WESTERN SUGAR REFINERY ET AL.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 254.—November 29, 1919.

SYLLABUS.

Where certain jobbers in groceries, for the purpose of preventing a competing corporation, in which a large number of retailers held stock, but which sold to the retail trade generally and only to such trade, and which had been purchasing from a large number of manufacturers at prices usually charged the jobbing trade, from purchasing from manufacturers and manufacturers' agents, secretly conspired among themselves—

(*a*) to represent, and did represent, to various manufacturers and to brokers representing such manufacturers, that said company should not be permitted to purchase from them at prices usually charged the jobbing trade; and to induce and compel manufacturers and their agents, by means of boycotts and threats of boycott, to decline to sell to said company upon the terms usually given to jobbers, and pursuant to said agreement;

(*b*) advised some of said brokers, and through them certain sugar refiners, their principals, that they objected to sales to said corporation on the usual jobbing terms;

(*c*) threatened various brokers, who secretly sold said corporation with boycott;

(*d*) refused, in the case of several of their number, to handle a certain product because the manufacturer thereof sold to the said corporation at the usual jobbing prices;

(*e*) sold and offered to sell to said company's retail customers products and commodities at prices lower than those charged by them to the company itself for similar products and commodities;

(*f*) made false statements concerning said corporation and its plan and manner of doing business; and

Where certain brokers, because of coercion, persuasion, boycott, and threats of boycott, and influenced by loss of patronage or fear of such loss—

(*a*) refused to sell to said corporation at the usual price to jobbers;

(*b*) advised manufacturers whom they represented not to sell to the corporation at such prices;

(*c*) refused to accept orders from said corporation except through other jobbers and at prices higher than those charged the jobbing trade;

(*d*) wrote (in the case of one of their number) to one of the principals, a sugar refiner, stating that all of the jobbers in the territory had expressed themselves as objecting to the said broker, or his principal, the refining company, selling to said corporation, with the result that the broker and refiner refused, and continued to refuse, to sell to said corporation; and (in the case of another broker) wrote to a manufacturer stating that the Southern California Association of Manufacturers' Representatives was opposed to its members soliciting business from said corporation, and that sales to the said corporation would affect the relations of the writer with other jobbers; and

(*e*) made false statements concerning the company and its manner of doing business; and

Where certain refiners of sugar, principals of some of the brokers herein referred to, with knowledge of the facts, conspired and agreed among themselves and with brokers and jobbers—

(*a*) to refuse to sell sugar to the said corporation at the usual prices to jobbers;

(*b*) actually refused, in the case of one of the principals, and continued to refuse, to sell to such corporation;

With the result that other brokers were influenced and persuaded not to sell to said corporation at the usual prices to jobbers, and that the corporation against which the above acts were directed was compelled to purchase a large percentage of the commodities usually handled by it from other jobbers, its competitors, paying therefor prices higher than those charged by manufacturers to jobbers, lost to its competitors a large volume of its business, suffered further loss by reason of its inability to secure sugar, and was prevented from purchasing freely in interstate commerce, the commodities dealt in by it at prices usually charged the jobbing trade:

Held, That such agreements and understandings, carried out in the manner described, constituted unfair methods of competition in violation of section 5 of the act approved September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Western Sugar Refining Co.; California-Hawaiian Sugar Refining Co.; Haas-Baruch & Co.; Stetson-Barret Co.; R. L. Craig & Co.; M. A. Newmark & Co.; United Wholesale Grocery Co.; Channel Commercial Co.; California Wholesale Grocery Co.; The C. E. Cumberson Co.; The Colbert Co.; Flint & Boynton; Franz, Cunningham & Co.; Hamilton & Menderson; Henderson & Osborn; Holmes-Danforth-Creighton Co.; Johnson, Carvell & Murphy; Kelley-Clarke Co.; Laukota Garriott Co.; D. A. Macneil & Son Co.; Mailliard & Schmiedell; Cosmo Morgan Co.; Parrott & Co.; Bradley-Kuhl Co.; Spohn-Cook Co.; J. H. Stewart Co.; The J. K. Armsby Co.; and Schiff Lang Co., all of whom are hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the Los Angeles Grocery Co. is a corporation organized and existing under the laws of the State of California, with principal place of business at Los Angeles, in said State, and is engaged in the business of buying and selling in wholesale quantities and in the usual course of wholesale trade groceries and food products such as are bought and sold generally by persons, firms, and corporations engaged in the business generally known as that of a wholesale grocer; that in the course of its said business the Los Angeles Grocery Co. purchases commodities dealt in by it in the various States and Territories of the United States and transports same through other States and Territories to the city of Los Angeles, in the State of California, where such commodities are resold in the usual course

of wholesale trade, and there is continuously, and has been at all times herein mentioned, a constant current of trade and commerce in commodities so purchased by the said Los Angeles Grocery Co. between and among the various States and Territories of the United States.

