

October 4, 2018

Justice Department

To Whom It May Concern:

In our view what the Consent Decree has done for the independent exhibitor is that it has established rules and norms that all the studios generally abide by. Our business like any other depends on consistency to operate on a day-to-day basis, as well as providing the confidence to investors and banking institutions that our business model continues to be stable. I have been in this industry for almost 40 years and while there have been changes in methods of film rental calculations, establishment of zones / engagements in larger markets, all the movement has been driven by the advent of multi-screen complexes and in an increase available products as film investments have flourished due to the ancillary home video market. Independent exhibitors have survived and in many cases thrived alongside of larger national corporations, in large measure due to the stability and norms established by the Consent Decree. Despite these established rules, many studios have attempted to condition the sale of one film upon the sale of another, attempted to bully our circuit by threatening to not make films available to our smaller locations if we chose to not book our busier locations with a given product. Blatantly bill our company vast sums for "early bird" ticket prices while allowing our competitors to continue the same policy without penalizing or charging them and concoct arcane methods of billing that force ticket price increases that certainly fix prices to the consumer. These are continuous supplier battles in a complicated business climate that we have to wage in order to survive. Rules and norms established by the Consent Decree have kept a contentious relationship functioning for decades. It is difficult to imagine a world without established rules in place, where we would be in a far more precarious, arbitrary and uncertain position.

Studio #1

These are just two recent examples where we felt that we were being treated unfairly and short of suing our primary suppliers; we simply have no realistic recourse.

Studio #1 sent us an invoice for \$14,238.25 in 2017 due to an audit of our 2015 box-office reports that concluded that we had violated their Master License Agreement "MLA" by offering a discounted "early bird" admission ticket prior to noon primarily at our Livonia, Michigan theatre.

The following is a letter sent to our Studio #1 representative last year prior to a conference call to discuss the "MLA" infraction.

August 18, 2017

Dear XXXX:

I am glad we had the opportunity to discuss your correspondence of August 11. As we pointed out during the call, we have several concerns that we thought we should clarify further.

In reviewing the current pricing structures advertised by the exhibitors in the Detroit metropolitan market as of this writing, there are two major exhibitors offering "Early Bird" specials that are a reduction from their established Matinee price. This can be easily verified by referencing the following web sites:

<https://www.amctheatres.com>

<https://www.mjtheatres.com/location/27878/Westland-Grand-Cinema-16-Showtimes>

<http://www.emagine-entertainment.com/showtimes/canton/?v=1>

Emagine Canton offers a \$5.00 Matinee Daily (\$1.50 less than Laurel Park)

As we discussed, our decision back in 2015 to offer an "Early Bird" price before noon (set at \$4.25 from 9am until noon and our Matinee rate set at \$6.50 starting at noon) at our Laurel Park location was driven by the imperative to offer potential consumers a competitive price point consistent with the price that had been established by the prominent exhibitors within the market. The only other reasonable alternative was to simply not incur the added hourly operating expense and remain closed until noon.

Complicating matters further, AMC began to offer a two-tier variable pricing structure that featured a higher weekend admission rate and a lower weekday admission rate. Mirroring the method of the new AMC policy, we determined that we would maintain our weekend price structure and lower the Matinee price to \$5.00 on weekdays. Our evening weekday general admission was \$8.75 or \$1.25 higher than the AMC's general admission of \$7.50 at that time. Additionally, Emagine Canton has maintained a \$5.00 Matinee price, which continues today. We might also point out that AMC offers a daily \$3.99 Matinee and \$5.99 General Admission for first run films including Studio #1 products at the metropolitan Detroit Star Southfield location, seemingly with the acquiescence of Studio#1.

In anticipation of the introduction of luxury recliners in our Laurel Park location we eliminated the "Early Bird" special on June 16, 2015. In December of that year we completely renovated our Laurel Park facility and introduced 100 percent luxury reclining seating. This strategy has proven to be extremely successful and

differentiated Laurel Park from the other theatres in the market. This new amenity played a significant factor in our decision to steadily increase prices, now offering the theatre with superior amenities and improved consumer experience.

As a matter of principle, our company has never been in a proponent of discounted pricing such as “Tuesday Bargain Days” or complicated two-tier structures. In our view, policies such as these only serve to cheapen the value of movie-going in the mind of the consumer. Our current daily price structure in place since April 21, 2016 is as follows: \$6.50 Matinee (from 9am until 6pm), \$6.00 for Children & Seniors throughout the day and \$9.75 for evening General Admission. It is simple policy for consumers and reflective of the implied goals of the Studio#1 agreement.

It is deeply troubling to accept the rationale behind penalizing our business while clearly allowing our competitors within the market to violate your contract provision to not allow a lesser price than the established Matinee. These infractions exist today and a ticket can be purchased for “Early Bird” showings at a rate well below the established Matinee price at these major exhibitor’s theatres. Our company by contrast eliminated this “Early Bird” pricing policy over two years ago on June 16, 2015. One can only surmise that these two major exhibitors are not subsidizing “Early Bird” ticket sales, as it is clearly economically unsustainable to do so. Additionally, our box-office reports are submitted to your company on a weekly basis following the close of a business week and clearly indicated our pricing strategy. Twenty-eight Studio #1 distributed films were booked in our theatres grossing \$3,820,205 in the past two years without a single expression of warning or concern that we should consider adjusting our policies to avoid a violation of the “discount tickets” portion of the Studio#1 agreement. Box-office reports are submitted weekly to Studio #1 and had this matter been discussed two years ago, this would have limited our financial exposure. We do not mind accepting the responsibility for our business decisions if the consequences are not outright discriminatory, unfair or unjust. As a matter of moral principal we should be treated fairly and on an even plane with the major circuits on the enforcement of the rules.

