

APPENDIX A

FINAL JUDGMENTS

(Ordered by Case Listing in the Case Caption)

UNITED STATES v.
THE UNION PACIFIC RAILROAD COMPANY, *et al.*

In Equity No.: 2136

Year Judgment Entered: 1913

IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF UTAH.

Equity 2136.

THE UNITED STATES OF AMERICA, COMPLAINANT,

vs.

THE UNION PACIFIC RAILROAD COMPANY; THE OREGON
SHORT LINE RAILROAD COMPANY; THE OREGON RAIL-
ROAD & NAVIGATION COMPANY; THE SAN PEDRO, LOS
ANGELES & SALT LAKE RAILROAD COMPANY; THE AT-
CHISON, TOPEKA & SANTA FE RAILWAY COMPANY; THE
SOUTHERN PACIFIC COMPANY; NORTHERN PACIFIC
RAILWAY COMPANY; GREAT NORTHERN RAILWAY COM-
PANY; FARMERS' LOAN & TRUST COMPANY; JACOB H.
SCHIFF; OTTO H. KAHN; JAMES STILLMAN; HENRY C.
FRICK; WILLIAM A. CLARK; ROBERT S. LOVETT, AS
TRUSTEE; CENTRAL PACIFIC RAILWAY COMPANY AND
SOUTHERN PACIFIC RAILROAD COMPANY, DEFENDANTS.

FINAL DECREE.

Whereas the above cause was determined by a decree of
this court entered June 24, 1911, dismissing the bill, from
which complainant appealed to the Supreme Court of the
United States, which, in an opinion delivered December 2,
1912, reversed the decree of this court and issued its
mandate filed herein February 12, 1913, remanding the
cause with instructions to enter a decree and for further
proceedings in conformity with its opinion, which opinion
directed among other things, that disposition of the shares

of capital stock of the defendant Southern Pacific Company found to have been unlawfully acquired by the defendant Oregon Short Line Railroad Company in the interest of the defendant Union Pacific Railroad Company—

shall be made subject to the approval and decree of the District Court, and any plan for the disposition of this stock must be such as to effectually dissolve the unlawful combination thus created;

and further that—

The court shall proceed, upon the presentation of any plan to hear the Government and defendants and may bring in any additional parties whose presence may be necessary to a final disposition of the stock in conformity to the views herein expressed.

And any plan or plans shall be presented to the District Court within three months from the receipt of the mandate of this court, failing which, or upon the rejection by the court of plans submitted within such time, the court shall proceed by receivership and sale, if necessary, to dispose of such stock in such wise as to dissolve such unlawful combination.

And whereas thereupon, on February 12, 1913, this court entered a decree adjudging that the shares of the defendant Southern Pacific Company held by the defendant Oregon Short Line Railroad Company were acquired by virtue of an unlawful combination to restrain trade and commerce and enjoining the defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company and their agents from voting or receiving dividends in respect thereof, and providing further, amongst other things, as follows:

SEC. 14. That as directed by the said Supreme Court of the United States, the said defendants may present to this court plans for the disposition of the stock of said Southern Pacific Company, so held by said Oregon Short Line Railroad Company, within three months from the 12th day of February, 1913, the date of the filing of the mandate in this court; and the court, upon the presentation of such plans, will hear the complainant and defendants and will bring in any additional parties whose presence may be found necessary to a final disposition of the stock in conformity with the decision of the Supreme Court. In the event that defendants shall fail to present such plans within said time, or upon the rejection by the court of the plans submitted within such time, this court will take such further steps relative to a disposition of such stock as may be necessary

to carry out the provisions of this decree, jurisdiction of the cause being retained for that purpose.

And whereas on February 12, 1913, the defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company presented a plan for the disposition of the said shares which had been approved by the Attorney General of the United States but which was withdrawn before action thereon because of the failure of the railroad commission of the State of California to approve certain features thereof within its jurisdiction;

And whereas thereafter, with the consent of the Attorney General, the time within which to present plans was extended by the Supreme Court until July 1, 1913;

And whereas on June 5, 1913, the defendants Union Pacific Railroad Company and Oregon Short Line Railroad filed herein a petition submitting (1) a First Amended Plan, in substance providing for the disposition of said shares by a public subscription offering at prices and upon terms to be fixed by said defendants and with certain limitations upon the right of Union Pacific stockholders to subscribe; and (2) a Second Amended Plan, in substance providing for the transfer of said shares to a trustee and for the offering of the trustee's non-voting certificates of interest therein, upon terms fixed by said defendants, to Union Pacific stockholders or their assignees for subscription, which certificates of interest should be exchangeable for Southern Pacific shares upon affidavit that the applicant for such exchange owned no Union Pacific Railroad Company stock;

And whereas on June 12, 1913, the said defendants filed a petition supplementing their First Amended Plan and Second Amended Plan aforesaid by a proposal to sell to the Pennsylvania Railroad Company 382,924 shares of the Southern Pacific Company in exchange for 425,472 shares of The Baltimore and Ohio Railroad Company;

And whereas, by petition filed herein June 30, 1913, the said defendants withdrew all of the plans recited in the petitions then pending before the court and submitted their third amended plan;

And whereas complainant has filed an answer to said petition submitting said third amended plan;

Now, therefore, it is ordered, adjudged, and decreed:

SECTION 1. Said third amended plan is hereby approved in so far, and only so far, as its provisions are embodied in this decree.

SECTION 2. The defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company having asked permission to sell to the Pennsylvania Railroad Company 382,924 of the said shares of the capital stock of the defendant Southern Pacific Company, of the par value of \$38,292,400, and to accept in exchange 425,472 shares (half preferred and half common) of the capital stock of The Baltimore and Ohio Railroad Company, of the par value of \$42,547,200 (being all the stock of said company owned or controlled by the Pennsylvania Railroad Company or any of its subsidiaries), and it appearing that such sale or exchange would be a substantial step toward the effectual dissolution of the particular combination now before the court, it is hereby approved and leave is granted to effect the same: *Provided, however,* That neither such approval and leave nor anything contained in this decree shall ever be taken or construed as affecting the obligations, powers, rights, or duties under present or future laws of any person or corporation not a party to this cause, nor to be taken or construed as an adjudication that any defendant herein has the right to acquire or hold the shares of stocks so sold or exchanged, nor as an exemption of any defendant in respect of such acquisition or holding from the operation of any law now in force or which may hereafter be enacted.

In the event of such sale immediate delivery shall be made of the said 382,924 shares of the defendant Southern Pacific Company, which is hereby directed to cause them to be transferred on its stock books to the Pennsylvania Railroad Company, upon presentation of the certificates therefor duly assigned, and thereupon to pay to the defendant Oregon Short Line Railroad Company, on demand,

the dividends appertaining to said shares heretofore declared and payable April 1, and July 1, 1913, respectively; and the transaction shall be reported to the court within 30 days from the date hereof.

SECTION 3. The Central Trust Company of New York, a corporation organized and existing under the laws of the State of New York, and hereinafter called the Trustee, having declared its submission to the jurisdiction of this court for all purposes of this cause, and having entered its appearance herein by counsel, is made a party hereto; and said Central Trust Company of New York is hereby appointed to receive and hold, as the custodian and depository of this court, subject to the provisions of this decree and to the further orders and decrees of the court herein, all shares of the capital stock of defendant Southern Pacific Company which shall be transferred to it as hereinafter provided.

SECTION 4. The shares of the defendant Southern Pacific Company held by the defendant Oregon Short Line Railroad Company remaining after the sale to the Pennsylvania Railroad Company of 382,924 shares thereof as hereinabove provided, to wit, 883,576 shares, or the entire holdings if such sale to the Pennsylvania Railroad Company shall not be consummated within 30 days from the date hereof, shall be transferred forthwith to the Trustee and registered in its name on the books of the Southern Pacific Company, and certificates therefor delivered to the Trustee.

The defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company shall assign or cause to be assigned to the Trustee all dividends appertaining to the shares so transferred which shall have been declared and shall be then or thereafter payable to the defendant Oregon Short Line Railroad Company, or the individuals holding in its behalf, as the registered stockholders entitled to such dividends. Such dividends hereinafter designated as the "accumulated dividends," shall be collected by the Trustee and held and distributed upon the terms and conditions hereinafter provided.

SECTION 5. Prior to November 1, 1913, the defendants

Union Pacific Railroad Company and Oregon Short Line Railroad Company shall offer to all stockholders of the former, common and preferred (registered as such on a date to be designated in the offer and not more than 40 days from its date) or to their assignees, the right to subscribe for certificates of interest representing the said Southern Pacific Company shares transferred to the Trustee as provided hereunder, substantially in the proportion of their respective holdings, with such allowance in fixing the distribution ratio as the above-named defendants may deem necessary for possible conversions of convertible bonds of the said Union Pacific Railroad Company. The offering shall include all accumulated dividends appertaining to said shares, and shall be at such price and upon such other terms as the defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company shall determine, except as specifically herein prescribed or as otherwise directed by the court by a subsequent order or decree.

The subscription price shall be payable at the time of the subscription, or at the option of the subscriber, \$25 per share at the time of subscription and the balance within one year thereafter, with interest on such balance at the rate of 6 per cent per annum. The subscriptions shall be filed with the Trustee.

Neither of the defendants Union Pacific Railroad Company or Oregon Short Line Railroad Company, nor any corporation controlled by either, nor any person acting in the interest of either, shall acquire by purchase or otherwise any of said certificates of interest.

The defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company may cause the sale of said certificates of interest upon such subscription offer to be underwritten, the underwriters to agree to purchase any certificates, or such and amount thereof as shall be designated in the underwriting agreement, not subscribed for pursuant to the offer.

