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APPENDIX A:

FINAL JUDGMENTS

(Ordered by Year Judgment Entered)

UNITED STATES v. E.L. BRUCE CO., ET AL.

CIVIL NO. 21783 W

JUDGMENT ENTERED: FEB. 14, 1941



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. E. L. Bruce Company. Inc., J. E. Higgins Lumber Company, White Brothers, Inlaid Floor Company, Strable Hardwood Company, Clifford E. Coates, John S. Ferraro, Alfred J. Bowman, J. E. Higgins, Jr., Cecil S. Lean, Frank O'Connor, Charles A. Koenig, B. E. Bryan., U.S. District Court, N.D. California, 1940-1943 Trade Cases ¶56,121, (Feb. 14, 1941)

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United States of America v. E. L. Bruce Company. Inc., J. E. Higgins Lumber Company, White Brothers, Inlaid Floor Company, Strable Hardwood Company, Clifford E. Coates, John S. Ferraro, Alfred J. Bowman, J. E. Higgins, Jr., Cecil S. Lean, Frank O'Connor, Charles A. Koenig, B. E. Bryan.

1940-1943 Trade Cases ¶56,121. U.S. District Court, N.D. California, Southern Division. Civil No. 21783 W. February 14, 1941.

Upon the consent of all parties a decree is entered in civil proceedings under the Sherman Anti-Trust Act perpetually enjoining the defendants from combining to fix prices or regulate the distribution of hardwood flooring, from participating in price fixing conferences or methods, from inducing manufacturer discrimination against dealers, distributors or purchasers, from compiling, publishing, or enforcing compliance with any basic price schedule, and from allocating sales or markets.

Tarahurman Arnold, Assistant Attorney General, Frank J. Hennessy, United States Attorney for the Northern District of California, Southern Division, Post Office Building, San Francisco, California, Tom Clark and Charles C. Pearce, Special Assistants to the Attorney General, for the Plaintiff.

Waraalter A. Dold, Monadnock Building; Heller, Ehrman, White & McAuliffe (Jerome B. White), Nevada Bank Building; Linforth, Cannon & Miller (Jesse H. Miller), de Young Building; Carl H. Allen, Merchants Exchange Building, all of San Francisco, California, for the Defendants.

Before Welsh, District Judge.

Consent Judgment

WELSH, D. J.: This cause came on to be heard on this 14th day of February, 1941, the complainant being represented by Frank J. Hennessy, United States Attorney for the Northern District of California, Southern Division, and Tom C. Clark and Charles C. Pearce, Special Assistants to the Attorney General, and the defendants being represented by their counsel, and said defendants having appeared voluntarily and generally and having waived service of process, and having consented in writing to the making and entry of this decree;

[*Adequacy of Remedy*]

And it appearing to the Court that this judgment will provide suitable relief concerning the matters alleged in the complaint herein; and it further appearing that by reason of the aforesaid consent of the parties, it is unnecessary to proceed with the trial of the cause or to take testimony therein or to make any adjudication of the facts,

Now, Therefore, upon motion of complainant and upon the consent of all parties hereto and without taking any testimony or evidence, it is hereby

Ordered, Adjudged, And Decreed:

I. That this Court has jurisdiction of the subject matter of this action as alleged in the complaint herein and of all persons and parties herein.

[*Basis of Action*]

II. The complaint herein states a cause of action against all of the defendants under the Act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," (26 Stat. 209) commonly known as the Sherman Act, and the acts amendatory thereof and supplemental thereto.

[*Definitions*]

III. The term "hardwood flooring" as used in this decree means strips of oak and maple wood, cut to various sizes and used as flooring in dwellings and other types of construction. The term "national manufacturers" as used in this decree signifies those companies, associations, firms, or individuals which manufacture hardwood flooring by milling from raw materials, to-wit: oak and maple timber, and which distribute said hardwood flooring in interstate commerce to wholesale and retail outlets located in various States of the United States, and which sell, ship, and deliver said hardwood flooring in interstate trade and commerce into the San Francisco Bay Area. The term "hardwood flooring dealers" as used in this decree means those companies, firms, or individuals which, as wholesalers, purchase hardwood flooring from the national manufacturers thereof for resale to hard wood flooring contractors and others desirous of purchasing such hardwood flooring at retail. The term also means such companies, firms, or individuals as act as agencies or representatives of the national manufacturers in such retail sales. The term "hardwood flooring contractors" as used in this decree means those companies, firms, or individuals which have secured the requisite state and local licenses lawfully to engage in the installation, alteration, and repair of hardwood floors, and which purchase hardwood flooring from the hardwood flooring dealers.

[*Application of Decree*]

IV. This decree is directed to and shall bind each of the defendants named in the complaint herein, their respective officers, directors, trustees, agents, employees, and

all persons acting or authorized to act on their behalf, and is likewise directed to and shall bind any and all corporations, partnerships, associations, and individuals who hereafter may succeed to or acquire, directly or indirectly, in whole or in part, the ownership or control of the hardwood flooring business of any defendant.

[*Prohibited Activities*]

V. That the defendants and each of them, and all of their respective officers, directors, trustees, agents, servants, employees, and all persons acting under, through, by, or in behalf of them or any of them, or claiming so to act, be and they hereby are perpetually enjoined, restrained, and prohibited from engaging in, pursuing, continuing, carrying out or extending, directly or indirectly, expressly or impliedly, any combination or conspiracy to restrain interstate trade and commerce in hardwood flooring in violation of the aforesaid Act of Congress as alleged in the complaint herein; from entering into, pursuing, or carrying out by any means whatsoever any other combination or conspiracy of similar character or effect; from combining, conspiring, or agreeing among themselves or with others, directly or indirectly, to do or engage in any of the following acts and practice and from doing or engaging in any such acts and practices, as follows:

[*Price Fixation*]

(a) Raising, lowering, fixing, establishing, maintaining, or stabilizing the prices charged for hardwood flooring;

[*Distribution Regulation*]

(b) Formulating, adopting, maintaining, or enforcing uniform rules, regulations, practices, or policies governing the distribution, purchase or sale of hardwood flooring;

(c) Preventing, suppressing, or restraining any hardwood flooring dealer, distributor, contractor, or purchaser of hardwood flooring from purchasing, selling, receiving, or distributing the same;

[*Price Conferences*]

(d) Sponsoring, calling, holding, attending, or participating in any meeting or conference for the purpose of raising, lowering, fixing, establishing, maintaining, or stabilizing the price of hardwood flooring;

[*Bid Depositaries*]

(e) Sponsoring, establishing, maintaining, operating or participating in the operation of any system, scheme, plan, device, or program for depositing, filing, or exchanging among themselves or with others bids, invoices, quotations, price lists, statistics, or prices of hardwood flooring which has the purpose or effect of fixing, raising, lowering, establishing, maintaining, or stabilizing the sale price of hardwood flooring; or having the effect of restricting or impairing the free choice of any bid awarding authority or agency in selecting a bona fide competitive bid on any proposal, order, or project;

[*Price Information*]

(f) Exchanging or disseminating, either orally or in writing, any information concerning future prices of hardwood flooring;

[*Advisory Service*]

(g) Recommending, advising, or suggesting the raising, lowering, fixing, maintaining, or stabilizing of prices of hardwood flooring;

[*Dealer Discrimination*]

(h) Persuading, forcing, or in any manner inducing any hardwood flooring manufacturer, distributor, broker, or other agents, to discriminate against any hardwood flooring dealer, distributor, or purchaser with respect to purchases, sales, prices, charges, terms, or conditions of sale of hardwood flooring;

[*Price Schedules*]

(i) Compiling, publishing, subscribing to, following or enforcing compliance with any standard, average, basic or group price, price list, schedule, or bulletin which recommends or provides for uniform prices, differentials, minimums, discounts, rebates, concessions, or exchange prices with respect to the distribution, purchase, or sale of hardwood flooring;

(j) Setting up, establishing, maintaining, contributing to or participating in any confidential or secret system, scheme, or plan for reporting data or statistics as to purchases, sales, past prices, orders or deliveries of hardwood flooring, which data and statistics are not publicly disseminated or otherwise available to any interested person;

[*Sale Restriction*]

(k) Artificially or arbitrarily allocating or apportioning or in any manner arbitrarily restricting sales of hardwood flooring;

[*Customer Allocation*]

(1) Artificially or arbitrarily allocating customers or markets or marketing territories in the sale of hardwood flooring.

[*Compliance Investigation*]

VI. For the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on the written request of the Attorney General or an Assistant Attorney General, and on reasonable notice to the defendants be permitted (1) reasonable 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 the matters 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 regarding any such matters; and the defendants on request of the Attorney General or an Assistant Attorney General shall submit such reports in respect to 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 in which the United States is a party or as otherwise required by law.

[*Retention of Jurisdiction*]

VII. Jurisdiction of this cause is hereby retained for the purpose of enabling any of the parties to this decree to apply to the Court at any time (upon due and reason able notice to the adverse party or parties) for such further orders and directions as may be necessary or appropriate for the construction of or the carrying out of this decree, for the modification thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

[*Effective Date*]

VIII. This decree shall be effective from the date of the entry hereof.

UNITED STATES v. BATTERY SEPARATOR
MFRS.' ASS'N, ET AL.

