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NORTHERN DISTRICT OF CALIFORNIA

8 UNITED STATES DISTRICT COURT FOR
9 THE NORTHERN DISTRICT OF CALIFORNIA

10 CV 19 80 147 MISC TSH

Misc. No.

12 IN RE: TERMINATION OF LEGACY
13 ANTITRUST JUDGMENTS IN THE
14 NORTHERN DISTRICT OF CALIFORNIA

15 UNITED STATES' MOTION TO
16 TERMINATE LEGACY ANTITRUST
17 JUDGMENTS AND
18 MEMORANDUM IN SUPPORT
19 THEREOF

16 UNITED STATES OF AMERICA,
17 Plaintiff,

18 v.

Civil No. 12539

18 COAL DEALERS ASS'N OF CAL., *et al.*,
19 Defendants;

20 UNITED STATES OF AMERICA,
21 Plaintiff,

22 v.

Civil No. 13884

23 OTIS ELEVATOR CO., *et al.*,
24 Defendants;

25 UNITED STATES OF AMERICA,
26 Plaintiff,

27 v.

Civil No. 13303

28 FEDERAL SALT CO., *et al.*,
Defendants;

1 UNITED STATES OF AMERICA,
2 Plaintiff,

3 v.

4 CALIFORNIA RETAIL HARDWARE &
5 IMPLEMENT ASS'N, *et al.*,
Defendants;

Civil No. 1835

6 UNITED STATES OF AMERICA,
7 Plaintiff,

8 v.

9 FERNALD CO., *et al.*,
10 Defendants;

Civil No. 1944

11 UNITED STATES OF AMERICA,
12 Plaintiff,

13 v.

14 STANDARD OIL CO. OF CAL., *et al.*,
Defendants;

Civil No. 2542-S

15 UNITED STATES OF AMERICA,
16 Plaintiff,

17 v.

18 ASSOCIATED MARBLE COS., *et al.*,
19 Defendants;

Civil No. 21848-L

20 UNITED STATES OF AMERICA,
21 Plaintiff,

22 v.

23 CALIFORNIA RICE INDUS., *et al.*,
24 Defendants;

Civil No. 21990-S

25 UNITED STATES OF AMERICA,
26 Plaintiff,

27 v.

28 MONTEREY SARDINE INDUS.,
Defendant;

Civil No. 21991-W

1 UNITED STATES OF AMERICA,
2 Plaintiff,

3 v.

4 FREIGHTWAYS, *et al.*,
5 Defendants;

Civil No. 22075-R

6 UNITED STATES OF AMERICA,
7 Plaintiff,

8 v.

9 PAC. GREYHOUND LINES, *et al.*,
10 Defendants;

Civil No. 25267-S

11 UNITED STATES OF AMERICA,
12 Plaintiff,

13 v.

14 N. CAL. PLUMBING & HEATING WHOLESALERS
15 ASS'N, *et al.*,
16 Defendants;

Civil No. 29170

17 UNITED STATES OF AMERICA,
18 Plaintiff,

19 v.

20 SWITZER BROS., *et al.*,
21 Defendants;

Civil No. 29860

22 UNITED STATES OF AMERICA,
23 Plaintiff,

24 v.

25 GOLDEN GATE CHAPTER, NAT'L
26 ELECS. DISTRIBS. ASS'N, *et al.*,
27 Defendants;

Civil No. 31567

28 UNITED STATES OF AMERICA,
Plaintiff,

v.

NAT'L ASS'N OF VERTICAL TURBINE PUMP
MFRS., *et al.*,
Defendants;

Civil No. 29446

1 UNITED STATES OF AMERICA,
2 Plaintiff,

3 v.

4 R.P. OLDHAM CO., *et al.*,
5 Defendants;

Civil No. 36385

6 UNITED STATES OF AMERICA,
7 Plaintiff,

8 v.

9 BLUE DIAMOND CORP., *et al.*,
10 Defendants;

Civil No. 38703

11 UNITED STATES OF AMERICA,
12 Plaintiff,

13 v.

14 WILSON & GEO. MEYER & CO., *et al.*,
15 Defendants;

Civil No. 38606

16 UNITED STATES OF AMERICA,
17 Plaintiff,

18 v.

19 W. WINTER SPORTS REPRESENTATIVES ASS'N,
20 Defendant;

Civil No. 40567

21 UNITED STATES OF AMERICA,
22 Plaintiff,

23 v.

