

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

complying with the Act. Seano also exceeded the Act's \$50 million threshold with respect to his

holdings of Esperion Therapeutics, Inc. ("Esperion") and ultimately held more than \$100 million of its voting securities without complying with the Act.

II. JURISDICTION AND VENUE

engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. § 18a(a)(1). At all times relevant to this complaint, Sacane had total assets in excess of \$100 million.

6. Management, formerly known as Highline Management (N.A.), LLC, is a limited liability company organized under the laws of Delaware. At all times relevant to this complaint, Management had the contractual power to designate a majority of the board of directors of Master Fund and controlled Master Fund within the meaning of 16 C.F.R. § 801.1(b).

7. Duna is a limited liability company organized under the laws of Delaware.

investment company that conducts all of its investment and trading activities through, and invests

Act, 15 U.S.C. § 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. § 18a(a)(1). At all times relevant to this complaint, Aksys had total assets in excess of \$10 million.

10. Esperion, at all times relevant to this complaint, was a corporation organized under the laws of Delaware, with its principal office and place of business in Ann Arbor, MI. At all

13. Section 801.1(a)(1) of the Rules, 16 C.F.R. § 801.1(a)(1), defines “person” to mean “an ultimate parent entity and all entities which it controls directly or indirectly.”

14. Section 801.1(a)(3) of the Rules, 16 C.F.R. § 801.1(a)(3), defines “ultimate parent entity” to mean “any entity which is not controlled by any other entity.”

15. Section 801.1(b) of the Rules, 16 C.F.R. §801.1(b) defines “control.”

16. An acquiring entity may have more than one ultimate parent entity. Each such ultimate parent entity is an acquiring person and must file notification with the SEC.

17.

agencies if the acquisition is reportable under the Act.

17. An acquiring person making an acquisition of voting securities must indicate in its

is liable to the United States for a civil penalty for each day during which such violation occurs.

violation. The maximum amount of civil penalty is \$11,000 per day, pursuant to the Debt Collection Improvement Act of 1996, Pub. L. 104-134, § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note), and Federal Trade Commission Rule 1.98. 16 C.F.R. § 1.98. 61 Fed. Reg. 54548 (Oct. 21, 1996).

VI. ACQUISITIONS OF AGENCIES AND ESPIONAGE VOTING SECURITIES

23. On or about July 23, 2003, Sacane's outside counsel raised questions with Sacane concerning the HSR reportability of the Aksys acquisitions. On August 20, 2003, [REDACTED]

submitted two premerger notifications under the HSR Act for Durus, which was also an ultimate parent entity of Master Fund, notifying the federal antitrust agencies that Durus had crossed the \$50 million and 50% notification thresholds in connection with Master Fund's acquisitions of Aksys shares.

24. After being informed by the FTC's Premerger Notification Office in January 2005 that Sacane was also an ultimate parent entity of Master Fund, Sacane filed two premerger notifications for himself as an acquiring person in connection with the same acquisitions on April

28. As an ultimate parent entity of Master Fund, Sacane was required by the HSR Act to submit a notification and observe the Act's waiting period before Master Fund made the acquisitions described in paragraphs 26 and 27.

29. Sacane failed to file a premerger notification and report form with the federal antitrust agencies and failed to observe the statutory waiting period before the acquisitions of Esperion voting securities described in paragraphs 26 and 27.

20. On or about July 23, 2003, Sacane's outside counsel raised questions with Sacane

concerning the HSR reportability of the Esperion acquisitions. On August 29, 2003, Sacane submitted two premerger notifications under the HSR Act for Durus, which was also an ultimate

securities of Aksys valued in excess of \$50 million, and ending on April 24, 2003, as a result of which Master Fund held greater than 50% of the voting securities of Aksys, were in violation of the HSR Act, 15 U.S.C. § 18a; and that Defendant Sacane, as ultimate parent entity of Master Fund, was in violation of the HSR Act each day from February 24, 2003, to April 24, 2003.

