

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter

of

NATIONAL LEAD COMPANY, a corporation, et al.

Docket No. 5253

EXCEPTIONS OF RESPONDENT, NATIONAL LEAD COMPANY,
TO TRIAL EXAMINER'S RECOMMENDED DECISION

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May 21, 1948.

Bowne & Co., Inc., 163 Front Street, New York 7

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Comes now the respondent, National Lead Company, by its attorneys, Alexander & Green, and, pursuant to Rule XXIII of the Rules of Practice of this Commission, submits the following exceptions to the Trial Examiner's Recommended Decision herein and to the failure of said Trial Examiner to include proposed findings and conclusions heretofore requested by this respondent under Rule XXI of said Rules of Practice:

**Exceptions to Section I of the Recommended Decision, entitled
"Proceedings":**

1. This respondent excepts to the statement in the third sentence of the fourth full paragraph on page 2 of the Recommended Decision that "Proposals were thereupon duly filed by all parties, * * *". The proposals submitted by the attorney in support of the amended complaint were not filed within the time fixed by the Commission.

**Exceptions to Section II of the Recommended Decision, entitled
"Pleadings and Issues":**

2. This respondent excepts to item "2" under "Count One" of "Outline of Complaint" on page 3 of the Recommended Decision (PARAGRAPH SEVEN A [8] of the Amended Complaint).

3. This respondent excepts to item "5 (d)" on page 4 of the Recommended Decision (PARAGRAPH NINE B of the Amended Complaint).

4. This respondent excepts to item "5 (e)" on page 4 of the Recommended Decision (PARAGRAPH NINE C of the Amended Complaint).

5. This respondent excepts to the second full paragraph on page 5 of the Recommended Decision, which purports to summarize the answer of this respondent to the amended complaint (Answer to Amended Complaint of Respondent, National Lead Company).

6. This respondent excepts to the third full paragraph on page 5 of the Recommended Decision as being an incomplete, as well as inaccurate, summary of the answers of the respondents to the amended complaint (Answers to Amended Complaint of all respondents).

7. This respondent excepts to the inclusion on page 6 of the Recommended Decision of the following as one of "*The Issues*" herein:

"Did *National*, through its various acquisitions, secure and employ monopolistic control over the lead pigments industry?" (Federal Trade Commission Act, Section 5.)

8. This respondent excepts to the inclusion on page 6 of the Recommended Decision of the following as one of "*The Issues*" herein:

"Did *National's* relations with *Smelting* exert a monopolistic influence over the price of pig lead?" (Tr. 4209-4252; Proposed Findings and Conclusions submitted by the attorney in support of the amended complaint; Federal Trade Commission Act, Section 5.)

9. This respondent excepts to the inclusion on page 6 of the Recommended Decision of the following as one of "*The Issues*" herein:

"Did *National* conspire with du Pont with the purpose and effect of maintaining fixed price levels on white lead-in-oil?" (Amended

Complaint, PARAGRAPH SEVEN B [7]; Tr. 4209-4252; Proposed Findings and Conclusions submitted by the attorney in support of the amended complaint; Federal Trade Commission Act, Section 5.)

10. This respondent excepts to the inclusion on page 6 of the Recommended Decision of the following as one of "*The Issues*" herein:

"Were the tendencies and effect of these practices to restrain trade, suppress competition, or create monopoly through unequal cost factors and identical delivered prices?" (Amended Complaint, PARAGRAPH ELEVEN; Federal Trade Commission Act, Section 5; Sherman Act, Sections 1 and 2.)

11. This respondent excepts to the inclusion on page 6 of the Recommended Decision of the following as one of "*The Issues*" herein:

"Did respondents' employment of the zone system as alleged involve differences in price between customers (a) located in a zone, and (b) located in different zones, which differences were more than differences in cost of sale and delivery?" (Clayton Act, Section 2[a].)

12. This respondent excepts to the inclusion on page 6 of the Recommended Decision of the following as one of "*The Issues*" herein:

"Did each respondent so discriminate in price between customers through the granting of different trade, regional, and quantity discounts?" (Clayton Act, Section 2[a].)

13. This respondent excepts to the second sentence in the paragraph beginning at the bottom of page 6 of the Recommended Decision upon the ground that there is no room for the employment of "inference" where there is reliable, probative and substantial evidence and that, in any event, no "inference" could be drawn which conflicts with such reliable, probative and substantial evidence.

14. This respondent excepts to the first three full sentences appearing at the top of page 7 of the Recommended Decision upon the ground that, in many instances, "important portions" of the

evidence have not been set forth in the Recommended Decision, reliable, probative and substantial evidence has been ignored, evidence has been misquoted, and no reasonable regard has been had for the greater weight of the evidence herein.

Exceptions to Section III of the Recommended Decision, entitled "Report Upon the Evidence":

15. This respondent excepts to the first paragraph under the heading "*Count One*" of the "REPORT UPON THE EVIDENCE" upon the ground that the facts of organization, location, control, interstate commerce and business of each respondent are not shown by the record to be substantially as set out in the amended complaint.

16. This respondent excepts to the second and third paragraphs under the heading "*Count One*" of the "REPORT UPON THE EVIDENCE" appearing at page 7 and the top of page 8 of the Recommended Decision, except the last sentence thereof which appears as the first full sentence at the top of page 8 of the Recommended Decision, insofar as the same do not correspond to paragraphs 2 through 5 inclusive of the proposed findings of fact heretofore submitted by this respondent, and the record citations contained in said proposals are herein incorporated by reference.

17. This respondent excepts to the statement in the second sentence of the second paragraph under the heading "*Count One*" of the "REPORT UPON THE EVIDENCE" appearing at page 7 of the Recommended Decision to the effect that corroding pig lead differs from common pig lead in that the former is desilverized (Com. Ex. 93-G*; Com. Ex. 113; Tr. 1214, 2124).

18. This respondent excepts to the first sentence of the last paragraph beginning on page 7 of the Recommended Decision, which reads as follows:

* This is one of the exhibits heretofore objected to by respondents, as to which appeal from the ruling of the Examiner has been reserved by stipulation to the final argument on the merits herein. Any reference herein to such exhibits as to which objections have heretofore been made is not to be deemed a waiver of any objection by any respondent thereto.

"At one time National produced pig lead, and one of its subsidiaries now produces a limited amount (CX 93)." (Com. Ex. 22-Z-1; Resp. Ex. 173.)

19. This respondent excepts to item "(1-a)", under the heading "*National's Acquisitions*", on page 8 of the Recommended Decision (Answer of this respondent to amended complaint; Tr. 17-20; Com. Ex. 3 A-Y; Resp. Ex. 179-E).

20. This respondent excepts to item "(1-b)" on page 8 of the Recommended Decision (Com. Exs. 5-B, 22-P *et seq.*; Resp. Exs. 176 A-B, 180 A-B; Tr. 3300, 3310, 3317-18).

21. This respondent excepts to the statement in item "(1-c)" on page 8 of the Recommended Decision that this respondent acquired Evans Lead Company in "about 1944" (Tr. 1625-26).

22. This respondent excepts to item "(1-d)" on page 9 of the Recommended Decision (Resp. Exs. 153, 175-A, 179-D; Tr. 2891-92, 1071-72, 1625).

