

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 WALT DISNEY STUDIO MOTION PICTURES'  
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. 57 filed by Walt Disney Studio Motion Pictures ("Disney") in the amount of \$216,244 and proposing that the claim be expunged.

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 Disney master license agreement ("MLA"). The Disney MLA provides the terms for each exhibition licensed by Disney 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 issued pass and discount admissions in excess of this allowance, additional film rental is due to Disney in the amount of \$216,244.

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

Dated: March 19, 2013



Harvey Shapiro  
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New York, NY 10019  
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**EXHIBIT A**

**SARGOY, STEIN, ROSEN & SHAPIRO**  
Attorneys at Law

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HARVEY SHAPIRO

Direct Dial: (212) 621-8224  
hshapiro@sargoy.com

March 12, 2012

**VIA EMAIL**

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

**Re: Dickinson Theatres, Inc. – Overland Park, Kansas  
Walt Disney Studios Motion Pictures**

Dear Mr. Horton:

We issued a report to Walt Disney Studios Motion Pictures (“Disney”) 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. Disney has requested that we present their findings to Dickinson (as detailed herein) and negotiate a settlement of their claims.

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 Disney:

**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

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- 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 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 Disney).
- *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 31<sup>st</sup>.
- *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 31<sup>st</sup>.
- *Radio Advertising Exchange* – used for promotions set up by studios with radio stations.

We advised Disney 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 to Disney as "Free".

We also advised Disney 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

Disney's license agreement provides that any person admitted at less than the established box office price in excess of 0.5% of total admissions during each week be accounted, in gross receipts, as if admitted at the greater of (a) the theatre's highest established box office price or (b) the highest amount upon which the minimum per capita royalty is based.

#### 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 Disney (see Schedule 1). For Disney, we calculated 24,719 passes in excess of license agreement stated percentages resulting in estimated additional film rental totaling \$80,802 (see Schedule 2).

## 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) at select locations. 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 Disney (see Schedule 1).

### License Agreement Provisions and Audit Findings Regarding Discount Admissions

The terms of Disney's license agreement in relation to discount admissions is discussed in finding #1 above. For Disney, we have calculated additional film rental totaling \$96,499 (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 Disney calculation. *Fall Back* admissions (excluding Monday) accounted for approximately 23.07% of total discount admissions and 1.10% of total admissions for Disney. [Note: these admissions are included under total discount admissions on Schedule 1.]

### Audit Findings Regarding "Fall Back" Bargain Pricing Program Admissions

For Disney, we have calculated additional film rental due Disney for 38,366 *Fall Back* discount admissions totaling \$38,943 (see Schedule 4).

## 4. Birthday Parties

We advised Disney 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 Disney.

5. **3D Engagements**

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

**Audit Conclusion**

In summary, our audit findings, as they pertain to Disney, total \$216,244 in film rental due as follows:

<u>Finding</u>	<u>Issue</u>	<u>Claim</u>
1.	Pass Claim	\$80,802
2.	Discount Ticket Claim	96,499
3.	<i>Fall Back</i> Discount Claim	<u>38,943</u>
	<b>Total Audit Claim</b>	<b><u>\$216,244</u></b>

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

**DICKINSON THEATRES, INC.**  
**OVERLAND PARK, KS**  
**YEARLY PASS AND DISCOUNT RATIOS**  
**WALT DISNEY STUDIOS MOTION PICTURES**  
**FOR THE AUDIT PERIOD JANUARY 1, 2007 THROUGH MAY 27, 2010**

(1) Year	(2) Total Pass Admissions	(3) Total Paid Admissions	(4) Total Discount Admissions	Ratio of Pass Admissions		Ratio of Discount Admissions	
				(Col 4 / Col 1)	(Col 4 / Col 3)	(Col 4 / Col 1)	(Col 4 / Col 3)
2007	1,289,743	26,444	1,263,299	33,996	2.05%	2.09%	2.64%
2008	916,123	6,544	909,579	26,108	0.71%	0.72%	2.85%
2009	975,929	7,240	968,689	67,471	0.74%	0.75%	6.91%
2010	319,834	2,000	317,834	38,729	0.63%	0.63%	12.11%
<b>Grand Total</b>	<b>3,501,629</b>	<b>42,228</b>	<b>3,459,401</b>	<b>166,304</b>	<b>1.21%</b>	<b>1.22%</b>	<b>4.75%</b>
							<b>4.81%</b>

Note: Pass Admissions already exclude Re-Admits.



