UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v.

LONE STAR CADILLAC COMPANY,
Defendant.

Civil Action No. 9277

UNITED STATES OF AMERICA,
Plaintiff,

v.

AMERICAN HOSPITAL SUPPLY CORP., *et al.*,
Defendants.

Civil Action No. CA 3-1018

UNITED STATES OF AMERICA,
Plaintiff,

v.

SOUTHWESTERN PEANUT SHELLERS ASSN.,
Defendant.

Civil Action No. 3-6028-C

UNITED STATES OF AMERICA, Plaintiff, v. AVIATION SPECIALTIES CO., INC., *et al.*, Defendants.	Civil Action No. 3-7722-E
UNITED STATES OF AMERICA, Plaintiff, v. LUBBOCK COUNTY BEVERAGE ASSN., *et al.*, Defendants.	Civil No. CA 5-76-126
UNITED STATES OF AMERICA, Plaintiff, v. REVCO D.S., INC., *et al.*, Defendants.	Civil No. CA 3-81-0157-H

THE UNITED STATES' MOTION TO TERMINATE LEGACY ANTITRUST JUDGMENTS

The United States moves to terminate the judgments in each of the above-captioned antitrust cases pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. The United States has concluded that because of their age and changed circumstances since their entry, these judgments—which were entered from 38 to 80 years ago—no longer serve to protect competition. The United States gave the public notice and the opportunity to comment on its intent to seek termination of the judgments; it received no comments opposing termination. For these and other reasons explained below, the United States requests that these judgments be terminated.

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 its antitrust judgments.[2] 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, none of these judgments likely continues to do so because of changed circumstances.

The Antitrust Division recently 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.[3] In addition, the

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[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.

[2] The judgment in *Revco D.S., Inc.et ano*, Civ. No. CA 3-81-0157-H, entered in 1981, was one of the few exceptions in which antitrust final judgments entered after 1979 did not have a ten year limit on its terms. For the reasons set forth in these papers, we move that it be terminated along with the other judgments discussed in this memorandum.

[3] 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.

Antitrust Division established a website to keep the public apprised of its efforts to terminate perpetual judgments that no longer serve to protect competition.[4] 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[5]:

- 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, https://www.justice.gov/atr/JudgmentTermination.
- 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.
- Following review of public comments, the Antitrust Division identified those judgments it still believed warranted termination, and the United States now moves for this Court to terminate them.

The remainder of this memorandum is organized as follows: Section II describes the Court's jurisdiction to terminate the judgments in the above-captioned cases. Section III explains that perpetual judgments rarely serve to protect competition and those that are more than ten

[4] *Judgment Termination Initiative*, U.S. DEP'T OF JUSTICE, https://www.justice.gov/atr/JudgmentTermination (last updated Apr. 12, 2019).

[5] The process is identical to that followed by the United States when it recently and successfully moved for termination in multiple other districts around the country. *E.g.*, *United States v. Nat'l Steel Corp.*, Case 4:18-mc-3668 (S.D. Tex. Apr. 12, 2019) (terminating five legacy antitrust judgments); *United States v. Kahn's Bakery, Inc.*, Case 3:75-cv-106 (S.D. Tex. Apr. 12, 2019) (terminating a legacy antitrust judgment); *United States v. Martin Linen Supply Co.*, Case 5:19-mc-121 (W.D. Tex. Mar. 4, 2019) (terminating a legacy antitrust judgment); *Judgment Termination Initiative*, U.S. Dep't of Justice, https://www.justice.gov/atr/JudgmentTermination (last updated Apr. 12, 2019) (collecting similar orders from at least fourteen additional Districts).

years old should be terminated absent compelling circumstances. The section also describes the additional reasons that the United States believes each of the judgments should be terminated. Section IV concludes. Exhibit A attaches a copy of each final judgment that the United States seeks to terminate. Exhibit B summarizes the terms of each judgment and the United States' reasons for seeking termination. Finally, Exhibit C is a proposed order terminating the final judgments.

II. APPLICABLE LEGAL STANDARDS FOR TERMINATING THE JUDGMENTS

This Court has jurisdiction to terminate the judgments in the above-captioned cases. All judgments addressed in this motion, copies of which are included in Appendix A, provide that the Court retains jurisdiction.[6] In addition, the Federal Rules of Civil Procedure grant the Court authority to terminate each judgment. 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 Frew v. Janek*, 780 F.3d 320, 327 (5th Cir. 2015) (explaining that Rule 60(b) should be "construed liberally," that the "rule is broadly phrased," that "many of the itemized grounds are overlapping," and that the rule "free[s] Courts to do justice in hard cases where the circumstances generally measure up to one or more of the itemized grounds").

