

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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NATIONAL ASSOCIATION OF THEATRE OWNERS; NATIONAL ASSOCIATION OF THEATRE OWNERS OF NEW JERSEY; AMERICAN MULTI-CINEMA, INC.; CINEMARK USA, INC.; REGAL CINEMAS, INC.; BJK ENTERTAINMENT, INC.; BOW TIE CINEMAS, LLC; and COMMUNITY THEATERS LLC,

Plaintiffs,

- against -

PHILIP D. MURPHY, in his official capacity as Governor of New Jersey; and JUDITH PERSICILLI, in her official capacity as Acting Commissioner of Health,

Defendants. x

Case No. 20-cv-08298

ECF Case

**DECLARATION OF ROBERT PIECHOTA IN SUPPORT OF PLAINTIFFS' APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

I, ROBERT PIECHOTA, hereby declare as follows:

1. I am the President of BJK Entertainment, Inc. ("BJK"), one of the Plaintiffs herein. I am also the President of the National Organization of Theatre Owners of New Jersey ("NATO NJ"), another of the Plaintiffs herein. I submit this declaration in support of Plaintiffs National Organization of Theatre Owners, National Organization of Theatre Owners of New Jersey, American Multi-Cinema, Inc., Cinemark USA, Inc., Regal Cinemas, Inc., BJK Entertainment, Inc., Bow Tie Cinemas, LLC, and Community Theaters LLC's application for a temporary restraining order and preliminary injunction. I have personal knowledge of the matters set forth herein. If called and sworn as a witness, I could and would competently testify to the facts set forth herein.



2. As President of BJK, my job responsibilities include all decisions involved in operating the movie theatre business, including finance, film selection and scheduling, theatre procedures, and setting policies.

3. As President of NATO NJ, my job responsibilities include informing our members of new and ongoing local, state, and national legislation, providing advice on all matters affecting movie theatergoing, working on new programs to benefit our members and the moviegoing public as times change, and offering scholarships to employees in the theatre industry and children of employees.

4. BJK owns and operates one movie theatre, specifically, Hillsborough Cinema in Hillsborough, New Jersey. BJK is a member of NATO NJ and NATO.

5. NATO NJ is a non-profit organization that represents its voluntary members, who are movie theatre owners, operators, executives, and managers in New Jersey, and which are affected by and subject to the Governor's orders discussed herein. NATO NJ's purpose is to provide its members with vocational advice, professional guidance, and to further promote the welfare of New Jersey's movie theatres. NATO NJ carries out its mission by, among other things, working on behalf of New Jersey motion picture exhibitors on state and local governmental issues affecting movie theatres; providing educational workshops; and offering financial support to its many student-employees and children of employees interested in further education.

6. BJK and NATO NJ understand the importance of, and fully support the goal of, protecting the public health from the risks of COVID-19. By this lawsuit, BJK and NATO NJ simply seek to be treated fairly in comparison to other places of public assembly that have been



allowed to reopen. BJK and NATO NJ is not seeking any special treatment, it is just asking for fair treatment.

7. I have reviewed the protocols for health and safety that NATO NJ and NATO have proposed to the Governor of New Jersey's office in connection with reopening movie theatres in the State. A true and correct copy of those proposed protocols are attached to the Declaration of John Fithian of NATO.

8. I was part of a group that met with representatives of the Governor's office to discuss these proposed protocols. Prior to this meeting, we shared the proposed reopening protocols with the Governor's Chief of Staff. In a telephone call, NATO described that we had sent the protocols and were prepared to reopen in a safe and healthy manner. We indicated that theatres and churches should be treated in an equivalent manner, and that the Governor had already allowed houses of worship to reopen. On June 29, 2020, John Fithian and Esther Baruh of NATO, along with Joseph Masher of Bow Tie Cinemas, two legislative representatives of NATO, and I met with two members of the Governor's office, ostensibly to discuss our proposed protocols for safely reopening movie theatres in New Jersey. One of the Governor's staff asked about HVAC systems. The Governor's staff asked no other questions about the plan.

