

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

FILED
Kansas City, KS
MAR 20 2013
Clerk
U.S. Bankruptcy Court

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In re Dickinson Theatres, Inc.)
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Case Number 12-22602

Chapter 11

**CLAIMANT METRO-GOLDWYN-MAYER STUDIOS INC'S
RESPONSE TO DEBTOR'S OBJECTION**

Harvey Shapiro hereby affirms and states under penalty of perjury:

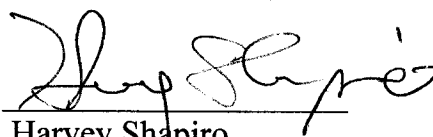
1. I am a partner of the law firm of Sargoy, Stein, Rosen & Shapiro and submit this affirmation in response to "Debtor's Objection to Claim and Notice to Claimant" dated February 28, 2013, objecting to Claim No. 53 filed by Metro-Goldwyn-Mayer Inc ("MGM") in the amount of \$11,675 and proposing that the claim be allowed as a General Unsecured Claim in the amount of \$5,000.00

2. This claim arises from an audit our firm conducted of the books and records of Dickinson Theatres, Inc. ("Dickinson"). Following the completion of this review, we issued an audit report with schedules, a copy of which is attached hereto as Exhibit A.

3. This report states that Dickinson issued pass and discount admissions in excess of the percentage allowance for such admissions provided by the MGM master license agreement ("MLA"). The MGM MLA provides the terms for each exhibition licensed by MGM to Dickinson. These terms include a provision that when the percentage of pass and discount admissions exceeds the percentage allowance of all admissions, additional film rental is to be calculated and paid. Since Dickinson permitted pass and discount admissions in excess of this allowance, additional film rental is due to MGM in the amount of \$11,675.

4. Therefore, for the reasons set forth herein and in the audit report attached as Exhibit A, it is respectfully requested that MGM's proof of claim be allowed in full.

Dated: March 19, 2013



Harvey Shapiro
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EXHIBIT A

SARGOY, STEIN, ROSEN & SHAPIRO
Attorneys at Law

HARVEY SHAPIRO

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February 24, 2012

VIA EMAIL

Mr. Ron Horton
CEO
Dickinson Theatres, Inc.
9201 W. 133rd St., Suite A
Overland Park, Kansas 66212

**Re: Dickinson Theatres, Inc. – Overland Park, Kansas
Metro-Goldwyn-Mayer Studios Inc. Audit Findings**

Dear Mr. Horton:

We issued a report to Metro-Goldwyn-Mayer Studios Inc. (“MGM”) summarizing the findings of our audit of Dickinson Theatres, Inc. (“Dickinson”) for the period January 1, 2007 through May 27, 2010. Each client has been advised only of those audit issues that pertain to their company. MGM has requested that we present their findings to Dickinson (as detailed herein).

Dickinson provided us with data by date, theater, and studio related to all admission categories for the entire circuit. When compared to the results of our sample testwork, we concluded the information provided to be accurate with a reasonable degree of certainty and utilized it as a basis for calculating the claims.

Audit Findings

Based upon our audit testwork, the records maintained by Dickinson provided an adequate audit trail. Contact personnel were cooperative during fieldwork and subsequent data requests. Following is a summary of our audit findings as they relate to MGM:

1. Pass Admissions

During the audit period, Dickinson issued free passes for various purposes:

- *Re-admittance Pass* – issued to patrons for any inconvenience due to theater problems (i.e. film breaks, temperature control, seating etc.). Pass is valid anytime and is unrestricted. Some managers write the name of the film on the re-admittance ticket, although that is not standard procedure.
- *EBA (Employee Benevolent Account) Service Charge Pass* – issued by individual theaters to its employees and one friend or two parents. Employees are permitted to see two movies per week and are required to show ID, sign a log, and pay \$1.00. This service charge is put into a fund that is used for employees in need or given to charities. Pass cannot be used for the first 10 days of any film or on holidays. Other restrictions are based upon the manager’s discretion (e.g. pass

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cannot be used for a sold out show). Although we included the number of service charge passes in our calculation, we did not calculate a separate claim for the corresponding service charges (note, these charges were not reported on box office statements submitted to MGM).

