

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No. _____
)	Filed: July 28, 1995
v.)	
)	
COMPUTER ASSOCIATES)	
INTERNATIONAL, INC.,)	
and LEGENT CORPORATION,)	
)	
Defendants.)	
)	

FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, having filed its Complaint herein on July 28, 1995, and Plaintiff and Defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of fact or law;

AND WHEREAS, Defendants having agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment being prompt and certain remedial action to ensure that, after the acquisition referred to herein, competition is not substantially lessened in certain product markets for enumerated types of mainframe systems management software;

AND WHEREAS, Defendants having represented to Plaintiff that the licensing and customer election procedures required below can

and will be accomplished and that Defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the licensing and customer election provisions contained below;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION

This Court has jurisdiction over each of the parties hereto and the subject matter of this action. Venue is proper in this Court. The Complaint states a claim upon which relief may be granted against the Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. DEFINITIONS

A. "Computer Associates" means Defendant Computer Associates International, Inc., its successors and assigns, each subsidiary and division thereof, and each officer, director, employee, agent and other person acting for or on behalf of any of them.

B. "Customer" means a holder of any current license or maintenance agreement for any subject software product with defendants, regardless where the customer is located.

C. "Customer Information" means all information, files, and records maintained by Defendants concerning Customers, including (i) all customer call reports (or portions thereof covering the Subject Software Products); (ii) all pricing information; (iii) all support and maintenance logs; and (iv) all other information maintained by defendants about specific Customers as concerns the Subject Software Products.

D. "Defendants" means, collectively or individually as the context requires, Computer Associates and/or Legent.

E. "Effective Date(s)" means the later of (i) the date of entry by the Court of this Final Judgment; or (ii) the execution of definitive license agreement(s) as contemplated in Part IV, below.

F. "Legent" means Defendant Legent Corporation, its successors and assigns, each subsidiary and division thereof, and each officer, director, employee, agent and other person acting for or on behalf of any of them.

G. "PIPES" means the technology developed by Peer Logic, Inc. known as PIPES, PIPES Platform, PIPES Platform Software Developers Kit, and derivative works of any of these products, both in object code and source code forms.

H. "Subject Software Product" means each of the following computer programs presently sold by Legent: (i) EPIC/VSE (VSE tape management and disk management); (ii) FAQS/PCS (VSE automated job scheduling); (iii) Alert/VSE and Alert/CICS (VSE

security); and (iv) FAQs/ASO for VSE (VSE automated operations). Each Subject Software Product shall include:

1. all source code and object code for the version or versions of the Subject Software Product currently being sold or distributed anywhere in the world, all existing source code and object code for all prior versions of the Subject Software Product previously sold or distributed anywhere in the world, and the most current iterations of source code and object code for all versions of the Subject Software Product under development or developed but not yet being sold or distributed, as of the date of the license(s) entered into pursuant to Part IV, below;

2. all optional modules, add-ons, enhancements and software customization sold or distributed to customers for use with the Subject Software Product;

3. all development tools, development environments, unique programming languages, software patches and other software or intellectual property that are or were used to develop, upgrade, and maintain that Subject Software Product that (i) defendants have the right to license, sub-license or assign, and (ii) that are not generally commercially available;

4. all existing documentation developed for use with any past, present or future version of the Subject Software Product, including all technical or development documentation, all user documentation, and all support documentation and support records, delivered to each licensee in an electronic form acceptable to that licensee.

III. APPLICABILITY

A. The provisions of this Final Judgment apply to the Defendants, their successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents, employees, attorneys and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. Defendants and each person bound by this Final Judgment shall cooperate in ensuring that the provisions of this Final Judgment are carried out.

B. Defendants shall require, as a condition of the licensing required herein, that the licensee(s) agree to be bound by the provisions of this Final Judgment that apply to such licensee(s).

