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10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA  
12

13 UNITED STATES OF AMERICA, )  
14 )

15 Plaintiff, )

16 v. )

Civil No. 81-0186-MML

17 KAHAN & LESSIN CO.; )  
LANDSTROM DISTRIBUTORS, INC.; )  
18 NATURE'S BEST; and )  
TREE OF LIFE WEST, INC., )

COMPETITIVE IMPACT  
STATEMENT

19 Defendants. )  
20

Filed: February 5, 1982

21 Pursuant to Section 2(b) of the Antitrust Procedures and  
22 Penalties Act, 15 U.S.C. §16(b), the United States files this  
23 Competitive Impact Statement, relating to the proposed Final  
24 Judgment submitted for entry in this case.  
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I.

Nature and Purpose of the Proceeding

On January 14, 1981, the United States filed a civil antitrust suit alleging that Kahan & Lessin Co., Landstrom Distributors, Inc., Nature's Best, and Tree of Life West, Inc., engaged in a conspiracy to fix the prices and terms and conditions of sale of natural foods, vitamins and cosmetics from 1974 to 1978. All of the defendants were wholesale distributors of natural foods, vitamins and cosmetics during the conspiracy period. All of the defendants are located in California and their annual sales during the conspiracy were about fifty million dollars.

In the Prayer to its Complaint, the Government asked the Court: to find that the defendants had engaged in an unlawful combination and conspiracy in restraint of trade in violation of Section 1 of the Sherman Act (15 U.S.C. § 1); to enjoin the defendants from continuing the conspiracy; and to require each defendant to notify its employees and its suppliers of the terms of any final judgment, to report for 10 years to the United States on actions taken to ensure compliance with the final judgment, and to create and maintain memoranda of oral communications with any other health food distributor.

On the same day that the Government filed its complaint in this proceeding, an Indictment was returned by a federal grand jury in Los Angeles charging the same price-fixing offense against the defendants named in the Complaint. Two of the defendants, Nature's Best and Tree of Life West, pleaded nolo contendere to the charges in the Indictment. Judge A. Wallace Tashima accepted

1 the nolo contendere pleas. Landstrom Distributors and Kahan &  
2 Lessin were convicted following a five week jury trial in June,  
3 1981.

4 Entry by the Court of the proposed Final Judgment will  
5 terminate this litigation. The Court will retain jurisdiction for  
6 possible future proceedings which might be required to interpret,  
7 modify or enforce the proposed provisions of the Final Judgment.

## 8 II.

### 9 The Nature of the Alleged Violation

10 Natural foods, vitamins and cosmetics are sold and shipped to  
11 health food retail stores and other customers by health food  
12 distributors who are also referred to as jobbers or wholesalers.  
13 Health food distributors purchase natural foods, vitamins and  
14 cosmetics from manufacturers and other suppliers.

15 The National Nutritional Foods Association (NNFA) is a trade  
16 association serving the health food industry. NNFA holds annual  
17 conventions and it, or its regional affiliates, sponsor regional  
18 trade shows. At the NNFA convention, and at regional trade shows,  
19 distributors frequently maintain booths or exhibits at which they  
20 solicit and accept orders from customers. "Convention specials"  
21 are discounts offered to customers by distributors in connection  
22 with a NNFA or regional convention in which the discounts  
23 originate with the manufacturers and are passed along by the  
24 distributors. "Trade show discounts" are discounts offered and  
25 originated by distributors at the conventions.

26 Each of the defendants is a health food distributor and is  
27 incorporated in the State of California. Kahan & Lessin has its  
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1 principal place of business in Compton, California. Its primary  
2 market is southern California, but it also has sales throughout the  
3 western United States. Landstrom's principal place of business is  
4 in South San Francisco, California. Its primary market is northern  
5 California, but it has significant sales in southern California and  
6 throughout the western United States. Nature's Best has its  
7 principal place of business in Torrance, California, and its  
8 primary market is southern California. Tree of Life West has its  
9 principal place of business in Sun Valley, California, and its  
10 primary market is southern California.

11 The complaint alleges that between October 1974 and October  
12 1978 the defendants conspired to fix the prices and terms and  
13 conditions of sale of natural foods, vitamins and cosmetics. The  
14 defendants carried out the conspiracy by participating in a number  
15 of meetings and having other communications during which they:

16 (a) Discussed prices and terms and conditions of  
17 sale of natural foods, vitamins and cosmetics;

18 (b) Agreed to eliminate trade show discounts at the  
19 NNFA convention and at regional trade shows;

20 (c) Agreed to limit the time period during which  
21 they offered convention specials to customers;

22 (d) Agreed to prevent manufacturers and other  
23 suppliers from selling directly to retail stores;

24 (e) Agreed to eliminate and restrict discounts  
25 offered by the defendants based upon the dollar volume  
26 of purchases by their customers;

27 (f) Agreed to maintain the wholesale list price of  
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1 certain products so as to provide a 25% gross margin to  
2 distributors;

3 (g) Agreed to standardize various terms and  
4 conditions of sale to customers; and

5 (h) Communicated with one another as to agreements  
6 reached at prior meetings in order to ensure compliance  
7 with the agreements.

