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9
 10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

12
 13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 GEN. ELEC. CO.,
 17 WESTINGHOUSE ELEC. CORP.,
 18 DELTA-STAR ELEC. CO.,
 19 A.B. CHANCE CO.,
 20 COLE ELEC. CO.,
 21 HI-VOLTAGE EQUIP. CO.,
 22 PAC. ELEC. MFG. CORP.,
 RY. & INDUS. ENG'G CO.,
 23 S. STATES EQUIP. CORP., AND
 ELEC. ENG'RS EQUIP. CO.,

24 Defendants.

Misc. No. 2:19-MC-00120-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 69 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. For this and other reasons explained below, the United
9 States requests that the judgment be terminated.

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.²
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
22 business. As a result, hundreds of these legacy judgments remain open on the dockets of
23 courts around the country. Originally intended to protect the loss of competition arising
24 from violations of the antitrust laws, none of these judgments likely continues to do so
25 because of changed circumstances.

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27 ¹ This case was originally filed as case No. 7899-M in the former Southern District
28 of California prior to the establishment of the Central District of California in 1966.

² 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.

1 The Antitrust Division has implemented a program to review and, when
2 appropriate, seek termination of legacy judgments. The Antitrust Division's Judgment
3 Termination Initiative encompasses review of all its outstanding perpetual antitrust
4 judgments. The Antitrust Division described the initiative in a statement published in the
5 Federal Register.³ In addition, the Antitrust Division established a website to keep the
6 public informed of its efforts to terminate perpetual judgments that no longer serve to
7 protect competition.⁴ The United States believes that its outstanding perpetual antitrust
8 judgments presumptively should be terminated; nevertheless, the Antitrust Division is
9 examining each judgment to ensure that it is suitable for termination. The Antitrust
10 Division is giving the public notice of—and the opportunity to comment on—its intention
11 to seek termination of its perpetual judgments.

12 In brief, the process the United States is following to determine whether to move to
13 terminate a perpetual antitrust judgment is as follows:

- 14 • The Antitrust Division reviews each perpetual judgment to determine whether it
15 no longer serves to protect competition such that termination would be
16 appropriate.
- 17 • If the Antitrust Division determines a judgment is suitable for termination, it
18 posts the name of the case and the judgment on its public Judgment
19 Termination Initiative website,
20 <https://www.justice.gov/atr/JudgmentTermination>.
- 21 • The public has the opportunity to comment on each proposed termination
22 within thirty days of the date the case name and judgment are posted to the
23 public website.

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27 ³ 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>.

⁴ *Judgment Termination Initiative*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/atr/JudgmentTermination>.

- Following review of public comments, the Antitrust Division determines whether the judgment still warrants termination; if so, the United States moves to terminate it.

The United States followed this process for each judgment it seeks to terminate.⁵

The remainder of this motion is organized as follows: Section III describes the Court’s jurisdiction to terminate the judgment and the applicable legal standards for terminating the judgment. Section IV argues that perpetual judgments rarely serve to protect competition and that those that are more than ten years old presumptively should be terminated. Section IV also discusses specific circumstances justifying termination. Section V concludes. Appendix A attaches a copy of the judgment that the United States seeks to terminate with this motion. A proposed order terminating the judgment accompanies this motion.

III. APPLICABLE LEGAL STANDARDS FOR JUDGMENT TERMINATION

This Court has jurisdiction and authority to terminate the judgment. The judgment provides that the Court retains jurisdiction. In addition, the Federal Rules of Civil Procedure grant the Court authority to terminate the judgment. According to Rule 60(b)(5) and (b)(6), “[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); *see also Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 441 (2004) (explaining that Rule 60(b)(5) “encompasses the traditional power of a court of equity to modify its decree in light of

⁵ The United States followed this process to move several dozen other district courts to terminate legacy antitrust judgments. *See, e.g., In re: Termination of Legacy Antitrust Judgments in the District of Idaho*, Case 1:19-mc-10427-DCN (D. Idaho Apr. 18, 2019); *United States v. Inter-Island Steam Navigation Co., et al.*, Case 1:19-mc-00115 (D. Haw. April 9, 2019) (terminating five judgments); *United States v. Odom Co., 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 changed circumstances” and that “district courts should apply a ‘flexible standard’ to the
2 modification of consent decrees when a significant change in facts or law warrants their
3 amendment”) (citation omitted); *United States v. Asarco Inc.*, 430 F.3d 972, 979 (9th Cir.
4 2005) (Under Rule 60(b), “a court may relieve a party from a final judgment when . . . it
5 is no longer equitable that the judgment should have prospective application. . . . [This]
6 Rule codifies the courts’ traditional authority, inherent in the jurisdiction of the chancery,
7 to modify or vacate the prospective effect of their decrees.”) (citations and internal
8 quotation marks omitted). Given its jurisdiction and authority, the Court may terminate
9 the judgment for any reason that justifies relief, including that the judgment no longer
10 serves its original purpose of protecting competition.⁶ Termination of the judgment is
11 warranted.