23. This respondent excepts to the statement in item "(1-e)" on page 9 of the Recommended Decision to the effect that its production of "Dry white lead" from 1936 to 1941 was 30% to 35% upon the ground that this percentage refers only to "dry white lead, basic carbonate" (See Proposed Findings of this respondent, paragraph 6 thereof, and record references therein contained).

24. This respondent excepts to the statement in item "(1-e)" on page 9 of the Recommended Decision that the percentage of white lead-in-oil produced by this respondent in 1932 "may have gone as high as 70%" (Tr. 1666).

25. This respondent excepts to the chart in item "(1-e)" on page 9 of the Recommended Decision purporting to show the comparative average percentages of production of white lead, dry and in oil, of the respondents and other companies for the years 1938 through 1941 as being inaccurate (Com. Ex. 669).

26. This respondent excepts to the statement in item "(1-e)" on page 9 of the Recommended Decision to the effect that respondent, Eagle-Picher, was a "potential" competitor of this respondent (See Proposed Findings submitted by respondents, The Eagle-Picher Company and the Eagle-Picher Sales Company, and the record references therein contained; Proposed Findings submitted by this respondent, paragraphs 3 to 7, inclusive, thereof, and the record references therein contained).

27. This respondent excepts to the statement in item "(1-e)" on page 9 of the Recommended Decision purporting to set forth the "combined" production of this respondent and respondent, Eagle-Picher, of white lead, dry and in oil, as being inaccurate and upon the further ground that there is no warrant in the record to "combine" the production of these two respondents.

28. This respondent excepts to the statement in item "(1-e)" on page 9 of the Recommended Decision to the effect that the percentage of production of respondent, Eagle-Picher, has been "increased" by the latter's acquisition of respondent International's lead pigment plant "and business" as being unsupported by the record.

29. This respondent excepts to the statement in item "(1-e)" on page 9 of the Recommended Decision that its prices, terms and conditions of sale were followed generally "by all of its domestic competitors" as being unsupported by the record.

30. This respondent excepts to the statement in item "(1-e)" on page 9 of the Recommended Decision to the effect that it became a "predominant" factor in the (lead pigments) industry as being unsupported by the reliable, probative and substantial evidence herein.

31. This respondent excepts to the statement in item "(1-e)" on page 9 of the Recommended Decision to the effect that its competitors "felt compelled" to follow its prices and terms as being unsupported by the record.

32. This respondent excepts to the statement in item "(1-e)" appearing at the top of page 10 of the Recommended Decision to the effect that its facilities for production were at all times adequate to satisfy the entire market demand for white lead as erroneous (Tr. 2500) and as unsupported by the reliable, probative and substantial evidence.

33. This respondent excepts to the first paragraph of item "(1-f)" appearing on page 10 of the Recommended Decision insofar as the same fails to include the statements made in paragraph 16 of the Proposed Findings of this respondent (See record references contained in said Proposed Findings, paragraph 16).

34. This respondent excepts to the statements in item "(1-f)" on page 10 of the Recommended Decision which refer to Mr. Charles Simon as "secretary" of this respondent and that he testified "that he did not know that" this respondent ever exercised any control over respondent, Eagle-Picher (Tr. 3304, 3309).

35. This respondent excepts to the second paragraph of item "(1-f)" on page 10 of the Recommended Decision upon the ground that neither the record references therein made nor any other evidence in this proceeding in any way supports the statement there made that "There is some direct evidence, however, of close relations between these two respondents" (referring to this respondent and respondent, Eagle-Picher) (See, *e.g.*, Tr. 1576, 2202).

36. This respondent excepts to the first sentence of item "(2-a)", under the heading "*National's Relations With Smelting*", on page 11 of the Recommended Decision upon the ground that there is no reliable, probative and substantial evidence to support the statements made in that sentence.

37. This respondent excepts to the statement in the second sentence of item "(2-a)" on page 11 of the Recommended Decision to the effect that American Smelting & Refining Company produced

between 30% and 40% of the world supply of refined lead. (This respondent has proposed corrections to Tr. 4093 which, if made, would alter the percentages stated.)

38. This respondent excepts to the last sentence of item "(2-a)" on page 11 of the Recommended Decision as unsupported by the record.

39. This respondent excepts to item "(2-b)" on page 11 of the Recommended Decision (Com. Ex. 93 A-I).

40. This respondent excepts to the first two sentences of item "(2-c)" appearing at the bottom of page 11 and the top of page 12 of the Recommended Decision (Com. Ex. 93 F-G).

41. This respondent excepts to the statement in the first sentence of item "(2-d)" on page 12 of the Recommended Decision to the effect that Hoyt Metal Company was acquired by this respondent as a property of United Lead Company upon the ground that there is no reliable, probative and substantial evidence to support this statement.

42. This respondent excepts to the second sentence of item "(2-d)" on page 12 of the Recommended Decision (Com. Ex. 94 A-G).

43. This respondent excepts to item "(2-e)" on page 12 of the Recommended Decision (Com. Exs. 22 A-Z-47, 93 A-I, 94 A-G, 851 A-B; Resp. Ex. 173; Tr. 1068-69, 1214-17, 3277, 3280, 4084 *et seq.*).

44. This respondent excepts to the first sentence of item "(2-f)" appearing on page 12 of the Recommended Decision (Resp. Ex. 228; Com. Ex. 113; Tr. 3277, 3280, 4084 *et seq.*).

45. This respondent excepts to the second sentence of item "(2-f)" appearing at the bottom of page 12 and the top of page 13 of the Recommended Decision (Tr. 4084 *et seq.*).

46. This respondent excepts to the statement in the third sentence of item "(2-f)" on page 13 of the Recommended Decision to the effect

54. This respondent excepts to the first sentence of item "(4-a)" on page 14 of the Recommended Decision as containing inferences and conclusions unsupported by the record (See Proposed Findings of this respondent, paragraphs 50 to 66, inclusive, thereof, and record references therein contained).

55. This respondent excepts to the second sentence of item "(4-a)" which appears at the bottom of page 14 and the top of page 15 of the Recommended Decision. (See, *e. g.*, Resp. Exs. 165 A-O, 166 A-B, 169 A-N, 170 A-B, 171, 162 A-D, 213 A-Q, 214.)

56. This respondent excepts to the word "plan" in the third sentence of item "(4-a)" on page 15 of the Recommended Decision as being unsupported by the record.

57. This respondent excepts to the outline on page 15 of the Recommended Decision purporting to set forth the method by which white lead-in-oil and keg products were sold. (See, *e. g.*, Proposed Findings of this respondent, paragraphs 50 to 57, inclusive, thereof, and record references therein made.)

58. This respondent excepts to the paragraph beginning on the fourth line of page 15 of the Recommended Decision beginning with the words "*White lead-in-oil and keg products*" (Clayton Act, Section 2[a]).

59. This respondent excepts to the paragraph beginning on line 37 of page 15 of the Recommended Decision with the words "*Dry white lead and lead sulphate*" (Resp. Ex. 159-A; Tr. 1576, 2624, 2625, 3497; Clayton Act, Section 2[a]).