24 N. CAL. PHARM. ASS'N,
25 Defendant;

Civil No. 39629

26 UNITED STATES OF AMERICA,
27 Plaintiff,

28 v.

JOS. SCHLITZ BREWING CO., *et al.*,
Defendants;

Civil No. 42127

1 UNITED STATES OF AMERICA,
2 Plaintiff,

3 v.

4 COAST MFG. & SUPPLY CO.,
5 Defendant;

Civil No. 43028

6 UNITED STATES OF AMERICA,
7 Plaintiff,

8 v.

9 KIMBERLY-CLARK CORP.,
10 Defendant;

Civil No. 40529

11 UNITED STATES OF AMERICA,
12 Plaintiff,

13 v.

14 DYMO INDUS.,
15 Defendant;

Civil No. 42672

16 UNITED STATES OF AMERICA,
17 Plaintiff,

18 v.

19 SWIFT INSTRUMENTS, INC.,
20 Defendant;

Civil No. C-73-0300 CBR

21 UNITED STATES OF AMERICA,
22 Plaintiff,

23 v.

24 UNITED SCI. CO.,
25 Defendant;

Civil No. C-73-0299 ACW

26 UNITED STATES OF AMERICA,
27 Plaintiff,

28 v.

H.S. CROCKER CO., *et al.*,
Defendants;

Civil No. C-74-0560 CBR

1 UNITED STATES OF AMERICA,
2 Plaintiff,

3 v.

4 ALAMEDA CTY. VETERINARY MED. ASS'N,
5 Defendant;

Civil No. 75-2398-CBR

6 UNITED STATES OF AMERICA,
7 Plaintiff,

8 v.

9 FEDERATED DEP'T STORES, INC., *et al.*,
10 Defendants;

Civil No. 76-858 RHS

11 UNITED STATES OF AMERICA,
12 Plaintiff,

13 v.

14 GREAT W. SUGAR CO., *et al.*,
15 Defendants;

Civil No. 74-2674 SW

16 UNITED STATES OF AMERICA,
17 Plaintiff,

18 v.

19 UTAH-IDAHO SUGAR CO., *et al.*,
20 Defendants;

Civil No. 74-2676 SC

21 UNITED STATES OF AMERICA,
22 Plaintiff,

23 v.

24 CALIFORNIA & HAWAIIAN. SUGAR CO., *et al.*,
25 Defendants;

Civil No. 74-2675 RHP

26 UNITED STATES OF AMERICA,
27 Plaintiff,

28 v.

ENDERLE METAL PRODS. CO., *et al.*,
Defendants;

Civil No. C77-1579 CFP

1 UNITED STATES OF AMERICA,
2 Plaintiff,

3 v.

4 GOLDEN GATE SPORTFISHERS, INC.,
5 Defendant;

Civil No. C78-1608 WWS

6 UNITED STATES OF AMERICA,
7 Plaintiff,

8 v.

9 SPECTRA-PHYSICS, INC., *et al.*,
10 Defendants;

Civil No. C 78-1879 TEH

11 UNITED STATES OF AMERICA,
12 Plaintiff,

13 v.

14 ACORN ENG'G CO.,
15 Defendant;

Civil No. C 80-3388 TEH

16 UNITED STATES OF AMERICA,
17 Plaintiff,

18 v.

19 DOMTAR INC., *et al.*,
20 Defendants.

Civil No. C-87-0689 RFP

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1 **I. INTRODUCTION**

2 The United States moves to terminate the judgments in each of the above-captioned antitrust
3 cases pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. The judgments were entered by
4 this Court between 120 and 32 years ago. The United States has concluded that because of their age and
5 changed circumstances since their entry, these judgments no longer serve to protect competition. The
6 United States gave the public notice and the opportunity to comment on its intent to seek termination of
7 the judgments; it received no comments opposing termination. For these and other reasons explained
8 below, the United States requests that the judgments be terminated.

