EXHIBIT B

ORDERS FROM CASES TERMINATING LEGACY ANTITRUST FINAL JUDGMENTS

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

Civil Action No.: 19-mc-80147-TSH

Date Order Entered: July 3, 2019

United States District Court
Northern District of California

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/department-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

United States District Court
Northern District of California

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

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

IV. DISCUSSION

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

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

United States District Court
Northern District of California

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

Civil Action No.: 19-mc-80147-TSH

Date Order Entered: July 19, 2019

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. COAL DEALERS ASSOCIATION OF CALIFORNIA, et al., Defendants.	Case No. 19-mc-80147-JST **ORDER ADOPTING MAGISTRATE'S REPORT AND RECOMMENDATION** Re: ECF No. 1, 3

The Court has reviewed Magistrate Judge Thomas Hixson's report and recommendation to grant the United States' Rule 60(b) motion to terminate legacy antitrust judgments that no longer protect competition. ECF No. 3. The Court finds the report to be correct, well-reasoned, and thorough, and adopts it in every respect.

The Court further notes that Judge Hixson's report was not served on any party. Given that this motion seeks to terminate judgments entered between 120 and 32 years ago and that many of the affected entities no longer exist, the Court finds that the government's public comment initiative provided adequate notice under the circumstances. ECF No. 2 ¶¶ 5-7.

IT IS SO ORDERED.

Dated: July 19, 2019

JON S. TIGAR
United States District Judge

United States District Court
Northern District of California

UNITED STATES v.
CONTINENTAL GRAIN COMPANY

Civil Action No.: 1:70-CV-6733

Date Order Filed: May 30, 2019

2019 WL 2323875
Only the Westlaw citation is currently available.
United States District Court, E.D. Texas.

UNITED STATES OF AMERICA, Plaintiff,
v.
CONTINENTAL GRAIN COMPANY, Defendant.

CIVIL ACTION NO. 1:70-CV-6733
|
Filed 05/30/2019

MEMORANDUM AND ORDER

MARCIA A. CRONE UNITED STATES DISTRICT JUDGE

***1** Pending before the court is Plaintiff United States of America's (the "Government") Motion and Memorandum Regarding Termination of Legacy Antitrust Judgment (#2), wherein it requests that the court terminate a judgment it entered in 1970 that enjoined Defendant Continental Grain Company ("Continental") from conditioning the availability of its grain loading services on an agreement to use particular stevedoring services for grain handling. Having considered the motion and the applicable law, the court is of the opinion that the Government's motion should be GRANTED and that the final judgment in this case should be TERMINATED.

I. Background

On July 21, 1970, Judge Joe J. Fisher entered a final judgment in this case finding that the Government had stated a claim upon which relief could be granted pursuant to the Sherman Act and enjoining Continental from conditioning the use of its grain loading services on an agreement to use particular stevedoring services for grain handling. The judgment did not indicate that this prohibition would end at any particular point, and it has been in effect indefinitely. On April 29, 2019, over 48 years after the final judgment was entered, the Government filed the present motion wherein it seeks to terminate the injunction against Continental pursuant to Federal Rules of Civil Procedure 60(b)(5) and 60(b)(6). The Government argues the judgment should be terminated because it is outdated, it does not conform with the Government's present-day policy regarding the length of antitrust judgments, and a request for public comment on terminating the judgment went unanswered.

II. Analysis

Rule 60(b) of the Federal Rules of Civil Procedure provides that a court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(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).

