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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 PHILLIPS PETROL. CO., AND
17 TIDEWATER OIL CO.,
18 Defendants.
19

Misc. No. 2:19-MC-00080

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

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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 43 years ago.¹ 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.²

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.³
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
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18 ¹ This case was originally filed as Civil No. 66-1154-WJF.

19 ² The United States notes that it makes identical arguments for judgment
20 termination in the following nine merger cases where the required relief has been
21 accomplished: (1) *United States v. Suburban Gas*, No. 885-61-S (S.D. Cal. Sept. 17,
22 1962); (2) *United States v. Richfield Oil Corp., et al.*, No. 62-1374-JWC (S.D. Cal. Jan.
23 11, 1966); (3) *United States v. Von’s Grocery Co., et al.*, No. 336-60-CC (C.D. Cal. Jan.
24 30, 1967); (4) *United States v. Times Mirror Co.*, Civil No. 65-366-WJF (C.D. Cal. June
25 27, 1968); (5) *United States v. Am. Pipe & Constr. Co., et al.*, No. 64-1775-MP (C.D.
26 Cal. Feb 26, 1970); (6) *United States v. Norris Indus., Inc.*, Civil No. 73-1036-WPG
27 (C.D. Cal. May 5, 1975); (7) *United States v. Phillips Petrol. Co., et al.*, No. 66-1154-
28 WJF (C.D. Cal. Sept. 3, 1975); (8) *United States v. Parker-Hannifin Corp., et al.*, No. 71-
1011-LTL (C.D. Cal. Sept. 29, 1976); and (9) *United States v. Coca-Cola Bottling Co. of
L.A., et al.*, No. 76-3988-LTL (C.D. Cal. Sept. 18, 1978).

³ 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 violation of the Clayton Act.

1 a court terminates them. Although a defendant may move a court to terminate a perpetual
2 judgment, few defendants have done so. There are many possible reasons for this,
3 including that defendants may not have been willing to bear the costs and time resources
4 to seek termination, defendants may have lost track of decades-old judgments, individual
5 defendants may have passed away, or company defendants may have gone out of
6 business. As a result, hundreds of these legacy judgments remain open on the dockets of
7 courts around the country. Originally intended to protect the loss of competition arising
8 from violations of the antitrust laws, none of these judgments likely continues to do so
9 because of changed circumstances.

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

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

28 ⁵ *Judgment Termination Initiative*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/atr/JudgmentTermination>.

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

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

16 The United States followed this process for each judgment it seeks to terminate.⁶

17 The remainder of this motion is organized as follows: Section III describes the
18 Court's jurisdiction to terminate the judgment and the applicable legal standards for
19 terminating the judgment. Section IV argues that perpetual judgments rarely serve to
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22 ⁶ The United States followed this process to move several dozen other district
23 courts to terminate legacy antitrust judgments. *See, e.g., In re: Termination of Legacy*
24 *Antitrust Judgments in the District of Idaho*, Case 1:19-mc-10427-DCN (D. Idaho Apr.
25 18, 2019); *United States v. Inter-Island Steam Navigation Co., et al.*, Case 1:19-mc-
26 00115 (D. Haw. April 9, 2019) (terminating five judgments); *United States v. Odom Co.,*
27 *et al.*, Case 3:72-cv-00013 (D. Alaska Mar. 29, 2019) (terminating one judgment); *United*
28 *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); *In re: Termination of Legacy Antitrust Judgments*, No. 2:18-mc-00033 (E.D.
Va. Nov. 21, 2018) (terminating five judgments).

1 protect competition and that those that are more than ten years old presumptively should
2 be terminated. Section IV also discusses specific circumstances justifying termination.
3 Section V concludes. Appendix A attaches a copy of the initial final judgment that the
4 United States seeks to terminate with this motion. Appendix B attaches a copy of a
5 February 17, 1976 judgment modification. Appendix C attaches a copy of an August 27,
6 1976 judgment modification. Appendix D attaches a copy of a March 12, 1979 judgment
7 modification. A proposed order terminating the final judgment as modified accompanies
8 this motion.