9 **II. BACKGROUND**

10 From 1890, when the antitrust laws were first enacted, until the late 1970s, the United States
11 frequently sought entry of antitrust judgments whose terms never expired.¹ Such perpetual judgments
12 were the norm until 1979, when the Antitrust Division of the United States Department of Justice
13 (“Antitrust Division”) adopted the practice of including a term limit of ten years in nearly all of its
14 antitrust judgments. Perpetual judgments entered before the policy change, however, remain in effect
15 indefinitely unless a court terminates them. Although a defendant may move a court to terminate a
16 perpetual judgment, few defendants have done so. There are many possible reasons for this, including
17 that defendants may not have been willing to bear the costs and time resources to seek termination,
18 defendants may have lost track of decades-old judgments, individual defendants may have passed away,
19 or company defendants may have gone out of business. As a result, hundreds of these legacy judgments
20 remain open on the dockets of courts around the country. Originally intended to protect the loss of
21 competition arising from violations of the antitrust laws, none of these judgments likely continues to do
22 so because of changed circumstances.

23 The Antitrust Division has implemented a program to review and, when appropriate, seek
24 termination of legacy judgments. The Antitrust Division’s Judgment Termination Initiative encompasses
25 review of all its outstanding perpetual antitrust judgments. The Antitrust Division described the initiative

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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 both of these acts.

1 in a statement published in the Federal Register.² In addition, the Antitrust Division established a
2 website to keep the public apprised of its efforts to terminate perpetual judgments that no longer serve to
3 protect competition.³ The United States believes that its outstanding perpetual antitrust judgments
4 presumptively should be terminated; nevertheless, the Antitrust Division is examining each judgment to
5 ensure that it is suitable for termination. The Antitrust Division is giving the public notice of—and the
6 opportunity to comment on—its intention to seek termination of its perpetual judgments.

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

- 9 • The Antitrust Division reviews each perpetual judgment to determine whether it no longer
10 serves to protect competition such that termination would be appropriate.
- 11 • If the Antitrust Division determines a judgment is suitable for termination, it posts the name
12 of the case and the judgment on its public Judgment Termination Initiative website,
13 <https://www.justice.gov/atr/JudgmentTermination>.
- 14 • The public has the opportunity to comment on each proposed termination within thirty days
15 of the date the case name and judgment are posted to the public website.
- 16 • Following review of public comments, the Antitrust Division determines whether the
17 judgment still warrants termination; if so, the United States moves to terminate it.

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

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21 ² Department of Justice's Initiative to Seek Termination of Legacy Antitrust Judgments, 83 Fed. Reg.
22 19,837 (May 4, 2018), <https://www.gpo.gov/fdsys/granule/FR-2018-05-04/2018-09461>.

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

24 ⁴ The United States followed this process to move several dozen other district courts to terminate legacy
25 antitrust judgments. See, e.g., *In re: Termination of Legacy Antitrust Judgments in the District of Idaho*,
26 Case 1:19-mc-10427-DCN (D. Idaho Apr. 18, 2019); *United States v. Inter-Island Steam Navigation*
27 *Co., Ltd., et al.*, Case 1:19-mc-00115 (D. Haw. April 9, 2019) (terminating five judgments); *United*
28 *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 Grocерыmen'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 The remainder of this memorandum is organized as follows: Section III describes the Court's
2 jurisdiction to terminate the judgments in the above-captioned cases and the applicable legal standards
3 for terminating the judgments. Section IV explains that perpetual judgments rarely serve to protect
4 competition and that those that are more than ten years old presumptively should be terminated absent
5 compelling circumstances. Section IV also describes the additional reasons that the United States
6 believes each of the judgments should be terminated. Section V concludes. Appendix A attaches a copy
7 of each final judgment that the United States seeks to terminate. Appendix B summarizes the terms of
8 each judgment and the United States' reasons for seeking termination. A proposed order accompanies
9 this motion.

10 **III. APPLICABLE LEGAL STANDARDS FOR TERMINATING THE JUDGMENTS**

11 This Court has jurisdiction and authority to terminate the judgments in the above-captioned
12 cases. A copy of each judgment is included in Appendix A. Almost all provide that the Court retains
13 jurisdiction. Jurisdiction was not explicitly retained in two⁵ above-captioned cases, but it has long been
14 recognized that courts are vested with inherent power to modify judgments they have issued which
15 regulate future conduct.⁶ In addition, the Federal Rules of Civil Procedure grant the Court authority to
16 terminate each judgment. According to Rule 60(b)(5) and (b)(6), "[o]n motion and just terms, the court
17 may relieve a party . . . from a final judgment . . . (5) [when] applying it prospectively is no longer
18 equitable; or (6) for any other reason that justifies relief." Fed. R. Civ. P. 60(b)(5)–(6); *see also Frew ex*
19 *rel. Frew v. Hawkins*, 540 U.S. 431, 441 (2004) (explaining that Rule 60(b)(5) "encompasses the
20 traditional power of a court of equity to modify its decree in light of changed circumstances" and that
21 "district courts should apply a 'flexible standard' to the modification of consent decrees when a
22 significant change in facts or law warrants their amendment"); *United States v. Asarco Inc.*, 430 F.3d
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24 ⁵ *United States v. Coal Dealers Ass'n of Cal., et al.*, Civil No. 12539 (N.D. Cal. May 2, 1899); *United*
25 *States v. Federal Salt Co., et al.*, Civil No. 13303 (July 13, 1914).