PAR. 2. That the respondents, the Western Sugar Refining Co., a corporation, and the California-Hawaiian Sugar Refining Co., a corporation, are each engaged in the State of California in the business of manufacturing cane sugar, which product is sold by said respondents in various States and Territories of the United States in the regular course of interstate commerce, but each of said respondents, with the purpose, intent, and effect of stifling and suppressing competition in the interstate sale of sugar in wholesale quantities, and pursuant to the demands of other respondents named herein, has failed and refused, and still refuses, to sell its manufactured product to said Los Angeles Grocery Co., whose organization and business is set out in paragraph 1 hereof.

PAR. 3. That the respondents, Haas-Baruch & Co., Stetson-Barret Co., R. L. Craig & Co., M. A. Newmark & Co., United Wholesale Grocery Co., Channel Commercial Co., and California Wholesale Grocery Co., are all corporations organized and existing under the laws of the State of California, with principal office and place of business at Los Angeles, in said State, and are engaged in the business known generally as that of wholesale grocers; that said respondents, with the purpose, intent, and effect of stifling and suppressing competition in the sale of grocery products at wholesale, have conspired and confederated together with themselves and with the other respondents named in paragraphs 2 and 4 hereof to prevent the Los Angeles Grocery Co. from obtaining commodities dealt in by it from manufacturers and manufacturers' agents and other usual sources from which a wholesale dealer in groceries must obtain the commodities dealt in by him and have by boycott and threats of boycott in many instances induced manufacturers of grocery products and agents of said manufacturers to refuse to sell their products to the said Los Angeles Grocery Co.;

that is to say, manufacturers were informed by said respondents that if they sold their product to said Los Angeles Grocery Co. that said respondents would not thereafter purchase any of the products of said manufacturers, but that a boycott of said products would be put in force by said respondents.

PAR. 4. That the respondents, The C. E. Cumberson Co.; The Colbert Co.; Flint & Boynton; Franz, Cunningham & Co.; Hamilton & Menderson; Henderson & Osborn; Holmes-Danforth-Creighton Co.; Johnson, Carvell & Murphy; Kelley-Clarke Co.; Laukota-Garriott Co.; D. A. Macneil & Son Co.; Mailliard & Schmiedell; Cosmo Morgan Co.; Parrott & Co.; Bradley-Kuhl Co.; Spohn-Cook Co.; J. H. Stewart Co.; The J. K. Armsby Co.; and Schiff Lang Co. are members of the Southern California Association of Manufacturers' Representatives, and are engaged in business in Los Angeles, Calif., of selling the products of various manufacturers of groceries and food products, including the products manufactured by the respondents named in paragraph 2 hereof, which said manufacturers supply the wholesale grocery trade in southern California and adjacent territory; said respondents named in this paragraph have permitted the respondents named in paragraph 3 hereof to intimidate them by boycott and threats of boycott of the products sold by them, if same were also sold to the Los Angeles Grocery Co., and as a result of such intimidation said respondents have refused and still refuse to sell the products manufactured by their respective principals to said Los Angeles Grocery Co.; that the refusal to sell their respective products to the Los Angeles Grocery Co., as aforesaid, was with the purpose, intent, and effect of stifling and suppressing competition in the sale of grocery and food products at wholesale in that community.