SECTION 6. The Trustee shall execute and issue certificates of interest representing the shares transferred to it

hereunder and shall deliver them at its office in the city of New York to the subscribers therefor under section 5 hereof, upon payment in full of the subscription price and compliance in all respects with the terms prescribed by the offering, or by any subscription receipt issued under section 7 hereof, to be performed by the subscribers to entitle them to receive such certificates of interest; and in like manner shall deliver such certificates of interest upon full payment therefor to any other purchasers to whom the defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company shall be authorized by the court to sell the same. All such certificates shall be registered by the Trustee in the names of the purchasers. They shall be substantially in the form hereto annexed marked "Form A."

SECTION 7. The Trustee shall issue part-paid subscription receipts to all subscribers who shall elect to defer payment of the balance of the subscription price, upon payment of the aforesaid initial installment thereof and due compliance in all other respects with the terms prescribed by the offering to be performed by the subscribers at the time of the subscription; and in like manner shall deliver such subscription receipts, upon payment of such initial installment of the purchase price, to any other purchasers to whom defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company shall be authorized by the court to sell the said certificates of interest. All such subscription receipts shall be registered by the Trustee in the names of the purchasers. They shall be substantially in the form hereto annexed marked "Form B."

SECTION 8. The certificates of interest and subscription receipts issued hereunder may be in the denominations of 1 share, 10 shares, 50 shares, 100 shares and such other denominations as the Trustee shall elect. The certificates of interest and subscription receipts shall be executed on behalf of the Trustee by such officer of the Trustee in the city of New York, or by such agent in London, England, as it shall authorize thereunto, and such certificates of

interest may be countersigned by a trust company in the city of New York as registrar.

SECTION 9. The Trustee shall, if so requested by the registered owner of any subscription receipt issued hereunder and then outstanding, by application in writing presented at its office in the city of New York not less than 10 days prior to any annual or special stockholders' meeting of the Southern Pacific Company, execute and deliver to such registered owner, or to his nominee, a proxy appointing such attorneys, agents and proxies, as such registered owner shall nominate in his said application, to appear and vote at such stockholders' meeting upon the number of shares represented by said subscription receipt, for the election of directors and upon any other business transacted at such meeting: *Provided, however,* that as a condition precedent to the issue of such proxy the applicant shall file with the Trustee at its said office, on or before the tenth day preceding such meeting, an affidavit executed as hereinafter in section 11 hereof prescribed, and in one of the forms referred to in said section 11, except that said affidavit shall refer to and describe a subscription receipt (or receipts) owned by said applicant, instead of certificates of interest, and there shall be substituted in the form of said affidavit for the words "for the purpose of procuring the issue of shares of the capital stock of the Southern Pacific Company held by said Trustee, in exchange for said certificate (or certificates) of interest" the words "for the purpose of procuring the issue of a proxy to vote upon the shares of the capital stock of the Southern Pacific Company held by said Trustee represented by the subscription receipt (or receipts) above described": *And provided further,* that the applicant for such proxy shall at the close of business on the tenth day preceding said meeting be registered on the books of the Trustee as the owner of the subscription receipt (or receipts) upon which such application is based.

The Trustee shall not be entitled to vote or issue proxies for voting in respect of any of the said shares of defen-

dant Southern Pacific Company except as in this section provided or as may be hereafter directed by the court.

SECTION 10. So long as any of the shares of the capital stock of the Southern Pacific Company aforesaid shall be held by the Trustee, the Trustee shall collect and receive any and all cash dividends, declared by the Southern Pacific Company, appertaining to the shares so held, which shall be payable to the Trustee, as the registered stockholder entitled to such dividends by the terms of the declarations thereof.

Upon the conversion pursuant to section 11 hereof of any certificate of interest issued hereunder into a certificate for shares of capital stock of the Southern Pacific Company held by the Trustee, the latter shall pay in cash to the owner of the certificate of interest so converted or upon his order the amount of all cash dividends collected by it, including the aforesaid accumulated dividends, appertaining to the number of shares represented by such certificate of interest, but without interest thereon, and shall execute and deliver to such owner or upon his order a dividend order or assignment for the amount of any unmatured dividends declared in respect of such shares which shall be vested at the time of such conversion in the Trustee as the registered stockholder entitled thereto. Any interest realized or allowed by the Trustee upon funds paid to it as dividends shall be applicable to the payment of the compensation of the Trustee and the expenses of the administration of the trust, and any balance thereof remaining shall be paid to the defendant Oregon Short Line Railroad Company, unless otherwise ordered by the court.

All dividends payable otherwise than in cash which shall be declared by the Southern Pacific Company shall be received and held by the Trustee for the *pro rata* benefit of said registered owners, from time to time, of the certificates of interest issued hereunder and outstanding, upon the same terms and conditions as the shares originally deposited, and shall be distributed to the persons who shall be the respective owners of certificates of

interest when and as, and only when and as, the shares originally deposited are distributed to them respectively, subject to any necessary adjustment by scrip or otherwise, in the discretion of the Trustee, in respect of fractional shares. All subscription or other rights offered to stockholders of the Southern Pacific Company shall be immediately assigned by the Trustee *pro rata* to said registered owners of the certificates of interest and subscription receipts issued hereunder and then outstanding, who shall be such registered owners at the date when such rights become fixed.

No deduction shall be made by the Trustee in the distribution of such dividends or increase for any commissions or expenses of the Trustee or other cost of collection or payment.

SECTION 11. At any time upon demand, at its office in the city of New York, upon surrender of any outstanding certificate of interest by the registered owner thereof or his assignee, the Trustee shall deliver to him stock certificates for the number of shares of the defendant Southern Pacific Company (of the par value of \$100 each) represented by the surrendered certificate of interest, which stock certificates shall be issued by the said Southern Pacific Company and registered on its books in the name of the new holder, upon condition, however, that the applicant for such conversion or exchange shall file with the Trustee a duly executed affidavit in one of the forms hereto annexed.

The affidavit in the case of an individual applying for such conversion or exchange in his own right shall be substantially in the form annexed hereto marked "Form C."

If the applicant is a corporation or joint-stock company, the affidavit shall be executed by its president, vice president, controller, secretary, or treasurer, or, in the case of a corporation of a foreign country, by one of its managing officers, and shall be substantially in the form annexed hereto marked "Form D."

If the applicant is a partnership the affidavit shall be

executed by one of the partners and shall be substantially in the form annexed hereto marked "Form E."

If the applicant is an executor, administrator, guardian, or testamentary or other trustee of an express trust the affidavit shall be made by such executor, administrator, guardian, or trustee, as the case may be, or by one of such if the application is made on behalf of joint representatives, or, if such representative is a corporation or joint-stock company, by its president, vice president, controller, secretary, or treasurer, or, in the case of a corporation of a foreign country, by one of its managing officers, and shall be substantially in the form annexed hereto marked "Form F."

Provided, however, that whenever the number of shares of capital stock of the defendant Southern Pacific Company held by the Trustee hereunder shall be reduced by the conversion of certificates of interest as provided in this section to 500 shares, it shall be the duty of the Trustee thereupon to distribute such remaining shares *pro rata* amongst the registered owners of the then outstanding certificates of interest, or their assignees, upon the surrender of such certificates of interest, without requiring the affidavits hereinabove provided for.

All certificates of interest surrendered pursuant to conversions or exchanges effected under this section shall forthwith be canceled by the Trustee and shall not be reissued.

Within thirty (30) days after the conversion of certificates of interest as herein provided shall have commenced, and at monthly intervals thereafter, the Trustee shall file with the clerk of the court a report showing the aggregate amount of certificates of interest converted since the last previous report of the Trustee and the names of all persons, firms, or corporations to whom shares of stock of the Southern Pacific Company shall have been issued pursuant to every such conversion involving more than one hundred (100) shares; and from time to time upon the request of the Attorney General of the United States the Trustee shall furnish him with any

information which he may require relating to the carrying out of this decree.

SECTION 12. The Trustee shall keep at an office maintained by it in the city of New York books for the registration and transfer of the certificates of interest and subscription receipts issued hereunder. Provision may be made by the Trustee for the registration and transfer of subscription receipts and certificates of interest in London, England. Upon the surrender of any such certificate of interest or subscription receipt duly assigned for transfer and the payment of any stamp tax required by law, the Trustee shall issue to the transferee one or more new certificates of interest or subscription receipts for a like number of shares and shall cancel the surrendered certificate of interest or subscription receipt.

The Trustee may treat the person in whose name shall be registered any certificate of interest or subscription receipt, as hereinbefore provided, as the absolute owner thereof and shall not be affected by any notice to the contrary; and also in order to enable it to effectuate the true intent of this decree the Trustee (so far as consistent with the provisions hereof) may decide all matters of detail in respect of the form of subscription receipts or certificates of interest and the arrangements necessary for their issue and transfer.

The Trustee shall be accountable for its action hereunder only in proceedings in this cause, and any order of the court entered upon notice to it and to the defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company shall be full protection to the Trustee for any action which it may take pursuant thereto, and any action so taken by the Trustee shall be binding upon all holders of subscription receipts and certificates of interest. The Trustee shall not be liable to anyone for deferring to take any action until instructed by the court.

In case any certificate of interest or subscription receipt issued hereunder shall become mutilated or be destroyed, the Trustee, in its discretion, may issue a new certificate of interest or subscription receipt of the same denomina-

tion in exchange and substitution for and upon cancellation of such mutilated certificate of interest or subscription receipt, or in lieu of and substitution for the same if destroyed. In case of destruction, the applicant for a substituted certificate of interest or subscription receipt shall furnish to the Trustee evidence of such destruction to the satisfaction of the Trustee in its discretion, and such reasonable indemnity as the Trustee shall require.

