

ROBERT J. STAAL  
MARK F. ANDERSON  
Antitrust Division  
Department of Justice  
450 Golden Gate Avenue - Room 16432  
Box 36046  
San Francisco, California 94102  
Telephone: (415) 556-6300

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 ) Civil No. 74-2676-CBR  
 v. )  
 ) COMPLAINT  
 UTAH-IDAHO COMPANY; and )  
 CALIFORNIA AND HAWAIIAN SUGAR ) 15 U.S.C. § 1  
 COMPANY, ) (Sherman Antitrust Act)  
 )  
 Defendants. ) Filed: December 19, 1974  
 )

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this action against the defendants named herein and complains and alleges as follows:

I

DEFINITIONS

1. As used herein:

- (a) "Refined sugar" means any grade or type of saccharine product derived from sugar beets or sugar cane which contains sucrose, dextrose or levulose;
- (b) "Refiner" means any company engaged in the processing of sugar beets or the refining of raw cane sugar into, and the sale, of refined sugar;

- (c) "Basis price" means the list price of refined sugar sold by a refiner f.o.b. its refinery or processing factory;
- (d) "Prepaid freight application," commonly known as a "prepay," means a portion of the delivered price for refined sugar equal in amount to a freight charge from a basing point to the customer's location;
- (e) "Delivered price" means the price of refined sugar delivered to the customer and generally consists of the basis price plus the prepaid freight application;
- (f) "Allowance" means a discount from delivered price;
- (g) "Effective selling price" means the price actually charged to the customer by the refiner and generally consists of the delivered price, less any allowance; and
- (h) "The Market" means the States of Washington, Oregon, Utah, Idaho and Wyoming (west of the town of Rawlins). These states have customarily been described by refiners as the Intermountain-Northwest territory.

## II

### JURISDICTION AND VENUE

2. This complaint is filed under Section 4 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 4), commonly known as the Sherman Act, in order to prevent and restrain continuing violation by the defendants, as hereinafter alleged, of Section 1 of the Act (15 U.S.C. § 1).

3. Defendant California and Hawaiian Sugar Company transacts business and is found within the Northern District of California.

### III

#### DEFENDANTS

4. Utah-Idaho Sugar Company (hereinafter referred to as "U-I") is hereby made a defendant herein. U-I was incorporated in 1907 under the laws of the State of Utah. U-I's principal place of business is in Salt Lake City, Utah. During all or part of the period of time covered by this complaint, defendant U-I engaged in the business of processing and selling refined sugar in The Market.

5. California and Hawaiian Sugar Company (hereinafter referred to as "C & H") is made a defendant herein. C & H was incorporated as an agricultural cooperative in 1921 under the laws of the State of California. C & H's principal place of business is in San Francisco, California. During all or part of the period of time covered by this complaint, defendant C & H engaged in the business of refining and selling refined sugar in The Market.

### IV

#### CO-CONSPIRATORS

6. Various corporations, firms and individuals not named as defendants in this complaint participated as co-conspirators in the violation alleged and performed acts and made statements in furtherance thereof.

### V

#### TRADE AND COMMERCE

7. Refined sugar is made by processing sugar beets or by refining raw sugar which is derived from crushed sugar cane. Grocery sugar is sold to grocery wholesalers and retailers for eventual sale to consumers; industrial sugar is sold in liquid or dry form in bags or bulk to firms engaged in the preparation and manufacture of food and beverages. Approximately 22 percent

of the sugar sold in the United States is sold as grocery sugar; nearly all of the remainder is sold as industrial sugar.

8. Private label sugar is grocery sugar packed by a refiner but sold under the brand name of a purchaser, usually a grocery chain or buying cooperative. There is no difference in quality between grocery sugar sold under a refiner's brand and grocery sugar sold under a purchaser's private label. However, private label generally sells for less at wholesale and retail than the refiner's brand.

9. Total domestic sales of refined sugar in 1972 amounted to approximately 212 million hundredweights which had a value of about \$2.5 billion. Of this, in excess of 6 million hundredweights or approximately \$75 million worth of refined sugar was sold in The Market. Of the \$75 million, \$25 million or 33 percent was grocery sugar. C & H and U-I dominate grocery sugar sales in The Market; in 1972, they had 42 percent and 44 percent of all grocery sugar sales, respectively.

