November 7, 2011

The Honorable Tani Gorre Cantil-Sakauye
Chief Justice, and Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Re: Flagship Theatres of Palm Desert LLC v. Century Theatres, Inc.
Case No. S19736
Amicus Curiae Letter in Support of Petition for Review

To The Honorable Chief Justice and Associate Justices:

Under rule 8.500(g) of the California Rules of Court, amici curiae the Alliance of Automobile Manufacturers, the American Bankers Association, the Association of American Publishers, the Business Software Alliance, California Association of REALTORS®, the California Bankers Association, the California Grocers Association, the California Hospital Association, Chevron Corporation, Dole Food Company, Inc., the Entertainment Software Association, Google Inc., the Independent Film & Television Alliance, Intel Corporation, the Motion Picture Association of America, Inc., National Collegiate Athletic Association, the National Football League, the National Hockey League, the Pharmaceutical Research and Manufacturers Association, and Wal-Mart Stores, Inc. write in support of Century Theatres, Inc.'s and Cinemark USA, Inc.'s petition for review in this case.

The petition for review raises two issues, both of which present important questions of statewide concern. We focus this letter, however, on the first issue presented: Whether, to meet the "antitrust injury" requirement under the Cartwright Act, California Business & Professions Code section 16720 et seq., a plaintiff must demonstrate injury flowing from an actual lessening of competition.

The Court of Appeal's decision adopts the theory that an antitrust plaintiff satisfies the antitrust injury requirement merely by demonstrating injury to itself – without regard to whether there has been a reduction of overall competition in the relevant market. This misguided theory conflicts with the well-settled principle that the state and federal antitrust laws protect competition, not individual competitors. If allowed to stand, the Court of Appeal's decision would dramatically weaken the antitrust injury requirement in California, creating tremendous uncertainty for all businesses in California and opening the door to a wave of baseless antitrust claims brought by competitors seeking to salve their wounds in the marketplace by misusing the antitrust laws to stifle legitimate competition by their rivals. Review is therefore necessary "to settle an important question of law." (Cal. Rules of Court, rule 8.500(b)(1).)

INTEREST OF AMICI CURIAE

This letter is filed on behalf of 20 organizations and businesses. These businesses and the organizations' members do business in California and therefore have a significant interest in the law governing the antitrust injury requirement under the Cartwright Act. Many of the amici

routinely advocate their interests by filing amicus curiae briefs, including in this Court and in the California Courts of Appeal. The statements of each individual entity are included at the end of this letter.

WHY REVIEW SHOULD BE GRANTED

I. The Decision Below Squarely Conflicts with the Governing Antitrust Injury Standards under Both California and Federal Law

To have standing to sue, the plaintiff in any antitrust case under the Cartwright Act must prove that it has suffered "antitrust injury," which is "'the type of injury the antitrust laws were intended to prevent, and which flows from the invidious conduct which renders defendants' acts unlawful.'" (*Morrison v. Viacom, Inc.* (1998) 66 Cal.App.4th 534, 548, quoting *Kolling v. Dow Jones & Co.* (1982) 137 Cal.App.3d 709, 723.) While the Court of Appeal acknowledged that antitrust injury is an essential element of a Cartwright Act claim (Slip Op. at 10–11), it held that an antitrust plaintiff is not required "to show actual harm to competition" to prove antitrust injury. (*Id.* at 11.) The Court of Appeal's holding conflicts with decades of antitrust jurisprudence requiring a showing of harm to competition to establish antitrust injury and is inconsistent with the fundamental purpose of the antitrust laws, which were enacted for "the protection of competition, not competitors." (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 186 (*Cel-Tech*), quoting *Cargill, Inc. v. Monfort of Colorado, Inc.* (1986) 479 U.S. 104, 115, italics and internal quotations omitted; see also *Brown Shoe Co. v. United States* (1962) 370 U.S. 294, 320 [antitrust laws are for the benefit of "*competition*, not *competitors*"], italics in original; *Spectrum Sports, Inc. v. McQuillan* (1993) 506 U.S. 447, 458 [the antitrust laws are directed "not against conduct which is competitive, even severely so, but against conduct which unfairly tends to destroy competition itself"].)[1]