REPORTS, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein in which it alleged that it had reason to believe that the above-named respondents, Western Sugar

Refinery; California & Hawaiian Sugar Refining Co.; Haas Baruch & Co.; Stetson-Barret Co.; R. L. Craig & Co.; M. A. Newmark & Co.; United Wholesale Grocery Co.; Channel Commercial Co.; California Wholesale Grocery Co.; The C. E. Cumberson Co.; The Colbert Co.; Flint & Boynton, Franz, Cunningham & Co.; Hamilton & Menderson; Henderson & Osborn, Holmes-Danforth-Craighton Co.; Johnson, Carvell & Murphy; Kelley-Clarke Co.; Laukota-Garriott Co.; D. A. Macneil & Son Co.; Mailliard & Schmiedell; Cosmo Morgan Co.; Parrott & Co.; Bradley-Kuhl Co.; Spohn-Cook Co.; J. H. Stewart Co.; The J. K. Armsby Co.; and Schiff Lang Co., have been and now are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in respect thereof would be to the interest of the public, and fully stating its charges in that respect, and the respondents having entered their appearances by their respective attorneys, and having duly filed their answers, and the Commission having introduced testimony in support of the charges in the said complaint, and the respondents, Western Sugar Refinery, Stetson-Barret Co., R. L. Craig & Co., M. A. Newmark & Co., United Wholesale Grocery Co., Channel Commercial Co., California Wholesale Grocery Co.; The C. E. Cumberson Co., and J. H. Stewart Co., having rested their case at the close of the Commission's case, and the other respondents named herein having introduced certain evidence in support of their respective answers to said complaint, and counsel for Haas Baruch & Co.; Stetson-Barret Co.; R. L. Craig & Co.; M. A. Newmark & Co.; United Wholesale Grocery Co.; California Wholesale Grocery Co.; Channel ommercial Co.; Western Sugar Refinery; California & Hawaiian Sugar Refining Co.; and Mailliard & Schmiedell, having filed briefs, and the Commission having heard the argument of counsel on the merits of the case, and having duly considered the record and being fully advised in the premises, now makes this report and findings as to the facts and conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, Haas Baruch & Co., Stetson-Barret Co., R. L. Craig & Co., M. A. Newmark & Co., United Wholesale Grocery Co., Channel' Commercial Co., and California Wholesale Grocery Co., are all corporations organized and existing under the laws of the State of California, having their respective offices and places of business at Los Angeles, in said State, and are engaged in the business of buying and selling in interstate commerce in wholesale quantities, groceries, and products, such as are generally dealt in by those engaged in the business generally known as that of wholesale grocer. Said respondents are hereinafter designated as "respondent jobbers."

PAR. 2. That the respondents, The C. E. Cumberson Co.; The Colbert Co.; Flint & Boynton; Franz, Cunningham & Co.; Hamilton & Menderson; Henderson & Osborn; Holmes-Danforth-Creighton Co.; Johnson, Carvel & Murphy; Kelley-Clarke Co.; Laukota-Garriott Co.; D. A. Macneil & Son Co.; Mailliard & Schmiedell; Cosmo Morgan Co.; Parrott & Co.; Bradley-Kuhl Co.; Spohn-Cook Co.; J. H. Stewart Co.; The J. K. Armsby Co.; and Schiff Lang Co., are engaged in the business, at Los Angeles, Calif., of selling in interstate commerce, the products of various manufacturers of groceries and food products, including the products manufactured by the respondents, named in paragraph 3 hereof, which said manufacturers supply the wholesale grocery trade in southern California and adjacent territory; that all of said respondents are members of an association known as the "Southern California Association of Manufacturers' Representatives," and are hereinafter designated as "respondent brokers."

PAR. 3. That the respondents, Western Sugar Refinery and the California & Hawaiian Sugar Refining Co. are corporations incorporated under the laws of California, and are each engaged, in the State of California, in the business of manufacturing cane sugar, which product is sold by said respondents in various States and Territories of the United States in the regular course of interstate commerce. Said

respondents are hereinafter designated as the "respondent refiners."

PAR. 4. That the Los Angeles Grocery Co. is a corporation organized under the laws of the State of California and having its office, warehouse, and place of business in Los Angeles, in said State; that since January 2, 1918, the said Los Angeles Grocery Co. has been and still is engaged in the business of purchasing in wholesale quantities, goods and commodities, such as are generally carried by those engaged in business as a wholesale grocer, and selling the same in wholesale quantities for profit to its customers; that said company sells the goods and commodities dealt in by it to the retail grocery trade only, and does not sell to consumers; that there are about 80 stockholders of said company, most of whom are retail grocers; that said company sells to a large number of retail grocers who are not stockholders; that the business of the said Los Angeles Grocery Co. is separate and distinct from the business of any of its stockholders, and said company has never owned, controlled, or had an interest in any retail grocery or groceries, and has never conducted a retail business.