The party seeking relief from a judgment, order, or proceeding bears the burden of showing that Rule 60(b) applies. *Frew v. Janek*, 780 F.3d 320, 327 (5th Cir. 2015) (citing *League of United Latin Am. Citizens, Dist. 19 v. City of Boerne*, 659 F.3d 421, 438 (5th Cir. 2011)); *see Lyles v. Medtronic Sofamor Danek, USA, Inc.*, 871 F.3d 305, 316 (5th Cir. 2017), *cert. denied*, 138 S. Ct. 1037 (2018); *United States v. City of New Orleans*, 947 F. Supp. 2d 601, 615 (E.D. La.), *aff'd*, 731 F.3d 434 (5th Cir. 2013). "[T]he decision to grant or deny relief under Rule 60(b) lies within the sound discretion of the district court and will be reversed only for abuse of that discretion." *Lyles*, 871 F.3d at 315 (quoting *Hesling v. CSX Transp. Inc.*, 396 F.3d 632, 638 (5th Cir. 2005)); *see Buck v. Davis*, ___ U.S. ___, 137 S. Ct. 759, 777 (2017) ("Rule 60(b) vests wide discretion in courts ...."). Rule 60(b) "is to be construed liberally to do substantial justice ... [it] is broadly phrased and many of the itemized grounds are overlapping, freeing Courts to do justice in hard cases where the circumstances generally measure up to one or more of the itemized grounds."

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Frew, 780 F.3d at 327 (quoting *Johnson Waste Materials v. Marshall*, 611 F.2d 593, 600 (5th Cir. 1980)).

***2** Under Rule 60(b)(6), a district court may relieve a party from an order or proceeding for any reason which justifies relief, other than those also enumerated in Rule 60(b). *Buck*, 137 S. Ct. at 777; *see Rocha v. Thaler*, 619 F.3d 387, 399-400 (5th Cir. 2010), *cert. denied*, 565 U.S. 941 (2011). "Rule 60(b)(6) is a grand reservoir of equitable power to do justice in a particular case when relief is not warranted by the preceding clauses ...." *Balentine v. Thaler*, 626 F.3d 842, 846 (5th Cir. 2010), *cert. denied*, 564 U.S. 1006 (2011) (quoting *Batts v. Tow-Motor Forklife Co.*, 66 F.3d 743, 747 (5th Cir. 1995)); *see Guevara v. Davis*, 679 F. App'x 332, 334 (5th Cir.), *cert. denied*, 138 S. Ct. 554 (2017); *Boissier v. Katsur*, 676 F. App'x 260, 264 (5th Cir. 2017). The court is of the opinion that Rule 60(b)(5) warrants relief in this case; hence, reliance on Rule 60(b)(6) is not necessary.

Rule 60(b)(5) authorizes district courts to terminate final judgments with prospective effects when their enforcement is no longer equitable. *Pico v. Glob. Marine Drilling Co.*, 900 F.2d 846, 851 (5th Cir. 1990); *Bailey v. Ryan Stevedoring Co.*, 894 F.2d 157, 160 (5th Cir. 1990). "In reviewing a request for relief under Rule 60(b)(5), '[w]e are not framing a decree [...] [w]e are asking ourselves whether anything has happened that will justify us now in changing a decree.' " *W. Water Mgmt., Inc. v. Brown*, 40 F.3d 105, 108 (5th Cir. 1994) (quoting *United States v. Swift & Co.*, 286 U.S. 106, 119 (1932)). "The inquiry ... is whether the changes are so important that the dangers, once substantial, have become attenuated to a shadow." *Swift & Co.*, 286 U.S. at 119. There is no time limit on when a Rule 60(b)(5) motion must be filed, other than that it should be brought "within a reasonable time." *Johnson Waste Materials*, 611 F.2d at 601.

Continuing injunctions, such as the one at issue here, "have the requisite prospective effect" required by Rule 60(b)(5). *Cook v. Birmingham News*, 618 F.2d 1149, 1152 (5th Cir. 1980). The Government contends that the judgment should be terminated because permanent antitrust injunctions typically fail to protect competition, as markets change over time due to competitive and technological advances. In fact, beginning in 1979, this prompted the Government to begin including term limits, typically no longer than 10 years, on the judgments they sought. After the passage of nearly 50 years, the court is satisfied that the judgment in this case has exhausted its useful purpose and that the dangers it once addressed are no longer present. Further, the Government received no opposition to the termination of this judgment during the public comment period. The Government has demonstrated that relief from this judgment is warranted under Rule 60(b)(5). Thus, the Government's motion is GRANTED.

III. Conclusion

Consistent with the foregoing analysis, it is ordered that the final judgment entered in this case is TERMINATED.

