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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
Plaintiff,

v.

BOOTH FISHERIES CO., *et al.*,
Defendants;

Equity No. 146-E

UNITED STATES OF AMERICA,
Plaintiff,

v.

SEATTLE PRODUCE ASSOCIATION, *et al.*,
Defendants;

Equity No. 410

UNITED STATES OF AMERICA,
Plaintiff,

v.

NORTHWEST SHOE FINDERS CREDIT
BUREAU, *et al.*,
Defendants;

Equity No. 579

1 UNITED STATES OF AMERICA,
2 Plaintiff,

3 v.

4
5 WASHINGTON WHOLESALE GROCERS
6 ASSOCIATION, *et al.*,
7 Defendants;

Civil Action No. 538

8 UNITED STATES OF AMERICA,
9 Plaintiff,

10 v.

11 WASHINGTON WHOLESALE TOBACCO
12 & CANDY DISTRIBUTORS, INC., *et al.*,
13 Defendants;

Civil Action No. 570

14
15 UNITED STATES OF AMERICA,
16 Plaintiff,

17 v.

18 SEATTLE FISH EXCHANGE, INC., *et al.*,
19 Defendants;

Civil Action No. 612

20
21 UNITED STATES OF AMERICA,
22 Plaintiff,

23 v.

24 NORTH COAST TRANSPORTATION
25 COMPANY, *et al.*,
26 Defendants;

Civil Action No. 1675

1
2 UNITED STATES OF AMERICA,
3 Plaintiff,

4 v.

5 WESTERN FARMERS ASSOCIATION,
6 Defendant;

Civil Action No. 8150

7
8 UNITED STATES OF AMERICA,
9 Plaintiff,

10 v.

11 ARDEN-MAYFAIR, INC., *et al.*,
12 Defendants;

Civil Action No. 189-71C2

13
14 UNITED STATES OF AMERICA,
15 Plaintiff,

16 v.

17 NORTHWEST COLLISION
18 CONSULTANTS,
19 Defendant.

Case No. C75-837V

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22 UNITED STATES OF AMERICA,
23 Plaintiff,

24 v.

25 NORTHERN PACIFIC RAILWAY CO., *et*
26 *al.*

27 Defendant.
28

Civil Action No. 2277

1
2 **THE UNITED STATES’ MOTION AND MEMORANDUM**
3 **REGARDING TERMINATION OF LEGACY ANTITRUST JUDGMENTS**

4 The United States moves to terminate the judgments in each of the above-captioned
5 antitrust cases pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. The judgments
6 were entered by this Court between 41 and 101 years ago. The United States has concluded that
7 because of their age and changed circumstances since their entry, these judgments no longer
8 serve to protect competition. The United States gave the public notice and the opportunity to
9 comment on its intent to seek termination of the judgments; it received no comments. For these
10 and other reasons explained below, the United States requests that the judgments be terminated.

11
12 **1. BACKGROUND**

13 From 1890, when the antitrust laws were first enacted, until the late 1970s, the United
14 States frequently sought entry of antitrust judgments whose terms never expired.¹ Such
15 perpetual judgments were the norm until 1979, when the Antitrust Division of the United States
16 Department of Justice (“Antitrust Division”) adopted the practice of including a term limit of ten
17 years in nearly all of its antitrust judgments. Perpetual judgments entered before the policy
18 change, however, remain in effect indefinitely unless a court terminates them. Although a
19 defendant may move a court to terminate a perpetual judgment, few defendants have done so.
20 There are many possible reasons for this, including that defendants may not have been willing to
21 bear the costs and time resources to seek termination, defendants may have lost track of decades-
22 old judgments, individual defendants may have passed away, or company defendants may have
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28 ¹ The primary antitrust laws are the Sherman Act, 15 U.S.C. §§ 1–7, and the Clayton Act, 15 U.S.C. §§ 12–
27. The judgments the United States seeks to terminate with the accompanying motion concern violations of one or
both of these laws.