CIVIL NO. 21940-R

JUDGMENT ENTERED: AUG. 11, 1941



U. S. v. BATTERY SEPARATOR MFRS.' ASSN., ET AL.
 IN THE DISTRICT COURT OF THE UNITED STATES FOR
 THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN
 DIVISION.

July Term, 1941.

Civil Action No. 21940-R.

UNITED STATES OF AMERICA, PLAINTIFF

VS.

BATTERY SEPARATOR MANUFACTURERS' ASSOCIATION; AR-
 ROW MILL CO; EVANS PRODUCTS CO.; PORT ORFORD
 CEDAR COMPANY; SMITH WOOD PRODUCTS, INC.;
 STANDARD BATTERY SEPARATOR COMPANY; WEST COAST
 BATTERY SEPARATOR CO.; WESTERN BATTERY SEPARA-
 TOR CO.; HARRY B. JAMESON; PAUL S. SPEYER; FRANK
 L. FREEMAN; MAX D. TUCKER; RALPH SINGER;
 GEORGE ULETT; ERNEST HARRINGTON; FRED W.
 PAYNE; CHARLES KINNEAR; F. M. BINNION,
 DEFENDANTS.

CONSENT DECREE.

The complainant, United States of America, having
 filed its complaint herein on August 11, 1941; all of the
 defendants having appeared generally and having waived
 service of process; all parties hereto by their respective
 attorneys herein having severally consented to the entry
 of this final decree herein without trial or adjudication
 of any issue of fact or law herein and without admission
 by any party in respect of any such issue; and the com-
 plainant having moved the Court for this decree;

Now, therefore, before any testimony has been taken
 herein, and without trial or adjudication of any issue of
 fact or law herein, and upon consent of all parties hereto,
 it is hereby

ORDERED, ADJUDGED, AND DECREED:

1. That the Court has jurisdiction of the subject
 matter 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 Re-
 straints and Monopolies," and the acts amendatory
 thereof and supplemental thereto.

2. For the purpose of this decree, the term "battery
 separator" means a wooden slat used in the manufacture
 of batteries as a partition between positive and negative
 plates.

3. The defendants, their members, directors, officers,
 agents, and employees, their successors, and all persons
 acting under, through, or for defendants or their succes-
 sors, or any of them, be and they hereby are perpetually
 enjoined and restrained from agreeing, combining, or
 conspiring among themselves or with any other indi-
 vidual, association, or corporation—

(a) to limit, curtail, or determine the amount of
 battery separators of any size or kind to be produced,
 manufactured, or sold during any indicated period of
 time;

(b) to promote or secure the limitation, curtailment,
 or other determination of the volume of production,
 manufacture, or sale of battery separators;

(c) to recommend a limitation of production or sale
 of battery separators or assign production, manufacture,
 or sales quotas to individual manufacturers or processors
 or groups of manufacturers or processors of battery
 separators;

(d) to formulate, promote, or participate in any plan
 for the allocation of business to individual manufac-
 turers or groups of manufacturers of battery separators;

(e) to raise, lower, fix, establish, maintain, or stabilize
 the price of battery separators;

(f) to gather, compile, or disseminate information or
 statistics as to the volume of production or shipments by
 the members of the battery separator industry, the
 prices or mill realizations derived from actual prices
 which such products brought in past transactions, stocks
 on hand, orders on hand, cost of transportation, or

other information pertaining to the condition or operation of the industry, unless such information and statistics are readily, fully, and fairly available to the purchasing and distributing trade at the time of their initial dissemination and are in a form which is not forbidden by any other provision of this decree and which does not disclose to competitors invoices as to individual transactions or any data as to individual sales to named customers, or information as to the amount of production or shipments of battery separators by any individual manufacturer;

(g) to prevent, hinder, or discourage any individual, firm, or corporation from engaging in the business of manufacturing, processing, or distributing battery separators.

4. The defendants, their members, directors, officers, agents, and employees, their successors, and all persons acting under, through, or for defendants or their successors, or any of them, be, and they are, hereby individually and perpetually enjoined and restrained from engaging in any of the following specific acts and practices:

(a) Collecting, compiling, or utilizing data respecting production, manufacture, sales, orders, shipments, deliveries, or prices of manufacturers for the purpose of violating any of the provisions of paragraph 3 hereof.

(b) Distributing or disseminating any data collected or compiled respecting the production, manufacture, sales, orders, shipments, deliveries, or prices of manufacturers for the purpose of indicating whether manufacturers, or any of them, are cooperating in carrying out any of the activities prohibited by paragraph 3 hereof.

(c) Presenting or discussing at meetings or by correspondence, or otherwise, data relating to production, manufacture, sales, orders, shipments, deliveries, or prices for the purpose of cooperating in carrying out any of the activities prohibited by paragraph 3 hereof.

(d) Examining or auditing records or accounts of manufacturers relating to production, manufacture, sales,

orders, shipments, deliveries, or prices for the purpose of determining whether manufacturers, or any of them, are cooperating in carrying out any of the activities prohibited by paragraph 3 hereof.

(e) Sponsoring, calling, holding, or participating in any meeting or conference of competitors in the battery separator business held for the purpose of raising, lowering, fixing, establishing, maintaining, or stabilizing prices, price differentials, working charges, or amounts to be included in or deducted from the price charged for battery separators, or for the purpose of preventing, hindering, or discouraging any individual, firm, or corporation from engaging in the business of manufacturing, processing, or distributing battery separators.

(f) Exerting pressure by act, suggestion, or otherwise upon one or more competitors in the battery separator business to raise, lower, fix, establish, maintain, or stabilize production, prices, price differentials, working charges, terms and conditions of sale, or amounts to be included in or deducted from the price charged for battery separators, provided that this subparagraph shall not prohibit legitimate bargaining negotiations between a seller and a purchaser.

(g) Disclosing to competitors, directly or indirectly, invoices as to individual transactions or any data as to individual sales to named customers or information as to the amount of production or shipments of battery separators by any individual manufacturer, for the purpose of cooperating in carrying out any of the activities prohibited by paragraph 3 hereof.

(h) Paying money to or receiving money from competitors in the battery separator business for the purpose of carrying out any of the activities prohibited by paragraph 3 hereof.

5. This decree shall not prohibit any agreement or arrangement which is specifically authorized by any act of Congress.

6. Except as specifically provided in paragraph 4 of this decree, nothing contained herein shall be deemed to

affect relations which otherwise are lawful between a defendant, its officers, employees, or agents, or its subsidiaries, or between subsidiaries of a defendant.

7. For the purpose of securing compliance with this decree, authorized representatives of the Department of Justice, upon the written request of the Attorney General or an Assistant Attorney General, shall be permitted access, within the office hours of the defendants, and upon reasonable notice, to books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or the control of the defendants, or any of them, relating to any of the matters contained in this decree. Any authorized representative of the Department of Justice, subject to the reasonable convenience of the defendants, shall be permitted to interview officers or employees of defendants without interference, restraint, or limitation by defendants; provided, however, that any such officer or employee may have counsel present at such interview. Defendants, upon written request of the Attorney General or an Assistant Attorney General, shall submit such reports with respect to any of the matters contained in this decree as from time to time may be necessary for the purpose of enforcement of this decree; provided, however, that the 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 in which the United States is a party or as otherwise required by law.

8. Jurisdiction of this action 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 or directions as may be necessary or appropriate in relation to the construction of or carrying out of this decree, for the modification thereof (including, without limitation, any modification or vacation of this decree upon application of said defendants, or any of them, required in

order to conform this decree to any act of Congress enacted after the date of entry of this decree), and for the enforcement of compliance therewith and the punishment of violations thereof.

Dated at San Francisco, California, this 11th day of August, 1941.

(S) MARTIN I. WELSH,
United States District Judge.

UNITED STATES v. BAKERSFIELD ASSOCIATED
PLUMBING CONTRACTORS, ET AL.

CIVIL NO. 1479-ND

JUDGMENT ENTERED: MAY 26, 1958



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Bakersfield Associated Plumbing Contractors, Inc.; Kern, Inyo and Mono Counties Sheet Metal Contractors Association, Inc.; and Kern County Electrical Contractors Association, Inc., U.S. District Court, S.D. California, 1958 Trade Cases ¶69,087, (May 26, 1958)

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United States v. Bakersfield Associated Plumbing Contractors, Inc.; Kern, Inyo and Mono Counties Sheet Metal Contractors Association, Inc.; and Kern County Electrical Contractors Association, Inc.

