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Date: January 29, 2023

CT- 2023-003

Annie Ruhlmann for / pour
REGISTRAR / REGISTRAIRE

CT-2023-003

OTTAWA, ONT.

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THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an application by the Commissioner of Competition for an order pursuant to section 74.1 of the *Competition Act* and subsection 74.01(1.1) of the *Competition Act*;

BETWEEN:

COMMISSIONER OF COMPETITION

Applicant

– and –

CINEPLEX INC.

Respondent

**AFFIDAVIT OF JAY ECKERT
(AFFIRMED JANUARY 29, 2024)**

1. My name is Jay Eckert. I am the founder and creative director at Parachute Design Group Inc. I earned my graphic design diploma after completing the three-year program at Seneca Polytechnic (formerly Seneca College). In 2007, I became a Registered Graphic Designer by completing the required testing, portfolio interview and work experience required by The Association of Graphic Designer (CGD) designation from The Association of Design Professionals of Canada.
2. I prepared an initial Expert Report dated January 5, 2024, requested by the Commissioner of Competition, where I provide my opinion and

analysis relating to the Commissioner’s Notice of Application against Cineplex Inc.

- 3. I have now prepared a Reply Expert Report dated January 29, 2024, which I have attached as Exhibit “A” to this affidavit.

Affirmed remotely by Jay Eckert)
 stated as being located in the City of)
 Toronto in the Province of Ontario, before)
 me at the City Of Ottawa in the Province of)
 Ontario on January 29, 2024 in accordance)
 with O. Reg. 431/20, Administering Oath)
 or Declaration Remotely)

 Commissioner for Taking Affidavits)

 Jay Eckert)





This is Exhibit "A" to the affidavit of Jay Eckert,
affirmed remotely and stated as being located
in the city of Toronto in the Province of Ontario,
before me in the city of Ottawa in the province of Ontario,
on January 29, 2024, in accordance with
O. Reg 431/20, Administering Oath or Declaration Remotely.



Commissioner of Competition v. Cineplex Inc. (CT-2023-003)

Response to Expert Report from Dr. On Amir and Witness Statement from Daniel Francis McGrath by Jay Eckert, RGD, CGD.

Introduction

1. I have been provided with the expert report of Dr. On Amir (the “Amir Report”)¹ and the Witness Statement of Daniel Francis McGrath (the “McGrath Witness Statement”)² in response to my expert report relating to the Commissioners’ Notice of Application against Cineplex, Inc.
2. In this reply, I:
 - a. Analyze the screen captures of the Tickets pages from the Amir Report. My analysis shows that many of the screen captures used in the Amir Report do not represent the user experience of any consumers that use the Cineplex mobile application (the “**App**”) and only a small percentage of consumers that use Cineplex’s website, Cineplex.com (the “**Website**”);
 - b. Respond to Dr. Amir’s argument that the Tickets Page could not include information about the Online Booking Fee because it would create clutter and transparency issues, by presenting a simple, non-invasive design solution to illustrate how this information could be presented to consumers efficiently without adding clutter to the page layout;

¹ Affidavit of Dr. On Amir (Affirmed January 12, 2024).

² Witness Statement of Daniel Francis McGrath, affirmed January 12, 2024.

- c. Respond to Dr. Amir's analytics data analysis regarding total percentage of website visitors that did not view the Tickets Page.
- d. Respond to Dr. Amir's critique that my analysis does not rely on analytical information from Cineplex and his suggestion that I did not account for users ability to zoom. Cineplex did not provide analytical data about consumers screen size or scrolling behaviour. The main purpose of the zoom function is to help people with low visual acuity to zoom in. When this is done, even more information will end up below the fold.
- e. Respond to Mr. McGrath's claims about font sizes used on the Tickets page.
- f. Analyze the video attached as Exhibit A to the McGrath Witness Statement.

a. Analysis of Screen Captures from the Amir Report

- 3. The Amir Report contains screen captures of the Website user experience during the purchase flow using a screen resolution that is well beyond the resolution of most users according to the published global analytics. This applies to Figures 4, 5, 6, 7, 8, 10, 11, 12, and 13 in the Amir Report. These figures all display information that is normally hidden below the fold.
- 4. We can estimate the screen that Dr. Amir would have used to create these screen captures. I will demonstrate this by replicating *Figure 4: Ticketing Page* of the Amir Report.³ We do this by using a feature in the Safari web browser that shows us what resolution is needed to view the webpage at the same size as shown in Figure 4. This developer tool in Safari, called Responsive Design Mode,⁴ is designed to help people who create websites

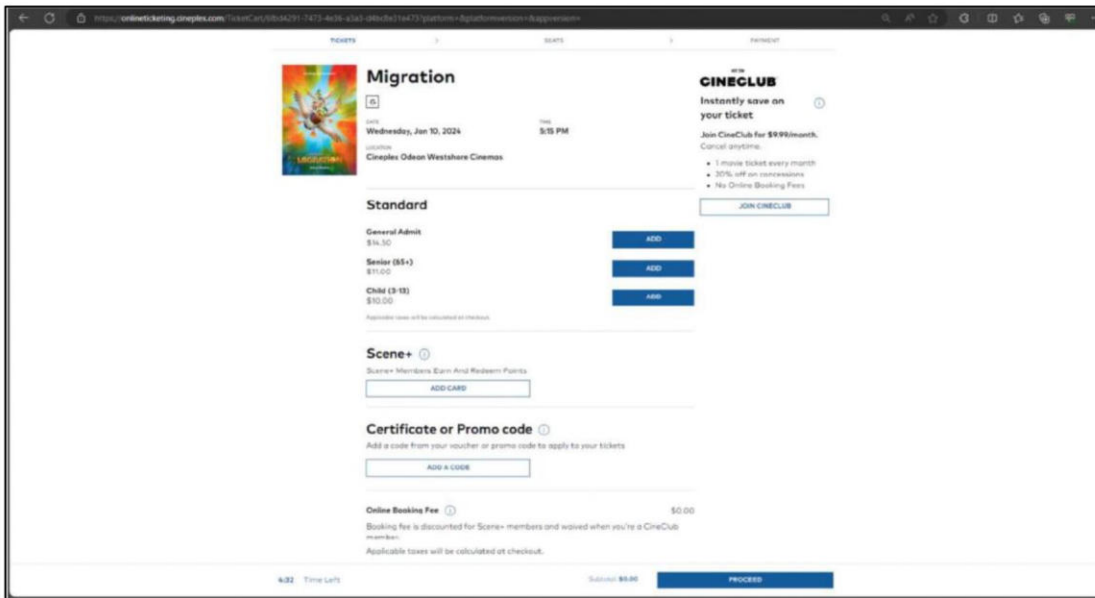
³ Affidavit of Dr. On Amir (Affirmed January 12, 2024). Pages 12-13, Paragraph 17.

⁴ Apple Developer, "Responsive Design Mode", accessed January 24, <https://developer.apple.com/documentation/safari-developer-tools/responsive-design-mode>

test how their sites will look on different screen sizes. This assists designers in deciding where to put content and how to organize information. Other popular web browsers, like Google Chrome, have similar tools that can be added by installing a plugin.

