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11 UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,)	
)	
14 Plaintiff,)	
)	
15 v.)	Civil Action No.
)	
16 DEL NORTE FISHERMEN'S MARKETING)	C-82-3355-SC
17 ASSOCIATION, INC.,)	
)	Filed: July 6, 1982
18 Defendant.)	
)	

19 COMPLAINT

20 The United States of America, plaintiff, by its attorneys,
21 acting under the direction of the Attorney General of the United
22 States, brings this civil action against the above-named defendant
23 to obtain equitable relief and complains and alleges as follows:

24 I.

25 JURISDICTION AND VENUE

26 1. This complaint is filed and this action is instituted by
27 the United States of America under Section 4 of the Sherman Act,
28 15 U.S.C. § 4, to prevent and restrain the continuing violation,
29 as hereinafter alleged, of Section 1 of the Sherman Act, 15 U.S.C.
30 § 1.

31 2. The defendant has its principal place of business,
32 transacts business and is found in the Northern District of
California.

1 II.

2 DEFENDANT

3 3. The Del Norte Fishermen's Marketing Association
4 (hereinafter the DNFMA) is made a defendant herein. The DNFMA is
5 a corporation organized and existing under the laws of the State
6 of California with its corporate headquarters in Crescent City,
7 California. It has approximately 84 members, most of whom are
8 commercial fishermen. DNFMA was formed in 1971 for the purpose of
9 representing its members in the sale and marketing of salmon,
10 crab, and shrimp in the State of California.

11 III.

12 CO-CONSPIRATORS

13 4. Various firms and individuals, not made defendants in
14 this complaint, have participated as co-conspirators in the
15 violation alleged herein and have performed acts and made
16 statements in furtherance thereof.

17 IV.

18 DEFINITIONS

19 5. As used herein, the term:

20 (a) "Person" means any individual, partnership, firm,
21 association, corporation or other business or legal entity;

22 (b) "Seafood" means either fish or shellfish;

23 (c) "Processor" means any person who obtains raw
24 seafood from fishermen for the purpose of resale in fresh,
25 frozen or canned form;

26 (d) "Ex vessel price" means the price paid fishermen by
27 processors for seafood; and

28 (e) "Member" means any person who has signed a
29 membership agreement with DNFMA and has not submitted a
30 written resignation to DNFMA.

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V.

TRADE AND COMMERCE

6. Commercial fishermen catch salmon, crab and shrimp off the coast of California and deliver such seafood to processors located in various ports along the Northern California coast, including Crescent City.

7. Processors pay commercial fishermen based on the total pounds delivered. The amount of compensation is determined by multiplying the ex vessel price for the particular seafood by the number of pounds that a fisherman delivers to the processor.

8. Some of these commercial fishermen are members of DNFMA, which, prior to the start of each fishing season, negotiates with processors for an ex vessel price to be paid its member fishermen for the particular seafood involved.

9. DNFMA will negotiate only with processors who have signed a dealer's agreement with DNFMA. The agreement provides, among other things, that the processor withhold poundage fees from the price paid to fishermen for seafood and remit the fees to DNFMA. DNFMA uses the poundage fees to finance its operations.

10. In 1979, approximately 69,392,865 pounds of seafood valued at \$39,841,634 were landed in an area comprised of the counties of Mendocino, Humboldt, and Del Norte, California, an area which includes Crescent City. In 1976, landings in Crescent City totalled 16,784,367 pounds valued at \$6,828,528.

11. In each of the years 1977, 1978 and 1979, Northern California seafood processors had out-of-state sales in excess of \$20,000,000. A substantial amount of the seafood sold to these processors came from Crescent City. The activities of the defendant, its members, and co-conspirators which are the subject of the violation hereinafter alleged are in the flow of and have an effect upon interstate commerce.

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1 12. In 1934 the Fishermen's Collective Marketing Act, 15
2 U.S.C. §§ 521-522, was passed, authorizing two or more fishermen
3 to act together in associations or cooperatives to catch, produce,
4 prepare for market, process, handle and market seafood. These
5 joint activities among members of cooperatives are exempt from the
6 antitrust laws, provided the cooperative has been formed and
7 operates in conformity with the statute's terms and limitations.
8 For example, members of a cooperative cannot engage in joint
9 pricing and marketing actions with nonmembers. In addition,
10 immunity does not and has never extended to joint acts to compel
11 or coerce nonmembers to comply with an association's prices or its
12 policies.

13 VI.

14 VIOLATION ALLEGED

15 13. Commencing in or about the year 1975, and continuing
16 until the date of this complaint, the defendant and
17 co-conspirators have engaged in a combination and conspiracy in
18 unreasonable restraint of the aforesaid trade and commerce in
19 violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The
20 combination and conspiracy is continuing and will continue unless
21 the relief hereinafter prayed for is granted.

22 14. The aforesaid combination and conspiracy has consisted of
23 a continuing agreement, understanding, and concert of action among
24 the defendant and co-conspirators, the substantial terms of which
25 have been to fix and maintain the ex vessel price offered
26 processors by commercial fishermen and to eliminate competition
27 between commercial fishermen for the sale of seafood to
28 processors.

29 15. In furtherance of the aforesaid combination and
30 conspiracy, the defendant and co-conspirators have done the things
31 that they have combined and conspired to do, including, among
32 other things:

1 (a) agreeing with nonmember commercial
2 fishermen not to fish until the defendant has
3 settled with processors on an ex vessel price;

4 (b) agreeing with nonmember commercial
5 fishermen to sell seafood at DNFMA's prices;

6 (c) compelling, through threats, harassment,
7 vandalism and intimidation, nonmember commercial
8 fishermen to comply with DNFMA's prices and
9 policies; and

10 (d) requiring all processors who have entered
11 into a dealer's agreement with DNFMA to collect and
12 pay poundage fees on all seafood delivered by all
13 fishermen, including nonmember commercial
14 fishermen.

15 VII.

16 EFFECTS

17 16. The aforesaid combination and conspiracy has had the
18 following effects, among others:

19 (a) the ex vessel price offered by commercial fishermen
20 has been fixed and maintained at artificial and noncompetitive
21 levels;

22 (b) price competition in the sale of seafood by
23 commercial fishermen has been restrained;

24 (c) commercial fishermen have been prevented from free
25 and open competition in the sale of seafood to processors; and

26 (d) processors of seafood have been deprived of the
27 benefits of free and open competition in the market for
28 seafood.

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PRAYER

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that the defendant 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;

2. That the defendant, its officers, directors, employees, agents, successors, assigns, and all other persons acting or claiming to act on its behalf be perpetually enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining, or renewing, the combination and conspiracy hereinbefore alleged, or from engaging in any other combination, conspiracy, contract, agreement, understanding, or concert of action having a similar purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect;

3. That the defendant be enjoined from requiring processors to pay poundage fees to DNFMA for seafood delivered by nonmember fishermen and that the defendant be required to notify all processors who presently have dealer agreements with DNFMA that these processors shall only pay poundage fees to DNFMA on seafood delivered by DNFMA members;

4. That the plaintiff have such other and further relief as

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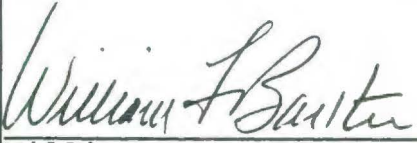
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1 the nature of the case may require and the court may deem just and
2 proper; and

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

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