1958 Trade Cases ¶69,087. U.S. District Court, S.D. California, Northern Division. Civil Action No. 1479-ND. Filed May 26, 1958. Modified Judgment entered on December 22, 1958, CCH [1959 TRADE CASES ¶ 69,266](#). Case No. 1242 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Practices—Bid Depository—Price Tampering.—Three associations of plumbing, sheet metal, and electrical subcontractors were held to have engaged in price tampering by adopting and enforcing rules for the operation of their bid depository which (1) required subcontractors to submit separate bids for the plumbing, heating, and ventilating portions of a construction contract and discount no more than 5 per cent of the total in a combination bid, (2) required the successful bidder on a construction contract to pay a fee to the depository, and (3) permitted the withdrawal of a bid, upon the payment of a withdrawal fee, in the interval between the opening of the bids by the depository and submission of the bids to the general contractor. The limitation on the combination bid discount restricted the bidder's freedom to submit a truly competitive bid, the depository fee produced more revenue for the depository than its operation required and to that extent constituted an unreasonable restraint of trade, and the rule concerning the withdrawal of bids invited collusion between the bidding subcontractors. While those rules constituted price tampering and were illegal *per se*, the depository's other rules, which were designed to eliminate bid peddling, did not constitute a boycott or an unreasonable restraint of trade. There was no coercion to induce or compel the use of the bid depository and a non-member could use the facility to submit his bid if he agreed to be bound by its rules.

For the plaintiff: James M. McGrath, Edward R. Minor, and Thomas R. Sheridan of the Antitrust Division, Department of Justice.

For the defendants: Mack, Bianco, King and Eyherabide, Bakersfield, Cal., by D. Bianco and Harvey H. Means.

Findings of Fact

[*Nature of Action*]

GILBERT H. JERTBERG, District Judge [*In full text except for omissions indicated by asterisks*]: This is a proceeding filed by the Government on June 28, 1955, against Bakersfield Associated Plumbing Contractors, Inc., Kern, Inyo and Mono Counties Sheet Metal Contractors Association, Inc., and Kern County Electrical Contractors Association, Inc., alleging an unlawful combination and conspiracy in unreasonable restraint of interstate trade and commerce in plumbing, heating and ventilating, sheet metal, and electrical supplies, materials and fixtures, in violation of Section 1 of the Sherman Antitrust Act. The relief sought is of an equitable nature. The issues are raised by the complaint and by the joint and several answers of the defendants.

Federal jurisdiction is invoked on the ground that these proceedings are instituted under [Section 4 of the Sherman Act](#), in order to prevent and restrain continuing violations by defendants of [Section 1 of the Sherman Act](#). It is alleged in the complaint that each of the corporations named as defendants has an office, transacts business, and is found within the Southern District of California, Northern Division, and that the alleged violations of law described in the complaint have been and are being carried out within the said district and division.

The case was tried by the Court sitting without a jury. Pre-trial proceedings resulted in the filing of a pre-trial conference order, in which the parties reached agreement upon many of the facts. The evidence consisted of the pre-trial conference order and oral and documentary evidence.

[*Attorneys*]

The plaintiff was represented by James M. McGrath, Edward R. Minor, and Thomas R. Sheridan of the Antitrust Division, Department of Justice. The defendants were represented by Mack, Bianco, King & Eyherabide, of Bakersfield, California, D. Bianco and Harvey H. Means appearing.

[*Findings of Fact*]

Having considered the evidence presented, the proposed findings and counterfindings prepared respectively by counsel for plaintiff and defendants in accordance with the Court's Order of December 30, 1957, and having held hearings on April 25, 1958 and May 2, 1958 for the purpose of settling the findings and judgment in this matter, the Court now makes the following findings of fact and conclusions of Law:

[*Defendants' Offices*]

1. Each of the defendants has an office in the City of Bakerfield, County of Kern, State of California.

[*Definitions*]

2. As used herein and by stipulation during the course of the trial, the term "Bakers-field Trade Area" refers to the City of Bakersfield and the County of Kern, State of California.

3. The term "construction supplies" as used herein refers to plumbing, heating and ventilating, sheet metal, and electrical supplies, materials, and fixtures which are furnished by subcontractors in connection with the performance of construction contracts.

4. As used herein and as defined in the pre-trial conference order, the term "bid depository," unless otherwise specified, refers to the "Bakersfield Construction Industry Bid Depository," which is a facility established, maintained, and operated by the defendants, through which bids of subcontractors are received and processed and made available to general contractors in accordance with the rules for the operation of such bid depository.

5. The terms "process" and "deliver" as used herein have the same meaning as when used in the bid depository rules and in the correspondence of the bid depository with both general and subcontractors. It is intended that as used herein these terms shall have their usual and ordinary meaning.

6. As used herein and as defined in the pre-trial conference order, the term "bid peddling" refers to the disclosure, for the purpose of obtaining a more favorable bid, by a general contractor of one subcontractor's bid to a competing subcontractor prior to the time the awarding authority has made an award to the general contractor, and the term "bid shopping" refers to such disclosure for the same purpose after an award has been made to the general contractor.

[*Defendants*]

7. The defendant, Bakersfield Associated Plumbing Contractors, Inc., is a corporation organized and existing under the laws of the State of California, chartered as a non profit business league. Said defendant has its office and principal place of business at Bakersfield, California, and transacts business within the Southern District of California, Northern Division. Said defendant is composed of the following member sub contractors who are the major plumbing subcontractors in the Bakersfield Trade Area. The name, address, date of membership, and date each member signed the bid depository agreement follows: * * *

8. The defendant Kern, Inyo and Mono Counties Sheet Metal Contractors Association, Inc. is a corporation organized and existing under the laws of the State of California, chartered as a non-profit association. Said defendant has its office and principal place of business at Bakersfield, California, and transacts business within the Southern District of California Northern Division. Said defendant is composed of the following member subcontractors, who are the major sheet metal subcontractors in the Bakersfield Trade Area. The name, address, date of membership, and date each member signed the bid depository agreement follows: * * *

9. The defendant, Kern County Electrical Contractors Association, Inc., is a corporation organized and existing under the laws of the State of California, chartered as a non-profit association. Said defendant has its office and principal place of business at Bakersfield, California, and transacts business within the Southern District of California, Northern Division. Said defendant is composed of 25 member subcontractors, who are the major electrical subcontractors in the Bakersfield Trade Area. The name, address, date of membership, and date each member signed the bid depository agreement follows: * * *

[*Contracting Practices*]

10. The awarding authority who plans a major construction project usually enters into a single comprehensive contract with a general contractor who assumes responsibility for the entire project. This is the practice in the Bakersfield Trade Area as well as throughout the United States. Generally, the awarding authority advertises for bids and awards the contract to the lowest and most responsible bidder. General contractors, after they have received the award, usually subcontract specialized portions of the construction, such as plumbing, heating and ventilating, electrical, and sheet metal work. The general contractor customarily seeks to obtain the most favorable subcontractor bids possible. The general contractor, after receiving bids from subcontractors, frequently attempts to obtain a more favorable price for the work.

General contractors, in bidding on projects of the type within the depository rules, generally submit to the awarding authority a sealed written bid, accompanied with a deposit, which the general contractor forfeits if he fails to enter into a contract after his bid is accepted. At the time and place specified in the invitation for bids, the awarding authority opens the bids in public. The bids are tabulated and, as a general rule, the job is awarded to the lowest responsible bidder.

In the preparation of the bids referred to in the next preceding paragraph hereof, the general contractor makes his estimate of labor, materials, overhead and profit, and submits an offer to the awarding authority to furnish the material and perform the work in accordance with the plans and specifications for one lump sum amount.

As a general rule, general contractors do not perform the mechanical or specialty work, such as plumbing, electrical, heating and ventilating and sheet metal. They submit bids to the awarding authority based on sub-bids received from the specialty subcontractor. Before the general contractor submits his bid to the awarding authority, he invites and obtains bids from such subcontractors.

11. In advance of requesting bids on any construction project, the awarding authority causes specifications to be drawn describing, among other things, in detail the supplies to be furnished in such project. In many instances, the specifications describe such supplies by brand name, and in many other instances the specifications describe such supplies by a brand name as a standard, and substitutions are permitted with the approval of the architect.

12. The specifications referred to in the next preceding paragraph hereof, describe items of construction supplies manufactured outside the State of California, and items of construction supplies manufactured within the State of California.

13. In order to properly make up his bid to the awarding authority, it is necessary that the general contractor have the bids of the subcontractors submitted to him sufficiently in advance of the time for filing general bids, in order to permit adequate analysis and compilation.

14. In order to properly prepare his bid for submission to the general contractor, the subcontractor should obtain plans and specifications of the work, study them to familiarize himself with the details, make an examination of the job site, itemize and price the materials required for the job, and estimate the labor, overhead, and profit.

[*Interstate Commerce*]

15. The subcontractors, including members of the defendant trade associations, do not customarily carry on hand sufficient construction supplies for large construction projects. After receiving the award of a subcontract, the subcontractor orders from wholesalers or directly from manufacturers, for his own account, the construction supplies needed for the contract on which he has bid. Large quantities of construction supplies sold and installed

in the Bakersfield Trade Area are manufactured in States other than California and are shipped in interstate trade and commerce from such States to the Bakersfield Trade Area. A substantial part of the construction supplies sold and installed in the Bakersfield Trade Area is shipped by manufacturers from plants located outside the State of California direct to the job site in said area. Other such construction supplies are ordered by wholesalers from manufacturers located out side the State of California to fill orders placed by subcontractors. These construction supplies are shipped by manufacturers from plants located outside the State of California to job sites in the Bakersfield Trade Area.