1 | gone out of business. As a result, hundreds of these legacy judgments remain open on the
2 | dockets of courts around the country. Originally intended to protect the loss of competition
3 | arising from violations of the antitrust laws, none of these judgments likely continues to do so
4 | because of changed circumstances.
5 |

6 | The Antitrust Division has implemented a program to review and, when appropriate, seek
7 | termination of legacy judgments. The Antitrust Division’s Judgment Termination Initiative
8 | encompasses review of all its outstanding perpetual antitrust judgments. The Antitrust Division
9 | described the initiative in a statement published in the Federal Register.² In addition, the
10 | Antitrust Division established a website to keep the public apprised of its efforts to terminate
11 | perpetual judgments that no longer serve to protect competition.³ The United States believes that
12 | its outstanding perpetual antitrust judgments presumptively should be terminated; nevertheless,
13 | the Antitrust Division is examining each judgment to ensure that it is suitable for termination.
14 | The Antitrust Division is giving the public notice of—and the opportunity to comment on—its
15 | intention to seek termination of its perpetual judgments.
16 |

17 | In brief, the process the United States is following to determine whether to move to
18 | terminate a perpetual antitrust judgment is as follows:
19 |

- 20 | • The Antitrust Division reviews each perpetual judgment to determine whether it no
21 | longer serves to protect competition such that termination would be appropriate.
- 22 | • If the Antitrust Division determines a judgment is suitable for termination, it posts the
23 | name of the case and the judgment on its public Judgment Termination Initiative
24 | website, <https://www.justice.gov/atr/JudgmentTermination>.

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26 |
27 | ² Department of Justice’s Initiative to Seek Termination of Legacy Antitrust Judgments, 83 Fed. Reg.
28 | 19,837 (May 4, 2018), <https://www.gpo.gov/fdsys/granule/FR-2018-05-04/2018-09461>.

³ *Judgment Termination Initiative*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/atr/JudgmentTermination>.

- The public has the opportunity to comment on each proposed termination within thirty days of the date the case name and judgment are posted to the public website.
- Following review of public comments, the Antitrust Division determines whether the judgment still warrants termination; if so, the United States moves to terminate it.

The United States followed this process for each judgment it seeks to terminate by this motion.⁴

The remainder of this motion is organized as follows: Section II describes the Court’s jurisdiction to terminate the judgments in the above-captioned cases and the applicable legal standards for terminating the judgments. Section III explains that perpetual judgments rarely serve to protect competition and that those that are more than ten years old presumptively should be terminated. Section III also presents factual support for termination of each judgment. Section IV concludes. Appendix A attaches a copy of each final judgment that the United States seeks to terminate. Finally, Appendix B is a proposed order terminating the final judgments.

2. APPLICABLE LEGAL STANDARDS FOR TERMINATING THE JUDGMENTS

This Court has jurisdiction and authority to terminate the judgments in the above-captioned cases, copies of which are included in Appendix A. In almost all of the judgments at issue, the Court expressly retained jurisdiction. Jurisdiction was not explicitly retained in two of the eleven above-captioned cases,⁵ but it has long been recognized that courts are vested with inherent power to modify judgments they have issued which regulate future conduct.⁶ In

⁴ The United States followed this process to move several dozen other district courts to terminate legacy antitrust judgments. *See, e.g., United States v. Idaho State Pharmaceutical Ass’n, Inc. et al.*, Case 1:19-mc-10427-DCN (D. Idaho Apr. 18, 2019) (terminating four judgments); *United States v. Inter-Island Steam Navigation Co., Ltd., et al.*, Case 1:19-mc-00115 (D. Haw. April 9, 2019) (terminating five judgments); *United States v. The Nome Retail Grocerymen’s Ass’n, et al.*, Case 2:06-cv-01449 (D. Alaska Mar. 7, 2019) (terminating one judgment); *United States v. Am. Amusement Ticket Mfrs. Ass’n, et al.*, Case 1:18-mc-00091 (D.D.C. Aug. 15, 2018) (terminating nineteen judgments).