SECTION 13. From time to time the Trustee shall pay over to the defendant Oregon Short Line Railroad Company, or to its order, upon demand, when and as received by it, the moneys received by it in payment of, on account of, subscriptions or purchases as hereinbefore provided, and it shall not be liable for any loss of such moneys unless incurred through its gross negligence or willful misconduct.

SECTION 14. The Trustee shall be entitled to reasonable compensation, the amount thereof to be approved by the court, for all services rendered by it hereunder, which compensation, together with counsel fees and other expenses incurred hereunder and approved by the court, and all stamp and other taxes imposed by law upon the transfer of the shares of the Southern Pacific Company from the Trustee to the holders of certificates of interest, shall be paid by the defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company.

SECTION 15. The defendant Southern Pacific Company is hereby authorized and directed from time to time to make any transfers upon its stock books of the aforesaid shares of its capital stock held by the defendant Oregon Short Line Railroad Company, or its nominees, and to make all payments of dividends, contemplated by the provisions of this decree or necessary or appropriate in the performance thereof.

SECTION 16. Nothing in this decree nor in that entered February 12, 1913, shall be construed as prohibiting the defendant Union Pacific Railroad Company from acquiring at any time the capital stock or the railroads and other

property of the defendant Central Pacific Railroad Company.

SECTION 17. If, at any time after January 1, 1916, any of such certificates of interest shall remain outstanding, the court, in its discretion, after a hearing upon such notice to holders of certificates of interest as it may direct, may order the shares of the Southern Pacific Company represented by said certificates to be sold and the proceeds distributed to the registered owner or owners of such certificate or certificates.

SECTION 18. The Trustee is hereby authorized to treat all funds on deposit hereunder as general deposits and to allow interest thereon.

Louis C. Krauthoff, Esquire, of New York City, is appointed commissioner for the court to see to it that the letter and spirit of this plan of dissolution is carried out and is directed to report to the court from time to time.

SECTION 19. The Trustee shall be subject to removal by the court in its discretion, and, in the event of such removal, the court shall appoint another Trustee.

SECTION 20. Any party to this cause may make application to the court at any time for such further orders and directions as may be necessary or proper in relation to the carrying out of the provisions of this decree, or in relation to the disposition of the unlawfully held shares of the defendant Southern Pacific Company; and jurisdiction thereof is retained for the purpose of giving full effect to this decree and the decree herein entered on February 12, 1913, and for the purpose of making such other and further orders and decrees or taking such other action, if any, as may become necessary or appropriate to carry out and enforce said decrees and the directions of the Supreme Court.

WALTER H. SANBORN,
WILLIAM C. HOOK,
WALTER I. SMITH,

United States Circuit Judges.

JUNE 30, 1913.

FORM A.

No. _____ Shares.

CERTIFICATE OF INTEREST
IN

SOUTHERN PACIFIC COMPANY STOCK.

This is to certify that the undersigned (hereinafter designated as the "Trustee") has received and now holds for _____ or assigns, certificates representing _____ shares of the capital stock of the Southern Pacific Company, a corporation of the State of Kentucky, of the par value of \$100 each, subject to the terms of a decree entered the _____ day of June, 1913, by the District Court of the United States for the District of Utah, in the suit of the United States of America against Union Pacific Railroad Company and others, to which decree reference is hereby made for a statement of the terms and conditions upon which this certificate is issued and of the rights of the holder hereof, and to which decree the holder of this certificate assents by acceptance hereof.

This certificate is one of a series of certificates issued by the undersigned in accordance with the terms of the said decree, representing in the aggregate not exceeding _____ shares of the capital stock of said Southern Pacific Company.

The registered owner hereof, or his assigns, is entitled, upon the surrender of this certificate and upon filing with the Trustee an affidavit in the form required by section 11 of said decree (to the effect, in substance, that the applicant does not own any shares of the capital stock of the Union Pacific Railroad Company and is not acting for or on behalf of any stockholder of the Union Pacific Railroad Company, or in concert, agreement, or understanding with any other person, firm, or corporation for the control of the Southern Pacific Company in the interest of the Union Pacific Railroad Company, but in his own behalf in good faith), to receive a stock certificate for the number of shares of the capital stock of said Southern Pacific Company represented by this certificate and to receive the

amount of all dividends (but without interest thereon) appertaining to the number of shares represented by this certificate declared and payable by the Southern Pacific Company after the 2nd day of January, 1913, and collected and received by the Trustee prior to such conversion, and also to receive a dividend order or assignment executed by the Trustee for any declared but unmatured dividend appertaining to said shares which shall be vested, at the time of such conversion, in the Trustee as the registered holder of said shares. All subscription or other rights offered by the Southern Pacific Company appertaining to the shares represented by this certificate will be assigned to the registered owner hereof, as provided in said decree.

This certificate is transferable by the registered owner hereof, in person or by his duly authorized attorney, at the office of the Trustee in the city of New York, upon surrender and cancellation hereof; and thereupon one or more new certificates for a like number of shares will be issued to the transferee in exchange therefor.

This certificate is not valid until countersigned by the registrar.

In witness whereof, _____, as Trustee, has caused this certificate to be executed by one of its vice presidents and its corporate seal to be hereunto affixed and to be attested by one of its assistant secretaries this day of _____, 191 .

_____,
Trustee.

By _____,
Vice President.

Attest:

_____,
Assistant Secretary.

Countersigned:

_____,
By _____.

FORM OF ASSIGNMENT.

For value received the undersigned hereby sells, assigns, and transfers unto _____ the interest in Southern Pacific Company shares and dividends thereon represented by the within certificate and does hereby irrevocably constitute and appoint _____ attorney to transfer the same on the books of the Trustee, with full power of substitution in the premises.

Dated _____.

In the presence of—

_____.

FORM B.

No. _____ Shares

SUBSCRIPTION RECEIPT

FOR

CERTIFICATE OF INTEREST IN SOUTHERN PACIFIC COMPANY STOCK.

This is to certify that the undersigned (hereinafter designated as the "Trustee") has received payment of the first installment of twenty-five dollars (\$25) per share of the subscription price (\$ _____ per share) of certificates of interest in _____ shares of the capital stock of the Southern Pacific Company, of the par value of \$100 per share, and that _____, or assigns, will be entitled to receive a fully paid certificate of interest for said shares, at the office of the undersigned in the city of New York, upon the surrender of this receipt and the payment of the balance of said subscription price, on or prior to the day of _____, 1914, with interest thereon at the rate of 6 per cent per annum to the date of payment.

Failure to pay the said deferred balance on the subscription price, with the interest thereon, on the day of _____, 1914, will operate as a forfeiture of all rights in respect of the subscription and the installment previously paid.

The undersigned has received and will hold, until default in the payment of the principal or interest of the deferred balance of the said subscription price, for the

above-named subscriber, or assigns, stock certificates representing the number of shares above specified of the capital stock of the Southern Pacific Company; subject to the terms of a decree entered the _____ day of June, 1913, by the District Court of the United States for the District of Utah, in the suit of the United States of America against Union Pacific Railroad Company and others, to which decree reference is hereby made for a statement of the terms and conditions upon which this subscription receipt is issued and of the rights of the holder hereof, and to which decree the holder hereof assents by acceptance hereof.

All dividends, appertaining to the number of shares above specified, declared and payable by the Southern Pacific Company after the second day of January, 1913, will be collected by the Trustee, and paid over (but without interest thereon) to the holder of a fully paid certificate of interest for said shares, upon the conversion of such certificate of interest into said shares of the capital stock of the Southern Pacific Company pursuant to the provisions of said decree.

This subscription receipt is transferable by the registered owner hereof, in person or by his duly authorized attorney, at the office of the Trustee in the city of New York or at its office or agency in London, England, upon surrender and cancellation hereof; and thereupon one or more new subscription receipts for a like number of shares will be issued to the transferee in exchange herefor.

The registered owner hereof is entitled, at any time not less than 10 days prior to the annual stockholders' meeting of the Southern Pacific Company held on the Wednesday following the first Monday of April in each year, and not less than 10 days prior to any special stockholders' meeting of said company, to require the Trustee to execute and deliver to such registered owner, or his nominee, a proxy appointing such attorneys, agents, and proxies as the registered owner hereof shall nominate in writing, to appear and vote at such stockholders' meeting

upon the number of shares represented by this subscription receipt, for the election of directors and upon any other business transacted at such meeting: *Provided, however,* that such registered owner shall file with the Trustee, at its office in the city of New York, on or before the tenth day preceding such meeting, an affidavit in the form required by sections 9 and 11 of said decree (to the effect in substance that the registered owner hereof does not own any shares of the capital stock of the Union Pacific Railroad Company, and is not acting for or on behalf of any stockholder of the Union Pacific Railroad Company, or in concert, agreement, or understanding with any other person, firm, or corporation for the control of the Southern Pacific Company in the interest of the Union Pacific Railroad Company, but in his own behalf in good faith); *And provided, further,* that the applicant for such proxy shall at the close of business on the tenth day preceding said meeting be registered on the books of the Trustee as the owner of this subscription receipt.

This subscription receipt shall not be valid for any purpose unless signed on behalf of the Trustee by one of its officers or by its agent in London.

In witness whereof, _____ as Trustee, has caused this certificate of interest to be executed in its behalf this _____ day of _____, 1913.

Trustee.
By _____.

FORM OF ASSIGNMENT.

For value received, the undersigned hereby sells, assigns, and transfers unto _____ this subscription receipt and the interest represented thereby in shares of the capital stock of Southern Pacific Company, and dividends thereon, and does hereby irrevocably con-

stitute and appoint _____ attorney to transfer the same on the books of the Trustee, with full power of, substitution in the premises.