16. In order to perform construction con tracts, member subcontractors and other subcontractors who have used the bid depository, have placed practically all orders for construction supplies with companies having offices located in California. Many of such companies are independent, locally-owned jobbers or wholesalers. Many of such companies, some of whom are listed in Document No. 2417 of Exhibit No. 16, are wholly-owned and controlled subsidiaries, operating divisions, or local agents of corporations whose principal offices and manufacturing plants are located outside the State of California. Quantities of such construction supplies are shipped pursuant to such orders from points outside the State of California to the California offices or warehouses of the companies from which such supplies were ordered. Quantities of such construction supplies are also shipped pursuant to such orders from points outside the State of California directly to the job sites of construction projects in the Bakers-field Trade Area.

17. The cost to the subcontractor of the construction supplies furnished in connection with the performance of a subcontract bid on through the bid depository, usually amounts to approximately 50 per cent, more or less, of the total amount of the subcontractor's bid.

18. Substantially all of certain types of construction supplies, as well as many brand name products furnished by subcontractors in performing construction contracts resulting from bids made through the bid depository, are manufactured only outside the State of California.

19. Invoices and shipping documents establish that in the year 1955 there were shipments totaling \$340,000 from points out side the State of California delivered to the job sites of construction projects bid on through the bid depository. In addition, shipments from points outside the State of California to subcontractors who were successful bidders through the bid depository in the calendar year 1955, but which shipments were not definitely tied in with specific bid depository projects, amounted to \$350,000. On one uncompleted project processed through the bid depository in 1956, out-of-state shipments of construction sup plies directly to the job site amounted to approximately \$150,000.

20. Quantities of construction supplies are shipped into warehouses in the State of California from points outside the State of California in response to orders placed by subcontractors, for the purpose of performing construction contracts awarded to said subcontractors as a result of bids made through the Bakersfield Construction Industry Bid Depository. Such construction supplies are shipped from said warehouses directly to the job sites of such construction projects, or directly to such subcontractors who subsequently furnish such supplies in the performance of said construction contracts. Such supplies, when received in California, are not reshipped or intended to be reshipped outside the State of California.

21. The sale and installation of construction supplies in the Bakersfield Trade Area by subcontractors, including members of the defendants and users of the bid depository are interrelated with and necessary to the movement in interstate commerce, of a substantial volume of construction supplies which flows in a continuous uninterrupted stream from points of origin in States other than California, to the ultimate owners or builders at the site of installation.

[*Bid Depository Rules*]

22. During 1954 the three defendants, acting in concert, adopted rules for the operation of a bid depository known as the Bakersfield Construction Industry Bid Depository. These rules are dated October 27, 1954. Since the adoption of the rules for the bid depository, the bid depository has been operated by the defendants in accordance with said rules, and the defend ants intend to continue to operate the bid depository under said rules

unless restrained by order of this Court. A copy of these rules is attached to the complaint as Exhibit "A". Such rules are as follows:

"Bakersfield Construction Industry Bid Depository "Bakersfield Associated Plumbing Contractors, Inc.

"Kern, Inyo and Mono Counties Sheet Metal Contractors Association, Inc.

"Kern County Electrical Contractors Association, Inc.

"27, October, 1954

"1. *Purpose*: These rules are established for the purpose of providing fair and open competition between the members of the plumbing, heating and ventilating, sheet metal and electrical industries and to eliminate the unfair practice of bid peddling.

"2. *Applicability*: The rules herein established shall govern any proposal tender or offer to contract the installation of plumbing, heating and ventilating, sheet metal or electrical, upon all projects within the Counties of Kern, Inyo and Mono for the plumbing, heating and ventilating, and sheet metal industries, and the County of Kern for the electrical industry, wherein the awarding authority has designated and advertised a specific time for the opening of contract bids for the performance of work upon said project by an user of the bid depository or member of the associations.

"3. *Depository*: To achieve the objects of this agreement, the Bakersfield Associated Plumbing Contractors, Inc., Kern, Inyo and Mono Counties Sheet Metal Contractors Association, Inc., and the Kern County Electrical Contractors Association, Inc., hereinafter referred to as the associations will establish and maintain a bid depository at 1420 24th Street, Bak-ersfield, California. The bid depository box shall be equipped with two locks; the first two persons depositing bids on any specified project that will be present for the opening of such bids will lock the depository box and retain the keys thereto; upon the specified time for the opening of such bids, the persons retaining the keys will unlock the box; all bids will then be announced and tabulated by the respective associations secretaries.

"4. *Deposit of Bids*: The bid depository maintained by the associations shall be available to all plumbing, heating and ventilating, sheet metal and electrical contractors desiring to bid upon the designated project.

"5. *Time of Deposit*: All bids must be received by the depository normally not later than six hours prior to the time designated for the opening of bids by the awarding authority; provided, however, that if the time designated by the awarding authority for opening bids is such that deposit six hours prior thereto would not be during normal working hours, then the Board of Directors of each association shall coordinate and designate the time at which bids must be deposited; in the event of time designation by the association Board of Directors. All bidders known to be interested in bidding the project shall be notified sufficiently in advance of the time of deposit by the office of the depository. Bids received later than the time hereinabove provided shall be returned to the bidding contractor unopened.

"6. *Combination Bids (Plumbing, Heating & Ventilating)*: Contractors submitting bids to the depository must submit separate bids for plumbing and heating and ventilating, and may submit a bid representing a combination of the plumbing and heating and ventilating; provided, however, that the combination bid so submitted may not be reduced more than five per cent (5%) of the separate bids so combined. All bids are to be submitted to the depository upon the condition that either the plumbing or heating and ventilating portion of any bid may be used by the general contractor with any other plumbing or heating and ventilating bid, or portion of a bid, submitted through the depository. Any bid purporting or attempting to restrict such use in combination with other depository bids shall be invalid.

"7. *Bid Opening*: The procedure for submission and opening of bids shall be as follows:

"A. To assure uniformity of bids, all bids must be submitted upon the bid forms supplied by the depository; forms will be mailed by the depository to all contractors indicating an intent to bid the project; bids not submitted upon the depository bid form will not be recognized.

"B. Bidders shall submit to the depository a separate, sealed bid addressed to each general contractor with whom the bidding contractor intends to bid, and shall submit an additional bid addressed to the depository.

"C. Bids addressed to the depository will be opened at 1421 24th Street, Bakers-field, California, six hours prior to the bid opening of the awarding authority, unless a different time has been designated in paragraph 5; bids will be opened at such time solely for the purpose of determining whether the bids conform to depository requirements; bids so opened shall not be deemed an offer to any general contractor at the time of such opening.

"D. Bids addressed to the general contractors shall be available to the general contractors one hour following the opening of bids addressed to the depository; provided, however, that no bid shall be delivered to a general contractor until said contractor has agreed in writing to accept the bid if it is the low bid accepted through the depository.

"8. *Depository Fee*: The successful bidder or bidders shall pay to the depository fund, as a depository fee, a sum equal to one per cent (1%) of the contract awarded to each bidder for plumbing, one per cent (1%) of the contract for heating and ventilating, one per cent (1%) of the contract for sheet metal, and one per cent (1%) of the contract for electrical; provided, however, that the depository fee pertaining to any one of the aforementioned subcontracts shall not exceed \$1,000.00. The depository fee shall be paid at the time the contractor receives the first payment on the contract. A contractor failing to pay the required depository fee within thirty (30) days of the date specified herein shall be denied the privileges of the depository until the fee has been paid.

"9. *Collection of Delinquent Fees*: In the event of litigation to collect a delinquent depository fee, or to collect a delinquent withdrawal fee, the delinquent contractor shall pay all attorney fees, costs of suit, and other expenses reasonably incurred in connection with such litigation.

"10. *Reopening of Projects*: When bids for a specified project are once opened, there shall be no further bidding on said project for a period of one hundred twenty (120) days by contractors who did not bid such project in the first instance unless the plans and specifications have been revised in an amount exceeding twenty-five per cent (25%) of the work and/or materials prescribed in the original plans and specifications.

"11. *Conditions of Bid*: All plumbing and heating and ventilating bids shall be submitted upon the condition that the bid may be used only in combination with a plumbing and heating and ventilating bid which has been submitted through the depository. Said condition of bid will be printed upon the bid form provided by the depository.

"12. *Withdrawal of Bid*: The procedure for withdrawal of bid shall be as follows:

"A. Any bid in the depository may be withdrawn without penalty at any time prior to the opening of bids as outlined in paragraph 7 hereof.

"B. After the opening of bids as outlined in paragraph 7 hereof, a bid may be withdrawn prior to the time that bids are made available to the general contractors; provided, however, that a bid may be withdrawn at that time only upon payment of one per cent (1%) of the total amount of said bid, said penalty not to exceed \$1,000.00. Payment of the penalty herein provided must be made within ten (10) days of the withdrawal. Notification that a bid is to be withdrawn must be made by the contractor or his agent.