SIGNED at Beaumont, Texas, this 30th day of May, 2019.

All Citations

Slip Copy, 2019 WL 2323875

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UNITED STATES v.
KAHN'S BAKERY, INC., MEAD FOODS, INC.,
AND RAINBO BAKING CO. OF EL PASO

Civil Action No.: EP-75-CA-106

Date Order Entered: March 26, 2019

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

2019 MAR 26 AM 9:50

WESTERN DISTRICT OF TEXAS
BY

UNITED STATES OF AMERICA, Plaintiff,	§	
v.	§	EP-75-CA-106
KAHN'S BAKERY, INC., MEAD FOODS, INC., and RAINBO BAKING CO. OF EL PASO, Defendants.	§	

ORDER GRANTING MOTION TO TERMINATE LEGACY ANTITRUST JUDGMENT

On this day, the Court considered the Government's "Motion to Terminate Legacy Antitrust Judgment" [hereinafter "Motion"], filed on February 7, 2019, in the above-captioned cause. Therein, the Government moves to terminate the judgment in this antitrust case pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, having concluded that "because of its age and changed circumstances since its entry, the judgment—which was issued 41 years ago—no longer serves to protect competition." Mot. 1. After due consideration, the Court is of the opinion that the Motion should be granted for the reasons that follow.

I. FACTUAL AND PROCEDURAL BACKGROUND

On June 3, 1975, the Government filed its Complaint against Defendants Kahn's Bakery, Incorporated, Mead Foods, Incorporated, and Rainbo Baking Company of El Paso [hereinafter "Defendants"], who were the "principal processors and sellers of bread products in the El Paso area." Compl. 3. In its Complaint, the Government alleged that "[b]eginning at least as early as 1954 . . . and continuing thereafter at least until January 1, 1974, the [D]efendants and co-conspirators have engaged in a combination and conspiracy in unreasonable restraint of . . . interstate trade and commerce." *Id.* at 4. Specifically, the Government alleged that Defendants and co-conspirators agreed "(a) to fix, raise, and maintain the prices of bakery products sold by the [D]efendants as wholesale bakers to retail outlets in the El Paso area; and (b) to submit collusive and rigged bids to government agencies and other institutions requesting competitive bids for the sale of bakery products." *Id.* at 5. Accordingly, the Government brought a claim pursuant to the Sherman Act in order to prevent and restrain antitrust violations by Defendants. *Id.* at 1. Additionally, the Government brought claims pursuant to the Clayton Act and False Claims Act to recover

damages in connection with the Government's capacity as purchaser of bread products for use by Federal installations. *Id.*

On August 19, 1977, District Judge John H. Wood, Jr. entered a Final Judgment. The judgment perpetually enjoins Defendants from bid rigging and price fixing. Final J. 3. Furthermore, the Final Judgment enjoins each Defendant from communicating bread prices to any other Defendant for a period of ten years and, additionally, enjoins each Defendant from communicating future prices to any other Defendant. *Id.* Additionally, the Final Judgment requires Defendants to pay the Government the aggregate sum of $110,001, paid in installments for a period of six consecutive years. *Id.* at 7. Finally, the Final Judgment, contains terms to ensure compliance with the Final Judgment, including the requirement, for a period of five years, that each Defendant submit affidavits certifying that its bids and price lists are not the product of agreement with other bread sellers and the requirement that Defendants provide the Government access to relevant records upon written request by the Government. *Id.* at 5–6. Over forty-one years later, on February 7, 2019, the Government filed its Motion, requesting that the judgment be terminated.