⁵ *United States v. Booth Fisheries Co.*, Equity No. 146-E (W.D. Wash. Mar. 13, 1918); *United States v. Seattle Produce Assoc.*, Equity No. 410 (W.D. Wash. Mar. 21, 1925).

⁶ *See United States v. Swift & Company*, 286 U.S. 106, 114-15 (1932) (“We are not doubtful of the power of a court of equity to modify an injunction in adaptation to changed conditions, though it was entered by consent. . .

1 addition, the Federal Rules of Civil Procedure grant the Court authority to terminate each
2 judgment. Rule 60(b)(5) and (b)(6) provides that, “[o]n motion and just terms, the court may
3 relieve a party . . . from a final judgment . . . (5) [when] applying it prospectively is no longer
4 equitable; or (6) for any other reason that justifies relief.” Fed. R. Civ. P. 60(b)(5)–(6); *see also*
5 *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431,441 (2004) (explaining that Rule 60(b)(5)
6 “encompasses the traditional power of a court of equity to modify its decree in light of changed
7 circumstances” and that “district courts should apply a ‘flexible standard’ to the modification of
8 consent decrees when a significant change in facts or law warrants their amendment”) (citation
9 omitted); *United States v. Asarco Inc.*, 430 F.3d 972, 979 (9th Cir. 2005) (Under Rule 60(b), “a
10 court may relieve a party from a final judgment when . . . it is no longer equitable that the
11 judgment should have prospective application [This] Rule codifies the courts’ traditional
12 authority, inherent in the jurisdiction of the chancery, to modify or vacate the prospective effect
13 of their decrees.”) (citations and internal quotation marks omitted). Thus, the Court may
14 terminate each judgment for any reason that justifies relief, including that the judgment no longer
15 serves its original purpose of protecting competition.⁷ Termination of these judgments is
16 warranted.

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23 . Power to modify the decree was reserved by its very terms, and so from the beginning went hand in hand with its
24 restraints. If the reservation had been omitted, power there still would be by force of principles inherent in the
25 jurisdiction of the chancery. A continuing decree of injunction directed to events to come is subject always to
26 adaptation as events may shape the need.”) (citations omitted); *see also Keith v. Volpe*, 784 F.2d 1457, 1461 (9th
27 Cir. 1986) (“[E]ven in the absence of express authorization in the decree or request from the parties, the power to
28 modify in appropriate circumstances is inherent in the equity jurisdiction of the court.”).

⁷ In light of the circumstances surrounding the judgments for which it seeks termination, the United States
does not believe it is necessary for the Court to make an extensive inquiry into the facts of each judgment to
terminate them under Fed. R. Civ. P. 60(b)(5) or (b)(6). All of these judgments would have terminated long ago if
the Antitrust Division had the foresight to limit them to ten years in duration as under its policy adopted in 1979.
Moreover, the passage of decades and changed circumstance since their entry, as described in this memorandum,
means that it is likely that the judgments no longer serve their original purpose of protecting competition.

1 **3. ARGUMENT**

2 It is appropriate to terminate the perpetual judgments in each of the above-captioned
3 cases because they no longer serve their original purpose of protecting competition. The United
4 States believes that the judgments presumptively should be terminated because their age alone
5 suggests they no longer protect competition. Other reasons, however, also weigh in favor of
6 terminating them. Under such circumstances, the Court may terminate the judgments pursuant to
7 Rule 60(b)(5) or (b)(6) of the Federal Rules of Civil Procedure.
8

9 **A. The Judgments Presumptively Should Be Terminated Because of Their Age**

10 Permanent antitrust injunctions rarely serve to protect competition. The experience of the
11 United States in enforcing the antitrust laws has shown that markets almost always evolve over
12 time in response to competitive and technological changes. These changes may make the
13 prohibitions of decades-old judgments either irrelevant to, or inconsistent with, competition.
14 These considerations, among others, led the Antitrust Division in 1979 to establish its policy of
15 generally including in each judgment a term automatically terminating the judgment after no
16 more than ten years.⁸ The judgments in the above-captioned matters—all of which are decades
17 old—presumptively should be terminated for the reasons that led the Antitrust Division to adopt
18 its 1979 policy of generally limiting judgments to a term of ten years.
19