IV. LICENSING

A. Bidding Procedures

Defendants are hereby ordered and directed to grant a nonexclusive, worldwide, irrevocable license for each Subject Software Product, on the terms and in the manner hereinafter stated:

1. Defendants shall, within seven (7) days after execution of the stipulation in this action, retain an independent investment banker to identify and solicit bidders, and to evaluate bids, for each Subject Software Product. The

identity of and terms of retention of said investment banker shall be subject to the approval of the Plaintiff, and said investment banker shall be charged with faithfully carrying out the terms of this Final Judgment. In the event that Plaintiff does not approve the investment banker proposed by Defendants, Defendants shall within three (3) days, submit to Plaintiff six (6) alternate investment bankers, with the terms of the proposed retention stated for each. Plaintiff shall have the right to select from among these six (6) alternatives.

2. The investment banker shall serve at the cost and expense of Defendants, and shall receive compensation based on a fee arrangement providing an additional incentive based solely on the price and terms of the license and the speed with which it is accomplished.

3. The investment banker shall have discretion to solicit bids for license of the Subject Software Products and to otherwise make known, by usual and customary means, the availability for license of the Subject Software Products. Plaintiff and Defendants may provide names of prospective licensees to the investment banker for solicitation, but in no event shall the investment banker be limited to soliciting bids only from persons identified by Plaintiff or Defendants.

4. The investment banker shall provide any person making an inquiry regarding a possible bid for the Subject Software Products with a copy of this Final Judgment, and shall coordinate the furnishing to all bona fide prospective licensees

the information and access specified in sub-section IV.A.5, below. The investment banker shall have discretion to establish such pre-bidding and bidding procedures, subject to the approval of Plaintiff, as are reasonably designed to elicit acceptable bids not later than twenty (20) days after the investment banker is retained. The investment banker shall file weekly reports with the parties setting forth the investment banker's efforts to accomplish licensing of the Subject Software Products as contemplated under this Final Judgment, including the name, address, and telephone number of each person who, during the preceding week, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the subject software products, and shall describe in detail each contact with any such person during that period.

5. Defendants shall promptly furnish to all bona fide prospective licensees, subject to customary confidentiality assurances, all information reasonably necessary for pre-bidding due diligence regarding the subject software products, except such information as may be subject to the attorney-client privilege or the attorney work product doctrine. Defendants shall provide such information to the Plaintiff at the same time that such information is made available to any other person. Defendants shall permit prospective licensees of each Subject Software Product to have reasonable access to personnel and to make such reasonable inspection of any Subject Software Product,

together with such financial, operational, or other documents and information as may be relevant to the license required by this Final Judgment.

6. Within seven (7) days after the close of bidding, provided for in sub-section IV.A.3 above, the investment banker shall, in consultation with the parties, determine the successful bidder or bidders for each Subject Software Product. No bid may be accepted that contains any provision requiring or permitting continuing royalty payments to Defendants or the reporting to defendants of sales units or revenues of the Subject Software Product by the bidder. Preference may first be given to bids to license all subject software products, then to license multiple Subject Software Products, then to license an individual Subject Software Product.

7. Defendants shall make all reasonable efforts to enter into a definitive agreement for the licensing of each Subject Software Product to the successful bidder or bidders within fourteen (14) days after selection by the investment banker of the successful bidder or bidders. Plaintiff may, in its sole discretion, extend the time period for completion of a definitive licensing agreement for an additional period of time not to exceed thirty (30) days.

8. Unless Plaintiff otherwise consents, licensing of the Subject Software Products shall include such assets and be accomplished in such a way as to satisfy Plaintiff, in its sole discretion, that each Subject Software Product can and will be

used by the licensee(s) as part of a viable, ongoing business involving the sale or license of the Subject Software Product to customers, including a demonstration to Plaintiff's satisfaction that (i) the license is for the purpose of competing effectively in the selling of the Subject Software Products to customers; (ii) the licensee has the managerial, operational, technical and financial capability to compete effectively in the selling of the Subject Software Products to customers; and (iii) none of the terms of any agreement between the licensee and Defendants gives Defendants the ability artificially to raise the licensee's costs, impairs the licensee's ability to innovate the Subject Software Products, impairs the licensee's ability to support customers, or otherwise interferes with the ability of the licensee to compete effectively. Plaintiff may decline to approve a license of a Subject Software Product to any person currently selling any product in the same product market (as alleged in Plaintiff's Complaint).

