



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

Karen Ross, Secretary

May 4, 2012

DMS NOTICE
QC - 12 - 6
DISCARD: RETAIN

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Cinemark USA, Inc. – (Proposed) Final Judgment Pursuant to Stipulation,
April 25, 2012

Enclosed is a (Proposed) Final Judgment Pursuant to Stipulation issued by the District Attorney's Office of Solano County filed against Cinemark USA, Inc., dba Century Theatres on April 25, 2012 for failure to redeem for cash or check any gift certificate or gift card with a cash value of less than ten dollars in accordance with California Civil Code Section 1749.5 (b) (2).

Cinemark USA, Inc., dba Century Theatres was assessed civil penalties, investigative cost recovery, and *cy pres* of \$60,000. Civil penalties amounted to \$28,213; *cy pres* restitution amounted to \$10,000; agency and prosecution costs were \$21,392; and \$395 were for court fees. *Cy Pres* of \$10,000 will be evenly distributed between the Consumer Trust Fund of Solano County Department of Agriculture/Weights and Measures and the Consumer Trust Fund of Shasta County Department of Agriculture/Weights and Measures.

Solano County should be sure to report these penalties in the County Monthly Report. All participating counties should separately record their individual investigative cost reimbursements in the appropriate columns in the report.

We appreciate the fine work done by the Solano County District Attorney's Office along with the State and county investigators that documented and caused to be prosecuted these violations. If you have any questions, please contact Kathy de Contreras, Supervising Special Investigator, Quantity/Weighmaster Programs, Enforcement Branch at (916) 229-3047, or kcontreras@cdfa.ca.gov.

Sincerely,

Enclosure

cc: Edmund Williams, Director, CDFA County/State Liaison



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*Attorneys for Plaintiff
The People of the State of California
(Additional counsel on following page)*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SOLANO

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

CINEMARK USA, INC., dba CENTURY THEATRES;

Defendants.

Case No. *FC5039609*

(PROPOSED) FINAL JUDGMENT
PURSUANT TO STIPULATION

ENDORSED FILED
Clerk of the Superior Court

APR 25 2012

By J. WOOD
DEPUTY CLERK

1 STEPHEN S. CARLTON
District Attorney, County of Shasta
2 Erin M. Dervin (SBN 188426)
Deputy District Attorney
3 1525 Court Street, Third Floor
Tel: (530) 245-6300
4 Fax: (530) 245-6345

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1 Plaintiff, the People of the State of California, appears through its attorneys: Donald A. du
2 Bain, District Attorney of Solano County, by Diane Taira, Deputy District Attorney and Stephen
3 S. Carlton, District Attorney of Shasta County, by Erin M. Dervin, Deputy District Attorney.
4 Defendant, CINEMARK USA, Inc., dba Century Theatres, a Texas corporation, hereafter
5 "CINEMARK" or "Defendant", appears through its attorney, Reginald D. Steer. It appears to the
6 Court that the parties hereto have stipulated and consented to the entry of this Final Judgment
7 without the taking of proof and without this Final Judgment constituting evidence or an admission
8 by Defendant regarding any issue of fact alleged in the complaint, and with Defendant denying
9 any wrongdoing or admitting any liability alleged therein, and with the People having agreed that
10 this Final Judgment shall not be used in any action or proceeding as evidence or an admission by
11 Defendant of any wrongdoing or liability, or of any fact alleged in the Complaint, and the Court
12 having considered the matter and the pleadings, and good cause appearing therefore,

13
14 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

15 **JURISDICTION**

- 16 1. This Court has jurisdiction over the subject matter hereof and the parties hereto.

17 **FAIR, JUST, AND EQUITABLE SETTLEMENT**

- 18 2. Based upon the representations of the parties, the Court finds that this Final Judgment was
19 entered into in good faith and is, in all respects, fair, just, and equitable to adequately protect the
20 public as it relates to CINEMARK's conduct alleged in the Complaint herein.

21 **DISCLAIMER OF ADMISSIONS**

- 22 3. This Final Judgment has been entered without any admission by Defendant as to the
23 merits of the allegations in the Complaint. Nothing in this Final Judgment or any act performed
24 by CINEMARK, nor any document executed pursuant to this Final Judgment, shall be construed
25 as an admission of CINEMARK of any fact, liability, issue of law, conclusion of law or violation
26 of any statutory or regulatory laws, nor shall compliance with this Final Judgment constitute or be
27 construed as an admission by CINEMARK of any fact, liability, issue of law, conclusion of law
28 or violation of any statutory or regulatory laws.

1 **INJUNCTION**

2 4. Pursuant to Business and Professions Code sections 17203 and 17535, CINEMARK and
3 its officers, regional managers, theatre managers and employees responsible for working
4 CINEMARK theatre cash registers are hereby permanently enjoined and restrained from
5 engaging in any of the following acts or practices:

6 A. Failing to redeem for cash or check any gift certificate or gift card with a cash value
7 of less than ten dollars (\$10) in accordance with California Civil Code Section 1749.5(b)(2).

8 **COMPLIANCE**

9 5. CINEMARK shall inform its officers, regional managers, theatre managers and
10 employees responsible for working CINEMARK theatre cash registers of the specific injunctive
11 provisions of the Final Judgment.

12 6. CINEMARK shall deliver to plaintiff's counsel listed herein, within ninety (90) days of
13 the date of the entry of Judgment, a certification of compliance with paragraph 5.

