



DEPARTMENT OF JUSTICE

Antitrust Division

UNITED STATES, et al. v. CINEMARK HOLDINGS, INC., et al.

Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. §16(b)-(h), that a proposed Final Judgment, Hold Separate Stipulation and Order and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in United States of America et al. v. Cinemark Holdings, Inc., et al., Civil Action No. 1:13-cv-727. On May 20, 2013, the United States filed a Complaint alleging that the proposed acquisition by Cinemark Holdings, Inc. of movie theatres and related assets from Rave Cinemas, LLC would violate Section 7 of the Clayton Act, 15 U.S.C. §18. The proposed Final Judgment, filed the same time as the Complaint, requires Cinemark Holdings, Inc. to divest certain theatre assets and requires Alder Wood Partners, L.P., which is controlled by Cinemark's Chairman, to divest Movie Tavern, Inc.

Copies of the Complaint, proposed Final Judgment, Hold Separate Stipulation and Order and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW, Suite 1010, Washington, DC 20530 (telephone: 202-514-2481), on the Department of Justice's website at <http://www.justice.gov/atr>, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Plano, TX 75093)
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 RAVE HOLDINGS, LLC)
 2101 Cedar Springs Road, Suite 800)
 Dallas, TX 75201)
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 and)
)
 ALDER WOOD PARTNERS, L.P.)
 12400 Coit Road, Suite 800)
 Dallas, TX 75251)
)
Defendants.)
 _____)

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, and the State of Texas, acting through its Attorney General, bring this civil antitrust action to prevent the proposed acquisition by Cinemark Holdings, Inc. (“Cinemark”) of thirty-two movie theatres owned and operated by Rave Holdings, LLC (“Rave Cinemas”).

Cinemark is a significant competitor to Rave Cinemas in the exhibition of first-run, commercial movies in the area in and around Voorhees and Somerdale in southern New Jersey, the eastern sector of Louisville, Kentucky, and the area in and around Denton, Texas. Another movie theatre company, Movie Tavern, Inc. (“Movie Tavern”), which is controlled by Cinemark’s founder and Chairman of the Board and majority owned by Defendant Alder Wood Partners, L.P. (“Alder Wood Partners”), is a significant competitor with Rave Cinemas in the exhibition of first-run, commercial movies in the western portion of Fort Worth, Texas. If Cinemark’s acquisition of Rave Cinemas is permitted to proceed, in these markets, it would either give Cinemark direct control of its most significant competitor or leave theatres controlled by

Cinemark's Chairman as the most significant competitor to the Cinemark-acquired theatre. The acquisition likely would substantially lessen competition in the exhibition of first-run, commercial movies in each of these markets in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

I. JURISDICTION AND VENUE

1. This action is filed by the United States pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to obtain equitable relief and to prevent a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The State of Texas brings this action under Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent the defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

2. The distribution and theatrical exhibition of first-run, commercial films is a commercial activity that substantially affects, and is in the flow of, interstate trade and commerce. Defendants' activities in purchasing equipment, services, and supplies as well as licensing films for exhibition substantially affect interstate commerce. The Court has jurisdiction over the subject matter of this action and jurisdiction over the parties pursuant to 15 U.S.C. §§ 22, 25, and 26, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

3. Venue in this District is proper under 28 U.S.C. § 1391(c). Defendants have consented to venue and personal jurisdiction in this judicial district.

II. DEFENDANTS AND THE PROPOSED ACQUISITION

4. Defendant Rave Holdings, Inc. ("Rave Cinemas") is a Delaware limited liability company with its headquarters in Dallas, Texas. Rave Cinemas owns and operates 35 movie theatres with 518 screens in a dozen states. Rave Cinemas is the seventh-largest movie theatre exhibitor in the United States based on box office revenues.

5. Defendant Cinemark Holdings, Inc. (“Cinemark”) is a Delaware corporation with its headquarters in Plano, Texas. Cinemark owns and operates 298 movie theatres with a total of 3,916 screens in thirty-nine states. Cinemark is the third-largest movie theatre exhibitor in the United States based on box office revenues. Lee Roy Mitchell is the founder, a significant shareholder, and Chairman of the Board of Directors of Cinemark.

6. Defendant Alder Wood Partners, L.P. (“Alder Wood Partners”) is a Texas limited partnership with its headquarters in Dallas, Texas. Alder Wood Partners owns 100% of the voting shares of Movie Tavern, Inc. (“Movie Tavern”). Mr. Lee Roy Mitchell and his wife own 99% of Alder Wood Partners. Through Alder Wood Partners, they control Movie Tavern and receive approximately 92% of its profits. The other approximately 8% of Movie Tavern’s profits are reserved for the benefit of its management. Movie Tavern is a Texas corporation with its headquarters in Dallas, Texas. In addition to serving as Cinemark’s Chairman, Mr. Mitchell serves as a Director of Movie Tavern. Movie Tavern owns and operates 16 movie theatres, with a total of 130 screens in seven states.

7. Cinemark and Movie Tavern are not independent competitors. Mr. Mitchell, as Cinemark’s founder and Chairman of the Board, has influence over Cinemark’s pricing and other strategic decisions, as well as access to competitively-sensitive information. He also has a significant holding of Cinemark shares. At the same time, Mr. Mitchell, as a Director of Movie Tavern who together with his wife owns nearly all of the voting shares and profits of Movie Tavern, has influence over Movie Tavern’s pricing and other strategic decisions. Thus, Mr. Mitchell has an ability and financial incentive to encourage, facilitate, and enforce coordination between the companies. Because of Mr. Mitchell’s substantial influence over pricing and

strategic decisions at the two companies, Cinemark and Movie Tavern are unlikely to compete aggressively with each other. For example, were Cinemark to determine that it is in its unilateral interest to build a new theatre close to a Movie Tavern, Mr. Mitchell would be in a position to undermine that effort. Similarly, were Movie Tavern to consider an aggressive price cut to the detriment of Cinemark, Mr. Mitchell would be in a position to undermine that effort.

8. On November 16, 2012, Cinemark and Rave Cinemas executed a purchase and sale agreement. The acquisition is structured as an asset purchase for approximately \$220 million. Cinemark will acquire thirty-two of Rave Cinemas' thirty-five movie theatres and will manage the three theatres it is not acquiring until Rave Cinemas has sold them.

III. BACKGROUND OF THE MOVIE THEATRE INDUSTRY

9. Viewing movies in the theatre is a popular pastime. Over one billion movie tickets were sold in the United States in 2012, with total box office revenue reaching approximately \$9.7 billion.

10. Companies that operate movie theatres are called "exhibitors." Some exhibitors own a single theatre, whereas others own a circuit of theatres within one or more regions of the United States. Cinemark, Rave Cinemas, and Movie Tavern are exhibitors in the United States, as are Regal Entertainment Group ("Regal") and AMC Entertainment, Inc. ("AMC").

11. Exhibitors set ticket prices for a theatre based on a number of factors, including the age and condition of the theatre, the number and type of amenities the theatre offers (such as the range of snacks, food and beverages offered, the size of its screens and quality of its sound systems, and stadium and/or reserved seating), the competitive situation facing the theatre (such as the price of tickets at nearby theatres, the age and condition of those theatres, and the number

and type of amenities they offer), and the population demographics and density surrounding the theatre.

IV. RELEVANT MARKET

A. Product Market

12. Movies are a unique form of entertainment. The experience of viewing a movie in a theatre is an inherently different experience from live entertainment (*e.g.*, a stage production or attending a sporting event) or viewing a movie in the home (*e.g.*, through streaming video, on a DVD, or via pay-per-view).

13. Reflecting the significant differences of viewing a movie in a theatre, ticket prices for movies are generally very different from prices for other forms of entertainment. For example, live entertainment is typically significantly more expensive than a movie ticket, whereas home viewing through streaming video, DVD rental, or pay-per-view is usually significantly less expensive than viewing a movie in a theatre.