5. When using this tool on Dr. Amir's Figure 4, we see that the capture offered in his analysis relies on a screen resolution of approximately 2,560 pixels by 1,550 pixels. This resolution is so large, that the monitor I used to reproduce this image, a 32-inch Apple Pro Studio Display which is designed for 6K video editing, still has to scale the web page and its contents down 9% to fit on screen as represented in Dr. Amir's example.
6. Additionally, in these figures, in order to display this information, Dr. Amir scrolled down the page to move past the standard Cineplex Website header that contains the logo and navigation bar. The Website header requires an additional 80 pixels of vertical screen real estate that is hidden in these figures, adding to the distorted nature of the captures presented in his report.
7. For reference, *Dr. Amir's Figure 4: Ticketing Page* from the Amir Report:

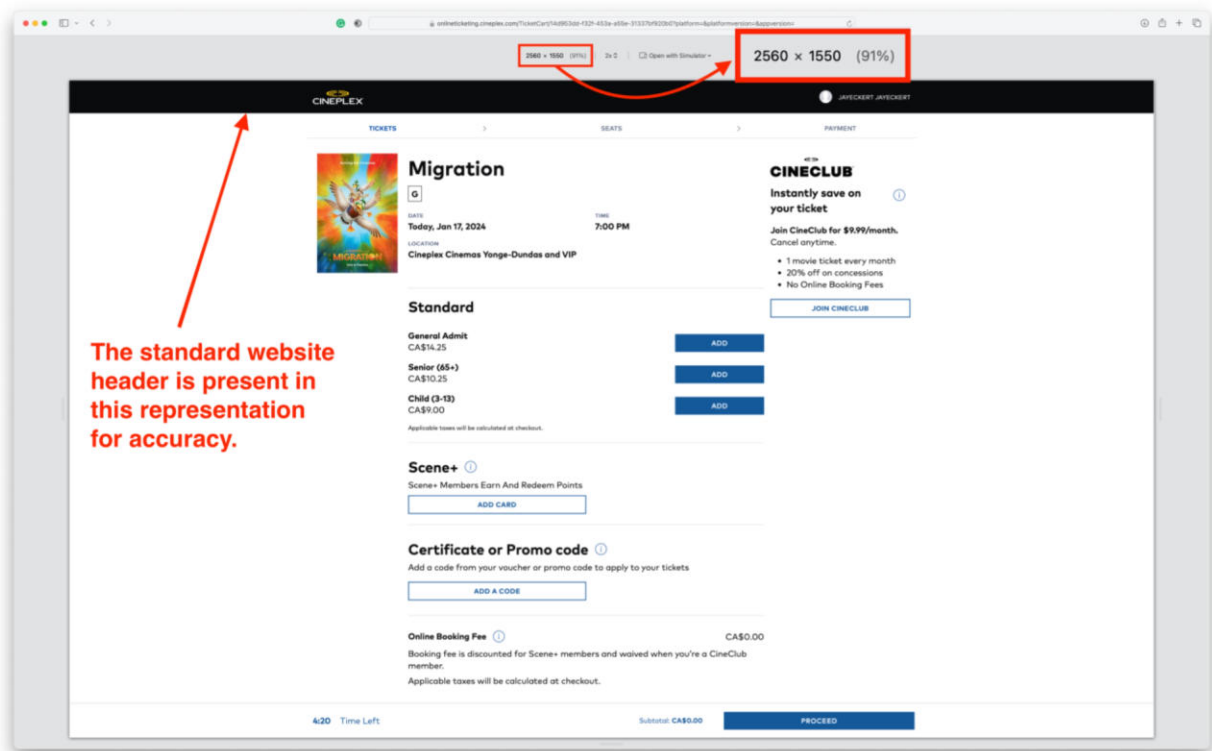
Amir Report Figure 4: Ticketing Page.



8. Figure A below, shows a recreation of the on-screen image from Dr. Amir's Figure 4.⁵ The screen resolution and browser zoom required to display the web page in approximately the same context as the image in Figure 4 are indicated at the top of the web browser, within the red box. I have magnified this portion of the screenshot for visibility within the report. This example also includes the standard Website header that Dr. Amir's Figure 4 does not include.
9. Figure A: Recreation of the screen display from Figure 4 of the Amir Report, using Responsive Design Mode. I use the red arrow to point to the Cineplex header missing in Dr. Amir's screen capture.

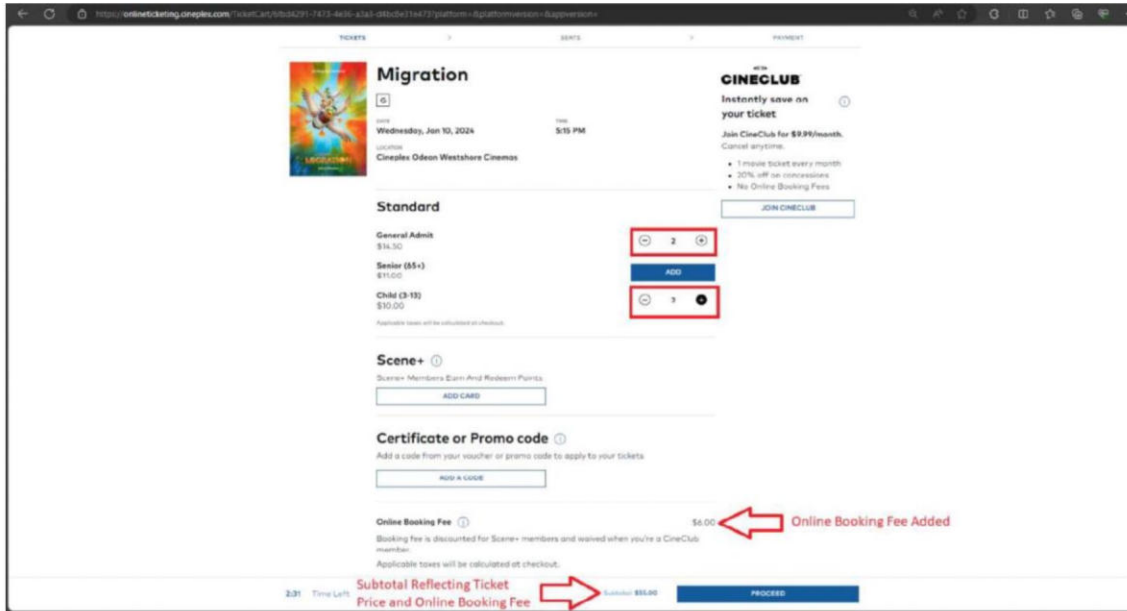
⁵ Tickets Page, Cineplex.com accessed January 17, 2024:
<https://onlineticketing.cineplex.com/TicketCart/9be9cde4-b5b0-4f6c-a33d-ab1fc00e90ee?platform=&platformversion=&appversion=>

Figure A: Recreation of Figure 4 from the Amir Report.



