DEPARTMENT OF JUSTICE
Antitrust Division

United States, et al. v. AMC Entertainment 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. AMC Entertainment Holdings, Inc., et al., Civil Action No. 1:15-cv-02181. On December 15, 2015, the United States and the State of Connecticut filed a Complaint alleging that AMC Entertainment Holdings, Inc. proposed acquisition of SMH Theatres, Inc. movie theatres and related assets would violate section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires AMC Entertainment Holdings, Inc. to divest certain theatre assets.

Copies of the Complaint, proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement are available for inspection on the Antitrust Division'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.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to David C. Kully, Chief, Litigation III Section, Antitrust

Division, Department of Justice, 450 Fifth Street NW, Suite 4000, Washington, DC 20530 (telephone: 202-305-9969).

Patricia A. Brink
Director of Civil Enforcement

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA Antitrust Division 450 Fifth Street, N.W., Suite 4000 Washington, DC 20530, and STATE OF CONNECTICUT Office of the Attorney General 55 Elm Street Hartford, CT 06106, *Plaintiffs*, v. AMC ENTERTAINMENT HOLDINGS, INC. One AMC Way 11500 Ash Street Leawood, KS 64105, and SMH THEATRES, INC. 12750 Merit Drive, Suite 800 Dallas, TX 75251, *Defendants*.	Civil Action No.: 1:15-cv-02181 Judge: Beryl A. Howell Filed: 12/15/2015

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, and the State of Connecticut, acting by and through its Office of the Attorney General, bring this civil antitrust action to prevent the proposed acquisition by AMC

Entertainment Holdings, Inc. ("AMC") of all of the outstanding voting securities of SMH Theatres, Inc. ("Starplex Cinemas").

I. NATURE OF ACTION

1. AMC is a significant competitor to Starplex Cinemas in the exhibition of first-run, commercial movies in the area in and around East Windsor, New Jersey and in the area in and around Berlin, Connecticut. If AMC's acquisition of Starplex Cinemas is permitted to proceed, it would give AMC direct control of its most significant competitor in these markets. 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.

II. JURISDICTION AND VENUE

2. 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.

3. The State of Connecticut 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. The State of Connecticut, by and through its Office of the Attorney General, brings this action as *parens patriae* on behalf of the citizens, general welfare, and economy of its state.

4. 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 pursuant to 15 U.S.C. § 25 and 28 U.S.C. §§ 1331, 1337(a), and 1345.

5. Defendants consent to personal jurisdiction and venue in this district. Therefore, this Court has personal jurisdiction over each Defendant and venue is proper under 28 U.S.C. § 1391(b) and (c). In addition, venue is proper under 15 U.S.C. § 22 because one defendant operates theatres in this District; the other transacts business by attracting patrons from and advertising in this District.

III. DEFENDANTS AND THE PROPOSED ACQUISITION

6. Defendant AMC is a Delaware corporation with its headquarters in Leawood, Kansas. AMC operates 349 theatres and 4,975 screens in locations throughout the United States. Measured by number of screens and box office revenue, AMC is the second-largest theatre circuit in the United States.

7. Defendant Starplex Cinemas is a Texas corporation with its headquarters in Dallas, Texas. Starplex operates 33 movie theatres with a total of 346 screens in the United States, primarily located in small to midsize markets.

8. On July 13, 2015, AMC and Starplex Cinemas executed a stock purchase agreement. Under the agreement, AMC will acquire all outstanding voting securities of Starplex Cinemas for approximately $172 million.

IV. 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 2014, with total box office revenue reaching approximately $10 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. AMC and Starplex Cinemas are exhibitors in the United States.

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 whether it provides stadium and/or reserved seating), competitive pressures 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.

V. 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 generally differ 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, a 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 the screen, the sophistication of the sound system, 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 reasonable 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, art and foreign-language movies tend to have more narrow appeal and typically attract an older audience than commercial movies. Exhibitors consider the operation of theatres that exhibit art and foreign-language movies to be distinct from the operation of theatres that exhibit 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 East Windsor, New Jersey

19. AMC and Starplex Cinemas account for the majority of the first-run, commercial movie tickets sold in and around East Windsor, New Jersey ("East Windsor"). The only theatres that predominantly show first-run commercial movies in the East Windsor area are the Starplex Town Center Plaza 10, the AMC MarketFair 10, and the AMC Hamilton 24. The Starplex theatre is located approximately 10 miles from each of the AMC theatres.