This court has recognized that "[i]njury to a competitor is not equivalent to injury to competition; only the latter is the proper focus of antitrust laws." (*Cel-Tech*, *supra*, 20 Cal.4th at p. 186, citing *Atlantic Richfield Co. v. USA Petroleum Co.* (1990) 495 U.S. 328, 344 (*Atlantic Richfield*); see also *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.* (1977) 429 U.S. 477, 488–489 (*Brunswick*).) Moreover, a long line of federal decisions holds that an antitrust plaintiff must "show that its loss comes from acts that reduce output or raise prices to consumers." (*Chicago Professional Sports Ltd. Partnership v. NBA* (7th Cir. 1992) 961 F.2d 667, 670; see *Sterling Merchandising, Inc. v. Nestle, S.A.* (1st Cir. 2011) 656 F.3d 112, 121–122 [no antitrust injury

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[1] The Cartwright Act and federal Sherman Act share the "common objective to protect and promote competition." (*Chavez v. Whirlpool Corp.* (2001) 93 Cal.App.4th 363, 369 (*Chavez*), citing *State of California ex rel. Van de Kamp v. Texaco, Inc.* (1988) 46 Cal.3d 1147, 1153; *Business Electronics v. Sharp Electronics* (1988) 485 U.S. 717, 726.) Accordingly, "[b]ecause the Cartwright Act has objectives identical to the federal antitrust acts, the California courts look to cases construing the federal antitrust laws for guidance in interpreting the Cartwright Act." (*Vinci v. Waste Management, Inc.* (1995) 36 Cal.App.4th 1811, 1814, fn. 1; see also *Chavez*, *supra*, 93 Cal.App.4th at p. 369 ["Since the Cartwright Act and the federal Sherman Act share similar language and objectives, California courts often look to federal precedents under the Sherman Act for guidance"].)

absent proof of increased prices or decreased output]; *Nelson v. Monroe Regional Medical Center* (7th Cir. 1991) 925 F.2d 1555, 1564 [same].)

In *Pool Water Products v. Olin Corp.* (9th Cir. 2001) 258 F.3d 1024, for example, the Ninth Circuit affirmed the district court's grant of summary judgment on the plaintiff distributor's federal and California antitrust claims for failure to show antitrust injury where the plaintiff was unable to show that its reduction in profits and market share flowed from conduct by the defendant that caused harm to competition. (*Id.* at pp. 1034–1036.) The court stated that "[a] decrease in one competitor's market share, however, affects competitors, not competition .... Shifting [plaintiff's] sales to [defendant] and other competitors in the market does not directly affect consumers and therefore does not result in antitrust injury." (*Id.* at p. 1036; see also *Paladin Associates, Inc. v. Montana Power Co.* (9th Cir. 2003) 328 F.3d 1145, 1158 ["Where the defendant's conduct harms the plaintiff without adversely affecting competition generally, there is no antitrust injury"]; *Adaptive Power Solutions, LLC v. Hughes Missile Systems Co.* (9th Cir. 1998) 141 F.3d 947, 952 [affirming grant of summary judgment for failure to show antitrust injury where plaintiff was able to prove only injury to itself and there was no evidence the alleged group boycott caused any significant harm to competition in the relevant market].)

The Court of Appeal's decision conflicts with this long line of authorities interpreting the antitrust injury requirement under California and federal law. Under the Court of Appeal's theory, an individual competitor can satisfy the antitrust injury requirement simply by demonstrating injury to itself arising out of an alleged violation – without connecting that injury to an actual harm to consumer welfare through increased prices, reduced output or some other cognizable harm to competition in the relevant market. This is directly contrary to the foregoing cases, which demonstrate that an individual plaintiff's own injury-in-fact, without more, is insufficient to establish antitrust injury. (*Atlantic Richfield*, *supra*, 495 U.S. at p. 339 & fn. 8; see also *McGlinchy v. Shell Chemical Co.* (9th Cir. 1988) 845 F.2d 802, 812 (*McGlinchy*) ["It is injury to the market or to competition in general, not merely injury to individuals or individual firms that is significant" under the antitrust laws].)

To support its ruling, the Court of Appeal quotes a portion of a footnote from *Brunswick*, the case in which the United States Supreme Court first articulated the antitrust injury requirement. (Slip Op. at 11 [stating that "the antitrust injury requirement does not mean that an antitrust plaintiff 'must prove an actual lessening of competition in order to recover'"], citing *Brunswick*, *supra*, 429 U.S. at p. 489, fn. 14.) The Court of Appeal misinterprets this footnote. It is apparent from the full text of footnote 14 that the Supreme Court in *Brunswick* was merely allowing – in dicta – that situations might arise in which incipient anticompetitive conduct would harm competition in the future but had not yet done so at the time it first inflicted injury on the plaintiff. This case does not present such a situation. The conduct about which Flagship complains is not at an incipient stage and was ongoing for at least several years at the time the defendants moved for summary judgment.[2] (Slip Op. at 3–4.)

