UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| UNITED STATES OF AMERICA | : | Criminal No.: 00 CR 592 (WHD) |
| v. | : | Filed: June 1, 2000 |
| LOEB & MAYER, INC., | : | Violations: 15 U.S.C. § 1<br>18 U.S.C. § 371 |
| Defendant. | : | |

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INFORMATION

COUNT ONE -- SHERMAN ACT CONSPIRACY
(15 U.S.C. § 1)

The United States of America, acting through its attorneys, charges:

1. Loeb & Mayer, Inc. ("L&M") is hereby made a defendant on the charge stated below.

I. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

2. L&M was a New York State corporation located in Arverne, New York. L&M was primarily a vendor of food.

3. The Board of Education of the City of New York ("NYCBOE") was the entity responsible for operating New York City's public school system, the largest in the United States. Its annual budgets, which approached $10 billion, were funded by the federal, state, and city governments. It serviced a student population of nearly 1.1 million and operated more than 1,500 facilities. It served

approximately 640,000 lunches and 150,000 breakfasts every school day, the majority of which were subsidized by various government programs, primarily those programs established pursuant to the National School Lunch Act of 1946 and administered by the United States Department of Agriculture.

4. The NYCBOE solicited bids from, and awarded contracts to, vendors of food on a regular basis. The primary food contracts awarded by the NYCBOE were requirements contracts that obligated the vendors to supply and deliver food at the stated prices for the contract period. Both public and non-public schools received food pursuant to these contracts. Individual schools placed orders as needed, usually once or twice a week.

5. The NYCBOE sought separate bids, and awarded separate contracts, for the supply of a number of categories of food, including frozen food, produce, and groceries. Each of these bids and contracts was divided into parts, usually geographically by borough. The company bidding the lowest price for a particular part of a contract usually received an award for that part. The term of most of these contracts varied from three to six months. Toward the expiration of the contract period, the NYCBOE again solicited bids for the supply of food.

6. In addition to the contracts described in Paragraphs 4 and 5, the NYCBOE occasionally sought bids and awarded contracts for furnishing and delivering specified quantities of grocery and frozen food items to be

warehoused.

7. The NYCBOE required bidders to certify, under penalty of perjury, that, among other things, the prices in their bids had been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such prices, with any other bidder or with any competitor.

8. Whenever in this Count reference is made to any act, deed, or transaction of any corporation, such allegation shall be deemed to mean that the corporation engaged in such act, deed, or transaction by or through its officers, directors, agents, employees, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

9. Various persons and firms, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof.

## II. TRADE AND COMMERCE

10. During the period covered by this Count, L&M purchased substantial quantities of food, including frozen food, for resale to the NYCBOE from brokers, who ordered their goods on behalf of L&M from suppliers located throughout the United States. These suppliers commonly shipped the goods ordered by the brokers directly to L&M.

11. From approximately May 1996 until approximately April 1999, pursuant to contracts that are the subject of this Count, the NYCBOE purchased approximately $126 million of frozen food from members of the conspiracy, including approximately $21 million of frozen food from L&M.

12. The activities of the defendant and co-conspirators with respect to the sale of food to the NYCBOE, including the sale of frozen food pursuant to contracts that are the subject of this Count, were within the flow of, and substantially affected, interstate trade and commerce.

## III. DESCRIPTION OF THE OFFENSE

13. From approximately May 1996 until approximately April 1999, the exact dates being unknown to the United States, the defendant and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act (Title 15, United States Code, Section 1).

14. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators, the substantial terms of which were to rig bids and allocate contracts for the supply of frozen food to the NYCBOE.

15. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators did those things which they combined and conspired to do, including, among other

things:

(a) Prior to the submission of bids, they participated in meetings and conversations where they discussed and agreed how to bid so as to divide upcoming contracts to supply frozen food to the NYCBOE. These meetings were held at different sites in or near New York City, including the Crowne Plaza LaGuardia Hotel in Queens; the Ramada Inn or Courtyard by Marriott at LaGuardia in Queens; the offices of one of the co-conspirators at the Bronx Terminal Market; a meeting room available to the businesses operating at the Hunts Point Food Distribution Center in the Bronx; and a food trade show at the Meadowlands in East Rutherford, New Jersey;

(b) They designated which co-conspirators would be the low bidders, among the co-conspirators, on specified parts of contracts to supply frozen food to the NYCBOE;

(c) They discussed and agreed on the prices or price levels they would bid on specified parts of contracts to supply frozen food to the NYCBOE, and then bid accordingly;

(d) They refrained from bidding or submitted intentionally high, complementary bids on specified parts of contracts to supply frozen food to the NYCBOE;

(e) They gave substantial amounts of cash to a co-conspirator, with the understanding that he would use the cash to pay other potential bidders not

to bid competitively on particular contracts to supply food to the NYCBOE;

(f) They shared the net profits earned on contracts to furnish and deliver specified quantities of frozen food items to be warehoused by giving each other money or free merchandise; and

(g) They falsely certified, under penalty of perjury, that, among other things, the prices in their bids had been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such prices, with any other bidder or competitor.