[6] *United States v. Lone Star Cadillac Co.*, Civil Action No. 9277, Section VIII (N.D. Tex. May 10, 1963); *United States v. Am. Hosp. Supply Corp.*, Civil Action No. CA 3-1018, Section VII (N.D. Tex. Dec. 20, 1965); *United States v. Sw. Peanut Shellers Assn.*, Civil Action No. 3-6028-C, Section VIII (N.D. Tex. Jan. 29, 1973); *United States v. Aviation Specialties Co.*, Civil Action No. 3-7722-E Section IX (N.D. Tex. Mar. 13, 1974); *United States v. Lubbock Cty. Beverage Assn.*, Section X (N.D. Tex. Apr. 3, 1978); *United States v. REVCO D.S., Inc.*, Civil No. CA 3-81-0157-H, Section XI (N.D. Tex. June 2, 1981).

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.[7] 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 all terms of the judgment have been satisfied and that 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 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

[7] In light of the circumstances surrounding the judgments 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 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 the foresight to limit them to ten years in duration as under its policy adopted in 1979. Moreover, the passage of decades and changed circumstance since their entry, as described in this memorandum, means that it is likely that the judgments no longer serve their original purpose of protecting competition.

an impediment to the kind of adaptation to change that is the hallmark of competition, undermining the purposes of the antitrust laws. 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]

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 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 terminating each judgment. These reasons include: (1) all terms of the judgment have been satisfied, (2) the judgment largely prohibits that which the antitrust laws already prohibit, and (3) changed factual and legal circumstances. Each of these reasons suggests the judgments no longer serve to protect competition. In this section, this motion describes these additional reasons and identifies those judgments that are worthy of termination for each reason. Exhibit B summarizes the key terms of each judgment and the reasons to terminate it.

1. All Terms of the Judgment Have Been Satisfied

The Antitrust Division has determined that the terms of the judgment in *United States v. Revco D.S., Inc.*, Civil No. CA 3-81-0157-H, have been satisfied such that termination is appropriate. The judgment required Revco to divest dozens of drug stores in Texas. Because the required divestitures took place years ago, and because all other substantive terms of the judgments were satisfied or expired with divestiture or within a limited number of years of

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

divestiture, this judgment has been satisfied in full. Termination in this case is a housekeeping action that has no implication for competition: it will allow the Court to clear its docket of a judgment that should have been terminated long ago but for the failure to include a term automatically terminating it upon satisfaction of its substantive terms.

2. Terms of the 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, market allocation, bid rigging, and group boycott:

- *United States v. Lone Star Cadillac Co.*, Civil. Action No. 9277 (market allocation)
- *United States v. Southwestern Peanut Sehllers Assn.*, Civil Action No. 3-6028-C (price fixing and group boycott)
- *United States v. Aviation Specialties Co.*, Civil Action No. 3-7722-E (price fixing, market allocation, and bid rigging)
- *United States v. Lubbock County Beverage Assn.*, Civil No. CA 5-76-126 (price fixing)

These terms amount to little more than an admonition that defendants must not violate the law. Absent such terms, defendants who engage in the type of behavior prohibited by these judgments still face the possibility of imprisonment, significant criminal fines, and treble damages in private follow-on litigation, thereby making such violations of the antitrust laws unlikely to occur. 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.

3. Other Reasons to Terminate

Finally, the judgment in *United States v. American Hospital Supply Corp.*, Civil Action No. CA 3-1018, prohibited a distributor of hospital and scientific products from acquiring the stock, assets, or properties of a named distributor of such supplies. This judgment has been largely 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 under the Hart–Scott–Rodino Antitrust Improvements Act of 1976. 15 U.S.C. §18a (2006).

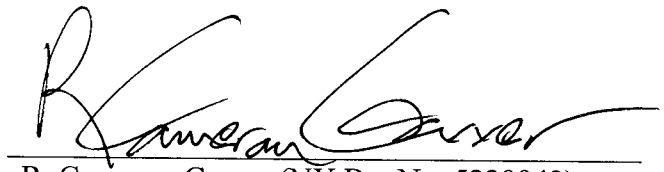
C. There Has Been No Public Opposition to Termination

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.[9] A few months later, the Antitrust Division listed the judgments in the above-captioned cases on its public website, describing its intent to move to terminate the judgments.[10] The notice identified each case, linked to the judgment, and invited public comment. No comments were received.

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. A proposed order terminating the judgments in the above-captioned cases is attached as Exhibit C.

Respectfully submitted,



Dated: April 22, 2019

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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 (last updated Apr. 12, 2019); *Judgment Termination Initiative: Texas, Northern District*, U.S. DEP'T OF JUSTICE, https://www.justice.gov/atr/judgment-termination-initiative-texas-northern-district (last updated Dec. 13, 2018).