"C. In the event that a bid is not withdrawn prior to delivery to the general contractor, the bid shall become an irrevocable offer to the general contractor and shall not be withdrawn thereafter; the consideration for the option herein provided shall be the execution by the general contractor of the agreement to accept low bid at the time of receipt of the subcontract bid.

"13. *Naming of Subcontractors*: In the event that any plumbing, heating and ventilating, sheet metal, or electrical contractor intends to subcontract a part of his bid to another contractor signatory to this agreement, such contractor shall designate the name of said subcontractor to be used by him on the bid

form; subcontractors so named shall not be changed thereafter in the absence of showing good cause therefor.

“14. *Recordation of Bids*: All bids submitted through the depository shall be accurately recorded and placed on file in the office of the depository; said bids will be available for inspection by any participant or user of the depository or any other person or persons approved by the Board of Directors. All such bids shall be maintained in the files of the depository for a period of one year after date of opening.

“In consideration of the observance of the foregoing rules by other participants in the depository, and in consideration of the maintenance of the bid depository, I hereby agree to abide by the rules and conditions hereinabove prescribed, and to pay any fee or fees provided in said rules and conditions.

“Date

“Name of Firm

“Signature”

[*Antitrust Charges*]

23. The main thrust of the Government is against the establishment and operation by the defendants of the bid depository in accordance with said rules. The complaint alleges that the unlawful combination and conspiracy in unreasonable restraint of interstate trade and commerce has consisted of a continuing agreement and concert of action among the defendants

- (a) To organize and operate a depository for bids relating to the selling and installing of construction supplies for building projects in the Bakersfield Trade Area;
- (b) To adopt and enforce rules governing said depository;
- (c) To induce and compel their members to use said depository in submitting bids relating to the sale and installation of construction supplies for building projects in the Bakersfield Trade Area;
- (d) To induce and compel others to use said depository in submitting and in obtaining bids;
- (e) To induce and compel general contractors to limit contract awards to bids submitted through said depository, and to induce and compel their members to boycott and refuse to deal with general contractors who do not undertake so to limit such awards; and
- (f) To channel to subcontractors submitting to the rules of said depository the sale and installation of construction supplies for building projects in the Bakersfield Trade Area, and to exclude others from engaging in such selling and installation.

The complaint alleges that the purpose, intent and necessary effect of the organization and operation of the bid depository have been and are:

- (a) To eliminate competition among those engaged in the sale and installation of construction supplies in the Bakersfield Trade Area;
- (b) To deprive general contractors and awarding authorities in the Bakersfield Trade Area of the opportunity to contract for the purchase and installation of construction supplies in a free and competitive market;
- (c) To impose unreasonable restraint upon interstate trade and commerce in construction supplies.

[*Enforcement of Rules— Area*]

24. Rule 2 of the rules of the bid depository provides that the rules therein established “shall govern any proposal, tender, or offer to contract the installation of plumbing, heating and ventilating, sheet metal or electrical, upon all projects within the Counties of Kern, Inyo and Mono for the plumbing, heating and ventilating, and sheet metal industries, and the County of Kern for the electrical industry, wherein the awarding

authority has designated and advertised a specific time for the opening of contract bids for the performance of work upon said project by any user of the bid depository or member of the associations.”

25. It has been stipulated that the rules of the bid depository are enforced by the defendants only with respect to the Bakers field Trade Area, which includes the city of Bakersfield and the county of Kern, State of California.

[*Non-Members*]

26. A subcontractor may bid through the Bakersfield Construction Industry Bid Depository, even though he is not a member of any of the defendant trade associations, if he signs an agreement to be bound by the bid depository rules. He is not required to sign a new agreement each time he bids through the bid depository.

27. Any subcontractor who bids through the bid depository must agree to abide by the rules and regulations of said bid depository with respect to all bids submitted by such subcontractor through the bid depository. Customarily, each subcontractor evidences his adherence to the agreement mentioned in the preceding paragraph by signing a form similar to that which is attached to the complaint as Exhibit “A.”

[*Bidding— Depository*]

28. Member subcontractors who place bids on a construction project through the bid depository, bid only through the depository.

29. It is the general practice of member subcontractors and in accordance with the rules of the bid depository that in each instance in which any project is bid on through the bid depository, member subcontractors will not knowingly submit bids, except through the bid depository, on those features of the project which are bid on through the bid depository.

30. A subcontractor bidding through the bid depository to more than one general contractor bids the same figure to each general contractor to whom he bids.

[*Depository Costs*]

31. The expense of renting an office for the bid depository, and the expense of administering the bid depository are shared by the defendants.

32. Defendant Bakersfield Associated Plumbing Contractors, Inc. receives the depository fees so far as they pertain to bids for furnishing and installing plumbing, heating and ventilating, and sheet metal supplies, and the defendant Kern County Electrical Contractors Association, Inc. receives the depository fees so far as they pertain to bids for furnishing and installing electrical supplies.

[*Bidding Costs*]

33. There is a substantial cost involved in the preparation of a bid by a conscientious subcontractor for submission to the general contractor. Such cost amounts to one per cent more or less of the total of such subcontractor's bid.

[*Duplicate Bids*]

34. Each subcontractor who bids through the bid depository must submit to the bid depository a sealed bid addressed to each general contractor to whom he desires to submit a bid, and a duplicate bid addressed to the bid depository.

35. The duplicate bids addressed to the bid depository and referred to in the preceding paragraph, are opened by secretaries of the defendant associations prior to the delivery to the general contractors of the bids addressed to the latter. There was no evidence to the effect that the secretaries opened bids directed to the bid depository prior to the closing time.

36. The secretaries of the defendant associations prepare tabulations of the duplicate bids referred to in the preceding paragraph hereof, after such duplicate bids have been opened, and such tabulations are available to all subcontractors who bid on such construction project through the bid depository.

[*Combination Bids*]

37. Rule 6 of the bid depository requires that subcontractors submitting bids to the bid depository must submit separate bids for plumbing and heating and ventilating, and may submit a bid representing a combination of the plumbing, heating and ventilating, provided that the combination bid so submitted may not be reduced more than five per cent of the separate bids so combined. This rule limits the freedom of the combination bidder to submit a truly competitive bid which might result in a decrease in the cost to the general contractor.

[*Exclusion of Subcontractors*]

38. Rule 7 D originally provided that bids addressed to the general contractors should be available to the general contractors one hour following the opening of bids addressed to the depository. On or about June 1, 1955, the bid depository rules were amended to provide that the interval between the opening of the duplicate bids addressed to the bid depository and delivery of the bids to the general contractors should be lengthened to two hours.

39. In accordance with Rule 7 D, the defendants do not deliver to any general contractor the sealed bids addressed to him unless he signs an agreement that, if he receives the award of the general contract, he will not only accept the low bid delivered to him through the bid depository, but will use it. The effect of the enforcement of Rule 7 D precludes the subcontractors bidding through the bid depository from submitting bids on the particular project involved to those general contractors who do not sign the bid depository agreement, and precludes subcontractors who have not submitted bids through the depository from submitting any bid on the particular project involved to any general contractor who signs the agreement.

[*Depository Fee*]

40. Rule 8 provides that the successful subcontractor shall pay as a depository fee a sum equal to one per cent of such subcontract award, provided that the aforementioned fee pertaining to a bid shall not exceed \$1,000. The fees collected under this rule produced substantially more revenue than is required for the ordinary operation and maintenance of the bid depository. Some of the subcontractor members of defendant associations considered this fee as an element of cost in computing their bids. Some of the subcontractors sometimes absorbed this cost. Ordinarily, such costs would be passed on to the general contractor and by him passed on to the project owner.

[*Legislation*]

41. On or about June 21, 1955, Senate Bill S-1644 was favorably reported out of the Senate Judiciary Committee of the United States Congress. This bill was not enacted into law and died at the expiration of the 84th Congress. Hearings have been held on March 20, 27, and 28, 1957, before the Claims Subcommittee of the House Judiciary Committee on a proposed Federal Construction Contract Procedure Act, which act is directed substantially to the same purpose as Senate Bill S-1644. Since 1952, hearings have been held before committees of Congress on various bills directed to the same general purpose as Senate Bill S-1644.

42. Senate Bill S-1644, if enacted, would have required general contractors on federal works to list the bids of mechanical or specialty contractors such as plumbing, sheet metal, or electrical contractors. One purpose of S-1644 was to substantially reduce or eliminate the practice of bid peddling or bid shopping on federal construction after the award of the contract to the general contractor.

[*Ethics*]

43. Associated General Contractors of America, Inc. is a national association of general contractors. Section 3 of the Rules of Ethical Practice of the Associated General Contractors of America, Inc. contains a provision substantially as follows:

The operations of the contractor are made possible through the functioning of those agencies which furnish him with services or products, and in contracting with them he is rightfully obligated by the same principles of honor and fair dealing that he desires should govern actions toward him of architects, engineers and client owners. Ethical conduct with respect to subcontractors and those who supply materials requires that:

1. Proposals should not be invited from anyone who is known to be unqualified to perform the proposed work or to render the proper service.
2. The figures of one competitor shall not be made known to another before the award of the subcontract, nor should they be used by the contractor to secure a lower proposal from another bidder.
3. The contract should preferably be awarded to the lowest bidder if he is qualified to perform the contract, but if the award is made to another bidder, it should be at the amount of the latter's bid.
4. In no case should the low bidder be led to believe that a lower bid from his has been received.
5. When the contractor has been paid by a client owner for work or materials, he should make payment promptly, and in just proportion, to the subcontractor and others.

