

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS**

In re:	)	
	)	
	)	Case No. 12-22602
DICKINSON THEATRES, INC.,	)	
a Kansas corporation,	)	Chapter 11
	)	
	)	
Debtor.	)	

**DEBTOR'S MOTION TO AMEND THE SUPPLEMENTAL ORDER  
PURSUANT TO 11 U.S.C. § 105(A) AND 363(B) AUTHORIZING DEBTOR  
TO PAY CLAIMS OF CRITICAL VENDORS (DOCKET NO. 84)  
TO INCLUDE LIONS GATE FILMS, INC.**

Dickinson Theatres, Inc., the debtor and debtor-in-possession in the above captioned case (the "Debtor"), by and through its undersigned counsel, files this motion (the "Motion"), pursuant to Section 105(a) of Title 11 of the United States Code (11 U.S.C. §§ 101 *et seq.*, as amended, the "Bankruptcy Code") and Rule 60 of the Federal Rules of Civil Procedure (the "Fed. R. Civ. P.") as incorporated by Rule 9024 of the Federal Rules of Procedure (the "Bankruptcy Rules"), for the entry of an order amending the supplemental order that was entered pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code authorizing the Debtor pay certain claims of critical vendors (the "Supplemental Order") (*Docket No. 84*) to include Lions Gate Films, Inc ("Lions Gate"). In support of the Motion, the Debtor states as follows:

**JURISDICTION**

1. The Court has jurisdiction over the Motion under 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this Chapter 11 case in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory and rule based predicates for the relief requested herein are Section 105(a) of the Bankruptcy Code and Fed. R. Civ. P. 60 as incorporated by Rule 9024 of the Bankruptcy Rules.

### **BACKGROUND**

3. On September 21, 2012 (the "Petition Date"), the Debtor filed its voluntary petition in this Court for reorganization relief under Chapter 11 of the Bankruptcy Code, commencing the Debtor's Chapter 11 Case (the "Chapter 11 Case"). (*See Docket No. 1.*) The Debtor continues to operate its business and manage its properties as debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in this Chapter 11 Case. On October 2, 2012, the Office of the United States Trustee appointed a creditor's committee (the "Committee"). (*See Docket No 79.*)

4. Contemporaneously with the filing of its Chapter 11 petition, the Debtor filed a plan of reorganization (the "Plan") and the Disclosure Statement and requested the Court to schedule hearings on the adequacy of the Disclosure Statement and confirmation of the Plan. (*See Docket Nos. 25, 26 and 29.*) The proposed Plan provides for payment of all allowed claims in full with interest over five years.

5. On the Petition Date, the Debtor filed its Motion Pursuant to 11 U.S.C. §§ 105(a) and 363(b) for Authorization to Pay Claims of Critical Trade Vendors (the "Critical Vendors Motion"). (*Docket No. 9.*) On September 28, 2012, the Court entered its order granting the Critical Vendors Motion (the "Critical Vendors Order"). (*Docket No. 60.*)

6. As set forth in the Declaration of Ron Horton in Support of the Chapter 11 Petition (*Docket No. 19*), the Debtor operates 18 movie theatres with 210 screens in seven states

(the "Business"). The primary function of the Debtor's Business is the exhibition of movies to the public. Following entry of the Critical Vendors Order, the Debtor determined, by agreement with the United States Trustee, that, in order to best maintain its Business during the Chapter 11 Case for a successful reorganization, it was necessary to identify and specially provide for the claims of certain critical film distributor vendors (the "Critical Film Distributor Vendors"). Accordingly, on October 2, 2012, the Court entered the Supplemental Order. (*See Docket No. 84.*)

7. At the time the Court entered the Supplemental Order, the Debtor had not had any communication with Lions Gate or its counsel. However, at all times before, and during, this Chapter 11 Case, the Debtor has considered Lions Gate to be a Critical Film Distributor Vendor.

#### **RELIEF REQUESTED**

8. By this Motion, the Debtor seeks the entry of an order substantially in the form attached hereto as Exhibit A, which amends the Supplemental Order to provide Lions Gate with the same treatment as the other Critical Film Distributor Vendors in the Supplemental Order.