60. This respondent excepts to the entire latter portion of item "(4-a)" beginning with the paragraph at the bottom of page 15 of the Recommended Decision and the words "*Dry red lead, litharge and other pigments*" and continuing with the remainder of that paragraph on page 16 of the Recommended Decision, and the other paragraphs

in said item "(4-a)" on page 16 of the Recommended Decision down to item "(4-b)" on page 16 of the Recommended Decision (See, *e. g.*, Proposed Findings of this respondent, paragraphs 62 to 66, inclusive, thereof, and the record references therein contained; Proposed Findings of this respondent, paragraphs 6 to 11, inclusive, thereof, and the record references therein contained; Clayton Act, Section 2[a]).

61. This respondent excepts to all except the first paragraph of item "(4-b)" beginning with the second paragraph of said item at the bottom of page 16 and continuing to the top of page 18 of the Recommended Decision (Record references contained in said item "(4-b)"; Proposed Findings of this respondent, paragraphs 26 to 33, inclusive, thereof, and record references therein contained, paragraphs 50 to 66, inclusive, thereof, and record references therein contained; Reply of this respondent to Proposals Submitted by Counsel for the Commission, page 3 thereof, and record references therein contained).

62. This respondent excepts to item "(4-c)" on page 18 of the Recommended Decision (Com. Exs. 505-A, 517-A, 523; Resp. Exs. 147, 168, 182; Tr. 2916, 3067).

63. This respondent excepts to item "(4-d)" on pages 18 and 19 of the Recommended Decision (Record references contained in said item "(4-d)"; Proposed Findings of this respondent, paragraphs 50 to 66, inclusive, thereof, and record references therein contained).

64. This respondent excepts to item "(5)", under the heading "*Agreement and Price Uniformity Through Particular Practices*", appearing on page 19 of the Recommended Decision as being unsupported by the record.

65. This respondent excepts to the first and third sentences of item "(5-a1)" on page 19 of the Recommended Decision (Record references therein contained; Proposed Findings of this respondent, paragraphs 20 and 26 thereof and record references therein contained).

66. This respondent excepts to the fourth sentence of item "(5-a1)" appearing at the top of page 20 of the Recommended Decision (Com. Exs. 501 A-D, 508 C, 800 A-C; Tr. 2175).

67. This respondent excepts to the fifth and sixth sentences of item "(5-a1)" appearing on page 20 of the Recommended Decision upon the ground that there is nothing in the record to show that "All respondents" were represented on the Committees during N. R. A. days or that all participated in the various meetings of the Committees.

68. This respondent excepts to the first three sentences of item "(5-a2)" on page 20 of the Recommended Decision (Proposed Findings of this respondent, paragraphs 26 and 27 thereof, and record references therein contained).

69. This respondent excepts to the last sentence of item "(5-a2)" on page 20 of the Recommended Decision as being incomplete (Resp. Exs. 6 A-I, 7 A-C, 8 A-B, 50-0).

70. This respondent excepts to the last sentence of item "(5-a3)" appearing at the top of page 21 of the Recommended Decision insofar as the same may be interpreted as representing the conclusions of the Trial Examiner, as distinguished from those of counsel in support of the amended complaint, upon the ground that said conclusions find no support in the record.

71. This respondent excepts to the second sentence of item "(5-a4)" on page 21 of the Recommended Decision insofar as the same implies that evidence to the effect stated was found only in the parol testimony of Wormser and others (Com. Exs. 501 A-D, 502 A-C, 504 A-B, 505 A-B, 799, 800 A-C, 801 A-B, 802 A-B, 803, 805 A-C; Resp. Exs. 83 A-Z-3, 85 A-Z-13, 134 A-E, 135 A-B, 136 A-B, 137 A-B, 138 A-B).

72. This respondent excepts to the first sentence of item "(5-a5)" on page 21 of the Recommended Decision insofar as the same implies

that there is any proof in the record of "agreements" as to the matters therein referred to, upon the ground that there is no proof in the record of any such "agreements." (See also, Com. Ex. 505-A.)

73. This respondent excepts to the second sentence of item "(5-a5)" on page 21 of the Recommended Decision upon the ground that the same is unsupported by the record.

74. This respondent excepts to the third sentence of item "(5-a5)" appearing on page 21 of the Recommended Decision upon the ground that the same is an incomplete summary of the record references therein made.

75. This respondent excepts to the words "except during the period covered by the Code" in the fifth sentence of item "(5-a6)" appearing on the top of page 22 of the Recommended Decision as being an inaccurate summary of the testimony referred to (Tr. 2353-55).

76. This respondent excepts to the second paragraph of item "(5-a6)" appearing on page 22 of the Recommended Decision as unsupported by the record.

77. This respondent excepts to the first two sentences of item "(5-b1)", under the heading "*Consignment or 'Agency' Agreements*", on page 22 of the Recommended Decision (Tr. 2905-07; Com. Exs. 506-D, 595, 613 A-C, 706 B-D, 712 A).

78. This respondent excepts to the first two sentences of item "(5-b2)" on page 22 of the Recommended Decision (Com. Ex. 501-A; Tr. 2160).

79. This respondent excepts to the last sentence of item "(5-b2)" on page 23 of the Recommended Decision insofar as the same implies there were "Agreements to employ a uniform consignment plan", upon the ground that the implication is not supported by the record.

80. This respondent excepts to item "(5-b3)" on pages 23 and 24 of the Recommended Decision (Com. Exs. 613 A-C, 626, 629 A-C, 506-E, 752 A-Z-144; Tr. 638).

81. This respondent excepts to item "(5-b4)" on page 24 of the Recommended Decision upon the ground that the same is incomplete (Com. Exs. 506-D, 706-F; *United States v. General Electric Co.*, 272 U. S. 476; *Fed. Trade Comm. v. Curtis Co.*, 260 U. S. 568, 581).

82. This respondent excepts to the second sentence of item "(5-b5)" on page 24 of the Recommended Decision (Com. Ex. 576).

83. This respondent excepts to the third sentence of item "(5-b5)" on page 24 of the Recommended Decision upon the ground that the same is unsupported by the record.

84. This respondent excepts to the fourth sentence of item "(5-b5)" on page 24 of the Recommended Decision upon the ground that the record contains no reliable, probative and substantial evidence in support thereof.

85. This respondent excepts to the first two sentences of the second paragraph of item "(5-b5)" appearing at the bottom of page 24 of the Recommended Decision (Com. Ex. 836-E; Tr. 3535).

86. This respondent excepts to so much of the third sentence of the third paragraph of item "(5-b5)" on page 25 of the Recommended Decision as refers to "consignees" and "dealer" of this respondent and respondent, Eagle-Picher (Com. Exs. 613 A-C, 629 A-C).

87. This respondent excepts to item "(5-b6)", under the heading "*Recommended Resale Prices*", on pages 25 and 26 of the Recommended Decision (Record references therein made; Com. Exs. 656 A-B, 659 A, B, Q through Z-51; Resp. Exs. 229 through 305-D, inclusive; Tr. 2502-03, 3514-15, 2995).

88. This respondent excepts to item "(5-c1)", under the heading "*Uniform Quotations*", on pages 26 and 27 of the Recommended Decision upon the ground that neither the record references therein made nor any other portion of the record supports the statements there made.

