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9  
10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA

12  
13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 PITTSBURGH-ERIE SAW CO.,  
17 FRANK E. MARKELL,  
18 CHARLES H. JULL,  
19 WILSON W. MCCLAREN, AND  
LESTER E. WALTON,

20 Defendants.  
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Misc. No. 2:19-MC-00119-VAP

**UNITED STATES' MOTION TO  
TERMINATE LEGACY  
ANTITRUST JUDGMENT AND  
MEMORANDUM IN SUPPORT  
THEREOF**

1 **I. INTRODUCTION**

2 The United States respectfully moves to terminate the judgment in the above-  
3 captioned antitrust case pursuant to Rule 60(b) of the Federal Rules of Civil Procedure.  
4 The judgment was entered by this Court 90 years ago.<sup>1</sup> The United States has concluded  
5 that because of its age and changed circumstances since its entry, the judgment no longer  
6 serves to protect competition. The United States gave the public notice and the  
7 opportunity to comment on its intent to seek termination of the judgment; it received no  
8 comments opposing termination. For this and other reasons explained below, the United  
9 States requests that the judgment be terminated.

10 **II. BACKGROUND**

11 From 1890, when the antitrust laws were first enacted, until the late 1970s, the  
12 United States frequently sought entry of antitrust judgments whose terms never expired.<sup>2</sup>  
13 Such perpetual judgments were the norm until 1979, when the Antitrust Division of the  
14 United States Department of Justice (“Antitrust Division”) adopted the practice of  
15 including a term limit of ten years in nearly all of its antitrust judgments. Perpetual  
16 judgments entered before the policy change, however, remain in effect indefinitely unless  
17 a court terminates them. Although a defendant may move a court to terminate a perpetual  
18 judgment, few defendants have done so. There are many possible reasons for this,  
19 including that defendants may not have been willing to bear the costs and time resources  
20 to seek termination, defendants may have lost track of decades-old judgments, individual  
21 defendants may have passed away, or company defendants may have gone out of  
22 business. As a result, hundreds of these legacy judgments remain open on the dockets of  
23 courts around the country. Originally intended to protect the loss of competition arising  
24 from violations of the antitrust laws, none of these judgments likely continues to do so  
25 because of changed circumstances.

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27 <sup>1</sup> This case was originally filed as case No. Q-86-H in the former Southern District  
28 of California prior to the establishment of the Central District of California in 1966.

<sup>2</sup> 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 judgment the United States seeks to terminate with this motion concerns violations of the Sherman Act.

1 The Antitrust Division has implemented a program to review and, when  
2 appropriate, seek termination of legacy judgments. The Antitrust Division's Judgment  
3 Termination Initiative encompasses review of all its outstanding perpetual antitrust  
4 judgments. The Antitrust Division described the initiative in a statement published in the  
5 Federal Register.<sup>3</sup> In addition, the Antitrust Division established a website to keep the  
6 public informed of its efforts to terminate perpetual judgments that no longer serve to  
7 protect competition.<sup>4</sup> The United States believes that its outstanding perpetual antitrust  
8 judgments presumptively should be terminated; nevertheless, the Antitrust Division is  
9 examining each judgment to ensure that it is suitable for termination. The Antitrust  
10 Division is giving the public notice of—and the opportunity to comment on—its intention  
11 to seek termination of its perpetual judgments.

12 In brief, the process the United States is following to determine whether to move to  
13 terminate a perpetual antitrust judgment is as follows:

- 14 • The Antitrust Division reviews each perpetual judgment to determine whether it  
15 no longer serves to protect competition such that termination would be  
16 appropriate.
- 17 • If the Antitrust Division determines a judgment is suitable for termination, it  
18 posts the name of the case and the judgment on its public Judgment  
19 Termination Initiative website,  
20 <https://www.justice.gov/atr/JudgmentTermination>.
- 21 • The public has the opportunity to comment on each proposed termination  
22 within thirty days of the date the case name and judgment are posted to the  
23 public website.

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27 <sup>3</sup> Department of Justice's Initiative to Seek Termination of Legacy Antitrust  
28 Judgments, 83 Fed. Reg. 19,837 (May 4, 2018), <https://www.gpo.gov/fdsys/granule/FR-2018-05-04/2018-09461>.