20 **B. The Judgments Should Be Terminated Because They Are Unnecessary**

21 In addition to age, other reasons weigh heavily in favor of terminating each judgment.
22 Based on its examination of the judgments, the Antitrust Division has determined that each
23 should be terminated for one or more of the following reasons:
24

- 25
- 26 • All requirements of the judgment have been met such that it has been satisfied in full.
27 In such a case, termination of the judgment is a housekeeping action: it will allow the

28 ⁸ U.S. DEP'T OF JUSTICE, ANTITRUST DIVISION MANUAL at III-147 (5th ed. 2008), <https://www.justice.gov/atr/division-manual>.

1 Court to clear its docket of a judgment that should have been terminated long ago but
2 for the failure to include a term automatically terminating it upon satisfaction of its
3 terms.

- 4 • Most defendants likely no longer exist. With the passage of time, many of the
5 company defendants in these actions likely have gone out of existence, and many
6 individual defendants likely have passed away. To the extent that defendants no
7 longer exist, the related judgment serves no purpose and should be terminated.
- 8 • The judgment prohibits acts that the antitrust laws already prohibit, such as fixing
9 prices, allocating markets, rigging bids, or engaging in group boycotts. These
10 prohibitions amount to little more than an admonition that defendants must not violate
11 the law. Absent such terms, defendants still are deterred from violating the law by
12 the possibility of imprisonment, significant criminal fines, and treble damages in
13 private follow-on litigation; a mere admonition to not violate the law adds little
14 additional deterrence. To the extent a judgment includes terms that do little to deter
15 anticompetitive acts, it should be terminated.

16 Additional reasons specific to each judgment are set forth below:

17 **1. *United States v. Booth Fisheries Co., et al.*, Equity No. 146-E (W.D. Wash. Mar. 13, 1918)**

18 The Court entered the judgment in 1918. The judgment prohibited the defendants from
19 entering into any agreement to fix prices for the sale of halibut, and enjoined certain of the
20 defendants from jointly operating halibut business facilities and from controlling or owning of
21 certain companies or property. *See* Appendix A-2-6. The Court should terminate this judgment
22 because of its age, and also because the terms largely prohibit acts the antitrust laws already
23 prohibit (price fixing).

24 **2. *United States v. Seattle Produce Assoc., et al.*, Equity No. 410 (W.D. Wash. Mar. 21, 1925)**

25 The Court entered the judgment in 1925. The judgment prohibited the defendants from
26 taking part in a price-fixing conspiracy or otherwise agreeing to fix prices or other terms of sale
27 of produce, and ordered the Seattle Produce Association to be dissolved. *See* Appendix A-7-10.
28 The Court should terminate this judgment because of its age, and also because the dissolution of

1 the Seattle Produce Association was accomplished, and the other terms largely prohibit acts the
2 antitrust laws already prohibit (price fixing).

3 **3. *United States v. Northwest Shoe Finders Credit Bureau, et al.***, Equity No. 579 (W.D.
4 Wash. Jan. 11, 1928)

5 The Court entered the judgment in 1928, retaining jurisdiction in paragraph (i) of the
6 judgment. The judgment prohibited the defendants from fixing prices or otherwise agreeing
7 upon rules that would restrict competition between any of the defendants. *See* Appendix A-11-
8 14. The Court should terminate this judgment because of its age, and also because the terms
9 largely prohibit acts the antitrust laws already prohibit (price fixing).

