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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

IN RE: TERMINATION OF LEGACY ANTITRUST JUDGMETNS IN THE DISTRICT OF IDAHO	Civil Action No. 1:19-mc-10427-DCN
UNITED STATES OF AMERICA, Plaintiff, v. IDAHO STATE PHARMACEUTICAL ASSOCIATON, INC., Defendant.	Civil Action No. 3654

UNITED STATES OF AMERICA, Plaintiff, v. MONROC, INC., *et al*., Defendant.	Civil Action No. 1-75-176
UNITED STATES OF AMERICA, Plaintiff, v. MORRISON-KNUDSEN COMPANY, INC. *et al*., Defendants.	Civil Action No. 1-75-177
UNITED STATES OF AMERICA, Plaintiff, v. ALBERTSON'S, INC., *et al*., Defendants.	Civil Action No. 1-74-66

MEMORANDUM IN SUPPORT OF UNITED STATES OF AMERICA'S MOTION TO TERMINATE LEGACY ANTITRUST JUDGMENTS

The United States respectfully submits this memorandum in support of its motion to terminate four legacy antitrust judgments. The Court entered these judgments in cases brought by the United States between 1963 and 1977; thus, these judgments are between forty-two and fifty-six years old. After examining each judgment—and after soliciting public comments on each proposed termination and receiving no objections—the United States has concluded that termination of these judgments is not only appropriate, but is also consistent with the terms of

said judgments (which expressly reserved unto the parties the ability to apply for such further orders or request such modifications of said judgments as may be necessary or 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 States frequently sought entry of antitrust judgments whose terms never expired.[1] Such perpetual judgments were the norm until 1979, when the Antitrust Division of the United States Department of Justice ("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. Although a defendant may move a court to terminate a perpetual judgment, few defendants have done so. There are many possible reasons for this, including that defendants may not have been willing to bear the costs and time resources to seek termination, defendants may have lost track of decades-old judgments, individual defendants may have passed away, or firm defendants may have gone out of business. As a result, hundreds of these legacy judgments remain open on the dockets of courts around the country. Originally intended to protect the loss of competition arising from violations of the antitrust laws, nearly all of these judgments likely have been rendered obsolete by changed circumstances since their entry.

The Antitrust Division recently implemented a program to review and, when appropriate, seek termination of legacy judgments. The Antitrust Division's Judgment Termination Initiative

[1] 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 the accompanying motion concern violations of these two laws.

encompasses review of all of its outstanding perpetual antitrust judgments. The Antitrust Division described the initiative in a statement published in the Federal Register.[2] In addition, the Antitrust Division established a website to keep the public apprised of its efforts to terminate perpetual judgments that no longer serve to protect competition.[3] The United States believes that its outstanding perpetual antitrust judgments presumptively should be terminated; nevertheless, the Antitrust Division examined each judgment covered by this motion to ensure that it is suitable for termination. The Antitrust Division also gave the public notice of—and the opportunity to comment on—its intention to seek termination of these judgments.

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

- The Antitrust Division reviewed its perpetual judgments entered by this Court to identify those that no longer serve to protect competition such that termination would be appropriate.

- When the Antitrust Division identified a judgment it believed suitable for termination, it posted the name of the case and a link to the judgment on its public Judgment Termination Initiative website.

- The public had the opportunity to submit comments regarding each proposed termination to the Antitrust Division within thirty days of the date the case name and judgment link was posted to the public website.

- Having received no comments regarding the above-captioned judgments, the United States moves this Court to terminate them.

The United States followed this process for each judgment it seeks to terminate by this motion.[4]

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[2] 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.

[3] https://www.justice.gov/atr/JudgmentTermination.

[4] The United States also followed this process in several other districts. *See United States v. Am. Amusement Ticket Mfrs. Ass'n*, 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); *United States v. The Wachovia Corp.*

The remainder of this memorandum sets forth the legal basis for the Court's jurisdiction and discusses below the reasons why each of the judgments in the above-captioned cases should be terminated. Attached to this memorandum are three appendices -- Appendix A attaches a copy of each final judgment that the United States seeks to terminate. Appendix B summarizes the terms of each judgment and the United States' reasons for seeking termination. Appendix C is a Proposed Order Terminating Final Judgments.