II. LEGAL STANDARD

Pursuant to Federal Rule of Civil Procedure 60(b)(5) and (b)(6), "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." The Fifth Circuit has recognized that "Rule 60(b) is to be construed liberally to do substantial justice." *Frew v. Janek*, 780 F.3d 320, 327 (5th Cir. 2015) (quoting *Johnson Waste Materials v. Marshall*, 611 F.2d 593, 600 (5th Cir. 1980)). Furthermore, "[t]he rule is broadly phrased and many of the itemized grounds are overlapping, freeing Courts to do justice in hard cases where the circumstances generally measure up to one or more of the itemized grounds." *Id.*

III. DISCUSSION

The Government files its Motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure and seeks to terminate the judgment in this case. In its Motion, the Government explains that, since 1979, the Antitrust Division has generally followed a policy of including in each judgment a term that automatically terminates the judgment after no more than ten years. Mot. 1. This policy is based on the Government's realization "that markets almost always evolve over time in response to competitive and technological

changes in ways that render long-lived judgments no longer protective of competition or even anticompetitive." *Id.* at 1–2. Because hundreds of judgments entered prior to the 1979 policy contained no termination clause and remain in force today, the Government has "implemented a program to review and, when appropriate, seek termination of these perpetual legacy judgments, including the judgment in this case." *Id.* at 2 (first citing 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); and then citing *Judgment Termination Initiative*, U.S. DEP'T OF JUSTICE, https://www.justice.gov/atr/JudgmentTermination (last updated Feb. 1, 2019)). Courts in other districts have granted the Government's requests to terminate legacy antitrust judgments. *In re: Termination of Legacy Antitrust Judgments,* No. 2:18-mc-00033 (E.D. Va. Nov. 21, 2018) (terminating five legacy antitrust judgments); *United States v. Am. Amusement Ticket Mfrs. Ass'n*, Case 1:18-mc-00091 (D.D.C. Aug. 15, 2018) (terminating nineteen legacy antitrust judgments).

The Government provides several reasons for terminating the judgment in the instant case. First, the Government argues, because the

judgment is over forty-one years old, it "presumptively should be terminated because of its age." Mot. 3. Furthermore, "many of the judgment's requirements have elapsed or been satisfied," including the ten-year prohibition against communicating prices and the order to pay damages. *Id.* Additionally, the perpetual terms prohibiting Defendants from bid rigging and price fixing "target that which the antitrust laws already prohibits." *Id.* Based on the Government's assessment that the judgment should be terminated, the Government "gave the public notice of—and the opportunity to comment on—its intention to seek termination of the judgment." *Id.* at 4; *Legacy Antitrust Judgment: U.S. v. Kahn's Bakery, Inc., et al.*, U.S. DEP'T OF JUSTICE, https://www.justice.gov/atr/legacy-antitrust-judgment-kahns-bakery-inc-et-al (last updated Sept. 17, 2018). The Government received no comments. *Id.*

After due consideration, the Court concludes that the Government has demonstrated that the Final Judgment no longer serves to protect competition. In light of the rationale for the Government's Judgment Termination Initiative and the reasons offered by the Government for terminating the Final Judgment in this case, including the age of the Final Judgment, the lapse and satisfaction of its key terms, and the absence of any

opposition to the Government's position, the Court is of the opinion that it is appropriate to terminate the Final Judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure.

IV. CONCLUSION

Accordingly, **IT IS ORDERED** that the Government's "Motion to Terminate Legacy Antitrust Judgment" is **GRANTED**.

IT IS FURTHER ORDERED that the **FINAL JUDGMENT** entered in this case is **TERMINATED**.

SIGNED this 26 **day** of **March, 2019**.

PHILIP R. MARTINEZ
UNITED STATES DISTRICT JUDGE

UNITED STATES v.
VIRGIN ISLANDS GIFT AND FASHION
SHOP ASSOCIATION, INC., *et al.*

Civil Action No.: 1969-295

Date Order Entered: June 11, 2019

DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Civil No. 1969-295**
	)	
VIRGIN ISLANDS GIFT AND FASHION SHOP ASSOCIATION, INC.; C. & M. CARON, INC.; A.H. RIISE GIFT SHOP, INC.; CAVANAGH'S, INC.; CARIBE TIME PRODUCTS, INC.; CONTINENTAL, INC.; THE GENERAL TRADING CORPORATION; CARDOW, INC.; CASA VENEGAS, INC.; FRENCH SHOPPE, INC.; LITTLE SHOP, INC.; MR. WOODIE, INC.; CHI CHI, INC.; ST. THOMAS JEWELRY, INC. d/b/a PLACE VENDOME; H. STERN-ST. THOMAS, INC.; THEO'S INC.; and A.H. LOCKHART & CO., INC.,	)	
	)	
Defendants.	)	

ATTORNEYS:

R. Cameron Gower
United States Department of Justice
Washington, DC
For the United States of America.

ORDER

GÓMEZ, J.

