

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

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. 3:20-cv-08298-BRM-TJB

ECF Case

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

x

I, JOSEPH MASHER, hereby declare as follows:

1. I am the Chief Operating Officer of Bow Tie Cinemas, LLC (“Bow Tie”), one 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 Enterprises, 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 Chief Operating Officer of Bow Tie, my job responsibilities include overseeing the entire operation of Bow Tie Cinemas, LLC, including, but not limited to these departments: Operations, Human Resources, Management Information Systems, Marketing, Food and Beverage, and Film Buying.

3. Bow Tie owns or operates movie theatres in the State of New Jersey, specifically, Caldwell Cinemas, Hoboken Cinemas, Millburn Cinemas, South Orange Cinemas, and Warner Theater (in Ridgewood). Bow Tie is a member of NATO NJ and NATO.

4. Bow Tie understands the importance of, and fully supports the goal of, protecting the public health from the risks of COVID-19. By this lawsuit, Bow Tie simply seeks to be treated fairly in comparison to other places of public assembly that have been allowed to reopen. Bow Tie is not seeking any special treatment, it is just asking for fair treatment.

5. 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 a reopening of movie theatres in the State. A true and correct copy of those proposed protocols are attached to the Declaration of John Fithian of NATO.

6. 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 Robert Piechota of BJK Entertainment and NATO NJ, 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.

7. Bow Tie has been working on procedures for the safe reopening of its movie theatres in New Jersey and the other states in which it owns or operates movie theatres. The protocols that have been proposed for New Jersey meet or exceed those that Bow Tie has implemented at its theatres in other states that have allowed movie theatres to reopen.

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

9. Bow Tie is ready, willing, and able to implement these protocols, if allowed to reopen in New Jersey. Bow Tie theatres in New Jersey have the facilities, equipment, manpower, training resources, management resources to implement these protocols. Bow Tie also is committed to address promptly any other concerns, if any, that may arise from health officials in New Jersey.

10. Bow Tie has been allowed by state and/or local government officials in some other states to reopen. Bow Tie has, in fact, reopened in 3 states. In those states where Bow Tie has reopened, I am unaware of any cases of COVID-19 being traced to attendance at one of our theatres. I am also unaware of any problems, issues, or citations from state or local government officials in any state in which Bow Tie has reopened.

11. Bow Tie's theatres present 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.

12. 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 typical movie auditoriums.

13. 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 one of our theatres.

14. Massage parlors and tattoo parlors have been allowed to reopen in New Jersey, 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 theatres.

15. 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. All of Bow Tie's

movie theatres in the State did in fact close on that date. By virtue of Executive Order No. 104 and subsequent orders of the Governor, all of Bow Tie's theatres in New Jersey have remained closed since March 16, 2020.

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

17. In addition, due to the closure of all of its theatres in New Jersey, Bow Tie has had to place over 75 of its employees on furlough, reduced working hours, or have been laid off.

18. The government-required closure of all of Bow Tie'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 Bow Tie in its theatres. Some of those films include Artemis Fowl, Trolls, The King of Staten Island, Greyhound, and The Lovebirds. The Governor's orders have absolutely prevented Bow Tie from showing these films, and has absolutely prevented our patrons from seeing these films in theatres.

19. Bow Tie 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.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 9th day of July, 2020, at 4:30PM.



Joseph Masher