- *Annual Pass* – issued to home office employees. Pass holders are required to sign a log and show I.D. Pass cannot be used the first 10 days of any film or on holidays and expires annually on May 31st.
- *Corporate Exchange EBA Exempt Pass* – issued through the home office to radio stations, restaurants and for tradeouts. Pass cannot be used the first 10 days of any film or on holidays and expires annually on May 31st.
- *Radio Advertising Exchange* – used for promotions set up by studios with radio stations.

We advised MGM that all persons entering via free pass, with the exception of a re-admittance ticket, are issued a computer generated ticket with "Free \$0.00" printed on it. These passes are reported on box office statements submitted to MGM as "Free".

We also advised MGM that all persons entering with a re-admittance ticket do not receive a computer generated ticket; Dickinson internally records when re-admittance passes are distributed but does not report them. Therefore, the data provided to us for the audit already excluded readmittance passes. In order to determine the scope of issuance, we analyzed a one week sample of physical supporting documentation for every theater in the circuit. That analysis revealed that distributed re-admittance passes were immaterial, accounting for 0.69% of overall paid attendance and redemptions accounted for 0.16%.

License Agreement Provisions Regarding Passes

MGM's license agreement provides that any person admitted free or on reduced rate admissions in excess of 2% of the total of all admission on each exhibition date be accounted for at the full Established Box Office Price.

Audit Findings Regarding Passes

Although we received pass detail for the entire audit period, passes were not broken down into the various categories. Therefore, for a one week sample that included every theater in the circuit, we analyzed the physical supporting documentation in order to determine a percentage of total passes for each sub-category. That analysis revealed that employee passes (i.e. EBA and Annual Pass) accounted for 79.55% of overall passes during that period.

We computed separate ratios of pass admissions to total admissions for MGM (see Schedule 1).

For MGM, we calculated 1,030 passes in excess of license agreement stated percentages resulting in estimated additional film rental totaling \$3,084 (see Schedule 2). Total passes did not exceed the stated percentage in MGM's license agreement for the years 2008 through 2010; accordingly, we did not calculate a pass claim for those years.

2. Discount Programs

During the audit period, Dickinson issued discount tickets for various purposes:

- *Group Tickets* - issued through the home office at a minimum of 50 tickets at \$5.75 each (currently \$6.00); additional tickets sold in increments of 10. Tickets are unrestricted and do not expire.
- *Super Family Value Sundays* – discounted matinee screenings (until 6:00 PM). Prices vary depending on location but range from \$4.50 to \$5.50.

Starting in late September 2008 the East Glen 16 – Lee's Summit, MO, theater began to offer a discounted birthday admission at a price of \$5.00. Regular child admission at this location was \$7.00 during this period. These admissions were included in the discount ticket calculations.

We computed separate ratios of discount ticket admissions to total admissions for MGM (see Schedule 1).

Audit Findings Regarding Discount Admissions

The terms of MGM's license agreement in relation to discount admissions is discussed in finding #1 above. We calculated additional film rental due MGM totaling \$6,748 (see Schedule 3).

3. "Fall Back" Bargain Pricing Program

Since approximately September 2009, Dickinson has offered a "Fall Back" bargain pricing program in its seven Kansas City Metro area theaters. Patrons pay \$6.00 all day, Monday through Thursday; a \$3.00 premium is charged for 3D movies. These prices are lower than those for admissions at these theaters on Friday, Saturday and Sunday. In discussions with Dickinson Management, they advised that they instituted this program in order to compete with AMC's Weekday Escape pricing in their home market.

Based upon our testwork, we determined that Monday had the highest admissions during the audit period. We therefore made an allowance for that day as a bargain day and treated the remaining admission days as discounts in the MGM calculation. *Fall Back* admissions (excluding Monday) accounted for approximately 13.65% of total discount admissions and 0.46% of total admissions for MGM. [Note: these admissions are included under total discount admissions on Schedule 1.]

Audit Findings Regarding "Fall Back" Bargain Pricing Program Admissions

We calculated additional film rental due MGM for 2,358 *Fall Back* discount admissions totaling \$1,843 (see Schedule 4).