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

Area In and Around Berlin, Connecticut

21. AMC and Starplex Cinemas account for the majority of the first-run, commercial movie tickets sold in and around Berlin, Connecticut ("Berlin"). Within the Berlin area are the Starplex Berlin 12 and the AMC Plainville 20. These two theatres are located approximately 8 miles apart. Only three other theatres in the Berlin area also show first-run, commercial movies.

22. Moviegoers who reside in Berlin are unlikely to travel significant distances out of that area to attend a first-run, commercial movie. A small but significant increase in the price of

tickets by a hypothetical monopolist of first-run, commercial movie theatres in Berlin would likely not cause a sufficient number of moviegoers to travel out of that area to make the increase unprofitable. Berlin constitutes a relevant geographic market in which to assess the competitive effects of this acquisition.

VI. COMPETITIVE EFFECTS

23. 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, students, or children) moviegoers will begin to frequent their rivals. Exhibitors also compete by seeking 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 variety and highest quality snacks, food, and drinks at concession stands or cafés in the lobby or served to moviegoers at their seats.

24. AMC and Starplex Cinemas currently compete for moviegoers in the East Windsor and Berlin markets. These markets are concentrated, and in each market, AMC and Starplex Cinemas are the other's most significant competitor, given their close proximity. Their rivalry spurs each to improve the quality of its theatres and keeps ticket prices in check. Theatres operated by other exhibitors offer less attractive options for visitors to defendants' theatres because those theatres are located farther away or are smaller in size or poorer in quality.

25. In the relevant markets at issue, the acquisition of Starplex Cinemas likely will result in a substantial lessening of competition. In the East Windsor and Berlin markets, the

transaction will lead to significant increases in concentration and eliminate existing competition between AMC and Starplex Cinemas.

26. Market concentration is often a useful indicator of the level of competitive vigor in a market and the likely competitive effects of a merger. The more concentrated a market, and the more a transaction would increase that concentration, the more likely it is that the transaction would result in reduced competition, harming consumers. Market concentration commonly is measured by the Herfindahl-Hirschman Index ("HHI"), as discussed in Appendix A. Markets in which the HHI exceeds 2,500 points are considered highly concentrated, and transactions that increase the HHI by more than 200 points in highly concentrated markets are presumed likely to enhance market power.

27. In East Windsor, the proposed acquisition would give AMC control of all of the first-run, commercial movie theatres, with 34 out of 34 total screens and a 100% share of the $13 million annual box office revenues. The acquisition would yield a post-acquisition HHI of 10,000, representing an increase of roughly 2,300 points.

28. In Berlin, the proposed acquisition would give AMC control of three of the six first-run, commercial movie theatres, with 44 out of 79 total screens and an approximate 68% share of the $11 million annual box office revenues. The acquisition would yield a post-acquisition HHI of approximately 5,260, representing an increase of roughly 2,280 points.

29. Today, were one of defendants' theatres to unilaterally increase ticket prices in East Windsor or Berlin, the exhibitor that increased price would likely suffer financially as a substantial number of its customers would patronize the other exhibitor. The acquisition would eliminate this pricing constraint. 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 for matinees, children, seniors, or students.

30. The proposed acquisition likely would also reduce competition between AMC and Starplex Cinemas over the quality of the viewing experience at their East Windsor or Berlin theatres. If no longer motivated to compete, AMC and Starplex Cinemas would have reduced incentives to maintain, upgrade, and renovate their theatres, to improve the theatres' amenities and services, or to license the most popular movies, thus reducing the quality of the viewing experience for moviegoers in East Windsor and Berlin.

VII. ENTRY

31. 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 unless the population density, demographics, or the quality of existing theatres makes new entry viable. Over the next two years, entry of new first-run, commercial movie theatres in East Windsor or Berlin would be unlikely to defeat a price increase by the merged firm.

VIII. VIOLATION ALLEGED

32. Plaintiffs hereby reincorporate paragraphs 1 through 28.

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

34. The transaction would likely have the following effects, among others: (a) the prices of tickets at first-run, commercial movie theatres in East Windsor and Berlin 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 below levels that would prevail absent the acquisition.

