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11 UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION
14

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16 UNITED STATES OF AMERICA,
17 Plaintiff,
18 v.
19 VA PARTNERS I, LLC
20 VALUEACT CAPITAL MASTER FUND, L.P.
21 VALUEACT CO-INVEST INTERNATIONAL, L.P.,
22 Defendants.

Civil Action No.:

23 **COMPLAINT**

24 The United States of America, acting under the direction of the Attorney General of the
25 United States, brings this civil action to obtain civil penalties and equitable relief against the
26 Defendants (collectively, “ValueAct”) for failing to comply with the premerger notification and
27 waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976
28 (“HSR Act”), and alleges as follows:

I. INTRODUCTION

1
2 1. The Hart-Scott-Rodino Act, 15 U.S.C. §18a, is an essential part of modern
3 antitrust enforcement. It requires purchasers of voting securities in excess of a certain value to
4 notify the Department of Justice and the Federal Trade Commission and to observe a waiting
5 period before consummating the transaction. These obligations extend to acquisitions of
6 minority interests. One limited exemption to these obligations applies if the purchaser's holdings
7 constitute less than ten percent of the stock of the company and the acquisition is "solely for the
8 purpose of investment" – that is, the purchaser has no intention of participating in the company's
9 business decisions.

10 2. ValueAct promotes itself as having a strategy of "active, constructive
11 involvement" in the management of the companies in which it invests. This case concerns recent
12 acquisitions by two ValueAct investment funds of over \$2.5 billion of voting securities of
13 Halliburton Company and Baker Hughes Incorporated. Halliburton and Baker Hughes are head-
14 to-head competitors and two of the largest providers of oilfield products and services in the
15 world. On November 17, 2014, Halliburton and Baker Hughes announced their intent to merge.
16 Their proposed merger is the subject of an ongoing antitrust review in the United States and
17 several other countries.

18 3. ValueAct began acquiring significant holdings of the two companies on the heels
19 of the Halliburton/Baker Hughes merger announcement. From the beginning, ValueAct
20 anticipated influencing the business decisions of the companies as the merger process unfolded.
21 ValueAct sent memoranda to its investors outlining this strategy and explaining that purchasing a
22 stake in each of these firms would allow it to "be a strong advocate for the deal to close," which
23 would in turn "[i]ncrease probability of deal happening." If the deal encountered "regulatory
24 issues," ValueAct "would be well positioned as an owner of both companies to help develop the
25 new terms." ValueAct executives also discussed internally a back-up plan to "sell at least some
26 of Baker's pieces" if the deal were blocked or abandoned.

27 4. ValueAct's purchases of Halliburton and Baker Hughes shares did not qualify for
28 the narrow exemption from the requirements of the HSR Act for acquisitions made solely for the

1 purpose of investment. ValueAct planned from the outset to take steps to influence the business
2 decisions of both companies, and met frequently with executives of both companies to execute
3 those plans.

4 5. These HSR Act violations allowed ValueAct to become one of the largest
5 shareholders of both Halliburton and Baker Hughes, without providing the government its
6 statutory right to notice and prior review of the stock purchases. ValueAct established these
7 positions as Halliburton and Baker Hughes were being investigated for agreeing to a merger that
8 threatens to substantially lessen competition in numerous markets. ValueAct intended to use its
9 position as a major shareholder of these companies to obtain access to management, to learn
10 information about the merger and the companies' strategies in private conversations with senior
11 executives, to influence those executives to improve the chances that the merger would be
12 completed, and to influence other business decisions whether or not the merger went forward.

13 6. The Court should assess a civil penalty of at least \$19 million to address
14 ValueAct's violations of the HSR Act, and should restrain ValueAct from further violations.

15 **II. JURISDICTION AND VENUE**

16 7. This Complaint is filed and these proceedings are instituted under Section 7A of
17 the Clayton Act, 15 U.S.C. § 18a, added by Title II of the HSR Act, to recover civil penalties and
18 equitable relief for violations of that section.

19 8. This Court has jurisdiction over the Defendants and over the subject matter of this
20 action pursuant to Section 7A(g) of the Clayton Act, 15 U.S.C. § 18a(g), and pursuant to
21 28 U.S.C. §§ 1331, 1337(a), 1345 and 1355. Each of the Defendants is engaged in commerce, or
22 in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C.
23 § 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. § 18a(a)(1).