9. Within one (1) business day following execution of a definitive agreement for the licensing of any or all of the Subject Software Products, Defendants or the trustee, whichever is then responsible for effectuating the license, shall notify Plaintiff of the proposed license. If the trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in

or desire to, acquire any ownership interest in any Subject Software Product, together with full details of same. Plaintiff may, at its sole discretion, request additional information concerning the proposed license and the proposed licensee, which Defendants and the proposed licensee shall promptly provide. Plaintiff shall provide prompt written notice to Defendants and the trustee, if there is one, stating whether or not it objects to the proposed licensee. Upon written notice that the Plaintiff does not object to the proposed licensee, a license proposed under this Part IV may be consummated.

B. License Rights

Any license for one or more of the Subject Software Products shall, at minimum, convey the following:

1. the Subject Software Product, as defined herein;
2. the right of the licensee(s) to obtain comprehensive training for its developers and support personnel from Defendants, such that the licensee(s) will be able to maintain, develop and support the Subject Software Product in substantially the same manner as Defendants;
3. the right of the licensee(s) to assign or sub-license substantially all of its rights under the license(s) to another person, or to sub-license for the purpose of creating distributorships or agents of the licensee, provided however, that the license may, if Defendants and the licensee(s) so agree, preclude the sub-license of rights to any Subject Software Product on a non-exclusive basis for the purpose of creating

additional independent, competing software vendors of a Subject Software Product;

4. for a period of 180 days after the Effective Date, the right of the licensee(s), without interference from Defendants, to solicit, bid for and hire any of Defendants' employees, agents or contractors whose job duties as of the date of the filing by the parties of this Final Judgment relate, in whole or in part, directly to the development or technical support of the subject software products (hereinafter, the "Subject Software Product Employees"). To effectuate this right, Defendants shall provide to the licensee(s): (i) the name, address, telephone number, job description, and current compensation of each Subject Software Product Employee; (ii) the right to contact and recruit any or all such persons regarding possible employment; (iii) releases by defendants from any non-compete covenants applicable to any Subject Software Product Employee; and (iv) releases by Defendants from any right under federal, state or other applicable law to claim misappropriation of intellectual property or trade secrets, insofar as such intellectual property or trade secrets relate to the development or support of the Subject Software Products;

5. the right of the licensee to obtain the employment files and records of the Subject Software Product Employees, pursuant to the following procedure: (i) all such employment files and records (or copies thereof), as well as the names, addresses, and telephone numbers of such persons, shall be

provided by the Defendants to the investment banker, within five (5) days after the retention of the investment banker; (ii) the investment banker shall contact each Subject Software Product Employee and notify such person, in a form approved in advance by Plaintiff (a) of that person's right to authorize the investment banker or trustee to release that person's employment file or record to any licensee; (b) of the manner in which that person shall provide notice to the investment banker or trustee of its authorization (such as a telephone number that Employee should call); (c) that Defendants will not learn from the investment banker or trustee of the person's authorization to release his or her employment file or record to the licensee; and (d) of the time period in which the person must communicate his or her authorization to the investment banker or trustee; (iii) if a person chooses to authorize the release of his or her employment file or record, the investment banker or trustee shall promptly provide to the licensee(s) that person's employment file or record; and (iv) the investment banker or trustee shall not disclose to Defendants the identity of any person that has chosen to authorize the release of his or her employment file to a licensee(s).

6. for all Customers who elect to transfer their customer relationship for any Subject Software Product to the licensee pursuant to section V, below: (a) full and complete assignment of all licenses and maintenance contracts for the Subject Software Products so transferred, and (b) full and

complete transfer of all Customer Information covering the Subject Software Products so transferred, provided however that Defendants may retain Customer Information, but no Customer Information retained by Defendants shall be used for purposes of selling or marketing any Subject Software Product to any Customer who elects, pursuant to Part V herein, to transfer its business relationship to the licensee(s) for any Subject Software Product.

