

APPENDIX A:

UNITED STATES v. RETAIL FURNITURE DEALERS ASS'N OF
S. CAL. ET AL.

CIVIL NO. 2230-Y

JUDGMENT ENTERED MAY 7, 1942

**In the District Court of the United States
for the Southern District of California, Central
Division**

CIVIL ACTION No. 2230-Y

UNITED STATES OF AMERICA, PLAINTIFF

v.

RETAIL FURNITURE DEALERS ASSOCIATION OF SOUTHERN
CALIFORNIA;
WESTERN STOVE COMPANY;
O'KEEFE & MERRITT COMPANY;
JAMES GRAHAM MFG. CO.;
ESTATE STOVE COMPANY;
CRIBBEN & SEXTON;
LEO J. MEYBERG COMPANY;
W. C. GAFFERS;
BARKER BROS. CORPORATION;
BROADWAY DEPARTMENT STORE, INC.;
J. W. ROBINSON CO.;
BULLOCK'S, INC.;
THE MAY CO.;
FIFTH STREET BUILDING (INC.);
DOHRMANN COMMERCIAL CO.;
LOS ANGELES FURNITURE CO.;
SOUTHERN CALIFORNIA GAS COMPANY;
SOUTHERN COUNTIES GAS COMPANY;
C. E. PRICE;
B. D. BARNES;
JACK P. DAVIDSON;
DANIEL P. O'KEEFE;
ROSS MUNRO;
LLOYD D. LANGWORTHY;
R. C. FERBER;
L. EARN;

V. T. PENDER;
F. F. BROWN;
E. J. STRICKLAND;
NORMAN R. MCKEE;
W. E. FAIRCHILD;
E. P. BARKER;
G. W. GUTH;
PHIL BATTELIE;
WILLIAM STANLEY KEIR;
J. P. ELLIOTT;
M. G. SUES;
FRED G. ABBEY;
DEFENDANTS.

FINAL JUDGMENT

The complainant, United States of America, having filed its Complaint herein on May 4, 1942; all of the defendants having appeared and severally filed their answers to such Complaint denying the substantive allegations thereof; and all parties hereto, by their respective attorneys herein, having severally consented to the entry of this final Decree herein without trial and without admission by any party in respect of any issue;

NOW, THEREFORE, before any testimony has been taken herein, and upon consent of all parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

That the Court has jurisdiction of the subject matter hereof and of all the parties hereto; that the Complaint states a cause of action against the defendants under the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," and the acts amendatory

For the purpose of this Decree:

(a) The term "gas range" means any stove or similar metal apparatus which uses manufactured or natural gas as fuel and any equipment therefor.

(b) The term "sales contract" means any agreement between a seller and purchaser of a gas range for the sale or purchase thereof.

(c) The term "defendant manufacturers" means the following defendants: Western Stove Company, O'Keefe & Merritt Company, James Graham Mfg. Co., Estate Stove Company, Cribben & Sexton, and W. C. Gaffers.

(d) The term "defendant retailers" means the following defendants: Barker Bros. Corporation, Broadway Department Store, Inc., J. W. Robinson Co., Bullock's, Inc., The May Co., Fifth Street Building (Inc.), Dohrmann Commercial Co., Los Angeles Furniture Co., Southern California Gas Company, Southern Counties Gas Company and C. E. Price.

(e) The term "retailer" means any person, firm, partnership or corporation engaged in selling gas ranges at retail.

(f) The term "manufacturer" means any person, firm, partnership, or corporation engaged in manufacturing gas ranges and in selling or distributing such gas ranges to wholesalers, jobbers, distributors, or retailers.

