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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 74-102-PHX-CAM
)	
HOLSUM BAKERY, INC.;)	
RAINBO BAKING COMPANY OF PHOENIX;)	FINAL JUDGMENT
RAINBO BAKING COMPANY OF TUCSON;)	
BAIRD'S BREAD COMPANY; and)	Filed: April 17, 1978
C.J. PATTERSON COMPANY,)	
)	Entered: July 7, 1978
Defendants.)	
)	

Plaintiff, United States of America, having filed its complaint herein on February 14, 1974, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence of an admission by any party consenting hereto with respect to any issue;

NOW, THEREFORE, before any testimony or evidence has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1 I.

2 This Court has jurisdiction of the subject matter hereof,
3 and of the parties hereto. Count I of the complaint states
4 a claim upon which relief may be granted against defendants
5 under Section 1 of the Sherman Act (15 U.S.C. §1).

6 II.

7 As used in this Final Judgment:

- 8 (a) "Person" means any individual, partnership, firm,
9 corporation, association, or other business or
10 legal entity;
- 11 (b) "Bakery products" means any type of bread or other
12 baked product exclusive of fruit cakes, cookies
13 and other confections, produced, distributed or
14 sold by defendants;
- 15 (c) "Federal Institution" means any agency, instrument-
16 ality or institution of the United States of
17 America which purchases bakery products;
- 18 (d) "State Institution" means any agency, instrument-
19 ality or institution of the State of Arizona or
20 any political subdivision thereof, including, but
21 not limited to, any county, city, town,
22 municipality, or school district.

23 III.

24 The provisions of this Final Judgment are applicable
25 to any defendant herein and shall also apply to each of its
26 officers, directors, agents, employees, successors and
27 assigns, and to all other persons in active concert or
28 participation with any of them, who shall have received
29 actual notice of this Final Judgment by personal service or
30 otherwise. The provisions of this Final Judgment shall
31 apply only to acts or transactions of any defendant occurring
32 within, or affecting any acts or transactions within, the

1 State of Arizona.

2 IV.

3 Each defendant is enjoined and restrained from directly
4 or indirectly entering into, adhering to, maintaining,
5 enforcing or claiming any right under any contract, agreement,
6 combination, understanding, plan or program with any person
7 to:

- 8 (a) Fix, determine, establish, maintain or
9 stabilize the prices, discounts or other
10 terms or conditions for the sale of bakery
11 products to any third person;
- 12 (b) Submit noncompetitive collusive or rigged
13 bids for bakery products to any federal
14 institution;
- 15 (c) Submit noncompetitive collusive or rigged
16 bids for bakery products to any State
17 institution, or to any other third person;
- 18 (d) Allocate, rotate or divide markets,
19 customers or territories;
- 20 (e) Communicate to or exchange with any other
21 person producing, distributing or selling
22 any bakery product any actual or proposed
23 price, price change, discount, or other
24 term or condition or sale at or upon which
25 any bakery product is to be, or has been,
26 sold to any third person, prior to the
27 communication of such information to
28 customers generally.

29 Nothing in this Section IV shall be applicable to any
30 prices, discounts or other terms or conditions of sale, or
31 communications relating thereto, offered by a defendant to
32 any person or offered by any person to a defendant in

1 negotiating for, entering into or carrying out a sale or
2 proposed sale or purchase of bakery products between that
3 defendant and such other person, or where such other person
4 is acting as a purchasing agent or group buying
5 representative on behalf of any third person.

6 V.

7 Each defendant is enjoined and restrained from directly
8 or indirectly:

9 (a) Communicating to or exchanging with any other
10 person producing, distributing or selling
11 bakery products any information relating to
12 price, discount or any other term or
13 condition of sale of bakery products which
14 has been charged or allowed or is to be
15 charged or allowed by any person to any
16 customer or prospective customer prior to
17 the communication of such information to
18 customers generally.

19 (b) Communicating to or exchanging with any
20 other person producing, selling or
21 distributing bakery products any information
22 relating to price, discount or any other
23 term or condition of sale of bakery products
24 which has been charged or allowed or is to
25 be charged to allowed by any person to any
26 federal or state institution prior to the
27 communication of such information to the
28 public generally.

29 (c) Nothing in this Section V shall be applicable
30 to any prices, discounts or other terms or
31 conditions of sale, or communications
32 relating thereto, offered by a defendant to

1 any person or offered by any person to a defendant in
2 negotiating for, entering into, or carrying out a sale or
3 proposed sale or purchase of bakery products between that
4 defendant and such other person, or where such other person
5 is acting as a purchasing agent or group buying representative
6 on behalf of any third person.