14 **MONETARY RELIEF**

15 7. Pursuant to Business and Professions Code sections 17206 and 17536 and the Court's
16 inherent equitable authority, CINEMARK is ordered to pay forthwith to the Solano County
17 District Attorney's Office on behalf of the People of the State of California a total settlement of
18 Sixty Thousand Dollars (\$60,000), such payment not to be negotiated until on or after the date of
19 entry of this Final Judgment, said sum to be allocated among the various offices of the District
20 Attorneys as they shall deem appropriate, except that in any event, no less than \$21,392 of the
21 total shall be paid as the costs of investigation and prosecution in this matter the allocation of
22 which is described below:

23 A. Six Thousand Dollars (\$6,000.00) for costs of prosecution. Pursuant to
24 Government Code section 26506, the costs in this paragraph shall be divided equally between the
25 District Attorney of Solano County and the District Attorney of Shasta County

26 B. Fifteen Thousand Three Hundred Ninety Two Dollars (\$15,392.00) pursuant to
27 Business and Professions Code section 12015.3, as reimbursement of costs of as follows:

1	(1) Alameda County Department of Agriculture/Weights & Measures:	\$ 447.00
2	(2) Butte County Department of Agriculture/Weights & Measures:	\$ 100.00
3	(3) Contra Costa Department of Agriculture/Weights & Measures:	\$ 550.00
4	(4) Imperial County Department of Agriculture/Weights & Measures:	\$ 107.00
5	(5) Kings County Department of Agriculture/Weights & Measures:	\$ 98.00
6	(6) Los Angeles County Department of Agriculture/Weights & Measures:	\$2,318.00
7	(7) Marin County Department of Agriculture/Weights & Measures:	\$ 100.00
8	(8) Monterey County Department of Agriculture/Weights & Measures:	\$ 130.00
9	(9) Napa County Department of Agriculture/Weights & Measures:	\$ 132.00
10	(10) Orange County Department of Agriculture/Weights & Measures:	\$ 126.00
11	(11) Placer County Department of Agriculture/Weights & Measures:	\$ 53.00
12	(12) Riverside County Department of Agriculture/Weights & Measures:	\$ 563.00
13	(13) Sacramento County Department of Agriculture/Weights & Measures:	\$ 800.00
14	(14) San Bernardino County Department of Agriculture/Weights & Measures:	\$ 252.00
15	(15) San Mateo County Department of Agriculture/Weights & Measures:	\$ 269.00
16	(16) San Joaquin County Department of Agriculture/Weights & Measures:	\$ 260.00
17	(17) Santa Clara County Department of Agriculture/Weights & Measures:	\$1,087.00
18	(18) Shasta County Department of Agriculture/Weights & Measures:	\$ 174.00
19	(19) Solano County Department of Agriculture/Weights & Measures:	\$4,616.00
20	(20) State Division Measurement Standards	\$2,827.00
21	(21) Sutter County Department of Agriculture/Weights & Measures:	\$ 60.00
22	(22) Ventura County Department of Agriculture/Weights & Measures:	\$ 252.00
23	(23) Yolo County Department of Agriculture/Weights & Measures:	\$ 71.00

24 C. *Cy pres*: The parties having recognized the impossibility of identifying individuals
25 who may claim that they were refused the right to redeem for cash or check their gift certificates
26 or gift cards with cash value of less than ten dollars (\$10), the Court therefore orders under the
27 doctrine of *cy pres*, and in the public interest, that the amount of Ten Thousand Dollars
28 (\$10,000.00), shall be paid as follows:

1 (1) Five Thousand Dollars (\$5,000.00) to Consumer Trust Fund of
2 Solano County Department of Agriculture/Weights & Measures for the benefit the citizens of the
3 Counties of Solano and Shasta as well as the State of California by aiding in the training,
4 investigation and prosecution of cases that fall under the jurisdiction of Weights and Measures.

5 (2) Five Thousand Dollars (\$5,000.00) to the Consumer Trust Fund of
6 Shasta County Department of Agriculture/Weights & Measures for the benefit the citizens of the
7 Counties of Solano and Shasta as well as the State of California by aiding in the training,
8 investigation and prosecution of cases that fall under the jurisdiction of Weights and Measures.

9 D. Payment shall be delivered to Deputy District Attorney Diane Taira County of
10 Solano, at 675 Texas Street, Suite 4500, Fairfield, CA 94533 to be negotiated and distributed in
11 accordance with the schedule above on or after the date of entry of this Final Judgment,

12 8. At the time of filing the Stipulation for Entry of Final Judgment, Defendant shall
13 pay the sum of Three Hundred Ninety-Five Dollars (\$395.00) payable to the Clerk of the Solano
14 County Superior Court for first appearance fees.

15 9. Except as otherwise expressly provided herein, each party shall bear its own attorney's
16 fees and costs.

17 **RETENTION OF JURISDICTION**

18 10. Jurisdiction is retained for the purpose of enabling any party to the Stipulated Final
19 Judgment to apply to the Court for such further orders and directions as may be necessary and
20 appropriate for the construction and carrying out of the Stipulated Final Judgment, for the
21 modification or dissolution of any injunctive provisions hereof, for enforcement of compliance
22 herewith, or for the punishment of violations hereof.

23 11. This Judgment has been reviewed by the Court, and based upon the representations of the
24 parties, the Court finds that it has been entered in good faith and is, in all respects, fair, just, and
25 equitable to protect the public and the individuals who may have been affected by the issues
26 related as more fully described in the Complaint.

27 12. The parties waive the right to appeal this Judgment both as to form and content and the
28 serving and filing of a notice of Entry of Judgment.

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13. The clerk is directed to enter this Stipulated Final Judgment forthwith.

Dated: 4/23/12

Michael Mattice

Judge of the Superior Court