89. This respondent excepts to the first sentence of item "(5-c2)" on page 27 of the Recommended Decision as containing inferences unwarranted by the record (Com. Ex. 504-B).

90. This respondent excepts to so much of the second sentence of item "(5-c2)" on page 27 of the Recommended Decision as implies that it put Article "II" of the Supplementary Code as finally adopted into effect some months prior to its formal adoption (Compare Tr. 4077 with Schedule A, Article III of Com. Ex. 809).

91. This respondent excepts to the third, fourth and fifth sentences of item "(5-c2)" on page 27 of the Recommended Decision (Record references therein made; Proposed Findings of this respondent, paragraphs 81 and 82, thereof, and record references therein made).

92. This respondent excepts to the entire second paragraph of item "(5-c2)" appearing on pages 27 and 28 of the Recommended Decision upon the ground that neither the record references therein made nor any other portion of the record supports the statements there made.

93. This respondent excepts to all except the first sentence of item "(5-c3)" on page 28 of the Recommended Decision (Record references therein contained; Tr. 1067, 3666-67; Resp. Exs. 299 through 305-D).

94. This respondent excepts to the first sentence of item "(5-c4)" on page 28 of the Recommended Decision as containing inferences unwarranted by the record.

95. This respondent excepts to the statement in the fourth sentence of item "(5-c4)" on page 28 of the Recommended Decision that "sometimes it [Glidden] charged dealers 5¢ more per 100 lbs. than National and others charged" (Com. Exs. 662-Z-17-Z-18, 663-H, 659-Z-28).

96. This respondent excepts to the tenth and eleventh sentences of item "(5-c4)" which appear on page 29 of the Recommended Decision as being unsupported by the record.

97. This respondent excepts to all of item "(5-c5)" that appears on page 29 of the Recommended Decision (Record references therein made; see also, exception 87, above, and record references there made).

98. This respondent excepts to the first sentence appearing on page 30 of the Recommended Decision (which sentence is a part of item "[5-c5]") and to the last sentence of said item "(5-c5)" as being unsupported by the record.

99. This respondent excepts to the statement in the next to the last sentence of item "(5-c5)" on page 30 of the Recommended Decision to the effect that its "quotations" and those of respondent, Eagle-Picher, were "identical" in the periods referred to as being unsupported by and contrary to the record (See, *e. g.*, Tr. 4095-96; Resp. Exs. 306 A-B, 307 A-B, 308 A-C).

100. This respondent excepts to item "(5-c6)", under the heading "*Uniform Sales Prices*", which appears on pages 30 to 32, inclusive, of the Recommended Decision in its entirety (Record references therein made; Tr. 638; Com. Exs. 613 A-C, 629 A-C; *United States v. General Electric Co.*, 272 U. S. 476; *Fed. Trade Comm. v. Curtis Co.*, 260 U. S. 568, 581).

101. This respondent excepts to item "(5-c7)" on page 33 of the Recommended Decision (see exception 98, above, and record references and authorities there cited).

102. This respondent excepts to item "(5-c8)" on page 33 of the Recommended Decision as being unsupported by the record.

103. This respondent excepts to item "(5-c9)" on page 33 of the Recommended Decision as being unsupported by the record.

104. This respondent excepts to item "(5-c10)" on pages 33 and 34 of the Recommended Decision as being unsupported by either the record references there made or other portions of the record.

105. This respondent excepts to item "(5-c11)", under the heading "*Uniform Bidding*", on page 34 of the Recommended Decision as being unsupported by the record and the record references therein made.

106. This respondent excepts to all of item "(5-d)", under the heading "*Container Differentials*", as appears on page 34 of the Recommended Decision (Com. Ex. 800 A-C).

107. This respondent excepts to that portion of item "(5-d)" which appears on page 35 of the Recommended Decision, beginning with the first word on said page and continuing through the word "deviation" on the ninth line of said page, as being unsupported by the record (See, e. g., Com. Ex. 659 Q-V; Answers of all respondents to Amended Complaint).

108. This respondent excepts to the fourth sentence of item "(5-e)", under the heading "*Quarterly Contracts*", on page 35 of the Recommended Decision (Tr. 1658-60, 3080).

109. This respondent excepts to the last three sentences of item "(5-e)" on page 35 of the Recommended Decision as unsupported by the record.

110. This respondent excepts to the first three sentences of item "(5-f)", under the heading "*Red Lead Differentials*", on page 36 of the Recommended Decision as unsupported by the record.

111. This respondent excepts to item "(6-a)", under the heading "*Evidence of Effects*", on page 36 of the Recommended Decision as

unsupported by either the record references therein made or any other portion of the record.

112. This respondent excepts to the sixth sentence of item "(6-b)" which appears as the last sentence on page 36 of the Recommended Decision as being hypothetical and not supported by the record.

113. This respondent excepts to a portion of the ninth sentence of item "(6-b)" on page 37 of the Recommended Decision, beginning with the word "but" on the seventh line of said page and continuing for the rest of that sentence, as being unsupported by the record.

114. This respondent excepts to the first three sentences of item "(6-d)" beginning on page 37 and extending to the second line of page 38 of the Recommended Decision and to the second paragraph of said item on page 38 of the Recommended Decision as being unsupported by the record.

115. This respondent excepts to the use of the word "system" in item "(6-d)" which appears on the fourth line of page 38 of the Recommended Decision upon the ground that it suggests inferences and conclusions unsupported by the record.

116. This respondent excepts to items "(7-a1)", "(7-a2)", "(7-a3)", "(7-a4)", "(7-a5)", "(7-a6)", "(7-a7)", "(7-a8)" and "(7-a9)", all under the heading "*Conclusions on Acquisitions and Methods*", on pages 38, 39 and 40 of the Recommended Decision as either unsupported by the evidence or directly contrary to the reliable, probative and substantial evidence herein.

117. This respondent excepts to item "(7-b1)" appearing under the heading "*Conclusions as to Agreements*" on pages 40 and 41 of the Recommended Decision as either unsupported by the evidence or directly contrary to the reliable, probative and substantial evidence herein.

118. This respondent excepts to item "(7-b2)" on pages 41 and 42 of the Recommended Decision, except for the second sentence thereof appearing on page 41 of the Recommended Decision, as containing statements, inferences and insinuations unsupported by the evidence or directly contrary to the reliable, probative and substantial evidence herein.

119. This respondent excepts to item "(7-b3)" on page 42 of the Recommended Decision, except for the statements therein made that respondent, Glidden, used shipping points from which customers paid the freight and made prices substantially different from those of this respondent, that respondent, Glidden, did not use any consignment plan until six years after the adoption of the agency plan by this respondent, and that respondent Glidden's use thereof was short-lived and according to its own individual method, that Glidden produced evidence showing the existence of no agreement and showing the practicability of securing its competitors' quotations promptly and the necessity of meeting them in such manner as would enable it to do business and make as large a profit margin as possible, and that respondent, Glidden, gave active competition, upon the ground that the portions of such item excepted to contain statements, inferences and insinuations either unsupported by the evidence or directly contrary to the reliable, probative and substantial evidence herein.

120. This respondent excepts to item "(7-b4)" on pages 42 and 43 of the Recommended Decision, except for the statement that respondent, Sherwin-Williams, did not use any consignment method, upon the ground that said item contains statements, inferences and insinuations either unsupported by the evidence or directly contrary to the reliable, probative and substantial evidence herein.