III

The defendant manufacturers, their directors, officers, agents and employees, and their successors, and all persons acting under, through, or for said defendant manufacturers, or their successors, or any of them, be, and they hereby are, enjoined and restrained from:

(a) agreeing, combining or conspiring with

any other manufacturer, its or their officers, directors, agents or employees, (1) to fix, establish, adhere to, maintain, stabilize or suggest wholesale or retail prices, terms or conditions for the sale of gas ranges; (2) to induce or require any retailer of gas ranges to maintain or adhere to established, published, suggested or subscribed prices, terms, or conditions for the sale or purchase of new or used gas ranges by said retailer; (3) to refuse to sell or supply gas ranges to any retailer, or to sell or supply gas ranges to any agreed upon retailer, or to otherwise discriminate against or coerce or threaten any retailer, or discriminate in favor of any agreed upon retailer; (4) to police and investigate the prices charged or the terms or conditions set by any retailer for the sale or purchase of new or used gas ranges;

(b) agreeing, combining or conspiring with any retailer (1) to establish, adhere to, maintain or stabilize the terms and conditions of sale or trade, other than minimum prices to be charged for new gas ranges, which directly affect the amount paid or received or agreed to be paid or received by the purchaser at retail for new or used gas ranges; (2) to threaten or coerce any other retailer in connection with his or its sales of gas ranges at retail, by threatening to refuse or refusing to sell and supply gas ranges to such retailer, or by discriminating against such retailer in the terms or conditions upon which he may purchase gas ranges or by otherwise injuring or threatening to injure such retailer;

(c) agreeing, combining or conspiring with any other defendant manufacturer or manufacturers or with any other manufacturer, its or their officers, directors, agents or employees, and with any retailer to fix, establish, adhere to,

The defendant manufacturers, their directors, officers, agents, and employees, and their successors, and all persons acting under, through, or for said defendant manufacturers, or their successors, or any of them, be, and they hereby are, individually enjoined and restrained from refusing to sell or supply gas ranges to any retailer because such retailer fails to abide by or has offered to deviate from the prices, terms, or conditions of sale set by other manufacturers of gas ranges, or otherwise discriminating against, coercing, or threatening any retailer for this reason.

V

The defendant retailers, their directors, officers, agents and employees, and their successors, and all persons acting under, through, or for said defendant retailers, or their successors, or any of them, be, and they hereby are, enjoined and restrained from:

(a) agreeing, combining, or conspiring with any other defendant retailer or retailers or with any other retailer, its or their officers, directors, agents, or employees, (1) to fix, establish, adhere to, maintain or stabilize wholesale or retail prices, terms or conditions for the sale of gas ranges; (2) to induce or require any retailer of gas ranges to maintain or adhere to established, published, suggested, or subscribed prices, terms or conditions for the sale or purchase of new or used gas ranges by said retailer; (3) to refuse to purchase, sell, display, advertise, handle or otherwise to discriminate against, or threaten to discriminate against, gas ranges manufactured or distributed by any manufacturer, or sold or distributed by defendant Gas Companies, or to purchase, sell, display, advertise or handle gas ranges manufactured or distributed by any manufacturer or

to otherwise discriminate in favor of any manufacturer; (4) to police and investigate the prices charged or the terms or conditions set by any manufacturer, wholesaler or retailer for the sale or purchase of new or used gas ranges; (5) to induce any manufacturer to issue or place in effect any resale price contract, or to submit any such contract or any minimum prices established pursuant thereto to any agency or group for approval or disapproval, or to include in any such contract any provision establishing resale prices or the observance of stipulated terms of sale; (6) to induce any manufacturer to raise, lower, fix, establish, maintain or stabilize the retail prices, terms or conditions for the sale or purchase of new or used gas ranges, or to refuse to sell or supply gas ranges to any retailer, or to sell and supply gas ranges to any retailer for the purpose of threatening or coercing any other retailer in connection with his or its sales of gas ranges at retail, or to otherwise threaten or discriminate against any retailer or in favor of any agreed upon retailer;

(b) agreeing, combining or conspiring with any manufacturer to establish, adhere to, maintain, or stabilize the terms and conditions of sale or trade, other than minimum prices to be charged for new gas ranges, which directly affect the amount paid or received or agreed to be paid or received by the purchaser at retail for gas ranges;

(c) agreeing, combining or conspiring with any other defendant retailer or retailers or with any other retailer, its or their officers, directors, agents or employees and with any manufacturer to fix, establish, adhere to, maintain or stabilize retail prices for gas ranges.

