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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

KAISER STEEL CORP., AND U.S. STEEL CORP.,

Defendants.

Misc. No. 2:19-MC-00111-VAP

UNITED STATES' MOTION TO TERMINATE LEGACY ANTITRUST JUDGMENT AND MEMORANDUM IN SUPPORT THEREOF

I. INTRODUCTION

The United States respectfully moves to terminate the judgment in the above-captioned antitrust case pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. The judgment was entered by this Court 51 years ago.[1] The United States has concluded that because of its age and changed circumstances since its entry, the judgment no longer serves to protect competition. The United States gave the public notice and the opportunity to comment on its intent to seek termination of the judgment; it received no comments opposing termination. For this and other reasons explained below, the United States requests that the judgment be terminated.[2]

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[1] This case was originally filed as Civil No. 64-833-MP.

[2] For the convenience of the Court, the United States notes that one or more of the arguments in support of termination are the same for the following 35 judgments for which the United States is seeking termination by separate motions: (1) *United States v. Pac. Coast Plumb. Supply Ass'n, et al.*, Civil No. 1686-92 (S.D. Cal. Jan. 6, 1912); (2) *United States v. S. Cal. Wholesale Grocers' Ass'n, et al.*, Civil No. H-81-J (S.D. Cal. Sept. 22, 1925); (3) *United States v. Cal. Wholesale Grocers' Ass'n, et al.*, Civil No. H-80-M (S.D. Cal. May 5, 1926); (4) *United States v. Eighteen Karat Club, et al.*, Civil No. L12J (S.D. Cal. May 4, 1927); (5) *United States v. S. Cal. Marble Ass'n, et al.*, Civil No. 1254-H (S.D. Cal. Nov. 12, 1940); (6) *United States v. Harbor Dist. Lumber Dealers Ass'n, et al.*, Civil No. 1401-Y (S.D. Cal. Feb. 14, 1941); (7) *United States v. Heating, Piping, & Air Conditioning Contractors Ass'n of S. Cal., et al.*, Civil No. 1642-Y (S.D. Cal. July 10, 1941); (8) *United States v. Santa Barbara Cty. Chapter, Nat'l Elec. Contractors Ass'n, et al.*, Civil No. 1678-H (S.D. Cal. Aug. 4, 1941); (9) *United States v. Harbor Dist. Chapter, Nat'l Elec. Contractors Ass'n, et al.*, Civil No. 1677-RJ (S.D. Cal. Aug. 4, 1941); (10) *United States v. San Pedro Fish Exch., et al.*, Civil No. 1772-B (S.D. Cal. Sept. 15, 1941); (11) *United States v. Retail Furniture Dealers Ass'n of S. Cal., et al.*, Civil No. 2230-Y (S.D. Cal. May 7, 1942); (12) *United States v. S. Cal. Gas Co., et al.*, Civil No. 2231-Y (S.D. Cal. May 7, 1942); (13) *United States v. Schmidt Lithograph Co., et al.*, Civil No. 2424 BH (S.D. Cal. Sept. 14, 1942, as modified on Nov. 25, 1975); (14) *United States v. Produce Exch. of L.A., et al.*, Civil No. 2539-Y (S.D. Cal. Nov. 2, 1942); (15) *United States v. California Fruit Growers Exch., et al.*, Civil No. 2577-BH (S.D. Cal. Nov. 18, 1942); (16) *United States v. John B. Reeves & Son, et al.*, Civil No. 8769-WM (S.D. Cal. May 29, 1950); (17) *United States v. Stationers Ass'n of S. Cal., Inc., et al.*, Civil No. 14777-C (S.D. Cal. Jan. 15, 1954); (18) *United States v. Kosher Butchers' Ass'n of L.A., et al.*, Civil No. 17914 Y (S.D. Cal. Mar. 1, 1955); (19) *United*

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.[3] 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

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States v. Los Angeles Meat & Provision Drivers Union, Local No. 626, et al., Civil No. 682-60 HW (S.D. Cal. Jun. 17, 1963); (20) *United States v. Kaynar Mfg. Co., et al.*, Civil No. 63-1036-S (S.D. Cal. Jun. 30, 1964); (21) *United States v. California Chem. Co., et al.*, Civil No. 64-873-S (S.D. Cal. Aug. 23, 1965); (22) *United States v. Bethlehem Steel Co., et al.*, Civil No. 65-1426-IH (S.D. Cal. Aug. 23, 1966); (23) *United States v. Gen. Motors Corp., et al.*, Civil No. 62-1208-CC (S.D. Cal. Aug. 17, 1966); (24) *United States v. Armco Steel Corp., et al.*, Civil No. 65-1425-S (C.D. Cal. Nov. 15, 1966); (25) *United States v. Ace Drill Bushing Co., et al.*, Civil No. 66-483-TC (C.D. Cal. Jan. 17, 1967); (26) *United States v. United States Steel Corp., et al.*, Civil No. 64-836-MP (C.D. Cal. Dec. 8, 1967); (27) *United States v. Am. Pipe & Constr. Co., et al.*, Civil No. 64-832-MP (C.D. Dec. 8, 1967); (28) *United States v. Kaiser Steel Corp., et al.*, Civil No. 64-833-MP (C.D. Cal. Dec. 8, 1967); (29) *United States v. United Concrete Pipe Corp., et al.*, Civil No. 64-834-MP (C.D. Cal. Dec. 8, 1967 & C.D. Cal. May 24, 1968); (30) *United States v. U.S. Indus., et al.*, Civil No. 64-835-MP (C.D. Cal. Dec. 8, 1967 & C.D. Cal. May 24, 1968); (31) *United States v. Greater L.A. Solid Wastes Mgmt. Ass'n, et al.*, Civil No. 74-809-RJK (C.D. Cal. Apr. 29, 1974); (32) *United States v. Frito-Lay, Inc., et al.*, Civil No. 70-1175-R (C.D. Cal. Oct. 21, 1974); (33) *United States v. Orange Cty. Travel Agents Ass'n*, Civil No. 75-1513 WMB (C.D. Cal. Aug. 13, 1975); (34) *United States v. R & G Sloane Mfg. Co., et al.*, Civil No. 71-1522-ALS (C.D. Cal. Apr. 12, 1976); and (35) *United States v. Phillips Petrol. Co., et al.*, Civil No. 75-974-HP (C.D. Cal. Aug. 31, 1977).