24 9. Venue is properly based in this District under Section 12 of the Clayton Act, 15
25 U.S.C. § 22, and under 28 U.S.C. § 1391(b)(2), (c)(2). Each of the Defendants transacts or has
26 transacted business in this district and has its principal place of business here.

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ValueAct Capital Submission in Response to Second Request issued on 1/27/2016 and 2/10/2016 - Business Confidential - Confidential Treatment Requested

ABILITY TO INFLUENCE: OUR "ACTIVISM" SCORECARD

Total Core Investments	79
Public Board Seats	41
Proxy Contest*	1
CEO/CFO Changes	33
Major Divestitures	14
Recaps/Big Share Repurchases	26
Operating Consultant Engagements	14
Acquisition/Investment Strategy	11
Company Sales	19
Compensation Changes	9

*Settled before vote

22

14. In presentations, ValueAct has explained that it likes "disciplined oligopolies" and looks to invest in businesses in "[o]ligopolistic markets, high barriers-to-entry."

15. ValueAct funds have previously violated the HSR Act by acquiring voting securities without making the required notifications. In 2003, ValueAct Capital Partners, L.P. filed corrective notifications for three prior acquisitions of voting securities. ValueAct outlined steps it would take to ensure future compliance with the HSR Act. No enforcement action was taken at that time. Master Fund then failed to make required filings with respect to three acquisitions that it made in 2005. ValueAct agreed to pay a \$1.1 million civil penalty to settle an HSR Act enforcement action based on these violations.

V. BACKGROUND

A. **The Hart-Scott-Rodino Antitrust Improvements Act**

16. The HSR Act requires parties to file a notification with the Federal Trade Commission and the Department of Justice and to observe a waiting period before consummating acquisitions of voting securities or assets that exceed certain value thresholds.

1 These requirements give the antitrust enforcement agencies prior notice of, and information
2 about, proposed transactions. The waiting period also provides the antitrust enforcement
3 agencies with an opportunity to investigate and to seek an injunction to prevent the
4 consummation of anticompetitive transactions.

5 17. The HSR Act contains certain limited exemptions to the notification and waiting
6 period requirements. The acquirer of voting securities has the burden of showing eligibility for
7 an exemption. One such exemption applies narrowly to acquisitions made “solely for the
8 purpose of investment” if the voting securities held do not exceed ten percent of the outstanding
9 voting securities of the issuer. 15 U.S.C. § 18a(c)(9). The regulations implementing the Act
10 explain that, to qualify for this exemption, the acquiring party must have “no intention of
11 participating in the formulation, determination, or direction of the basic business decisions of the
12 issuer.” 16 C.F.R. § 801.1(i)(1).

13 **B. ValueAct’s Initial Investment Decision and Strategy**

14 18. After Halliburton and Baker Hughes announced their intent to merge on
15 November 17, 2014, ValueAct began purchasing stock in each company through its Master Fund
16 and Co-Invest Fund. ValueAct continued to make purchases in both companies for several
17 months, eventually acquiring over \$2.5 billion in securities of the two companies combined.

18 19. As ValueAct was acquiring stock in these two companies in December 2014 and
19 early January 2015, its executives were developing strategies to use ValueAct’s ownership
20 position to influence management of each firm as necessary to increase the probability of the
21 deal being completed. ValueAct’s Master Fund crossed the applicable HSR Act reporting
22 thresholds for Baker Hughes and Halliburton on December 1 and December 5, 2014,
23 respectively, and Master Fund continued to build up its position as its executives discussed
24 strategy. These discussions culminated in the drafting of memoranda that ValueAct sent to its
25 investors on January 16, 2015. These memoranda – one about Baker Hughes and one about
26 Halliburton – explained ValueAct’s decision to acquire stakes in these competitors through its
27 Master Fund, and offered investors the opportunity to increase their stakes in these firms through
28 additional share purchases by ValueAct’s Co-Invest Fund.

1 20. These memoranda and other contemporaneous documents show that ValueAct's
2 most senior executives planned from the outset to play an active role at Halliburton and Baker
3 Hughes. The lead ValueAct partner responsible for the Baker Hughes investment internally
4 circulated a draft of an investor memorandum explaining that "our activist approach limits our
5 downside in the unlikely case that the merger does not close." The draft further noted that if the
6 merger were not completed, ValueAct "would likely seek to take a more active role in
7 overseeing the company." ValueAct's CEO then requested an insertion into the memorandum
8 highlighting that ValueAct's "[a]ctive role" is an additional reason to invest in both companies.