The defendant retailers, their directors, officers, agents and employees, and their successors, and all persons acting under, through, or for said defendant retailers, or their successors, or any of them, be, and they hereby are, individually enjoined and restrained from refusing to purchase, sell, display, advertise or handle gas ranges sold by any manufacturer for the purpose of coercing such manufacturer to issue resale price contracts or to include in such contracts any stipulated provision or to enforce such contracts, or to abide by the prices, terms, or conditions of retail sales set by other manufacturers of gas ranges, or otherwise discriminating against any manufacturer for any such purpose.

VII

The defendants, their directors, officers, agents and employees, and their successors, and all persons acting under, through or for said defendants, or their successors, or any of them, be, and they hereby are, enjoined and restrained from:

- (a) agreeing, combining, or conspiring between or among themselves, or with any other manufacturer, retailer, or distributor, to fix, maintain or adhere to prices charged or to be charged for gas ranges in any manner involving any collaboration between manufacturers, not including distributors, or between wholesalers, or between retailers, or between distributors of the same class or in any manner not permitted by the Act of July 2, 1890, c. 647, 26 Stat. 209, as amended by the Act of August 17, 1937, c. 690, 50 Stat. 693, known as the Sherman Act as amended by the Miller-Tydings Amendment;
- (b) agreeing, combining, or conspiring with any other defendant manufacturer or defendant

retailer, or with any other manufacturer, retailer or distributor, its or their directors, officers, agents or employees, to withhold from or to refuse any retailer financing facilities in connection with the sale or purchase of new gas ranges;

(c) agreeing, combining, or conspiring with any other defendant manufacturer or defendant retailer, or with any other manufacturer, retailer distributor, its or their officers, directors, agents or employees, to refuse to accept liability on, or to guarantee payments accruing under, or to purchase, sales contracts originating with any retailer;

(d) agreeing, combining or conspiring with any other defendant manufacturer or defendant retailer, or with any other manufacturer, retailer, or distributor, its or their directors, officers, agents or employees, to require as a condition precedent to assuming liability on or guaranteeing payment accruing under, or purchasing, sales contracts originating with any retailer, that said retailer sell gas ranges covered by said sales contracts in accordance with prices, discounts, terms or conditions established or suggested by any manufacturer or retailer.

VIII

Defendants, their respective directors, officers, agents, and employees, and their successors, and all persons acting under, through or for said defendants, or their successors, or any of them, be, and they hereby are, individually and perpetually enjoined and restrained from:

- (a) sponsoring, calling, holding, or participating in any meeting or conference held for the purpose of devising, formulating, or attempting means and methods for carrying out or effectuating any of the acts or practices enjoined by this Decree;

(b) organizing, maintaining, fostering, or joining any group, association or organization of manufacturers, retailers, or distributors, or any of them, created or operating to police, investigate, enforce, or maintain surveillance over the observance or nonobservance of resale prices or resale contracts, relating to the sale of gas ranges, of or by manufacturers, wholesalers, or retailers, whether through investigation, the holding of hearings, the assessment of fines, or liquidated damages, threats of litigation, conduct of litigation, or otherwise;

(c) circulating or disseminating in any manner data or information identifying any manufacturer or retailer who has or has not established or maintained resale prices or other terms or conditions of sale for gas ranges or informing any manufacturer of the identity of any retailer who has failed or refused to conform to or abide by, or who has conformed to or abided by, or who has offered to deviate from or abide by, prices, terms or conditions established, published or suggested by any manufacturer for the sale or purchase of new or used gas ranges;

(d) policing or investigating, or inducing or seeking to induce a manufacturer to investigate and police, the prices charged or paid, or the terms or conditions of sale offered, or given, by any retailer in connection with the sale or purchase, or in connection with negotiations for the sale or purchase of new or used gas ranges for the purpose of influencing coercing or restraining any manufacturer in the adoption or enforcement of a resale price policy with respect to such retailer;

(e) entering into or carrying out any contract fixing resale prices or other conditions or terms of sale for gas ranges with the knowledge that such contract has been submitted in advance of adoption by any manufacturer or distributor to any

competing manufacturer or distributor, or to any agency or organization acting for or supported by any group of competitors engaged in the manufacture, distribution or sale of gas ranges for review, approval, or disapproval, or has been issued pursuant to an agreement or understanding among persons, firms or corporations in competition with each other.