4. Birthday Parties

We advised MGM that Dickinson offers birthday party packages at select theaters which includes a regular priced admission ticket per child and discounted concessions. Some locations offer reserved seating, if requested; a premium of \$10.00 is charged for the entire party (i.e. a "flat

rate”), not for each person. This charge is not reflected on box office statements submitted to MGM.

5. 3D Engagements

Dickinson charges a \$3.00 premium for admission to 3D screens. We advised MGM that the charge is included in the cost of admission and reported to MGM as part of the overall ticket price.

Audit Conclusion

In summary, our audit findings, as they pertain to MGM, total \$11,675 in film rental due as follows:

<u>Finding</u>	<u>Issue</u>	<u>Claim</u>
1.	Pass Claim	\$3,084
2.	Discount Ticket Claim	6,748
3.	Fall Back Discount Claim	<u>1,843</u>
	Total Audit Claim	<u>\$11,675</u>

We appreciate the professional courtesy and assistance extended to our auditors during their visit to Dickinson's offices. Once you have had the opportunity to review this material, please contact me or Stephanie Sage-Woodin with any comments or questions.

Best regards,



Harvey Shapiro

Attachments

cc: A. Fisher

Schedule 1

DICKINSON THEATRES, INC.
 OVERLAND PARK, KS
 YEARLY PASS AND DISCOUNT RATIOS
 METRO-GOLDWYN-MAYER STUDIOS INC.
 FOR THE AUDIT PERIOD JANUARY 1, 2007 THROUGH MAY 27, 2010

Year	(1) Total Admissions	(2) Total Pass Admissions	(3) Total Paid Admissions	(4) Total Discount Admissions	Ratio of Pass Admissions		Ratio of Discount Admissions	
					Admissions (Col 1 - Col 2)	To Total (Col 4 / Col 1)	Admissions (Col 4 / Col 3)	To Total (Col 4 / Col 5)
2007	293,511	6,900	286,611	7,492	2.35%	2.41%	2.55%	2.61%
2008	130,145	723	129,422	3,651	0.56%	0.56%	2.81%	2.82%
2009	57,609	454	57,155	2,993	0.79%	0.79%	5.20%	5.24%
2010	26,629	246	26,383	3,139	0.92%	0.93%	11.79%	11.90%
Grand Total	507,894	8,323	499,571	17,275	1.64%	1.67%	3.40%	3.46%

Note: Pass Admissions already exclude Re-Admits.

DICKINSON THEATRES, INC.
 OVERLAND PARK, KS
 ADDITIONAL RECEIPTS AND FILM RENTAL DUE UPON UNACCOUNTED NET PASSES
 METRO-GOLDWYN-MAYER STUDIOS INC.
 FOR THE AUDIT PERIOD JANUARY 1, 2007 THROUGH MAY 27, 2010

Year	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	Total Pass Admissions	Total Admissions	Contract Pass Deduction	Contractual Number of Passes Deductible (Col 2 x Col 3)	Number of Passes Above Deductible (Col 1 - Col 4)	Average Net Admission Price (A)	Additional Receipts Due (Col 5 x Col 6)	Average Film Rental Term	Estimated Film Rental Due (Col 7 x Col 8)
2007	6,900	293,511	2.00%	5,870	1,030	\$6.14	\$6,324	48.76%	\$3,084
Grand Total - Excess Passes	6,900	293,511		5,870	1,030		\$6,324		\$3,084

Note: Pass Admissions already exclude Re-Admits.
 (A) Based on average ticket price for full priced admissions from Dickinson data; by studio.

**DICKINSON THEATRES, INC.
OVERLAND PARK, KS
DISCOUNTED PRICED TICKET RECEIPTS AND FILM RENTAL DUE
METRO-GOLDWYN-MAYER STUDIOS INC.
FOR THE AUDIT PERIOD JANUARY 1, 2007 THROUGH MAY 27, 2010**

(1) Year	(2) Number of Passes Under Contract Deductible (See Schedule 3a)	(3) Number of Discount Tks Subject to Additional Film Rental (Col 1 - Col 2)	(4) Average Net Price of Redeemed Discount Tickets (A)	(5) Average Admission Price (B)	(6) Average Price Differential (Col 5 - Col 4)	(7) Additional Receipts Due (Col 3 x Col 6)	(8) Average Film Rental Term	(9) Estimated Film Rental Due (Col 7 x Col 8)
2007	0	7,492	\$5.14	\$6.14	\$1.00	\$7,492	48.76%	\$3,653
2008	1,880	1,771	\$5.35	\$6.27	\$0.92	\$1,629	47.98%	\$782
2009	698	1,671	\$5.10	\$6.48	\$1.38	\$2,306	50.36%	\$1,161
2010	287	1,118	\$4.98	\$7.00	\$2.02	\$2,258	51.00%	\$1,152
Grand Total - Discount Tickets	2,865	12,052				\$13,685		\$6,748

(A) Based on average price paid for redeemed discount admissions from Dickinson data; by studio.