10. As a second example, *Figure 5: Updated Ticket Page* from the Amir Report also does not accurately represent what the typical web user would see on the Tickets Page once they have added tickets to the cart. Like Figure 4 of the Amir Report this capture uses a screen resolution well beyond the capabilities of most web users around the world and scrolls past the standard Cineplex Website header to reveal the Online Booking Fee at the bottom of the page.
11. For reference, *Figure 5: Updated Ticket Page* from the Amir Report:

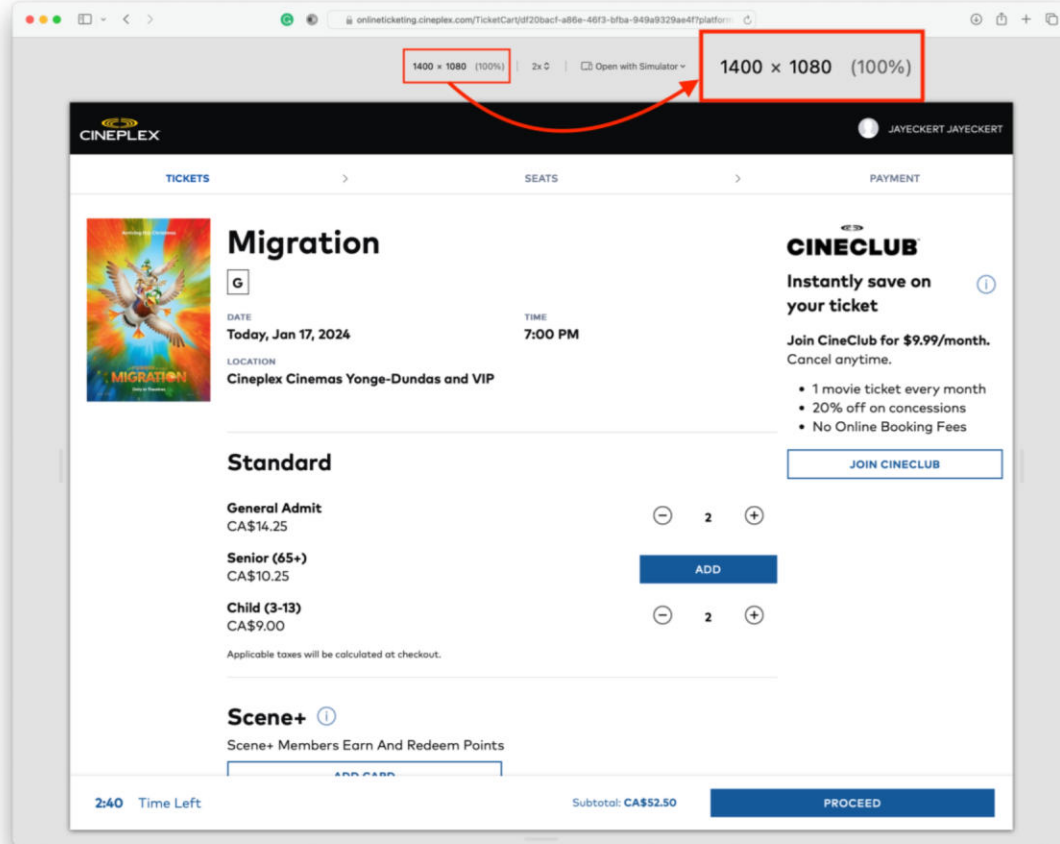
Amir Report Figure 5: Updated Ticket Page.



12. Figure B below shows a recreation of Dr. Amir’s Figure 5 using the accepted maximum screen height derived from all screen resolutions measured and published by GlobalStats as of December 2023 to present a more accurate representation of user experience and visibility of the Online Booking Fee.⁶

⁶ StatCounter Global Stats screen resolution data as of December 2023:
<https://gs.statcounter.com/screen-resolution-stats/desktop/worldwide/#monthly-202211-202311-bar>

Figure B – Recreation of Figure 5 from the Amir Report.



13. As shown in Figure B we can see that information about the Online Booking Fee is not included in the information presented to the user without scrolling and there is no indication that the Online Booking Fee has been added in to the sub-total presented in the floating ribbon at the bottom of the screen.
14. The Amir Report references the *“Impact of E-Commerce Website Usability on User Satisfaction.” Journal of Advanced Computational Intelligence and Intelligent Informatics 23.1 (2019): 91- High usability is the key to the success of an E-commerce website and a determinant factor for users to continue using the website.*⁷ In this reference, the Amir Report notes:

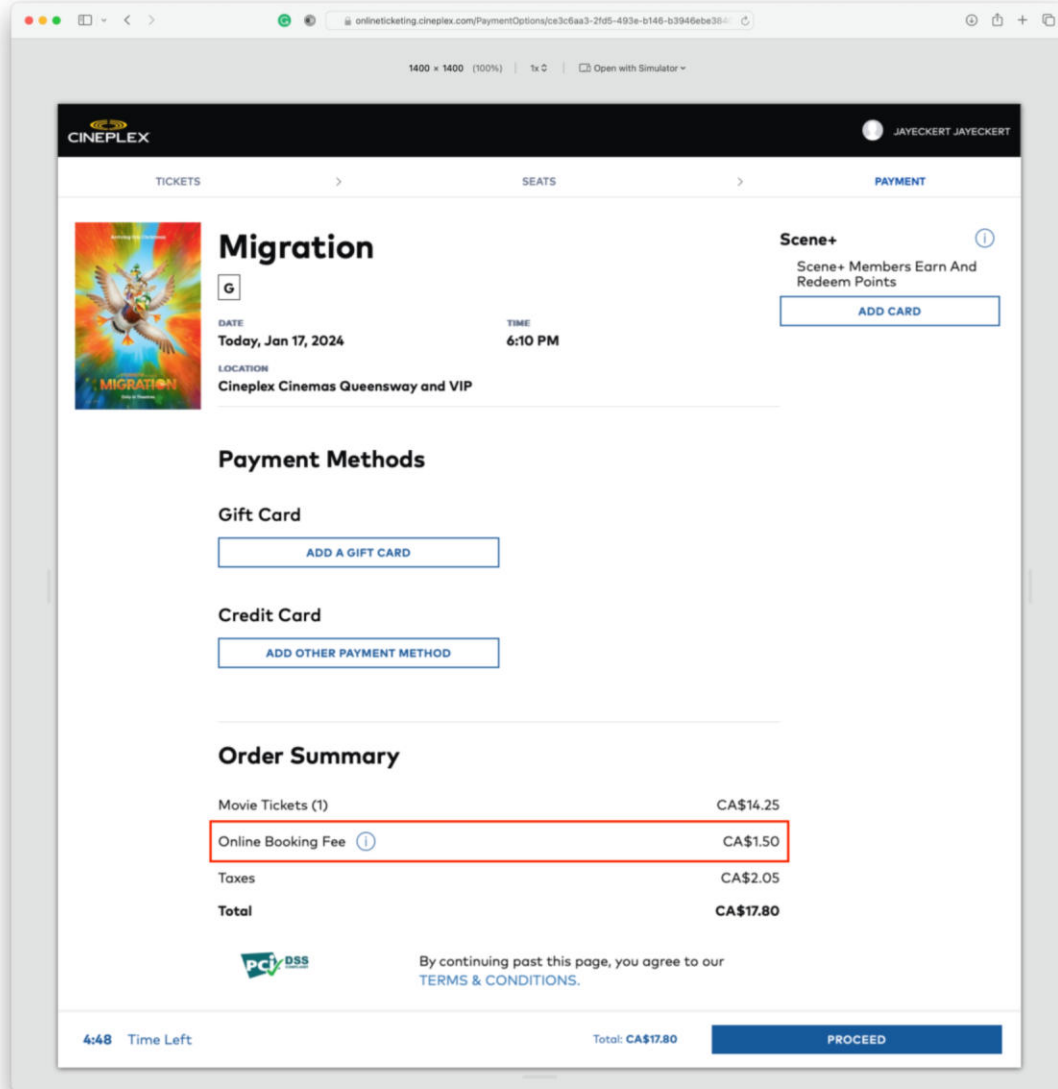
⁷ Affidavit of Dr. On Amir (Affirmed January 12, 2024). Page 18, Footnote 26.

