

1 KATRINA ROUSE (CABN 270415)
 2 katrina.rouse@usdoj.gov
 3 ALBERT B. SAMBAT (CABN 236472)
 4 albert.sambat@usdoj.gov
 Attorneys for the United States
 5 Antitrust Division
 U.S. Department of Justice
 6 450 Golden Gate Avenue
 Box 36046, Room 10-0101
 7 San Francisco, CA 94102
 Telephone: (415) 934-5300
 8 Facsimile: (415) 934-5399

9
 10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA
 12

13 UNITED STATES OF AMERICA,
 14 Plaintiff,
 15

16 v.

17 KAYNAR MFG. CO., INC.,
 18 ELASTIC STOP NUT CORP. OF
 19 AM., STANDARD PRESSED STEEL
 CO., TEXTRON INDUS., INC.,
 20 Defendants.
 21

Misc. No. 2:19-MC-00103-VAP

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

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1 **I. INTRODUCTION**

2 The United States respectfully moves to terminate the judgments in the above-
 3 captioned antitrust case pursuant to Rule 60(b) of the Federal Rules of Civil Procedure.
 4 The judgments were entered by this Court 55 years ago.¹ The United States has
 5 concluded that because of their age and changed circumstances since their entry, the
 6 judgments no longer serve to protect competition. The United States gave the public
 7 notice and the opportunity to comment on its intent to seek termination of the judgments;
 8 it received no comments opposing termination. For this and other reasons explained
 9 below, the United States requests that the judgments be terminated.²

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 11 ¹ This case was originally filed as case No. 63-1036-S in the former Southern
 12 District of California prior to the establishment of the Central District of California in
 13 1966.

14 ² For the convenience of the Court, the United States notes that one or more of the
 15 arguments in support of termination are the same for the following 35 judgments: (1)
 16 *United States v. Pac. Coast Plumb. Supply Ass'n, et al.*, Civil No. 1686-92 (S.D. Cal. Jan.
 17 6, 1912); (2) *United States v. S. Cal. Wholesale Grocers' Ass'n, et al.*, Civil No. H-81-J
 18 (S.D. Cal. Sept. 22, 1925); (3) *United States v. Cal. Wholesale Grocers' Ass'n, et al.*,
 19 Civil No. H-80-M (S.D. Cal. May 5, 1926); (4) *United States v. Eighteen Karat Club, et*
 20 *al.*, Civil No. L12J (S.D. Cal. May 4, 1927); (5) *United States v. S. Cal. Marble Ass'n, et*
 21 *al.*, Civil No. 1254-H (S.D. Cal. Nov. 12, 1940); (6) *United States v. Harbor Dist.*
 22 *Lumber Dealers Ass'n, et al.*, Civil No. 1401-Y (S.D. Cal. Feb. 14, 1941); (7) *United*
 23 *States v. Heating, Piping, & Air Conditioning Contractors Ass'n of S. Cal., et al.*, Civil
 24 No. 1642-Y (S.D. Cal. July 10, 1941); (8) *United States v. Santa Barbara Cty. Chapter,*
 25 *Nat'l Elec. Contractors Ass'n, et al.*, Civil No. 1678-H (S.D. Cal. Aug. 4, 1941); (9)
 26 *United States v. Harbor Dist. Chapter, Nat'l Elec. Contractors Ass'n, et al.*, Civil No.
 27 1677-RJ (S.D. Cal. Aug. 4, 1941); (10) *United States v. San Pedro Fish Exch., et al.*,
 28 Civil No. 1772-B (S.D. Cal. Sept. 15, 1941); (11) *United States v. Retail Furniture*
Dealers Ass'n of S. Cal., et al., Civil No. 2230-Y (S.D. Cal. May 7, 1942); (12) *United*
States v. S. Cal. Gas Co., et al., Civil No. 2231-Y (S.D. Cal. May 7, 1942); (13) *United*
States v. Schmidt Lithograph Co., et al., Civil No. 2424 BH (S.D. Cal. Sept. 14, 1942, as
 modified on Nov. 25, 1975); (14) *United States v. Produce Exch. of L.A., et al.*, Civil No.
 2539-Y (S.D. Cal. Nov. 2, 1942); (15) *United States v. California Fruit Growers Exch.,*
et al., Civil No. 2577-BH (S.D. Cal. Nov. 18, 1942); (16) *United States v. John B. Reeves*
& Son, et al., Civil No. 8769-WM (S.D. Cal. May 29, 1950); (17) *United States v.*
Stationers Ass'n of S. Cal., Inc., et al., Civil No. 14777-C (S.D. Cal. Jan. 15, 1954); (18)
United States v. Kosher Butchers' Ass'n of L.A., et al., Civil No. 17914 Y (S.D. Cal. Mar.
 1, 1955); (19) *United States v. Los Angeles Meat & Provision Drivers Union, Local No.*