8 According to the Complaint, the alleged conspiracy had the  
9 following effects, among others:

10 (a) Prices paid for natural foods, vitamins and  
11 cosmetics by customers of the defendants were fixed,  
12 stabilized and maintained at artificial and  
13 non-competitive levels;

14 (b) Competition in terms and conditions of sale of  
15 natural foods, vitamins and cosmetics was restrained and  
16 suppressed; and

17 (c) Customers of the defendants were denied the  
18 benefits of free and open competition in the market for  
19 natural foods, vitamins and cosmetics.

20 III.

21 Explanation of the Proposed Final Judgment

22 The United States and the defendants have stipulated that a  
23 Final Judgment, in the form filed with the Court, may be entered  
24 by the Court at any time after compliance with the Antitrust  
25 Procedures and Penalties Act. The proposed Final Judgment  
26 provides that the entry of the Final Judgment does not constitute  
27 any evidence against, or admission by, any party with respect to  
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1 any issue of law or fact. Under the provisions of Section 2(e) of  
2 the Antitrust Procedures and Penalties Act, entry of the proposed  
3 Final Judgment is conditioned upon the Court finding that its  
4 entry will be in the public interest.

5 The proposed Final Judgment contains two principal forms of  
6 relief. First, defendants are enjoined from repeating the  
7 behavior that characterized the conspiracy. Second, the proposed  
8 Final Judgment places an affirmative obligation on defendants to  
9 provide certain persons with notice of this action, and requires  
10 defendants to maintain copies of communications between themselves  
11 and other distributors.

12 A. Prohibited Conduct

13 Section V of the proposed Final Judgment enjoins defendants  
14 from entering into, adhering to, or maintaining any contract,  
15 agreement, understanding, plan or program with any other distrib-  
16 utor either (1) to fix, maintain or stabilize the prices, dis-  
17 counts, or terms or conditions of the sale of natural foods,  
18 vitamins or cosmetics, or (2) to coerce any manufacturer or  
19 supplier of natural foods, vitamins or cosmetics from selling  
20 directly to retail stores. Defendants are also forbidden by this  
21 section from communicating to or discussing with another  
22 distributor, prices or terms or conditions of sale of natural  
23 foods, vitamins or cosmetics, except in relation to a proposed or  
24 actual bona fide purchase or sale of natural foods, vitamins or  
25 cosmetics between the parties to the communication or the  
26 publication of price lists for general distribution to customers.

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1        B. Affirmative Obligations of the Defendants

2        Section IV requires each defendant, as a condition of the sale  
3 of all or substantially all of its assets used by it as a  
4 distributor, to require the purchaser to agree to be bound by the  
5 Final Judgment and to file the agreement with the Court.

6        Section VI (A) of the proposed Final Judgment orders defend-  
7 ants to furnish a copy of the Final Judgment within 60 days of its  
8 entry to each of its employees who have management responsibility  
9 for the sale of natural foods, vitamins or cosmetics. Section  
10 VI (C) requires each defendant to file with the Court and the  
11 plaintiff, an affidavit concerning compliance with Section VI (A).  
12 Thereafter, by Section VI (B), each defendant shall furnish a copy  
13 of the Final Judgment to each person who becomes a management  
14 employee described in Section VI (A) within 60 days after that  
15 person assumes that position. By Section VI (D), each defendant  
16 will notify annually its management employees of the obligations  
17 imposed upon them by the Final Judgment.

18        Section VI (E) requires each defendant to maintain copies of  
19 all written communications with any other distributor, exclusive  
20 of invoices and bills of lading.

21        Section VI (F) requires each defendant for a period of 5 years  
22 on the anniversary date of entry of the Final Judgment to inform  
23 plaintiff of actions taken to ensure compliance with the Final  
24 Judgment.

25        Finally, under Section VII of the proposed Final Judgment, the  
26 Justice Department will have access, upon reasonable notice, to  
27 the defendants' records and personnel to determine their compliance  
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1 with the Final Judgment and may require a defendant to submit  
2 written reports with respect to any of the matters contained in  
3 the Final Judgment.

4 C. Scope of Proposed Judgment

5 (1) Persons Bound by the Decree. The proposed Final  
6 Judgment expressly provides in Section III that its provisions  
7 apply to the defendants, and to their officers, directors, agents,  
8 employees, subsidiaries, successors and assigns, and to all other  
9 persons in active concert or participation with any of them who  
10 receive actual notice of the Final Judgment. Section IV provides  
11 that a defendant cannot sell all or substantially all of its  
12 assets unless the purchaser agrees to be bound by the Final  
13 Judgment.

14 (2) Duration of the Decree. Section IX provides that the  
15 Final Judgment will be in effect for a period of ten years  
16 following the date of its entry.