10. During the period of time covered by this complaint, the defendant C & H received substantial quantities of raw sugar derived from sugar cane grown and crushed in the State of Hawaii. There was a substantial and continuous flow in interstate commerce of said raw sugar from the State of Hawaii to the State of California where it was refined by defendant C & H and sold in The Market.

11. During the period of time covered by this complaint, defendants' and co-conspirators' cane refinery and sugar beet processing factories were located in various states in the United States and substantial quantities of the sugar refined and processed at the refinery and factories were sold and shipped across state lines to customers throughout The Market. There was a substantial and continuous flow of refined sugar in interstate commerce from the refinery and sugar beet processing factories

of defendants and co-conspirators to their customers.

## VI

### VIOLATION ALLEGED

12. Beginning at least as early as February 1972, the exact date being to the plaintiff unknown, and continuing up to and including the date of the filing of this complaint, the defendants and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in The Market in violation of Section 1 of the Sherman Act, as amended (15 U.S.C. § 1). This combination and conspiracy may continue unless the relief hereinafter prayed for is granted.

13. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding and concert of action among the defendants and co-conspirators to eliminate competition among themselves in the sale of refined sugar by, among other things, agreeing to prevent and suppress the sale of private label sugar in The Market.

14. During the period of time covered by this complaint and for the purpose of formulating and effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators did those things which, as hereinbefore alleged, they combined and conspired to do, including, among other things, the following:

- (a) met at the Olympic Club in San Francisco, California, and discussed whether or not to offer private label sugar for sale in The Market; and
- (b) thereafter mutually refrained from offering private label sugar for sale in The Market up to the date of the filing of this complaint.

## VII

### EFFECTS

15. The aforesaid combination and conspiracy has had the following effects, among others:

- (a) purchasers of refined sugar have been deprived of free and open competition in the sale of refined sugar;
- (b) prospective purchasers of private label sugar have been deprived of free and open competition in the sale of private label sugar; and
- (c) competition between and among defendants and co-conspirators has been restricted, suppressed and restrained.

PRAYER

WHEREFORE, plaintiff prays:

1. That, pursuant to Section 5 of the Sherman Act (15 U.S.C. § 5), the Court order summonses to be issued to U-I, commanding it to appear and answer the allegations contained in the complaint, and to abide by and perform such orders and decrees as this Court may make in the premises.

2. That the Court adjudge and decree that the defendants and co-conspirators have engaged in an unlawful combination and conspiracy in restraint of the aforesaid trade and commerce in violation of Section 1 of the Sherman Act.

3. That each of the defendants, its subsidiaries, successors, transferees, assignees, and the respective officers, directors, partners, agents and employees thereof, and all other persons acting or claiming to act on their behalf, be enjoined and restrained from in any manner, directly or indirectly:

- (a) continuing, maintaining or renewing the combination and conspiracy hereinbefore alleged, or from engaging in any other combination and conspiracy having a similar purpose or effect, and from adopting or following any practice, plan, program or device having a similar purpose or effect; and

(b) communicating to any other refiner, or causing to be communicated through any broker or third party to any other refiner, information concerning prices or other terms or conditions of sale of refined sugar, except to the extent necessary in connection with a bona fide purchase or sales transaction between the parties to such communications.

4. That the plaintiff have such other, further, general and different relief as the case may require and the Court may deem just and proper under the circumstances.

5. That the plaintiff recover the costs of this suit.

  
\_\_\_\_\_  
THOMAS E. KAUPER  
Assistant Attorney General

\_\_\_\_\_  
ROBERT J. STAAL

  
\_\_\_\_\_  
BADDIA J. RASHID

\_\_\_\_\_  
MARK F. ANDERSON

\_\_\_\_\_  
ANTHONY E. DESMOND

\_\_\_\_\_  
CHRISTOPHER S. CROOK

Attorneys,  
Department of Justice

\_\_\_\_\_  
GLENDA R. JERMANOVICH

Attorneys,  
Department of Justice

Antitrust Division  
Department of Justice  
Box 36046  
450 Golden Gate Avenue  
San Francisco, California  
94102