26 ⁶ *See United States v. Swift & Company*, 286 U.S. 106, 114-15 (1932) ("We are not doubtful of the
27 power of a court of equity to modify an injunction in adaptation to changed conditions, though it was
28 entered by consent. . . . Power to modify the decree was reserved by its very terms, and so from the
beginning went hand in hand with its restraints. If the reservation had been omitted, power there still
would be by force of principles inherent in the jurisdiction of the chancery. A continuing decree of
injunction directed to events to come is subject always to adaptation as events may shape the need.")
(citations omitted).

1 972, 979 (9th Cir. 2005) (Under Rule 60(b), “a court may relieve a party from a final judgment when . . .
2 it is *no longer equitable* that the judgment should have prospective application. . . . [This] Rule codifies
3 the courts’ traditional authority, inherent in the jurisdiction of the chancery, to modify or vacate the
4 prospective effect of their decrees.”). Thus, the Court may terminate each judgment for any reason that
5 justifies relief, including that the judgment no longer serves its original purpose of protecting
6 competition.⁷ Termination of these judgments is warranted.

7 **IV. ARGUMENT**

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

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

15 Permanent antitrust injunctions rarely serve to protect competition. The experience of the United
16 States in enforcing the antitrust laws has shown that markets almost always evolve over time in response
17 to competitive and technological changes. These changes may make the prohibitions of decades-old
18 judgments either irrelevant to, or inconsistent with, competition. These considerations, among others,
19 led the Antitrust Division in 1979 to establish its policy of generally including in each judgment a term
20 automatically terminating the judgment after no more than ten years.⁸ The judgments in the above-
21 captioned matters—all of which are decades old—presumptively should be terminated for the reasons
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24 ⁷ In light of the circumstances surrounding the judgments for which it seeks termination, the United
25 States does not believe it is necessary for the Court to make an extensive inquiry into the facts of each
26 judgment to terminate them under Fed. R. Civ. P. 60(b)(5) or (b)(6). All of these judgments would have
27 terminated long ago if the Antitrust Division had the foresight to limit them to ten years in duration as
28 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.

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

1 that led the Antitrust Division to adopt its 1979 policy of generally limiting judgments to a term of ten
2 years.⁹

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

4 In addition to age, other reasons weigh heavily in favor of terminating each judgment. These
5 reasons include: (1) most defendants likely no longer exist, (2) the judgment largely prohibits that which
6 the antitrust laws already prohibit, (3) market conditions likely have changed, and (4) all requirements of
7 the judgments have been met. Each of these reasons suggests the judgments no longer serve to protect
8 competition. In this section, we describe these additional reasons, and we identify those judgments that
9 are worthy of termination for each reason. Appendix B summarizes the key terms of each judgment and
10 the reasons to terminate it.

11 1. Most Defendants Likely No Longer Exist

12 The Antitrust Division believes that most of the defendants in the following cases brought by the
13 United States are likely no longer in business:

- 14 • *California Retail Hardware & Implement Ass'n, et al.*, Civil No. 1835 (1927),
- 15 • *Fernald Co., et al.*, Civil No. 1944 (1927),
- 16 • *Associated Marble Cos., et al.*, Civil No. 21848-L (1941),
- 17 • *California Rice Indus., et al.*, Civil No. 21990-S (1941),
- 18 • *Monterey Sardine Indus., et al.*, Civil No. 21991-W (1941),
- 19 • *Freightways, et al.*, Civil No. 22075-R (1944),
- 20 • *Wilson & Geo. Meyer & Co., et al.*, Civil No. 38606 (1961),
- 21 • *N. Cal. Pharm. Ass'n*, Civil No. 39629 (1963), and
- 22 • *Enderle Metal Prods. Co., et al.*, Civil No. C-77-1579 CFP (1979).