9 21. Although the memoranda ultimately shared with investors watered down the
10 words used to describe ValueAct's activist strategy, they still emphasized that purchasing a stake
11 in Halliburton and Baker Hughes would "increase probability of deal happening" and would
12 allow ValueAct to be "a strong advocate for the deal to close." ValueAct identified this as one
13 of three "key considerations" supporting its investment decision. A contemporaneous email
14 among ValueAct partners remarked that if Halliburton's shareholders threatened to vote against
15 the deal, ValueAct's "position in HAL should be meaningful enough to have a substantial role in
16 those conversations."

17 22. ValueAct also intended to help restructure the merger if it hit roadblocks. On
18 December 16, 2014, ValueAct's CEO emailed his partners: "if we own both we can drive new
19 terms to get the deal done if weird [expletive] is happening." ValueAct also expressed this view
20 in its memos to investors: "In the event of further fundamental dislocation or regulatory issues,
21 it is possible the deal would need to be restructured and we believe ValueAct Capital would be
22 well positioned as an owner of both companies to help develop the new terms."

23 23. In a December 2014 internal email, a ValueAct partner observed that "[i]f the deal
24 failed, the back-up plan would seem to be to sell at least some of Baker's pieces, and we think
25 that we could get up to 12x EBITDA for just 2 of BHI's businesses – artificial lift and
26 chemicals." ValueAct's memoranda to investors noted, "Recent transactions in each of those
27 industries [specialty chemicals and artificial lift] suggest that these businesses are worth north of
28 10 times EBITDA." Moreover, the Baker Hughes memorandum explained that there are

1 “numerous levers for the company to pull to drive margin expansion,” and identified Baker
2 Hughes’s pressure pumping business as a good candidate for margin improvement.

3 24. Regardless of how the merger process unfolded, ValueAct intended to influence
4 the business decisions of both companies. For example, on December 5, 2014, the day Master
5 Fund’s holdings in Halliburton crossed the HSR Act threshold, a ValueAct partner wrote an
6 email to ValueAct’s CEO about Halliburton: “Wonder if it would be possible to get the VRX
7 [Valeant Pharmaceuticals] comp plan in from outside the board room?” The CEO responded
8 “Yes. Good idea.” (ValueAct had recently convinced management to change the executive
9 compensation plan at another of its investments, Valeant Pharmaceuticals.)

10 25. ValueAct also intended to play a role in Halliburton’s efforts to integrate the two
11 firms. ValueAct told its investors that its stake in Halliburton “helps to further enhance our
12 relationship with management and the board of directors as they work to complete the merger
13 and integrate the business into Halliburton’s existing operations.”

14 **C. ValueAct’s Efforts to Influence the Management of Both Companies**

15 26. Consistent with its investment strategy of “active, constructive involvement,”
16 ValueAct established a direct line to senior management at both Halliburton and Baker Hughes
17 and met with them frequently from the time it started acquiring stock. From December 2014
18 through January 2016, ValueAct met in person or had teleconferences more than fifteen times
19 with senior management of Halliburton or Baker Hughes, including meeting multiple times with
20 the CEOs of both companies. ValueAct partners also exchanged a number of emails with
21 management at both firms about the merger and the companies’ respective operations.

22 27. ValueAct reached out to Baker Hughes immediately after it began purchasing
23 shares. On December 1, 2014, the day Master Fund’s holdings crossed the HSR Act threshold
24 for Baker Hughes, a ValueAct partner told a Baker Hughes executive that ValueAct was positive
25 on the merger but also liked “that 20% of [Baker Hughes’s] revenue comes from non-capital
26 intensive business lines which could command a big multiple if sold.” A few days later,
27 ValueAct’s CEO met in person with the CFO of Baker Hughes. According to Baker Hughes’s
28 notes of the meeting, ValueAct’s CEO “highlighted that it was critical that BHI continued

1 focused [*sic*] on many of these improvement opportunities despite the acquisition. He
2 specifically emphasized with graphs the largest gap/opportunities he saw.” With respect to the
3 gap in Baker Hughes’s North American margins, ValueAct’s CEO stated, “Looking to learn with
4 BHI on how to close that GAP [*sic*].” ValueAct’s CEO also discussed other areas “that he
5 thought BHI should continue to focus on as there was a lot of improvement opportunity.”
6 According to the notes, the meeting ended with ValueAct’s CEO “stating that they would remain
7 in contact and sharing that they plan to be large shareholders of BHI.”