PAR. 5. That the said Los Angeles Grocery Co. and the respondent jobbers, namely, Haas-Baruch & Co., Statson-Barret Co., R. L. Craig & Co., M. A. Newmark & Co., United Wholesale Grocery Co., Channel Commercial Co., and California Wholesale Grocery Co. are competitors in the business of buying and selling in wholesale quantities, in the usual course of wholesale trade, groceries and food products, such as are bought and sold generally by persons, firms, and corporations engaged in the business generally known as that of a wholesale grocer.

PAR. 6. That the said Los Angeles Grocery Co., in the course of its said business, purchases the goods and commodities dealt in by it in the various States and Territories of the United States, and said goods and commodities are transported to the said Los Angeles Grocery Co., in the State of California, where such goods and commodities are resold in the course of wholesale trade, and there is continuously, and has been at all times mentioned in the complaint herein,

a constant current of trade and commerce in the goods and commodities so purchased by the Los Angeles Grocery Co. between the States and Territories of the United States.

PAR. 7. That a large number of manufacturers, other than those represented by the respondent brokers, have sold, and now sell directly to the Los Angeles Grocery Co. the goods and commodities respectively manufactured by them at the prices regularly charged to the competitors of said company, and others engaged in similar business.

PAR. 8. That since and prior to January 2, 1918, all of the respondents herein, with the purpose and intent of stifling, suppressing, and preventing competition in commerce between the Los Angeles Grocery Co. and the respondent jobbers, and with the purpose and intent of preventing the said Los Angeles Grocery Co. from obtaining the goods and commodities dealt in by it from manufacturers and manufacturers' agents and other usual sources from which a wholesale dealer in groceries must obtain such commodities, have secretly agreed and conspired among themselves, and have had secret understandings with each other as follows:

(*a*) The respondent jobbers have agreed among themselves that the said Los Angeles Grocery Co. was and is not conducting its business in accordance with certain tests or standards fixed and established by said respondent jobbers; and have agreed and conspired among themselves to state and represent to various manufacturers and their agents that the Los Angeles Grocery Co. was not conducting its business in accordance with such tests and standards; and have further agreed and conspired among themselves to induce, coerce, and compel, by means of boycott and threats of boycott, manufacturers of grocery and food products and their agents, to refuse to deal with or sell to the Los Angeles Grocery Co., in interstate commerce, upon the terms. and at the prices offered and charged to its competitors, including respondent jobbers and others engaged in similar business; and to compel said company to purchase its supplies from and through respondent jobbers, all of whom are competitors of said company.

(*b*) That the respondent brokers, induced by coercion, persuasion, boycott, and threats of boycott on the part of respondent jobbers, have agreed and conspired among themselves, and with the other respondents mentioned herein, to refuse to sell to the Los Angeles Grocery Co. the products manufactured by their respective principals upon the terms and at the prices offered and charged to the competitors of said company, including respondent jobbers and others engaged in similar business, to recommend to their respective principals that they should not sell to said company upon such terms and at such prices; and have further agreed and conspired to compel the Los Angeles Grocery Co. to purchase said products from and through respondent jobbers (who are competitors of said company) at prices higher than those charged to such competitors and others engaged in similar business.

(*c*) That the respondent refiners, namely, Western Sugar Refinery and California & Hawaiian Sugar Refining Co., and the respondents, Cosmo Morgan Co. and D. A. Macneil & Son Co., have agreed and conspired among themselves and with each other, and with the other respondents mentioned in the complaint, with the purpose and intent of stifling, suppressing, and preventing competition between the Los Angeles Grocery Co. and the respondent jobbers to refuse to sell sugar to the Los Angeles Grocery Co. upon the terms and at the prices offered and charged to its competitors, and to compel the Los Angeles Grocery Co. to pay for sugar purchased by it prices higher than those charged to its competitors and others engaged in similar business. That said respondents have had at all times knowledge of the opposition of the respondent jobbers to the Los Angeles Grocery Co.