14. Viewing a movie at home typically lacks several characteristics of viewing a movie in a theatre, including the size of screen, the sophistication of sound systems, and the social experience of viewing a movie with other patrons. In addition, the most popular, newly released or “first-run” movies are not available for home viewing at the time they come out in theatres.

15. Movies are considered to be in their “first-run” during the four to five weeks following initial release in a given locality. If successful, a movie may be exhibited at other theatres after the first-run as part of a second or subsequent run (often called a “sub-run” or “second-run”). Moviegoers generally do not regard sub-run movies as an adequate substitute for first-run movies. Reflecting the significant difference between viewing a newly-released, first-

run movie and an older sub-run movie, tickets at theatres exhibiting first-run movies usually cost significantly more than tickets at sub-run theatres.

16. Art movies and foreign language movies are also not adequate substitutes for commercial, first-run movies. Art movies, which include documentaries, are sometimes referred to as independent films. Although art and foreign language movies appeal to some viewers of commercial movies, the potential audience for art movies is quite distinct as art movies tend to have more narrow appeal and typically attract an older audience. Exhibitors consider art theatre operations as distinct from the operations of theatres that exhibit commercial movies. Similarly, foreign-language movies do not widely appeal to U.S. audiences. As a result, most moviegoers do not regard art movies or foreign-language movies as adequate substitutes for first-run, commercial movies.

17. The relevant product market within which to assess the competitive effects of this acquisition is the exhibition of first-run, commercial movies. A hypothetical monopolist controlling the exhibition of all first-run, commercial movies would profitably impose at least a small but significant and non-transitory increase in ticket prices.

B. Geographic Markets

18. Moviegoers typically are not willing to travel very far from their home to attend a movie. As a result, geographic markets for the exhibition of first-run, commercial movies are relatively local.

Area In and Around Voorhees and Somerdale in Southern New Jersey

19. Cinemark and Rave Cinemas account for the majority of the first-run, commercial movie tickets sold in and around Voorhees Township, New Jersey and the close-by town of

Somerdale, New Jersey (“Voorhees-Somerdale”), an area which encompasses Rave Cinemas’ Ritz Center 16 and the Cinemark 16. These two theatres are located less than 3 miles apart. Two non-party theatres in this area also show first-run, commercial movies.

20. Moviegoers who reside in Voorhees-Somerdale are unlikely to travel significant distances out of that area to attend a first-run, commercial movie except in unusual circumstances. A small but significant post-acquisition increase in the price of first-run, commercial movie tickets in Voorhees-Somerdale would likely not cause a sufficient number of moviegoers to travel out of that area to make the increase unprofitable. Voorhees-Somerdale constitutes a relevant geographic market in which to assess the competitive effects of this acquisition.

East Louisville, Kentucky Area

21. Rave Cinemas and Cinemark account for the vast majority of the first-run, commercial movie tickets sold in the eastern portion of Louisville, Kentucky (“East Louisville”), an area which encompasses Rave Cinemas’ Stonybrook 20 + IMAX, Cinemark’s Tinseltown USA and XD with 19 screens, and the future Cinemark Mall of St. Matthews 10, which will exhibit first-run, commercial movies and is projected to open in July 2013. One non-party theatre in this area shows a mix of first-run, commercial movies and foreign-language and art/independent films.

22. Moviegoers who reside in East Louisville are unlikely to travel significant distances out of that area to attend a first-run, commercial movie except in unusual circumstances. A small but significant post-acquisition increase in the price of first-run, commercial movie tickets in East Louisville would likely not cause a sufficient number of moviegoers to travel out

of that area to make the increase unprofitable. East Louisville constitutes a relevant geographic market in which to assess the competitive effects of this acquisition.

Western Fort Worth, Texas Area

23. Rave Cinemas and Movie Tavern account for the majority of the first-run, commercial movie tickets sold in the western portion of Fort Worth, Texas (“Western Fort Worth”), an area which encompasses Rave Cinemas’ Ridgmar 13 + Xtreme and three Movie Tavern theatres: the Ridgmar with six screens, the West 7th Street with seven screens, and the Hulen with 13 screens. Three non-party theatres in this area show first-run, commercial movies.

24. Moviegoers who reside in Western Fort Worth are unlikely to travel significant distances out of that area to attend a first-run, commercial movie except in unusual circumstances. A small but significant post-acquisition increase in the price of first-run, commercial movie tickets in Western Fort Worth would likely not cause a sufficient number of moviegoers to travel out of that area to make the increase unprofitable. Western Fort Worth constitutes a relevant geographic market in which to assess the competitive effects of this acquisition.

Greater Denton, Texas Area

25. Cinemark, Movie Tavern, and Rave Cinemas account for the majority of the first-run, commercial movie tickets sold in the area in and around Denton, Texas (“Greater Denton”), an area which encompasses the Cinemark 14 in Denton, the Denton Movie Tavern with 4 screens, and the Rave Cinemas’ Hickory Creek 16 in nearby Hickory Creek, Texas. One non-party theatre in this area shows first-run, commercial movies.

26. Moviegoers who reside in Greater Denton are unlikely to travel significant distances out of that area to attend a first-run, commercial movie except in unusual circumstances.

A small but significant post-acquisition increase in the price of first-run, commercial movie tickets in Greater Denton would likely not cause a sufficient number of moviegoers to travel out of that area to make the increase unprofitable. Greater Denton constitutes a relevant geographic market in which to assess the competitive effects of this acquisition.

V. COMPETITIVE EFFECTS

27. Exhibitors compete to attract moviegoers to their theatres over the theatres of their rivals. They do that by competing on price, knowing that if they charge too much (or do not offer sufficient discounted tickets for matinees, seniors, children, etc.) moviegoers will begin to frequent their rivals. Exhibitors also seek to license the first-run movies that are likely to attract the largest numbers of moviegoers. In addition, they compete over the quality of the viewing experience by offering moviegoers the most sophisticated sound systems, largest screens, best picture clarity, best seating (including stadium and reserved seating), and the broadest range and highest quality snacks, food, and drinks at concession stands or cafes in the lobby or served to moviegoers at their seats.

28. Cinemark and/or Movie Tavern currently compete with Rave Cinemas for moviegoers in the relevant markets at issue. These markets are concentrated, and in each market, Cinemark and/or Movie Tavern and Rave Cinemas are the other's most significant competitor, given their close proximity to one another. Their rivalry spurs each to improve the quality of their theatres and keeps ticket prices in check. For various reasons, the other theatres in the relevant geographic markets offer less attractive options for the moviegoers that are served by the Cinemark and/or Movie Tavern and Rave theatres. For example, they are located farther away from these moviegoers, or they are a relatively smaller size or have fewer screens.

29. In the relevant markets at issue, the acquisition of Rave Cinemas likely will result in a substantial lessening of competition. In the Voorhees-Somerdale, East Louisville, and Greater Denton markets, the transaction will lead to significant increases in concentration and eliminate existing competition between Cinemark and Rave Cinemas. In the Western Fort Worth and Greater Denton markets, where Rave currently competes closely with Movie Tavern, Cinemark's acquisition of the Rave Cinemas theatres likely will also reduce competition because Cinemark will not have the same incentive that Rave Cinemas has to compete aggressively against Movie Tavern. In those markets, Mr. Mitchell, as both the Chairman of Cinemark and a Director of Movie Tavern, and, together with his wife, majority owner of Movie Tavern, will have both the incentive and ability to dampen competition after Rave Cinemas is acquired by Cinemark.

30. In Voorhees-Somerdale, the proposed acquisition would give Cinemark control of two of the four first-run, commercial movie theatres in that area, with 32 out of 48 total screens and an approximately 71% share of 2012 box office revenues, which totaled about \$14.7 million. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI")¹, the acquisition would yield a post-acquisition HHI of approximately 5,861, representing an increase of roughly 2,416 points.