8 28. On January 16, 2015, ValueAct filed a Beneficial Ownership Report
9 (Schedule 13D) with the Securities and Exchange Commission publicly disclosing its substantial
10 stake in Baker Hughes and reporting that it might discuss “competitive and strategic matters”
11 with Baker Hughes management, and might “propos[e] changes in [Baker Hughes’s]
12 operations.” Before submitting the Schedule 13D, ValueAct’s CEO notified Halliburton’s CEO
13 of the impending filing on Baker Hughes, explaining that the filing “gives us the flexibility to
14 engage with the company [Baker Hughes] on all issues.” Later the same day, ValueAct’s CEO
15 emailed Halliburton’s CEO a copy of its investment memoranda for both Halliburton and Baker
16 Hughes.

17 29. By February, after ValueAct had completed its outreach to investors seeking
18 capital for additional share purchases, ValueAct began acquiring stock in Halliburton and Baker
19 Hughes through Co-Invest Fund. On March 10, 2015, Co-Invest Fund’s holdings in Halliburton
20 crossed the applicable HSR Act reporting threshold.

21 30. Also in early March, ValueAct contacted Halliburton to offer assistance in
22 advance of the shareholder vote on the merger. ValueAct offered Halliburton “to speak with any
23 of [Halliburton’s] top shareholders about [ValueAct’s] view of the merger prior to the vote.”
24 Halliburton responded that it would let ValueAct know if ValueAct’s help became necessary.

25 31. In May 2015, ValueAct further engaged with Halliburton on the company’s plans
26 for post-merger integration. On May 13, ValueAct met with Halliburton’s CEO to discuss
27 actions that Halliburton could take in an attempt to achieve its target merger synergies. On
28 May 27, a ValueAct partner called Halliburton’s Chief Integration Officer to recommend a firm

1 for real estate integration services. In a subsequent email exchange, another ValueAct partner
2 emphasized the need to engage on these issues at the executive level, and stated that
3 Halliburton's plan was "a traditional approach likely to leave value on the table." Instead, the
4 partner identified alternative ways the real estate firm could work with Halliburton to help
5 achieve the synergy goals.

6 32. ValueAct also followed through on its idea for changing Halliburton's executive
7 compensation plan. On July 14, 2015, ValueAct contacted Halliburton's CEO to schedule a
8 meeting to discuss executive compensation. At the meeting, which ultimately occurred in
9 September, ValueAct delivered a thirty-five-page presentation detailing ValueAct's preferred
10 approach, commenting on Halliburton's current plan, and proposing specific changes.

11 **D. Consistent with Its Initial Plans, ValueAct Worked to Restructure the**
12 **Merger or to Sell Parts of Baker Hughes**

13 33. ValueAct carefully monitored the status of the antitrust review process and
14 intended to intervene with the management of each firm as necessary to increase the probability
15 of the deal being completed. ValueAct met with Baker Hughes's CEO in May 2015 and
16 according to ValueAct's notes of that meeting, Baker Hughes's CEO "seemed pretty worried
17 about anti-trust, and implied odds deal goes through 70% or lower in his mind." ValueAct then
18 continued to push management of both companies to preserve the deal or, if these efforts failed,
19 to sell off pieces of Baker Hughes.

20 34. On August 31, 2015, ValueAct met with Baker Hughes's CEO "to plant the seed
21 to seek alternative options with other buyers if the deal falls through." In its initial investment
22 analysis, the ValueAct partners had discussed selling individual Baker Hughes businesses as a
23 back-up plan if the merger failed. ValueAct presented an updated analysis to argue this case to
24 Baker Hughes. ValueAct also proposed restructuring the deal with Halliburton, suggesting that
25 Baker Hughes should sell its pressure pumping, artificial lift, and specialty chemical businesses
26 to Halliburton at a premium in lieu of receiving the merger termination fee.

27 35. According to ValueAct notes from the meeting, Baker Hughes's CEO was "very
28 committed to running BHI stand-alone if the deal fails and did not seem to entertain the idea of

1 shopping the business piecemeal to other buyers.” The notes explain that ValueAct agreed that
2 the Baker Hughes CEO’s plan to “focus on technology-based product lines, and grow the
3 business organically in these areas seems like the right areas to focus for the stand-alone
4 company.” But this plan was not what the ValueAct executives hoped for: “the problem is that
5 this story seems like a 4-5 year period with the stock not generating a great return over that
6 period.” According to Baker Hughes’s notes of the meeting, the ValueAct executives registered
7 disappointment with Baker Hughes’s CEO, and informed him that Halliburton and Baker
8 Hughes were “the only investment ValueAct had where they did not have board seats.”