12 **IV. ARGUMENT**

13 It is appropriate to terminate the judgment because it no longer serves its original
14 purpose of protecting competition. The United States believes that this perpetual
15 judgment presumptively should be terminated because its age alone suggests it no longer
16 protects competition. Other reasons, however, also weigh in favor of terminating it.
17 Under such circumstances, the Court may terminate the judgment pursuant to
18 Rule 60(b)(5) or (b)(6) of the Federal Rules of Civil Procedure.

19 **A. The Judgment Presumptively Should Be Terminated Because of Age**

20 Permanent antitrust injunctions rarely serve to protect competition. The experience
21 of the United States in enforcing the antitrust laws has shown that markets almost always
22 evolve over time in response to competitive and technological changes. These changes
23 may make the prohibitions of decades-old judgments either irrelevant to, or inconsistent
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25 ⁶ 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 with, competition. These considerations, among others, led the Antitrust Division in
2 1979 to establish its policy of generally including in each judgment a term automatically
3 terminating the judgment after no more than ten years.⁷ The judgment—which is
4 decades old—presumptively should be terminated for the reasons that led the Antitrust
5 Division to adopt its 1979 policy of generally limiting judgments to a term of ten years.

6 **B. The Judgment Should Be Terminated Because It Is Unnecessary**

7 In addition to age, other reasons weigh heavily in favor of terminating the
8 judgment. Based on its examination of the judgment, the Antitrust Division has
9 determined that it should be terminated for the following reasons:

- 10 • The judgment prohibits acts that the antitrust laws already prohibit, such as
11 fixing prices and rigging bids. These prohibitions amount to little more than an
12 admonition that defendants must not violate the law. Absent such terms,
13 defendants still are deterred from violating the law by the possibility of
14 imprisonment, significant criminal fines, and treble damages in private follow-
15 on litigation; a mere admonition to not violate the law adds little additional
16 deterrence. To the extent a judgment includes terms that do little to deter
17 anticompetitive acts, it should be terminated.
- 18 • All the relevant patents have expired. From 1861 until the United States
19 enacted the Uruguay Round Agreements Act (“URAA”), which took effect on
20 June 8, 1995, patent terms lasted 17 years from grant with no extensions. *See*
21 *Act of March 2, 1861, ch. 88, § 16, 12 Stat. 246, 249 (1861)*. The URAA
22 changed the patent term from seventeen years from the date of issue to the
23 current twenty years from the earliest filing date. Pub.L. 103-465, 108 Stat.
24 4809, 4984.

25 The consent judgment was entered in 1949. Jurisdiction was explicitly retained in
26 Section IX of the judgment. The judgment enjoined manufacturers of electrical
27 equipment and holders of certain electrical equipment patents from fixing the prices of
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⁷ U.S. DEP’T OF JUSTICE, ANTITRUST DIVISION MANUAL at III-147 (5th ed. 2008),
<https://www.justice.gov/atr/division-manual>.

1 disconnecting and grounding switches, from engaging in bid rigging, and from
2 information sharing. The judgment also required reasonable royalty and non-exclusive
3 licensing of patents relating to disconnecting and grounding switches. The judgment
4 should be terminated because (a) its terms largely prohibit acts the antitrust laws already
5 prohibit (price fixing and bid rigging); and (b) all the relevant patents have expired.

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

7 The United States has provided adequate notice to the public regarding its intent to
8 seek termination of the judgment. On April 25, 2018, the Antitrust Division issued a
9 press release announcing its efforts to review and terminate legacy antitrust judgments.⁸
10 On March 22, 2019, the Antitrust Division listed the judgment on its public website,
11 describing its intent to move to terminate it.⁹ The notice identified the case, linked to the
12 judgment, and invited public comment. No comments were received opposing
13 termination.

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25 ⁸ Press Release, *Department of Justice Announces Initiative to Terminate*
26 *“Legacy” Antitrust Judgments*, U.S. DEP’T OF JUSTICE (April 25, 2018),
27 <https://www.justice.gov/opa/pr/departments-justice-announces-initiative-terminate-legacy-antitrust-judgments>.

28 ⁹ *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).

1 **V. CONCLUSION**

2 For the foregoing reasons, the United States believes termination of the judgment
3 in the above-captioned case is appropriate and respectfully requests that the Court enter
4 an order terminating it. A proposed order terminating the judgment in the above-
5 captioned case accompanies this motion.

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7 DATE: 6/11/2019

Respectfully submitted,

8 /s/

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12 /s/

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