

STATE OF MICHIGAN
IN THE SIXTH JUDICIAL CIRCUIT

Sarah Deming – an individual

Case: 2011-122030-CZ

Plaintiff,

-v-

CH NOVI LLC a Michigan limited Liability Company dba EMAGINE NOVI, and
FILMDISTRICT DISTRIBUTION LLC, a New York Limited Liability Company

Joint and Several Defendants.

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FIRST AMENDED COMPLAINT

Plaintiff amends the Complaint, as of right, as follows:

JURISDICTIONAL STATEMENT AND VENUE

1. This is an action brought under the Michigan Consumer Protection Act, MCL §445.901 *et seq* .
2. Plaintiff is an individual residing in Oakland County Michigan.
3. Defendant CH NOVI LLC is a Michigan LLC. Defendant FilmDistrict Distribution LLC (“FILMDISTRICT”) is a New York LLC with sufficient business activity in Oakland County Michigan for personal jurisdiction.
4. A public display of a motion picture, for a fee, is a service under the Michigan

Consumer Protection Act, and otherwise falls under the act.

5. The acts complained of took place in Oakland County Michigan.
6. Plaintiff seeks injunctive relief, and therefore Circuit Court is appropriate.

COMMON FACTS

7. Plaintiff incorporates all previous paragraphs as though pled herein.
8. Defendant CH NOVI LLC, owns and operate a Motion Picture theater in Novi, Michigan.
9. Defendant FILMDISTRICT has marketed and distributed a motion picture called DRIVE.
10. DRIVE was distributed by Defendant FILMDISTRICT to Defendant CH NOVI to be publicly displayed on or about September 20, 2011, and thereafter.
11. DRIVE was advertised and promoted by Defendant FILMDISTRICT in theaters, and other media by utilizing trailers, one page media promotional descriptions, a website , posters, advertising, and other types of promotion.
12. Said advertising and promotion by Defendants promoted the film DRIVE as a chase, race, or high speed action driving film, similar to the *Fast and Furious*, *Fast Five*, or similar, series of movies.
13. Despite said advertising and promotion, DRIVE bore very little similarity to a chase, race, or high speed action film, for reasons including but not limited to DRIVE having relatively little high speed action driving, race driving, or chase driving in the motion picture.
14. Drive had many segments of slow paced, interpersonal drama, including the friendship between Driver and Irene and her family.

15. Despite said advertising and promotion, DRIVE bore very little similarity to the style and character of the movie Defendants, through their marketing and advertising purported and represented DRIVE to be.

16. Despite said advertising and promotion by Defendants, DRIVE was an extremely graphically violent film, including a slow motion depiction of a young woman's head being blown off .

17. Despite said advertising and promotion by Defendants, DRIVE was a motion picture that used extreme gratuitous defamatory dehumanizing racism to depict members of the Jewish faith, and thereby promoted criminal violence against members of the Jewish faith.

18. Despite said advertising and promotion by Defendants, DRIVE emphasized the religion of only the Jewish characters in the film, through the film's action, dialogue, and symbols.

19. Despite said advertising and promotion by Defendants, DRIVE portrayed only the Jewish characters, who were the antagonists in the film, as uniformly and unambiguously evil, and not worthy of the audience's sympathy or empathy.

20. Despite said advertising and promotion by Defendants, DRIVE portrayed the Jewish characters, individually or jointly using historic false Jew hating stereotypes¹, including but not limited to:

A. Jews are murderous

B. Jews are dishonest

C. Jews scheme and conspire with each other to take advantage of, and

¹ Presented more subtly than the more obvious manner employed by publications such as *Der Sturmer*, but arguably more effective for art house film intellectuals.

control gentiles for the Jewish schemers' benefit.

D. Jews believe they are racially or otherwise superior to other groups as evidenced throughout the film, including Izzy/Nino one of two Jewish characters . referring to “Chink food”, and Bernie Rose, the other Jewish character, referring to someone as a “monkey”.

E. Jews are physically grotesque, as evidenced by the way Izzy was portrayed, and the otherwise out of place comment by Benicio, the innocent child in DRIVE that: “The sharks are bad and the sharks look mean”.

F. Jews take advantage of non-Jews, as evidenced by the “slick” way Bernie acquires 70% of the racing business that Shannon conceived.

G. Jews corrupt the morals of Gentiles, as evidenced by the otherwise unnecessary female dressing room scene, evincing the false stereotype of Jewish control of the “flesh” industries.