9 36. On September 18, 2015, ValueAct pitched its restructuring plan to Halliburton’s
10 CEO, advocating that Halliburton pursue selective acquisitions of Baker Hughes’s production
11 chemicals and artificial lift businesses. According to Halliburton’s notes of the call, ValueAct
12 suggested that Halliburton should offer a substantial sum to acquire these businesses and settle
13 the \$3.5 billion merger break-up fee at the same time.

14 37. During this conversation with the CEO of Halliburton, ValueAct shared Baker
15 Hughes’s plans if the merger could not close. According to Halliburton’s notes of the call,
16 ValueAct stated that if the merger could not be consummated, Baker Hughes’s CEO intended to
17 “run the company like he did before.” Halliburton’s CEO then asked whether Baker Hughes’s
18 CEO was “listening to VA.” A ValueAct partner replied that Baker Hughes’s CEO “realize [*sic*]
19 can go to his board directly.” ValueAct also asked Halliburton’s CEO if there was “anything we
20 [ValueAct] can do to be helpful,” and explicitly offered to “apply pressure to BHI CEO
21 regarding unhappiness if he continues to run co. if deal does not go through.” In short, ValueAct
22 offered to use its position as a shareholder to pressure Baker Hughes’s management to change its
23 business strategy in ways that could affect Baker Hughes’s competitive future.

24 38. ValueAct and Halliburton’s willingness to discuss the competitive future of Baker
25 Hughes in the absence of a merger is further confirmed by notes contained in ValueAct’s files.
26 These notes list “3 options that Lazard [presumably Halliburton’s CEO, David Lesar] discussed”
27 with respect to Baker Hughes. One of those options was “Cripple a competitor.”
28

1 46. Master Fund was in violation of the requirements of the HSR Act related to its
2 purchase of Halliburton voting securities each day beginning December 5, 2014, and ending on
3 or about January 27, 2016.

4 **B. Count 2: Co-Invest Fund's Acquisition of Halliburton**

5 47. The HSR Act and applicable implementing regulations required that Co-Invest
6 Fund file a notification and report form with the antitrust enforcement agencies and observe a
7 waiting period before acquiring any voting securities in Halliburton that would result in Co-
8 Invest Fund holding an aggregate total amount of voting securities in excess of the \$50 million
9 threshold, as adjusted (\$76.3 million beginning in February 2016).

10 48. On or about February 24, 2015, Co-Invest Fund began purchasing Halliburton
11 voting securities. On or about March 10, 2015, Co-Invest Fund's aggregate value of Halliburton
12 voting securities exceeded the \$76.3 million threshold. Co-Invest Fund continued to purchase
13 Halliburton voting securities until March 12, 2015, by which time Co-Invest Fund's aggregate
14 value of Halliburton voting securities exceeded \$138 million.

15 49. Co-Invest Fund failed to file the required notification or observe the required
16 waiting period.

17 50. On or about January 22, 2016, Co-Invest Fund had sold a sufficient quantity of
18 voting securities of Halliburton such that its holdings were no longer in excess of \$76.3 million.

19 51. Co-Invest Fund was in violation of the requirements of the HSR Act related to its
20 purchase of Halliburton voting securities each day beginning March 10, 2015, and ending on or
21 about January 22, 2016.

22 **C. Count 3: Master Fund's Acquisition of Baker Hughes**


23 52. The HSR Act and applicable implementing regulations required that Master Fund
24 file a notification and report form with the antitrust enforcement agencies and observe a waiting
25 period before acquiring any voting securities in Baker Hughes that would result in Master Fund
26 holding an aggregate total amount of voting securities in excess of the \$50 million threshold, as
27 adjusted (\$75.9 million in December 2015, and \$76.3 million beginning in February 2016).

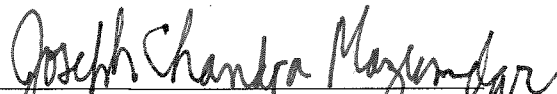
- 1 (f) That the Court order such other and further relief as the Court may deem just and
- 2 proper; and,
- 3 (g) That the Court award the Plaintiff its costs of this suit.

4 Dated:

5 Respectfully submitted,

6 FOR THE PLAINTIFF UNITED STATES
7 OF AMERICA:


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9 
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11 WILLIAM J. BAER
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