121. This respondent excepts to item "(7-c1)", under the heading "*Conclusions as to Effects*", on page 43 of the Recommended Decision as either unsupported by the evidence or directly contrary to the reliable, probative and substantial evidence herein.

122. This respondent excepts to the first, second and last sentences of item "(7-c2)" on page 43 of the Recommended Decision as either unsupported by the evidence or directly contrary to the reliable, probative and substantial evidence herein.

123. This respondent excepts to item "(7-c3)" on pages 43 and 44 of the Recommended Decision insofar as the same may be deemed to differ from item "(11-c)" on pages 58 to 60, inclusive, of the Recommended Decision (except for the words therein specifically excepted to hereinafter), and insofar as said item "(7-c3)" may be said to imply that a near-mill customer would receive any benefit through f. o. b. mill pricing, under the circumstances disclosed by this record, for the reasons set forth in said item "(11-c)".

124. This respondent excepts to items "(7-c4)" and "(7-c5)" on page 44 of the Recommended Decision as being either unsupported by the evidence or directly contrary to the reliable, probative and substantial evidence herein.

125. This respondent excepts to item "(7-d1)", under the heading "*Conclusions of Law*", on pages 44 and 45 of the Recommended Decision. (Resp. Exs. 6 through 8, inclusive. See also: *National Industrial Recovery Act*, Section 5, 48 Stat. 195, 198; *Eugene Dietzgen Co. v. Federal Trade Com'n*, 142 F. 2d 321, 329; *Aetna Portland Cement Co. v. Federal Trade Com'n*, 157 F. 2d 533, 549, rev'd on other grounds, U. S.).

126. This respondent excepts to item "(7-d2)" on page 45 of the Recommended Decision (See, e.g.: *Sugar Institute v. United States*, 297 U. S. 553; *Cement Mfrs. Assn. v. United States*, 268 U. S. 588; *Maple Flooring Assn. v. United States*, 268 U. S. 563; *Aetna Portland Cement Co. v. Federal Trade Com'n*, *supra*; *United States v. General Electric Co.*, 272 U. S. 476; *Fed. Trade Comm. v. Curtis Co.*, 260 U. S. 568, 581; *U. S. v. Socony-Vacuum Oil Co.*, 310 U. S. 150, 198-199; *U. S. v. U. S. Steel Corporation*, 251 U. S. 417; *U. S. v. International Harvester Co.*, 274 U. S. 693; *U. S. v. Standard Oil of N. J.*, 47 F. 2d 288; *Appalachian Coals, Inc. v. United States*, 288 U. S. 344).

127. This respondent excepts to item "(7-d3)" on page 45 of the Recommended Decision as being unsupported by and contrary to the record and upon the further ground that the matters referred to in said item are not within the jurisdiction of the Federal Trade Commission as set forth in the Federal Trade Commission Act. (In addition, see: *U. S. v. U. S. Steel Corporation*, 223 Fed. 55, 251 U. S. 417; *U. S. v. International Harvester Co.*, 274 U. S. 693; *U. S. v. Aluminum Co. of America*, 148 F. 2d 416, 424.)

128. This respondent excepts to items "(7-d4)", "(7-d5)" and "(7-d6)" on pages 45 and 46 of the Recommended Decision as being unsupported by and contrary to the record and the Federal Trade Commission Act. (See authorities cited *supra*.)

129. This respondent excepts to the third paragraph under the heading "COUNT Two" on page 46 of the Recommended Decision, insofar as the same incorporates the items set forth in the "REPORT UPON THE EVIDENCE" at pages 7-46 of the Recommended Decision, in the same manner as hereinabove set out in exceptions 15 through 128 hereinabove.

130. This respondent excepts to item "(8-a1)" on pages 46 and 47 of the Recommended Decision as unwarranted by the facts or the law. (See, Clayton Act, Section 2 [a]; *Trade Commission v. Staley*, 324 U. S. 746; *Corn Products Co. v. Comm'n.*, 324 U. S. 726.)

131. This respondent excepts to item "(8-a2)" on pages 47, 48, and 49 of the Recommended Decision (Record references therein made; Tr. 442-60, 529-30. See also, authorities cited in exception 130 above.)

132. This respondent excepts to all except the last sentence of item "(8-a3)" on page 49 of the Recommended Decision as unsupported by either the record references therein made or any other portion of the record.

133. This respondent excepts to item "(8-a4)" on pages 49 and 50 of the Recommended Decision as unsupported by either the record references therein made or any other portion of the record.

134. This respondent excepts to items "(9)" and "(9-a)", under the heading "*Discriminations Through Differentials*", on page 50 of the Recommended Decision as being unsupported by the record). (See, also, exception 81, above, and record references and authorities there cited.)

135. This respondent excepts to the first and last sentences of item "(9-b)" on page 50 of the Recommended Decision as containing statements and inferences not warranted by the record.

136. This respondent excepts to the first sentence of item "(9-c)" on page 51 of the Recommended Decision as unsupported by the record.

137. This respondent excepts to item "(9-d)" on pages 51 and 52 of the Recommended Decision as unsupported by the record.

138. This respondent excepts to the first sentence of item "(9-e)" on page 52 of the Recommended Decision as unsupported by the record.

139. This respondent excepts to the entire second paragraph of item "(9-e)" on page 52 of the Recommended Decision and the first two sentences on page 53 of the Recommended Decision as unsupported by the record references therein made (Tr. 442-60, 529-30).

140. This respondent excepts to the statement in the fourth sentence on page 53 of the Recommended Decision, which sentence is a part of item "(9-e)", to the effect that Resp. Exs. 215-A-B and 216 were studies based on sales from this respondent's "Atlantic branch", as contrary to the evidence (Tr. 4051 *et seq.*).

141. This respondent excepts to the statement in the fifth sentence on page 53 of the Recommended Decision, which sentence is a part of item "(9-e)", to the effect that in respondents' study the difference in average sales and freight costs between carload and less-than-carload shipments of dry white lead was "about $\frac{1}{4}$ ¢ per lb.", as being inaccurate (Resp. Ex. 216).

142. This respondent excepts to the first and last sentences of item "(9-f)" on page 53 of the Recommended Decision as unsupported by the record.

143. This respondent excepts to item "(10-a)", under the heading "*Effects of Discriminations*", on page 53 of the Recommended Decision as unsupported by the record.

144. This respondent excepts to the first two sentences of item "(10-b)" at the bottom of page 53 and the top of page 54 of the Recommended Decision as unsupported by the record. (See, *e. g.*, Tr. 1717, 1796-97, 1876.)

145. This respondent excepts to the entire latter portion of item "(10-b)", beginning with the third sentence thereof, on page 54 of the Recommended Decision as being an inaccurate summary of the testimony and the record references therein cited.

146. This respondent excepts to item "(10-c)" on page 54 of the Recommended Decision in its entirety as containing statements contrary to the evidence in some instances, misquotation of the testimony, and incomplete statements of the evidence (Record references therein made; see also: Tr. 1411-12, 1422, 1441-1473).

147. This respondent excepts to the first, third, fourth, fifth, sixth and last sentences of item "(10-d)" on page 55 of the Recommended Decision as unsupported by the record.