1 II. BACKGROUND

2 From 1890, when the antitrust laws were first enacted, until the late 1970s, the
 3 United States frequently sought entry of antitrust judgments whose terms never expired.³
 4 Such perpetual judgments were the norm until 1979, when the Antitrust Division of the
 5 United States Department of Justice (“Antitrust Division”) adopted the practice of
 6 including a term limit of ten years in nearly all of its antitrust judgments. Perpetual
 7 judgments entered before the policy change, however, remain in effect indefinitely unless
 8 a court terminates them. Although a defendant may move a court to terminate a perpetual
 9 judgment, few defendants have done so. There are many possible reasons for this,
 10 including that defendants may not have been willing to bear the costs and time resources
 11 to seek termination, defendants may have lost track of decades-old judgments, individual
 12 defendants may have passed away, or company defendants may have gone out of

14 626, *et al.*, Civil No. 682-60 HW (S.D. Cal. Jun. 17, 1963); (20) *United States v. Kaynar*
 15 *Mfg. Co., et al.*, Civil No. 63-1036-S (S.D. Cal. Jun. 30, 1964); (21) *United States v.*
 16 *California Chem. Co., et al.*, Civil No. 64-873-S (S.D. Cal. Aug. 23, 1965); (22) *United*
 17 *States v. Bethlehem Steel Co., et al.*, Civil No. 65-1426-IH (S.D. Cal. Aug. 23, 1966);
 18 (23) *United States v. Gen. Motors Corp., et al.*, Civil No. 62-1208-CC (S.D. Cal. Aug.
 19 17, 1966); (24) *United States v. Armco Steel Corp., et al.*, Civil No. 65-1425-S (C.D. Cal.
 20 Nov. 15, 1966); (25) *United States v. Ace Drill Bushing Co., et al.*, Civil No. 66-483-TC
 21 (C.D. Cal. Jan. 17, 1967); (26) *United States v. United States Steel Corp., et al.*, Civil No.
 22 64-836-MP (C.D. Cal. Dec. 8, 1967); (27) *United States v. Am. Pipe & Constr. Co., et al.*,
 23 Civil No. 64-832-MP (C.D. Dec. 8, 1967); (28) *United States v. Kaiser Steel Corp., et al.*,
 24 Civil No. 64-833-MP (C.D. Cal. Dec. 8, 1967); (29) *United States v. United Concrete*
 25 *Pipe Corp., et al.*, Civil No. 64-834-MP (C.D. Cal. Dec. 8, 1967 & C.D. Cal. May 24,
 26 1968); (30) *United States v. U.S. Indus., et al.*, Civil No. 64-835-MP (C.D. Cal. Dec. 8,
 27 1967 & C.D. Cal. May 24, 1968); (31) *United States v. Greater L.A. Solid Wastes Mgmt.*
 28 *Ass’n, et al.*, Civil No. 74-809-RJK (C.D. Cal. Apr. 29, 1974); (32) *United States v.*
Frito-Lay, Inc., et al., Civil No. 70-1175-R (C.D. Cal. Oct. 21, 1974); (33) *United States*
v. Orange Cty. Travel Agents Ass’n, Civil No. 75-1513 WMB (C.D. Cal. Aug. 13, 1975);
 (34) *United States v. R & G Sloane Mfg. Co., et al.*, Civil No. 71-1522-ALS (C.D. Cal.
 Apr. 12, 1976); and (35) *United States v. Phillips Petrol. Co., et al.*, Civil No. 75-974-HP
 (C.D. Cal. Aug. 31, 1977).

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 judgments the United States seeks to terminate with this motion concerns violation of the Sherman Act.

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

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

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

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

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27 ⁴ 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>.

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

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

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

8 The remainder of this motion is organized as follows: Section III describes the
9 Court's jurisdiction to terminate the judgments and the applicable legal standards for
10 terminating the judgments. Section IV argues that perpetual judgments rarely serve to
11 protect competition and that those that are more than ten years old presumptively should
12 be terminated. Section IV also discusses specific circumstances justifying termination.
13 Section V concludes. Appendices A and B attach copies of the judgments that the United
14 States seeks to terminate with this motion. A proposed order terminating the judgments
15 accompanies this motion.