Before the Court is the motion of the United States to terminate the September 8, 1970, Judgment entered in this action.

I. FACTUAL AND PROCEDURAL HISTORY

On September 10, 1969, the United States filed a complaint alleging antitrust violations under 15 U.S.C. § 3 against the

Virgin Islands Gift and Fashion Shop Association, Inc.; C. & M. Caron, Inc.; A.H. Riise Gift Shop, Inc.; Cavanagh's, Inc.; Caribe Time Products, Inc.; Continental, Inc.; The General Trading Corporation; Cardow, Inc.; Casa Venegas, Inc.; French Shoppe, Inc.; Little Shop, Inc.; Mr. Woodie, Inc.; Chi Chi, Inc.; St. Thomas Jewelry, Inc. d/b/a Place Vendome; H. Stern-St. Thomas, Inc.; Theo's Inc.; and A.H. Lockhart & Co., Inc. (collectively "the Gift Shop Defendants"). The several Gift Shop defendants each were retailers of merchandise sole in their respective gift shops.

On September 8, 1970, this Court entered a final judgment to which the parties consented. That judgment perpetually enjoins the Gift Shop Defendants from fixing or facilitating fixing the price or discounts of gift shop items. The judgment also perpetually requires the Gift Shop Defendants to report to the United States or open their books to the United States upon the United States's reasonable request. Further, the judgment contains various short-term requirements, such as requiring the Gift Shop Defendants to cancel or destroy certain price lists, discount schedules, and other materials within 30 days of entry of the judgment. The judgment also retained jurisdiction "for the purpose of enabling any of the parties . . . to apply to this Court at any time for such further orders and directions as may be necessary or

appropriate for . . . termination of any of the provisions [of this Final Judgment]." *See United States v. V.I. Gift & Fashion Shop Ass'n*, No. 1969-295, 1970 U.S. Dist. LEXIS 10335, at *10 (D.V.I. Sep. 8, 1970).

The United States now moves, pursuant to Federal Rule of Civil Procedure 60(b), to terminate the September 8, 1970, Judgment.

II. DISCUSSION

"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). Federal Rule of Civil Procedure 60 ("Rule 60") in pertinent part provides:

> (b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
>
> . . .
>
> (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 . . . can show 'a significant change either in factual conditions or in law.'"

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

Relief under Rule 60(b)(6) is extraordinary because it can be given for "any other reason justifying relief." *Coltec Indus. Inc. v. Hobgood*, 280 F.3d 262, 273 (3d Cir. 2002).

III. ANALYSIS

The United States indicates that pursuant to Federal Rule of Civil Procedure 60(b) ("Rule 60") it seeks to terminate the September 8, 1970, Judgment in this case.

The United States asserts that its experience enforcing antitrust laws has shown that markets evolve over time "in ways that render long-lived judgments no longer protective of competition, or even anticompetitive." *See* Mot. of the United States to Terminate a Legacy Antitrust J. at 2, ECF No. 3. As a result, since 1979, the Antitrust Division of the United States Department of Justice ("Antitrust Division") has "followed a

policy of including in each judgment a term automatically terminating antitrust judgments after no more than ten years." *Id.*

Here, the September 8, 1970, Judgment has been in effect for over 48 years. Significantly, the deadline for each short-term requirement imposed by that judgment has long-since elapsed. Additionally, the ongoing prohibitions within the judgment target only price fixing or facilitation thereof--actions already prohibited by the antitrust laws. *See, e.g.,* 15 U.S.C. § 3; *United States v. Nat'l Ass'n of Real Estate Bds.*, 339 U.S. 485, 489 (1950); *United States v. Bausch & Lomb Optical Co.*, 321 U.S. 707, 720 (1944). The United States also informs the Court that the leading defendant, the Virgin Islands Gift and Fashion Shop Association, Inc., no longer exists. Given these circumstances, termination of the September 8, 1970, Judgment 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).

