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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 **C 05 5306**
13 STATE OF CALIFORNIA,

14 Plaintiff,

15 v.

16 MARQUEE HOLDINGS, INC.,
a Delaware corporation,
17 d/b/a AMC ENTERTAINMENT INC.,

18 and

19 LCE HOLDINGS, INC.,
a Delaware corporation,
20 d/b/a LOEWS CINEPLEX
ENTERTAINMENT CORPORATION,

21 Defendants.
22

CASE NO.

**COMPLAINT FOR
EQUITABLE RELIEF FOR
VIOLATION OF THE CLAYTON
ACT**

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23 Plaintiff State of California, on its own behalf and as *parens patriae* on behalf of its
24 citizens, by and through its Attorney General, Bill Lockyer, brings this civil antitrust action to
25 prevent the proposed merger of Marquee Holdings Inc. d/b/a AMC Entertainment Inc. ("AMC")
26 and LCE Holdings, Inc. d/b/a Loews Cineplex Entertainment Corporation and Loews Theatres
27 ("Loews"). If the merger is permitted to proceed, it would combine the top two first-run movie
28 theater operators in the City and County of San Francisco, State of California ("San Francisco")

COMPLAINT FOR EQUITABLE RELIEF FOR VIOLATION OF CLAYTON ACT

1 and would substantially lessen competition and tend to create a monopoly in the theatrical
2 exhibition of first-run commercial films in this market in violation of Section 7 of the Clayton
3 Act, 15 U.S.C. § 18. Plaintiff alleges as follows:

4 1. AMC and Loews both operate chains of movie theaters throughout the United States and
5 worldwide, and earn revenue through the theatrical exhibition of films and concession sales. The
6 theatrical exhibition of films is a multi-billion dollar industry, with total domestic box office
7 revenues for 2004 exceeding \$9.5 billion.

8 2. AMC and Loews are the two largest exhibitors of first-run commercial films^{1/} in San
9 Francisco by revenue as well as number of screens. AMC operates the AMC Kabuki, located at
10 1881 Post Street with 8 screens, and the AMC Van Ness, located at 1000 Van Ness Avenue, with
11 14 screens. Loews operates the Loews Metreon, located at 101 Fourth Street with 16 screens.
12 By combining these two companies, the proposed merger would create a circuit significantly
13 larger than all its rivals combined in San Francisco.

14 3. AMC and Loews currently compete against each other in San Francisco on two levels: they
15 compete to secure first-run films from film distributors and they compete to attract consumers.
16 The proposed merger would eliminate both levels of competition and create a dominant exhibitor
17 in San Francisco. As a result, the merger is likely to substantially lessen competition in the
18 markets for theatrical exhibition of first-run commercial films in San Francisco.

19 4. The reduction in competition caused by the proposed merger would enhance the ability of
20 the merged firm to raise ticket prices and reduce investment in theater improvements and
21 renovations in San Francisco. The merger would also give the merged firm market power in its
22 dealings with distributors, including the ability to depress film rental terms.

23 I. Jurisdiction and Venue

24 5. This action is filed by the State of California, through its Attorney General, as
25 *parens patriae*, under Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and restrain
26 violations of Section 7 of the Clayton Act, 15 U.S.C. § 18.

27
28 1. First-run commercial films refer to feature length motion pictures, and exclude purely
art or foreign language films.

1 6. Both AMC and Loews operate theaters in this District and throughout the United States.
2 The distribution and exhibition of first-run commercial films is a commercial activity that
3 substantially affects, and is in the flow of, interstate trade and commerce. The defendants
4 purchase substantial quantities of equipment, services, and supplies from sources located outside
5 of California. The Court has jurisdiction over the subject matter of this action and jurisdiction
6 over the parties pursuant to 15 U.S.C. §§ 22 and 26, and 28 U.S.C. §§ 1331 and 1337.

7 7. Venue in this District is proper under 15 U.S.C. § 22 and 28 U.S.C. § 1391(b).

8 **II. Background: The Movie Industry**

9 8. Theatrical exhibition of feature length motion picture films ("movies") provides a major
10 source of out-of-home entertainment in the United States. Although they vary significantly, ticket
11 prices for movies tend to be less expensive than many other forms of out-of-home entertainment,
12 particularly live entertainment such as sporting events and theater. Movies have therefore
13 retained their appeal as mass entertainment: over one and one half billion movie tickets were sold
14 in the United States in 2004.