International Journal of Research in Marketing 20 (2003): 153-175 at 174 (“The finding that ease of obtaining information has a stronger effect on both overall satisfaction and loyalty online than offline has important implications. First, a service provider should determine the appropriate information needs of its customers. Second, it should design a website so that the customer can access not only all the relevant information but also access them only when he/she needs it. Third, the company should invest in technologies that search for the right information and retrieve the information as quickly as possible. Fourth, the company may want to focus on creating the right user-interfaces that allow customers to access information in the way that is most convenient for them[.]”). [Emphasis in the original.]

15. This reference does offer fundamental best practices for creating online experiences. However, the Amir Report does not account for the actual experience presented to most Website users when making this assessment.
16. Through my analysis of the Consumer Flow as described in the Amir Report, the only page throughout the entire user experience that presents the Online Booking Fee and an explanation of its application next to, or near the ticket prices is the Order Summary Page, as shown in Figure C below.⁸

⁸ The Cineplex Checkout Page, January 17, 2024:
<https://onlineticketing.cineplex.com/PaymentOptions/ce3c6aa3-2fd5-493e-b146-b3946ebe3840>

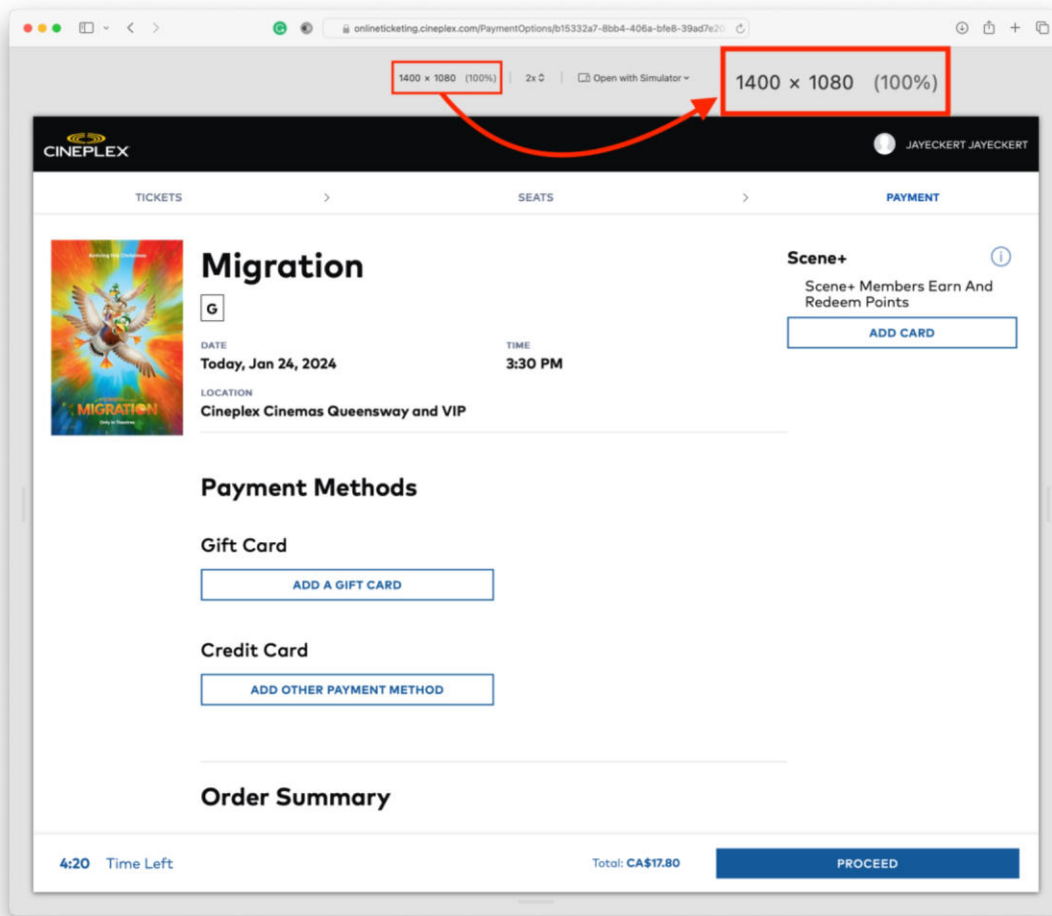
Figure C – Website Order Summary Page.



17. In creating Figure C above, I have used a larger than normal screen resolution to perform the screen capture so that I am able to show the Online Booking Fee and Order Summary above the page fold. I have also added a red box to Figure C, in order to highlight the placement of Online Booking Fee on the Order Summary Page. For the majority of website users, the detailed Order Summary, with the Online Booking Fee, actually appears below the

