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7 **UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEVADA**

8  
 9 UNITED STATES OF AMERICA,  
 Plaintiff,

10 v.

Civil Action No. 14  
 Civil No. 939 (Old)

11 LAS VEGAS MERCHANT PLUMBERS  
 12 ASSOCIATION, *et al.*,  
 Defendants.

13  
 14 UNITED STATES OF AMERICA,  
 Plaintiff,

15 v.

Civil Action No. 1232

16 ASSOCIATED NEVADA DAIRYMEN,  
 17 INC., *et al.*,  
 Defendants.

18  
 19 UNITED STATES OF AMERICA,  
 Plaintiff,

20 v.

Civil Action No. 133

21 ANDERSON DAIRY, INC., *et al.*,  
 22 Defendants.

23 UNITED STATES OF AMERICA,  
 Plaintiff,

24 v.

Civil Action No. R-2041

25 INDEPENDENT BODY SHOP ASSN. OF  
 26 RENO AND SPARKS, INC.,  
 Defendant.

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UNITED STATES OF AMERICA,  
Plaintiff,

v.

Civil Action No. R-2724

A. LEVY & J. ZENTNER CO., *et al.*,  
Defendants.

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UNITED STATES OF AMERICA,  
Plaintiff,

v.

Civil Action No. R-2735

LEN HARRIS WHOLESALE MEATS, INC.,  
*et al.*,  
Defendants.

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UNITED STATES OF AMERICA,  
Plaintiff,

v.

Civil Action No. CIV-LV-76-183

FOREMOST-MCKESSON, INC., *et al.*,  
Defendants.

**Memorandum in Support of the Motion of the United States to Terminate Legacy Antitrust Judgments**

The United States respectfully submits this memorandum in support of its motion to terminate seven legacy antitrust judgments in cases brought by the United States. The Court entered these judgments between 1955 and 1977; thus, these judgments are between forty-two and sixty-four years old. After examining each judgment—and after soliciting public comments on each proposed termination—the United States has concluded that termination of these judgments is appropriate. Termination will permit the Court to clear its docket, the Department to clear its records, and businesses to clear their books, allowing each to utilize its resources more effectively.

**I. BACKGROUND**

From 1890, when the antitrust laws were first enacted, until the late 1970s, the United

1 States frequently sought entry of antitrust judgments whose terms never expired.<sup>1</sup> Such  
2 perpetual judgments were the norm until 1979, when the Antitrust Division of the United States  
3 Department of Justice (“Antitrust Division”) adopted the practice of including a term limit of ten  
4 years in nearly all of its antitrust judgments. Perpetual judgments entered before the policy  
5 change, however, remain in effect indefinitely unless a court terminates them. Although a  
6 defendant may move a court to terminate a perpetual judgment, few defendants have done so.  
7 There are many possible reasons for this, including that defendants may not have been willing to  
8 bear the costs and time resources to seek termination, defendants may have lost track of decades-  
9 old judgments, individual defendants may have passed away, or firm defendants may have gone  
10 out of business. As a result, hundreds of these legacy judgments remain open on the dockets of  
11 courts around the country. Originally intended to protect the loss of competition arising from  
12 violations of the antitrust laws, nearly all of these judgments likely have been rendered obsolete  
13 by changed circumstances.

14 The Antitrust Division recently implemented a program to review and, when appropriate,  
15 seek termination of legacy judgments. The Antitrust Division’s Judgment Termination Initiative  
16 encompasses review of all of its outstanding perpetual antitrust judgments. The Antitrust  
17 Division described the initiative in a statement published in the Federal Register.<sup>2</sup> In addition,  
18 the Antitrust Division established a website to keep the public apprised of its efforts to terminate  
19 perpetual judgments that no longer serve to protect competition.<sup>3</sup> The United States believes that  
20 its outstanding perpetual antitrust judgments presumptively should be terminated; nevertheless,  
21 the Antitrust Division examined each judgment covered by this motion to ensure that it is  
22 suitable for termination. The Antitrust Division also gave the public notice of—and the  
23 opportunity to comment on—its intention to seek termination of these judgments.

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25 <sup>1</sup> The primary antitrust laws are the Sherman Act, 15 U.S.C. §§ 1-7, and the Clayton Act,  
26 15 U.S.C. §§ 12-27. The judgments the United States seeks to terminate with the accompanying  
27 motion concern violations of these two laws.