23 These judgments relate to very old cases brought against corporate and individual defendants.
24 The cases are between 40 and 92 years old. With the passage of time, many of the company defendants
25 in these actions likely have gone out of existence, and many individual defendants likely have passed
26 away, as discussed in more detail in Appendix B. To the extent that defendants no longer exist, the
27 related judgment serves no purpose and should be terminated.

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27 ⁹ The judgments in *Spectra-Physics, Inc.*, No. 78-1879 (1981); *Acorn Eng'g Co.*, No. C-80-3388 (1982);
28 and *Domtar Inc., et al.*, No. C-87-0689 RFP (1987) were three of the few exceptions in which antitrust
final judgments entered after 1979 did not have a ten year limit on its terms. For the reasons set forth
below, we move that they be terminated along with the other judgments discussed in this memorandum.

1 2. Terms of Judgment Prohibit Acts Already Prohibited by Law

2 The Antitrust Division has determined that the core provisions of the judgments in the following
3 cases prohibit acts that the antitrust laws already prohibit, such as fixing prices, allocating markets,
4 rigging bids, or engaging in group boycotts:

- 5 • *Coal Dealers Ass'n of Cal., et al.*, Civil No. 12539 (1899) (prohibiting price fixing),
- 6 • *Otis Elevator Co., et al.*, Civil No. 13884 (1906) (prohibiting price fixing and market allocation),
- 7 • *Federal Salt Co., et al.*, Civil No. 13303 (1914) (prohibiting price fixing),
- 8 • *Fernald Co., et al.*, Civil No. 1944 (1927) (prohibiting price fixing),
- 9 • *Standard Oil Co. of Cal., et al.*, Civil No. 2542-S (1930) (prohibiting price fixing),
- 10 • *Associated Marble Cos., et al.*, Civil No. 21848-L (1941) (prohibiting price fixing),
- 11 • *California Rice Indus., et al.*, Civil No. 21990-S (1941) (prohibiting price fixing),
- 12 • *Monterey Sardine Indus., et al.*, Civil No. 21991-W (1941) (prohibiting price fixing),
- 13 • *Pac. Greyhound Lines, et al.*, Civil No. 25267-S (1947) (prohibiting price fixing and group boycott)
- 14 • *N. Cal. Plumbing & Heating Wholesalers Ass'n, et al.*, Civil No. 29170 (1953) (prohibiting price fixing),
- 15 • *Nat'l Ass'n of Vertical Turbine Pump Mfrs., et al.*, Civil No. 29446 (1954) (prohibiting price fixing),
- 16 • *R.P. Oldham, et al.*, Civil No. 36385 (1958, 1959 & 1960) (prohibiting price fixing and market allocation),
- 17 • *Blue Diamond Corp., et al.*, Civil No. 38703 (1961) (prohibiting price fixing),
- 18 • *N. Cal. Pharm. Ass'n*, Civil No. 39629 (1963) (prohibiting price fixing),
- 19 • *H.S. Crocker Co., et al.*, Civil No. C-74-0560 CBR (1975 & 1976) (prohibiting price fixing and market allocation),
- 20 • *Alameda Cty. Veterinary Med. Ass'n*, Civil No. 75-2398-CBR (1977) (prohibiting price fixing),
- 21 • *Federated Dep't Stores, Inc., et al.*, Civil No. 76-858 RHS (1978) (prohibiting price fixing),
- 22 • *Great W. Sugar Co., et al.*, Civil No. 74-2674 SW (1978) (prohibiting price fixing),
- 23 • *Utah-Idaho Sugar Co., et al.*, Civil No. 74-2676 (1978) (prohibiting output restrictions),
- 24 • *California and Hawaiian Sugar Co., et al.*, Civil No. 74-2675 RHP (1978) (prohibiting price fixing),
- 25 • *Enderle Metal Prods. Co., et al.*, Civil No. 77-1579 CFP (1979) (prohibiting price fixing), and
- 26 • *Golden Gate Sportfishers, Inc.*, Civil No. C-78-1608 WWS (1979) (prohibiting price fixing).