Dated _____.
In the presence of—

_____.

_____.

FORM C.

STATE OF _____, *County of* _____:

_____, being duly sworn deposes and says:

That deponent is the *bona fide* owner in his own proper right of a certificate or certificates of interest numbered _____ for _____ shares registered in the name of _____, issued by the Central Trust Company, of New York, as Trustee, under a decree entered on the _____ day of June, 1913, by the District Court of the United States for the District of Utah, in the suit of the United States of America against Union Pacific Railroad Company and others, and makes this affidavit for the purpose of procuring the issue of shares of the capital stock of the Southern Pacific Company held by said Trustee, in exchange for said certificate (or certificates) of interest. That deponent does not own in his (or her) own right any shares of the capital stock of the Union Pacific Railroad Company, a corporation of the State of Utah, whether registered in his (or her) own name on the books of said Union Pacific Railroad Company or registered in the names of others for deponent's use and benefit. That deponent, in making this application, is not acting for or on behalf of any stockholder of the Union Pacific Railroad Company, or in concert, agreement, or understanding with any other person, firm, or corporation for the control of the Southern Pacific Company in the interest of the Union Pacific Railroad Company, but in his own behalf in good faith.

Sworn to before me this _____ day of _____, 191 .

FORM D.

STATE OF _____, *County of* _____, ss:

_____, being duly sworn deposes and says:

That he is _____ of the _____, a corporation (or a joint stock company), hereinafter called the "Applicant." That said applicant is the *bona fide* owner in its own proper right of a certificate or certificates of interest numbered _____ for _____ shares, registered in the name of _____, issued by the Central Trust Company of New York, as Trustee, under a decree entered on the _____ day of June, 1913, by the District Court of the United States for the District of Utah, in the suit of the United States of America against Union Pacific Railroad Company and others, and that deponent makes this affidavit for the purpose of procuring the issue of shares of the capital stock of the Southern Pacific Company held by said Trustee, in exchange for said certificate (or certificates) of interest. That said applicant does not own in its own right any shares of the capital stock of the Union Pacific Railroad Company, a corporation of the State of Utah, whether registered in its own name on the books of said Union Pacific Railroad Company or registered in the names of others for said applicant's use and benefit. That said applicant, in making this application, is not acting for or on behalf of any stockholder of the Union Pacific Railroad Company, or in concert, agreement, or understanding with any other person, firm or corporation for the control of the Southern Pacific Company in the interest of the Union Pacific Railroad Company, but in its own behalf in good faith.

Sworn to before me this _____ day of _____, 191 .

FORM E.

STATE OF _____, *County of* _____, ss:

_____, being duly sworn deposes and says:

That he is a member of the partnership of _____, hereinafter called the "Applicants"; that said applicants are the *bona fide* owners in their own proper right of a certificate or certificates of interest numbered _____ for _____

shares, registered in the name of _____, issued by the Central Trust Company of New York, as Trustee, under a decree entered on the _____ day of June, 1913, by the District Court of the United States for the District of Utah, in the suit of the United States of America against Union Pacific Railroad Company and others, and deponent makes this affidavit for the purpose of procuring the issue of shares of the capital stock of the Southern Pacific Company held by said Trustee in exchange for said certificate (or certificates) of interest. That said applicants do not own in their own right any shares of the capital stock of the Union Pacific Railroad Company, a corporation of the State of Utah, whether registered in the applicants' own name on the books of said Union Pacific Railroad Company or registered in the names of others for their use and benefit. That said applicants, in making this application, are not acting for or on behalf of any stockholder of the Union Pacific Railroad Company, or in concert, agreement, or understanding with any other person, firm, or corporation for the control of the Southern Pacific Company in the interest of the Union Pacific Railroad Company, but in their own behalf in good faith.

Sworn to before me this _____ day of _____, 191 .

FORM F.

STATE OF _____, County of _____, ss:

_____, being duly sworn deposes and says:

That he is _____ of _____. That the trust estate represented by deponent is the *bona fide* owner in its own proper right of a certificate or certificates of interest numbered _____ for _____ shares, registered in the name of _____, issued by the Central Trust Company of New York, as Trustee, under a decree entered on the _____ day of June, 1913, by the District Court of the United States for the District of Utah, in the suit of the United States against Union Pacific Railroad Company and others. That deponent makes this affidavit for the purpose of procuring the issue of shares of the

capital stock of the Southern Pacific Company held by said Trustee, in exchange for said certificate (or certificates) of interest. That said trust estate does not own any shares of the capital stock of the Union Pacific Railroad Company, a corporation of the State of Utah, whether registered in the name of said trust estate on the books of said Union Pacific Railroad Company or registered in the names of others for the use and benefit of said trust estate. That said trust estate, in making this application, is not acting for or on behalf of any stockholder of the Union Pacific Railroad Company, or in concert, agreement, or understanding with any other person, firm, or corporation for the control of the Southern Pacific Company in the interest of the Union Pacific Railroad Company, but in its own behalf in good faith.

Sworn to before me this _____ day of _____, 191 .

UNITED STATES v.
UTAH-IDAHO GROCERS' ASSOCIATION, *et al.*

In Equity No.: 8158

Year Judgment Entered: 1926

**UNITED STATES OF AMERICA v. UTAH-IDAHO
GROCERS' ASSOCIATION ET AL., DEFENDANTS.**

IN THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE DISTRICT OF UTAH,
CENTRAL DIVISION.

In Equity No. 8158.

UNITED STATES OF AMERICA, COMPLAINANT

v.

UTAH-IDAHO WHOLESALE GROCERS' ASSOCIATION ET AL.,
DEFENDANTS.

The United States of America having filed its petition herein on the 9th day of April, 1924, and the defendants Utah-Idaho Wholesale Grocers' Association, Zions Co-operative Mercantile Institution, Syms Utah Grocer Co., John Bros. Co., Utah Wholesale Grocery Company, Anderson-Taylor Company, John Scowcroft & Sons Co., Ogden Wholesale Grocery Company, and Idaho Wholesale Grocery Company having duly appeared by and through their attorneys, Messrs. Dey, Hoppaugh & Mark; the defendants C. A. Orlob and Fred G. Taylor, copartners, doing business under the firm name and style C. A. Orlob Company in the City of Salt Lake, State of Utah, Rudolph Geoghegan and John Doe Geoghegan, partners, doing business under the firm name and style Geoghegan Brokerage Company, and C. A. Orlob and Fred G. Taylor, copartners, doing business under the firm name and style of Fred G. Taylor Company, in the city of Ogden, State of Utah, and F. J. Fabian, doing business under the firm name and style of F. J. Fabian Co., having duly appeared by and through their attorneys, Messrs. Fabian & Clendennin; the defendant, Geo. B. Lockhart, having duly appeared by and through his attorney, Roy Catcher, Esq.; and the defendants, Lester Remers, and John H. Spohn and G. W. Clark, copartners, doing business under the firm name and style of Spohn & Clark, having duly appeared by and through their attorney, James A. Rice, Esq., and all of said defendants having

U. S. v. UTAH-IDAHO GROCERS' ASSO. ET AL 1197

answered, and the cause being now at issue on the petition and answers.

Now comes the United States of America, by Charles M. Morris, its attorney for the District of Utah; C. Stanley Thompson, special assistant to the Attorney General, and H. H. Atkinson, United States attorney for the District of Nevada, and come also all of the defendants herein by their solicitors as aforesaid; and

It appearing to the court that the court has jurisdiction of the subject matter alleged in the petition, and that the petition states a cause of action; and the petitioner having moved the court for an injunction against the defendants, as hereinafter decreed, and the court having fully considered the statements of counsel for the respective parties, and all of the defendants, through their said solicitors, now and here consenting to the rendition of the following decree:

Now, therefore, it is ordered, adjudged, and decreed as follows:

I

That the combination and conspiracy in restraint of interstate trade and commerce, and the acts, agreements, and understandings in restraint of interstate trade and commerce, as such combination, conspiracy, acts, agreements, and understandings are described in subparagraph "(a)," in so far as the name pertains to prices to be charged on sales in interstate commerce for groceries and other like articles, and to the terms, conditions, and policies which should obtain with respect to the sale and delivery in interstate commerce of said groceries and other like articles, and subparagraphs "(c)," "(d)," "(e)," and "(h)," all of paragraph IV of the petition herein and the restraint of such trade and commerce obtained thereby are violative of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," known as the "Sherman Antitrust Act."

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DECREES AND JUDGMENTS

II

That the defendants, and each of them, and their members, officers, agents, servants, and employees, and all persons acting under, by, through, or on behalf of them, or claiming so to act, be, and they hereby are, perpetually enjoined, restrained, and prohibited from agreeing, combining, or conspiring, directly or indirectly, among themselves, or any of them, or with others, and from continuing any such agreements, combination, or conspiracy.

(a) To fix, establish, or maintain (1) the prices to be charged on sales in interstate commerce for said groceries and other like articles; and (2) the terms, conditions, and policies which should obtain with respect to the sale and delivery in interstate commerce of said groceries and other like articles in so far as such terms, conditions, and policies substantially or unreasonably restrain interstate commerce.

(b) To exclude, or to use any means to exclude, competitors from engaging in the business of buying and selling said groceries and other like articles.

(c) To coerce or compel manufacturers of said groceries and other like articles to sell the same exclusively to wholesale grocers.

(d) To refuse to buy from or to prevent others from buying from any manufacturer who sells groceries and other like articles to other than the wholesale grocers who are members of defendant, Utah-Idaho Wholesale Grocers' Association.

(e) To prevent retailers from buying direct from manufacturers.

(f) To aid, abet, or assist, directly or indirectly, each other or others to do any or all of the matters and things hereinbefore set forth and enjoined.