28 <sup>2</sup> 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>.

<sup>3</sup> <https://www.justice.gov/atr/JudgmentTermination>.

1 In brief, the process by which the United States has identified judgments it believes  
2 should be terminated is as follows:

- 3 • The Antitrust Division reviewed its perpetual judgments entered by this  
4 Court to identify those that no longer serve to protect competition such  
5 that termination would be appropriate.
- 6 • When the Antitrust Division identified a judgment it believed suitable for  
7 termination, it posted the name of the case and a link to the judgment on  
8 its public Judgment Termination Initiative website,  
9 <https://www.justice.gov/atr/JudgmentTermination>.
- 10 • The public had the opportunity to submit comments regarding each  
11 proposed termination to the Antitrust Division within thirty days of the  
12 date the case name and judgment link was posted to the public website.
- 13 • Having received no comments regarding the above-captioned judgments,  
14 the United States now moves this Court to terminate them.

15 The United States followed this process for each judgment it seeks to terminate by this motion.<sup>4</sup>

16 The remainder of this memorandum is organized as follows: Section II describes the  
17 Court's jurisdiction to terminate the judgments in the above-captioned cases. Section III  
18 explains that perpetual judgments rarely serve to protect competition and those that are more  
19 than ten years old should be terminated absent compelling circumstances. This section also  
20 describes the additional reasons that the United States believes each of the judgments should be  
21 terminated. Appendix A attaches a copy of each final judgment that the United States seeks to  
22 terminate. Appendix B summarizes the terms of each judgment and the United States' reasons  
23 for seeking termination. Finally, Appendix C is a Proposed Order Terminating Final Judgments.

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24 <sup>4</sup> The United States followed this same process to move other district courts to terminate  
25 legacy antitrust judgments. *See, e.g., United States v. Am. Amusement Ticket Mfrs. Ass'n*,  
26 Case 1:18-mc-00091 (D.D.C. Aug. 15, 2018) (terminating nineteen judgments); *In re:*  
27 *Termination of Legacy Antitrust Judgments*, Case 2:18-mc-00033 (E.D. Va. Nov. 21, 2018)  
28 (terminating five judgments); *United States v. Standard Sanitary Mfg. Co., et al.*, Case 1:19-mc-  
00069-RDB (D. Md. Feb. 7, 2019) (terminating nine judgments); *United States v. Inter-Island  
Steam Navigation Co. Ltd., et al.*, Case 1:19-mc-00115-JMS-RLP (D. Haw. Apr. 9, 2019)  
(terminating five judgments); and *United States v. The Nome Retail Grocerymen's Ass'n, et al.*,  
Case 2:06-cv-01449-HRH (D. Alaska Mar. 7, 2019) (terminating one judgment).

**I. APPLICABLE LEGAL STANDARDS FOR TERMINATING THE JUDGMENTS**

This Court has jurisdiction to terminate the judgments in the above-captioned cases. Each judgment, a copy of which is included in Appendix A, provides that the Court retains jurisdiction. Moreover, the Court's inherent authority to terminate a judgment it has issued is now encompassed in the Federal Rules of Civil Procedure. Rule 60(b)(5) and (b)(6) provides that, "[o]n motion and just terms, 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." Fed. R. Civ. P. 60(b)(5)-(6); *accord United States v. Asarco, Inc.*, 430 F.3d 972, 979 (9th Cir. 2005) (explaining that Rule 60(b)(5) "'codifies the courts' traditional authority, inherent in the jurisdiction of the chancery, to modify or vacate the prospective effect of their decrees[.]'" *Bellevue Manor Assoc. v. United States*, 165 F.3d 1249, 1252 (9th Cir. 1999) (internal quotations and citations omitted)."

Given its jurisdiction and its authority, the Court may terminate each judgment for any reason that justifies relief, including that the judgments no longer serve their original purpose of protecting competition.<sup>5</sup> Termination of these judgments is warranted.