¹ See U.S. Dep't of Justice and Federal Trade Commission, Horizontal Merger Guidelines § 5.3 (2010), available at <http://www.justice.gov/atr/public/guidelines/hmg-2010.html>. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

31. In East Louisville, after the completion of Cinemark's Mall of St. Matthews 10 in July 2013, the proposed acquisition would give Cinemark control of three of the four theatres showing first-run, commercial movies, with 49 out of 53 total screens. As measured by total screens only (since Cinemark's Mall of St. Matthews 10 does not yet have box office revenues), the acquisition would result in Cinemark having a market share of approximately 93% in East Louisville. The acquisition would yield a post-acquisition HHI of 8,604, representing an increase of roughly 4,130 points.

32. In Western Fort Worth, the proposed acquisition would give Cinemark/Movie Tavern control of four of the seven first-run, commercial movie theatres in that area, with 39 out of 71 total screens and approximately 60% of 2012 box office revenues, which totaled almost \$17 million. The acquisition would yield a post-acquisition HHI of approximately 4,828 representing an increase of roughly 1,736 points.

33. In Greater Denton, the proposed acquisition would give Cinemark/Movie Tavern control of three of the four first-run, commercial movie theatres, with 34 out of 46 total screens and approximately 62% of 2012 box office revenues, which totaled about \$11 million. The acquisition would yield a post-acquisition HHI of approximately 5,265, representing an increase of roughly 1,640 points.

34. Today, were one of Defendants' theatres to unilaterally increase ticket prices in a relevant market, the exhibitor that increased price would likely suffer financially as a substantial number of its patrons would patronize the other exhibitor. The acquisition would eliminate this pricing constraint. After the acquisition, Cinemark and/or Movie Tavern would re-capture a significant proportion of such losses, making price increases more profitable than they would be

pre-acquisition. Thus, the acquisition is likely to lead to higher ticket prices for moviegoers, which could take the form of a higher adult evening ticket price or reduced discounting, *e.g.*, for matinees, children, seniors, and students.

35. The proposed acquisition likely would also reduce competition between Cinemark and/or Movie Tavern and Rave Cinemas over the quality of the viewing experience in the relevant markets at issue. If no longer motivated to compete, Cinemark and/or Movie Tavern and Rave Cinemas would have reduced incentives to maintain, upgrade, and renovate their theatres in the relevant markets, to improve those theatres' amenities and services, and to license the most popular movies, thus reducing the quality of the viewing experience for a moviegoer.

VI. ENTRY

36. Sufficient, timely entry that would deter or counteract the anticompetitive effects alleged above is unlikely. Exhibitors are reluctant to locate new first-run, commercial theatres near existing first-run, commercial theatres or near those already under construction unless the population density, demographics, or the quality of existing theatres makes new entry viable. Over the next two years, demand by moviegoers to see first-run, commercial movies in the geographic markets at issue will likely not be sufficient to support entry of new first-run, commercial movie theatres that are not already under construction.

VII. VIOLATION ALLEGED

37. Plaintiffs hereby reincorporate paragraphs 1 through 36.

38. The likely effect of the proposed transaction would be to lessen competition substantially in the relevant product and geographic markets in violation of Section 7 of the Clayton Act, 15 U.S.C. §18.

39. The transaction would likely have the following effects, among others: (a) the prices of tickets at first-run, commercial movie theatres in the relevant markets would likely increase to levels above those that would prevail absent the acquisition; and (b) the quality of first-run, commercial theatres and the viewing experience at those theatres would likely decrease in the relevant markets below levels that would prevail absent the acquisition.

VIII. REQUESTED RELIEF

40. Plaintiffs request: (a) adjudication that the proposed acquisition would violate Section 7 of the Clayton Act; (b) permanent injunctive relief to prevent the consummation of the proposed acquisition; (c) an award to each plaintiff of its costs in this action; and (d) such other relief as is proper.

DATED: May 20, 2013

FOR PLAINTIFF UNITED STATES OF AMERICA

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ALDER WOOD PARTNERS, L.P.,)
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COMPETITIVE IMPACT STATEMENT

Plaintiff, United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (“APPA” or “Tunney Act”), 15 U.S.C. §16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

On November 16, 2012, Defendant Cinemark Holdings, Inc. (“Cinemark”) agreed to acquire most of the assets of Rave Holdings, LLC (“Rave Cinemas”). Cinemark is a significant competitor with Rave Cinemas in the exhibition of first-run, commercial movies in parts of New Jersey, Kentucky, and Texas. Another movie theatre company, Movie Tavern, Inc. (“Movie Tavern”), which is controlled by Cinemark’s founder and Chairman of the Board and majority owned by Defendant Alder Wood Partners, L.P. (“Alder Wood Partners”), is a significant competitor with Rave Cinemas in the exhibition of first-run, commercial movies in parts of Texas. Plaintiffs filed a civil antitrust complaint on May 20, 2013, seeking to enjoin the proposed acquisition and to obtain equitable relief. The Complaint alleges that the acquisition, if permitted to proceed, would either give Cinemark direct control of its most significant competitor or leave theatres controlled by Cinemark’s Chairman as the most significant competitor to the Cinemark-

acquired theatre. The likely effect of this acquisition would be to substantially lessen competition in the exhibition of first-run, commercial movies in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

At the same time the Complaint was filed, the Plaintiffs also filed a Hold Separate Stipulation and Order (“Hold Separate”) and a proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, Cinemark and Rave Cinemas are required to divest three theatres located in New Jersey, Kentucky, and Texas to acquirer(s) acceptable to the United States, which will consult with the State of Texas on the purchaser of the Texas theatre. In addition, under the proposed Final Judgment, Alder Wood Partners is required to divest the entire business of Movie Tavern, which includes theatres located in parts of Fort Worth and Denton, Texas, to acquirer(s) acceptable to the United States, which will consult with the State of Texas as appropriate.

Under the terms of the Hold Separate, Defendants will take all steps necessary to ensure that the three theatres to be divested and the whole of the Movie Tavern business are operated as competitively independent, economically viable, and ongoing business concerns, and that competition is maintained and not diminished during the pendency of the ordered divestitures.

The Plaintiffs and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendants and the Proposed Transaction

Rave Cinemas is a Delaware limited liability company with its headquarters in Dallas, Texas. Rave Cinemas owns and operates 35 movie theatres containing 518 screens in a dozen states throughout the United States. Rave Cinemas is the seventh-largest theatre exhibitor in the United States and earned domestic box office revenue of approximately \$169 million in 2012.

Cinemark is a Delaware corporation with its headquarters in Plano, Texas. It owns and operates 298 theatres with 3,916 screens in various states. Cinemark is the third-largest theatre exhibitor in the United States and earned domestic box office revenues of approximately \$1 billion in 2012. Lee Roy Mitchell is a founder, a significant shareholder, and Chairman of the Board of Directors of Cinemark.

Defendant Alder Wood Partners, L.P. (“Alder Wood Partners”) is a Texas limited partnership with its headquarters in Dallas, Texas. Alder Wood Partners owns 100% of the voting shares of Movie Tavern. Mr. Lee Roy Mitchell and his wife own 99% of Alder Wood Partners. Through Alder Wood Partners, they control Movie Tavern and receive approximately 92% of its profits. The other approximately 8% of Movie Tavern’s profits is reserved for the benefit of its management. Movie Tavern is a Texas corporation with its headquarters in Dallas, Texas. In addition to serving as Cinemark’s Chairman, Mr. Mitchell serves as a Director of Movie Tavern. Movie Tavern owns and operates 16 movie theatres, with a total of 130 screens in seven states and earned box office revenues of approximately \$31 million in 2012.

On November 16, 2012, Cinemark and Rave Cinemas executed a purchase and sale agreement under which Cinemark will acquire, for approximately \$220 million, thirty-two of Rave Cinemas’ thirty-five movie theatres and will manage the three theatres it is not acquiring

until Rave Cinemas has sold them.

