

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS,
EL PASO DIVISION

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WESTERN DISTRICT OF TEXAS
BY: [Signature]

**UNITED STATES OF
AMERICA,
Plaintiff,**

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v.

EP-75-CA-106

**KAHN'S BAKERY, INC., MEAD
FOODS, INC., and RAINBO
BAKING CO. OF EL PASO,
Defendants.**

**ORDER GRANTING MOTION TO TERMINATE LEGACY
ANTITRUST JUDGMENT**

On this day, the Court considered the Government's "Motion to Terminate Legacy Antitrust Judgment" [hereinafter "Motion"], filed on February 7, 2019, in the above-captioned cause. Therein, the Government moves to terminate the judgment in this antitrust case pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, having concluded that "because of its age and changed circumstances since its entry, the judgment—which was issued 41 years ago—no longer serves to protect competition." Mot. 1. After due consideration, the Court is of the opinion that the Motion should be granted for the reasons that follow.

I. FACTUAL AND PROCEDURAL BACKGROUND

On June 3, 1975, the Government filed its Complaint against Defendants Kahn's Bakery, Incorporated, Mead Foods, Incorporated, and Rainbo Baking Company of El Paso [hereinafter "Defendants"], who were the "principal processors and sellers of bread products in the El Paso area."

Compl. 3. In its Complaint, the Government alleged that "[b]eginning at least as early as 1954 . . . and continuing thereafter at least until January 1, 1974, the [D]efendants and co-conspirators have engaged in a combination and conspiracy in unreasonable restraint of . . . interstate trade and commerce." *Id.* at 4. Specifically, the Government alleged that Defendants and co-conspirators agreed "(a) to fix, raise, and maintain the prices of bakery products sold by the [D]efendants as wholesale bakers to retail outlets in the El Paso area; and (b) to submit collusive and rigged bids to government agencies and other institutions requesting competitive bids for the sale of bakery products." *Id.* at 5. Accordingly, the Government brought a claim pursuant to the Sherman Act in order to prevent and restrain antitrust violations by Defendants. *Id.* at 1. Additionally, the Government brought claims pursuant to the Clayton Act and False Claims Act to recover

damages in connection with the Government's capacity as purchaser of bread products for use by Federal installations. *Id.*

On August 19, 1977, District Judge John H. Wood, Jr. entered a Final Judgment. The judgment perpetually enjoins Defendants from bid rigging and price fixing. Final J. 3. Furthermore, the Final Judgment enjoins each Defendant from communicating bread prices to any other Defendant for a period of ten years and, additionally, enjoins each Defendant from communicating future prices to any other Defendant. *Id.* Additionally, the Final Judgment requires Defendants to pay the Government the aggregate sum of \$110,001, paid in installments for a period of six consecutive years. *Id.* at 7. Finally, the Final Judgment, contains terms to ensure compliance with the Final Judgment, including the requirement, for a period of five years, that each Defendant submit affidavits certifying that its bids and price lists are not the product of agreement with other bread sellers and the requirement that Defendants provide the Government access to relevant records upon written request by the Government. *Id.* at 5–6. Over forty-one years later, on February 7, 2019, the Government filed its Motion, requesting that the judgment be terminated.

II. LEGAL STANDARD

Pursuant to Federal Rule of Civil Procedure 60(b)(5) and (b)(6), “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.” The Fifth Circuit has recognized that “Rule 60(b) is to be construed liberally to do substantial justice.” *Frew v. Janek*, 780 F.3d 320, 327 (5th Cir. 2015) (quoting *Johnson Waste Materials v. Marshall*, 611 F.2d 593, 600 (5th Cir. 1980)). Furthermore, “[t]he rule is broadly phrased and many of the itemized grounds are overlapping, freeing Courts to do justice in hard cases where the circumstances generally measure up to one or more of the itemized grounds.” *Id.*

III. DISCUSSION

The Government files its Motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure and seeks to terminate the judgment in this case. In its Motion, the Government explains that, since 1979, the Antitrust Division has generally followed a policy of including in each judgment a term that automatically terminates the judgment after no more than ten years. Mot. 1. This policy is based on the Government’s realization “that markets almost always evolve over time in response to competitive and technological

changes in ways that render long-lived judgments no longer protective of competition or even anticompetitive.” *Id.* at 1–2. Because hundreds of judgments entered prior to the 1979 policy contained no termination clause and remain in force today, the Government has “implemented a program to review and, when appropriate, seek termination of these perpetual legacy judgments, including the judgment in this case.” *Id.* at 2 (first citing Department of Justice’s Initiative to Seek Termination of Legacy Antitrust Judgments, 83 Fed. Reg. 19,837 (May 4, 2018), <https://www.gpo.gov/fdsys/granule/FR-2018-05-04/2018-09461>); and then citing *Judgment Termination Initiative*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/atr/JudgmentTermination> (last updated Feb. 1, 2019)). Courts in other districts have granted the Government’s requests to terminate legacy antitrust judgments. *In re: Termination of Legacy Antitrust Judgments*, No. 2:18-mc-00033 (E.D. Va. Nov. 21, 2018) (terminating five legacy antitrust judgments); *United States v. Am. Amusement Ticket Mfrs. Ass’n*, Case 1:18-mc-00091 (D.D.C. Aug. 15, 2018) (terminating nineteen legacy antitrust judgments).

The Government provides several reasons for terminating the judgment in the instant case. First, the Government argues, because the

judgment is over forty-one years old, it “presumptively should be terminated because of its age.” Mot. 3. Furthermore, “many of the judgment’s requirements have elapsed or been satisfied,” including the ten-year prohibition against communicating prices and the order to pay damages. *Id.* Additionally, the perpetual terms prohibiting Defendants from bid rigging and price fixing “target that which the antitrust laws already prohibits.” *Id.* Based on the Government’s assessment that the judgment should be terminated, the Government “gave the public notice of—and the opportunity to comment on—its intention to seek termination of the judgment.” *Id.* at 4; *Legacy Antitrust Judgment: U.S. v. Kahn’s Bakery, Inc., et al.*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/atr/legacy-antitrust-judgment-kahns-bakery-inc-et-al> (last updated Sept. 17, 2018). The Government received no comments. *Id.*

After due consideration, the Court concludes that the Government has demonstrated that the Final Judgment no longer serves to protect competition. In light of the rationale for the Government’s Judgment Termination Initiative and the reasons offered by the Government for terminating the Final Judgment in this case, including the age of the Final Judgment, the lapse and satisfaction of its key terms, and the absence of any

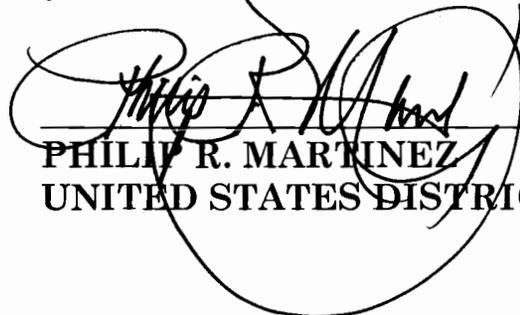
opposition to the Government's position, the Court is of the opinion that it is appropriate to terminate the Final Judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure.

IV. CONCLUSION

Accordingly, **IT IS ORDERED** that the Government's "Motion to Terminate Legacy Antitrust Judgment" is **GRANTED**.

IT IS FURTHER ORDERED that the **FINAL JUDGMENT** entered in this case is **TERMINATED**.

SIGNED this 26 day of March, 2019.



PHILIP R. MARTINEZ
UNITED STATES DISTRICT JUDGE