7 VI.

8 Each defendant shall for a period of five (5) years
9 from the date of entry of this Final Judgment, furnish
10 simultaneously with each bid or quotation required to be
11 sealed which is submitted by it for the sale of bakery
12 products to any federal institution in the State of Arizona,
13 a written certification by an officer of such defendant, that
14 such bid was not in any way the result, directly or
15 indirectly, of any agreement, understanding, or communication
16 with any other producer, seller or distributor of bakery
17 products. Nothing in this Section VI shall be interpreted
18 to prohibit any defendant from negotiating for, entering
19 into, or carrying out purchase or sale transactions with
20 any other person, with respect to said bid, whereby the
21 defendant would purchase or supply bakery products; provided,
22 however, that the amount of such defendant's bid for such
23 purchased products shall not in any way be the result of
24 any agreement, understanding or communication between such
25 defendant and such other person.

26 VII.

27 For a period of five (5) years from the date of entry
28 of this Final Judgment, each defendant shall preserve all
29 written price computations and other written calculations
30 actually performed by such defendant in the preparation and
31 submission of any bid required to be sealed which is
32 submitted to any federal or state institution, and shall

1 retain such written computations and calculations for a
2 period of at least five (5) years from the date each bid
3 which is based on such computations or calculations is
4 submitted to any federal or state institution.

5 VIII.

6 The injunctions contained in this Final Judgment shall
7 not apply to relations between a defendant and a parent or
8 subsidiary of, or corporations under common control with,
9 such defendant or between the officers, directors, agents
10 and employees thereof.

11 IX.

12 Each defendant shall:

- 13 (a) Serve within sixty (60) days after the entry of
14 this Final Judgment a copy of this Final
15 Judgment upon each of its officers and
16 directors, and upon each of its employees
17 and agents who have any responsibility for
18 establishing prices, discounts or other terms
19 or conditions for the sale of bakery products;
- 20 (b) Serve a copy of this Final Judgment upon each
21 successor to such officers, directors, employees
22 or agents described in Paragraph (a) of this
23 Section IX within sixty (60) days after such
24 successor becomes employed or associated with
25 each such defendant;
- 26 (c) Within ninety (90) days after entering of
27 this Final Judgment, to file with this Court
28 and to serve upon the plaintiff affidavits
29 concerning the fact and manner of compliance
30 with Paragraph (a) of this Section IX.

31 X.

32 Upon motion of the plaintiff or upon this Court's own

1 motion, responsible officials of each defendant may from time
2 to time be ordered to appear before this Court to give sworn
3 testimony relating to each such defendant's manner of
4 compliance with the provisions of this Final Judgment.

5 XI.

6 (A) For the purpose of determining or securing compliance
7 with this Final Judgment, defendants shall permit
8 duly authorized representatives of the Department
9 of Justice, on written request of the Attorney
10 General or the Assistant Attorney General in charge
11 of the Antitrust Division, and on reasonable
12 notice, subject to any legally recognized privilege:

13 (1) Access, during the business hours of defendants,
14 who may have counsel present, to those books,
15 ledgers, accounts, correspondence, memoranda
16 and other records and documents in the
17 possession or under the control of defendants
18 which relate to any matters contained in
19 this Final Judgment;

20 (2) Subject to the reasonable convenience of defendants
21 and without restraint or interference from them, to
22 interview officers, directors, agents, partners
23 or employees of defendants, any of whom may have
24 counsel present, regarding any matters contained
25 in this Final Judgment.

26 (B) For the purpose of determining or securing compliance
27 with this Final Judgment, upon written request of the
28 Attorney General or the Assistant Attorney General
29 in charge of the Antitrust Division, defendants shall
30 submit such reports in writing, with respect to the
31 matters contained in this Final Judgment, as may
32 from time to time be requested.

1 (C) No information obtained by the means provided in
2 this Section XI of the Final Judgment shall be
3 divulged by a representative of the Department of
4 Justice to any person other than a duly authorized
5 representative of the Executive Branch of the
6 United States, except in the course of legal
7 proceedings to which the United States is a party,
8 or for the purpose of securing compliance with
9 this Final Judgment, or as otherwise required by
10 law. If at the time information or documents are
11 furnished by a defendant to plaintiff, such
12 defendant identifies in writing the material in any
13 such information or documents of a type described
14 in Rule 26(c)(7) of the Federal Rules of Civil
15 Procedures, and said defendant marks each
16 pertinent page of such material, "Subject to claim
17 of protection under Rule 26(c)(7) of the Federal
18 Rules of Civil Procedure," then 10 days' notice
19 shall be given by plaintiff to such defendant
20 prior to divulging such material in any legal
21 proceeding (other than a Grand Jury proceeding)
22 to which that defendant is not a party.

23 XII.

24 Jurisdiction is retained by this Court for the purpose
25 of enabling any of the parties to this Final Judgment to
26 apply to this Court at any time for such further orders and
27 directions as may be necessary or appropriate for the
28 construction or modification of any of the provisions
29 thereof, for the enforcement of compliance therewith, and
30 for the punishment of violations thereof.

31 XIII.

32 Entry of this Final Judgment is in the public interest.

Dated: July 7, 1978

DOJ-1978-07

/s/ C. A. Muecke
UNITED STATES DISTRICT JUDGE