We have enjoyed a great deal of success in recent years and have grown our business steadily. We are a small company trying to find our way in the world encircled by much larger exhibitors and we have been on the cutting edge of the conversion to a luxury cinema experience. We have enjoyed a respectful and admirable business relationship with the Studio #1 Company throughout the past 16 plus years and it is our sincerest hope that we can resolve this issue in an equitable manner.

Sincerely,

Cory Jacobson

Braden Alan

John Scanlan

As a result of our conference call with Studio #1 representatives, we were required to pay an additional \$14,238.25 in added film rental for the “early bird” pricing policy. This was also particularly galling, as we had also eliminated the “early bird” policy several years prior to their objection at our own discretion. Disney adamantly refused to discuss or state that they would fairly enforce the portion of the “MLA” contact with our larger market competition at: MJR, Cinemark or AMC Theatres, which has continued to the same policy of “early bird” matinee tickets prior to noon in their locations throughout metropolitan Detroit as of this writing. Quite obviously, neither of these major circuits is subsidizing all ticket sales prior to noon and we can only rationally conclude that we were unfairly treated due to the size of our business. The only other conclusion in our view would be that Disney is actively conspiring with other exhibitors due to AMC, Cinemark and MJR’S circuit size. By not enforcing their “MLA” rules equitably, this provides AMC, MJR and Cinemark an unfair competitive advantage in the market and deprives us from offering the same pricing choice to our customers, should we chose to do so without further financial penalty.

Studio #2

Studio #2 added a “Per-Capita 2.0” clause to their film contracts that established a per-capita ticket price they expected to receive for each admission ticket sold. The following is directly taken from Studio #2’s contract - *The Per Capita Average Admission Price shall be the mathematical Average of the Theater’s own Admission Price of the following 4 Admission Prices: adult weekend evening, adult weekend matinee, adult midweek evening (non-discount pricing) and the child weekend matinee. In addition, for Per Capita Version 2.0 calculations on each 3D motion picture, the 3D upcharge charged by the Theater will be added to the Per Capita Average Admission Price against every ticket denoted as 3D on the Box Office Reports. Lastly, the Per Capita Average Admission Price for each motion picture may be weighted based on genre: general, family or adult; weighting is wholly within our discretion.* [17] The result indirectly fixes higher prices in order to avoid an added upcharge. Studio #2 determined the per-capita by an unempirical blend of adding the ticket price points together and dividing by the number of price categories. They then affixed an arbitrary number of 95 percent of the total the exhibitor had to achieve in order to avoid getting charged an added film rental fee per ticket. This policy was detrimental in a number of ways. 1) If the exhibitor chooses to offer more matinee performances than evening performances, the percentage of matinee

tickets available naturally reduces the price of average tickets sold. 2) The film contracts prohibit the exhibitor from not showing a “studio #2” film while the theatre was typically open for business, forcing the performances. 3) The exhibitor has no way of determining the make up of the audience and if more senior citizens, children or matinee tickets are sold, the resulting average ticket price is naturally reduced. 4) If the exhibitor chooses to increase ticket prices, the Per Capita 2.0 thresholds increase along with it, making it all but impossible to avoid the added billing. Studio #2 by the implementation of Per Capita 2.0 is then charging the exhibitor for a percentage of revenue that was never collected from the patron.

. The following is a copy of an email sent to the Sony accounting department in an attempt to correct many of the problems of over billing and inconsistencies in their invoicing that don't comply with their “MLA” contract.

. Dear XXXX:

. Per your request, we have attached copies of individual statistical analysis by movie and theatre, and have made the following observations:

. ☒ The way that 3D Avg. price is calculated is oversimplified. They add \$3 to our average 2D price. The problem is that if you take a new average of 3D and use the same weight %, it turns out to be lower than that. In the case of Monroe and Laurel Park, it is a difference of \$0.15/ticket.

. ☒ Emergency passes are systematically billed, as well as other passes (which at no point exceed 2%). In addition, should they exceed 2%, they should be represented in the Excess Pass column, which they do not.

. ☒ The total admission numbers are false in several occasions –the audit total (which I consider to mean Total admin-total pass + excess pass) is, in reality, what we reported as the gross total on our BOR's

. ☒ The PC 2.0 Price for Laurel Park is false; they report 7.12, when it is 7.125 and they calculate 7.13 (not a huge error, but a misrepresentation, nonetheless). This is not difficult –when dealing with money, always round up!

. ☒ Billing is inaccurate and must always be internally audited. For example, the week of 17 Jul 2012, LP was billed for 3D when it was in fact 2D. This resulted in a PC 2.0 gross that was nearly \$1200 overstated and we were subsequently overbilled by \$766.61. This was just in one week.

. ☒ After receiving 2 statements for Laurel Park and Monroe, as a circuit we were overbilled by as much as \$1,324.08 just as a result of inaccuracies

. ☒ The weighted % is consistently higher than the theatre's average performance. Effectively, what this does is render negotiated terms void. If I negotiate 70% terms, I should have a reasonable expectation to pay 70% of my revenue created in the actual course of business. I should not have to adjust my expectation of this agreement to include systematic renegotiation of terms under the guise of a “weighted average price.” What this does is create revenues that simply do not exist.

. ☒ In the first two PC 2.0 Statements, the average payment % has gone from 65% over the first 3 weeks, to approx. 70%. The better a picture performs, the higher that percentage will go.

. ☒ What if, by some miracle, we beat their average –would we then receive a credit? How does that work? The language of the amendment is not specific to that.

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. We will be available to discuss this on Monday at 10:30am PST (1:30 EST).

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. Thank you,
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. [REDACTED]

Should you have any question or wish to discuss our experiences, we would be available for a conference call at any time.

Sincerely,

[REDACTED]

[REDACTED]

Phoenix Theatres