44. In submitting bids to general contractors of the type within the provisions of and contemplated by Exhibit "A" attached to plaintiff's complaint, subcontractors do not break down the component parts of their bids into labor, materials, overhead and profit.

45. Manufacturers' selling prices of construction supplies to jobbers and wholesalers are generally uniform throughout the State.

46. The plans and specifications of the awarding authority covering jobs of the type within the provisions of the Depository Rule, as applicable to the specialty portions thereof, that is, the plumbing, electrical, heating and ventilating and sheet metal work, are, as a matter of general practice, made available to subcontractors.

[*Withdrawal Penalty*]

47. Rule 12 B provides that after the opening of the bids as outlined in Rule 7, a bid may be withdrawn prior to the time that the bids are made available to the general contractors, only on the payment of one per cent of the total amount of said bid, not to exceed \$1,000. There is evidence in the record that on at least two occasions the successful bidder reimbursed the withdrawing bidder in the amount of the penalty that such withdrawing bidder was compelled to pay. In the absence of other safeguards, such rule invites collusion, and constitutes an unreasonable restraint on commerce.

[*Operation of Depository— Scope*]

48. On approximately fifty-two projects bid on through the bid depository in 1955, about twelve general contractors bid to the awarding authority without receiving any subcontractors' bids from the bid depository. These general contractors received no bids from subcontractors who bid through the bid depository. Only two of such general contractors were successful bidders. The total amount of the contract awards made to these two general contractors was about \$30,000.

49. During the year 1955, general contractors to whom bids were delivered through the bid depository, received awards totaling more than ten million dollars on the projects involved.

50. During the year 1955, substantially all work of the type performed by members of defendant associations on projects in the Bakersfield Trade Area, where the awarding authorities designated and advertised a specific time for the opening of contract bids for the performance of work upon such projects, has been bid through said bid depository and the successful bidders have been (a) subcontractors who submitted bids on such work through the bid depository; and (b) general contractors who received their bids from said bid depository.

51. During the year 1955, total subcontracts in the amount of more than three million dollars were processed through the bid depository, and practically all of the subcontracts on the projects involved were awarded to members of the defendant associations.

[*Price Tampering*]

52. The adoption and enforcement of Rules 6 and 12 B constituted price tampering. As a consequence of such price tampering, there was unreasonable restraint on interstate trade and commerce in the sale and installation of construction supplies in the Bakersfield Trade Area.

53. The adoption and enforcement of Rule 8 constituted price tampering to the extent that more revenue was produced than was required for the ordinary operation and maintenance of the bid depository and, to this extent, the adoption and enforcement of Rule 8 had an unreasonable restraint on interstate trade and commerce in the sale and installation of construction supplies in the Bakersfield Trade Area.

[*Reasonable Restraints*]

54. The rules of the bid depository, other than Rules 6, 8, and 12 B, imposed only reasonable restraints upon interstate commerce in that they were designed to and did eliminate the practice of bid peddling. The defendants established the bid depository primarily to eliminate bid peddling and, except as hereinbefore stated to the contrary, their purpose was not to place unreasonable restraints upon interstate commerce.

55. Except such evidence as was offered with respect to the adoption and enforcement of Rules 6, 8, and 12 B, and except as found herein to the contrary, there is no evidence that:

- (a) Building costs increased as a result of the operation of the bid depository;
- (b) Building activity in the area has in any way been adversely affected by the operation of the bid depository;
- (c) Any manufacturer or supplier of construction supplies has been coerced or intimidated by the defendants in connection with the operation of the bid depository;
- (d) The free flow of construction supplies in interstate commerce has been in any wise impeded or affected;
- (e) Any general contractor or subcontractor has been threatened or intimidated, or in any way coerced to use or not to use the bid depository; and
- (f) There was any dishonesty, collusion, or unfair practice on the part of those charged with the operation of the bid depository.

56. The effects, if any, on interstate commerce as a result of the enforcement of the rules of the bid depository, other than Rules 6, 8, and 12 B, are speculative and inconsequential.

Conclusions of Law

The Court concludes:

- (1) Rules 6, 8, and 12 B of the bid depository rules are price tampering rules and are illegal *per se* under [Section 1 of the Sherman Act](#).
- (2) As a consequence of the adoption and enforcement of said Rules 6, 8, and 12 B by the defendants, interstate commerce in the sale and installation of construction supplies was unreasonably restrained.
- (3) The adoption and enforcement of the bid depository rules other than Rules 6, 8, and 12 B, do not constitute a boycott, nor do they singly or collectively constitute any unreasonable restraint of trade, nor are they *per se* violations of the Sherman Act.
- (4) In adopting and enforcing the rules of the bid depository other than Rules 6, 8, and 12 B of the bid depository rules, the defendants have not contracted, combined, and conspired among themselves to violate [Section 1 of the Sherman Act](#).
- (5) In adopting and enforcing Rules 6, 8, and 12 B of the bid depository rules, the defendants have contracted, combined, and conspired among themselves to violate [Section 1 of the Sherman Act](#).
- (6) The Government is entitled to an injunction and other equitable relief as prayed for with respect to the bid depository rules Nos. 6, 8, and 12 B.

Judgment

In accordance with the foregoing findings of fact and conclusions of law, it is hereby ordered, adjudged and decreed as follows:

I

[*Jurisdiction*]

The Court has jurisdiction of the subject matter hereof and of the parties herein. The defendants Bakersfield Associated Plumbing Contractors, Inc., Kern, Jnyo and Mono Counties Sheet Metal Contractors Association, Inc., and Kern County Electrical Contractors Association, Inc., by the adoption and enforcement of Rules 6, 8, and 12 B of the bid depository hereinafter described, have combined and conspired among themselves and with others to unreasonably restrain interstate trade and commerce, in violation of Section 1 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act.

II

[*Definitions*]

As used in this judgment:

- (a) The term "Bakersfield Trade Area" shall refer to and include the city of Bakersfield, and the county of Kern, State of California.
- (b) The term "construction supplies" shall refer to plumbing, heating and ventilating, sheet metal, and electrical supplies which are furnished by subcontractors in connection with the performance of construction contracts.
- (c) The term "bid depository" shall refer to a facility through which bids of subcontractors are received and processed and made available to general contractors, in accordance with the rules for the operation of such bid depository.
- (d) The term "Bakersfield Construction Industry Bid Depository" is a facility established, maintained, and operated by the defendants, through which bids of subcontractors are received and processed and made available to general contractors in accordance with the rules for the operation of such bid depository. A copy of such rules is attached to plaintiff's complaint as Exhibit A and has been incorporated in the findings of fact made by the Court in this action.

III

[*Applicability*]

The provisions of this judgment applicable to any defendant shall apply to such defendant, its officers, directors, managers, agents, employees, successors and assigns, and to all persons and corporations acting, or claiming to act, under, through, or on behalf of them, or any of them.

IV

[*Practices Prohibited*]

The defendants, and each of them, are enjoined and restrained from:

- (a) engaging in or participating in agreements, understandings, practices, or arrangements having a purpose or effect of continuing, reviving, or renewing the aforesaid combination or conspiracy;
- (b) adopting, enforcing, or continuing in effect any of the provisions of Rule 6, Rule 8, or Rule 12 B of the rules of the Bakersfield Construction Industry Bid Depository, or any rule for the operation of a bid depository which
 - (i) requires the submission of separate bids for plumbing, or separate bids for heating and ventilating;
 - (ii) attaches any condition with respect to the price at which any combination bid for plumbing and heating and ventilating may be submitted;

(iii) requires that the successful subcontractor bidding through such bid depository shall pay any fee to such bid depository, or to any person, partnership, firm, association, corporation, or other legal entity;

(iv) permits any subcontractor to withdraw any bid during the interval between the time such subcontractor's bid is opened at such bid depository, and the time when any such bid is available for delivery to any general contractor by such bid depository.

Provided, however, that the defendants may within a period of one year after the entry of this judgment, upon notice to the Government, present to the Court a plan for the operation of a bid depository, and if, after hearing, the Court approves of such plan or any modification thereof, the Court may, within said period of one year from the date of entry of this judgment, modify this judgment to permit the operation of a bid depository in accordance with such plan or modification thereof.

V

[*Compliance*]

For the purpose of securing compliance with this judgment, and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted (1) access during the office hours of such defendant to those parts of the books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant which relate to any of the subject matters contained in this judgment; and (2) subject to the reasonable convenience of such defendant and without restraint or interference from it to interview officers or employees of said defendant, who may have counsel present. No information obtained by the means provided in this Section V shall be divulged by any representative of the Department of Justice to any person other than a duly authorized employee of the Department, except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this judgment, or as otherwise required by law.