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

10 This Court has jurisdiction and authority to terminate the judgment. The judgment
11 provides that the Court retains jurisdiction. In addition, the Federal Rules of Civil
12 Procedure grant the Court authority to terminate the judgment. According to
13 Rule 60(b)(5) and (b)(6), “[o]n motion and just terms, the court may relieve a party . . .
14 from a final judgment . . . (5) [when] applying it prospectively is no longer equitable; or
15 (6) for any other reason that justifies relief.” Fed. R. Civ. P. 60(b)(5)–(6); *see also Frew*
16 *ex rel. Frew v. Hawkins*, 540 U.S. 431, 441 (2004) (explaining that Rule 60(b)(5)
17 “encompasses the traditional power of a court of equity to modify its decree in light of
18 changed circumstances” and that “district courts should apply a ‘flexible standard’ to the
19 modification of consent decrees when a significant change in facts or law warrants their
20 amendment”) (citation omitted); *United States v. Asarco Inc.*, 430 F.3d 972, 979 (9th Cir.
21 2005) (Under Rule 60(b), “a court may relieve a party from a final judgment when . . . it
22 is no longer equitable that the judgment should have prospective application. . . . [This]
23 Rule codifies the courts’ traditional authority, inherent in the jurisdiction of the chancery,
24 to modify or vacate the prospective effect of their decrees.”) (citations and internal
25 quotation marks omitted). Given its jurisdiction and authority, the Court may terminate
26 the judgment for any reason that justifies relief, including that the judgment no longer

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1 serves its original purpose of protecting competition.⁷ Termination of the judgment is
2 warranted.

3 **IV. ARGUMENT**

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

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

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

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22 ⁷ In light of the circumstances surrounding the judgment for which it seeks
23 termination, the United States does not believe it is necessary for the Court to make an
24 extensive inquiry into the facts of the judgment to terminate it under Fed. R. Civ. P.
25 60(b)(5) or (b)(6). The judgment would have terminated long ago if the Antitrust
26 Division had the foresight to limit it to ten years in duration as under its policy adopted in
27 1979. Moreover, the passage of decades and changed circumstance since its entry, as
28 described in this memorandum, means that it is likely that the judgment no longer serves
its 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 **B. The Judgment Should Be Terminated Because It Is Unnecessary**

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

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

10 The initial judgment was entered on September 3, 1975 and was modified three
11 times. Jurisdiction was explicitly retained in Section III of the judgment. As a condition
12 of Phillips Petroleum Company’s (“Phillips”) merger with the Western and Marketing
13 Divisions of Tidewater Oil Company (“TOC”), the initial judgement required Phillips to
14 divest itself of specified assets it acquired from TOC to The Oil Shale Corporation
15 (“TOSCO”) with certain conditions limiting TOSCO’s ownership of other oil companies.
16 The initial judgment also imposed certain requirements involving its management of an
17 asset known as the Avon refinery. The court later issued an order on February 17, 1976,
18 that modified the language regarding the management of the Avon refinery, allowing for
19 it to be leased to and encumbered by certain oil companies. A subsequent order was
20 issued on August 27, 1976, that further allowed an asset of the Avon refinery to be leased
21 to another oil company. A final order in the matter was issued on March 12, 1979, that
22 added Ashland Oil, Inc. as a party to the order of divestiture. The judgment as modified
23 should be terminated because all requirements of the judgment have been met.

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

25 The United States has provided adequate notice to the public regarding its intent to
26 seek termination of the judgment. On April 25, 2018, the Antitrust Division issued a

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1 press release announcing its efforts to review and terminate legacy antitrust judgments.⁹
2 On March 22, 2019, the Antitrust Division listed the judgment on its public website,
3 describing its intent to move to terminate it.¹⁰ The notice identified the case, linked to the
4 judgment, and invited public comment. No comments were received opposing
5 termination.

6 **V. CONCLUSION**

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

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12 Respectfully submitted,

13 DATE: 6/5/2019

/s/

14 _____
15 KATRINAROUSE
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/s/

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26 _____
27 ⁹ Press Release, *Department of Justice Announces Initiative to Terminate*
28 *“Legacy” Antitrust Judgments*, U.S. DEP’T OF JUSTICE (April 25, 2018),
<https://www.justice.gov/opa/pr/departments-justice-announces-initiative-terminate-legacy-antitrust-judgments>.

¹⁰ *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).