PAR. 9. That pursuant to said agreements, understandings, and conspiracy, and to effect the objects and purposes thereof:

(*a*) The respondent jobbers at divers times since January 2, 1918, have stated and communicated to the

other respondents herein that the Los Angeles Grocery Co. was not conducting its business in accordance with tests or standards fixed and determined by the said respondent jobbers, and that said company should not be allowed to deal with and purchase from manufacturers of food products upon the terms and at the prices offered and charged to competitors of said company and others engaged in similar business.

(*b*) Said respondent jobbers have at divers times since January 2, 1918, communicated to the respondents, Cosmo Morgan Co. and D. A. Macneil & Son Co. objections to any sales by them of the products of their respective principals to the Los Angeles Grocery Co. upon the terms and at the prices offered and charged to competitors of said company and others engaged in similar business; and said respondents Cosmo Morgan Co. and D. A. Macneil & Son Co., have in turn communicated such objections to their respective principals, the respondents, Western Sugar Refinery and California & Hawaiian Sugar Refining Co.

(*c*) The respondent jobbers have since and prior to January 2, 1918, questioned various manufacturers' agents as to whether or not such agents were selling the products handled by them, respectively, to the Los Angeles Grocery Co. at the prices generally charged to competitors of said company and others engaged in similar business; and said respondent jobbers have threatened said manufacturers' agents with boycott and withdrawal of patronage in case they sold to the Los Angeles Grocery Co. upon such terms and at such prices.

(*d*) The respondent jobbers, at divers times since and prior to January 2, 1918, have threatened to boycott various manufacturers' agents because such agents had secretly sold to the Los Angeles Grocery Co. the products handled by them, respectively, at the prices charged competitors of said company; that in August, 1918, the respondents, Haas Baruch & Co., Stetson-Barret Co., and United Wholesale Grocery Co. refused to continue to handle a certain product when they learned that the

respondent broker selling such product had, under directions from his principal, sold some of the same to the Los Angeles Grocery Co. at the price charged to the competitors of said company.

(*e*) The respondent brokers have, since January 2, 1918, at the instigation of respondent jobbers, refused to sell to the Los Angeles Grocery Co. at the prices charged to its competitors; have refused to accept orders from said company unless such orders were billed to said company through one of the respondent jobbers, its competitors, at prices higher than those charged to such competitors and others engaged in similar business; and have at divers times recommended to their respective principals that the Los Angeles Grocery Co. should not be allowed to purchase directly from said principals upon the terms and at the prices offered and charged to its competitors and others engaged in similar business.

(*f*) The respondent brokers have since January 2, 1918, insisted that the Los Angeles Grocery Co. should purchase the commodities dealt in by them, respectively, through the respondent jobbers, who are competitors of the Los Angeles Grocery Co., and who rendered no service in connection with the distribution or handling of the commodities so sold to the Los Angeles Grocery Co., but merely rendered to the Los Angeles Grocery Co. bills for such commodities at prices higher than those charged to such respondents and others engaged in similar business.

(*g*) The respondent Cosmo Morgan Co. sent a letter to its principal, the Western Sugar Refinery, on January 7, 1918, in which among other things, it was stated that all of the wholesale grocers of southern California had been interviewed, and that they objected to the respondents, Western Sugar Refinery and Cosmo Morgan Co., selling to the Los Angeles Grocery Co.

(*h*) The respondents Western Sugar Refinery and Cosmo Morgan Co. have refused and still refuse to sell the product of said refiner to the Los Angeles Grocery Co.

(*i*) The respondent D. A. Macneil & Son Co. on July 2, 1918, sent to its principal, the respondent California & Hawaiian Sugar Refining Co., a telegram stating in substance that the jobbers of Los Angeles were about to hold a meeting to protest against recognition of the Los Angeles Grocery Co. as a jobber by the Food Administration.

(*j*) The respondent California & Hawaiian Sugar Refining Co., since January 2, 1918, has refused to sell its manufactured product to the Los Angeles Grocery Co. upon the terms and at the prices offered and charged to its competitors and others engaged in similar business, whereby said Los Angeles Grocery Co. has been compelled to buy said product through a broker at prices higher than those charged to its competitors.