[3] 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 a violation of the Sherman Act.

to seek termination, defendants may have lost track of decades-old judgments, individual defendants may have passed away, or company 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, none of these judgments likely continues to do so because of changed circumstances.

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

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

- The Antitrust Division reviews each perpetual judgment to determine whether it no longer serves to protect competition such that termination would be appropriate.

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[4] 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.

[5] *Judgment Termination Initiative*, U.S. DEP'T OF JUSTICE, https://www.justice.gov/atr/JudgmentTermination.

- If the Antitrust Division determines a judgment is suitable for termination, it posts the name of the case and the judgment on its public Judgment Termination Initiative website, https://www.justice.gov/atr/JudgmentTermination.
- The public has the opportunity to comment on each proposed termination within thirty days of the date the case name and judgment are posted to the public website.
- 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.[6]

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.

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[6] 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 Oregon*, Case 3:19-mc-00441 MO (D. Or. May 24, 2019) (terminating six judgments); *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).

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 changed circumstances" and that "district courts should apply a 'flexible standard' to the modification of consent decrees when a significant change in facts or law warrants their amendment") (citation omitted); *United States v. Asarco Inc.*, 430 F.3d 972, 979 (9th Cir. 2005) (Under Rule 60(b), "a court may relieve a party from a final judgment when . . . it is no longer equitable that the judgment should have prospective application. . . . [This] Rule codifies the courts' traditional authority, inherent in the jurisdiction of the chancery, to modify or vacate the prospective effect of their decrees.") (citations and internal quotation marks omitted). Given its jurisdiction and authority, the Court may terminate the judgment for any reason that justifies relief, including that the judgment no longer serves its original purpose of protecting competition.[7] Termination of the judgment is warranted.

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[7] In light of the circumstances surrounding the judgment 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 the judgment to terminate it under Fed. R. Civ. P. 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.

IV. ARGUMENT

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

A. The Judgment Presumptively Should Be Terminated Because of 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. 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.[8] This judgment—which is 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.

B. The Judgment Should Be Terminated Because It Is Unnecessary

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

- The judgment prohibits acts that the antitrust laws already prohibit, such as fixing prices, allocating markets, and rigging bids. These prohibitions amount to little more than an admonition that defendants must not violate the law. Absent such terms, defendants still are deterred from violating the law by the possibility of imprisonment, significant criminal fines, and treble damages in

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

private follow-on litigation; a mere admonition to not violate the law adds little additional deterrence. To the extent a judgment includes terms that do little to deter anticompetitive acts, it should be terminated.

The consent judgment was entered in 1967. Jurisdiction was explicitly retained in Section X of the judgment. The core terms of the consent judgment enjoined pipe manufacturers from fixing prices, submitting collusive bids to customers, and allocating or dividing territories or customers. Defendants were further enjoined from communicating certain information with any manufacturer or seller of pipe or any company providing the services of lining or coating pipe. Defendants were also enjoined from restricting production or sales of certain types of pipe to a specific territory. One of the two defendants likely no longer exists. An online search of the California Secretary of State Business registration records indicates that Kaiser Steel Corporation is no longer in an active status. Second, the judgment's terms largely prohibit acts the antitrust laws already prohibit (price fixing, bid rigging, and market allocation).

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 judgment. On April 25, 2018, the Antitrust Division issued a press release announcing its efforts to review and terminate legacy antitrust judgments.[9] On March 22, 2019, the Antitrust Division listed the judgment on its public website, describing its intent to move to terminate it.[10] The notice identified the case, linked to the judgment, and invited public comment. No comments were received opposing termination.

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[9] Press Release, *Department of Justice Announces Initiative to Terminate "Legacy" Antitrust Judgments*, U.S. DEP'T OF JUSTICE (April 25, 2018), https://www.justice.gov/opa/pr/department-justice-announces-initiative-terminate-legacy-antitrust-judgments.

[10] *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).

V. CONCLUSION

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

Respectfully submitted,

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