15 9. "Exhibitors" are companies that operate movie theaters. Some exhibitors own a single
16 theater, whereas others own a circuit of theaters within one or more regions of the United States.
17 AMC and Loews are national exhibitors and each operates one of the largest theater circuits in
18 the United States.

19 10. "Distributors" are companies that engage in the business of licensing movies to exhibitors.
20 Distributors arrange for the promotion and marketing of movies and contract with exhibitors to
21 exhibit movies at theaters throughout the country. Established distributors include Buena Vista,
22 Twentieth Century Fox, Universal, Sony Pictures and Warner Bros.

23 11. Distributors negotiate with exhibitors to exhibit movies. Exhibitors compete to obtain
24 movies at their theaters that they believe will be successful, and distributors choose theaters to
25 exhibit their movies based on the quality, location, and grossing potential of the theaters and the
26 particular terms offered by the exhibitors.

1 12. The terms of the agreements pursuant to which distributors license movies to exhibitors
2 vary and are individually negotiated. However, each agreement typically specifies a formula
3 pursuant to which box office revenues are divided between the exhibitor and the distributor.

4 13. Exhibitors set ticket prices for each theater based on a number of factors, including the
5 competitive situation facing each theater.

6 **III. Defendants and the Proposed Merger**

7 14. Defendant Marquee Holdings Inc. is a Delaware corporation with its principal place of
8 business in Kansas City, Missouri, and does business under the name AMC Entertainment Inc.
9 and AMC Theatres. As of June 1, 2005, AMC operated 215 theaters with 3,308 screens and is
10 the second largest exhibitor in the United States.

11 15. Defendant LCE Holdings, Inc is a Delaware corporation with its principal place of business
12 in New York, New York, and does business under the name Loews Cineplex Entertainment
13 Corporation and Loews Theatres. As of June 1, 2005, Loews operated 131 theaters with 1,427
14 screens and is the sixth largest exhibitor in the United States.

15 **IV. The Relevant Markets**

16 **A. Product Market**

17 16. Movies differ significantly from other forms of entertainment. The experience of viewing a
18 movie in a theater is an inherently different experience from a live show, a sporting event, or
19 viewing a videotape or Digital Video Disk ("DVD") in the home. Ticket prices for movies are
20 generally very different than prices for other forms of entertainment: live entertainment is
21 typically significantly more expensive than a movie ticket, whereas renting a videotape or DVD
22 is usually significantly cheaper than viewing a first-run movie in a theater. Because going to the
23 movies is so different an experience from other forms of entertainment and because movie prices
24 are significantly different from other forms of entertainment, small but significant price increases
25 for movie tickets generally do not cause a sufficient number of consumers to shift to other forms
26 of entertainment to make the increase unprofitable.

27 17. A movie is considered to be in its "first run" during the initial weeks following its release in
28 a given locality. If successful, a movie may be exhibited at other theaters after the first run as part

1 of a second or subsequent run (often called a sub-run). Tickets at theaters exhibiting sub-run
2 movies usually cost significantly less than tickets at first-run theaters. Because the movies
3 exhibited at sub-run theaters are no longer new releases, most consumers do not regard sub-run
4 movies as an adequate substitute for first-run movies and would not switch to sub-run movies if
5 the price of first-run movies was increased by a small but significant amount. This is also due to
6 the fact that sub-run theaters are typically inferior locations and quality compared to first-run
7 locations. The availability of sub-run theater locations has greatly diminished in recent years.

8 18. From the perspective of distributors, there is no adequate substitute for first-run theaters
9 when selecting locations to exhibit first-run commercial films. Distributors typically seek to
10 have their newly released commercial films exhibited widely in high-quality theaters. A small but
11 significant reduction in the licensing fees paid to distributors by exhibitors would not cause the
12 distributors to exhibit their movies in anything other than first-run theaters.

13 19. The relevant product market within which to assess the competitive effects of this merger is
14 the exhibition of first-run commercial films: from the consumers' perspective, the market is
15 first-run commercial films and from the distributors' perspective, the market is first-run theaters
16 in which to exhibit first-run commercial films.

