

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

HELIOS AND MATHESON ANALYTICS, INC.,
et al.,

Debtors.

Case No. 20-10242-dsj
Chapter 7

**NOTICE OF PRESENTMENT OF PROPOSED ORDER OVERRULING THE
TRUSTEE'S OBJECTION TO SILVER CINEMAS ACQUISITION COMPANY D/B/A
LANDMARK THEATRES' PROOF OF CLAIM**

PLEASE TAKE NOTICE, that pursuant to Rule 9074-1 of the Local Rules of Bankruptcy Procedure of the Southern District of New York, the annexed Proposed Order, overruling the Objection of Alan Nisselson, Esq., the Chapter 7 trustee in the above-captioned bankruptcy cases (the "Trustee") to Proof of Claim No. 155 filed by Cohen Brothers Realty Corp., as successor-in-interest to Silver Cinemas Acquisition Company d/b/a Landmark Theatres ("Landmark"), will be presented for settlement and entry to the Hon. David S. Jones, United States Bankruptcy Judge, at Room 501 of the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004, on **October 18, 2021, at 12:00 pm Eastern Standard Time**, that being no less than five (5) business days from the date hereof.

PLEASE TAKE FURTHER NOTICE, that objections or proposed counter-orders must be made in writing and received by the Court and undersigned counsel not later than **October**



201024221100800000000001

15, 2021, at 12:00 pm Eastern Standard Time. Unless an objection or proposed counter-order is received by that time, the Proposed Order annexed hereto may be entered by the Court.¹

Dated: New York, New York
October 8, 2021

HARWOOD REIFF LLC

By: /s/ Simon W. Reiff
Simon W. Reiff
370 Lexington Avenue, Suite 505
New York, New York 10017
(212) 661-0750 (office)
(646) 365-3332 (fax)
(347) 674-9797 (cell)
sreiff@harwoodreiff.com

*Attorneys for Claimant
Cohen Brothers Realty Corp. as successor-
in-interest to Silver Cinemas Acquisition
Company d/b/a Landmark Theatres*

¹ By this Court's Memorandum of Decision and Order, dated September 24, 2021, the Court encouraged the parties to reach agreement on the language of such a proposed order. The undersigned counsel circulated the Proposed Order annexed hereto on October 4, 2021 to counsel for the Trustee and Madison Global Partners, LLC, which had also objected to Claim No. 155, but to date, the undersigned counsel has not received any response to the Proposed Order.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

HELIOS AND MATHESON ANALYTICS, INC.,
et al.,

Debtors.

Case No. 20-10242-dsj
Chapter 7

**PROPOSED ORDER OVERRULING THE TRUSTEE’S OBJECTION TO SILVER
CINEMAS ACQUISITION COMPANY D/B/A LANDMARK THEATRES’ PROOF OF
CLAIM**

WHEREAS, on January 28, 2020 (the “Petition Date”), Helios and Matheson Analytics, Inc. a/k/a MovieFone (“Helios”) and certain of its affiliates, including MoviePass, Inc. (“MoviePass”), filed voluntary petitions for Chapter 7 relief;

WHEREAS, the Debtors’ bankruptcy cases are procedurally consolidated and jointly administered [ECF Doc. 16];

WHEREAS, Alan Nisselson (the “Trustee”) has been appointed as the Chapter 7 trustee for each of the above-captioned Chapter 7 debtors;

WHEREAS, Cohen Brothers Realty Corp. as successor-in-interest to Silver Cinemas Acquisition Company d/b/a Landmark Theatres (“Landmark”) timely filed Proof of Claim No. 155, seeking \$1,317,677.35 as a general unsecured claim for payments due under Section 3.2 of Landmark’s agreement with MoviePass (the “3.2 Claim”), and \$15,585,212.00 as a general unsecured claim for liquidated damages pursuant to Section 3.4 of Landmark’s agreement with MoviePass (the (“3.4 Claim”), for a total general unsecured claim of \$16,902,889.35;

WHEREAS, the Trustee objected [ECF Doc. 160] in part to Landmark’s Proof of Claim to the extent of Landmark’s 3.4 Claim, contending that the 3.4 Claim should be disallowed and

expunged in full or alternatively should be reclassified and subordinated to fourth priority pursuant to Bankruptcy Code [11 U.S.C.] § 726(a)(4), an objection that was joined [ECF Doc. 200] by Madison Global Partners, LLC (“Madison Global”), another creditor of the Debtors herein;

WHEREAS, Landmark filed an opposition [ECF Doc. 192] to the Trustee’s Objection, and the Trustee filed a reply [ECF Doc. 199] in further support of its Objection;

WHEREAS, this Court, by the Hon. David S. Jones, U.S.B.J., heard oral argument on the Trustee’s Objection on August 12, 2021;

WHEREAS, by a Memorandum of Decision and Order, dated September 24, 2021 [ECF Doc. 207], the Court, by the Hon. David S. Jones, U.S.B.J., overruled the Trustee’s Objection (as joined by Madison Global), holding that “the 3.4 Claim is based on a valid liquidated damages provision, rather than an unenforceable penalty or grossly disproportionate formula, and therefore should not be disallowed under Code Section 502(b)(1)” (*id.* at p. 12), and that “the liquidated damages provision does not constitute a fine or penalty subject to subordination under Code Section 726(a)(4)” (*id.*);

NOW, THEREFORE, the Court hereby orders that Claim No. 155 is allowed in its entirety, including \$1,317,677.35 for Landmark’s 3.2 Claim, and \$15,585,212.00 for Landmark’s 3.4 Claim, for a total general unsecured claim of \$16,902,889.35, and the Trustee’s and Madison Global’s objections thereto are overruled.

HON. DAVID S. JONES, U.S.B.J.