7. for a period of not less than one year after the Effective Date, full and prompt disclosure of all technical updates and problem resolution protocols for the Subject Software Products;

8. for a period of not less than one year after the Effective Date, reasonable (post-license) access during normal business hours to senior members of Defendants' development and support teams for the Subject Software Products to answer questions and provide problem resolution and advice relating to customer support;

9. for a period of not less than one year after the Effective Date, the right of the licensee to refer to the trademarks or trade names of the Subject Software Product for the purpose of representing to Customers and prospective customers that the Subject Software Product was developed by and licensed from Defendants. This subparagraph, however, shall not be construed to grant the licensee any right to market the Subject Software Product under the Defendants' trademarks or trade names.

C. Appointment of Trustee

1. If Defendants have not executed a definitive license or licenses to transfer all Subject Software Products as required by section IV.A, above, within the time specified therein (including any extension granted by Plaintiff pursuant to subsection IV.A.7, above), Defendants shall immediately notify Plaintiff of that fact in writing. Within five (5) calendar days of that date, Plaintiff shall provide Defendants with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required licensing. Defendants shall notify Plaintiff within five (5) calendar days thereafter whether either or both of such nominees are acceptable. If either or both of such nominees are acceptable to Defendants, Plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither nominee is acceptable to Defendants, they shall furnish to Plaintiff, at the time of Defendant's notification to Plaintiff, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required license. If either or both of such nominees are acceptable to Plaintiff, Plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither nominee is acceptable to Plaintiff, Plaintiff shall furnish the Court the names and qualifications of its and Defendants' proposed nominees. The Court may hear the parties as

to the nominees' qualifications and shall appoint one of the nominees as the trustee.

2. After the trustee's appointment has become effective, only the trustee shall have the right to license the Subject Software Products. The purpose of the trust shall be to create a viable, ongoing business which can compete effectively in the selling of the Subject Software Products. The trustee shall have the power and authority to execute a license or licenses to a person(s) acceptable to Plaintiff at such price and on such terms as are then obtainable upon the best reasonable effort by the trustee, subject to the provisions of sections IV.A and IV.B of this Final Judgment, and shall have such other powers as this Court shall deem appropriate to perform those functions. Defendants shall not object to the licensing of the Subject Software Products by the trustee on any grounds other than the trustee's malfeasance. Any such objection by Defendants must be conveyed in writing to Plaintiff and the trustee within five (5) calendar days after the trustee has notified Defendants of the proposed licensing.

3. The trustee shall serve at the cost and expense of Defendants, shall receive compensation based on a fee arrangement providing an incentive based on the price and terms of the license(s) and the speed with which it is accomplished, and shall serve on such other terms and conditions as the Court may prescribe; provided however, that the trustee shall receive no compensation, nor incur any costs or expenses, prior to the

effective date of its appointment. The trustee shall account for all monies derived. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to Defendants and the trust shall then be terminated.

4. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the licensing of the Subject Software Products and shall use their best efforts to assist the trustee in accomplishing the required license(s). The trustee shall have such full and complete access to the personnel, books, records, and facilities of Defendants' overall businesses as is reasonably necessary to carry out its responsibilities, and Defendants shall develop such financial or other information the trustee deems reasonably necessary to the licensing of the Subject Software Products. The trustee shall have full and complete access to the books and records of the investment banker retained pursuant to Section IV.A, above, relating to the investment banker's (i) attempts to obtain licensing of the Subject Software Products; and (ii) collection of employee files and records and authorizations to release such files and records to licensee(s).

5. After its appointment becomes effective, the trustee shall file weekly reports with the parties and the Court setting forth the trustee's efforts to accomplish licensing of the Subject Software Products as contemplated under this Final Judgment; provided however, that to the extent such reports

contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding week, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Subject Software Products, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to license the Subject Software Products.