**III. ARGUMENT**

It is appropriate to terminate the perpetual judgments in each the above-captioned cases because they no longer continue to serve their original purpose of protecting competition. The United States believes that the judgments presumptively should be terminated because their age alone suggests they no longer protect competition. Other reasons, however, also weigh in favor of terminating these judgments, including that many of the defendants likely no longer exist, terms of the judgment merely prohibit that which the antitrust laws already prohibit, and certain time-limited provisions of a final judgment already have expired. Under such circumstances, the

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<sup>5</sup> In light of the circumstances surrounding the judgments for which it seeks termination, the United States does not believe it is necessary for the Court to make an extensive inquiry into the facts of each judgment to terminate them under Fed. R. Civ. P. 60(b)(5) or (b)(6). All of these judgments would have terminated long ago if the Antitrust Division had the foresight to limit them to ten years in duration as 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.

1 Court may terminate the judgments pursuant to Rule 60(b)(5) or (b)(6) of the Federal Rules of  
2 Civil Procedure.

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

4 Permanent antitrust injunctions rarely serve to protect competition. The experience of the  
5 United States in enforcing the antitrust laws has shown that markets almost always evolve over  
6 time in response to competitive and technological changes. These changes may make the  
7 prohibitions of decades-old judgments either irrelevant to, or inconsistent with, competition. The  
8 development of new products that compete with existing products, for example, may render a  
9 market more competitive than it was at the time of entry of the judgment or may even eliminate a  
10 market altogether, making the judgment irrelevant. In some circumstances, a judgment may be  
11 an impediment to the kind of adaptation to change that is the hallmark of competition,  
12 undermining the purposes of the antitrust laws. These considerations, among others, led the  
13 Antitrust Division in 1979 to establish its policy of generally including in each judgment a term  
14 automatically terminating the judgment after no more than ten years.<sup>6</sup>

15 The judgments in the above-captioned matters—all of which are over four decades old—  
16 presumptively should be terminated for the reasons that led the Antitrust Division to adopt its  
17 1979 policy of generally limiting judgments to a term of ten years. There are no affirmative  
18 reasons for the judgments to remain in effect; indeed, there are additional reasons for terminating  
19 them.

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

21 In addition to age, other reasons weigh heavily in favor of termination of each judgment.  
22 These reasons include: (1) most defendants likely no longer exist, (2) the judgments largely  
23 prohibit that which the antitrust laws already prohibit, and (3) certain time-limited provisions of  
24 a final judgment already have expired. Each of these reasons suggests the judgments no longer  
25 serve to protect competition. In this section, we describe these additional reasons, and we  
26 identify those judgments that are worthy of termination for each reason. Appendix B

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28 <sup>6</sup> U.S. DEP'T OF JUSTICE, ANTITRUST DIVISION MANUAL at III-147 (5th ed. 2008),  
<https://www.justice.gov/atr/division-manual>.

1 summarizes the key terms of each judgment and the reasons to terminate it.

2 1. Most Defendants Likely No Longer Exist

3 The Antitrust Division believes that most of the defendants in the following cases  
4 brought by the United States likely no longer exist:

- 5 • *Las Vegas Merchant Plumbers Association, et al.*, Civil Action No. 14, Civil No. 939  
6 (Old) (judgment entered 1955),
- 7 • *Associated Nevada Dairymen, Inc., et al.*, Civil Action No. 1232 (judgment entered  
8 1955),
- 9 • *Anderson Dairy, Inc., et al.*, Civil Action No. 133 (judgment entered 1956),
- 10 • *Independent Body Shop Assn. of Reno & Sparks, Inc.*, Civil Action No. R-2401  
11 (judgment entered 1968),
- 12 • *A. Levy & J. Zentner Company, et al.*, Civil Action No R-2724 (judgment entered  
13 1973), and
- 14 • *Len Harris Wholesale Meats, Inc., et al.*, Civil Action No. R-2735 (judgment entered  
15 1974).

16 These judgments relate to very old cases brought against groups of individuals or firms.  
17 The cases are between forty-five and sixty-four years old. With the passage of time, many of the  
18 individual defendants in these cases likely have passed away, and several firm defendants appear  
19 to have gone out of existence, as explained in more detail in Appendix B. To the extent that  
20 defendants no longer exist, the related judgments serve no purpose, which is a reason to  
21 terminate these judgments.