(*k*) The respondent Schiff Lang Co., on February 20, 1919, wrote a letter to F. E. Booth & Co., manufacturers, of San Francisco, Calif., stating among other things that the Southern California Association of Manufacturers' Representatives were on record as against soliciting business from the Los Angeles Grocery Co., and that sales to said company would affect the relations of said F. E. Booth & Co. with the competitors of said company.

(*l*) The respondent jobbers, competitors of the Los Angeles Grocery Co., have at various times since and prior to January 2, 1918, sold and offered to sell to retail customers of the said company products and commodities at prices lower than those charged by said respondents to said company for similar products and commodities.

(*m*) The respondent jobbers and respondent brokers, at divers times since and before January 2, 1918, have made certain false statements and misrepresentations concerning the Los Angeles Grocery Co. and its plan and manner of conducting its business.

PAR. 10. That as a result of such agreement and conspiracy the Los Angeles Grocery Co. has been compelled since and prior to January 2, 1918, to purchase approxi-

mately 38 per cent of the products and commodities usually handled by it in the course of its business from its competitors, and to pay its competitors for such products and commodities prices higher than those regularly charged by manufacturers to its said competitors and others engaged in similar business.

PAR. 11. That as a result of such agreements and conspiracy the said Los Angeles Grocery Co. has lost to its competitors, the respondent jobbers, a large volume of business, and said Los Angeles Grocery Co. has suffered a further pecuniary loss by reason of its inability to obtain sugar from the respondents, Western Sugar Refinery and California & Hawaiian Sugar Refining Co.

PAR. 12. That the sale of sugar constitutes a large and important part of the business of a wholesale grocer or jobber. That as a result of such agreements and conspiracy and the refusal of the respondents, Western Sugar Refinery and California & Hawaiian Sugar Refining Co. to sell sugar to the Los Angeles Grocery Co., various manufacturers' representatives engaged in selling products and commodities in the course of interstate commerce to the wholesale grocery trade of southern California have been influenced and persuaded to refuse to sell the products and commodities handled by them respectively to the Los Angeles Grocery Co. at the prices regularly charged to its competitors and others engaged in similar business.

PAR. 13. That as a result of such agreements and conspiracy the Los Angeles Grovery Co. has been prevented from purchasing freely in interstate commerce the goods and commodities dealt in by it upon the terms and at the prices charged to its competitors; and said company has been compelled to purchase many of the commodities dealt in by it from and through its competitors and to pay to said competitors therefor higher prices than those paid by said competitors.

PAR. 14. That since January 2, 1918, the respondent brokers have at various times held secret, informal meetings directly after the adjournment of regular meetings of the Southern California Association of Manufacturers' Repre-

sentatives, at which said respondent brokers have discussed the Los Angeles Grocery Co. and have agreed among themselves what course to pursue relative to the demands of the said Los Angeles Grocery Co.; that it be permitted to purchase directly from their respective principals at the prices regularly charged to its competitors and others engaged in similar business; that such informal meetings were held so that no record might appear on the minutes of the said Southern California Association of Manufacturers' Representatives with respect to any action or discussion by said respondent brokers as members of such association.

PAR. 15. That the respondent brokers have been influenced in their decisions and actions with respect to the Los Angeles Grocery Co. and in their refusal to sell such company at the prices regularly charged to competitors thereof by the loss of patronage or the fear of loss of patronage from the respondent jobbers and because of the influence and pressure of said respondent jobbers.

PAR. 16. That at divers times since and prior to January 2, 1918, respondent brokers have secretly and without knowledge or consent of the respondent jobbers arranged with certain of their principals to pay to said Los Angeles Grocery Co. a rebate on the purchase price paid by said company for goods ordered by it from said respondent brokers and billed through and charged for by respondent jobbers; that said rebate generally amounted to the difference between the price paid by said Los Angeles Grocery Co. to respondent jobbers and the price charged for such goods to said respondent jobbers; that said rebates have been kept secret from respondent jobbers because of the fear and knowledge on the part of respondent brokers that said respondent jobbers would consider the allowance and payment of said rebates as tantamount to sales direct to said Los Angeles Grocery Co., and would, in consequence, withdraw their patronage from said respondent brokers and their respective principals. That in certain instances respondent brokers have secretly sold goods to said Los Angeles Grocery Co. when such brokers believed that the respondent jobbers would not learn of such sales.