Provided, however, That nothing contained in this decree shall be construed as preventing any defendant from fixing any price for his or its groceries, or other like

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articles, or from adopting any policy as to the purchase, sale, or delivery of said groceries and other like articles, if done individually and not as the result of any combination, conspiracy, or agreement with any other person or persons: *And provided further,* That nothing herein contained shall be construed as enjoining the defendants, or any of them, from doing any of the acts herein enjoined, unless such sale, price fixing, or policy shall involve or substantially affect interstate commerce as distinguished from intrastate commerce.

III

That each of the remaining prayers of the petition filed herein is hereby denied, in view of the statement of Government counsel that the evidence at hand does not show restraint of interstate trade and commerce by the other means alleged.

IV

That neither the complainant nor the defendants have or recover costs in this cause expended.

Dated at Salt Lake City, Utah, September 27, 1926.

TILLMAN D. JOHNSON,
Judge of the United States District Court.

UNITED STATES v.
THE LUCKY LAGER BREWING
COMPANY OF SAN FRANCISCO

Civil Action No.: C-15-58

Year Judgment Entered: 1958

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Lucky Lager Brewing Company of San Francisco., U.S. District Court, D. Utah, 1958 Trade Cases ¶69,160, (Oct. 6, 1958)

[Click to open document in a browser](#)

United States v. The Lucky Lager Brewing Company of San Francisco.

1958 Trade Cases ¶69,160. U.S. District Court, D. Utah, Central Division. No. C-15-58, Dated October 6, 1958. Case No. 1370 in the Antitrust Division of the Department of Justice.

Clayton Antitrust Act

Acquisitions of Stock or Assets—Acquisitions Under Clayton Act, Section 7—Consent Decree—Enforcement—Specific Relief—Divestiture of Stock and Assets—Contingent Provision Limiting Sales in Lieu of Divestiture.—A brewing company which acquired all of the capital stock of a competing brewing company was directed by a consent decree to sell all of its interest in the other company within nine months from the entry of the decree. The decree provided, among other things, for the appointment by the court of a sales agent to aid in the sale, for the court to make the final determination as to the acceptance of any offer, and for the court to determine the acceptability of a purchaser after considering whether the effect of the acquisition by such purchaser may be substantially to lessen competition or tend to create a monopoly in any line of commerce in any section of the country. The decree also provided that the order to sell would be cancelled upon the petition of either party if the sale had not been effected within nine months, except that an extension of time might be allowed if it was found that a reasonable probability existed of a sale within the extended period. If, however, the order of sale was cancelled as provided, the decree enjoined the brewing company from selling for consumption within the State of Utah, in any calendar year, more than 39 per cent of the total beer consumed in that State, the share of the market held by the other company prior to its acquisition by the defendant.

Acquisitions of Stock or Assets—Acquisitions Under Clayton Act, Section 7—Consent Decree—Enforcement—Specific Relief—Acquisitions Prohibited.—A California brewing company was prohibited by a consent decree from acquiring any shares of stock or other interest in any facilities or plant of any person engaged in the brewing of beer in the State of Utah. The company was also prohibited from acquiring, for a period of five years from the entry of the decree, any shares of stock or other interest in any facilities or plant of any person engaged in the brewing of beer, anywhere, except upon application to the court and a showing that the effect of such acquisition may not be substantially to lessen competition or tend to create a monopoly in any line of commerce in any section of the country.

Department of Justice Enforcement and Procedure—Consent Decree—Specific Relief —Divestiture—Contingent Provision—Sales Limitation in Lieu of Divestiture.—A brewing company which acquired all of the capital stock of a competing brewing company was ordered by a consent decree to sell all of its interest in the other company within nine months from the entry of the decree. The decree provided, however, that if the sale was not effected within nine months, the order to sell would be cancelled on the petition of either party. In the event that the order to sell was cancelled for failure to sell within nine months, the decree prohibited the company from selling for consumption within the State of Utah, during any calendar year, more than 39 per cent of the total beer consumed in that State, the share of the market held by the other company prior to its acquisition by the defendant.

For the plaintiff: Victor R. Hansen, Assistant Attorney General; W. D. Kilgore, Jr., and George H. Schueller, Attorneys, Department of Justice; A. Pratt Kesler, United States Attorney; and Lyle L. Jones, Marquis L. Smith, John H. Burgess, and Franklin C. Knock, Attorneys, Department of Justice.

For the defendant: McCutchen, Doyle, Brown & Enersen, by Gerald H. Trautman; and Ray, Quinney & Nebeker, by Grant C. Aadnesen.

Final Judgment

[*Consent Decree*]

A. SHERMAN CHRISTENSON, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on the 18th day of February 1958, and defendant Lucky Lager Brewing Company, sued herein as The Lucky Lager Brewing Company of San Francisco, having appeared by its attorney and filed its answer to such complaint, denying the substantive allegations thereof, and plaintiff and defendant having severally consented to this Final Judgment without trial or adjudication of any issue of fact or law herein and without any admission by plaintiff or defendant in respect to any issue:

Now, Therefore, before any testimony has been taken 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 of the subject matter hereof and of the parties hereto pursuant to section 15 of the Act of Congress of October 15, 1914, as amended, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act, and the complaint states a claim upon which relief may be granted under section 7 of said Act.

II

[*Definitions*]

As used in this Final Judgment:

A., "Lucky Lager" shall mean defendant Lucky Lager Brewing Company, a corporation organized and existing under the laws of the State of California, with its principal office at San Francisco, California.

B., "Fisher" shall mean the Fisher Brewing Company, a corporation organized and existing under the laws of the State of Nevada, with its principal office at Salt Lake City, Utah, all of the capital stock of which is owned by Lucky Lager.

III

[*Applicability*]

The provisions of this Final Judgment applicable to defendant Lucky Lager shall apply to Lucky Lager, its officers, agents, servants, employees, subsidiaries, successors and assigns, and to those persons in active concert or participation with Lucky Lager who receive actual notice of this Final Judgment by personal service or otherwise. The provisions of this Final Judgment shall not apply or relate to activities or operations outside of the United States.

None of the provisions of this Final Judgment shall apply to any purchaser of the stock or assets of Fisher, whether the purchase is pursuant to this Judgment or otherwise, if the sale is to a purchaser approved by the Court after hearing, taking into consideration whether the effect of the acquisition of Fisher by such purchaser may be substantially to lessen competition or to tend to create a monopoly in any line of commerce in any section of the country.

IV

[*Stock Acquisition Prohibited*]

Defendant Lucky Lager is enjoined and restrained:

A. From acquiring, directly or indirectly, any shares of stock or other interest in any facilities or plant of any person, partnership or corporation engaged in the brewing of beer in the State of Utah.

B. For a period of five years after the date of entry of this Final Judgment, from acquiring, directly or indirectly, any shares of stock or other interest in any facilities or plant of any person, partnership, or corporation engaged in the brewing of beer, except upon application to this Court and after an affirmative showing to the Court that the effect of such acquisition may not be substantially to lessen competition or to tend to create a monopoly in any line of commerce in any section of the country.

[*Divestiture Ordered*]

A. Within nine months from the date of appointment of a sales agent, as provided in paragraph B of this section V defendant Lucky Lager shall, subject to the terms and conditions of this Final Judgment, sell all of its interest in Fisher. Said interest in Fisher to be sold by defendant Lucky Lager shall, except as otherwise provided in paragraph D hereof, be the assets of Fisher and shall include but not be limited to Fisher's plant, goodwill, corporate name, trade names, properties, and all its beneficial contractual rights.

B. The Court shall appoint a person or firm to act as sales agent for the purpose of aiding in the sale of Fisher. Such appointment shall be made forthwith upon the entry of this Final Judgment upon the nomination of plaintiff after hearing both parties as to the qualification of any such proposed sales agent. The term of such appointment shall be for three months and shall continue as long thereafter as the parties and the Court are satisfied with the sales efforts of said sales agent. Said sales agent shall be responsible to the Court. His compensation shall be fixed by the Court and paid by defendant Lucky Lager. Said sales agent shall render monthly reports to the Court, with copies to the parties, concerning his sales efforts and his progress toward disposal of Fisher. Said sales agent shall cooperate with defendant in his or its sales activities and nothing herein shall prevent defendant from undertaking sales efforts subject to the supervision and approval of the Court.

C. Sale of Fisher shall be at a price and upon reasonable business terms to be determined by the Court, having due regard, among other things, for the following:

- (1) Price paid by Lucky Lager for the Fisher plant, goodwill, and other assets, properties and premises relating to or inuring to the benefit of the Fisher business as set forth in the contract of June 4, 1957, between Lucky Lager and Fisher Brewing Company, a Utah corporation, and the exhibits attached thereto;
- (2) The disposition of any of said assets since the acquisition of Fisher by Lucky Lager;
- (3) Any capital expenditures made on said Fisher plant since its acquisition by Lucky Lager;
- (4) Depreciation on or amortization of any of the assets listed in (1) and (3) above since the acquisition of Fisher by Lucky Lager;
- (5) The income tax consequences of any such sale;
- (6) The necessity of making a reasonable deviation from the above in order to effectuate prompt sale.

In the event any offer is received, plaintiff and defendant may be heard as to the propriety, reasonableness and acceptability of such offer, and the Court shall make final determination as to the acceptance of such offer.

D. Notwithstanding the foregoing provisions of this section, the Court may order the sale by Lucky Lager of its interest in the capital stock of Fisher if an offer is made for said stock equal to Lucky Lager's investment therein at the time said offer is received.

E. Sale of Fisher shall be to a purchaser acceptable to the Court, taking into consideration whether the effect of the acquisition of Fisher by such purchaser may be substantially to lessen competition or to tend to create a monopoly in any line of commerce in any section of the country.