#### **BASIS FOR RELIEF REQUESTED**

9. Section 105(a) of the Bankruptcy Code provides:

The court may issue an order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent the abuse of process.

11 U.S.C. § 105(a). Section 105(a) of the Bankruptcy Code grants bankruptcy courts broad authority and discretion to enforce the provisions of the Bankruptcy Code either under specific statutory or under equitable common law principles.

10. Rule 9024 of the Bankruptcy Rules, in relevant part, provides "Rule 60 of the F.R.Civ.P. applies in cases under the Code..." *See* Fed. R. Bankr. P. 9024. Fed. R. Civ. P. 60(b), in relevant part, provides "[o]n motion and just terms, the court may relieve a party or its legal representative from a[n]...order, or proceeding for...(6) any other reason that justifies relief." *See* Fed. R. Civ. P. 60(b)(6).

11. In this case, the Court has the authority, under Section 105(a) of the Bankruptcy Code, and Fed. R. Civ. P. 60(b)(6), as incorporated by Rule 9024 of the Bankruptcy Rules, to amend the Supplemental Order to include, and provide for, the claims of Lions Gate to be treated similarly as the other Critical Film Distributor Vendors.

12. As set forth above, the Debtor, in its reasonable business judgment, has determined that its ability to successfully reorganize in this Chapter 11 Case is dependent upon it being able to continue to exhibit high quality and popular movies to the general public. Lions Gate is set to distribute several popular movies in the coming weeks, including, but not limited to, the eagerly anticipated "Twilight" film. The Debtor has determined that in order to successfully reorganize in this Chapter 11 Case it must accord Lions Gate the same treatment as the other Critical Film Distributor Vendors are receiving pursuant to the terms of the Supplemental Order. Accordingly, the Debtor requests that this Court amend the Supplemental Order to include the claims of Lions Gate.

13. Finally, the Debtor has received the agreement of the Committee and its secured creditors for the entry of an order substantially in the form attached hereto as Exhibit A. Thus, granting the relief requested in this Motion is consistent with this Court's equitable powers under Section 105(a) of the Bankruptcy Code.

**NOTICE**

14. Notice of this Motion has been provided to the Official Service List pursuant to that Order entered by this Court on October 2, 2011. (*Docket No. 85.*) Because of the nature of the relief requested, the Debtor respectfully submits that no further notice of this Motion is necessary or required under the circumstances.

WHEREFORE, Debtor respectfully requests this Court enter an order substantially in the form as attached hereto as Exhibit A, and for such other and further relief this Court deems proper.

Dated: October 18, 2012

STINSON MORRISON HECKER LLP

By: s/ Sharon L Stolte

Sharon L. Stolte, KS #14302  
Paul M. Hoffmann, KS Fed. Bar No. 70170  
Timothy M. Swanson, KS #24516  
1201 Walnut, Ste. 2900  
Kansas City, MO 64106  
Tel: (816) 691-2456  
Fax: (816) 412-9325  
sstolte@stinson.com  
phoffmann@stinson.com  
tswanson@stinson.com

*Proposed Reorganization Counsel for  
the Debtor and Debtor-in-Possession*

- and -

ROBERT J. RAYBURN, III,  
ATTORNEY AT LAW

Robert J. Rayburn, III, KS #17102  
7400 W. 110th Street, Ste. 600  
Overland Park, KS 66210  
Tel: (816) 215-5567  
Fax: (888) 685-2224  
robert@rayburngrp.com

*Proposed General Corporate and  
Conflicts Counsel for the Debtor and  
Debtor-in-Possession*

**CERTIFICATE OF SERVICE**

This is to confirm that a copy of the foregoing Motion was electronically filed on October 18, 2012, and a copy placed in the United States mail, regular mail, postage prepaid, per the attached Official Service List. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system, and the filing may be accessed through that system.

s/ Sharon L. Stolte

---

Sharon L. Stolte