IX. REQUESTED RELIEF

35. 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: DECEMBER 15, 2015

FOR PLAINTIFF UNITED STATES OF AMERICA

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DATED: DECEMBER 15, 2015

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APPENDIX A

Herfindahl-Hirschman Index

The term "HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the relevant 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.

Markets in which the HHI is between 1,500 and 2,500 points are considered to be moderately concentrated, and markets in which the HHI is in excess of 2,500 points are considered to be highly concentrated. *See* U.S. Department of Justice & Federal Trade Commission, *Horizontal Merger Guidelines* § 5.3 (2010) ("Guidelines"). Transactions that increase the HHI by more than 200 points in highly concentrated markets presumptively raise antitrust concerns under the Guidelines. *Id.*

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA Antitrust Division 450 Fifth Street, N.W., Suite 4000 Washington, DC 20530, and STATE OF CONNECTICUT Office of the Attorney General 55 Elm Street Hartford, CT 06106, *Plaintiffs*, v. AMC ENTERTAINMENT HOLDINGS, INC. One AMC Way 11500 Ash Street Leawood, KS 64105, and SMH THEATRES, INC. 12750 Merit Drive, Suite 800 Dallas, TX 75251, *Defendants*.	Civil Action No.: 1:15-cv-02181 Judge: Beryl A. Howell Filed: 12/15/2015

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 July 13, 2015, Defendant AMC Entertainment Holdings, Inc. ("AMC") agreed to acquire all of the outstanding voting securities of SMH Theatres, Inc. ("Starplex Cinemas"). AMC and Starplex Cinemas are significant competitors in the exhibition of first-run, commercial movies in parts of New Jersey and Connecticut. Plaintiffs filed a civil antitrust complaint on December 15, 2015, seeking to enjoin the proposed acquisition and to obtain equitable relief. The Complaint alleges that the acquisition, if permitted to proceed, would give AMC direct control of its most significant competitor in the area in and around East Windsor, New Jersey and in the area in and around Berlin, Connecticut. 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, 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, AMC and Starplex Cinemas are required to divest one theatre located in New Jersey and one theatre located in Connecticut to acquirer(s) acceptable to the United States, in consultation with the State of Connecticut.

Under the terms of the Hold Separate, Defendants will take all steps necessary to ensure that the two theatres to be divested 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.

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. Defendants and the Proposed Transaction

Defendant Starplex Cinemas is a Texas corporation with its headquarters in Dallas, Texas. Starplex operates 33 movie theatres with a total of 346 screens in 12 states throughout the United States, primarily located in small to midsize markets. Starplex earned domestic box office revenue of approximately $57 million in 2014.

AMC is a Delaware corporation with its headquarters in Leawood, Kansas. It operates 349 theatres and 4,975 screens in locations primarily throughout the United States. Measured by number of screens and box office revenue, AMC is the second-largest theatre exhibitor in the United States and earned domestic box office revenues of approximately $1.8 billion in 2014.

On July 13, 2015, AMC and Starplex Cinemas executed a stock purchase agreement under which AMC will acquire, for approximately $172 million, all of the outstanding voting securities of Starplex Cinemas.

The proposed transaction, as initially agreed to by AMC and Starplex Cinemas on July 13, 2015, would lessen competition substantially as a result of AMC's acquisition of Starplex Cinemas. This acquisition is the subject of the Complaint and proposed Final Judgment filed by Plaintiffs on December 15, 2015.

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

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 two relevant geographic markets: the area in and around East Windsor, New Jersey ("East Windsor") and the area in and around Berlin, Connecticut ("Berlin").

East Windsor

The only theatres that predominantly show first-run commercial movies in the East Windsor area are the Starplex Town Center Plaza 10, the AMC MarketFair 10, and the AMC Hamilton 24. No other non-party theatres in this area predominantly show first-run, commercial movies.

Berlin

Within the Berlin area are the Starplex Berlin 12 and the AMC Plainville 20. These two theatres are located approximately 8 miles apart. Three non-party theatres in this area also show first-run, commercial movies.

The relevant markets in which to assess the competitive effects of this transaction are the first-run, commercial theatres in East Windsor and Berlin. A hypothetical monopolist controlling the exhibition of first-run, commercial movies in East Windsor and Berlin 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, students, or children), moviegoers will begin to frequent their rivals. Exhibitors also compete by seeking 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 cafés in the lobby or served to moviegoers at their seats.