17 D. Effect of the Proposed Final Judgment on Competition

18 The relief encompassed in the Final Judgment is aimed at  
19 preventing any recurrence of the activities alleged in the  
20 complaint. Such activities interfere with the normal operation of  
21 competitive forces in the marketplace, and accordingly, result in  
22 artificially determined price levels. Entry of the Final Judgment  
23 will insure that each defendant's prices, discounts, and terms and  
24 conditions of sale for natural foods, vitamins and cosmetics are  
25 arrived at independently. This assurance is primarily provided by  
26 Section V (C) which forbids management employees of defendants  
27 from discussing prices or terms or conditions of sale of natural  
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1 foods, vitamins and cosmetics with any other distributor.  
2 Forbidding such discussions should insure that each defendant will  
3 make its pricing decisions independently. Accordingly, it is the  
4 opinion of the Antitrust Division that the proposed Final Judgment  
5 adequately remedies the alleged violation.

6 IV.

7 Remedies Available To Potential  
8 Private Litigants

9 Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that  
10 any person who has been injured as a result of conduct prohibited  
11 by the antitrust laws may bring suit in federal court to recover  
12 three times the damages such person has suffered, as well as costs  
13 and reasonable attorney fees. Entry of the proposed Final  
14 Judgment in this proceeding will neither impair nor assist the  
15 bringing of any such private antitrust action. Under Section 5(a)  
16 of the Clayton Act, 15 U.S.C. § 16(a), the proposed judgment has  
17 no prima facie effect in any private lawsuit that may be brought  
18 against these defendants. The convictions of Landstrom  
19 Distributors and Kahan & Lessin in United States v. Kahan & Lessin  
20 Co., et al., CR 81-0029-AWT (C.D. Cal.), may have a prima facie  
21 effect in a private antitrust action under 15 U.S.C. § 16(a).

22 V.

23 Procedures Available for Modification  
24 of the Proposed Final Judgment

25 The proposed Final Judgment is subject to a stipulation  
26 between the United States and defendants which provides that the  
27 United States may withdraw its consent to the proposed Final  
28 Judgment any time before its entry. By its terms, the Final

1 Judgment also provides for the Court's retention of jurisdiction  
2 of this action in order to permit any of the parties to apply to  
3 the Court for such orders as may be necessary or appropriate for  
4 the modification of the Final Judgment.

5 As provided by the Antitrust Procedures and Penalties Act, 15  
6 U.S.C. § 16, any person wishing to comment upon the proposed  
7 judgment may submit, within the statutory sixty-day period,  
8 written comments to the United States Department of Justice,  
9 Attention: Alan L. Marx, Acting Chief, General Litigation  
10 Section, Antitrust Division, U.S. Department of Justice,  
11 Washington, D.C. 20530. Such comments, and the United States'  
12 response to them, will be filed with the Court and published in  
13 the Federal Register. The United States will evaluate all such  
14 comments to determine whether there is any reason for withdrawal  
15 of its consent to the proposed Final Judgment.

16 VI.

17 Alternatives to the Proposed Final Judgment

18 This proceeding does not involve any unusual or novel issues  
19 of fact or law which might make litigation against the defendants  
20 a more desirable alternative than entry of the Final Judgment.  
21 The only relief requested in the Complaint which is not substan-  
22 tially included in the terms of the proposed Final Judgment are a  
23 prayer requiring the defendants to make annual reports for 10  
24 years, a prayer that each defendant notify the manufacturers from  
25 whom it makes purchases of the substance of the Final Judgment,  
26 and a prayer requiring defendants to create a memorandum of each  
27 price communication with another distributor.

1 During negotiations with defendants, the Government agreed to  
2 limit the filing of annual reports by defendants to a five-year  
3 period and abandoned its efforts to have the decree include the  
4 notification to manufacturers and the creation of memoranda. The  
5 notification requirement was abandoned because of the great number  
6 of manufacturers from whom each defendant makes purchases and  
7 because of the publicity given to this and the criminal case by  
8 health food trade publications. Finally, the Government agreed  
9 not to include relief that would have required defendants to  
10 create memoranda of oral communications relating to price with  
11 another distributor during negotiations in which the defendants  
12 abandoned their opposition to Sections IV, V (B), V (C) and VI (F)  
13 of the proposed Final Judgment.

14 In other respects the proposed Final Judgment provides the  
15 relief which was requested in the Complaint. Consequently, the  
16 Government believes that disposition of this case without further  
17 litigation is in the public interest since the proposed Final  
18 Judgment affords the form and scope of relief that the Government  
19 may have obtained in a litigated judgment.

20 VII.

21 Other Materials

22 There are no materials or documents which the Government  
23 considered determinative in formulating this proposed Final

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1 Judgment. Therefore, none are being filed along with this  
2 Competitive Impact Statement.

3 Dated:

4  
5 By:

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D. Bruce Pearson

7  
8 Kenneth L. Gost  
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