10 **4. *United States v. Washington Wholesale Grocers Association, et al.***, Civil No. 538 (W.D.
11 Wash. Aug. 10, 1942)

12 The Court entered the judgment in 1942, retaining jurisdiction in Section VII of the
13 judgment. The judgment prohibited the defendants from agreeing to (1) fix prices for grocery
14 products, (2) allocate business among the defendants, (3) circulate or compile any suggested
15 price list, or (4) prevent anyone from engaging in the distribution of any grocery product or from
16 selling to or buying from anyone. The judgment also required the dissolution of the wholesale
17 grocers association formed by the defendants. *See* Appendix A-15-19. The Court should
18 terminate this judgment because of its age, and also because the wholesale grocers association
19 has been dissolved and the other terms largely prohibit acts the antitrust laws already prohibit
20 (price fixing and customer allocation).

21 **5. *United States v. Washington Wholesale Tobacco & Candy Distributors, Inc, et al.***, Civil
22 No. 570 (W.D. Wash. Aug. 24, 1942)

23 The Court entered the judgment in 1942, retaining jurisdiction in Section VIII of the
24 judgment. The judgment prohibited the defendants from agreeing to fix prices for tobacco
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1 products, allocate customers, or circulate any suggested price list. The judgment also required
2 the dissolution of the tobacco bureau formed by the defendants. *See* Appendix A-20-24. The
3 Court should terminate this judgment because of its age, and also because the terms largely
4 prohibit acts the antitrust laws already prohibit (price fixing and customer allocation), almost all
5 of the tobacco company defendants no longer exist, and the tobacco bureau has been dissolved.

6
7 6. *United States v. Seattle Fish Exchange, Inc., et al.*, Civil No. 612 (W.D. Wash. Nov. 10,
8 1942)

9 The Court entered the judgment in 1942, retaining jurisdiction in Section IX of the
10 judgment. Among other things, the judgment prohibited the defendants from fixing prices or
11 rigging bids for fish or packaging for fish, and from allocating customers. *See* Appendix A-25-
12 29. The Court should terminate this judgment because of its age, and also because the terms
13 largely prohibit acts the antitrust laws already prohibit (price fixing, bid rigging, and customer
14 allocation), most of the company defendants (including the Seattle Fish Exchange) are no longer
15 in business, and all of the individual defendants are likely deceased.

16
17 7. *United States v. North Coast Transportation Co., et al.*, Civil No. 1675 (W.D. Wash. Aug.
18 11, 1947)

19 The Court entered the judgment in 1947, retaining jurisdiction in Section VIII of the
20 judgment. The judgment prohibits each of the transportation company defendants from entering
21 into or carrying out restrictive agreements with carriers whereby such carriers are required (as a
22 condition to the enjoyment of joint fares, through routes, or joint terminal privileges) to refrain
23 from cooperating with competitors of defendant North Coast. The judgment also required North
24 Coast to divest its ownership interests in one of the other two defendants. *See* Appendix A-30-
25 34. The Court should terminate this judgment because of its age, and also because the required
26 divestiture took place, and two of the three defendants likely no longer exist.
27
28

1 8. *United States v. Northern Pacific Railway Co., et al.*, Civil No. 2277 (W.D. Wash. Jan. 28,
2 1959)

3 The Court entered the judgment in 1959, retaining jurisdiction in Section VII of the
4 judgment. The judgment prohibited the defendants from entering into or enforcing conditions in
5 their industrial leases requiring that the lessee ship any outgoing or incoming freight using
6 defendant Northern Pacific's railroad, or over the railroad lines designated by either defendant.
7
8 *See* Appendix A-35-41. The Court should terminate this judgment because of its age, and also
9 because market conditions have changed in the sixty years since the judgment was entered,
10 including substantial changes in the regulatory regime governing railroads.