9. BJK and NATO NJ have been working on procedures for the safe reopening of its movie theatres.

10. The protocols that have been proposed for New Jersey are a comprehensive and detailed plan for the safe and healthy reopening of movie theatres. They meticulously address all aspects of theatre operations, including employees, patrons, ticket sales, concessions sales, seating, security, training, and other elements of health and safety. In my opinion, based on my



long experience in the operation of theatres, they represent a safe plan for the health and safety aspects of reopening movie theatres in New Jersey.

11. BJK is ready, willing, and able to implement these protocols, if allowed to reopen in New Jersey. BJK's theatre has the facilities, equipment, manpower, training resources, management resources to implement these protocols. BJK also is committed to address promptly any other concerns, if any, that may arise from health officials in New Jersey.

12. BJK's theatre presents less of a risk for the spread of COVID-19 than other establishments that the Governor's orders have allowed to reopen. Unlike in churches or other places of worship, guests in our theatres generally do not engage with those outside their immediate groups to have conversations, hold or shake hands, hug, sing, provide verbal responses, do responsive readings, or engage in other forms of contact regularly engaged in at places of worship. Indeed, speaking and singing during the performance is not allowed during the performances in movie theatres. Nor are there shared books or documents or frequent sitting, standing and kneeling in our theatres during performances. Persons at places of worship tend to arrive for the service at or near the same time and leave at or near the same time. In my experience, places of worship do not have assigned seating or seat reservation systems.

13. Persons in libraries frequently stay for extended periods of time, in excess of the length of a typical movie. Patrons of libraries often stand and sit, sit directly facing other patrons, touch books and other shared objects, sit at desks used by other patrons, and use public computers. Libraries do not have assigned seating or seat reservation systems. A school or public library often has many more people present than the seating capacity of one of our movie auditoriums.



14. Customers in shopping malls frequently stay for extended periods of time, in excess of the length of a typical movie. Patrons of shopping malls often stand and sit, try on clothes and shoes, eat, and touch objects that are touched by others. Shopping malls ordinarily have many more customers present at any given time than the seating capacity of our auditoriums.

15. Massage parlors and tattoo parlors have been allowed to reopen, per the Governor's orders. I would consider the closeness and intensity of physical contact inherent in massage parlors and tattoo parlors to be much greater than anything that occurs in our movie theatre.

16. By virtue of Governor Philip D. Murphy's Executive Order No. 104, all movie theatres in the State of New Jersey were ordered closed as of March 16, 2020. BJK's movie theatre did in fact close on that date. By virtue of Executive Order No. 104 and subsequent orders of the Governor, BJK's movie theatre has remained closed since March 16, 2020.

17. As a result, BJK has suffered a complete and total loss of all revenue and profit from its theatres in New Jersey, from March 16, 2020 and continuing.

18. In addition, due to the closure of all of its theatres in New Jersey, BJK has had to place 34 of its employees on furlough, reduced working hours, or have been laid off.

19. The government-required closure of all of BJK's theatres in New Jersey has meant that numerous films of significant artistic, cultural, political, and popular merit have not and cannot be shown to the public by BJK in its theatres. Those films include art, cultural, historical, and documentary films such as John Lewis: Good Trouble, Truth, Emperor, St. Maude, First Cow, and others, as well as popular films such as Wonder Woman 1984, Top Gun:



Maverick, and others. The Governor's orders has absolutely prevented BJK from showing these films, and has absolutely prevented our patrons from seeing these films in theatres.

20. BJK has not received, and has not been offered, any compensation from the State of New Jersey for its involuntary closure due to the Governor's orders.

21. As President of NATO NJ, I am aware that there is only one drive-in movie theatre in the State of New Jersey, the Delsea Drive-In in Vineland, New Jersey.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 9<sup>th</sup> day of July, 2020, at

HILLSBOROUGH TWP, New Jersey.



Robert Piechota