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[2] Plaintiff Flagship Theatres and defendant Century Theatres operate competing movie theaters less than two miles apart. (Slip Op. at 3.) For many years, many film distributors have granted clearances – exclusive license agreements to show particular films for a limited time – with respect to each of the theaters, such that a distributor licensing a film to the theater owned by Century Theatres would agree not to license the same film to the theater owned by Flagship Theatres at the same time, and vice versa. (*Ibid.*) Plaintiff Flagship alleges that

The Court of Appeal also relies on two older decisions, *Klor's, Inc. v. Broadway-Hale Stores, Inc.* (1959) 359 U.S. 207 (*Klor's*), and *Marin County Board of Realtors, Inc. v. Palsson* (1976) 16 Cal.3d 920 (1976) [citing *Klor's*]. Neither of these cases supports the holding of the Court of Appeal. First and foremost, *Klor's* and *Marin County* were decided before the Supreme Court's *Brunswick* decision. Accordingly, although *Klor's* and *Marin* involved antitrust claims brought by small rivals against larger competitors, neither case addresses whether these claims would satisfy the antitrust injury requirement. The issue in *Klor's* (upon which *Marin* relies) was whether the alleged group boycott was unlawful, not whether the plaintiff had standing to sue. The Supreme Court held that the horizontal boycott in *Klor's* was per se unlawful, and thus harm to competition was presumed and the plaintiff was not required to show that the boycott was unreasonable under the rule of reason (i.e., by showing that the conduct had significant anticompetitive effects in the relevant market). (*Klor's*, *supra*, 359 U.S. at pp. 212–213.)

Further, the United States Supreme Court has held that *Klor's* has no application to purely vertical restraints – the type of agreements at issue in this case. (See *NYNEX Corp. v. Discon, Inc.* (1998) 525 U.S. 128, 134–135 [holding that *Klor's* is limited to group boycotts involving horizontal agreements among competitors].) Vertical restraints "promote interbrand competition by allowing a manufacturer to achieve certain efficiencies in the distribution of its products." (*Bert G. Gianelli Distributing Co. v. Beck & Co.* (1985) 172 Cal.App.3d 1020, 1044 fn. 7, quoting *Oreck Corp v. Whirlpool Corp.* (2d Cir. 1978) 579 F.2d 126, 131.) As noted by the Court of Appeal, clearances are vertical restraints that have traditionally been evaluated under the rule of reason. (Slip Op. at 6.)

II. The Court of Appeal's Ruling Dramatically Lowers the Antitrust Injury Standard in a Way That Will Significantly Chill Pro-Competitive Conduct

A central purpose of the requirement that an antitrust plaintiff demonstrate antitrust injury is to "ensure[] that otherwise routine disputes between business competitors do not escalate to the status of an antitrust action." (*Tops Markets, Inc. v. Quality Markets, Inc.* (2d Cir. 1998) 142 F.3d 90, 96; see also *McGlinchy*, *supra*, 845 F.2d at pp. 812–813 ["It is the impact upon competitive conditions ... which distinguishes the antitrust violation from the ordinary business tort"].) As the Ninth Circuit has explained, "[t]he goal of the antitrust laws ... is to safeguard general competitive conditions, rather than to protect specific competitors." (*Oahu Gas Service, Inc. v. Pacific Resources, Inc.* (9th Cir. 1988) 838 F.2d 360, 370; see also *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.* (1993) 509 U.S. 209, 225 ["Even an act of pure malice by one business competitor against another does not, without more, state a claim under the federal antitrust laws"].)

As a result, the antitrust injury requirement protects businesses in California from treble damage claims brought by disappointed competitors seeking to exploit the antitrust laws in an attempt to restrain the procompetitive actions of more efficient and successful rivals. (See *Ball Memorial Hosp., Inc. v. Mutual Hosp. Ins., Inc.* (7th Cir. 1986) 784 F.2d 1325, 1338

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in recent years the competing theater operated by defendant Century Theatres has received a disproportionate share of licenses to exhibit first-run films. (*Id.* at 2.) There were other theaters in the Coachella Valley that competed with the theaters owned by Century and Flagship, with about half the screens in the area being operated by Regal Theaters, the largest exhibitor in the country. (Pet. at 6–7.)