The proposed transaction, as initially agreed to by Cinemark and Rave Cinemas on November 16, 2012, would lessen competition substantially as a result of Cinemark's acquisition of Rave Cinemas. This acquisition is the subject of the Complaint and proposed Final Judgment filed by the Plaintiffs on May 20, 2013.

B. The Competitive Effects of the Transaction on the Exhibition of First-Run, Commercial Movies

The exhibition of first-run, commercial movies in parts of New Jersey, Kentucky, and Texas constitute lines of commerce and relevant markets for antitrust purposes.

1. The Relevant Product and Geographic Markets

The exhibition of first-run, commercial movies is a relevant product market under Section 7 of the Clayton Act. The experience of viewing a film in a theatre is an inherently different experience from live entertainment (*e.g.*, a stage production or attending a sporting event), or viewing a movie in the home (*e.g.*, through streaming video, on a DVD, or via pay-per-view).

Reflecting the significant differences between viewing a movie in a theatre and other forms of entertainment, ticket prices for movies are generally very different from prices for other forms of entertainment. Live entertainment is typically significantly more expensive than a movie ticket, whereas renting a DVD or ordering a pay-per view movie for home viewing is usually significantly cheaper than viewing a movie in a theatre.

Moviegoers generally do not regard theatres showing "sub-run" movies, art movies, or foreign language movies as adequate substitutes for commercial, first-run movies.

The transaction substantially lessens competition in four relevant geographic markets: one in part of New Jersey, one in part of Kentucky, and two in Texas. Each geographic market

contains a number of theatres – the majority of which are owned by the Defendants – at which consumers can view first-run, commercial movies. These relevant geographic markets are, specifically, as follows: the area in and around Voorhees and Somerdale in southern New Jersey (“Voorhees-Somerdale”), the eastern portion of Louisville, Kentucky (“East Louisville”), the western portion of Fort Worth, Texas (“Western Fort Worth”), and the area in and around Denton, Texas (“Greater Denton”).

Voorhees-Somerdale

Rave Cinemas’ Ritz Center 16 is located in Voorhees Township, New Jersey, and the Cinemark 16 operates in Somerdale, New Jersey. These theatres are located less than 3 miles apart. Two non-party theatres show first-run, commercial movies in the area around these towns.

East Louisville

The eastern portion of Louisville, Kentucky encompasses Rave Cinemas’ Stonybrook 20 + IMAX, Cinemark’s Tinseltown USA and XD with 19 screens, and the future Cinemark Mall of St. Matthews 10, which will exhibit first-run, commercial movies and is projected to open in July 2013. In this area, one non-party theatre shows a mix of first-run commercial movies, and foreign-language and art/independent films.

Western Fort Worth

The western portion of Fort Worth, Texas, encompasses Rave Cinemas’ Ridgmar 13 + Xtreme and three Movie Tavern theatres: the Ridgmar with six screens, the West 7th Street with seven screens, and the Hulen with 13 screens. Three non-party theatres in the area show first-run, commercial movies.

Greater Denton

The area of Greater Denton, Texas, encompasses the Cinemark 14 in Denton, the Denton Movie Tavern with 4 screens, and Rave Cinemas' Hickory Creek 16 in nearby Hickory Creek, Texas. One non-party theatre in this area shows first-run, commercial movies.

The relevant markets in which to assess the competitive effects of this transaction are the first-run, commercial theatres in the above-mentioned geographic areas: Voorhees-Somerdale, East Louisville, Western Fort Worth, and Greater Denton. A hypothetical monopolist controlling the exhibition of all first-run, commercial movies in each of these areas would profitably impose at least a small but significant and non-transitory increase in ticket prices.

2. Competitive Effects in the Relevant Markets

Exhibitors that operate first-run, commercial theatres compete on multiple dimensions. Exhibitors compete on price, knowing that if they charge too much (or do not offer sufficient discounted tickets for matinees, seniors, children, etc.), moviegoers will begin to frequent their rivals. Exhibitors also seek to license the first-run movies that are likely to attract the largest numbers of moviegoers. In addition, they compete over the quality of the viewing experience. They compete to offer the most sophisticated sound systems, largest screens, best picture clarity, best seating (including stadium and reserved seating), and the broadest range and highest quality snacks, food, and drinks at concession stands or cafes in the lobby or served to moviegoers at their seats.

Cinemark and/or Movie Tavern currently compete with Rave Cinemas for moviegoers in the relevant markets at issue. Each of these markets is concentrated, and Cinemark and/or Movie Tavern and Rave Cinemas are each other's most significant competitor, given their close proximity to one another. Their rivalry spurs each to improve the quality of their theatres and

keeps ticket prices in check. For various reasons, the other theatres in these markets offer less attractive options for the moviegoers that are served by the Cinemark and/or Movie Tavern and Rave theatres. For example, they are located farther away from these moviegoers, or they are a relatively smaller size or have fewer screens.

In these relevant markets, the acquisition of Rave Cinemas likely will result in a substantial lessening of competition. In the Voorhees-Somerdale, East Louisville, and Greater Denton markets, the transaction will lead to significant increases in concentration and eliminate existing competition between Cinemark and Rave Cinemas. In the Western Fort Worth and Greater Denton markets, where Rave currently competes closely with Movie Tavern, Cinemark's acquisition of the Rave Cinemas theatres likely will also reduce competition because Cinemark will not have the same incentive that Rave Cinemas has to compete aggressively against Movie Tavern. In those markets, Mr. Mitchell will have both the incentive and ability to dampen competition after Rave Cinemas is acquired by Cinemark. He is the Chairman and a significant shareholder of Cinemark and a Director of Movie Tavern, and, together with his wife, majority owner of Movie Tavern, and has access to competitively-sensitive information at both companies.

In Voorhees-Somerdale, the proposed acquisition would give the newly-merged entity control of two of the four first-run, commercial theatres, with 32 out of 48 total screens and a 71% share of 2012 box office revenues, which totaled approximately \$14.7 million. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI")², the acquisition would

² See U.S. Dep't of Justice and Federal Trade Commission, Horizontal Merger Guidelines § 5.3 (2010), available at <http://www.justice.gov/atr/public/guidelines/hmg-2010.html>. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 points when a market is controlled

yield a post-acquisition HHI of approximately, 5,861, representing an increase of roughly 2,416 points.

In East Louisville, after the completion of Cinemark's Mall of St. Matthews 10 in July 2013, the proposed acquisition would give the newly merged entity control of three of the four first-run, commercial theatres, with 49 of 53 total screens. As measured by total screens only (since Cinemark's Mall of St. Matthews 10 does not yet have box office revenues), the acquisition would result in Cinemark having a market share of approximately 93% in East Louisville. The acquisition would yield a post-acquisition HHI of 8,604, representing an increase of roughly 4,130 points.

In Western Fort Worth, the proposed acquisition would give Cinemark/Movie Tavern control of four of the seven first-run, commercial movie theatres in that area, with 39 out of 71 total screens and approximately 60% of 2012 box office revenues, which totaled almost \$17 million. The acquisition would yield a post-acquisition HHI of approximately 4,828, representing an increase of roughly 1,736 points.

In Greater Denton, the proposed acquisition would give Cinemark/Movie Tavern control of three of the four first-run, commercial movie theatres, with 34 out of 46 total screens and an approximately 62% of 2012 box office revenues, which totaled approximately \$11 million. The acquisition would yield a post-acquisition HHI of approximately 5,265, representing an increase of roughly 1,640 points.