6. Within ninety (90) days after its appointment has become effective, if the trustee has not accomplished the license(s) required to effectuate this Final Judgment, the trustee shall promptly file with the parties and the Court a report setting forth (i) the trustee's efforts to accomplish the required licensing, (ii) the reasons, in the trustee's judgment, why the required license(s) have not been accomplished, and (iii) the trustee's recommendations; provided however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The parties shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which shall, if necessary, include disposing of any or all assets of the Subject Software Product

businesses, including Customer contracts and/or software assets, to such buyers as the Court deems appropriate, or extending the trust and the term of the trustee's appointment.

V. CUSTOMER ELECTION

Defendants are hereby ordered and directed to take all measures necessary to effectuate the orderly and fair election and, where applicable, orderly transfer of all customer relationships concerning each Subject Software Product to the licensee of such Subject Software Product in the manner hereinafter stated.

A. Immediately upon execution of a definitive agreement to license any Subject Software Product, all provisions of any customer license or maintenance contract concerning such Subject Software Product that directly or indirectly restrict the Customer's ability to transfer its license or maintenance agreements of any Subject Software Product to the licensee of such Subject Software Product shall be suspended until the completion of the election and transfer process.

B. Within one (1) business day after execution of a definitive agreement or agreements to license the Subject Software Product, Defendants shall provide the investment banker or, if applicable, the trustee, with a complete list of the names, addresses, telephone numbers, and primary contact person of each Customer of each Subject Software Product, together with

all licenses or other contracts relating to the Subject Software Products.

C. Within five (5) calendar days after execution of a definitive agreement to license each Subject Software Product, the investment banker or, if applicable, the trustee, shall at Defendants' expense provide all customers with a notification of the right to elect whether to transfer their software license and maintenance contracts for the Subject Software Product to the licensee(s) of the Subject Software Product, such notification to be in a form approved by Plaintiff. Such notification shall include a copy of this Final Judgment, specify the identity of the licensee(s) of the Subject Software Products, specify the procedures to be followed in electing to transfer software licenses and maintenance contracts, and state an address of Plaintiff at which to direct questions or complaints about possible violations of the terms of this Final Judgment. Defendants and the licensee of the Subject Software Product shall have an equal right to enclose marketing or promotional materials with such notification, subject to Plaintiff's advance approval of such materials.

D. Except for the marketing or promotional materials included in the notification pursuant to the preceding subsection, Defendants and the licensee of the Subject Software Product shall not otherwise contact or communicate with any customer so notified regarding the Subject Software Products or the customer's election until after the conclusion of the

election period and transfer of all customer relationships to the licensee of each Subject Software Product, except (i) insofar as the customer initiates such contacts; and (ii) as may be necessary for routine technical support. In the event a customer's license or maintenance agreement covering any Subject Software Product shall expire or otherwise be renewable during the election period, the terms of the previous license or contract shall be extended until the conclusion of the election period and transfer of the customer relationship, unless the customer affirmatively terminates the license or contract. Defendants shall not solicit or induce customers to terminate licenses or contracts for the purpose of negotiating successor contracts during the election period.

E. Each Customer shall be permitted thirty (30) days after notification in which to notify the investment banker, or, if applicable, the trustee, of its election as to whether Defendants or the licensee shall have the rights to their software licenses and maintenance contracts for the Subject Software Products. Each Customer shall be given instructions how to notify the investment banker or trustee of its election. At the close of the thirty (30) day period, each Customer that has not communicated its election to the investment banker or, if applicable, the trustee shall be notified by the investment banker or trustee that it has fifteen (15) additional days in which to make an election and that failure to elect within that period shall result in such Customer being allocated either to

the Defendants or to the licensee(s). Customers failing to elect by the end of the fifteen (15) day period shall be randomly assigned to defendants or the licensee(s) of the Subject Software Products on a pro rata percentage equal to that of Customers who timely elected.