The premises considered, it is hereby

ORDERED that the motion of the United States to reopen the case (ECF No. 2) is **GRANTED**; it is further

ORDERED that the motion of the United States to terminate the September 8, 1970, Judgment (ECF No. 3) is **GRANTED**; and it is further

ORDERED that the September 8, 1970, Judgment entered in this matter is **TERMINATED**.

S_____
CURTIS V. GÓMEZ
District Judge

UNITED STATES v.
ANHEUSER-BUSCH, INC. *et al*.

Civil Action No.: 1:60-cv-08906-KMM

Date Order Entered: July 19, 2019

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,

v. **Civil Case No. 8906-M**

ANHEUSER-BUSCH, INC. *et al.*,

Defendants

UNITED STATES OF AMERICA,

v. **Civil Action No. 10,422 M**

PAUL BARNETT, INC. *et al.*,

Defendants

UNITED STATES OF AMERICA,

v. **Civil No. 10,292**

RYDER SYSTEM, INC.,

Defendant

UNITED STATES OF AMERICA,

v. **No. 417-62-Civ-WAM**

THE HOUSE OF SEAGRAM, INC.,

Defendant

UNITED STATES OF AMERICA,

v. **Civil No. 75-03087 Civ.-PF**

CUSTOMS BROKERS AND FORWARDERS ASSOC. OF MIAMI, INC.,

Defendant

UNITED STATES OF AMERICA,

v. **Civil No. FL-74-00078-Civ-NCR, Jr.**

CLIMATROL CORP. and SCREENCO INC.,

Defendants

UNITED STATES OF AMERICA,

v. **Civil No. 76-6041-Civ-JE**

AMERICAN SERV. CORP. *et al.*,

Defendants

ORDER TERMINATING FINAL JUDGMENTS

THIS CAUSE came before the Court upon the United States of America's Motion to Terminate the Judgments in each of the above-captioned antitrust cases pursuant to Federal Rule of Civil Procedure 60(b).[1] The Government gave public notice and the opportunity to comment on its intent to seek termination of the judgments and it received no comments opposing

[1] The Government filed an identical motion to terminate the seven above-captioned antitrust judgments in each above-captioned case and as such, this Order will address all of the above-captioned cases and will be filed separately on the respective dockets.

termination. The motion is now ripe for review.

I. BACKGROUND

The Government moves, pursuant to Federal Rule of Civil Procedure 60(b), to terminate seven anti-trust judgments, discussed herein. First, in *United States v. Ryder System Inc.*, No. 10,292 (1961), a judgment was entered requiring the defendant to sell all of its interests in varying numbers of trucks and accompanying lease contracts and preventing the defendant from acquiring additional assets for three years *See* 1:61-cv-10292-KMM, ECF No. 2. The Government moves to terminate this judgment arguing that the judgment has been satisfied in full and should have been terminated but for the failure to include a term automatically terminating it upon satisfaction of its substantive terms.

Second, in *United States v. Anheuser-Bush, Inc.*, No. 8906-M (1960), multiple judgments were entered which included provisions enjoining the defendant from acquiring shares of stock of any corporation engaged in brewing beer in Florida and selling any brewing facility or plant. *See* 1:60-cv-08906-KMM, ECF No. 2. The Government argues that these provisions have been mooted by subsequent statutory developments, which require that sufficiently large stock or asset acquisitions or sales be reported to federal antitrust authorities for their review.

