

**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,

Case No. 3:20-cv-08298-BRM-TJB

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

Plaintiffs,

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.

I, STEVEN ZUEHLKE, hereby declare as follows:

1. I am the Executive Vice President-Global Theatre Operations of Cinemark USA, Inc. (“Cinemark”), one of the Plaintiffs herein. I submit this declaration in support of Plaintiffs National Organization of Theatre Owners (“NATO”), 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 Executive Vice President-Global Theatre Operations of Cinemark, my job responsibilities include creation of, and updating as needed, and implementation of, all operating procedures, guidelines and policies for US domestic theatres, as well as coordination with the

Senior Vice President of International Operations and the Directors of Operations in each country regarding all best practices for adoption, adaptation and implementation as those country's laws allow. I also Chair and or am a member of several committees of the company, including Real Estate, Information Technology Steering, Conventions, and Best Practices, among others. I am the company's representative on several of NATO's committees, including the COVID-19 Reopening Working Group, the Advisory Board, Conventions, Diversity & Inclusion, and Theatre Technology. I also review the company's 10-Qs and annual 10-K filings, and sign a sub-certification for each. The company's three U.S. Operational Division Vice Presidents report to me. I work closely with each department head within the company: Human Resources, Legal, Real Estate, Construction, Food & Beverage, Theatre Technology, Information Technology, and Accounting/Finance - specifically on needed policy and procedure updates, but also on day-to-day evaluation of programs, designs, and projects under development.

3. Cinemark owns and operates movie theatres in the State of New Jersey, specifically, Cinemark Hazlet 12, Cinemark 16 and XD (in Somerdale), Cinemark Watchung and XD, and Cinemark Willowbrook Mall and XD (in Wayne). Cinemark is a member of Plaintiffs National Association of Theatre Owners of New Jersey ("NATO NJ") and NATO.

4. Cinemark understands the importance of, and fully supports the goal of, protecting the public health from the risks of COVID-19. By this lawsuit, Cinemark simply seeks to be treated fairly in comparison to other places of public assembly that have been allowed to reopen. Cinemark 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. Cinemark has been working on procedures for the safe reopening of its movie theatres throughout the United States. Cinemark's protocols for reopening, which have been implemented at its theatres in other states that have allowed movie theatres to reopen, meet or exceed those that Plaintiffs have proposed for New Jersey.

7. 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.

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

9. Cinemark has been allowed by state and/or local government officials in some other states to reopen. Cinemark has, in fact, reopened in two states (Texas and Florida). In those states where Cinemark 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 Cinemark has reopened.

10. Cinemark 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 generally are not allowed during the performances in our 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.

11. 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.

12. 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.

13. 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.

14. 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 Cinemark'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 Cinemark's theatres in New Jersey have remained closed since March 16, 2020.

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

16. In addition, due to the closure of all of its theatres in New Jersey, Cinemark has had to place 224 of its employees on furlough or have been laid off.

17. The government-required closure of all of Cinemark 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 Cinemark in its theatres. Some of those films include Hamilton, The One and Only Ivan, The Lovebirds, Trolls World Tour, Scoob!, Artemis Fowl, The Spongebob Movie, My Spy, Greyhound, Irresistible, and King of Staten Island. During this period of forced government closure, the Governor's orders have prevented Cinemark from showing these and other films, and has absolutely prevented our patrons from seeing these films in theatres.

18. Cinemark 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.

19. Cinemark has a program in its movie theatres known as Cinemark Theatre Church. Under that program, Cinemark makes its movie theatre auditoriums available for use by churches lacking a building of their own, or lacking the capability to safely host religious services during this period, to hold their religious services in our movie theatres. The Cinemark Theatre Church program is available nationwide and is offered in 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 13th day of July, 2020, at

_____, _____.

Steven D. Zuehlke _____

Steven Zuehlke