CONCLUSIONS.

PARAGRAPH 1. That under the conditions and circumstances set out in the foregoing findings of fact the agreements, understandings, policies, and practices of the respondents, as described in the foregoing findings of fact, constitute a conspiracy or combination as alleged in the complaint herein.

PAR. 2. That under the conditions and circumstances set forth in the foregoing findings of fact, the agreements, understandings, and practices of the respondent jobbers, as described in said findings, constitute a conspiracy.

PAR. 3. That under the conditions and circumstances set forth in the foregoing findings of fact, the acts, agreements, understandings, and practices of respondent brokers constitute a conspiracy.

PAR. 4. That under the conditions and circumstances set forth in the foregoing findings of fact the acts, agreements, understandings, and practices of the respondent refiners constitute a conspiracy.

PAR. 5. That under the conditions and circumstances set forth in the foregoing findings of fact, the acts, agreements, understandings, and practices of the respondents constitute an interference with the right of the Los Angeles Grocery Co. and other persons, firms, and corporations to buy and sell commodities, in interstate commerce, wherever, from, and to whomsoever, and at whatsoever price such persons, firms, and corporations may agree upon among themselves.

PAR. 6. That under the conditions and circumstances set forth in the foregoing findings of fact, the acts, agreements, understandings, policies, and practices of the respondent jobbers, the respondent brokers, and respondent refiners, and each and all of them, constitute unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and the respondents above

named having entered their appearances by their respective attorneys and having duly filed their answers admitting certain of the allegations of the complaint and denying others therein contained, and thereafter the Commission having introduced testimony in respect of the charges of the said complaint; and the respondents, Western Sugar Refinery, Stetson-Barret Co., R. L. Craig & Co., M. A. Newmark & Co., United Wholesale Grocery Co., Channel Commercial Co., California Wholesale Grocery Co., The C. E. Cumberson Co., and J. H. Stewart Co., having rested their case without introducing any evidence, and the other respondents named herein having introduced certain evidence in support of their respective answers to said complaint, and the Commission having heretofore made and filed its report stating its findings as to the facts and its conclusions that the respondents have violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

PARAGRAPH 1. *It is ordered*, That the respondents, Western Sugar Refinery, California & Hawaiian Sugar Refining Co., Haas-Baruch & Co., Stetson-Barret Co., R. L. Craig & Co., M. A. Newmark & Co., United Wholesale Grocery Co., Channel Commercial Co., California Wholesale Grocery Co., The C. E. Cumberson Co., The Colbert Co., Flint & Boynton, Franz, Cunningham & Co., Hamilton & Menderson, Henderson & Osborn, Holmes-Danforth-Craighton Co., Johnson, Carvell & Murphy, Kelley-Clarke Co., Laukota-Garriott Co., D. A. Macneil & Son Co., Mailliard & Schmiedell, Cosmo Morgan Co., Parrott & Co., Bradley-Kuhl Co., Spohn-Cook Co., J. H. Stewart Co., The J. K. Armsby Co., and Schiff Lang Co., and each of them, and their officers and agents, forever cease and desist from directly or indirectly—

(1) Combining and conspiring among themselves to induce, coerce, or compel manufacturers or manufacturers' agents to refuse to sell to the Los Angeles Gro-

cery Co., or to refuse to sell to said company upon the terms and at the prices offered and charged to competitors of said company and others engaged in similar business.

(2) Continuing or establishing any tests or standards for determining or deciding whether the Los Angeles Grocery Co. shall be permitted to purchase its supplies in interstate commerce upon the same terms and at the same prices as its competitors and others engaged in similar business.

(3) Making verbal or written statements to manufacturers, manufacturers' agents, or others that the Los Angeles Grocery Co. does not conform to any test or standard established by respondents or any of them.

(4) Inducing, coercing or compelling, or conspiring or attempting to induce, coerce, or compel manufacturers or manufacturers' agents to refuse to sell to the Los Angeles Grocery Co. because of any plan of organization or method of transacting business adopted by said company.

(5) Carrying on between and among themselves, or with others, communications having the purpose, tendency, or effect of inducing, coercing, or compelling manufacturers and manufacturers' agents to refuse to deal with or sell to the Los Angeles Grocery Co. upon terms agreed upon between such manufacturers, or their agents, and said company.