Finally, the Government argues that the judgments in the following cases are more than ten years old and merely prohibit acts that are illegal under the antitrust laws, such as fixing prices and dividing markets: *United States v. American Service Corporation et al.*, No. 76-6041-Civ-JE (1976) (prohibiting price fixing and dividing markets); *United States v. Customs Brokers & Forwarders Ass'n of Miami*, No. 75-3087 Civ.-P (1975) (prohibiting price fixing); *United States v. Climatrol Corp. and Screenco, Inc.*, No. FL-74-00078-Civ-NCR, Jr. (1974) (prohibiting price fixing and market division); *United States v. The House of Seagram, Inc.*, No. 417-62-Civ-

WAM (1962) (prohibiting price fixing); *United States v. Paul Barnett, Inc.*, No. 10,422 M (1961) (prohibiting price fixing and selling below cost). *See* 1:76-cv-06041-KMM, ECF No. 2; 1:75-cv-03087-KMM, ECF No. 3; 1:74-cv-00078-KMM, ECF No. 2; 1:62-cv-00417-KMM, ECF No. 2; 1:61-cv-10422-KMM, ECF No. 2. Thus, the Government argues that these judgments are no longer necessary.

Accordingly, the Government moves to terminate the above-captioned judgments arguing that Rule 60(b)(5) and (b)(6) provide the Court the authority to do so.

II. DISCUSSION

The Government explains that, since 1979, the Antitrust Division has generally followed a policy of including in each judgment a term that automatically terminates the judgment after no more than ten years. However, this was not the policy prior to 1979 and thus, hundreds of judgments entered prior to 1979 contain no termination clause and remain in force today. As a result, the Government has implemented a program to review and, when appropriate, seek termination of these perpetual legacy judgments, including the judgments in the above-captioned cases. The Government now seeks termination of the above-captioned judgments pursuant to Rule 60(b)(5) and (b)(6).

Rule 60(b)(5) and (b)(6) of the Federal Rules of Civil Procedure provide that:

> the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons. . . . (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). The party seeking relief from a judgment, order, or proceeding bears the burden of showing that Rule 60(b) applies. *Frew v. Janek*, 780 F.3d 320, 326–27 (5th Cir. 2015) ("Consent decrees, like other judgments, may be modified or terminated pursuant to Rule

60(b)(5), which provides three independent, alternative grounds for relief. . .. As the party seeking relief, Defendants must bear the burden of showing that Rule 60(b)(5) applies.").

Rule 60(b)(5) "applies in ordinary civil litigation where there is a judgment granting continuing prospective relief, such as an injunction." *Griffin v. Sec'y, Fla. Dept of Corr.*, 787 F.3d 1086, 1089 (11th Cir. 2015). It is appropriate to grant a Rule 60(b)(5) motion "when the party seeking relief from an injunction . . . can show a significant change either in factual conditions or in law." *Agostini v. Felton*, 521 U.S. 203, 215, 237 (1997) (internal citation and quotation marks omitted) (holding that "a court errs when it refuses to modify an injunction or consent decree in light of" changes in factual conditions or in law). Further, Rule 60(b)(6) provides that the Court "may relieve a party or its legal representative from a final judgment" for "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(6).

Courts in other districts have granted the Government's request to terminate similar legacy antitrust judgments. *See, e.g.*, *United States v. Kahn's Bakery Inc. et al.*, No. 3:75-cv-00106 (W.D. Tex. Mar. 26, 2019), ECF No. 4; *United States v. Continental Grain Co.*, No. 1:70-cv-06733 (E.D. Tex. May 30, 2019), ECF No. 3; *United States v. V.I. Gift and Fashion Shop Assoc. Inc.*, No. 3:69-cv-00295 (V.I. June 11, 2019), ECF No. 4.

Here, the Government points to changes in the factual and legal landscape that they believe justify their claim for relief under Rule 60(b)(5) and (b)(6). First, the Government argues that the judgments should be terminated because of their age. In addition to age, the Government argues that the judgments should be terminated because (1) all terms of the judgments have been satisfied, (2) most defendants no longer exist, and (3) the judgments largely prohibit act that the antitrust laws already prohibit.

Given these circumstances, and pursuant to Rule 60(b), the termination of the above-

captioned judgments is appropriate.

III. CONCLUSION

Accordingly, UPON CONSIDERATION of the Motion, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that the Government's Motion to Terminate Judgments in each of the above-captioned cases is GRANTED.

DONE AND ORDERED in Chambers at Miami, Florida, this 19th day of July, 2019.

K. MICHAEL MOORE
UNITED STATES CHIEF DISTRICT JUDGE

c: All counsel of record