27 The prohibitions in these judgments amount to little more than an admonition that defendants
28 must not violate the law. Absent such terms, defendants still are deterred from violating the law by the possibility of imprisonment, significant criminal fines, and treble damages in private follow-on litigation; a mere admonition to not violate the law adds little additional deterrence. To the extent these

1 judgments include terms that do little to deter anticompetitive acts, they serve no purpose and there is
2 reason to terminate them.

3 3. Market Conditions Likely Have Changed

4 The Antitrust Division has determined that the following judgments involve markets where
5 conditions likely have changed such that the judgment no longer protects competition:

- 6 • *Freightways, et al.*, Civil No. 22075-R (1944) (prohibiting agreements on territorial assignments and fixed rates among associated motor carriers),
- 7 • *Switzer Bros., et al.*, Civil No. 29860 (1953) (requiring licensing under certain patents)
- 8 • *Golden Gate Chapter, Nat'l Elecs. Distribs. Ass'n*, Civil No. 31567 (1954) (imposing requirements on association of electronic and radio parts and equipment wholesalers),
- 9 • *Jos. Schlitz Brewing Co., et al.*, Civil No. 42127 (1966) (requiring divestitures in the beer industry),
- 10 • *Coast Mfg. & Supply Co.*, Civil No. 43028 (1967) (addressing resale price maintenance),
- 11 • *Dymo Indus.*, Civil No. 42672 (1967) (addressing resale price maintenance),
- 12 • *Swift Instruments, Inc.*, Civil No. C-73-0300 CBR (1973) (addressing resale price maintenance), and
- 13 • *United Sci. Co.*, Civil No. C-73-0299 (1973) (addressing resale price maintenance).

14 For example, the subsequent development of new products may render a market more competitive than
15 it was at the time the judgment was entered or may even eliminate a market altogether, making the
16 judgment irrelevant. In some circumstances, a judgment may impede the kind of adaptation to change
17 that is the hallmark of competition, rendering it anticompetitive. Such judgments clearly should be
18 terminated.

19 4. All requirements of the judgment have been met

20 The Division has determined that the requirements of the following judgments have been met:

- 21 • *Jos. Schlitz Brewing Co., et al.*, Civil No. 42127 (1966) (divestitures complete),
- 22 • *Kimberly-Clark Corp.*, Civil No. 40529 (1967) (divestiture complete),
- 23 • *Spectra-Physics, Inc.*, Civil No. C-78-1879 TEH (1981) (royalty-free licenses provided for requisite period),
- 24 • *Acorn Eng'g Co.*, Civil No. C-80-3388 TEH (1982) (divestiture complete), and
- 25 • *Domtar Inc., et al.*, Civil No. C-87-0689 RFP (1987) (divestiture complete).

26 All requirements of each judgment have been met such that it has been satisfied in full. In such a case,
27 termination of the judgment is a housekeeping action: it will allow the Court to clear its docket of a
28 judgment that should have been terminated long ago but for the failure to include a term automatically
terminating it upon satisfaction of its terms.

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

2 The United States has provided adequate notice to the public regarding its intent to seek
3 termination of the judgments. On April 25, 2018, the Antitrust Division issued a press release
4 announcing its efforts to review and terminate legacy antitrust judgments.¹⁰ On March 8, 2019, the
5 Antitrust Division listed the judgments in the above-captioned cases on its public website, describing its
6 intent to move to terminate the judgments.¹¹ The notice identified each case, linked to the judgment, and
7 invited public comment. No comments were received.

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25 ¹⁰ Press Release, *Department of Justice Announces Initiative to Terminate “Legacy” Antitrust*
26 *Judgments*, U.S. DEP’T OF JUSTICE (April 25, 2018), <https://www.justice.gov/opa/pr/departments-justice-announces-initiative-terminate-legacy-antitrust-judgments>.

27 ¹¹ *Judgment Termination Initiative*, U.S. DEP’T OF JUSTICE, [https://www.justice.gov/atr/](https://www.justice.gov/atr/JudgmentTermination)
28 *Judgment Termination Initiative: California, Northern District*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/atr/judgment-termination-initiative-california-northern-district> (last updated Mar. 8, 2019).

1 **V. CONCLUSION**

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

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7 Respectfully submitted,

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10
11 DATE: 6/5/2019

/s/

12 KATRINA ROUSE
13 Assistant Chief
14 San Francisco Office
15 Antitrust Division
16 United States Department of Justice

/s/

17 ALBERT B. SAMBAT
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