["Competition is a ruthless process. A firm that reduces costs and expands sales injures rivals – sometimes fatally. The firm that slashes costs the most captures the greatest sales and inflicts the greatest injury.... These injuries to rivals are byproducts of vigorous competition, and the antitrust laws are not balm for rivals' wounds."]; see also Snyder & Kauper, *Misuse of the Antitrust Laws: The Competitor Plaintiff* (1991) 90 Mich. L.Rev. 551, 551–552 ["[T]he private antitrust remedy can be used to subvert competition. Cases filed by competitors may be particularly harmful, as firms may sue to prevent their rivals from ... aggressive pricing .... Unless courts are able effectively to confine suits by competitor plaintiffs to those that are truly meritorious, and to do so relatively early in the litigation process, such suits may have significant anticompetitive consequences."].)

As it stands, the Court of Appeal's decision creates significant uncertainty for all businesses operating in California. Under the Court of Appeal's ruling, any competitor – so long as it can allege harm to *itself* irrespective of whether the alleged conduct was harmful, neutral or beneficial to competition and consumer welfare – may now have standing to bring a treble damage antitrust action under the Cartwright Act.

The Court of Appeal's dramatic expansion of the definition of antitrust injury is not only contrary to existing law but it is also bad public policy. It creates intolerable uncertainty for businesses operating in California, and likely will have a chilling effect on procompetitive conduct, as competitors pull their competitive punches for fear of becoming embroiled in treble damage antitrust actions brought by disgruntled rivals complaining about legitimate competition. Such a state of affairs would be to the detriment of the very consumer welfare the Cartwright Act was designed to protect. Indeed, as the Supreme Court has stated, "captur[ing] unsatisfied customers from an inefficient rival, whose own ability to compete may suffer as a result ... is precisely the sort of competition that promotes the consumer interests that [antitrust law] aims to foster." (*Copperweld Corp. v. Independence Tube Corp.* (1984) 467 U.S. 752, 767.)

In addition, as a leading treatise has noted, the Supreme Court established the antitrust injury requirement in *Brunswick* at a time when private antitrust lawsuits were peaking, burdening the judiciary with large numbers of complex cases. (Sullivan & Grimes, The Law of Antitrust, An Integrated Handbook (1st ed. 2000) § 17.2a1, p. 917.) If not disapproved, an inevitable byproduct of the Court of Appeal's decision to ease the requirements for competitors to bring treble damage actions under the Cartwright Act will be to increase substantially the number of such cases filed in California courts. This will adversely impact an already overburdened judiciary and impose needless expense on California companies "because the costs of discovery in [antitrust] actions are prohibitive." (*Rutman Wine Co. v. E. & J. Gallo Winery* (9th Cir. 1987) 829 F.2d 729, 738.)

For these reasons, amici curiae the Alliance of Automobile Manufacturers, the American Bankers Association, the Association of American Publishers, the Business Software Alliance, California Association of REALTORS®, the California Bankers Association, the California Grocers Association, the California Hospital Association, Chevron Corporation, Dole Food Company, Inc., the Entertainment Software Association, Google Inc., the Independent Film & Television Alliance, Intel Corporation, the Motion Picture Association of America, Inc., the National Collegiate Athletic Association, the National Football League, the National Hockey League, the Pharmaceutical Research and Manufacturers Association, and Wal-Mart Stores, Inc.

respectfully request that this court grant review to settle the important question of whether to meet the antitrust injury element of the Cartwright Act a plaintiff must prove harm to competition, not merely harm to itself.

STATEMENTS OF INTEREST OF INDIVIDUAL AMICI CURIAE

The Alliance of Automobile Manufacturers, Inc. ("the Alliance") is a non-profit trade organization formed in 1999. Its mission is to improve the environment and motor vehicle safety through the development of global standards and the establishment of market-based, cost-effective solutions to emerging challenges associated with the manufacture of new automobiles. The members of the Alliance are BMW Group, Chrysler Group LLC, Ford Motor Company, General Motors LLC, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota, Volkswagen, and Volvo.

The American Bankers Association ("ABA") is the largest national trade association in the banking industry. It represents bankers and holding companies of all sizes in each of the fifty states and the District of Columbia. The ABA's members include community, regional and money center banks, as well as savings associations, trust companies and savings banks. Due to its size and experience, the ABA is the recognized voice for the nation's $13 trillion banking industry and its members' two million employees. In this role, the ABA provides its members with insight, in-depth expertise and resources to assist with their success. Likewise, the ABA promotes the interests of its members, and the banking industry as a whole, through its appearance in litigation as amicus curiae.