II. APPLICABLE LEGAL STANDARDS FOR TERMINATING THE JUDGMENTS

This Court has jurisdiction to terminate the judgments in the above-captioned cases. It has long been recognized that courts are vested with inherent power to modify judgments they have issued which regulate future conduct. *See United States v. Swift & Company*, 286 U.S. 106, 114-15 (1932). 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)." Finally, all of the judgments in the above-captioned cases, attached in Appendix A, expressly provide that the Court retains jurisdiction.

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and Am. Credit Corp., Case No. 3:75CV2656-FDW-DSC (W.D.N.C. Dec. 17, 2018) (terminating one judgment); *United States v. Capital Glass & Trim Co., et al.*, Case No. 3679N (M.D. Ala. Jan. 2, 2019) (terminating one judgment); *United States v. Standard Sanitary Mfg. Co., et al.*, Case 1:19-mc-00069-RDB (D. Md. Feb. 7, 2019) (terminating nine judgments).

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.[5] 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 defendants likely no longer exist and terms of the judgment merely prohibit that which the antitrust laws already prohibit. Under such circumstances, the Court may terminate the judgments pursuant to Rule 60(b)(5) or (b)(6) of the Federal Rules of Civil Procedure.

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

Permanent antitrust injunctions rarely serve to protect competition. The experience of the United States in enforcing the antitrust laws has shown that markets almost always evolve over time in response to competitive and technological changes. These changes may make the prohibitions of decades-old judgments either irrelevant to, or inconsistent with, competition. The development of new products that compete with existing products, for example, may render a

[5] In light of the circumstances surrounding the four Idaho judgments which are the subject of this motion, 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 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 circumstances since their entry, as described in this memorandum, means that the judgments likely no longer serve their original purpose of protecting competition.

market more competitive than it was at the time of entry of the judgment or may even eliminate a market altogether, making the judgment irrelevant. In some circumstances, a judgment may be an impediment to the kind of adaptation to change that is the hallmark of competition, undermining the purposes of the antitrust laws altogether. These considerations, among others, led the Antitrust Division in 1979 to establish its policy of generally including in each judgment a term automatically terminating the judgment after no more than ten years.[6]

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

B. The Judgments Should Be Terminated Because They Are Unnecessary

In addition to age, other reasons weigh heavily in favor of termination of each judgment. These reasons include: (1) certain defendants no longer exist, and (2) the judgment largely prohibits that which the antitrust laws already prohibit. Each of these reasons suggests the judgments no longer serve to protect competition. In this section, we describe these additional reasons, and we identify those judgments that are worthy of termination for each reason. Appendix B summarizes the key terms of each judgment and the reasons to terminate it.

1. Defendants Likely No Longer Exist

In *Monroc, Inc., et al.*, Civil Action No. 1-75-176, this judgment was entered in 1977, and from a search of corporate records with the Idaho Secretary of State's office, all three

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

corporate defendants appear to no longer exist. To the extent that defendants no longer exist, the related judgment serves no purpose, which is a reason to terminate this judgment.

2. Terms of Judgment Prohibit Acts Already Prohibited by Law

The Antitrust Division has determined that the core provisions of the judgments in the following cases merely prohibit acts that are illegal under the antitrust laws, such as price fixing, bid rigging, and acquisitions substantially likely to lessen competition:

- *Idaho State Pharmaceutical Association, Inc.*, Civil Action No. 3654 (prohibiting price fixing),
- *Monroc, Inc., et al.*, Civil Action No. 1-75-176 (prohibiting price fixing and bid rigging),
- *Morrison-Knudsen Company, Inc., et al.,* Civil Action No. 1-75-177 (prohibiting price fixing and bid rigging), and
- *Albertson's, Inc., et al.*, Civil Action No. 1-74-66 (acquisition substantially likely to lessen competition).

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

C. There Has Been No Public Opposition to Termination

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

[7] 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.

described its Judgment Termination Initiative in a statement published in the Federal Register.[8] On June 29, 2018, the Antitrust Division listed the judgments in the above-captioned cases on its public website, describing its intent to move to terminate the judgments.[9] The notice identified each case, linked to the judgment, and invited public comment for a period of 30 days. The Division received no comments concerning the judgments in any of the above-captioned cases.

IV. CONCLUSION

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

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[8] 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.

[9] https://www.justice.gov/atr/JudgmentTermination, link titled "View Judgments Proposed for Termination in Idaho, District."

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