AMC and Starplex Cinemas currently compete for moviegoers in East Windsor and Berlin. Each of these markets is concentrated, and AMC and Starplex Cinemas are each other's most significant competitor, given their close proximity. Their rivalry spurs each to improve the quality of its theatres and keeps ticket prices in check.

In East Windsor and Berlin, the acquisition by AMC of Starplex Cinemas' theatres likely will result in a substantial lessening of competition. The transaction will lead to significant increases in concentration and eliminate existing competition between AMC and Starplex Cinemas.

In East Windsor, the proposed acquisition would give the newly merged entity control of all of the first-run, commercial theatres, with 34 out of 34 total screens and a 100% share of annual box office revenues totaling approximately $13 million. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI"), as discussed in Appendix A of the Complaint, the acquisition would yield a post-acquisition HHI of 10,000, representing an increase of roughly 2,300 points.

In Berlin, the proposed acquisition would give the newly-merged entity control of three of the six first-run, commercial theatres, with 44 out of 79 total screens and an approximate 68% share of annual box office revenues totaling approximately $11 million. The acquisition would yield a post-acquisition HHI of approximately 5,260, representing an increase of roughly 2,280 points.

In East Windsor and Berlin today, were one of Defendants' theatres to increase ticket prices unilaterally, the exhibitor that increased price would likely suffer financially as a substantial number of its customers would patronize the other exhibitor's theatre. Other theatres are smaller than and/or farther from the parties' theatres and unlikely to offer enough of a competitive constraint to prevent such a price increase. After the acquisition, AMC 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 for matinees, children, seniors, and students.

Likewise, the proposed transaction would eliminate competition between AMC and Starplex Cinemas over the quality of the viewing experience at their theatres in East Windsor and Berlin. If no longer required to compete, AMC and Starplex Cinemas would have a reduced incentive to maintain, upgrade, and renovate their theatres, to improve the 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 either East Windsor or Berlin. Exhibitors are reluctant to locate new first-run, commercial theatres near existing first-run, commercial theatres, unless the population density, demographics, or the quality of existing theatres makes new entry viable. Over the next two years, entry of any new first-run, commercial movie theatres in East Windsor and Berlin would be unlikely to defeat a price increase by the merged firm.

For all of these reasons, the proposed transaction would lessen competition substantially in the exhibition of first-run, commercial movies in the East Windsor and Berlin markets, eliminate actual and potential competition between AMC and Starplex 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 Defendants within thirty (30) 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 one theatre in each of the relevant markets.

The theatres must be divested in such a way as to satisfy Plaintiffs that they can and will be operated by the purchaser as viable, ongoing businesses that can compete effectively 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 Defendants 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 AMC, the name Starplex, and any registered service marks of AMC or Starplex, 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.

Until the divestitures take place, AMC and Starplex Cinemas must maintain the sales and marketing of the theatres, and maintain the theatres in operable condition at current capacity configurations. In addition, AMC and Starplex 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 Defendants 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 Defendants are 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 them to divest alternative theatre assets that compete effectively with the theatres for which the landlord consent was not obtained. These provisions will insure that any failure by Defendants to obtain landlord consent does not thwart the relief obtained in the proposed Final Judgment.

The proposed Final Judgment also prohibits Defendants, without providing at least thirty (30) days notice to the United States Department of Justice, from acquiring any other theatres in the following counties: Hartford County, Connecticut and Mercer County, New Jersey. These counties correspond to the relevant geographic markets in this case. Such acquisitions could raise competitive concerns but might be too small to be reported under the Hart-Scott-Rodino ("HSR") premerger notification statute.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of AMC's acquisition of Starplex 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

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:

David C. Kully
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

Plaintiffs considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. Plaintiffs could have continued the litigation and sought preliminary and permanent injunctions against AMC's acquisition of Starplex Cinemas. Plaintiffs are satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the exhibition of first-run, commercial movies in East Windsor and Berlin. Thus, the proposed Final Judgment would achieve all or substantially all of the relief 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, U.S. Airways Group, Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) explaining that the "court's inquiry is limited" in Tunney Act settlements); *United States v. InBev N.V/S.A.*, No. 08-1965 (JR), 2009-2 Trade Cas. (CCH) ¶76,736, 2009 U.S. Dist. LEXIS 84787, 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.")[1]

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,

[1] 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.