<sup>4</sup> *Judgment Termination Initiative*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/atr/JudgmentTermination>.

- 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.<sup>5</sup>

The remainder of this motion is organized as follows: Section III describes the Court's jurisdiction to terminate the judgment and the applicable legal standards for terminating the judgment. Section IV argues that perpetual judgments rarely serve to protect competition and that those that are more than ten years old presumptively should be terminated. Section IV also discusses specific circumstances justifying termination. Section V concludes. Appendix A attaches a copy of the judgment that the United States seeks to terminate with this motion. A proposed order terminating the judgment accompanies this motion.

### **III. APPLICABLE LEGAL STANDARDS FOR JUDGMENT TERMINATION**

This Court has jurisdiction and authority to terminate the judgment. The judgment provides that the Court retains jurisdiction. In addition, the Federal Rules of Civil Procedure grant the Court authority to terminate the judgment. According to Rule 60(b)(5) and (b)(6), “[o]n motion and just terms, the court may relieve a party . . . from a final judgment . . . (5) [when] applying it prospectively is no longer equitable; or (6) for any other reason that justifies relief.” Fed. R. Civ. P. 60(b)(5)–(6); *see also Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 441 (2004) (explaining that Rule 60(b)(5) “encompasses the traditional power of a court of equity to modify its decree in light of

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<sup>5</sup> The United States followed this process to move several dozen other district courts to terminate legacy antitrust judgments. *See, e.g., In re: Termination of Legacy Antitrust Judgments in the District of Idaho*, Case 1:19-mc-10427-DCN (D. Idaho Apr. 18, 2019); *United States v. Inter-Island Steam Navigation Co., et al.*, Case 1:19-mc-00115 (D. Haw. April 9, 2019) (terminating five judgments); *United States v. Odom Co., et al.*, Case 3:72-cv-00013 (D. Alaska Mar. 29, 2019) (terminating one judgment); *United States v. The Nome Retail Grocymen'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); *In re: Termination of Legacy Antitrust Judgments*, No. 2:18-mc-00033 (E.D. Va. Nov. 21, 2018) (terminating five judgments).

1 changed circumstances” and that “district courts should apply a ‘flexible standard’ to the  
2 modification of consent decrees when a significant change in facts or law warrants their  
3 amendment”) (citation omitted); *United States v. Asarco Inc.*, 430 F.3d 972, 979 (9th Cir.  
4 2005) (Under Rule 60(b), “a court may relieve a party from a final judgment when . . . it  
5 is no longer equitable that the judgment should have prospective application. . . . [This]  
6 Rule codifies the courts’ traditional authority, inherent in the jurisdiction of the chancery,  
7 to modify or vacate the prospective effect of their decrees.”) (citations and internal  
8 quotation marks omitted). Given its jurisdiction and authority, the Court may terminate  
9 the judgment for any reason that justifies relief, including that the judgment no longer  
10 serves its original purpose of protecting competition.<sup>6</sup> Termination of the judgment is  
11 warranted.

#### 12 **IV. ARGUMENT**

13 It is appropriate to terminate the judgment because it no longer serves its original  
14 purpose of protecting competition. The United States believes that this perpetual  
15 judgment presumptively should be terminated because its age alone suggests it no longer  
16 protects competition. Other reasons, however, also weigh in favor of terminating it.  
17 Under such circumstances, the Court may terminate the judgment pursuant to  
18 Rule 60(b)(5) or (b)(6) of the Federal Rules of Civil Procedure.

##### 19 **A. The Judgment Presumptively Should Be Terminated Because of Age**

20 Permanent antitrust injunctions rarely serve to protect competition. The experience  
21 of the United States in enforcing the antitrust laws has shown that markets almost always  
22 evolve over time in response to competitive and technological changes. These changes  
23 may make the prohibitions of decades-old judgments either irrelevant to, or inconsistent  
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25 <sup>6</sup> In light of the circumstances surrounding the judgment for which it seeks  
26 termination, the United States does not believe it is necessary for the Court to make an  
27 extensive inquiry into the facts of the judgment to terminate it under Fed. R. Civ. P.  
28 60(b)(5) or (b)(6). The judgment would have terminated long ago if the Antitrust  
Division had the foresight to limit it to ten years in duration as under its policy adopted in  
1979. Moreover, the passage of decades and changed circumstance since its entry, as  
described in this memorandum, means that it is likely that the judgment no longer serves  
its original purpose of protecting competition.