148. This respondent excepts to the second sentence of item "(10-d)" on page 55 of the Recommended Decision upon the ground that the uncontradicted evidence establishes that the differential between carload and less-than-carload shipments of dry white lead, basic carbonate, was less than the difference in the respective costs of sale and delivery of the two quantities (Tr. 4050-65; Resp. Exs. 215 A-B, 216, 217; see, also, item "[10-k]" on page 57 of the Recommended Decision).

149. This respondent excepts to the first sentence of item "(10-e)" on page 55 of the Recommended Decision as unsupported by the record (See, *e. g.*, Resp. Ex. 217).

150. This respondent excepts to the second sentence of item "(10-e)" on page 55 of the Recommended Decision as unsupported by the record.

151. This respondent excepts to the last two sentences of item "(10-e)" on page 55 of the Recommended Decision upon the ground that the record establishes that there were no discriminations in prices within the meaning of Section 2(a) of the Clayton Act arising out of or in connection with the territorial differential method of selling lead pigments as employed by this respondent (*Trade Commission v. Staley Co.*, 324 U. S. 746; see, *e. g.*: Tr. 3966; Resp. Exs. 165 A-O, 166 A-B, 169 A-N, 170 A-B, 171, 162 A-D, 213 A-Q, 214).

152. This respondent excepts to item "(10-f)" on page 55 of the Recommended Decision, except for the last six words which read "and not from discriminations *per se*", as unsupported by the record.

153. This respondent excepts to the words in the first sentence of item "(10-g)" on page 56 of the Recommended Decision, under the heading "*Conclusions and Reasons*", which read "average freight increments latent", to the third sentence of said item, and to the words in the last sentence of said item which read "In the absence of excessive freight factors which would produce higher prices to the public and substantial economic disparities between customers", as unwarranted by the facts in this case or by the law (Clayton Act, Section 2[a]; Senate Committee Report No. 1502, dated February 3, 1936; *Corn Products Co. v. Comm'n.*, 324 U. S. 726; *Trade Commission v. Staley Co.*, 324 U. S. 746).

154. This respondent excepts to the second clause of the second sentence of item "(10-h)" on page 56 of the Recommended Decision, beginning with the words "and are justified", and to the remainder of said item, as being unsupported by the record.

155. This respondent excepts to item "(10-j)" on page 57 of the Recommended Decision as being unsupported by the record.

156. This respondent excepts to the word "all" in the first line of item "(10-k)" on page 57 of the Recommended Decision as unsupported by the record.

157. This respondent excepts to the first sentence of item "(10-l)" on page 57 of the Recommended Decision as unsupported by the record (See, *e. g.*, Resp. Ex. 217).

158. This respondent excepts to the word "discriminations" in the first line of item "(10-m)" on page 57 of the Recommended Decision as unsupported by the record.

159. This respondent excepts to the last two sentences of item "(10-m)" on page 57 of the Recommended Decision insofar as the same purport to state that there were any discriminations or discriminatory practices of any respondent in this proceeding or that the methods referred to were employed "co-operatively" or "collusively" by any of the respondents, upon the ground that said statements are unsupported by and directly contrary to the record.

160. This respondent excepts to items "(11-a)" and "(11-b)", under the heading "*Conclusions of Law*", on pages 57 and 58 of the Recommended Decision as unsupported by the record and contrary to law (Clayton Act, Section 2[a]).

161. This respondent excepts to the following words which are found in the third paragraph of item "(11-c)" and which appear as part of the sixth sentence of the second paragraph on page 59 of the Recommended Decision: "The Federal Trade Commission Act, based on the policy underlying the Sherman Act, seeks to enhance competition and produce differing prices, * * *", upon the ground that this statement finds no warrant in the law (See *U. S. v. U. S. Steel Corp.*, 251 U. S. 417, 451; *Swift & Co. v. U. S.*, 196 U. S. 375, 400; *U. S. v.*

Socony-Vacuum Oil Co., 310 U. S. 150, 198-99; *U. S. v. International Harvester Co.*, 274 U. S. 693; *U. S. v. Standard Oil Co. of New Jersey*, 47 F. [2d] 288; *Cement Mfrs. Assn. v. U. S.*, 268 U. S. 583, 605).

162. This respondent excepts to the words in the seventh sentence in the third paragraph of item "(11-c)" (which appears as the second paragraph on page 59 of the Recommended Decision) which read "in the absence of uneconomic or unlawful factors" as being unwarranted by the law (Clayton Act, Section 2[a]; *Trade Commission v. Staley Co.*, *supra*; Senate Committee Report No. 1502, dated February 3, 1936).

**Exceptions to Section IV of the Recommended Decision, entitled
"Recommended Findings and Conclusions":**

163. This respondent excepts to the statement in the second sentence of the first paragraph of PARAGRAPH 1-F on page 62 of the Recommended Decision to the effect that corroding pig lead differs from common pig lead in that the former is desilverized, for the same reasons as are set forth in exception 17 hereinabove.

164. This respondent excepts to the statement in the fifth sentence of the second paragraph of PARAGRAPH 1-F on page 62 of the Recommended Decision to the effect that the respondents herein produce practically all but a small quantity of the lead pigments produced and sold in the United States, upon the ground that the statement finds no support in the evidence.

165. This respondent excepts to the first sentence of PARAGRAPH 1-H on page 62 of the Recommended Decision as being unsupported by the record.

166. This respondent excepts to the second, third and fourth sentences of PARAGRAPH 1-H on pages 62 and 63 of the Recommended Decision, for the same reasons as are set forth in exception 20 hereinabove.

167. This respondent excepts to the statement in the last sentence of PARAGRAPH 1-H on page 63 of the Recommended Decision to the effect that this respondent acquired Evans Lead Company in "about 1944", for the same reasons as are set forth in exception 21 hereinabove.

168. This respondent excepts to PARAGRAPH 1-I on page 63 of the Recommended Decision, for the same reasons as are set forth in exception 22 hereinabove.

169. This respondent excepts to the statements contained in PARAGRAPH 1-J on pages 63 and 64 of the Recommended Decision to the effect that its dry white lead production was from 30% to 35%, that in 1932 its production of white lead in oil might have gone as high as 70%, that the percentages were as set forth in the tabulation at the top of page 64, that Eagle-Picher was a "potential competitor" of this respondent, that the "combined production" of this respondent and Eagle-Picher was as stated, that the percentage of Eagle-Picher has been increased by its acquisition of International's lead pigment plant and business, and to the first, second and last sentences of the last paragraph of said PARAGRAPH 1-J, for the same reasons as are set forth in exceptions 23 through 32, inclusive, hereinabove.

170. This respondent excepts to PARAGRAPH 1-K on page 64 of the Recommended Decision, for the same reasons as are set forth in exceptions 33 and 35 hereinabove.

171. This respondent excepts to the first, second and last sentences of PARAGRAPH 2-A on page 65 of the Recommended Decision, for the same reasons as are set forth in exceptions 36, 37 and 38 hereinabove.

172. This respondent excepts to PARAGRAPH 2-B on page 65 of the Recommended Decision, for the same reasons as are set forth in exception 39 hereinabove.