**DICKINSON THEATRES, INC.**  
**OVERLAND PARK, KS**  
**ADDITIONAL RECEIPTS AND FILM RENTAL DUE UPON UNACCOUNTED NET PASSES**  
**WALT DISNEY STUDIOS MOTION PICTURES**  
**FOR THE AUDIT PERIOD JANUARY 1, 2007 THROUGH MAY 27, 2010**

Year	(1) Total Pass Admissions	(2) Total Admissions	(3) Contract Pass Deduction	(4) Contractual Number of Passes Deductible (Col 2 x Col 3)	(5) Number of Passes Above Deductible (Col 1 - Col 4)	(6) Average Net Admission Price (A)	(7) Additional Receipts Due (Col 5 x Col 6)	(8) Average Film Rental Term	(9) Estimated Film Rental Due (Col 7 x Col 8)
2007	1,263,299	26,444	1,289,743	6,449	19,995	\$5.96	\$119,170	54.08%	\$64,447
2008	909,579	6,544	916,123	4,581	1,963	\$6.06	\$11,896	52.18%	\$6,207
2009	968,689	7,240	975,929	4,880	2,360	\$6.75	\$15,930	52.87%	\$8,422
2010	317,834	2,000	319,834	1,599	401	\$7.68	\$3,080	56.03%	\$1,726
<b>Grand Total - Excess Passes</b>	<b>3,459,401</b>	<b>42,228</b>	<b>3,501,629</b>	<b>17,509</b>	<b>24,719</b>		<b>\$150,076</b>		<b>\$80,802</b>

**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  
 WALT DISNEY STUDIOS MOTION PICTURES  
 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>Discount</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)
2007	33,996	\$5.16	\$5.96	\$0.80	\$27,197	54.08%	\$14,708
2008	26,108	\$5.35	\$6.06	\$0.71	\$18,537	52.18%	\$9,673
2009	48,834	\$5.07	\$6.75	\$1.68	\$82,041	52.87%	\$43,375
2010	19,000	\$4.98	\$7.68	\$2.70	\$51,300	56.03%	\$28,743
<b>Grand Total - Discount Tickets</b>	<b>127,938</b>				<b>\$179,075</b>		<b>\$96,499</b>

(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.

**DICKINSON THEATRES, INC.**  
**OVERLAND PARK, KS**  
**FALL BACK DISCOUNT TICKET RECEIPTS AND FILM RENTAL DUE**  
**WALT DISNEY STUDIOS MOTION PICTURES**  
**FOR THE AUDIT PERIOD JANUARY 1, 2007 THROUGH MAY 27, 2010**

(1)	(2)	(3)	(4)	(5)	(6)	(7)	
<u>Year</u>	<u>Actual</u> Number of Fall Back Admissions	<u>Average</u> Net Price of Redeemed Discount Tickets (A)	<u>Average Net</u> Admission Price (B)	<u>Average</u> Price Differential (Col 2 - Col 3)	<u>Additional</u> Receipts Due (Col 1 x Col 4)	<u>Average</u> Film Rental Term (Col 5 x Col 6)	<u>Estimated</u> Film Rental Due
2009	18,637	\$5.12	\$6.75	\$1.63	\$30,378	52.87%	\$16,061
2010	19,729	\$5.61	\$7.68	\$2.07	\$40,839	56.03%	\$22,882
<b>Grand Total - Fall Back Tickets</b>							<b>\$38,943</b>

(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 Walt Disney Studio Motion Pictures 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