In the four relevant markets today, were one of Defendants' theatres to increase ticket prices unilaterally, the exhibitor that increased price would likely suffer financially as a

by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

substantial number of its customers would patronize the other exhibitor's theatre. The other theatres are smaller and/or more distant than the parties' theatres and unlikely to offer enough of a competitive constraint to prevent such a price increase. After the acquisition, Cinemark or Movie Tavern would recapture such losses, making price increases more profitable than they would have been pre-acquisition. The acquisition is, therefore, likely to lead to higher ticket prices for moviegoers, which could take the form of a higher adult evening ticket price or reduced discounting, *e.g.*, for matinees, children, seniors, and students.

Likewise, the proposed transaction would eliminate competition between Cinemark and/or Movie Tavern and Rave Cinemas over the quality of the viewing experience at their theatres in each of the geographic markets at issue. If no longer required to compete, Cinemark and/or Movie Tavern and Rave Cinemas would have a reduced incentive to maintain, upgrade, and renovate their theatres in the relevant markets, to improve those theatres' amenities and services, and to license the most popular movies, thus reducing the quality of the viewing experience for a moviegoer.

The entry of a first-run, commercial theatre sufficient to deter or counteract an increase in movie ticket prices or a decline in theatre quality is unlikely in all of the relevant markets. Exhibitors are reluctant to locate new first-run, commercial theatres near existing first-run, commercial theatres or near those already under construction, unless the population density, demographics, or the quality of existing theatres makes new entry viable. Over the next two years, demand by moviegoers to see first-run, commercial movies in the geographic markets at issue will likely not be sufficient to support entry of any new first-run, commercial movie theatres that are not already under construction.

For all of these reasons, the proposed transaction would lessen competition substantially in the exhibition of first-run, commercial movies in the Voorhees-Somerdale, East Louisville, Western Fort Worth, and Greater Denton geographic markets, eliminate actual and potential competition between Cinemark and/or Movie Tavern and Rave Cinemas, and likely result in increased ticket prices and lower quality theatres in those markets. The proposed transaction therefore violates Section 7 of the Clayton Act.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestiture requirement of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisitions in each relevant geographic market, establishing new, independent, and economically-viable competitors. The proposed Final Judgment requires Cinemark within ninety (90) calendar days after the filing of the Complaint, or five (5) days after the notice of the entry of the Final Judgment by the Court, whichever is later, to divest as viable, ongoing businesses three theatres in the Voorhees-Somerdale, East Louisville, and Greater Denton geographic markets: the Rave Stonybrook 20 + IMAX (East Louisville), the Rave Ritz Center 16 (Voorhees-Somerdale), and either the Rave Hickory Creek 16 (Greater Denton) or the Cinemark 14 (Greater Denton).

The assets must be divested in such a way as to satisfy the Plaintiffs that the theatres can and will be operated by the purchaser as viable, ongoing businesses that can compete effectively in the relevant markets as first-run, commercial theatres. To that end, the proposed Final Judgment provides the acquirer(s) of the theatres with an option to enter into a transitional supply agreement with Cinemark of up to 120 days in length, with the possibility of one or more extensions not to exceed six months in total, for the supply of any goods, services, support,

including software service and support, and reasonable use of the name Cinemark, the name Rave, and any registered service marks of Cinemark, for use in operating those theatres during the period of transition. This ensures the acquirer(s) of the theatres can operate without interruption while long-term supply agreements are arranged and the theatres rebranded. Without the option to enter into a transitional supply agreement, the acquirer(s) might find itself temporarily without provisions, including concessions, necessary to operate the theatres.

The proposed Final Judgment also requires Alder Wood Partners within ninety (90) calendar days after the filing of the Complaint, or five (5) days after the notice of the entry of the Final Judgment by the Court, whichever is later, to divest the entire business of Movie Tavern, including the Movie Tavern theatres in the Western Fort Worth and the Greater Denton geographic markets. The assets must be divested in such a way as to satisfy the Plaintiffs that the sale will remedy the competitive harm alleged in the Complaint.

Until the divestitures take place, Cinemark, Alder Wood Partners, and Rave Cinemas must maintain the sales and marketing of the theatres, and maintain the theatres in operable condition at current capacity configurations. In addition, Cinemark, Alder Wood Partners, and Rave Cinemas must not transfer or reassign to other areas within the company their employees with primary responsibility for the operation of the theatres, except for transfer bids initiated by employees pursuant to Defendants' regular, established job posting policies. In the event that Cinemark and/or Alder Wood Partners do not accomplish the divestitures within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestitures.

If Cinemark is unable to effect any of the divestitures required herein due to its inability to obtain the consent of the landlord from whom a theatre is leased, Section VI.A of the proposed Final Judgment requires it to divest alternative theatre assets that compete effectively with the theatres for which the landlord consent was not obtained. If Alder Wood Partners is unable to effect the divestitures of any of the three Movie Tavern theatres, defined as the Western Fort Worth, Texas Movie Tavern Theatres in the proposed Final Judgment, due to the inability to obtain the landlords' consent, Section VI.B of the proposed Final Judgment requires Cinemark to divest the Ridgmar 13 + Xtreme theatre assets located at 2300 Green Oaks Road, Fort Worth, Texas that it will be acquiring from Rave Cinemas. These provisions will insure that any failure by Cinemark and/or Alder Wood Partners to obtain landlord consent does not thwart the relief obtained in the proposed Final Judgment. In addition, pursuant to Section V.G of the proposed Final Judgment, if a trustee has been appointed to effect the divestiture of the Movie Tavern Divestiture Assets and that trustee is unable for any reason to accomplish the divestiture of the portion of those assets that includes any of the Western Fort Worth, Texas Movie Tavern Theatres, the trustee will then divest the Ridgmar 13 + Xtreme theatre assets.

The proposed Final Judgment also prohibits Cinemark, without providing at least thirty (30) days notice to the United States Department of Justice, from acquiring any other theatres in the following counties: Tarrant County, Texas; Denton County, Texas; Camden County, New Jersey; and Jefferson County, Kentucky. These counties correspond to the relevant geographic markets in this case. The proposed Final Judgment also prohibits Alder Wood Partners, without providing at least thirty (30) days notice to the United States Department of Justice, from acquiring any theatres in any county in which Cinemark owns or operates a theatre exhibiting

first-run, commercial movies in any state; however this requirement will terminate in the event that no one serving as a limited partner of Alder Wood Partners as of May 13, 2013 serves as an officer or director of Cinemark. Such acquisitions could raise competitive concerns but might be too small to be reported under the Hart-Scott-Rodino (“HSR”) premerger notification statute. However, neither company is required to provide advance notification when making an acquisition of not more than two percent of the outstanding voting securities of a publicly-traded company, or comparable non-corporate interest in an unincorporated entity, with theatres exhibiting first-run, commercial movies where such investment is made solely for the purpose of investment.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of Cinemark’s acquisition of Rave Cinemas.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys’ fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The Plaintiffs and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United

States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the Federal Register.

Written comments should be submitted to:

John R. Read
Chief, Litigation III
Antitrust Division
United States Department of Justice
450 5th Street, N.W. Suite 4000
Washington, DC 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The Plaintiffs considered, as an alternative to the proposed Final Judgment, a full trial on

the merits against Defendants. The Plaintiffs could have continued the litigation and sought preliminary and permanent injunctions against Cinemark's acquisition of Rave Cinemas. The Plaintiffs are satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the provision of exhibition of first-run, commercial movies in the relevant markets identified by the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the Plaintiffs would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

- (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
- (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the

defendant within the reaches of the public interest.” *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States v. SBC Commc’ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v. InBev N.V/S.A.*, 2009-2 Trade Cas. (CCH) ¶76,736, 2009 U.S. Dist. LEXIS 84787, No. 08-1965 (JR), at *3, (D.D.C. Aug. 11, 2009) (noting that the court’s review of a consent judgment is limited and only inquires “into whether the government’s determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.”)³

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government’s complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458-62. With respect to the adequacy of the relief secured by the decree, a court may not “engage in an unrestricted evaluation of what relief would best serve the public.” *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460-62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001). *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court’s role in protecting the public interest is one of

³ The 2004 amendments substituted “shall” for “may” in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc’ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments “effected minimal changes” to Tunney Act review).

insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is “*within the reaches of the public interest.*” More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).⁴ In determining whether a proposed settlement is in the public interest, a district court “must accord deference to the government’s predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.” *SBC Commc’ns*, 489 F. Supp. 2d at 17; *see also Microsoft*, 56 F.3d at 1461 (noting the need for courts to be “deferential to the government’s predictions as to the effect of the proposed remedies”); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States’ prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. “[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is ‘within the reaches of public interest.’” *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff’d sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); *see also United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a

⁴ *Cf. BNS*, 858 F.2d at 464 (holding that the court’s “ultimate authority under the [APPA] is limited to approving or disapproving the consent decree”); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to “look at the overall picture not hypercritically, nor with a microscope, but with an artist’s reducing glass”). *See generally Microsoft*, 56 F.3d at 1461 (discussing whether “the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the ‘reaches of the public interest’”).

greater remedy). To meet this standard, the United States “need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.” *SBC Commc’ns*, 489 F. Supp. 2d at 17.