F. Promptly upon the close of the notification period or the Effective Date, whichever is later, the investment banker or trustee shall notify the parties and the licensee of the Subject Software Product of the election of each Customer, whether the Customer affirmatively made an election or was assigned at random, and provide the licensee with the information specified in subsection V.B, above, relating to each Customer that elected or was assigned to the licensee.

G. Within five (5) business days after receiving notification from the investment banker or trustee identified in the previous Section, Defendants shall transfer to the licensee of the subject software product all Customer Information for each Customer that (i) elected to transfer its license or maintenance agreement; or (ii) was allocated to the licensee(s) pursuant to Section V.E, above.

H. For each Customer that elects to transfer its license or maintenance agreement, or that is allocated to licensee(s) pursuant to Section V.E, above, Defendants shall pay to licensee a pro rata amount of all maintenance fees already paid by such Customer to Defendants to the extent such fees relate to service periods after the date of such assignment. If the maintenance

fees were negotiated or calculated as part of a multi-product bundle or package, the payment to licensee(s) shall be calculated by apportioning the maintenance fees among the products subject to the bundle or package in a ratio derived from the prices of each product as stated in Defendants' standard price list or schedule as of the date upon which the maintenance agreement became effective.

I. Upon transfer of all Customer Information, the licensee of the Subject Software Product, or Defendants, as the case may be, shall be deemed to be in full privity of contract with the Customer, and any provisions of the license or maintenance agreements that were suspended pursuant to section V.A, above shall be reinstated for the full remaining term of the contract.

J. Defendants shall not solicit any Customer electing to transfer its customer relationship for any Subject Software Product to the licensee, or that is allocated to the licensee pursuant to section V.E, above, to breach, repudiate, or abrogate the transferred maintenance agreement during the full remaining term of such agreement.

K. In any case where a Customer elects to transfer its customer relationship to the licensee, or is allocated to the licensee pursuant to section V.E, above, for a Subject Software Product covered by a license or maintenance agreement that also covers other products, such election shall apply only in respect of the Subject Software Product, and the license or maintenance agreement shall otherwise remain fully in effect; provided

however that any continuing license or maintenance obligation shall be reduced by an amount calculated by apportioning the licensing or maintenance fees in a ratio derived from the prices of each product as stated in Defendants' standard price list or schedule as of the date upon which the license or maintenance agreement became effective.

VI. PRESERVATION OF ASSETS

Until the transfer of the Subject Software Products and customer relationships required by the Final Judgment have been accomplished, Defendants shall take all steps necessary to comply with this Final Judgment and with the Stipulation previously executed by Defendants. Defendants shall take no action that would jeopardize the licensing of any Subject Software Product, shall continue to commit resources, development and support to each Subject Software Product at a level not materially less than that committed prior to the announcement of the subject acquisition, and shall not otherwise jeopardize the commercial viability of any Subject Software Product insofar as rights thereto may be transferable to a licensee of the Subject Software Product.

VII. CROSS-PLATFORM TECHNOLOGY

For five years following the entry by the Court of this Final Judgment, Defendants shall take no action, nor assert any right, to restrict Peer Logic, Inc. or any successor or assign of

Peer Logic, Inc. from licensing PIPES to any other person, notwithstanding any provisions of any agreement between such defendant and Peer Logic, Inc. to the contrary.

VIII. COMPLIANCE INSPECTION

For the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege or doctrine, from time to time:

A. Duly authorized representatives of the Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants made to its principal office, shall be permitted:

1. Access during office hours of Defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Defendants, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of Defendants and without restraint or interference from them, to interview or depose officers, employees, and agents of Defendants, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to Defendants' principal office, Defendants shall

submit such written reports, under oath if requested, with respect to the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to Plaintiff, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by Plaintiff to Defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which a defendant is not a party.

IX. RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to

this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

X. TERMINATION

This Final Judgment will expire on the tenth anniversary of the date of its entry.

XI. PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

UNITED STATES DISTRICT JUDGE

Dated: _____