IX

For the purpose of securing compliance with this Decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or an Assistant Attorney General and on reasonable notice to the defendants made to the principal office of the defendants, be permitted, subject to any legally recognized privilege (1) access during the office hours of the defendants to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendants, relating to any matter contained in this Decree, (2) subject to the reasonable convenience of the defendants and without restraint or interference from them, to interview officers or employees of the defendants, who may have counsel present, regarding any such matters, and (3) to require the defendants, on such written request, to submit such reports in respect of any such matters as may from time to time be reasonably necessary for the proper enforcement of this Decree; provided, however, that information obtained by the means permitted in this paragraph shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceedings for the purpose

United States is a party or as otherwise required by law.

X

For the purpose of construing and enforcing this Decree, the defendants Southern Counties Gas Company of California and Southern California Gas Company shall be considered as one defendant.

XI

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

Dated May 7, 1942.

LEON R. YANKWICH,
District Judge.

We hereby consent to the entry of the foregoing decree.

TOM C. CLARK,
ALFRED C. ACKERSON,

Special Assistants to the Attorney General.

THURMAN ARNOLD,
Assistant Attorney General.

WILLIAM FLEET PALMER,
United States Attorney.

MACFARLANE, SCHAEFER, HAUN & MULFORD,
By HENRY SCHAEFER, JR.,
Attorneys for defendants Broadway Department Store, Inc., Bullock's, Inc., F. F. Brown, R. C. Ferber.

J. WESLEY COLE,
Attorney for defendants Retail Furniture Dealers Association of Southern California, W. E. Fairchild, Phil Battelle, William Stanley Keir.

LAWLER, FELIX & HALL,
By BRENTON L. METZLER,
Attorneys for The May Co., Cribben & Sexton Company, J. P. Elliott, Lloyd L. Langworthy.

JOHN J. IRWIN,
Attorney for defendants James Graham Mfg. Co., W. C. Gaffers, O'Keefe & Merritt Company, Western Stove Company, Ross Munro, B. D. Barnes, Daniel P. O'Keefe.

LEROY M. EDWARDS, T. J. REYNOLDS
AND L. T. RICE,
By L. T. RICE,
Attorneys for defendants Southern California Gas Company, E. J. Strickland.

O. C. SATTINGER AND LEROY M. EDWARDS,
By O. C. SATTINGER,
Attorneys for the defendants Southern Counties Gas Company, Norman R. McKee.

LOEB & LOEB,
By HERMAN F. SELVIN,
Attorneys for defendants Estate Stove Company, Leo J. Meyberg Company, M. G. Sues, Jack P. Davidson.

COSGROVE & O'NEIL AND ROSCOE C. ANDREWS,
By ROSCOE C. ANDREWS,
Attorneys for defendants Los Angeles Furniture Co., Fred G. Abbey.

MATHER & SHEPPARD,
By PAUL M. GREGG & J. STANLEY MULLEN,
*Attorneys for defendants Dohrmann Com-
mercial Co., G. W. Guth.*

HARRY W. BIDDLE AND D. K. GAULT,
By HARRY W. BIDDLE,
Attorneys for defendant C. E. Price.

CLARK J. MILLIRON,
*Attorney for defendants Fifth Street Building
(Inc.), L. Earn.*

ELLIOTT H. PENTZ,
Attorney for defendant J. W. Robinson Co.

HAROLD H. STREIGHT,
*Attorney for defendants Barker Bros. Corpo-
ration, V. T. Pender, E. P. Barker.*