Moreover, the court’s role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to “construct [its] own hypothetical case and then evaluate the decree against that case.” *Microsoft*, 56 F.3d at 1459; see also *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 (“the ‘public interest’ is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged”). Because the “court’s authority to review the decree depends entirely on the government’s exercising its prosecutorial discretion by bringing a case in the first place,” it follows that “the court is only authorized to review the decree itself,” and not to “effectively redraft the complaint” to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459-60. As this Court confirmed in *SBC Communications*, courts “cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.” *SBC Commc’ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that “[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.” 15 U.S.C. § 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: “[t]he court is nowhere compelled to go to trial or to engage in extended

proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.” 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court’s “scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.” *SBC Commc’ns*, 489 F. Supp. 2d at 11.⁵

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: May 20, 2013

Respectfully submitted,

_____/s/_____
 JUSTIN M. DEMPSEY (D.C. Bar #425976)
 GREGG I. MALAWER (D.C. Bar #481685)
 U.S. Department of Justice
 Antitrust Division
 450 5th Street, NW, Suite 4000
 Washington, DC 20530
 Phone: Justin Dempsey (202) 307-5815

⁵ See *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the “Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone”); *United States v. Mid-Am. Dairymen, Inc.*, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (“Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.”); S. Rep. No. 93-298, 93d Cong., 1st Sess., at 6 (1973) (“Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.”).

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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UNITED STATES OF AMERICA)	
)	
and)	
)	
STATE OF TEXAS)	
)	Civil Action No.: 1:13-cv-00727
	<i>Plaintiffs,</i>)	
)	Judge: Beryl A. Howell
	v.)	
)	Filed: 05/20/2013
)	
CINEMARK HOLDINGS, INC.)	
)	
RAVE HOLDINGS, LLC)	
)	
and)	
)	
ALDER WOOD PARTNERS, L.P.)	
)	
	<i>Defendants.</i>)	
<hr/>)	

FINAL JUDGMENT

WHEREAS, Plaintiffs, United States of America and State of Texas, filed their Complaint on May 20, 2013, the Plaintiffs and Defendants, Cinemark Holdings, Inc. (“Cinemark”), Rave Holdings, LLC (“Rave Cinemas”), and Alder Wood Partners, L.P. (“Alder Wood Partners”), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the Defendants to assure that competition is not substantially lessened;

AND WHEREAS, Plaintiffs require Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to the Plaintiffs that the divestitures required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED AND DECREED:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

A. “Acquirer” or “Acquirers” means the entity or entities to which Cinemark divests the Cinemark Divestiture Assets, and the entity or entities to which Alder Wood Partners divests the Movie Tavern Divestiture Assets.

B. “Cinemark” means Defendant Cinemark Holdings, Inc., a Delaware corporation with its headquarters in Plano, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. “Rave Cinemas” means Defendant Rave Holdings, LLC, a Delaware limited liability company with its headquarters in Dallas, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. “Alder Wood Partners” means Defendant Alder Wood Partners, L.P., a Texas limited partnership with its headquarters in Dallas, Texas, its partners, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

E. Movie Tavern, Inc. means (“Movie Tavern”), a Texas corporation with its headquarters in Dallas, Texas and 16 movie theatres in seven states, and that is majority-owned by Alder Wood Partners.

F. “Divestiture Assets” means the Cinemark Divestiture Assets and the Movie Tavern Divestiture Assets.

G. “Landlord Consent” means any contractual approval or consent that the landlord or owner of one or more of the Divestiture Assets, or of the property on which one or more of the

Divestiture Assets is situated, must grant prior to the transfer of one of the Divestiture Assets to an Acquirer.

H. “Cinemark Divestiture Assets” means the following theatre assets:

	Theatre	Address
1	Rave Stonybrook 20 + IMAX	2745 South Hurstbourne Parkway, Louisville, KY 40220
2	Rave Ritz Center 16	900 Haddonfield-Berlin Road, Voorhees, NJ 08043
3	Rave Hickory Creek 16 OR Cinemark 14	8380 South Stemmons Freeway, Hickory Creek, TX 75065 2825 Wind River Lane, Denton, TX 76210

The term “Cinemark Divestiture Assets” also includes:

1. All tangible assets that comprise the business of operating theatres that exhibit first-run, commercial movies, including, but not limited to real property and improvements, research and development activities, all equipment, fixed assets, and fixtures, personal property, inventory, office furniture, materials, supplies, and other tangible property and all assets used in connection with the Cinemark Divestiture Assets; all licenses, permits, and authorizations issued by any governmental organization relating to the Cinemark Divestiture Assets; all contracts (including management contracts), teaming arrangements, agreements, leases, commitments, certifications, and understandings relating primarily to the Cinemark Divestiture Assets, including supply agreements, (provided however, that supply agreements that apply to all Cinemark theatres may be excluded from the Cinemark Divestiture Assets, subject to the transitional agreement provisions specified in Section IV (F)); all customer lists (including

loyalty club data at the option of the Acquirer(s), copies of which may be retained by Cinemark at its option), contracts, accounts, and credit records relating to the Cinemark Divestiture Assets; all repair and performance records and all other records relating to the Cinemark Divestiture Assets;

2. All intangible assets relating to the operation of the Cinemark Divestiture Assets, including, but not limited to all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, (provided however, that the name Cinemark, the name Rave, and any registered service marks of Cinemark may be excluded from the Cinemark Divestiture Assets, subject to the transitional agreement provisions specified in Section IV (F)), technical information, computer software and related documentation (provided however, that Cinemark's proprietary software may be excluded from the Cinemark Divestiture Assets, subject to the transitional agreement provisions specified in Section IV (F)), know-how and trade secrets relating primarily to the Cinemark Divestiture Assets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, all research data concerning historic and current research and development relating to the Cinemark Divestiture Assets, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information Cinemark and/or Rave Cinemas provide to their own employees, customers, suppliers, agents, or licensees (except for the employee manuals that Cinemark provides to all its employees), and all research data concerning historic and current research and development efforts relating to the Cinemark Divestiture Assets.

I. “Movie Tavern Divestiture Assets” means the entire business of Movie Tavern, Inc., including, but not limited to, the 16 theatres it currently operates as well as the theatres it has plans to open. The term “Movie Tavern Divestiture Assets” also includes:

1. All tangible assets that comprise the business of operating theatres that exhibit first-run, commercial movies, including, but not limited to real property and improvements, research and development activities, all equipment, fixed assets, and fixtures, personal property, inventory, office furniture, materials, supplies, and other tangible property and all assets used in connection with the Movie Tavern Divestiture Assets; all licenses, permits, and authorizations issued by any governmental organization relating to the Movie Tavern Divestiture Assets; all contracts (including management contracts), teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to the Movie Tavern Divestiture Assets, including supply agreements; all customer lists (including loyalty club data at the option of the Acquirer(s)), contracts, accounts, and credit records; all repair and performance records and all other records relating to the Movie Tavern Divestiture Assets;

2. All intangible assets used in the development, production, servicing, and sale of the Movie Tavern Divestiture Assets, including, but not limited to all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, all research data concerning historic and current research and development relating to the Movie Tavern Divestiture Assets, quality assurance and control procedures, design tools and simulation

capability, all manuals and technical information Movie Tavern provides to its employees, customers, suppliers, agents, or licensees, and all research data concerning historic and current research and development efforts relating to the Movie Tavern Divestiture Assets.