H. Jews are a threat to the physical safety of non-Jewish children, as evidenced by Izzy directing a physical threat against the innocent child in the film.

I. Jews are “outsiders”, not fitting in with the rest of society.

J. Jews are obsessed with Chinese and Italian food.

K. Jews are money hungry.

21. Unlike DRIVE, it is rare in American cinema for any ethnic or minority group to be uniformly portrayed in a totally negatively way as the Jews in Drive were, for reasons including the fact that such non nuanced characters are less interesting and less believable, in addition to any implication of racism such a depiction would invoke. To cite a few of many examples, “Nicky”, portrayed by Joe Pesci, in “Casino”, a murderous psychopath, was depicted as a loving father. And in “Scarface”, Tony Montana's mother

was a moral, honest Cuban, dispelling any implication of a uniform negative portrayal of Cuban immigrants.

22. Almost always, if not always, Jewish gangsters and criminals in American cinema have been portrayed as nuanced, the same as other types of gangsters, unlike in DRIVE, where the Jews were portrayed as uniformly evil, in a cartoon stereotypical manner.

23. The aforementioned negative depiction in DRIVE was especially unusual and offensive because there was no factual basis for such negative depiction, such as the arguable historic connection between the gangsters in “Once Upon a Time in America”, and Detroit’s Purple Gang, or the alleged factual basis of the movie “An Education”.

24. Jewish American violent gangsters are virtually unheard of today, but even if there was a factual basis for their contemporary existence, it would be rare for an American motion picture to depict them uniformly as evil and stereotyped for the reasons cited above.

25. DRIVE was also a thinly veiled allegory.

26. Said allegory was substantially that: The “Jew is a threat to the world today, and that threat is manifest, and associated with ¶20 A – F”.

27. Said allegory also made clear that killing the Jews was the necessary response to the Jewish threat, and that a simmering rage against said threat is about to boil over².

28. Said allegory that DRIVE contained, is promoted to DRIVE’S worldwide audience, despite the fact that Jew hating worldwide, is at the highest level since Nazi

² Red and blood symbolize passion and rage brewing under the surface. As such rage becomes manifest, the Jacket of Driver becomes more bloody.

Germany, and despite the fact that one of every two Jews born in the last one thousand years has been murdered for being Jewish.

29. Said allegory invoked Christian religious symbolism, including but not limited to: A Red crucifix that is formed around Driver, the movie's unnamed protagonist, wearing a "skinhead" mask as Driver looks through the window, stalking Izzy.

30. Said allegory invoked Christian religious symbolism, including but not limited to, a perverse Baptism when Izzy is being killed.

31. Said allegory invoked Jewish religious symbolism, including but not limited to, obvious references to Jewish ritual slaughter, banned in some parts of Scandinavia, manifest in the manner of murder Bernie Rose employs: Severing an artery and allowing the victim to bleed to death, and stabbing/slitting the throat of another victim, using a knife collection that Bernie reveres in the manner of a religious icon.

32. Said allegorical nature of the movie, was even more apparent because of the obvious and ridiculous plot holes, including but not limited to driver allowing himself to be stabbed by Bernie Rose, which made no logical sense.

33. Virtually no film critics described in any detail, if even mentioned, the allegorical nature of DRIVE, despite the importance of allegory in DRIVE. This for inexplicable reasons.

34. The President of Defendant FilmDistrict's marketing, Robert Berney stated to Nikki Finke, the respected film critic and "Hollywood insider", of *Deadline Hollywood*³:

Don't know if you've seen *Drive* or not. But it's extreme in many ways: ultra-violent, very different pacing. As Albert Brooks (sleazy crime lord and ex-movie producer in the film) says about his character's films, 'some critics call them European'. This film

³ Nikki Finke went on to explain: "Though defined as an American genre movie, I felt the pre-release marketing with its superficial one-sheet and film trailer and TV ad failed by never distinguishing *Drive* as anything more special than just another *Fast And Furious* ripoff."

is not a typical formulaic wide release. Yes, the CinemaScore is 'C-' but I just think that their methodology is designed for the average, wide release film. They never anticipated asking people about a Nic Refn movie! I don't buy it and hope they are very wrong.

Yet the marketing of DRIVE misled prospective viewers of the "extremeness" of the movie, by misleading promotion and advertising, as explained more fully herein.