## IV. JURISDICTION AND VENUE

16. The aforesaid combination and conspiracy was formed and carried out, in part, within the Southern District of New York within the five years preceding the filing of this Information.

IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1

## COUNT TWO -- SHERMAN ACT CONSPIRACY
(15 U.S.C. § 1)

The United States of America further charges:

17. Paragraphs 1 and 2 and Paragraphs 8 and 9 of Count One of this Information are repeated, realleged, and incorporated in Count Two as if fully set forth in this Count.

## V. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

18. Odyssey House, Inc. ("Odyssey House") was a not-for-profit residential substance abuse treatment organization located in Manhattan. Odyssey House received a significant portion of its funding from the State of New York. As a condition of that funding, the State of New York required Odyssey House to solicit at least three competitive bids before it purchased any items which, in the aggregate, totaled at least $3,000 during any 60-day period. Before purchasing most food items, including meat, Odyssey House solicited bids on a monthly basis from potential suppliers.

19. Aaron Lugo ("Lugo"), a co-conspirator, was the director of operations at Odyssey House. Lugo had primary responsibility for purchasing food, including meat.

20. "CC-1" was a co-conspirator that was a corporation located in Brooklyn, New York. CC-1 sold food, primarily meat, to Odyssey House.

## VI. TRADE AND COMMERCE

21. During the period covered by this Count, L&M purchased substantial quantities of food, including meat, for resale to Odyssey House from brokers, who ordered their goods on behalf of L&M from suppliers located throughout the United States. These suppliers commonly shipped the goods ordered by the brokers directly to L&M.

22. From approximately late 1993 until approximately April 1998, as a

result of the conspiracy charged in this Count, Odyssey House awarded contracts for the supply of meat worth a total of at least $1.385 million to L&M and to CC-1. L&M's share of those contracts totaled approximately $791,000; CC-1's share totaled approximately $594,000.

23. The activities of the defendant and co-conspirators with respect to the sale of meat to Odyssey House, pursuant to contracts that are the subject of this Count, were within the flow of, and substantially affected, interstate trade and commerce.

## VII. DESCRIPTION OF THE OFFENSE

24. From approximately late 1993 until approximately April 1998, the exact dates being unknown to the United States, the defendant and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act (Title 15, United States Code, Section 1).

25. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators, the substantial terms of which were to rig the bids for and allocate contracts awarded by Odyssey House for the supply of meat.

26. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators did those

things which they combined and conspired to do, including, among other things:

(a) They discussed and agreed how to divide the monthly contracts for meat awarded by Odyssey House and then submitted monthly bids to Odyssey House in accordance with their agreement;

(b) An employee of L&M prepared and submitted bids to Odyssey House that purported to come from independent competitors but, in fact, were from other entities owned and controlled by the owners of L&M. Those bids contained prices higher than the prices in the bids submitted by L&M and CC-1;

(c) An employee of L&M also prepared and submitted bids to Odyssey House that purported to come from another company that sold meat, but those bids were submitted without the knowledge or consent of any of the owners or representatives of that company. Those bids also contained prices higher than the prices in the bids submitted by L&M and CC-1; and

(d) An employee of L&M and the owner of CC-1 paid money to Lugo for his assistance in frustrating and subverting Odyssey House's program for seeking competitive bids for contracts for the supply of meat and for ensuring that no potential competitors who were not co-conspirators would be invited to bid on such contracts.

## VIII. JURISDICTION AND VENUE

27. The aforesaid combination and conspiracy was formed and carried

out, in part, within the Southern District of New York within the five years preceding the filing of this Information.

IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1

COUNT THREE -- CONSPIRACY
(18 U.S.C. § 371)

The United States of America further charges:

28. Paragraphs 1 and 2 and Paragraphs 8 and 9 of Count One of this Information are repeated, realleged, and incorporated in Count Three as if fully set forth in this Count.

IX. DESCRIPTION OF THE OFFENSE

29. From approximately March 1990 until approximately 1998, the exact dates being unknown to the United States, the defendant and co-conspirators did unlawfully, willfully, and knowingly conspire, combine, confederate, and agree to defraud the United States of America and to commit offenses against the United States of America, to wit, to violate Title 18, United States Code, Sections 1341 and 1346, and to violate Title 26, United States Code, Section 7206(1), all in violation of Title 18, United States Code, Section 371.