J. “Western Fort Worth, Texas Movie Tavern Theatres” means the Ridgmar Movie Tavern, the West 7th Street Movie Tavern, and the Hulen Movie Tavern, which are three of the 16 currently operating Movie Tavern theatres included among the Movie Tavern Divestiture Assets.

III. Applicability

A. This Final Judgment applies to Cinemark, Rave Cinemas, and Alder Wood Partners, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Sections IV and V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer(s) of the assets divested pursuant to this Final Judgment.

IV. Divestitures

A. Cinemark is ordered and directed, within ninety (90) calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Cinemark Divestiture Assets in a manner consistent with this Final Judgment to one or more Acquirer(s) acceptable to the United States in its sole discretion (after consultation with the State of Texas, as appropriate). The United States,

in its sole discretion, may agree to one or more extensions of this time period, not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Cinemark agrees to use its best efforts to divest the Cinemark Divestiture Assets as expeditiously as possible.

B. Alder Wood Partners is ordered and directed, within ninety (90) calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Movie Tavern Divestiture Assets in a manner consistent with this Final Judgment to one or more Acquirer(s) acceptable to the United States in its sole discretion (after consultation with the State of Texas, as appropriate). The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed ninety (90) calendar days in total, and shall notify the Court in such circumstances. Alder Wood Partners agrees to use its best efforts to divest the Movie Tavern Divestiture Assets as expeditiously as possible.

C. In accomplishing the divestitures ordered by this Final Judgment, Defendants Cinemark and Alder Wood Partners shall each promptly make known, by usual and customary means, the availability of their respective Divestiture Assets. (For Cinemark, its respective Divestiture Assets are the Cinemark Divestiture Assets; and for Alder Wood Partners, its respective Divestiture Assets are the Movie Tavern Divestiture Assets.) Defendants shall each inform any person making an inquiry regarding a possible purchase of their respective Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall each offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to Defendants' respective Divestiture Assets customarily provided in a due diligence process except such

information or documents subject to the attorney-client privilege or work-product doctrine.

Defendants shall each make available such information to the Plaintiffs at the same time that such information is made available to any other person.

D. Defendants Cinemark and Alder Wood Partners shall provide the Acquirer(s) and the United States information relating to the personnel involved in the operation of their respective Divestiture Assets to enable the Acquirer(s) to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer(s) to employ any Defendant employee with primary responsibility for the operation of their respective Divestiture Assets.

E. Defendants shall permit prospective Acquirer(s) of their respective Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of their respective Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. In connection with the divestiture of the Cinemark Divestiture Assets pursuant to Section IV, or by a trustee appointed pursuant to Section V, of this Final Judgment, at the option of the Acquirer(s), Cinemark shall enter into a commercially reasonable transitional supply, service, support, and use agreement (“transitional agreement”), up to 120 days in length, for the supply of any goods, services, support, including software service and support, and reasonable use of the name Cinemark, the name Rave, and any registered service marks of Cinemark, that the Acquirer(s) request for the operation of the Cinemark Divestiture Assets during the period covered by the transitional agreement. At the request of the Acquirer(s), the United States in its sole discretion (after consultation with the State of Texas, as appropriate), may agree to one or

more extensions of this time period not to exceed six (6) months in total. The terms and conditions of the transitional agreement must be acceptable to the United States in its sole discretion (after consultation with the State of Texas, as appropriate). The transitional agreement shall be deemed incorporated into this Final Judgment and a failure by Cinemark to comply with any of the terms or conditions of the transitional agreement shall constitute a failure to comply with this Final Judgment.

G. Cinemark shall warrant to the Acquirer(s) of the Cinemark Divestiture Assets that each asset will be operational on the date of sale. Alder Wood Partners shall warrant to the Acquirer(s) of the Movie Tavern Divestiture Assets that each asset will be operational on the date of sale.

H. Defendants shall not take any action that will impede in any way the permitting, operation, or divestitures of their respective Divestiture Assets.

I. Defendants shall warrant to the Acquirer(s) that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of their respective Divestiture Assets. Following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

J. Unless the United States otherwise consents in writing, the divestitures made pursuant to Section IV, and/or by a trustee appointed pursuant to Section V of this Final Judgment, shall include all Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion (after consultation with the State of Texas, as appropriate) that the Divestiture Assets can and will be used by the Acquirer(s) as part of a viable,

ongoing business of operating theatres that exhibit first-run, commercial movies. Divestitures of the Divestiture Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States (after consultation with the State of Texas, as appropriate) that the Divestiture Assets will remain viable and the divestitures of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

- (1) shall be made to Acquirers that, in the United States' sole judgment (after consultation with the State of Texas, as appropriate) have the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the business of theatres exhibiting first-run, commercial movies; and
- (2) shall be accomplished so as to satisfy the United States, in its sole discretion (after consultation with the State of Texas, as appropriate) that none of the terms of any agreement between Acquirers and Defendants give the ability unreasonably to raise the Acquirers' costs, to lower the Acquirers' efficiency, or otherwise to interfere in the ability of the Acquirers to compete effectively.

V. Appointment of Trustee

A. If Cinemark has not divested the Cinemark Divestiture Assets within the time period specified in Section IV(A), Cinemark shall notify the United States of that fact in writing. If Alder Wood Partners has not divested the Movie Tavern Divestiture Assets within the time period specified in Section IV(B), Alder Wood Partners shall notify the United States of that fact

in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestitures of the Cinemark Divestiture Assets and/or the Movie Tavern Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Cinemark Divestiture Assets and/or the Movie Tavern Divestiture Assets, as the case may be. The trustee shall have the power and authority to accomplish the divestitures to Acquirer(s) acceptable to the United States (after consultation with the State of Texas, as appropriate) at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, VI, and VII of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of Cinemark and/or Alder Wood Partners, as the case may be, any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee and reasonably necessary in the trustee's judgment to assist in the divestiture(s).

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VII.

D. The trustee shall serve at the cost and expense of Cinemark and/or Alder Wood Partners, depending on which Divestiture Assets the trustee is selling, pursuant to a written agreement or agreements with the applicable Defendant(s) and on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets

sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Cinemark and/or Movie Tavern, depending on which Divestiture Assets the trustee sold, and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which it is accomplished, but timeliness is paramount.

E. The applicable Defendant(s) shall use their best efforts to assist the trustee in accomplishing the divestiture of their respective Divestiture Assets. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the assets and business to be divested, and the applicable Defendant(s) shall develop financial and other information relevant to such assets and business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. The applicable Defendant(s) shall take no action to interfere with or to impede the trustee's accomplishment of the divestitures.

F. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an

offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Cinemark Divestiture Assets and/or Movie Tavern Divestiture Assets, as the case may be.

G. If the trustee is responsible for effecting divestiture of all or any part of the Movie Tavern Divestiture Assets, it shall notify the United States and Alder Wood Partners within five (5) business days following a determination that it is unable for any reason to accomplish the divestiture. If the Movie Tavern Divestiture Assets that the trustee is unable to divest include any of the Western Fort Worth, Texas Movie Tavern Theatres, the trustee shall then divest the Ridgmar 13 + Xtreme theatre assets located at 2300 Green Oaks Road, Fort Worth, Texas.