35. The screenwriter of DRIVE , Hossein Amini, implicitly acknowledges the effect Jew hating has on Jews, by having Izzy justify his murderous plot, in part, because: "They called me a Kike, to my face", with implied empathy by Bernie Rose.

36. DRIVE received an abysmal CINEMASCOPE of "C-", indicating that moviegoers were expecting something other than the movie they saw on opening weekend based on Defendant FILMDISTRICT'S wrongful advertising and promotion, as set forth herein.

37. Despite the above, including ¶34, DRIVE was marketed like any other action drive, chase, or racing film, as set forth in this complaint

38. Plaintiff viewed the short trailer during the motion picture performance of "The Debt", and because of that trailer, caused to be purchased for Plaintiff a ticket for DRIVE, which Plaintiff ultimately paid for.

39. Plaintiff viewed the performance of the motion picture DRIVE on or about September 16, 2011, at Defendant CH NOVI'S theater.

COUNT I

VIOLATION OF MICHIGAN CONSUMER PROTECTION ACT

40. Plaintiff incorporates all previous paragraphs as though pled herein.

41. Defendants jointly and severally profited from the screenings of DRIVE at

Defendant CH NOVI's theater.

42. Defendant FILMDISTRICT's marketing was in violation of MCL §445.903(c) because the actual “character” of the film was not as Defendant FILMDISTRICT represented, as set forth more fully herein, causing Plaintiff to suffer damages including but not limited to the purchase price of the ticket.

43. Defendant FILMDISTRICT's marketing was in violation of MCL §445.903(e) because the actual “style” of the film was not as Defendant FILMDISTRICT represented, as set forth more fully herein, causing Plaintiff to suffer damages including but not limited to the purchase price of the ticket, as set forth more fully herein. Plaintiff expected an action driving, chase, or race film, and instead saw a racist film.

44. Defendant FILMDISTRICT's marketing was in violation of MCL §445.903(s) because Defendants failed to reveal a material fact, the omission of which tended to, and in fact did mislead and deceive the Plaintiff, and which fact could not reasonably be known by the Plaintiff, to wit: The way Jews were depicted in DRIVE, as set forth more fully herein; and the slow paced “art-house” nature of the film, as set forth more fully herein.

45. Defendant FILMDISTRICT's marketing was in violation of MCL §445.903(cc) because Defendants failed to reveal facts material to the transaction, in light of representations of fact made in a positive manner, to wit: The way Jews were depicted in DRIVE, as set forth more fully herein, in light of the marketing and promotion of the film, as described more fully herein. In addition, said violation occurred because of the relatively slow paced, relatively few action packed driving scenes, in light of the trailer, which represented otherwise.

REQUEST FOR INJUNCTIVE RELIEF

MCL §445.903(1)(b) provides injunctive relief even if there is a remedy at law. Plaintiff, as a person entitled under MCL §445.903(1)(b), respectfully requests that this Honorable Court issue a temporary and permanent injunction against Defendants, requiring a notice to the public, paid for by Defendants that will minimize the likelihood of violations of MCL §445.903(3) *et. seq*, including, but not limited to, a notice to the public regarding the extreme gratuitous defamatory racism, and promotion of violence, directed against members of the Jewish faith, and other forms of notice that negate the misrepresentations or misleading advertising and promotion as pled herein.

Such a notice is not an unreasonable burden on Defendants, and does not constrain Defendants' first amendment rights.

Defendants are continuing and will continue to violate the Michigan Consumer Protection Act if such injunction is not issued.

REQUEST FOR CLASS ACTION CERTIFICATION

MCL §445.911(3) provides for class action certification, and Plaintiff respectfully requests that such certification be granted and that the representative Plaintiff for the class be the instant Plaintiff. In addition, Plaintiff requests that the cost of notification of the class action be borne by Defendants. In the instant action:

- (a) the class is so numerous that joinder of all members is impracticable;
- (b) there are questions of law or fact common to the members of the class that

- predominate over questions affecting only individual members;
- (c) the claims of the representative parties are typical of the claims of the class;
 - (d) the representative parties will fairly and adequately assert and protect the interests of the class; and
 - (e) the maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice.

RELIEF REQUESTED

Wherefore Plaintiff respectfully requests that this Honorable Court grant the relief requested herein, including the greater of actual or statutory damages, reasonable attorney fees, class certification, and injunctive relief against all Defendants as pled herein.

Dated: October 14, 2011

Respectfully submitted,

/s/ Martin H. Leaf,
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Attorney for Plaintiff