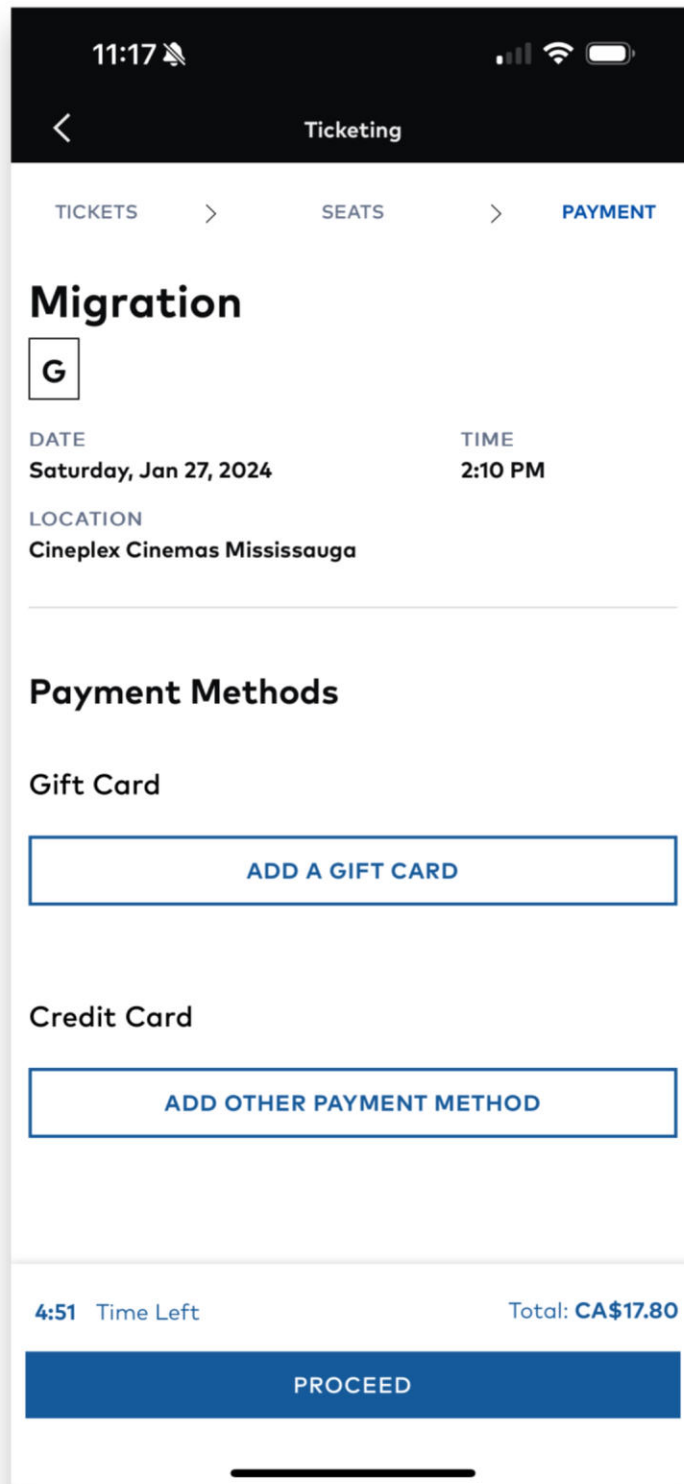
fold, which I have indicated in Figure D⁹ below for illustration purposes. All users of the Mobile App must scroll down below the page fold and floating ribbon to reveal the Order Summary, with the Online Booking Fee as well, as illustrated in Figure E.¹⁰

Figure D: Website Order Summary Page at standard resolution.



⁹ The Cineplex Checkout Page, January 24, 2024:
<https://onlineticketing.cineplex.com/PaymentOptions/b15332a7-8bb4-406a-bfe8-39ad7e2003b5>
¹⁰ The Cineplex Checkout Page, January 24, 2024 captured on iPhone 15 Pro Max.

Figure E: App Order Summary Page.



b. Information about the Online Booking Fee can be communicated in a way that does not create transparency or clutter issues

18. In his report, Dr. Amir describes how the Cineplex website is designed to offer a natural sequence of steps to help consumers purchase a movie ticket online.¹¹ Dr. Amir describes this detailed e-commerce process as the *Consumer Flow for Cineplex Consumers*¹² suggesting that Cineplex makes efforts to build a positive reputation with its customers and notes that user interface design is key in this pursuit, especially for goods sold online.¹³ Noting that the experience on the Cineplex website is crafted towards encouraging online sales, the first call to action presented to the user is “Get Tickets” as referenced in his Figure 2: Movie Detail.¹⁴
19. As Dr. Amir continues with his description of the Consumer Flow the user is presented with Showtime Information¹⁵ and then the Tickets Page¹⁶ where the user enters the sales funnel in the e-commerce experience.
20. Dr. Amir argues that the current design of the Cineplex Website and Mobile App is user-friendly and clear in showing prices. According to Dr. Amir, changing the display to include ticket prices inclusive of the Online Booking Fee would make it more confusing and less transparent potentially leading to negative outcomes for consumers.¹⁷
21. As a professional web designer with more than 20 year’s experience, I agree with Dr. Amir’s statement that clutter can introduce confusion and negatively influence the user experience, especially in key conversion points in the e-

¹¹ Affidavit of Dr. On Amir (Affirmed January 12, 2024). Page 9, Paragraph 12.

¹² Affidavit of Dr. On Amir (Affirmed January 12, 2024). Pages 9-17.

¹³ Affidavit of Dr. On Amir (Affirmed January 12, 2024). Pages 17-18, Paragraph 23.

¹⁴ Affidavit of Dr. On Amir (Affirmed January 12, 2024). Page 11, Figure 2.

¹⁵ Affidavit of Dr. On Amir (Affirmed January 12, 2024). Page 12, Figure 3.

¹⁶ Affidavit of Dr. On Amir (Affirmed January 12, 2024). Page 13, Figure 4.

¹⁷ Affidavit of Dr. On Amir (Affirmed January 12, 2024). Page 21, Paragraph 32.

commerce sales funnel that is carefully and intentionally designed within the Cineplex website.

22. Dr. Amir however fails to consider simple, non-invasive methods to present the user with clear notification of the Online Booking Fee and offer the user the opportunity to understand its application to online ticket purchases, which he states is a valuable part of his Five-Step Model of the consumer decision process.
23. The simplest solution would be to initially display the ticket price inclusive of the Online Booking Fee. After a fourth ticket is selected, the prices can easily be changed to reflect the lower price point for subsequent tickets added. The website already features the required logic to make these calculations as it is already factored into the display of the sub-total in the floating ribbon.
24. Below is an example of a simple design solution to illustrate a more transparent method of displaying this information, which could be presented to the user efficiently without adding clutter to the page layout or requiring the addition of “exceptions.”
25. Figure F presents a minor adjustment to the Tickets Page design to include clear messaging about the application of the Online Booking Fee next to the ticket pricing by including the “Online Price” label. This method also includes the information button that can open the existing pop up to explain the Online Booking Fee in more detail as outlined by Mr. McGrath in his Witness Statement, as illustrated in Figure G.

Figure F – Alternative Website Tickets Page design recommendation for Cineplex account holders who have not linked their Scene+ or CineClub memberships.