(6) Combining or conspiring among themselves, or with others, or using any scheme or device whatsoever to hinder, obstruct, and prevent the Los Angeles Grocery Co. from freely purchasing and obtaining in interstate commerce the commodities and products usually handled by it in the course of its business, or from freely competing in interstate commerce with the respondents, Haas Baruch & Co., Stetson-Barret Co., M. A. Newmark & Co., R. L. Craig & Co., United Wholesale Grocery Co., Channel Commercial Co., and California Wholesale Grocery Co., or others engaged in similar business.

(7) Hindering, obstructing, or preventing any manufacturer or manufacturers' agent from selling and shipping in interstate commerce to the Los Angeles Grocery Co.

(8) Combining or conspiring together, or with others, or using any scheme or device whatsoever to hinder, obstruct, or prevent manufacturers or their agents from dealing with the Los Angeles Grocery Co. upon any terms agreed upon by such manufacturers or their agents and said company.

(9) Making or circulating any false or misleading statements or representations concerning said company, its plan of organization, or method of transacting its business.

(10) Combining or conspiring among themselves, or with others to compel, or attempt to compel, the Los Angeles Grocery Co. to purchase the commodities required for its business from or through any competitor of said company.

PAR. 2. *It is further ordered*, That the respondents, Haas Baruch & Co., Stetson-Barret Co., R. L. Craig & Co., M. A. Newmark & Co., United Wholesale Grocery Co., Channel Commercial Co., and California Wholesale Grocery Co., and their officers and agents forever cease and desist—

(1) Combining and conspiring among themselves, to boycott, or to threaten to boycott, or to threaten with loss of custom or patronage, any manufacturer engaged in interstate commerce, or the agent or representative of such manufacturer, for selling or agreeing to sell to the Los Angeles Grocery Co. at prices regularly charged competitors of said company or others engaged in similar business.

(2) Making any statements or representations, verbal or written, having the purpose, tendency, or effect of preventing the Los Angeles Grocery Co. from freely purchasing and obtaining in interstate commerce the products and commodities dealt in by it in the course of its business.

PAR. 3. It is further ordered that the respondents, The C. E. Cumberson Co., The Colbert Co., Flint & Boynton, Franz, Cunningham & Co., Hamilton & Menderson, Henderson & Osborn, Holmes-Danforth-Craighton Co., Johnson, Carvell & Murphy, Kelley-Clarke Co., Laukota-Garriott Co., D. A. Macneil & Son Co., Mailliard & Schmiedell, Cosmo Morgan Co., Parrott & Co., Bradley-Kuhl Co., Spohn-Cook Co., J. H. Stewart Co., The J. K. Armsby Co., and Schiff Lang Co., and their officers and agents, forever cease and desist:

(1) Combining and conspiring among themselves, or with the other respondents herein, or with other persons or parties, to hinder, obstruct, or prevent the Los Angeles Grocery Co. from freely purchasing and obtaining in interstate commerce the products and commodities dealt in by it in the course of its business, or to induce, coerce, or compel manufacturers, producers, or dealers engaged in interstate commerce to refuse to sell to the said Los Angeles Grocery Co.

(2) Making or communicating to their respective principals verbally or in writing any statements or recommendations the purpose, intent, or effect of which is to induce and persuade such principals to refuse to sell to the Los Angeles Grocery Co. upon the terms and prices offered to its competitors and others engaged in similar business.

PAR. 4. It is further ordered that the respondents, California & Hawaiian Sugar Refining Co. and Western Sugar Refinery, and their officers, agents, and representatives, forever cease and desist:

(1) Combining or conspiring among themselves and with the other respondents herein, or with any persons or parties, to hinder, obstruct, and prevent the Los Angeles Grocery Co. from freely competing in interstate commerce with other persons, parties, firms, and corporations engaged in such commerce by refusing to sell sugar to said company, or by refusing to sell sugar to said company upon the terms and at the prices offered to its competitors and others engaged in similar business.

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(2) Using any device whatsoever to compel the Los Angeles Grocery Co. to pay for sugar purchased by it prices higher than those charged to competitors of said company and others engaged in similar business.

FEDERAL TRADE COMMISSION

v.

NESTLE'S FOOD CO., INC.