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

23 The Antitrust Division has determined that the core provisions of the judgments in the  
24 following cases merely prohibit acts that are illegal under the antitrust laws, such as price fixing,  
25 bid rigging, customer or market allocation, and acquisitions in which the effect may be  
26 substantially to lessen competition:

- 27 • *Las Vegas Merchant Plumbers Association, et al.*, Civil Action No. 14, Civil No. 939  
28 (Old) (prohibiting price fixing, bid rigging, and refusals to deal),
- *Associated Nevada Dairymen, Inc., et al.*, Civil Action No. 1232 (prohibiting price  
fixing),

- 1 • *Anderson Dairy, Inc., et al.*, Civil Action No. 133 (prohibiting price fixing),
- 2 • *Independent Body Shop Assn. of Reno and Sparks, Inc.*, Civil Action No. R-2401  
3 (prohibiting price fixing),
- 4 • *A. Levy & J. Zentner Company, et al.*, Civil Action No R-2724 (prohibiting price  
5 fixing, bid rigging, and customer/market allocation),
- 6 • *Len Harris Wholesale Meats, Inc., et al.*, Civil Action No. R-2735 (prohibiting price  
7 fixing, bid rigging, and customer/market allocation), and
- 8 • *Foremost-McKesson, Inc., et al.*, Civil Action No. CIV-LV-76-183 (prohibiting  
9 acquisitions substantially likely to lessen competition).

10 These terms amount to little more than an admonition that defendants shall not violate the  
11 law. To the extent these judgments include terms that do little to deter anticompetitive acts, they  
12 serve no purpose and there is reason to terminate them.

13 3. Certain Time-Limited Provisions of a Final Judgment Already Have  
14 Expired

15 In *Foremost-McKesson, Inc., et al.*, Civil Action No. CIV-LV-76-183, the judgment  
16 contains a ten-year prohibition on defendant acquiring any other Nevada liquor or wine  
17 wholesalers without prior approval of the United States or the Court. That ten-year restriction,  
18 however, expired in 1988. As this provision has expired, and the sole remaining restriction of  
19 the judgment deters anticompetitive acts that already are illegal (an acquisition substantially  
20 likely to lessen competition), this judgment no longer serves its purpose and should be  
21 terminated.

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

23 The United States has provided adequate notice to the public regarding its intent to seek  
24 termination of the judgments. On April 25, 2018, the Antitrust Division issued a press release  
25 announcing its efforts to review and terminate legacy antitrust judgments, and noting that it  
26 would begin its efforts by proposing to terminate judgments entered by the federal district courts  
27 in Washington, D.C., and Alexandria, Virginia.<sup>7</sup> On May 4, 2018, the Antitrust Division

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28 <sup>7</sup> Press Release, Department of Justice, Department of Justice Announces Initiative to  
Terminate “Legacy” Antitrust Judgments, (April 25, 2018),  
[https://www.justice.gov/opa/pr/department-justice-announces-initiative-terminate-legacy-  
antitrust-judgments](https://www.justice.gov/opa/pr/department-justice-announces-initiative-terminate-legacy-antitrust-judgments).

1 described its Judgment Termination Initiative in a statement published in the Federal Register.<sup>8</sup>  
2 On September 7, 2018, the Antitrust Division listed the judgments in the above-captioned cases  
3 on its public website, describing its intent to move to terminate the judgments.<sup>9</sup> The notice  
4 identified each case, linked to the judgment, and invited public comment. During a thirty-day  
5 comment period, the Division received no public comments concerning the judgments in any of  
6 the above-captioned cases.

7 **II. CONCLUSION**

8 For the foregoing reasons, the United States believes termination of the judgments in  
9 each of the above-captioned cases is appropriate, and respectfully requests that the Court enter an  
10 order terminating them. *See* Appendix C, which is a proposed order terminating the judgments  
11 in the above-captioned cases.

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13 Respectfully submitted,

14 Dated: May 2, 2019

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26 <sup>8</sup> Department of Justice’s Initiative to Seek Termination of Legacy Antitrust Judgments,  
27 83 Fed. Reg. 19,837 (May 4, 2018), <https://www.gpo.gov/fdsys/granule/FR-2018-05-04/2018-09461>.

28 <sup>9</sup> <https://www.justice.gov/atr/JudgmentTermination>, link titled “View Judgments Proposed for Termination in Nevada, District.”