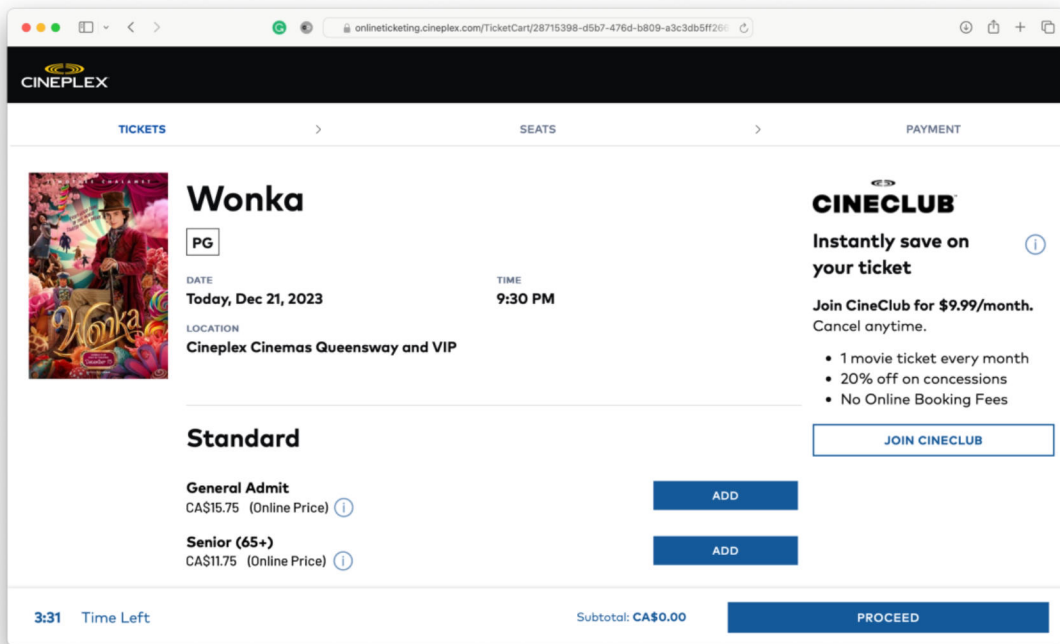
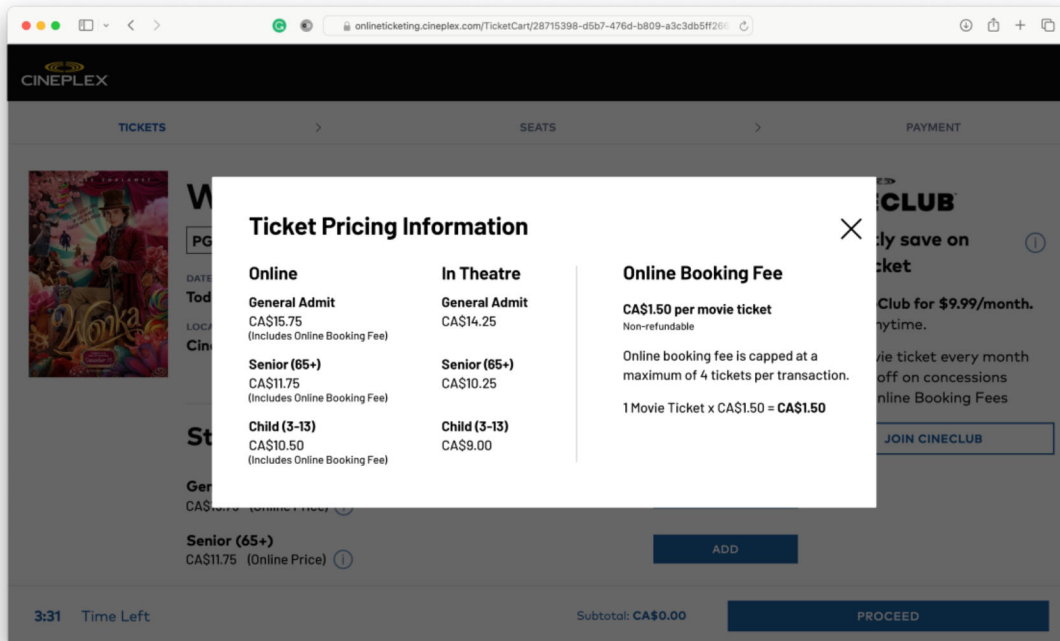
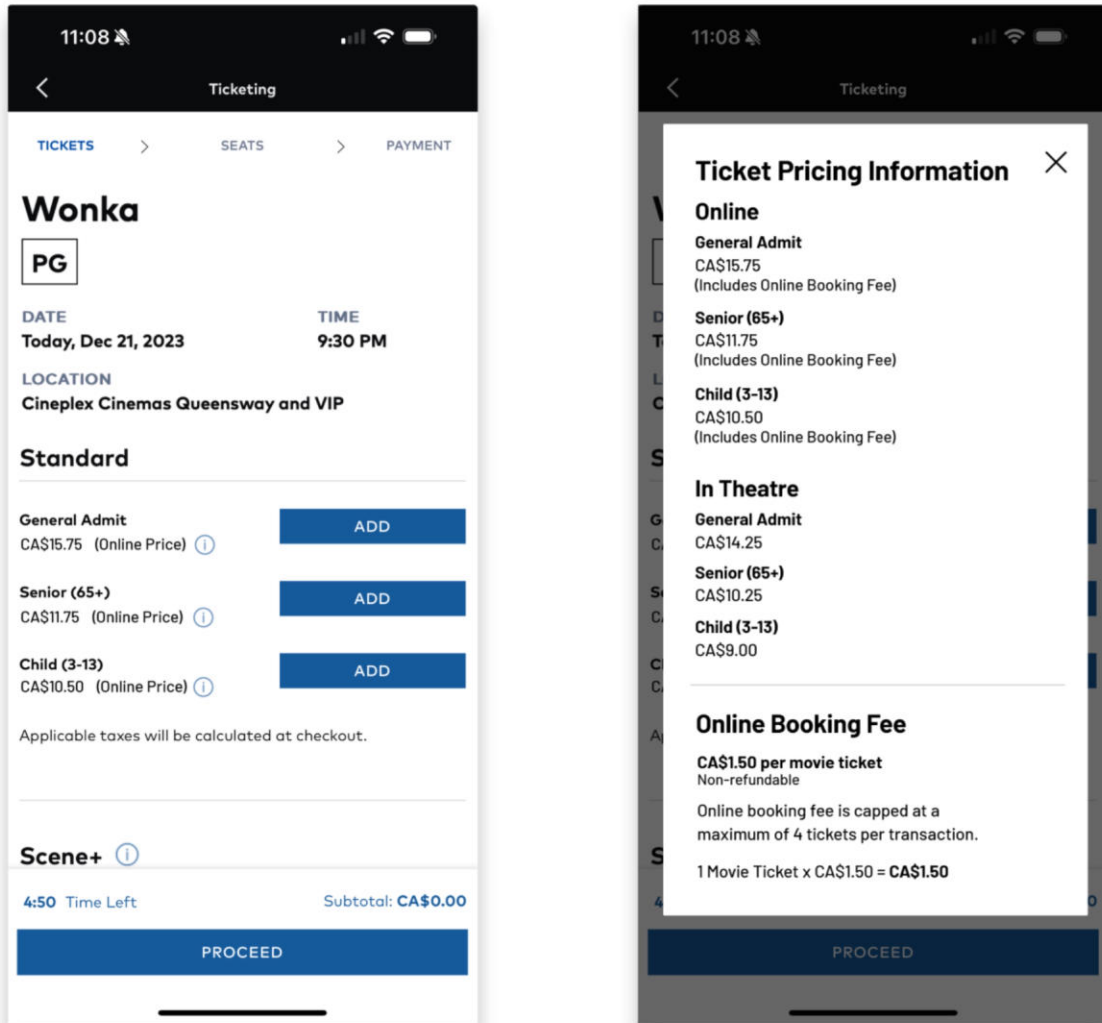


Figure G – Alternative Online Booking Fee information pop up.