F. Defendant Lucky Lager shall take such steps as are necessary to maintain Fisher and its physical plant until the time of sale thereof at the standard of operating performance applicable to said brewing plant at the time of entry of this Final Judgment. Pending such sale, defendant Lucky Lager shall not permit said plant to be diminished in capacity or turned to uses other than the production of beer. Defendant Lucky Lager shall at all times furnish to the sales agent and prospective purchasers of Fisher all information regarding Fisher, and permit them to have such access to, and to make such inspection of, Fisher's plant and records as are

reasonably necessary. Defendant Lucky Lager shall take all action which the Court may direct or approve in order to disseminate and publicize the availability for sale and to promote and effectuate the expeditious sale of Fisher.

G. Defendant Lucky Lager shall operate the Fisher business under the continued use of the same name, Fisher Brewing Company, and shall place the same names and labels used or owned by Fisher on the containers for the beer produced in the Fisher plant, with no design or statement on said containers or in the advertisement of either company which indicate the ownership of Fisher by Lucky Lager.

[*Contingent Provision*]

H. If Fisher has not been sold within nine months after the appointment of said sales agent, the order to sell Fisher and all other provisions contained in this section V of this Final Judgment shall be cancelled upon petition of either of the parties; provided, however, that the Court may allow an extension in the period of time during which Fisher may be sold upon petition of either of the parties, after hearing and after a finding that there is reasonable probability that Fisher will be sold during such extended period.

VI

[*Sales Limitation*]

In the event that the provisions of section V are cancelled as aforesaid, Lucky Lager shall not be subject to any further order in this action to divest itself of the Fisher plant, goodwill, corporate name, trade names, or other assets, properties or promises relating to or inuring to the benefit of the Fisher business, but in such event Lucky Lager is perpetually enjoined and restrained, beginning twelve months from the date of said cancellation, from selling for consumption in the State of Utah under any labels owned or controlled by Lucky Lager, Fisher or subsidiaries or affiliates of either of them in any calendar year more than 39 per cent of the quantity of "Total Beer Consumed" in the State of Utah, as reported by the Auditing Division of the Utah State Tax Commission for the previous calendar year.

In the event that, after this section VI has become operative, defendant should sell its stock in Fisher or its interest in Fisher (as defined in paragraph A of section V of this Final Judgment) defendant may, three years after such date, apply to the Court to be relieved of the injunctive provisions of this section VI, and the Court may grant such relief upon a showing that substantial competition exists in Utah between the purchaser and defendant Lucky Lager.

VII

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment, and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, upon reasonable notice to the defendant made to its principal office, be permitted:

(a) access, during the office hours of said defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession of or under the control of said defendant relating to any of the matters contained in this Final Judgment; and

(b) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview the officers and employees of defendant, who may have counsel present, regarding any such matters.

For the purpose of securing compliance with this Final Judgment, the defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made to its principal office, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the enforcement of this Final Judgment.

No information obtained by the means provided in this section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VIII

[*Jurisdiction Retained*]

Jurisdiction is retained 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 or for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

IX

[*Costs*]

Plaintiff shall recover its costs against the defendant to be taxed in this proceeding.

UNITED STATES v.
THE LUCKY LAGER BREWING
COMPANY OF SAN FRANCISCO

Civil Action No.: C-15-58

Year Judgment Modified: 1959

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE LUCKY LAGER BREWING COMPANY
OF SAN FRANCISCO,

Defendant.

Civil Action No. C-15-58

ORDER CANCELLING ALL PROVISIONS OF SECTION V
OF FINAL JUDGMENT INCLUDING ORDER TO SELL
FISHER BREWING COMPANY

WHEREAS the Court entered a Final Judgment herein on October 6, 1958, with the consent of the parties and without trial or adjudication of any issue of fact or law and without any admission by plaintiff or defendant in respect to any issue; and

WHEREAS the Court, on the same day, pursuant to Paragraph B of Section V of said Final Judgment, appointed J. A. Hogle & Co. of Salt Lake City, Utah, as sales agent to act under the terms of said Final Judgment; and

WHEREAS said sales agent has not found a qualified buyer for said Fisher Brewing Company; and

WHEREAS Paragraph H of Section V of said Final Judgment,
in relevant part, provides as follows:

"If Fisher has not been sold within nine months
after the appointment of said sales agent, the order
to sell Fisher and all other provisions contained in
this Section V of this Final Judgment shall be
cancelled upon petition of either of the parties;"

and

WHEREAS said nine months' period expired on July 6, 1959;

NOW, THEREFORE, IT IS HEREBY ORDERED that the order to
sell Fisher Brewing Company and all other provisions of Section V
of the Final Judgment entered herein, be and the same are hereby
cancelled.

IT IS FURTHER ORDERED that J. A. Hogle & Co. be and it
is hereby released as sales agent under said Section V of the
Final Judgment entered herein.

Dated: July 7, 1959.

/s/ A. SHERMAN CHRISTENSON
United States District Judge

UNITED STATES v.
THE LUCKY LAGER BREWING
COMPANY OF SAN FRANCISCO

Civil Action No.: C-15-58

Year Judgment Modified: 1963

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE LUCKY LAGER BREWING COMPANY
OF SAN FRANCISCO,

Defendant.

Civil Action No. C-15-58

ORDER MODIFYING
FINAL JUDGMENT

Defendant having moved this Court for an order modifying the final judgment herein, dated October 6, 1958, pursuant to the provisions of paragraph VIII thereof, the plaintiff having consented to such modification, and the issue having been presented and argued orally to this Court on October 21, 1963, and having been submitted for decision by this Court, it is hereby ordered that said motion be and it hereby is granted and that said final judgment be and it hereby is amended as follows:

Subsection B of Section IV to read as follows:

B. Defendant Lucky Lager is perpetually enjoined and restrained from acquiring, directly or indirectly, any shares of stock, assets, or other interest in any facilities or plant of any person, partnership or corporation engaged in the brewing of beer, except upon application to this Court and after an affirmative showing to the Court that the effect of such acquisition will not be substantially to lessen competition or to tend to create a monopoly in any line of commerce in any section of the country.

A new Section X added to read as follows:

X

Section VI of this Final Judgment is hereby canceled.

A new Section XI added to read as follows:

XI

Plaintiff may at any time, with notice to defendant Lucky Lager, move this Court for entry of an order reinstating Section VI of the Final Judgment, as originally entered herein, and this Court may enter such an order upon a showing by the plaintiff to the satisfaction of this Court that such an order is appropriate.

Said judgment as amended pursuant to the terms of this order shall remain in full force and effect.

Dated: October 24, 1963.

A. Sherman Christensen
UNITED STATES DISTRICT JUDGE

UNITED STATES v.
UTAH PHARMACEUTICAL ASSOCIATION

Civil Action No.: C-30-61

Year Judgment Entered: 1962

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No. C-30-61
)	
UTAH PHARMACEUTICAL ASSOCIATION,)	
)	
Defendant.)	

FINAL JUDGMENT

1 Plaintiff, United States of America, having filed its complaint
2 herein on March 7, 1961; defendant Utah Pharmaceutical Association
3 having filed its answer to said complaint on August 4, 1961; the
4 matter having been tried on November 21 and 22, 1961; and the court
5 having filed its memorandum decision on January 3, 1962;

6 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED
7 as follows:

I

8
9 This court has jurisdiction of the subject matter and of the
10 parties hereto. Defendant has combined and conspired with its officers,
11 directors and members and with various local pharmaceutical associations
12 to restrain trade and commerce in the sale of prescription drugs in
13 violation of section 1 of the Act of Congress of July 2, 1890, entitled
14 "An Act to protect trade and commerce against unlawful restraints and
15 monopolies," commonly known as the Sherman Act, as amended.

II

16 As used herein:

17 (a) "Prescription drug" is a medication for treatment of humans,
18 sold to fill a prescription written by a physician or other person
19 duly licensed to prescribe for the treatment of human ailments;
20
21
22

1 (b) "Pharmacist" is an individual duly licensed to fill pre-
2 scriptions written for the treatment of human ailments;

3 (c) "Prescription pricing schedule" is a formula or price list
4 designed for use in computing prices to be charged for prescription
5 drugs;

6 (d) "Person" is any individual, firm, partnership, corporation,
7 association, trustee or any other business or legal entity.

8 III

9 The provisions of this decree shall apply to defendant Utah
10 Pharmaceutical Association, its officers, directors, agents, members
11 and employees, and other persons in active concert or participation
12 with said defendant who shall receive actual notice of this decree by
13 personal service or otherwise.

14 IV

15 Defendant is hereby perpetually enjoined and restrained from,
16 directly or indirectly:

17 (a) Continuing to carry out the combination and conspiracy to
18 restrain the sale of prescription drugs as found herein, or any like
19 or similar combination or conspiracy to restrain trade and commerce in
20 the sale of prescription drugs, or any combination or conspiracy having
21 a like or similar purpose or effect;

22 (b) Entering into, adhering to, maintaining or furthering any
23 contract, agreement, understanding, plan or program (i) to fix,
24 determine, maintain or suggest prices or other terms or conditions for
25 the sale of prescription drugs, (ii) to formulate, adopt, issue, distri-
26 bute, recommend or suggest the use by any pharmacist or any other
27 person of any prescription pricing schedule or other list, formula,
28 guide, schedule, or method for pricing prescription drugs;

29 (c) Advocating, suggesting, urging, inducing, compelling, or in
30 any other manner influencing or attempting to influence any person to
31 use or adhere to any prescription pricing schedule or schedules or any
32 other list, formula, guide, schedule or method for pricing prescription
drugs;

1 (d) Policing or making individual contact with any pharmacist or
2 other person or devising or putting into effect any procedure to
3 ascertain, determine, fix, influence, or suggest the price at which
4 any prescription drug is or may be sold by any pharmacist, or the
5 professional fee charged or to be charged by any pharmacist in
6 connection with the sale of any prescription drug.

