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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 REDDI-WIP, INC.,

18 Defendant.

Misc. No. 2:19-MC-00135-VAP

**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 64 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. The United States had concluded that, for the reasons
9 discussed below, this judgment no longer serves to protect competition.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
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
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23 ¹ This case was originally filed as case No. 17906-BH in the former Southern
24 District of California prior to the establishment of the Central District of California in
1966.

25 ² For the convenience of the Court, the United States notes that the arguments in
26 support of termination are the same for the following three judgments: (1) *United States*
27 *v. Standard Oil Co. of Cal., et al.*, Civil No. 6159-Y (S.D. Cal. Jun. 30, 1948); (2) *United*
28 *States v. Richfield Oil Corp.*, Civil No. 6896-Y (S.D. Cal. Aug. 3, 1951); and (3) *United*
States v. Reddi-Wip, Inc., Civil No. 17906-BH (S.D. Cal. Oct. 28, 1955).

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 violations of the Sherman Act and the Clayton 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 judgment and the applicable legal standards for
 10 terminating the judgment. 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. Appendix A attaches a copy of the judgment that the United States
 14 seeks to terminate with this motion. A proposed order terminating the above-captioned
 15 judgment accompanies this motion.

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

17 This Court has jurisdiction and authority to terminate the judgment. The judgment
 18 provides that the Court retains jurisdiction. In addition, the Federal Rules of Civil
 19 Procedure grant the Court authority to terminate the judgment. 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 Idaho*, Case 1:19-mc-10427-DCN (D. Idaho Apr.
 26 18, 2019); *United States v. Inter-Island Steam Navigation Co., et al.*, Case 1:19-mc-
 27 00115 (D. Haw. April 9, 2019) (terminating five judgments); *United States v. Odom Co.,*
 28 *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); *In re: Termination of Legacy Antitrust Judgments*, No. 2:18-mc-00033 (E.D.
 Va. Nov. 21, 2018) (terminating five 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 judgment for any reason that justifies relief, including that the judgment no longer
13 serves its original purpose of protecting competition.⁷ Termination of the judgment is
14 warranted.

15 **IV. ARGUMENT**

16 It is appropriate to terminate the judgment because it no longer serves its original
17 purpose of protecting competition. The United States believes that this perpetual
18 judgment presumptively should be terminated because its age alone suggests it no longer
19 protects competition. Other reasons, however, also weigh in favor of terminating it.
20 Under such circumstances, the Court may terminate the judgment pursuant to
21 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 Judgment 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 judgment—which is
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 Judgment Should Be Terminated Because It Is Unnecessary**

12 This consent decree was entered in 1955. Section IX explicitly retains jurisdiction.
13 The judgment should be terminated because, at nearly 65 years old, it is well past the age
14 where an antitrust judgment presumptively becomes either irrelevant to, or inconsistent
15 with, competition.

16 The decree enjoins a supplier of ingredients, components, and equipment for
17 ready-to-dispense cans of whipped cream from exclusive dealing, tying arrangements,
18 discrimination in sales, and restrictions on re-sale and re-use. The decree also requires
19 cancellation of the defendant’s franchise contracts. If the Antitrust Division learns of the
20 defendants engaging in unlawful behavior in the future, it has all the investigative and
21 prosecutorial powers necessary to ensure that competition is not harmed. Based on its
22 examination of the judgment, the Antitrust Division has determined that it should be
23 terminated.

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

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: June 20, 2019

/s/

14 _____
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/s/

20 _____
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26 ⁹ Press Release, *Department of Justice Announces Initiative to Terminate*
27 *“Legacy” Antitrust Judgments*, U.S. DEP’T OF JUSTICE (April 25, 2018),
28 <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).