462 (9th Cir. 1988) (quoting *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 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).[2] 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 U.S. Airways*, 38 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *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 State's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

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§ 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).

[2] *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'").

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 U.S. Airways*, 38 F. Supp. 3d at 76 (noting that room must be made for the government to grant concessions in the negotiation process for settlements (citing *Microsoft*, 56 F.3d at 1461)); *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 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 U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *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); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). 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 Sen. 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. A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways*, 38 F. Supp. 3d at 76.[3]

[3] *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.*

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.

Dairymen, Inc., No. 73-CV-681-W-1, 1977-1 Trade Cas. (CCH) & 61,508, at 71,980, *22 (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, 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.").

Dated: December 15, 2015

Respectfully submitted,

/s/

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, and STATE OF CONNECTICUT, *Plaintiffs*, v. AMC ENTERTAINMENT HOLDINGS, INC. and SMH THEATRES, INC., *Defendants*.	Civil Action No.: 1:15-cv-02181 Judge: Beryl A. Howell Filed: 12/15/2015

[PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiffs United States of America and the State of Connecticut filed their Complaint on December 15, 2015, the Plaintiffs and Defendants, AMC Entertainment Holdings, Inc. ("AMC"), and SMH Theatres, Inc., ("Starplex Cinemas"), 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 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 Defendants divest the Divestiture Assets.

B. "AMC" means AMC Entertainment Holdings, Inc., a Delaware corporation with its headquarters in Leawood, Kansas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Starplex Cinemas" means Starplex Cinemas, Inc., a Texas Corporation 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. "Divestiture Assets" means the following theatre assets:

	Theatre	Address
1	Starplex Town Center Plaza 10	319 Route 130 North, East Windsor, NJ 08520
2	Starplex Berlin 12	19 Frontage Rd, Berlin, CT 06037

The term "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 Divestiture Assets; all licenses, permits, and authorizations issued by any governmental organization relating to the Divestiture Assets; all contracts (including management contracts), teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to the Divestiture Assets, including supply agreements (provided however, that supply agreements that apply to all of each Defendant's theatres may be excluded from the Divestiture Assets, subject to the transitional agreement provisions specified in Section IV (E)); all customer lists (including loyalty club data at the option of the Acquirer(s), copies of which may be retained by Defendants at their option), contracts, accounts, and credit

records relating to the Divestiture Assets; all repair and performance records and all other records relating to the Divestiture Assets; and

2. All intangible assets relating to the operation of the 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 Starplex, and any registered service marks of Starplex may be excluded from the Divestiture Assets, subject to the transitional agreement provisions specified in Section IV(E)), technical information, computer software and related documentation (provided however, that Defendants' proprietary software may be excluded from the Divestiture Assets, subject to the transitional agreement provisions specified in Section IV(E)), know-how and 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, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information Starplex Cinemas provides to their own employees, customers, suppliers, agents, or licensees (except for the employee manuals that Starplex provides to all its employees), and all research data concerning historic and current research and development.

E. "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.

III. APPLICABILITY

A. This Final Judgment applies to AMC and Starplex Cinemas, 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. Defendants are ordered and directed, within thirty (30) calendar days after the filing of the Complaint in this matter to divest the 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 Connecticut, as appropriate). The United States, in its sole discretion, may agree to one or more extensions of this time period, not to exceed thirty (30) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In accomplishing the divestitures ordered by this Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making an inquiry regarding a possible purchase of the 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 offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and

documents relating to the 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 make available such information to the Plaintiffs at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirer(s) and the United States information relating to the personnel involved in the operation and management of the applicable Divestiture Assets to enable the Acquirer(s) to make offers of employment. Defendants shall not interfere with any negotiations by the Acquirer(s) to employ or contract with any employee of any Defendant whose primary responsibility relates to the operation or management of the applicable Divestiture Assets being sold by the Acquirer(s).

D. Defendants shall permit prospective Acquirer(s) of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the 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.

E. In connection with the divestiture of the 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), Defendants shall enter into a transitional supply, service, support, and use agreement ("transitional agreement"), of 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 AMC, the name Starplex, and any registered service marks of AMC or Starplex, that the Acquirer(s) request for the operation of the 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 Connecticut, 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 Connecticut, as appropriate). The transitional agreement shall be deemed incorporated into this Final Judgment and a failure by Defendants to comply with any of the terms or conditions of the transitional agreement shall constitute a failure to comply with this Final Judgment.