7 Nothing in sub-sections (b), (c), or (d) of this section IV shall
8 be construed to restrain any pharmacy owner member of defendant Asso-
9 ciation from requiring his employees to sell prescription drugs at
10 prices, and upon terms and conditions of sale, established by such
11 pharmacy owner in pharmacies owned or operated by said pharmacy owner.

12 At any time, any agency of the United States or of the State of
13 Utah may, upon grounds of undue hardship to it, and without having
14 standing as a party herein, petition this court for an order enabling
15 defendant Association to negotiate and enter into a contract for the
16 sale of prescription drugs where the price of such prescription drugs
17 will be paid for by the petitioning agency. Such petition may be in
18 the form of a letter to the court with copies to be served on both the
19 plaintiff and defendant herein. The matter will then be set for hearing
20 at which time the petitioning agency may produce witnesses and other
21 evidence in support of its petition. Plaintiff and defendant will be
22 permitted to be heard and make objections to any such proposed negoti-
23 ation or contract. Permission by this court to enter into any such
24 contract shall not be considered an adjudication as to the legality or
25 illegality of such contract under the antitrust laws, nor shall it be
26 deemed to bar or estop the plaintiff from attacking the legality of any
27 such contract under the antitrust laws generally.

28 V

29 Defendant Association is hereby ordered and directed to dissolve
30 its committee on Prescription Pricing, Wages and Hours, and is enjoined
31

1 and restrained from forming, appointing, or maintaining such committee
2 or any similar committee.

3 VI

4 (a) Defendant Utah Pharmaceutical Association is ordered and
5 directed, within 30 days after the entry of this final judgment, to
6 serve by mail upon each of its members a conformed copy of this final
7 judgment. Said defendant is further ordered and directed to thereupon
8 file an affidavit with the clerk of this court that it has done so,
9 which affidavit shall set forth the name and address of each person so
10 served;

11 (b) Defendant Utah Pharmaceutical Association is ordered and
12 directed to furnish a copy of this final judgment ~~upon~~ each new member
13 thereon at the time of acceptance of such membership and to obtain
14 from each such member, and keep for ten years in its files, a receipt
15 therefor signed by each such new member.

16 VII

17 For the purpose of securing compliance with this final judgment,
18 duly authorized representatives of the Department of Justice shall,
19 upon written request of the Attorney General or the Assistant Attorney
20 General in charge of the Antitrust Division, and on reasonable notice
21 to the defendant, and subject to any legally recognized privilege,
22 be permitted:

23 (a) Reasonable access during the office hours of the defendant
24 to all books, ledgers, accounts, correspondence, memoranda, and other
25 records and documents in the possession or under the control of the
26 defendant, relating to any matters contained in this final judgment;
27 and

28 (b) Subject to the reasonable convenience of the defendant, and
29 without restraint or interference from it, to interview officers and
30 employees of the defendant (who may have counsel present) regarding
31 such matters.

VIII

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Jurisdiction is retained for the purpose of enabling any of the parties to this final judgment to apply to the court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of the final judgment, for the modification or vacating of any of the provisions thereof, and for the enforcement of compliance therewith and the punishment of violation thereof.

Dated: January 31, 1962

/s/ A. Sherman Christenson
United States District Judge

UNITED STATES v.
BEATRICE FOODS CO., *et al.*

Civil Action No.: NC-3869

Year Judgment Entered: 1971

1 this Partial Final Judgment constituting any evidence
2 against or admission by any party to said stipulation with
3 respect to any such issue and upon consent of the parties
4 hereto,

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

6 I

7 This Court has jurisdiction of the subject matter
8 herein and of the consenting defendants. The complaint
9 herein having presented more than one claim for relief and
10 dismissal being sought as to Counts I and II as to the
11 consenting defendants, the Court having considered all
12 facts and circumstances in this case hereby determines that
13 there is no just reason for delay and directs entry of this
14 Partial Final Judgment as to the claim made in Count III.

15 The complaint herein in Count III states a claim upon
16 which relief may be granted against said consenting
17 defendants under Section 1 of the Act of Congress of July 2,
18 1890, entitled "An Act to protect trade and commerce against
19 unlawful restraints and monopolies," commonly known as the
20 Sherman Act, as amended (15 U.S.C. § 1).

21 II

22 As used in this Partial Final Judgment:

23 (a) "Consenting defendants" means the
24 defendants Federated Dairy Farms, Inc. and
25 Hi-Land Dairyman's Association;

26 (b) "Raw milk" means unprocessed cows'
27 milk sold or delivered by producers to dis-
28 tributors for processing into dairy products;

29 (c) "Dairy products" means end products
30 which have been processed from raw milk and,
31 in addition, means related products which are
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not processed from raw milk but which are usually marketed by distributors. "Dairy products" includes but is not limited to pasteurized and homogenized milk; two-percent milk; skim milk; buttermilk; whipping and table cream; half and half; sour cream; cottage cheese; chocolate and orange drinks; ice creams and ice milk; sherbets; popsicles and other novelties;

(d) "Distributor" means any corporation, co-operative, partnership, firm or individual which either processes raw milk into dairy products or purchases dairy products from processors, and which sells and distributes dairy products to, among others, whole sale customers including grocery stores and retail customers including home delivery purchasers and purchasers at milk depots;

(e) "Wholesale prices" means those list prices, discounts and other terms and conditions of sale at which dairy products are to be sold by distributors to grocery stores and other retail outlets;

(f) "Retail prices" means those list prices, discounts and other terms and conditions of sale at which dairy products are to be sold to home delivery customers and other customers

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III

The provisions of this Partial Final Judgment applicable to any consenting defendant shall apply to such consenting defendant, its subsidiaries, successors and assigns and to their respective officers, directors, agents and employees, and to all persons in active concert or participation with any of them who receive actual notice of this Partial Final Judgment by personal service or otherwise.

IV

Each consenting defendant is enjoined and restrained from directly or indirectly in any manner entering into, adhering to, or claiming or maintaining any right under any contract, agreement, arrangement, understanding, plan or program with any other distributor:

(a) to fix, raise, maintain or stabilize wholesale prices for the sale of dairy products;

(b) to fix, raise, maintain or stabilize retail prices for the sale of dairy products;

(c) to submit collusive or rigged bids on dairy products to the United States of America or any instrumentality or agency thereof, to the State of Utah or any instrumentality or agency thereof, or to any other customer;

(d) to allocate, rotate or divide sales territories or any dairy product business among distributors.

V

Each consenting defendant is enjoined and restrained from:

(a) communicating with any other distributor

1 concerning prices and terms or conditions of
2 sale for dairy products bid or to be bid to
3 any third person prior to the bid opening of
4 any such bid, or, in the absence of a bid
5 opening, prior to the release by such third
6 person of such information publicly or to the
7 trade in general;

8 (b) communicating with any other distributor
9 concerning wholesale prices or retail prices
10 of said consenting defendant at any time prior
11 to the release of such prices publicly or to the
12 trade in general.

13 VI

14 Each consenting defendant is ordered and directed for
15 a period of five years from the date of the entry of this
16 Partial Final Judgment, to attach to each bid submitted by
17 it to any federal, state or local governmental authority,
18 agency or instrumentality thereof for the sale of dairy
19 products, a written certification by an officer or an
20 employee of such consenting defendant regularly having the
21 authority to determine the price for the type of bid in-
22 volved, which certification shall be substantially identical
23 to the language contained in Appendix A attached hereto
24 and made a part hereof.

25 VII

26 Each of the consenting defendants is ordered and
27 directed to:

28 (A) Serve within thirty (30) days after the
29 entry of this Partial Final Judgment a conformed copy of
30 this Partial Final Judgment upon each of its respective
31 officers, directors, managing agents and employees
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1 (excluding wholesale and retail truck drivers) who have any
2 responsibility for establishing wholesale prices, retail
3 prices or bids for the sale of dairy products by such
4 consenting defendant;

5 (B) Serve forthwith upon each successor officer,
6 director, managing agent and employee (excluding wholesale
7 and retail truck drivers) who shall have any responsibility
8 for establishing the wholesale prices, retail prices or
9 bids for the sale of dairy products by such consenting
10 defendant a conformed copy of this Partial Final Judgment;

11 (C) Maintain such records as will show the name,
12 title and address of each such officer, director, managing
13 agent and employee upon whom the Partial Final Judgment
14 has been served, as described in subparagraphs (A) and (B)
15 above, together with the date on which service was made;

16 (D) Advise and inform each such officer, director,
17 managing agent and employee upon whom the Partial Final
18 Judgment has been served as described in subparagraphs (A)
19 and (B) above, that violation by him of the terms of this
20 Partial Final Judgment could result in a conviction for
21 contempt of court and could subject him to imprisonment
22 and/or a fine.

23 VIII

24 (A) For the purpose of determining or securing
25 compliance with this Partial Final Judgment, and for no
26 other purpose, and subject to any legally recognized
27 privilege, duly authorized representatives of the Department
28 of Justice shall, upon the written request of the Attorney
29 General, or the Assistant Attorney General in charge of the
30 Antitrust Division, upon reasonable notice to any consenting
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1 defendant made to its principal office, be permitted:

2 (a) access, during the office hours of
3 said consenting defendant, and in the presence
4 of counsel if said defendant chooses, to all
5 books, ledgers, accounts, correspondence, memo-
6 randa, and other records and documents in the
7 possession of or under the control of said
8 consenting defendant relating to any of the
9 matters contained in this Partial Final
10 Judgment; and

11 (b) subject to the reasonable convenience
12 of said consenting defendant and without re-
13 straint or interference from it, to interview
14 the officers and employees of said consenting
15 defendant, who may have counsel present,
16 regarding any such matters.