173. This respondent excepts to the first two sentences of PARAGRAPH 2-C on page 65 of the Recommended Decision, for the same reasons as are set forth in exception 40 hereinabove.

174. This respondent excepts to all except the last sentence of PARAGRAPH 2-D on page 66 of the Recommended Decision, for the same reasons as are set forth in exceptions 41 and 42 hereinabove.

175. This respondent excepts to PARAGRAPH 2-E on page 66 of the Recommended Decision, for the same reasons as are set forth in exception 43 hereinabove.

176. This respondent excepts to PARAGRAPH 2-F on page 66 of the Recommended Decision, for the same reasons as are set forth in exceptions 44 and 45 hereinabove.

177. This respondent excepts to the first sentence of PARAGRAPH 3 on page 67 of the Recommended Decision, for the same reasons as are set forth in exception 48 hereinabove.

178. This respondent excepts to the words "direct" and "express" in the fourth sentence of PARAGRAPH 3 on page 67 of the Recommended Decision, for the same reasons as are set forth in exception 49 hereinabove.

179. This respondent excepts to the fifth, sixth, seventh, eighth and ninth sentences of PARAGRAPH 3 on page 67 of the Recommended Decisions, for the same reasons as are set forth in exception 50 hereinabove.

180. This respondent excepts to PARAGRAPH 4-A on pages 67 and 68 of the Recommended Decision, for the same reasons as are set forth in exceptions 54, 55, 57, 58, 59 and 60 hereinabove.

181. This respondent excepts to PARAGRAPH 4-B on page 68 of the Recommended Decision, for the same reasons as are set forth in exception 61 hereinabove.

182. This respondent excepts to PARAGRAPH 4-C on pages 68 and 69 of the Recommended Decision, for the same reasons as are set forth in exception 62 hereinabove.

183. This respondent excepts to PARAGRAPH 4-D on page 69 of the Recommended Decision, for the same reasons as are set forth in exception 63 hereinabove.

184. This respondent excepts to the first, third, fourth, fifth and sixth sentences of PARAGRAPH 5-A1 on page 69 of the Recommended Decision, for the same reasons as are set forth in exceptions 65, 66 and 67 hereinabove.

185. This respondent excepts to PARAGRAPH 5-A2 on page 70 of the Recommended Decision, for the same reasons as are set forth in exceptions 68 and 69 hereinabove.

186. This respondent excepts to PARAGRAPH 5-A3 on page 70 of the Recommended Decision, for the same reasons as are set forth in exceptions 72, 73 and 74 hereinabove.

187. This respondent excepts to the first two sentences of PARAGRAPH 5-B1 on page 71 of the Recommended Decision, for the same reasons as are set forth in exception 77 hereinabove.

188. This respondent excepts to the first and last sentences of PARAGRAPH 5-B2 on page 71 of Recommended Decision, for the same reasons as are set forth in exceptions 78 and 79 hereinabove.

189. This respondent excepts to PARAGRAPH 5-B3 on pages 71 and 72 of the Recommended Decision, for the same reasons as are set forth in exception 80 hereinabove.

190. This respondent excepts to PARAGRAPH 5-B4 on page 72 of the Recommended Decision, for the same reasons as are set forth in exception 81 hereinabove.

191. This respondent excepts to the second, third and fourth sentences of the first paragraph of PARAGRAPH 5-B5 on pages 72 and 73 of the Recommended Decision, to the first two sentences of the second paragraph of said PARAGRAPH 5-B5 on page 73 of the Recommended Decision, and to the words "consignees" and "dealer" appearing in the third sentence of the third paragraph of said PARAGRAPH 5-B5 on page 73 of the Recommended Decision, for the same reasons as are set forth in exceptions 82 through 86, inclusive, hereinabove.

192. This respondent excepts to PARAGRAPH 5-B6 on page 73 of the Recommended Decision, for the same reasons as are set forth in exception 87 hereinabove.

193. This respondent excepts to PARAGRAPH 5-C1 on page 74 of the Recommended Decision, for the same reasons as are set forth in exception 88 hereinabove.

194. This respondent excepts to the first sentence of the first paragraph of PARAGRAPH 5-C2, to that portion of the second sentence of said PARAGRAPH 5-C2 which states that National put Article "II" of the supplementary code into operation some months prior to its formal adoption, and to the third, fourth and last sentences of the first paragraph of said PARAGRAPH 5-C2 on page 74 of the Recommended Decision, and to all of the second paragraph of said PARAGRAPH 5-C2 on page 75 of the Recommended Decision, for the same reasons as are set forth in exceptions 89 through 92, inclusive, hereinabove.

195. This respondent excepts to all except the first sentence of PARAGRAPH 5-C3 on page 75 of the Recommended Decision, for the same reasons as are set forth in exception 93 hereinabove.

196. This respondent excepts to the first sentence of PARAGRAPH 5-C4, to the statement in the third sentence of said PARAGRAPH 5-C4 which states that sometimes respondent, Glidden, charged dealers 5¢ more per 100 lbs. than did this respondent and others, and to the last

sentence of said PARAGRAPH 5-C4 on pages 75 and 76 of the Recommended Decision, for the same reasons as are set forth in exceptions 94, 95 and 96 hereinabove.

197. This respondent excepts to the first paragraph of PARAGRAPH 5-C5 and to the first and last sentences of the second paragraph of said PARAGRAPH 5-C5 on page 76 of the Recommended Decision, for the same reasons as are set forth in exceptions 97 and 98 hereinabove.

198. This respondent excepts to PARAGRAPH 5-C6, PARAGRAPH 5-C7, PARAGRAPH 5-C8, PARAGRAPH 5-C9, PARAGRAPH 5-C10, and PARAGRAPH 5-C11 on pages 76, 77 and 78 of the Recommended Decision, for the same reasons as are set forth in exceptions 100 through 105, inclusive, hereinabove.

199. This respondent excepts to the first, second, third and fourth sentences, and to the first portion of the fifth sentence of PARAGRAPH 5-D on page 78 of the Recommended Decision, down to but not including the words "and it was shown", for the same reasons as are set forth in exceptions 106 and 107 hereinabove.

200. This respondent excepts to the omission from the end of the last sentence of PARAGRAPH 5-E on page 79 of the Recommended Decision of the words "or used generally" as set forth in the third sentence of item "(5-e)" on page 35 of the Recommended Decision.

201. This respondent excepts to the first three sentences of PARAGRAPH 5-F on page 79 of the Recommended Decision, for the same reasons as are set forth in exception 110 hereinabove.

202. This respondent excepts to PARAGRAPH 6-A on page 79 of the Recommended Decision, for the same reasons as are set forth in exception 111 hereinabove.

203. This respondent excepts to the third sentence of the first paragraph of PARAGRAPH 6-B on page 79 of the Recommended Decision, for the same reasons as are set forth in exception 112 hereinabove.

204. This respondent excepts to that portion of the last sentence of the second paragraph of PARAGRAPH 6-B on page 80 of the Recommended Decision, beginning with the word "but" on the seventh line of said page and continuing throughout the rest of said paragraph, for the same reasons as are set forth in exception 113 hereinabove.

205. This respondent excepts to PARAGRAPH 6-D on page 80 of the Recommended Decision, for the same reasons as are set forth in exception 114 hereinabove.