26. In Figure G, I have illustrated a simple and transparent method to communicate the definition and application of the Online Booking Fee using the existing information pop up on the Cineplex Website. This design option offers more transparency for the user by clearly stating the “In Theatre” price and the “Online Price” next to the definition of the Online Booking Fee. As the current language and experience offered on the Cineplex website focuses on driving e-commerce sales as outlined in Dr. Amir’s Consumer Flow, this design alternative offers the user full transparency over their options between “In Theatre” and “Online Ticket” sales.
27. Figure F presents a simple and effective design solution to ensure the Online Booking Fee information is present no matter where in the user experience the ticket pricing is displayed. It does not add the clutter or required exceptions that Dr. Amir suggests will impede or confuse the user. In fact, it improves transparency and adds value to the brand experience as Dr. Amir’s references indicate is an important part of the Consumer Flow.
28. Figure H below, is an example of how the design solution in Figure F can be applied to the App:

Figure H – Alternative App Tickets Page design recommendation for Cineplex account holders who have not linked their Scene+ or CineClub memberships.



29. Figures I and J below, is an example of how the Tickets page, and the corresponding information pop up, could adjust the ticket prices once the four ticket cap has been met and the Online Booking Fee is no longer added to the price of a ticket:

Figure I – Alternative Website Tickets Page design with adjusted ticket prices after reaching the four ticket Online Booking Fee cap.

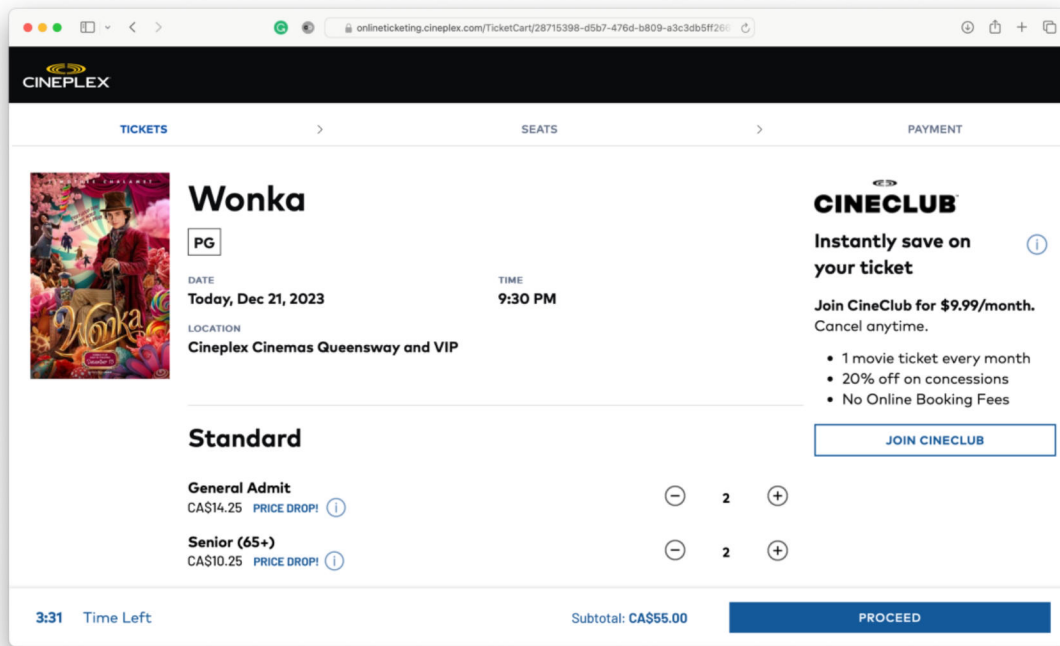
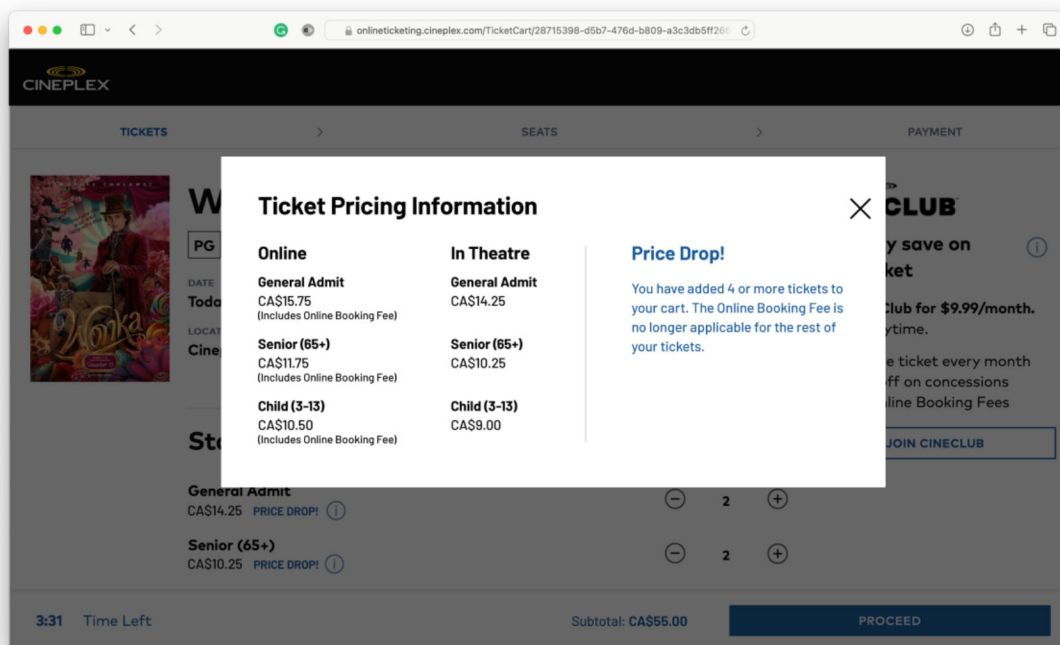


Figure J – Alternative Website Tickets Page design information pop up adjusted after reaching the four ticket Online Booking Fee cap.



30. Dr. Amir states “*The current design of the Cineplex Website and Mobile App is a transparent and intuitive option that better enables consumers to evaluate alternatives and self-sort into consumer groups via welfare-enhancing third-degree price discrimination.*”¹⁸ [Emphasis added.]
31. As discussed throughout my analysis, the Tickets Page on the Website and in the Mobile App do not offer a transparent and intuitive experience for users to make the most informed decision about their purchase because information about the Online Booking Fee is hidden below the fold for most consumers. As shown in the alternative design considerations for the Cineplex Tickets Page in Figures F - I, a few very minor adjustments to the information design on the page without any layout adjustments will make a very significant difference for the common user and allow them to make a more informed decision about their purchase.

c. Response to Dr. Amir’s data analysis and comments on the percentage of visitors that did not see the Tickets Page

32. Dr. Amir conducted an analysis of analytics data reported from Cineplex’s Adobe Analytics in doing so he appears to confuse the concept of visits with visitors.¹⁹
33. To understand this issue, we can consider Adobe Analytics definitions of “Visits” and “Visitors”. A “Visit” is a sequence of page views in a sitting or viewing “session”, which consists of multiple page views, while the term “Visitor” refers to the actual number of unique users to a website for a selected period of time.²⁰

¹⁸ Affidavit of Dr. On Amir (Affirmed January 12, 2024). Page 29, Paragraph 56.

