

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

Case No. 19-mc-80147-TSH

**REPORT AND RECOMMENDATION
TO TERMINATE LEGACY
ANTITRUST JUDGMENTS**

Re: Dkt. No. 1

I. INTRODUCTION

On April 25, 2018, the Antitrust Division of the United States Department of Justice (the “Antitrust Division”) announced an initiative to terminate legacy antitrust judgments that no longer protect competition. The government now brings the present motion seeking to terminate judgments in 37 cases pursuant to Federal Rule of Civil Procedure 60(b). ECF No. 1. The government argues that the age of the judgments and changed circumstances since their entry justify terminating them. Because not all parties have consented to Magistrate Judge jurisdiction, the Clerk of Court shall **REASSIGN** this case to a District Judge for disposition. After carefully reviewing the motion and controlling authorities, the undersigned **RECOMMENDS** the District Judge **GRANT** the motion to terminate the legacy antitrust judgments.

II. BACKGROUND

From 1890, when the antitrust laws were first enacted, until the late 1970s, the United States frequently sought entry of antitrust judgments whose terms never expired. Starting in 1979, the Antitrust Division adopted the practice of including a term limit of ten years in nearly all of its antitrust judgments. Perpetual judgments entered before the policy change, however, remain in

effect indefinitely unless a court terminates them. On April 25, 2018, the Antitrust Division announced that it would review 1,300 legacy judgments to identify those that no longer serve to protect competition and seek to terminate them. Department of Justice Announces Initiative to Terminate “Legacy” Antitrust Judgments, *The United States Department of Justice* (2018), <https://www.justice.gov/opa/pr/departments-justice-announces-initiative-terminate-legacy-antitrust-judgments> (last visited July 3, 2019). The process it follows includes: (1) reviewing outstanding judgments to identify those that no longer appear to protect competition such that termination would be appropriate, (2) posting the name of the case with a link to the relevant judgment on the public website if the Antitrust Division believes it is a candidate for termination, (3) allotting the public 30 days to provide comments regarding each proposed termination, and (4) filing a motion with the appropriate court seeking to terminate the judgment if the Antitrust Division still believes termination is appropriate following the comment period. *Id.*

In the present case, the Antitrust Division has petitioned to terminate 37 judgments in cases brought under the Sherman Act, 15 U.S.C. §§ 1-7, and the Clayton Act, 15 U.S.C. §§ 12-27. The judgments were entered by this Court between 120 and 32 years ago. The government posted the 37 judgments for public comment on March 8, 2019. Judgment Termination Initiative, *The United States Department of Justice* (2018), <https://www.justice.gov/atr/JudgmentTermination> (last visited July 3, 2019). The notice identified the cases, linked to the judgments, and invited public comments. *Id.* No comments were received opposing termination. Mot. at 1.

III. LEGAL STANDARD

“Rule 60(b) allows a party to seek relief from a final judgment, and request reopening of his case, under a limited set of circumstances[.]” *Gonzalez v. Crosby*, 545 U.S. 524, 528 (2005). Rule 60 provides that these limited set of circumstances include:

- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b).

A Rule 60(b)(5) motion may be granted “when the party seeking relief from an injunction

1 or consent decree can show ‘a significant change either in factual conditions or in law.’” *Agostini*
 2 *v. Felton*, 521 U.S. 203, 215 (1997) (quoting *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367,
 3 384 (1992)). Because Rule 60(b)(5) “encompasses the traditional power of a court of equity to
 4 modify its decree in light of changed circumstances,” *Frew v. Hawkins*, 540 U.S. 431, 441 (2004),
 5 the Court “should apply a ‘flexible standard’ to the modification of consent decrees when a
 6 significant change in facts or law warrants their amendment.” *Id.* (citing *Rufo*, 502 U.S. at 393).

7 Rule 60(b)(6) is residual to the other grounds listed in Rule 60(b) and is reserved for “any
 8 other reason that justifies relief” and requires “extraordinary circumstances.” *Lafarge Conseils Et*
 9 *Etudes, S.A. v. Kaiser Cement & Gypsum Corp.*, 791 F.2d 1334, 1338 (9th Cir. 1986).

10 IV. DISCUSSION

11 The Antitrust Division argues that the judgments presumptively should be terminated
 12 because of their age, because they are unnecessary, and because there has been no public
 13 opposition to termination. The Antitrust Division also argues that its experience enforcing
 14 antitrust laws has shown that markets evolve over time in ways that render long-lived judgments
 15 no longer protective of competition. Mot. at 4.

16 Here, the judgments the Antitrust Division seeks to terminate were issued between 120 and
 17 32 years ago. For nine of the judgments, the Antitrust Division has determined that most of the
 18 defendants likely no longer exist. Mot. at 5. For 22 of the judgments, the Antitrust Division has
 19 determined that the prohibited acts largely just recite conduct already prohibited by the antitrust
 20 laws. *Id.* at 6. For eight of the judgments, the Antitrust Division has concluded that the issues
 21 which the cases addressed involve markets where conditions have changed such that the judgment
 22 no longer protects competition. Mot. at 6; *see, e.g., United States v. Cont'l Grain Co.*, No. 1:70-
 23 CV-6733, 2019 WL 2323875, at *2 (E.D. Tex. May 30, 2019) (“After the passage of nearly 50
 24 years, the court is satisfied that the judgment in this case has exhausted its useful purpose and that
 25 the dangers it once addressed are no longer present.”). For five of the judgments, the government
 26 asserts that the requirements of the judgments have been met, rendering them satisfied in full.
 27 Mot. at 7. Further, the Government received no opposition to the termination of any of these
 28 judgments during the public comment period. *See Cont'l Grain Co.*, 2019 WL 2323875, at *2

(considering lack of opposition as a relevant factor in decision to terminate judgments). Given these circumstances, termination of the 37 judgments is appropriate. *See, e.g., United States v. Eastman Kodak Co.*, 63 F.3d 95, 102 (2d Cir. 1995) (affirming a district court's exercise of equitable discretion to terminate antitrust decrees where (1) the primary purposes of the decrees—the elimination of monopoly and unduly restrictive practices—had been achieved and (2) termination of the decrees would benefit consumers).

Further, other district courts across the country have terminated judgments in similar circumstances. *See United States v. Am. Amusement Ticket Mfrs. Ass'n*, No. 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); *United States v. The Wachovia Corp. and Am. Credit Corp.*, No. 3:75-cv-2656 FDW DSC (W.D.N.C. Dec. 17, 2018) (terminating one judgment); *United States v. Capital Glass & Trim Co., et al.*, No. 3679N (M.D. Ala. Jan. 2, 2019) (terminating one judgment); *United States v. Standard Sanitary Mfg. Co., et al.*, No. 19-mc-00069 RDB (D. Md. Feb. 7, 2019) (terminating nine judgments).

V. CONCLUSION

For the reasons stated above, the undersigned **RECOMMENDS** the District Judge **GRANT** the government's motion to terminate the legacy antitrust judgments. Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b)(2), a party may serve and file any objections within 14 days after being served.

Dated: July 3, 2019


THOMAS S. HIXSON
United States Magistrate Judge