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

17 This Court has jurisdiction and authority to terminate the judgments. The
18 judgments provide that the Court retains jurisdiction. In addition, the Federal Rules of
19 Civil Procedure grant the Court authority to terminate the judgments. According to
20 Rule 60(b)(5) and (b)(6), “[o]n motion and just terms, the court may relieve a party . . .
21 from a final judgment . . . (5) [when] applying it prospectively is no longer equitable; or

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23 ⁶ The United States followed this process to move several dozen other district
24 courts to terminate legacy antitrust judgments. *See, e.g., In re: Termination of Legacy*
25 *Antitrust Judgments in the District of Oregon*, Case 3:19-mc-00441 MO (D. Or. May 24,
26 2019) (terminating six judgments); *In re: Termination of Legacy Antitrust Judgments in*
27 *the District of Idaho*, Case 1:19-mc-10427-DCN (D. Idaho Apr. 18, 2019); *United States*
28 *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 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).

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

15 **IV. ARGUMENT**

16 It is appropriate to terminate the judgments because they no longer serve their
17 original purpose of protecting competition. The United States believes that these
18 perpetual judgments presumptively should be terminated because their age alone suggests
19 they no longer protect competition. Other reasons, however, also weigh in favor of
20 terminating them. Under such circumstances, the Court may terminate the judgments
21 pursuant to Rule 60(b)(5) or (b)(6) of the Federal Rules of Civil Procedure.

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25 ⁷ 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 **A. The Judgments Presumptively Should Be Terminated Because of Age**

2 Permanent antitrust injunctions rarely serve to protect competition. The experience
3 of the United States in enforcing the antitrust laws has shown that markets almost always
4 evolve over time in response to competitive and technological changes. These changes
5 may make the prohibitions of decades-old judgments either irrelevant to, or inconsistent
6 with, competition. These considerations, among others, led the Antitrust Division in
7 1979 to establish its policy of generally including in each judgment a term automatically
8 terminating the judgment after no more than ten years.⁸ The judgments—which are
9 decades old—presumptively should be terminated for the reasons that led the Antitrust
10 Division to adopt its 1979 policy of generally limiting judgments to a term of ten years.

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

12 In addition to age, other reasons weigh heavily in favor of terminating the
13 judgments. Based on its examination of the judgments, the Antitrust Division has
14 determined that they should be terminated for the following reason:

- 15 • The judgments prohibit acts that the antitrust laws already prohibit, such as
16 fixing prices and rigging bids. These prohibitions amount to little more than an
17 admonition that defendants must not violate the law. Absent such terms,
18 defendants still are deterred from violating the law by the possibility of
19 imprisonment, significant criminal fines, and treble damages in private follow-
20 on litigation; a mere admonition to not violate the law adds little additional
21 deterrence. To the extent a judgment includes terms that do little to deter
22 anticompetitive acts, it should be terminated.

23 Two judgments were entered in this case on June 30, 1964. One judgment was
24 entered against defendants Kaynar Manufacturing Co., Elastic Stop Nut Corp. of
25 America, and Standard Press Steel Co. The other judgment was entered against
26 defendant Textron Industries, Inc. Jurisdiction was explicitly retained in Section VII of
27 the judgments. The core terms of the judgments enjoined defendant manufacturers of
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⁸ U.S. DEP'T OF JUSTICE, ANTITRUST DIVISION MANUAL at III-147 (5th ed. 2008),
<https://www.justice.gov/atr/division-manual>.

1 military grade fasteners from fixing prices for said fasteners, from submitting
2 noncompetitive, collusive, or rigged bids to any purchasers of fasteners, and from
3 exchanging bidding or pricing information with competitors. The judgments should be
4 terminated because their terms largely prohibit acts the antitrust laws already prohibit
5 (price fixing, bid rigging).

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

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

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25 ⁹ 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 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).

1 **V. CONCLUSION**

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

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8 DATE: 6/7/2019

Respectfully submitted,

/s/

KATRINAROUSE
Assistant Chief
San Francisco Office
Antitrust Division
United States Department of Justice

/s/

ALBERT B. SAMBAT
Trial Attorney
San Francisco Office
Antitrust Division
United States Department of Justice