17 **B. Geographic Markets**

18 20. Consumers typically do not want to travel far from their homes to attend a movie,
19 particularly in urban areas. Accordingly, geographic markets for first-run commercial film are
20 predominantly local.

21 21. San Francisco is a peninsula bounded on three sides by water. To reach movie theaters to
22 the north or east would require consumers to travel either the Golden Gate Bridge to the north, or
23 the Bay Bridge or via Bay Area Rapid Transit (underwater) to the east. To reach movie theaters
24 south of San Francisco would require traveling outside of the city limits of San Francisco.
25 Consumers in San Francisco typically are reluctant to travel outside city limits to attend a movie.
26 A small but significant price increase for movie tickets in San Francisco would not cause a
27 sufficient number of consumers to travel out of city limits to make the increase unprofitable. San
28

1 Francisco and smaller areas contained therein constitutes a relevant geographic market in which
2 to assess some of the competitive effects of this merger.

3 22. From the perspective of distributors, it is important that their newly released first-run
4 commercial films be exhibited in San Francisco. San Francisco has a high population density
5 and is home to influential movie critics -- critics whose review of a movie can affect the movie's
6 performance regionally and nationwide. Because of the visibility and importance of the San
7 Francisco market, theaters in other geographic areas cannot substitute for theaters in San
8 Francisco: a distributor cannot "pass" (i.e., not show a movie in) San Francisco. From the
9 distributor perspective as well as the movie-goer perspective, San Francisco and smaller areas
10 contained therein constitutes a relevant geographic market.

11 23. The exhibition of first-run commercial films in San Francisco constitutes a relevant market
12 (i.e., a line of commerce and a section of the country) within the meaning of Section 7 of the
13 Clayton Act, 15 U.S.C. § 18.

14 **V. Competitive Effects**

15 24. In San Francisco, the proposed merger would give the newly merged entity control of 3
16 first-run commercial theaters with 38 screens and 2004-2005 box office revenue of over \$26
17 million. This represents a San Francisco market share by revenue of over 85% and screen
18 numbers of over 70% --more than all rivals combined. Post-merger, the second largest first-run
19 commercial theater circuit in San Francisco would be Regal Entertainment Group, with a market
20 share of roughly 6% of box office revenue and only 8 screens. Using a measure of market
21 concentration called the Herfindahl-Hirschman Index ("HHI")², the merger would yield a
22 post-merger HHI of over 7600, representing an increase of over 3600.

25 2. "HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of
26 market concentration. It is calculated by squaring the market share of each firm competing in the
27 market and then summing the resulting numbers. Under United States Department of Justice Merger
28 Guidelines, markets in which the HHI is in excess of 1800 points are considered to be highly
concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets
presumptively raise antitrust concerns under the Merger Guidelines. See Merger Guidelines § 1.51.

1 25. Entry into the market for first-run commercial movies in San Francisco, like other
2 metropolitan locations such as Chicago or Manhattan, is particularly time-consuming and
3 difficult and is not likely to significantly reduce the market strength of the combined entity in the
4 near future. Available sites are scarce, and real estate and construction costs are among the
5 highest in the nation. Identifying a site, planning the development, and constructing a theater in
6 San Francisco takes several years.

7 **A. Consumer Effects**

8 26. The proposed merger would make the competitive situation in San Francisco significantly
9 worse by further enhancing the ability of the remaining theater circuits, particularly the newly
10 merged AMC-Loews circuit, to increase prices.

11 a. The largest and most influential circuit in San Francisco prior to merger (Loews) is
12 price constrained by the prices charged by the other (AMC); in particular, they are
13 constrained by the risk that the other will not follow an attempted price increase. If AMC or
14 Loews were to increase prices and the other were not to follow, the firm that increased price
15 might suffer financially if a substantial number of its patrons decided that the increased
16 price was unreasonable and opted to patronize the other circuit.

17 b. The proposed merger would eliminate this pricing constraint and is therefore likely to
18 lead to higher prices for ticket buyers.

19 c. These higher prices may take the form of a higher adult evening ticket price or reduced
20 discounting for, e.g., matinees, twilight shows, seniors, students, and groups.

21 27. The proposed merger would also eliminate non-price competition between AMC and Loews
22 and is therefore likely to lead to lower quality theaters for movie-goers.