H. If the trustee has not accomplished the divestitures ordered under this Final Judgment within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Landlord Consent

A. If Cinemark is unable to effect any of the divestitures required herein due to the inability to obtain the Landlord Consent for any of the Cinemark Divestiture Assets, Cinemark shall divest alternative theatre assets that compete effectively with the theatre or theatres for which the Landlord Consent was not obtained. The United States shall, in its sole discretion (after consultation with the State of Texas, as appropriate) determine whether such theatre assets compete effectively with the theatres for which Landlord Consent was not obtained.

B. If Alder Wood Partners is unable to effect divestiture of any of the Western Fort Worth, Texas Movie Tavern Theatres due to the inability to obtain the Landlord Consent, Cinemark shall then divest the Ridgmar 13 + Xtreme theatre assets located at 2300 Green Oaks Road, Fort Worth, Texas, and such assets shall be deemed to be part of the Cinemark Divestiture Assets.

C. Within five (5) business days following a determination that Landlord Consent cannot be obtained for any of the Divestiture Assets, Cinemark and/or Alder Wood Partners, as applicable, shall notify the United States, and Cinemark shall propose an alternative divestiture pursuant to Section VI (A). The United States (after consultation with the State of Texas, as appropriate) shall have then ten (10) business days in which to determine whether such theatre assets are a suitable alternative pursuant to Section VI (A). If Cinemark's selection is deemed not to be a suitable alternative, the United States shall in its sole discretion select alternative theatre assets to be divested (after consultation with the State of Texas, as appropriate) from among those theatre(s) that the United States has determined, in its sole discretion, to compete effectively with the theatre(s) for which Landlord Consent was not obtained.

D. If the trustee is responsible for effecting divestiture of the Cinemark Divestiture Assets, it shall notify the United States and Cinemark within five (5) business days following a determination that Landlord Consent cannot be obtained for one or more of the Cinemark Divestiture Assets. Cinemark shall thereafter have five (5) business days to propose an alternative divestiture pursuant to Section VI (A). The United States (after consultation with the State of Texas, as appropriate) shall then have ten (10) business days to determine whether the proposed theatre assets are a suitable competitive alternative pursuant to Section VI (A). If Cinemark's selection is deemed not to be a suitable competitive alternative, the United States shall in its sole discretion select alternative theatre assets to be divested (after consultation with the State of Texas, as appropriate) from among those theatre(s) that the United States has determined, in its sole discretion, to compete effectively with the theatre(s) for which Landlord Consent was not obtained.

VII. Notice of Proposed Divestitures

A. Within two (2) business days following execution of a definitive divestiture agreement, Cinemark and/or Alder Wood Partners or the trustee, whichever is then responsible for effecting the divestitures required herein, shall notify the United States (and, as appropriate, the State of Texas), of any proposed divestitures required by Sections IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestitures and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States, in its sole discretion, after consultation with the State of Texas, as appropriate, may request from Defendants, the proposed Acquirer(s), any other third party, or the trustee, if applicable, additional information concerning the proposed divestitures, the proposed Acquirer(s), and any other potential Acquirer(s). Defendants and the trustee shall furnish any additional information requested to the United States within fifteen (15) calendar days of receipt of the request, unless the parties otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer(s), any third party, and the trustee, whichever is later, the United States shall provide written notice to Cinemark and/or Alder Wood Partners, as applicable, and the trustee, if there is one, stating whether it objects to the proposed divestitures. If the United States provides written notice that it does not object, the divestitures may be consummated, subject only to the applicable Defendant(s)' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VIII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

IX. Hold Separate

Until the divestitures required by this Final Judgment have been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestitures ordered by this Court.

X. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestitures have been completed under Sections IV or V, Cinemark and Alder Wood Partners shall each deliver to the United States an affidavit as to the fact and manner of its compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Cinemark Divestiture Assets or the Movie Tavern Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Cinemark and Alder Wood Partners has each taken to solicit buyers for their respective Divestiture Assets, and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Cinemark or by Alder Wood Partners, including limitation on information, shall be made within fourteen (14) calendar days of receipt of each such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Cinemark and Alder Wood Partners shall each deliver to the United States an affidavit that describes in reasonable detail all actions it has taken and all steps it has implemented on an ongoing basis to comply with Section IX of this Final Judgment. Cinemark and Alder Wood Partners shall each deliver to the United States an affidavit describing any changes to the efforts and actions outlined in their earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest their respective Divestiture Assets until one year after such divestitures have been completed.

XI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice Antitrust Division (“DOJ”), including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

- (1) access during Defendants’ office hours to inspect and copy, or at plaintiffs’ option, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and
- (2) to interview, either informally or on the record, Defendants’ officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable

convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the Plaintiffs shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XII. Notification

Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the "HSR Act"), Cinemark, without providing advance notification to the DOJ, shall not directly or indirectly acquire any assets of or any interest, including any financial,

security, loan, equity or management interest, in a business exhibiting first-run, commercial movies in Tarrant County, Texas; Denton County, Texas; Camden County, New Jersey; or Jefferson County, Kentucky during the ten years following the filing of the Complaint in this action. Notwithstanding the preceding sentence, in no event shall Cinemark be required to provide advance notification under this provision when making an acquisition of (1) not more than two percent of the outstanding “voting securities” (as that term is defined in 16 C.F.R. § 801.1) of a publicly-traded company with theatres exhibiting first-run, commercial movies where such acquisition is made “solely for the purpose of investment” (as that term is defined in 16 C.F.R. § 801.1), or (2) not more than two percent of “non-corporate interest” (as that term is defined in 16 C.F.R. § 801.1) in any unincorporated entity that holds any interest in a business with theatres exhibiting first-run, commercial movies where such acquisition is made “solely for the purpose of investment” (as that term is defined in 16 C.F.R. § 801.1).

Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the “HSR Act”), Alder Wood Partners, without providing advance notification to the DOJ, shall not directly or indirectly acquire any assets of or any interest, including any financial, security, loan, equity or management interest, in a business exhibiting first-run, commercial movies in any county which Cinemark owns or operates a theatre exhibiting first-run, commercial movies in any state during the earlier of (a) the ten years following the filing of the Complaint in this action, or (b) the date on which any person who is a limited partner of Alder Wood Partners as of May 13, 2013, no longer serves as an officer or director of Cinemark. Notwithstanding the preceding sentence, in no event shall Alder Wood Partners be required to

provide advance notification under this provision when making an acquisition of (1) not more than two percent of the outstanding “voting securities” (as that term is defined in 16 C.F.R. § 801.1) of a publicly-traded company with theatres exhibiting first-run, commercial movies where such acquisition is made “solely for the purpose of investment” (as that term is defined in 16 C.F.R. § 801.1), or (2) not more than two percent of “non-corporate interest” (as that term is defined in 16 C.F.R. § 801.1) in any unincorporated entity that holds any interest in a business with theatres exhibiting first-run, commercial movies where such acquisition is made “solely for the purpose of investment” (as that term is defined in 16 C.F.R. § 801.1).

Such notification by Cinemark and/or Alder Wood Partners shall be provided to the DOJ in the same format as, and per the instructions relating to, the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 9 of the instructions must be provided only about theatres that exhibit first-run, commercial movies. Notification shall be provided at least thirty (30) calendar days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the DOJ make a written request for additional information, Defendants shall not consummate the proposed transaction or agreement until thirty (30) days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly

construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

XIII. No Reacquisition

Neither Cinemark nor Alder Wood Partners may acquire or reacquire any part of the Cinemark Divestiture Assets or Movie Tavern Divestiture Assets divested under this Final Judgment during the term of this Final Judgment.

XIV. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XVI. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____, 2013

Court approval subject to procedures
of Antitrust Procedures and Penalties
Act, 15 U.S.C. § 16

_____ **United States District Judge**

[FR Doc. 2013-12762 Filed 05/29/2013 at 8:45 am; Publication Date: 05/30/2013]