17 (B) Upon the written request of the Attorney
18 General or the Assistant Attorney General in charge of the
19 Antitrust Division, made to its principal offices, each of
20 the consenting defendants shall submit such written reports
21 with respect to any of the matters contained in this Partial
22 Final Judgment as from time to time may be requested for the
23 enforcement of this Partial Final Judgment.

24 (C) No information obtained by the means provided
25 in this Section VIII shall be divulged by any representative
26 of the Department of Justice to any person other than a duly
27 authorized representative of the Executive Branch of the
28 plaintiff except in the course of legal proceedings to which
29 the United States is a party for the purpose of securing
30 compliance with this Partial Final Judgment, or as otherwise
31 required by law.
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IX

Jurisdiction is retained for the purpose of enabling any of the parties to this Partial 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 Partial Final Judgment or for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

Dated this 11th day of February, 1971.

BY THE COURT:

/s/ A. SHERMAN CHRISTENSEN
A. Sherman Christensen
UNITED STATES DISTRICT JUDGE

APPENDIX A

1
2 By submitting this bid the undersigned hereby certi-
3 fies that said bid has not been made or prepared in collusion
4 with any other distributor of dairy products and that the
5 prices, terms or conditions applicable to the sale thereof
6 have not been communicated by or on behalf of the bidder to
7 any other distributor and will not be so communicated to any
8 other distributor prior to the official opening of said bid
9 in violation of any decree entered against bidder by the
10 United States District Court for the District of Utah
11 (Northern Division) which may be applicable to said bid.

12 Dated:

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16 Signature of Officer or Employee of
the Consenting Defendant
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UNITED STATES v.
BEATRICE FOODS CO., *et al.*

Civil Action No.: NC-38-69

Year Judgment Entered: 1972
(Adding Additional Defendant)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 BEATRICE FOODS CO.; FEDERATED)
 DAIRY FARMS, INC.; and HI-LAND)
 DAIRYMAN'S ASSOCIATION,)
)
 Defendants.)

Civil No. NC-38-69

Entered: April 7, 1972 as to
Count III. Beatrice Foods
dismissed as to Counts I and II.
Damages assessed,

PARTIAL FINAL JUDGMENT AGAINST DEFENDANT,
BEATRICE FOODS CO.

Plaintiff United States of America, having filed its complaint herein on June 26, 1969, and the consenting Defendant, Beatrice Foods Co., having appeared by its attorneys and having filed its answer to such complaint denying the substantive allegations thereof; and plaintiff and consenting Defendant, by their respective attorneys, having consented to the making and entry of this Partial Final Judgment pursuant to stipulation entered into on February 22, 1972 without trial or adjudication of or finding on any issue of fact or law herein, and no testimony having been taken herein and without this Partial Final Judgment constituting any evidence against or admission by any party to said stipulation with respect to any such issue and upon consent of the parties hereto,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, as follows:

I.

This Court has jurisdiction of the subject matter herein and of the consenting Defendant. The complaint herein having presented more than one claim for relief and dismissal being sought as to Counts I and II as to the consenting Defendant, the Court having considered all facts and circumstances in this case hereby determines that there is no just reason for delay and directs entry of this Partial Final Judgment as to the claim made in Count III.

The complaint herein in Count III states a claim upon which relief may be granted against said consenting Defendant under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Act, as amended (15 U.S.C. §1).

II

As used in this Partial Final Judgment:

(a) "Consenting Defendant" means the defendant Beatrice Foods Co.;

(b) "Raw milk" means unprocessed cows' milk sold or delivered by producers to distributors for processing into dairy products;

(c) "Dairy products" means the end products which have been processed from raw milk and, in addition, means related products which are not processed from raw milk but which are usually marketed by distributors, consisting of pasteurized and homogenized milk; two-percent milk; skim milk; buttermilk; whipping and table cream; half and half; sour cream; yogurt; cottage cheese; chocolate and

flavored milk; orange and other fruit drinks; ice cream and ice milk; sherbet; water ices; mellorinetype products; popsicles and similar frozen novelties.

(d) "Distributor" means any corporation, cooperative, partnership, firm or individual which either processes raw milk into dairy products or purchases dairy products from processors, and which sells and distributes dairy products to, among others, wholesale customers including grocery stores and retail customers including home delivery purchasers and purchasers at milk depots;

(e) "Wholesale prices" means those list prices, discounts and other terms and conditions of sale at which dairy products are to be sold by distributors to grocery stores and other retail outlets;

(f) "Retail prices" means those list prices, discounts and other terms and conditions of sale at which dairy products are to be sold to home delivery customers and other consumers.

III

The provisions of this Partial Final Judgment shall apply throughout the United States to the consenting Defendant, its subsidiaries, successors and assigns and to their respective officers, directors, agents and employees,

and shall also apply to all persons in active concert or participation with any of them who receive actual notice of this Partial Final Judgment by personal service or otherwise, but shall not apply to activities between consenting Defendant and its officers, directors, agents and employees, nor to activities between consenting Defendant and subsidiary companies or affiliated companies of which 50% or more is owned by the consenting Defendant or which is in fact controlled by the consenting Defendant.

IV

The consenting Defendant is enjoined and restrained from directly or indirectly in any manner entering into, adhering to, or claiming or maintaining any right under any contract, agreement, arrangement, understanding, plan or program with any other distributor:

(a) to fix, raise, maintain or stabilize wholesale prices for the sale of dairy products;

(b) to fix, raise, maintain or stabilize retail prices for the sale of dairy products;

(c) to submit collusive or rigged bids on dairy products to the United States of America or any instrumentality or agency thereof, to any State government or any instrumentality or agency thereof, or to any other customer;

(d) to allocate, rotate or divide sales territories or dairy product business among distributors.

V

The consenting Defendant is enjoined and restrained from:

(a) communicating with any other distributor concerning prices and terms or conditions of sale for dairy products bid or to be bid to any third person prior to the bid opening of any such bid, or, in the absence of a bid opening, prior to the release by such third person of such information to the public;

(b) communicating to or exchanging with any other distributor selling any dairy product any actual or proposed price, price change, discount, or other term or condition of sale at or upon which any dairy product is to be, or has been, sold to any third person prior to the communication of such information to the public or customers generally.

Nothing in this Paragraph V shall be construed to enjoin or restrain consenting Defendant from communicating with any other distributor concerning prices, terms or conditions of sale of bona fide sales of dairy products between consenting Defendant and such other distributor; provided, however, that any such transactions shall be subject to the prohibitions of Section IV(a), (b), (c), and (d) above.

VI

The consenting Defendant is ordered and directed for a period of five (5) years from the date of the entry of this Partial Final Judgment, to attach to each bid submitted by it to any federal, state or local governmental authority, agency or instrumentality thereof, including but not limited to public school districts, for the sale of dairy products, a written certification by each officer or employee of consenting Defendant who participates

in whole or in part in determining the prices for the bid involved, which certification shall be in a form acceptable to plaintiff.

VII

The consenting Defendant is ordered and directed for a period of ten (10) years commencing with the date on which this Partial Final Judgment is entered, to:

(A) Serve within one hundred twenty (120) days after the entry of this Partial Final Judgment a conformed copy of this Partial Final Judgment upon each of its respective officers, directors, managing agents and employees (excluding wholesale and retail truck drivers) who have any responsibility for establishing wholesale prices, retail prices or bids for the sale of dairy products by consenting Defendant;

(B) Serve forthwith upon each successor officer, director, managing agent and employee (excluding wholesale and retail truck drivers) who shall have any responsibility for establishing wholesale prices, retail prices or bids for the sale of dairy products by consenting Defendant a conformed copy of this Partial Final Judgment;

(C) Advise and inform each such officer, director, managing agent and employee upon whom the Partial Final Judgment has been served as described in subparagraphs (A) and (B) above, that violation by him of the terms of this Partial Final Judgment could result in a conviction for contempt of court and could subject him to imprisonment and/or a fine.

(D) File with the San Francisco Office of the Anti-trust Division at the end of each of consenting Defendant's

fiscal years a report setting forth the steps which it has taken during the prior year to advise the consenting Defendant's appropriate officers, directors, managing agents and employees of its and their obligations under this Partial Final Judgment. Said report shall also include a list showing the name, title and address of each officer, director, managing agent and employee upon whom the Partial Final Judgment has been served, as described in subparagraphs (A) and (B) above, together with the date on which service was made.

VIII

(A) For the purpose of determining or securing compliance with this Partial Final Judgment, and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, upon reasonable notice to the consenting Defendant made to its principal office, be permitted:

(a) access, during the office hours of said consenting Defendant, and in the presence of counsel if said Defendant chooses, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession of or under the control of said consenting Defendant relating to any of the matters contained in this Partial Final Judgment; and

(b) subject to the reasonable convenience of said consenting Defendant and without restraint or

interference from it, to interview the officers and employees of said consenting Defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made to its principal offices, the consenting Defendant shall submit such written reports with respect to any of the matters contained in this Partial Final Judgment as from time to time may be requested for the enforcement of this Partial Final Judgment.

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

IX

Jurisdiction is retained for the purpose of enabling any of the parties to this Partial 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 Partial Final Judgment or for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

DATED this 7th day of April, 1972.

BY THE COURT:

/s/ A. SHERMAN CHRISTENSEN

A. Sherman Christensen
UNITED STATES DISTRICT JUDGE