23 a. In order to attract consumers, and perhaps even more importantly, in order to persuade
24 major movie studios to exhibit top movies at their respective theaters, AMC and Loews
25 strive to maintain high quality theaters.

26 b. The proposed merger would reduce competitive pressure to maintain high quality
27 theaters. In particular, the merger would give the merged entity such a large share of the
28

1 relevant markets, and of individual zones, that it would no longer need to maintain such
2 high quality in order to attract movies.

3 c. The reduction of non-price competition would reduce the incentive to maintain,
4 upgrade and renovate theaters in San Francisco, thus reducing the quality of the viewing
5 experience for a movie-goer. It also may allow the merged entity to reduce the number of
6 shows as there no longer would be competitive pressure to continue early and late shows.

7 **B. Distributor Effects**

8 28. The higher the concentration of exhibitors in a market, the worse movie rental terms tend to
9 be for distributors. In important markets for distributors -- such as San Francisco--this problem is
10 magnified since "passing" the market is not a viable option.

11 29. The increased concentration in San Francisco as well as the elimination of the second
12 largest competitor would reduce competition and substantially increase the ability of the newly
13 merged entity to dictate terms to the distributors. Distributors would lose the ability to play off
14 AMC and Loews against each other. In addition, the merged entity would have such a dominant
15 presence that a distributor would be unable to achieve adequate distribution by showing movies
16 in alternative venues. The increased market power of the merged firm would likely lead to
17 distributors receiving less in revenue for the exhibition of their pictures, most likely the result of
18 a less favorable percentage of the box office receipts.

19 30. The reduced revenue remitted to the distributors could lead to fewer movies being produced,
20 or less money being expended on high-quality movies to the ultimate detriment of consumers.

21 **VI. Requested Relief**

22 WHEREFORE, Plaintiff prays for judgment as follows:

23 A. That the merger be adjudged to be in violation of Section 7 of the Clayton Act;

24 B. That a permanent injunction be issued against the Defendants enjoining the merger and
25 ordering divestiture and such other relief as necessary in order to prevent irreparable injury to the
26 Plaintiff and its citizens;

27 C. That Plaintiff be awarded its costs of suit, including reasonable attorneys' fees; and

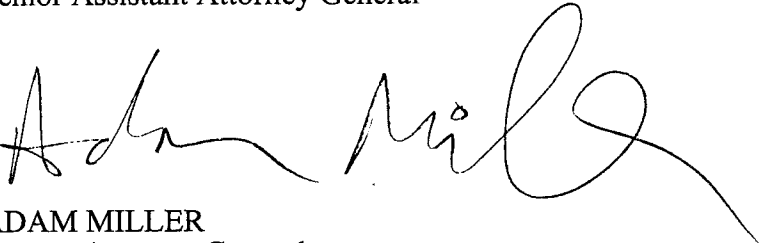
28 //

1 D. That Plaintiff be awarded such other relief as the Court deems just and proper.

2 Dated: December 19, 2005

3 Respectfully submitted,

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14 40071254.wpd

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **State of California v. Marquee Holdings, et al.**
U.S. D.C. Northern District

I declare:

I am employed in the County of San Francisco, California. I am 18 years of age or older and not a party to the within entitled cause; my business address is 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102.

On December 22, 2005, I served the attached:

1. **COMPLAINT FOR EQUITABLE RELIEF FOR VIOLATION OF THE CLAYTON ACT**
2. **STIPULATION FOR ENTRY OF FINAL JUDGMENT**
3. **STIPULATED FINAL JUDGMENT**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Francisco, California, addressed as follows:

**ILENE KNABLE GOTTS
DAMIAN G. DIDDEN
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019**

Attorneys for Marquee Holdings Inc.

**DEBORAH L. FEINSTEIN
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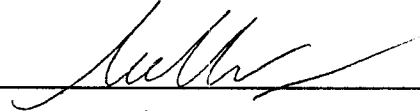
**JENNIFER L. CUMMINGS
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90 New Montgomery Street
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San Francisco, CA 94105**

Attorneys for LCE Holdings, Inc.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 22, 2005, at San Francisco, California.

Anh Ho

Typed Name

A handwritten signature in black ink, appearing to read 'Anh Ho', is written over a horizontal line.

Signature