1 with, competition. These considerations, among others, led the Antitrust Division in  
2 1979 to establish its policy of generally including in each judgment a term automatically  
3 terminating the judgment after no more than ten years.<sup>7</sup> The judgment—which is  
4 decades old—presumptively should be terminated for the reasons that led the Antitrust  
5 Division to adopt its 1979 policy of generally limiting judgments to a term of ten years.

6 **B. The Judgment Should Be Terminated Because It Is Unnecessary**

7 In addition to age, other reasons weigh heavily in favor of terminating the  
8 judgment. Based on its examination of the judgment, the Antitrust Division has  
9 determined that it should be terminated for the following reason:

- 10 • Market conditions likely have changed such that the judgment no longer  
11 protects competition or may even be anticompetitive. For example, the  
12 subsequent development of new products may render a market more  
13 competitive than it was at the time the judgment was entered or may even  
14 eliminate a market altogether, making the judgment irrelevant. In some  
15 circumstances, a judgment may impede the kind of adaptation to change that is  
16 the hallmark of competition, rendering it anticompetitive. Such judgments  
17 clearly should be terminated.

18 This consent decree was entered in 1929. Section 5 retains jurisdiction, including  
19 with regard to the United States' enforcement of the judgment. The decree generally  
20 enjoins monopolization and attempted monopolization of the U.S. market for saw blades  
21 and frames. It also enjoins certain means and methods of the 1929 monopolization that  
22 the decree was intended to remedy: discriminatory pricing; interference with existing  
23 contracts; disparagement of competing products; exclusive dealing; requiring customers  
24 and selling agents not to buy or sell competing products; and hiring competitors'  
25 employees, granting preferences, and giving free services for the purpose of excluding  
26 competitors. The judgment should be terminated because after ninety years market  
27 conditions likely have changed such that the judgment no longer protects competition.

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<sup>7</sup> U.S. DEP'T OF JUSTICE, ANTITRUST DIVISION MANUAL at III-147 (5th ed. 2008),  
<https://www.justice.gov/atr/division-manual>.

1 Should a violation recur, the Antitrust Division has resources to investigate and  
2 prosecute.

3 **C. There Has Been No Public Opposition to Termination**

4 The United States has provided adequate notice to the public regarding its intent to  
5 seek termination of the judgment. On April 25, 2018, the Antitrust Division issued a  
6 press release announcing its efforts to review and terminate legacy antitrust judgments.<sup>8</sup>  
7 On March 22, 2019, the Antitrust Division listed the judgment on its public website,  
8 describing its intent to move to terminate it.<sup>9</sup> The notice identified the case, linked to the  
9 judgment, and invited public comment. No comments were received opposing  
10 termination.

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25 <sup>8</sup> Press Release, *Department of Justice Announces Initiative to Terminate*  
26 *“Legacy” Antitrust Judgments*, U.S. DEP’T OF JUSTICE (April 25, 2018),  
27 <https://www.justice.gov/opa/pr/departments-justice-announces-initiative-terminate-legacy-antitrust-judgments>.

28 <sup>9</sup> *Judgment Termination Initiative*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/atr/JudgmentTermination>; *Judgment Termination Initiative: Central District of California*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/atr/judgment-termination-initiative-california-central-district> (last updated Mar. 22, 2019).

1 **V. CONCLUSION**

2 For the foregoing reasons, the United States believes termination of the judgment  
3 in the above-captioned case is appropriate and respectfully requests that the Court enter  
4 an order terminating it. A proposed order terminating the judgment in the above-  
5 captioned case accompanies this motion.

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7 Respectfully submitted,

8 DATE: 6/11/2019

/s/

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15 /s/

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