11 9. *United States v. Western Farmers Association*, Civil No. 8150 (W.D. Wash. Dec. 8, 1969)

12
13 The Court entered the judgment in 1969, retaining jurisdiction in Section IX of the
14 judgment. As a condition of the defendant's acquisition of a competitor, the judgment required
15 divestiture of a trade name and all associated business and good will. The judgment also
16 required the defendant to obtain clearance for subsequent acquisitions for a period of ten years.
17
18 Finally, the judgment enjoined the defendant from using any of the realty acquired in the
19 transaction for purposes of producing, processing, or selling fryer chickens. *See* Appendix A-42-
20 45. The Court should terminate this judgment because the divestiture was accomplished as
21 required and the ten-year notice period has passed, so only the realty use restriction remains in
22 effect. At fifty years old, such a restriction is well past the age where an antitrust judgment
23 presumptively becomes either irrelevant to, or inconsistent with, competition.

24
25 10. *United States v. Arden-Mayfair, Inc., et al.*, Civil No. 189-71C2 (W.D. Wash. Mar. 23,
26 1973)

27 The Court entered the judgment in 1973, retaining jurisdiction in Section X of the
28 judgment. The judgment prohibited the defendants from fixing wholesale prices of dairy

1 products, from allocating customers, or from engaging in bid-rigging activities. In addition, the
2 judgment enjoined defendants from communicating to or exchanging with other processor-
3 distributors any information concerning prices prior to the public disclosure of such information.
4
5 *See* Appendix A-46-53. The Court should terminate this judgment because of its age, and also
6 because the terms largely prohibit acts the antitrust laws already prohibit (price fixing, bid
7 rigging, and customer allocation).

8 11. *United States v. Northwest Collision Consultants*, No. C75-837V (W.D. Wash. Oct. 31,
9 1977)

10 The Court entered the judgment in 1977, retaining jurisdiction in Section VII of the
11 judgment. The judgment prohibited the defendant from engaging in price-fixing activities
12 concerning automotive body repair work. *See* Appendix A-54-61. The Court should terminate
13 this judgment because of its age, and also because the terms largely prohibit acts the antitrust
14 laws already prohibit (price fixing).

15
16 **C. There Has Been No Public Opposition to Termination**

17 The United States has provided adequate notice to the public regarding its intent to seek
18 termination of the judgments. On April 25, 2018, the Antitrust Division issued a press release
19 announcing its efforts to review and terminate legacy antitrust judgments.⁹ On September 7,
20 2018, the Antitrust Division listed the judgments in the above-captioned cases on its public
21 website, describing its intent to move to terminate the judgments.¹⁰ The notice identified each
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26 ⁹ Press Release, *Department of Justice Announces Initiative to Terminate “Legacy” Antitrust Judgments*,
27 U.S. DEP’T OF JUSTICE (April 25, 2018), <https://www.justice.gov/opa/pr/departement-justice-announces-initiative-terminate-legacy-antitrust-judgments>.

28 ¹⁰ *Judgment Termination Initiative*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/atr/JudgmentTermination>; *Judgment Termination Initiative: Washington, Western District*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/atr/judgment-termination-initiative-washington-western-district> (last updated Oct. 2, 2018).

1 case, linked to the judgment, and invited public comment. No comments were received.

2 **4. CONCLUSION**

3 For the foregoing reasons, the United States believes termination of the judgments in
4 each of the above-captioned cases is appropriate, and respectfully requests that the Court enter an
5 order terminating them. A proposed order terminating the judgments in the above-captioned
6 cases is attached as Appendix B.
7

8 DATED this 26th day of June, 2019.

9 Respectfully submitted,

10 BRIAN T. MORAN
11 United States Attorney

12 *s/ Sarah K. Morehead*
13 _____
14 SARAH K. MOREHEAD, WSBA No. 29680
15 Assistant United States Attorney
16 Western District of Washington
17 United States Attorney's Office
18 700 Stewart Street, Suite 5220
19 Seattle, Washington 98101-1271
20 Phone: 206-553-7970
21 E-mail: sarah.morehead@usdoj.gov

22 *s/ Don P. Amlin*
23 _____
24 DON P. AMLIN, DC Bar No. 978349
25 Trial Attorney
26 Antitrust Division
27 United States Department of Justice
28 450 Fifth St, NW; Suite 8010
Washington, DC 20530
Phone: (202) 598-8180
Email: don.amlin@usdoj.gov