As the principal national trade association of the U.S. book publishing industry, the Association of American Publishers ("AAP") represents some 250 member companies and organizations that include most of the major commercial book and journal publishers in the United States, as well as many small and non-profit publishers, university presses and scholarly societies. AAP members publish hardcover and paperback books and journals in every field of human interest. In addition to publishing print materials, many AAP members are active in the emerging market for e-books, while also producing computer programs, databases, Web sites and a variety of multimedia works for use in online and other digital formats. As permitted by U.S. copyright law, AAP members that are copyright owners frequently exercise their exclusive rights of copyright through transactions that involve granting exclusive licenses for certain uses of their works.

The California Association of REALTORS® ("CAR") is a non-profit trade association representing the interests of approximately 160,000 individuals licensed as real estate brokers or real estate salespersons by the State of California and the local associations of REALTORS® to which these individuals belong. As a trade association, CAR is familiar with the impact of antitrust law and jurisprudence on associations, and in particular, the impact on real estate industry. CAR believes that court recognition of the standing provisions of antitrust statutes that require proof of injury to competition itself is essential to the proper enforcement of these laws in a manner that was intended and that is fair to all parties, whether acting in an individual or representative capacity.

The California Bankers Association ("CBA") is a nonprofit organization established in 1891 that represents most of the FDIC-insured depository financial institutions that do business in this state. Its members range in size from single-branch community banks to the largest banks in the country. CBA frequently files amicus letters and briefs in state and federal courts on matters that significantly affect the banking industry. This case is such a matter as it would alter the established case law governing one firm's antitrust liability to another.

The California Grocers Association ("CGA") is a nonprofit trade association serving national, statewide and independent companies in the grocery industry throughout California. CGA's members range from the largest supermarkets to the smallest convenience stores, and include grocery manufacturers, wholesalers and suppliers. CGA has approximately 500 retail members operating more than 6,000 stores in the state, representing approximately 90 percent of the grocery business in California.

The California Hospital Association is a non-for-profit association whose membership comprises nearly 450 California hospitals, ranging in size from very large to very small, located in urban, suburban, and rural areas, and providing services ranging from very basic healthcare services to very complex tertiary and quaternary services. A predominant practice among California hospitals (and throughout the nation) is the provision of certain essential hospital services through exclusive contracts. A restructured antitrust injury analysis, such as reflected in the Court of Appeal's decision in this case, will dramatically affect the delivery of services throughout California hospitals, subjecting them to significant antitrust exposure for practices long demonstrated to facilitate better patient care and access to services.

Chevron Corporation is one of the world's leading integrated energy companies, with subsidiaries that conduct business worldwide. Founded and headquartered in California, Chevron is involved in virtually every facet of the energy industry and is the state's top oil producer and refiner. Based on revenues, Chevron is the largest company in California.

Dole Food Company, Inc. is the world's largest producer and marketer of high-quality fresh fruit and fresh vegetables. Dole markets a growing line of packaged and frozen fruit and is a produce industry leader in nutrition education and research. As a large company headquartered in California, Dole has an interest in the applicable standard for antitrust injury under the Cartwright Act.

The Entertainment Software Association ("ESA") is a not-for-profit trade association representing nearly all major U.S. publishers of computer and video games for video game consoles, personal computers, handheld and mobile devices, and the Internet.

Google Inc., founded in 1998, is a diversified technology company headquartered in California's Silicon Valley. Google's mission is to organize the world's information and make it universally accessible and useful.

The Independent Film & Television Alliance ("IFTA") is the non-profit trade association that represents over 155 companies that produce and distribute independently made motion pictures and television programming, as well as affiliated financial institutions that provide funding for independent production. IFTA members produce more than 400 independent films

and countless hours of television programming a year, and they produce, distribute and finance some of the world's most successful films. IFTA is also the owner of the American Film Market, the largest commercial film market in the world. IFTA has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

Intel Corporation is the world's largest semiconductor manufacturer and is also a leading manufacturer of computer, networking, and communications hardware and software products. As a large company headquartered in California, Intel has an interest in the applicable standard for antitrust injury under the Cartwright Act. Intel is therefore well positioned to explain why the decision by the Court of Appeal is flawed.