VI

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling either party to this judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction of or the carrying out of this judgment, for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

VII

[*Costs*]

Judgment is entered against the defendants, and each of them, for all costs to be taxed in this proceeding.

UNITED STATES v. BAKERSFIELD ASSOCIATED
PLUMBING CONTRACTORS, ET AL.

CIVIL NO. 1479-ND

MODIFIED JUDGMENT ENTERED: DEC. 22, 1958

Filed December 22, 1958

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No. 1479-ND
MODIFIED FINAL JUDGMENT

BAKERSFIELD ASSOCIATED PLUMBING
CONTRACTORS, INC.; KERN, INYO
AND MONO COUNTIES SHEET METAL
CONTRACTORS ASSOCIATION, INC.;
and KERN COUNTY ELECTRICAL
CONTRACTORS ASSOCIATION, INC.,

Defendants.

This is a proceeding filed by the Government on June 28, 1955 against the above-named defendants, alleging an unlawful combination and conspiracy in unreasonable restraint of interstate trade and commerce in plumbing, heating and ventilating, sheet metal, and electrical supplies, materials and fixtures, in violation of Section 1 of the Sherman Act. The relief sought is of an equitable nature. The defendants appeared and filed their joint and several answer to such complaint denying the substantive allegations thereof. The case was tried by the Court sitting without a jury.

After trial, the Court considered the evidence presented, the proposed findings and counter-findings prepared respectively by counsel for plaintiff and defendants, in accordance with the Court's Order of December 30, 1957, and after having held hearings on April 25, 1958 and May 2, 1958 for the

purpose of settling such findings and judgment in this matter the Court on May 26, 1958 filed its findings of fact, conclusions of law, and judgment. The aforesaid judgment which was entered in the docket of the above-entitled Court on May 29, 1958, provided in part as follows:

Provided, however, that the defendants may within a period of one year after the entry of this judgment, upon notice to the Government, present to the Court a plan for the operation of a bid depository, and if, after hearing, the Court approves of such plan or any modification thereof, the Court may, within said period of one year from the date of entry of this judgment, modify this judgment to permit the operation of a bid depository in accordance with such plan or modification thereof.

On October 21, 1958, pursuant to the aforesaid provision in such judgment, the defendants filed their petition for approval of a plan for the operation of a bid depository in accordance with certain rules which are fully set forth in such petition. A copy of such rules is attached as Exhibit A. On November 17, 1958, a hearing was held on said petition, at which evidence was offered by defendants in support of their petition for modification of such judgment.

The Court having considered the matters presented at the previous proceedings, having read such petition for modification of the judgment heretofore entered, having heard the evidence in support of such petition, and having found nothing objectionable in the rules which are attached as Exhibit A insofar as this proceeding is concerned,

IT IS ORDERED, ADJUDGED AND DECREED that the judgment heretofore entered be modified to provide as follows:

I

The Court has jurisdiction of the subject matter hereof and of the parties herein. The defendants Bakersfield Associated Plumbing Contractors, Inc., Kern, Inyo and Mono Counties Sheet Metal Contractors Association, Inc., and Kern County Electrical Contractors Association, Inc., by adopting on or about October 27, 1954 and enforcing Rules 6, 8, and 12 B of the Bakersfield

1 Construction Industry Bid Depository hereinafter described, have combined
2 and conspired among themselves and with others to unreasonably restrain
3 interstate trade and commerce, in violation of Section 1 of the Act of
4 Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled
5 "An Act to protect trade and commerce against unlawful restraints and
6 monopolies," commonly known as the Sherman Act.

7 II

8 As used in this judgment:

9 (a) The term "Bakersfield Trade Area" shall refer to and include the
10 city of Bakersfield, and the county of Kern, State of California.

11 (b) The term "construction supplies" shall refer to plumbing, heating
12 and ventilating, sheet metal, and electrical supplies which are furnished by
13 subcontractors in connection with the performance of construction contracts.

14 (c) The term "bid depository" shall refer to a facility through which
15 bids of subcontractors are received and processed and made available to
16 general contractors, in accordance with the rules for the operation of
17 such bid depository.

18 (d) The term "Bakersfield Construction Industry Bid Depository" is
19 a facility established, maintained, and operated by the defendants,
20 through which bids of subcontractors are received and processed and made
21 available to general contractors in accordance with the rules for the
22 operation of such bid depository. A copy of such rules is attached to
23 plaintiff's complaint as Exhibit A and has been incorporated in the
24 findings of fact made by the Court in this action.

25 III

26 The provisions of this judgment applicable to any defendant shall
27 apply to such defendant, its officers, directors, members, managers,
28 agents, employees, successors and assigns, and to all persons acting or
29 claiming to act under, through, or on behalf of them, or any of them, and
30 to any user of any bid depository operated by the defendants, or any of
31 them, who shall have had actual notice of the provisions of this judgment.

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IV

2 The defendants, and each of them, are enjoined and restrained from:

3 (a) engaging in or participating in agreements, understandings,
4 practices, or arrangements having a purpose or effect of continuing, reviving,
5 or renewing the aforesaid combination or conspiracy;

6 (b) adopting, enforcing, or continuing in effect, any of the provisions
7 of any rule for the operation of a bid depository which

8 (i) requires the submission of separate bids for plumbing,
9 or separate bids for heating and ventilating;

10 (ii) attaches any condition with respect to the price at
11 which any combination bid for plumbing and heating and ventilating
12 may be submitted;

13 (iii) requires that subcontractors who have been awarded
14 contracts as a result of bids deposited at such bid depository
15 shall pay any fees which, in the aggregate and in combination
16 with any other fees collected pursuant to any such rule, are
17 in excess of the amount reasonably required for the operation
18 and maintenance of such bid depository;

19 (c) coercing, inducing, or attempting to coerce or induce, any
20 contractor who has submitted a bid through a bid depository operated by
21 defendants, or any of them, to withdraw such bid after it has been opened,
22 announced, or published at such bid depository; and

23 (d) soliciting, receiving, or accepting money or any other things of
24 value as an inducement to the withdrawal of any bid submitted through a
25 bid depository operated by the defendants, or any of them, after it has been
26 opened, announced, or published at such bid depository.

27

IV A

28 The defendants are ordered and directed:

29 (a) to open in public at the office of any bid depository operated by
30 the defendants, or any of them, a copy of each bid received at such bid
31 depository, and to announce or publish such bid to those present at such
32 bid opening at least six hours prior to the time specified by the awarding

1 authority for the opening of general contractors' bids, and two hours prior
2 to the time when the sealed bids received at such bid depository are avail-
3 able to the general contractors to whom they are addressed;

4 (b) to notify all general contractors and subcontractors known to be
5 interested in bidding on any project through which bids have been or are
6 invited to be received at a bid depository operated by the defendants, or
7 any of them, of the time when such bids will be opened at such bid
8 depository; that such bids shall be opened under the conditions specified
9 in paragraph IV A (a) hereof and that they are at liberty to attend; and

10 (c) to notify all general contractors and subcontractors who in the
11 past have taken bids from, or placed bids with, a bid depository operated by
12 the defendants, or any of them, that bid openings are to be conducted under
13 the conditions specified in paragraph IV A (a) hereof, and that they are
14 invited to attend such openings.

15 IV B

16 The Court is of the view that the method of operating a bid depository
17 as outlined in Exhibit A attached to this judgment, does not violate the
18 antitrust laws of the United States, provided that the defendants in so
19 operating shall, in all other respects, be subject to all of the provisions
20 of this judgment.

21 V

22 For the purpose of securing compliance with this judgment, and for no
23 other purpose, and subject to any legally recognized privilege, duly
24 authorized representatives of the Department of Justice shall, upon written
25 request of the Attorney General or the Assistant Attorney General in charge
26 of the Antitrust Division, and on reasonable notice to any defendant made
27 to its principal office, be permitted (1) access during the office hours of
28 such defendant to those parts of the books, ledgers, accounts, correspondence,
29 memoranda and other records and documents in the possession or under the
30 control of such defendant which relate to any of the subject matters
31 contained in this judgment; and (2) subject to the reasonable convenience
32 of such defendant and without restraint or interference from it to interview

1 officers or employees of said defendant, who may have counsel present. No
2 information obtained by the means provided in this Section V shall be
3 divulged by any representative of the Department of Justice to any person
4 other than a duly authorized employee of the Department, except in the course
5 of legal proceedings to which the United States of America is a party for
6 the purpose of securing compliance with this judgment, or as otherwise
7 required by law.

8

VI

9 Jurisdiction is retained for the purpose of enabling either party to
10 this judgment to apply to this Court at any time for such further orders
11 and directions as may be necessary or appropriate for the construction of
12 or the carrying out of this judgment, for the modification or termination
13 of any of the provisions thereof, and for the enforcement of compliance
14 therewith and punishment of violations thereof.