F. Defendants shall warrant to the Acquirer(s) of the Divestiture Assets that each asset will be operational on the date of sale.

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

H. 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 the 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.

I. 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 the entire 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 Connecticut, 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. Divestiture 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 Connecticut, as appropriate) that the Divestiture Assets will remain viable and the divestiture 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 Connecticut, 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 Connecticut, as appropriate) that none of the terms of any agreement between Acquirers and Defendants gives Defendants the ability unreasonably to raise the Acquirers' costs, to lower the Acquirers' efficiency, or otherwise to interfere in the ability of any Acquirer to compete effectively.

V. APPOINTMENT OF TRUSTEE

A. If Defendants have not divested the Divestiture Assets within the time period specified in Section IV(A), Defendants shall notify the United States of that fact in writing, specifically identifying the Divestiture Assets that have not been divested. 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 Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. 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 Connecticut, 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 Defendants 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). Any such investment bankers, attorneys, or other agents shall serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

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 Defendants pursuant to a written agreement, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The trustee shall account for all monies derived from the sale of the applicable Divestiture Assets and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services yet unpaid and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Defendants 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 subject to sale by the trustee 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 they are accomplished, but timeliness is paramount. If the trustee and Defendants are unable to reach agreement on the trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within 14 calendar days of appointment of the trustee, the United States may, in its sole discretion (after consultation with the State of Connecticut, as appropriate), take appropriate action, including making a recommendation to the Court. The trustee shall, within three (3) business days of hiring any other professionals or agents, provide written notice of such hiring and the rate of compensation to Defendants and the United States.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures. 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 Defendants 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 or any applicable privileges. Defendants 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 Divestiture Assets.

G. 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.

H. If the United States determines that the trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute trustee.

VI. LANDLORD CONSENT

A. If Defendants are unable to effect any of the divestitures required herein due to the inability to obtain the Landlord Consent for any of the Divestiture Assets, Defendants 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 Connecticut, as appropriate) determine whether such theatre assets compete effectively with the theatres for which Landlord Consent was not obtained.

B. Within five (5) business days following a determination that Landlord Consent cannot be obtained for any of the Divestiture Assets, Defendants shall notify the United States, and Defendants shall propose an alternative divestiture pursuant to Section VI(A). The United States (after consultation with the State of Connecticut, 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 Defendants' selection is deemed not to be a suitable alternative, the United States shall in its sole discretion (after consultation with the State of Connecticut, as appropriate) select alternative theatre assets to be divested from among those theatre(s) that the United States has determined, in its sole discretion, compete effectively with the theatre(s) for which Landlord Consent was not obtained.

C. If a trustee is responsible for effecting divestiture of the Divestiture Assets, it shall notify the United States and Defendants within five (5) business days following a determination that Landlord Consent cannot be obtained for one or more of the Divestiture Assets. Defendants 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 Connecticut, 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 Defendants' selection is deemed not to be a suitable competitive alternative, the United States shall in its sole discretion (after consultation with the State of Connecticut, as appropriate) select alternative theatre assets to be divested from among those theatre(s) that the United States has determined, in its sole discretion, 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, Defendants or the trustee, whoever is then responsible for effecting the divestitures required herein, shall notify the United States and, as appropriate, the State of Connecticut, of any proposed divestitures required by Sections IV, V, or VI 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 Connecticut, 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 Defendants, 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 Defendants' 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, V, or VI, Defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Sections IV, V, or VI 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 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 Defendants have taken to solicit buyers for and complete the sale of the Divestiture Assets, and to provide required

information to prospective Acquirers, 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 Defendants, including limitations 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, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions taken and all steps implemented on an ongoing basis to comply with Section IX of this Final Judgment. Defendants shall 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 the 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 any related orders such as any Hold Separate Stipulation and Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, 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 the option of the United States, 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 responses 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, or an authorized representative of the State of Connecticut, as appropriate, 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 in any such information or documents 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 United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XII. NO REACQUISITION

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XIII. 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.

XIV. EXPIRATION OF FINAL JUDGMENT

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

XV. 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: _____, 2015

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

_____

United States District Judge

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