206. This respondent excepts to PARAGRAPH 7-A1, PARAGRAPH 7-A2, PARAGRAPH 7-A3, PARAGRAPH 7-A4, PARAGRAPH 7-A5, PARAGRAPH 7-A6, PARAGRAPH 7-A7 and PARAGRAPH 7-A8 on pages 80, 81 and 82 of the Recommended Decision, for the same reasons as are set forth in exception 116 hereinabove.

207. This respondent excepts to PARAGRAPH 7-B1 on pages 82 and 83 of the Recommended Decision, for the same reasons as are set forth in exception 117 hereinabove.

208. This respondent excepts to PARAGRAPH 7-B2 on page 83 of the Recommended Decision, for the same reasons as are set forth in exception 118 hereinabove.

209. This respondent excepts to PARAGRAPH 7-B3 on pages 83 and 84 of the Recommended Decision, in the same manner and for the same reasons as are set forth in exception 119 hereinabove.

210. This respondent excepts to PARAGRAPH 7-B4 on page 84 of the Recommended Decision, in the same manner and for the same reasons as are set forth in exception 120 hereinabove.

211. This respondent excepts to PARAGRAPH 7-C1 on page 84 of the Recommended Decision, for the same reasons as are set forth in exception 121 hereinabove.

212. This respondent excepts to the first two sentences of PARAGRAPH 7-C2 on page 84 of the Recommended Decision and to the last sentence of said PARAGRAPH 7-C2 on page 85 of the Recommended Decision, for the same reasons as are set forth in exception 122 hereinabove.

213. This respondent excepts to PARAGRAPH 7-C3, PARAGRAPH 7-C4 and PARAGRAPH 7-C5 on page 85 of the Recommended Decision, in the same manner and for the same reasons as are set forth in exceptions 123 and 124 hereinabove.

214. This respondent excepts to PARAGRAPH 7-D1, PARAGRAPH 7-D2, PARAGRAPH 7-D3, PARAGRAPH 7-D4, PARAGRAPH 7-D5 and PARAGRAPH 7-D6 on pages 85, 86 and 87 of the Recommended Decision, for the same reasons as are set forth in exceptions 125 through 128, inclusive, hereinabove.

215. This respondent excepts to the third paragraph of PARAGRAPH 8-A on page 87 of the Recommended Decision, in the same manner and for the same reasons as are set forth in exception 129 hereinabove.

216. This respondent excepts to PARAGRAPH 8-A1 and PARAGRAPH 8-A2 on page 88 of the Recommended Decision, for the same reasons as are set forth in exceptions 130 and 131 hereinabove.

217. This respondent excepts to all except the last sentence of PARAGRAPH 8-A3 on pages 88 and 89 of the Recommended Decision, for the same reasons as are set forth in exception 132 hereinabove.

218. This respondent excepts to PARAGRAPH 8-A4 and PARAGRAPH 9-A on pages 89 and 90 of the Recommended Decision, for the same reasons as are set forth in exceptions 133 and 134 hereinabove.

219. This respondent excepts to the first and last sentences of PARAGRAPH 9-B on page 90 of the Recommended Decision, for the same reasons as are set forth in exception 135 hereinabove.

220. This respondent excepts to the first sentence of PARAGRAPH 9-C on page 90 of the Recommended Decision, for the same reasons as are set forth in exception 136 hereinabove.

221. This respondent excepts to PARAGRAPH 9-D on pages 90 and 91 of the Recommended Decision, for the same reasons as are set forth in exception 137 hereinabove.

222. This respondent excepts to the first sentence of the first paragraph and to all of the second paragraph of PARAGRAPH 9-E on page 91 of the Recommended Decision, for the same reasons as are set forth in exceptions 138 and 139 hereinabove.

223. This respondent excepts to the first and last sentences of PARAGRAPH 9-F on page 91 of the Recommended Decision, for the same reasons as are set forth in exception 142 hereinabove.

224. This respondent excepts to PARAGRAPH 10-A, PARAGRAPH 10-B and PARAGRAPH 10-C on pages 91 and 92 of the Recommended Decision, for the same reasons as are set forth in exceptions 143 through 146, inclusive, hereinabove.

225. This respondent excepts to all except the seventh sentence in PARAGRAPH 10-D on pages 92 and 93 of the Recommended Decision, for the same reasons as are set forth in exceptions 147 and 148 hereinabove.

226. This respondent excepts to PARAGRAPH 10-E on page 93 of the Recommended Decision, in the same manner and for the same reasons as are set forth in exceptions 149, 150 and 151 hereinabove.

227. This respondent excepts to all of PARAGRAPH 10-F on page 93 of the Recommended Decision, except the last six words thereof which read "and not from discriminations *per se*", for the same reasons as are set forth in exception 152 hereinabove.

235. This respondent excepts to paragraph "3" of the "*Recommended Order*" on page 98 of the Recommended Decision as unwarranted by the record herein or the Federal Trade Commission Act and "as unreasonably restrictive and beyond the scope of the Commission's authority" in accordance with the Trial Examiner's Rulings on Proposals submitted by counsel in support of the amended complaint (see Trial Examiner's Rulings on Proposals for Findings and Conclusions Submitted by Counsel, page 8).

236. This respondent excepts to paragraph "4" of the "*Recommended Order*" on page 98 of the Recommended Decision as unwarranted by the record herein, or by the Clayton Act.

237. This respondent excepts to paragraph "5" of the "*Recommended Order*" on pages 98 and 99 of the Recommended Decision as unwarranted by the record herein or by the Federal Trade Commission Act or the Clayton Act.

Exceptions to the Trial Examiner's failure to find in accordance with Proposals for Findings and Conclusions submitted by this respondent, and as set forth in the Trial Examiner's Rulings on Proposals for Findings and Conclusions Submitted by Counsel, heretofore filed:

238. This respondent excepts to the failure of the Trial Examiner to find in *haec verba* as requested in paragraphs 1 through 10, inclusive, and 26 of the Proposed Findings submitted by this respondent and to the Trial Examiner's failure to rule upon, and to find as requested in, paragraphs 29, 50, and 64 of the Proposed Findings submitted by this respondent.

239. This respondent excepts to the Trial Examiner's denial of the findings requested in paragraphs 13 through 19, inclusive, 24, 27, 34 through 42, inclusive, 44, 48, 49, 51, 52, 56, 57, 60 through 63, inclusive, 65 through 68, inclusive, 71, 76, 80, 84, 85, 86, 88 through 97, inclusive, 102 through 108, inclusive, of the Proposed Findings submitted by this respondent.

240. This respondent excepts to the denial of the Conclusions of Law requested by this respondent in its proposals and numbered 1 through 8, inclusive.

In addition, this respondent adopts as its own and incorporates herein by reference the exceptions taken by each other respondent herein to the Recommended Decision of the Trial Examiner herein, except to the extent, if any, that any one or more of them may be inconsistent with the foregoing numbered exceptions.

Pursuant to the ruling of the Trial Examiner herein, this respondent reserves the right to file further proposals and further exceptions at the time of the submission of its brief on the merits and the argument of the case before the Commission.

This respondent respectfully requests argument on the above exceptions at the time of the argument before the Commission on the merits.

Respectfully submitted,

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