15

VII

16 Judgment is entered against the defendants, and each of them, for all
17 costs to be taxed in this proceeding.

18

19 Dated: December 22, 1958.

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/s/ LEON R. YANKWICH
Chief United States District Judge

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1 BAKERSFIELD CONSTRUCTION INDUSTRY BID DEPOSITORY

2 BAKERSFIELD ASSOCIATED PLUMBING CONTRACTORS, INC.

3 KERN, INYO AND MONO COUNTIES SHEET METAL CONTRACTORS

4 ASSOCIATION, INC.

5 KERN COUNTY ELECTRICAL CONTRACTORS ASSOCIATION, INC.

6 Dated _____

7
8 1. PURPOSE: These rules are established for the purpose of providing
9 fair and open competition between the members of the plumbing, heating
10 and ventilating, sheet metal and electrical industries and to eliminate
11 the unfair practice of bid peddling.

12 2. APPLICABILITY: The rules herein established shall govern any
13 proposal, tender or offer to contract the installation of plumbing,
14 heating and ventilating, sheet metal or electrical, upon all projects
15 within the Counties of Kern, Inyo and Mono for the plumbing, heating and
16 ventilating, and sheet metal industries, and the County of Kern for the
17 electrical industry, wherein the awarding authority has designated and
18 advertised a specific time for the opening of contract bids for the
19 performance of work upon said project by a user of the bid depository
20 or member of the associations.

21 3. DEPOSITORY: To achieve the objects of this agreement, the Bakers-
22 field Associated Plumbing Contractors, Inc., Kern, Inyo and Mono Counties
23 Sheet Metal Contractors Association, Inc., and the Kern County Electrical
24 Contractors Association, Inc., hereinafter referred to as the associations,
25 will establish and maintain a bid depository at 1421 - 24th Street,
26 Bakersfield, California. The bid depository box shall be equipped with
27 two locks; the first two persons depositing bids on any specified project
28 that will be present for the opening of such bids will lock the depository
29 box and retain the keys thereto; upon the specified time for the opening
30 of such bids, the persons retaining the keys will unlock the box; all
31 bids will then be publicly announced and tabulated by the respective
32 associations' secretaries.

33 4. DEPOSIT OF BIDS: The bid depository maintained by the associations
34 shall be available to all plumbing, heating and ventilating, sheet metal
35 and electrical contractors desiring to bid upon the designated project.

36 5. TIME OF DEPOSIT: All bids must be received by the depository
37 normally not later than six hours prior to the time designated for the
38 opening of bids by the awarding authority; provided, however, that if the
39 time designated by the awarding authority for opening bids is such that
40 deposit six hours prior thereto would not be during normal working hours,
41 then the Board of Directors of each association shall coordinate and
42 designate the time at which bids must be deposited; in the event of time
43 designation by the association Board of Directors all bidders known to
44 be interested in bidding the project shall be notified sufficiently in
45 advance of the time of deposit by the office of the depository. Bids
46 received later than the time hereinabove provided shall be returned to
47 the bidding contractor unopened.

48 6. COMBINATION BIDS: Contractors submitting bids to the depository may
49 submit separate bids for plumbing, heating and ventilating, sheet metal
50 and electrical work, and may submit a bid representing a combination of

1 all or any two or more thereof. All bids are to be submitted to the
2 depository upon the condition that either the plumbing, or heating and
3 ventilating, or sheet metal or electrical portion of any bid may be used
4 by the general contractor with any other plumbing, or heating and
5 ventilating, or sheet metal or electrical bid or portion of a bid
6 submitted through the depository. Any bid purporting or attempting to
7 restrict such use in combination with other depository bids shall be
8 invalid.

9
10 7. BID OPENING: The procedure for ~~submissio~~ and opening of bids shall
11 be as follows:

12 A. To assure uniformity of bids, all bids must be submitted
13 upon the bid forms supplied by the depository; forms will be
14 mailed by the depository to all contractors indicating an intent
15 to bid the project; bids not submitted upon the depository bid
16 form will not be recognized.

17 B. Bidders shall submit to the depository a separate, sealed
18 bid addressed to each general contractor with whom the bidding
19 contractor intends to bid, and shall submit an additional bid
20 addressed to the depository.

21 C. Bids addressed to the depository will be opened at 1421 -
22 24th Street, Bakersfield, California, six hours prior to the bid
23 opening of the awarding authority, unless a different time has been
24 designated in Paragraph 5; bids will be opened at such time solely
25 for the purpose of determining whether the bids conform to depository
26 requirements; bids so opened shall not be deemed an offer to any
27 general contractor at the time of such opening.

28 D. Bids addressed to the general contractors shall be available
29 to the general contractors two hours following the opening of bids
30 addressed to the depository; provided, however, that no bid shall
31 be delivered to a general contractor until said contractor has
32 agreed in writing to accept the bid if it is the low bid accepted
33 through the depository.

34 E. Bids shall be opened, in public, and all general contractors
35 and subcontractors, known to be interested in bidding on the
36 project, shall be notified that they are at liberty to attend
37 and witness the opening of bids; likewise all general contractors
38 who have in the past, taken bids from the depository shall be
39 notified in writing by the secretaries of the respective associations,
40 that bid depository openings are open to the public and that they are
41 invited to attend all bid openings.

42 8. DEPOSITORY FEE: The successful bidder or bidders shall pay to the
43 depository fund, as a depository fee, a sum equal to one-half of one
44 per cent (1/2 of 1%) of the contract awarded to each bidder for plumbing,
45 one-half of one per cent (1/2 of 1%) of the contract for heating and
46 ventilating, one-half of one per cent (1/2 of 1%) of the contract for
47 sheet metal and one-half of one per cent (1/2 of 1%) of the contract
48 for electrical; provided, however, that the depository fee pertaining
49 to any one of the aforementioned subcontracts shall not exceed \$250.00.
50 The depository fee shall be paid at the time the contractor receives
51 the first payment on the contract. A contractor failing to pay the
52 required depository fee within thirty (30) days of the date specified
53 herein shall be denied the privileges of the depository until the fee
54 has been paid.

1 9. COLLECTION OF DELINQUENT FEES: In the event of litigation to collect
2 a delinquent depository fee, or to collect a delinquent withdrawal fee,
3 the delinquent contractor shall pay all attorneys' fees, costs of suit,
4 and other expenses reasonably incurred in connection with such litigation.

5 10. REOPENING OF PROJECTS: When bids for a specified project are once
6 opened, there shall be no further bidding on said project for a period of
7 one hundred twenty (120) days by contractors who did not bid such project
8 in the first instance unless the plans and specifications have been
9 revised in an amount exceeding twenty-five per cent (25%) of the work
10 and/or materials prescribed in the original plans and specifications.

11 11. CONDITIONS OF BID: All plumbing, heating and ventilating, sheet
12 metal and electrical bids shall be submitted upon the condition that the
13 bid may be used only in combination with a plumbing, heating and ventilating,
14 sheet metal or electrical bid which has been submitted through the
15 depository. Said condition of bid will be printed upon the bid form
16 provided by the depository.

17 12. WITHDRAWAL OF BID: The procedure for withdrawal of a bid shall be as
18 follows:

19 A. Any bid in the depository may be withdrawn, without penalty,
20 at any time prior to the opening of bids as outlined in Paragraph 7
21 hereof.

22 B. After the opening of bids as outlined in Paragraph 7 hereof,
23 a bid may be withdrawn prior to the time that bids are made available
24 to the general contractors; provided, however, that a bid may be
25 withdrawn at that time only upon payment of one per cent (1%) of the
26 total amount of said bid, said penalty not to exceed \$1,000.00. Pay-
27 ment of the penalty herein provided must be made within ten (10) days
28 of the withdrawal. Notification that a bid is to be withdrawn must
29 be made by the contractor or his agent.

30 C. In the event that a bid is not withdrawn prior to delivery to
31 the general contractor, the bid shall become an irrevocable offer to
32 the general contractor and shall not be withdrawn thereafter; the
33 consideration for the option herein provided shall be the execution
34 by the general contractor of the agreement to accept low bid at the
35 time of receipt of the subcontract bid.

36 13. NAMING OF SUBCONTRACTORS: In the event that any plumbing, heating
37 and ventilating, sheet metal, or electrical contractor intends to subcon-
38 tract a part of his bid to another contractor signatory to this agreement,
39 such contractor shall designate the name of said subcontractor to be used
40 by him on the bid form; subcontractors so named shall not be changed
41 thereafter in the absence of showing good cause therefor.

42 14. RECORDATION OF BIDS: All bids submitted through the depository shall
43 be accurately recorded and placed on file in the office of the depository;
44 said bids will be available for inspection by any participant or user of
45 the depository or any other person or persons approved by the Board of
46 Directors. All such bids shall be maintained in the files of the depository
47 for a period of one year after date of opening.

48 In consideration of the observance of the foregoing rules by other
49 participants in the depository, and in consideration of the maintenance of
50 the bid depository, I hereby agree to abide by the rules and conditions
51

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1 hereinabove prescribed, and to pay any fee or fees provided in said rules
2 and conditions.

3 _____
4 Date

5 _____
6 Name of Firm

7 _____
8 Signature

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