30. It was a part of and object of the conspiracy that L&M and co-conspirators, having devised and intending to devise a scheme and artifice to (a) defraud certain customers of L&M; (b) obtain money and property from certain customers of L&M by means of false and fraudulent pretenses,

representations, and promises; and (c) deprive certain customers of L&M of their right to the honest services of certain of their employees; executed the scheme and artifice by and through the use of the United States mails, in violation of Title 18, United States Code, Sections 1341 and 1346.

31. It was a further part and object of the conspiracy that L&M and co-conspirators would and did defraud the Internal Revenue Service ("IRS") by impeding, impairing, defeating, and obstructing the lawful governmental functions of the IRS in the ascertainment, evaluation, assessment, and collection of income taxes due from individuals who were employees of certain customers of L&M, by impeding and impairing scrutiny by the IRS of L&M's true total income, to wit, by concealing the existence and size of certain cash payments received by L&M; and by impeding and impairing scrutiny by the IRS of the true total income of individuals who were employees of certain customers of L&M, to wit, by concealing the existence of cash kickbacks paid by employees of L&M to those individuals.

32. It was a further part and object of the conspiracy that L&M would and did unlawfully, willfully, and knowingly make and subscribe to a U.S. Income Tax Return for an S Corporation, Form 1120S, for the tax year 1997, which was verified by a written declaration that it was made under penalties of perjury, and which income tax return the company did not believe to be true and correct as to every material matter, insofar as it substantially understated L&M's true total

income, in violation of Title 26, United States Code, Section 7206(1).

## X. THE MANNER AND MEANS BY WHICH THE CONSPIRACY WAS CARRIED OUT

The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

33. During all or a part of the period from approximately March 1990 until approximately 1998, employees of L&M acting at the direction of the company's senior executives, paid cash kickbacks to employees of approximately ten of L&M's customers. Most of these customers were not-for-profit organizations and many were funded by various government entities. The kickbacks ensured that L&M would receive a portion of those customers' contracts for the supply of food, and discouraged the customers' employees from seeking to do business with other potential suppliers.

34. The employees receiving kickbacks had responsibility for the purchase of food. They included Aaron Lugo, the director of operations at Odyssey House, Inc., a residential substance abuse treatment organization located in Manhattan; employees at a residential substance abuse treatment organization located in Queens, New York; and an employee at Project Return Foundation, a residential substance abuse treatment organization also located in Manhattan. The kickbacks were usually paid monthly and by the mid-1990s totaled between $3500 and $5000 per month. The amount of the kickback paid to each of the employees was usually calculated according to a percentage of

the value of orders that their employer placed with L&M. One of the employees, however, received a "flat" kickback of $500 per month.

35. In exchange for the kickbacks, the employees receiving the kickbacks caused their employers to issue purchase orders to and pay invoices from L&M. These documents were sometimes sent between the organization and L&M via the United States mails.

36. The employees of L&M who actually paid the kickbacks received the cash directly or indirectly from the company's president. He, in turn, obtained the cash by causing L&M to collect money that it was owed in cash, and then by failing to deposit that cash in any bank account operated by the company and by failing to record the receipt of that cash in the company's books and records. L&M filed a U.S. Income Tax Return for an S Corporation, Forms 1120S, for tax year 1997 that was false and fraudulent in that it substantially understated L&M's true total income. L&M did not issue IRS Forms 1099 to any of the employees of its customers who received the cash kickbacks.

## XI. OVERT ACTS

In furtherance of the conspiracy, and to effect the objects thereof, the following overt acts were committed in the Southern District of New York, and elsewhere:

37. On numerous occasions between March 1990 and 1998, an employee of L&M paid cash kickbacks to Lugo at various locations in

Manhattan.

38. On numerous occasions between the early 1990s and 1998, an employee of L&M paid cash kickbacks to employees of a residential substance abuse treatment organization located in Queens, New York.

39. On numerous occasions between the early 1990s and 1998, an employee of L&M paid cash kickbacks to an employee at Project Return Foundation at various locations in Manhattan.

40. On numerous occasions between the mid-1990s and mid-1998, an employee of L&M collected cash from two of its customers and then distributed that cash to employees of the company so that they could pay cash kickbacks to employees of certain of the company's customers.

41. On or about March 3, 1998, L&M filed a false and fraudulent U.S. Income Tax Return for an S Corporation, Form 1120S, that failed to report as income approximately $60,000 in cash that had been received in 1997 from two of the company's customers.

IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 371

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