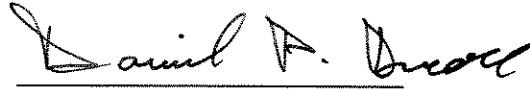
2. That the Court adjudge and decree that the acquisitions made by Master Fund of voting securities of Esperion beginning on March 24, 2003, as a result of which Master Fund held voting

Dated: 9/26, 2005.

FOR THE PLAINTIFF UNITED STATES
OF AMERICA:



Thomas O. Barnett



Daniel P. Ducore

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

(3) in the event Plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

~~Matthew S. Donlin~~

Dated: 9/26/05

FOR THE PLAINTIFF:



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

[REDACTED]

Ordered, Adjudged, and Decreed as follows:

I.

The Court has jurisdiction of the subject matter of this action and of the Plaintiff and the Defendant. The Complaint states a claim upon which relief can be granted against the Defendant

II.

Judgment is hereby entered in this matter in favor of Plaintiff United States of America and against Defendant Scott R. Sacane, and, pursuant to Section 7A(g)(1) of the Clayton Act, 15 U.S.C. § 18a(g)(1), the Debt Collection Improvement Act of 1996, Pub. L. 104-134

Suite 215 North
Washington, D.C. 20530.

Defendant shall pay the full amount of the civil penalties within thirty (30) days of entry of this Final Judgment. In the event of a default in payment, interest at the rate of eighteen (18) percent per annum shall accrue thereon from the date of default to the date of payment.

III.

Each party shall bear its own costs of this action.

IV.

Entry of this Final Judgment is in the public interest.

Dated: _____, 2005.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA
c/o Department of Justice
Washington, D.C. 20530,

Plaintiff,

v.

SCOTT R. SACANE,
20 Marshall Street
Suite 320
South Norwalk, CT 06854,

Defendant.

Civil Action No.

MOTION FOR ENTRY OF JUDGMENT

Plaintiff, having filed its Complaint in the above-captioned case, and having filed this date a Stipulation and proposed Final Judgment, hereby moves this Court for entry of a Final Judgment against Defendant Scott R. Sacane ("Defendant"). By agreement of the parties, the Final Judgment against the Defendant provides for the payment of a civil penalty totaling \$350,000 by Defendant pursuant to Section 7A(g)(1) of the Clayton Act, 15 U.S.C. § 18a(g)(1).

STATEMENT OF POINTS AND AUTHORITIES

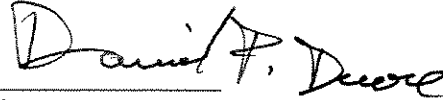
continuous violation of the HSR Act each day during the period beginning on February 24, 2003, through May 2, 2005, with respect to acquisitions of voting securities of one company; and beginning on March 24, 2003, through May 2, 2005, with respect to acquisitions of voting securities of another company. Under section (g)(1) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a(g)(1), any person who fails to comply with the Act shall be liable to the United States for a civil penalty of not more than \$11,000 for each day during which such person is in violation of

Because the Complaint seeks, and the Final Judgment provides for, only the payment of civil penalties, the procedures of the APPA are not required in this action. A consent judgment in a case seeking only monetary penalties is not the type of "consent judgment" contemplated by

For the above reasons, the United States asks the Court to enter the Final Judgment in this case.

Dated: 9/26/05

Respectfully submitted,



Daniel P. Ducore
D.C. Bar No. 933721

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D.C. Bar No. 269266
Special Attorney

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Federal Trade Commission
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CERTIFICATE OF SERVICE

J. Roberta S. Baruch certify that on 9/26 2005 the attached "Motion for Dis-

of Judgment," with exhibits, including a "Stipulation" and proposed "Final Judgment" were served upon the parties by mailing a copy to the person listed below:

Matthew S. Dontzin, Esquire
The Dontzin Law Firm
6 East 81st Street
New York, NY 10028