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4 **UNITED STATES DISTRICT COURT**  
5 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
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7 **UNITED STATES OF AMERICA,**

8 **Plaintiff,**

9 **v.**

10 **CURTIMADE DAIRY, INC., a corporation,**  
11 **and BENJAMIN A. CURTI, and individual,**

12 **Defendants.**

**1:93-cv-005042 LJO GSA**

**MEMORANDUM DECISION AND  
ORDER GRANTING REQUEST FOR  
RELIEF FROM CONSENT DECREE  
OF PERMANENT INJUNCTION (Doc.  
13)**

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14 On August 20, 1993, this Court ordered Defendants M. Curti & Sons, Inc.<sup>1</sup>, a corporation, and  
15 Benjamin A. Curti (collectively, “Defendants”) subject to the terms and conditions of a Consent Decree  
16 of Permanent Injunction (“Consent Decree”), which, among other things, rendered Defendants subject to  
17 Food and Drug Administration inspections of Defendants’ operations. Doc. 10; Doc. 13-2, Ex. A. The  
18 Consent Decree contained a provision permitting Defendants to petition the Court to modify or vacate  
19 the injunction eighteen (18) months from the date of Defendants’ last violation. Doc. 13-2, Ex. A at 5.  
20 Defendants make such a motion now, invoking Fed. R. Civ. P. 60(b)(5)(permitting relief from judgment  
21 where it is no longer equitable that the judgment should have prospective application), arguing that it is  
22 no longer equitable for the injunction to persist in this case because, for more than the required 18  
23 months, there have been no violations at the facility. Curti Decl. at ¶ 7. The United States, the Plaintiff in

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25 <sup>1</sup> The original Defendant M. Curti & Sons, Inc. has ceased to exist; the dairy facility subject to the Consent Decree is owned and operated by Curtimade Dairy, Inc. and managed by Benjamin A. Curti. *See* Declaration of Benjamin Curti (“Curti Decl.”), Doc. 13-4, at ¶¶ 3, 5.

1 this action, has indicated it does not object to relieving Defendants from the conditions of the Consent  
2 Decree. Doc. 17.

3 Having reviewed the entire record, and in light of Plaintiff's non-opposition, the Court:

4 (1) concludes it is appropriate to rule on the pending motion without oral argument pursuant to  
5 Local Rule 230(g);

6 (2) directs the Clerk of Court to VACATE the hearing on the motion, currently set for September  
7 25, 2015;

8 (3) GRANTS Defendants' motion for relief from the Consent Decree; and

9 (4) VACATES the injunction.

10 IT IS SO ORDERED.

11 Dated: September 17, 2015

/s/ Lawrence J. O'Neill  
UNITED STATES DISTRICT JUDGE