(B) Based on average ticket price for full priced admissions from Dickinson data; by studio.

Schedule 3a

DICKINSON THEATRES, INC.
OVERLAND PARK, KS
NET PASSES UNDER CONTRACT DEDUCTIBLE
METRO-GOLDWYN-MAYER STUDIOS INC.
FOR THE AUDIT PERIOD JANUARY 1, 2007 THROUGH MAY 27, 2010

Year	(1)		(2)		(3)	(4)		(5)
	Total Paid	Total Pass Admissions	Total Admissions	Total Admissions	Contract Pass Deduction	Contractual Number of Passes Deductible	Number of Passes Under Deductible	
	Admissions	Admissions	Admissions	Admissions	Deduction	(Col 2 x Col 3)	(Col 1 - Col 4)	
2008	129,422	723	130,145		2.00%	2,603	(1,880)	
2009	57,155	454	57,609		2.00%	1,152	(698)	
2010	26,383	246	26,629		2.00%	533	(287)	
Grand Total	212,960	1,423	214,383			4,288	(2,865)	

Note: Pass Admissions already exclude Re-Admits.

DICKINSON THEATRES, INC.
OVERLAND PARK, KS
FALL BACK DISCOUNT TICKET RECEIPTS AND FILM RENTAL DUE
METRO-GOLDWYN-MAYER STUDIOS INC.
FOR THE AUDIT PERIOD JANUARY 1, 2007 THROUGH MAY 27, 2010

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
<u>Year</u>	<u>Actual</u>	<u>Average</u>	<u>Average Net</u>	<u>Average</u>	<u>Additional</u>	<u>Average</u>	<u>Estimated</u>
	<u>Number of</u>	<u>Net Price of</u>	<u>Admission</u>	<u>Price</u>	<u>Receipts</u>	<u>Film Rental</u>	<u>Film Rental</u>
	<u>Fall Back</u>	<u>Redeemed</u>	<u>Price</u>	<u>Differential</u>	<u>Due</u>	<u>Term</u>	<u>Due</u>
	<u>Admissions</u>	<u>Discount Tickets</u>	(B)	(Col 2 - Col 3)	(Col 1 x Col 4)		(Col 5 x Col 6)
		(A)					
2009	624	\$4.64	\$6.48	\$1.84	\$1,148	50.36%	\$578
2010	1,734	\$5.57	\$7.00	\$1.43	\$2,480	51.00%	\$1,265
Grand Total - Fall Back Tickets	2,358				\$3,628		\$1,843

(A) Based on average price paid for redeemed discount admissions from Dickinson data; by studio.

(B) Based on average ticket price for full priced admissions from Dickinson data; by studio.

AFFIDAVIT OF SERVICE

UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS

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In re Dickinson Theatres, Inc.

Case Number 12-22602


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Harvey Shapiro, hereby affirms and states: I am over 18 years of age, not a party to this action, and admitted to practice law before the courts of the state of New York and the Federal District Courts of the Southern and Eastern Districts of New York; and present this affirmation under penalty of perjury.

On March 19, 2013 I served the Response to Debtor's Objection for the Claimant Metro-Goldwyn-Mayer Studios Inc upon the Clerk of the Court, United States Bankruptcy Court for the District of Kansas by mailing via UPS express mail service to:

Clerk of the Court
United States Bankruptcy Court
District of Kansas
161 U.S. Courthouse
500 State Avenue
Kansas City, KA 66101

Sharon L. Stolte, Esq.
Stinson Morrison Hecker LLP
1201 Walnut, Ste. 2900
Kansas City, MO 64106


Harvey Shapiro
New York Attorney Registration No. 221960