The Motion Picture Association of America, Inc. ("MPAA") is a not-for-profit association founded in 1922 to address issues of concern to the U.S. motion picture industry. Its members include Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Twentieth Century Fox Film Corporation, Universal City Studios LLC, Walt Disney Studios Motion Pictures, and Warner Bros. Entertainment Inc. MPAA's members and their affiliates are the leading producers and distributors of filmed entertainment in the theatrical, television, and home entertainment markets. Flagship Theatres' original complaint in the action below named two distributors, Universal Film Exchange LLP and Sony Pictures Releasing Corporation, as defendants, but Flagship dismissed both of those entities from the case and they were no longer parties at the time the trial court granted summary judgment.

The National Collegiate Athletic Association ("NCAA") is a membership-led nonprofit association of colleges and universities committed to supporting academic and athletic opportunities for more than 400,000 student-athletes at more than 1,000 member colleges and universities, including many within the State of California. Each year, more than 54,000 student-athletes compete in NCAA championships in Divisions I, II and III sports. The NCAA routinely conducts NCAA championship activities within the State of California.

The National Football League ("NFL") is an unincorporated association of thirty-two Member Clubs, each of which owns and operates a professional football team. NFL football is, and for many years has been, the most popular spectator sport in the United States.

The National Hockey League ("NHL") is an unincorporated association of thirty Member Clubs, each of which owns and operates a professional hockey team in the United States or Canada. NHL hockey is, and for many years has been, a popular spectator sport in North America. The NHL has three teams in California: the Anaheim Ducks, the Los Angeles Kings, and the San Jose Sharks.

The Pharmaceutical Research and Manufacturers of America (PhRMA) is an association of the country's leading research-based pharmaceutical and biotechnology companies. A list of PhRMA's members is available at http://www.phrma.org/about/member-companies. PhRMA members are devoted to inventing medicines that allow patients to live longer and have healthier and more productive lives. PhRMA's members have led the way in the search for new cures – in 2010, they invested an estimated $49.4 billion in discovering and developing new medicines.

Wal-Mart Stores, Inc. is the world's largest retailer and has a significant presence in California. Wal-Mart operates hundreds of stores, clubs and facilities throughout California and its e-commerce division is based in California, as well. Wal-Mart is committed to delivering everyday low prices to consumers.

Respectfully submitted,

THE ALLIANCE OF AUTOMOBILE MANUFACTURERS

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DECLARATION OF SERVICE

I declare that I am, and was at the time of service hereinafter mentioned, at least 18 years of age and not a party to the above-entitled action. I am employed in the City and County of San Francisco. My business address is 555 Mission Street, Suite 3000, San Francisco, CA 94105. On November 7, 2011, I caused to be served the following documents:

AMICI CURIAE LETTER IN SUPPORT OF PETITION FOR REVIEW

by placing a true copy thereof in an envelope addressed to each of the persons named below at the address shown, in the following manner:

SEE SERVICE LIST BELOW

☑ **BY MAIL**: I placed a true copy in a sealed envelope for deposit in the U.S. Postal Service through the regular mail collection process at Gibson, Dunn & Crutcher LLP on the date indicated above. I am familiar with the firm's practice for collection and processing of correspondence for mailing with the U.S. Postal Service. It is deposited with the U.S. Postal Service with postage prepaid on that same day in the ordinary course of business. I am aware that on motion of a party served, service is presumed invalid if the postal cancellation date or the postage meter date is more than one day after the date of deposit for mailing in the declaration.

Thomas L. Boeder Melora M. Garrison Perkins Coie LLP 1888 Century Park East, Suite 1700 Los Angeles, CA 90067-1721	Attorneys for Plaintiff and Appellant FLAGSHIP THEATRES OF PALM DESERT, LLC dba CINEMAS PALME D'OR
Maxwell M. Blecher David W. Kesselman Theo G. Arbucci Blecher & Collins, P.C. 515 S. Figueroa Street, Suite 1750 Los Angeles, CA 90071	Attorneys for Defendants and Respondents CENTURY THEATRES, INC. and CINEMARK USA, INC.

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Civil Case No. B211597

Superior Court of California
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Civil Case No. SC090481

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I certify under penalty of perjury that the foregoing is true and correct, that the foregoing document(s) were printed on recycled paper, and that this Declaration of Service was executed by me on November 7, 2011, at San Francisco, California.

Bonnie Honniball

Bonnie Honniball

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