¹⁹ Affidavit of Dr. On Amir (Affirmed January 12, 2024). Page 27, Paragraphs 46-48.

²⁰ Adobe Experience League: <https://experienceleague.adobe.com/docs/analytics-learn/tutorials/analysis-workspace/metrics/understanding-basic-visitor-metrics.html?lang=en#:~:text=Now%20the%20difference%20between%20a,%20time%20out%20period%20reached.>

34. Referencing “Visits” as actual “Visitors” creates a high likelihood of flawed outcomes in the analysis as Adobe outlined there is behaviour that affects how visits are calculated, which varies.²¹ As Adobe states, if a visitor performs any of the following actions, a new visit starts:

- Clears their cache mid-session and continues browsing your site
- Leaves your site open in a tab for longer than 30 minutes, then continues browsing
- Opens a different browser and navigates to your site on the same computer
- The same person browsing your site on different devices²²

d. Response to Dr. Amir’s data criticism and the comments on the use of the Zoom function

35. Dr. Amir is critical of my analysis because it is “*not supported by data or analysis of actual Cineplex consumers.*”²³ [Emphasis added.]

36. I agree with Dr. Amir that analytical information about Cineplex’s consumers’ screen resolution and scroll behaviour would provide the best insight into the consumer experience. However, Dr. Amir did not acknowledge in his report that Cineplex apparently does not track one of the most important user metrics, which is scroll behaviour.²⁴

37. Additionally, Cineplex has not provided audience screen resolution data from Adobe Analytics for analysis in this matter.

38. As such, as I said in my main report, in situations where direct audience analytics are not available, best practice dictates that the web designer follow

²¹ Adobe Experience League:

<https://experienceleague.adobe.com/docs/analytics/components/metrics/visits.html?lang=en>

²² Adobe Experience League:

<https://experienceleague.adobe.com/docs/analytics/components/metrics/visits.html?lang=en>

²³ Affidavit of Dr. On Amir (Affirmed January 12, 2024). Page 38, Paragraph 83.

²⁴ Undertaking Responses, Section 5a, *BLG Letter to the Commissioner re Answers to Follow Up Questions Arising from Answers to Undertakings and Under Advisements.pdf*

industry-wide accepted screen resolution metrics.²⁵ This practice is paramount throughout the professional web design industry, published on agency websites²⁶ and professional grade website testing platforms, such as BrowserStack for designers and developers to reference.²⁷

39. I personally review website analytics for hundreds of websites every year for my agency's clients and in more than 20 years have not encountered any website's analytics data suggesting a measurable volume of extremely high screen resolution traffic as Dr. Amir presents in his screenshots. Therefore, based on stated industry-wide best practices, globally sourced universal analytics, and user technology data along with my twenty-plus years of professional experience in the web design industry I am confident in the screen resolution data used to produce my analysis of the user experience on Cineplex's Website and App.
40. In his analysis, Dr. Amir does not recognize the importance of screen resolution and its importance within the modern website design process. As stated previously, web designers must design experiences for the technology that the majority of the audience will use to interact with the website or application.²⁸
41. Dr. Amir's focus on marketing theory in place of basic user experience design fundamentals does not address the transparency issues and experience on Cineplex's Tickets Page. This issue is compounded by Dr. Amir's use of screenshots captured at unrealistic screen resolutions, which are scrolled past the standard website header to reveal information normally hidden from

²⁵ Reference "Standard Screen Dimensions and Resolutions"; Affidavit of Jay Eckert (Affirmed January 5, 2024). Page 21, Paragraph 41.

²⁶ TopTal, "Responsive Design: Best Practices and Considerations", see "What Screen Resolutions are Relevant for Responsive Web Design?"; <https://www.toptal.com/designers/responsive/responsive-design-best-practices>

²⁷ BrowserStack, "What is the Ideal Screen Size for Responsive Web Design" see "Common Screen Resolutions for Desktop in 2023"; <https://www.browserstack.com/guide/ideal-screen-sizes-for-responsive-design>

²⁸ Reference "Discovery and Analytics Research"; Affidavit of Jay Eckert (Affirmed January 5, 2024). Pages 11-12, Paragraph 19.

view of what the vast majority of Website and App users experience on Cineplex's Tickets Page.

42. Dr. Amir also suggests that the analysis in my main report ignores relevant factors that would affect user experience and notes "browser zoom level" as a single example.²⁹
43. It is important to understand why users employ the zoom function.³⁰ The browser zoom function allows users with low visual acuity the ability to zoom in to a web page, or make the elements of the web page larger to improve its legibility. People who have vision-related disabilities may scale content to make text more readable, and people with certain neurocognitive differences may use the same approach to focus on a single line or paragraph.³¹
44. When Cineplex's Tickets Page is "zoomed in" the important information that is already below the page fold, is in fact pushed even further down the page as all the elements on the web page increase in size.
45. If users were to "zoom out" significantly in order to see the entire Tickets Page, which Dr. Amir suggests is normal behaviour,³² this would introduce a number of additional challenges as buttons, text and information would become so small the average user would not be able to read them.
46. Additionally, Dr. Amir has provided several marketing theory references from the International Journal of Research in Marketing³³ discussing the

²⁹ Affidavit of Dr. On Amir (Affirmed January 12, 2024). Page 38, Paragraph 86.

³⁰ Affidavit of Dr. On Amir (Affirmed January 12, 2024). Page 18, Footnote 26.

³¹ Bureau of Internet Accessibility, "Web Accessibility Tips: Don't Disable Zooming (Yes, Even On Mobile)"; <https://www.boia.org/blog/web-accessibility-tips-dont-disable-zooming-yes-even-on-mobile>

³² Affidavit of Dr. On Amir (Affirmed January 12, 2024). Page 39, Paragraph 86.

³³ For example, Affidavit of Dr. On Amir (Affirmed January 12, 2024). Page 18, Footnote 24 references, 'Shankar, Venkatesh, Amy K. Smith, and Arvind Rangaswamy. "Customer Satisfaction and Loyalty in Online and Offline Environments." *International Journal of Research in Marketing* 20 (2003): 153-175 at 174 ("The finding that ease of obtaining information has a stronger effect on both overall satisfaction and loyalty online than offline has important implications.").

importance of creating the right user-interfaces that allow customers to access information in the way that is most convenient for them.³⁴ By default, all web browsers magnification is set to 0%, meaning standard resolution or no magnification.

47. If the expectation is for users to “zoom out” or reduce standard magnification to view important information or have to reveal an entire page on screen to ensure they do not miss anything, we are not following this proposed best practice as we would be expecting the user to perform unusual and unnatural actions to view the web page. Dr. Amir also does not address how his opinion affects the mobile environment where screen resolution and browser zoom cannot be so easily manipulated.

e. Response to the claim that information on the Tickets Page uses large font

48. I have reviewed Mr. McGrath’s Witness Statement and attached video referenced as Exhibit A. I have found similar issues with the screen captures presented as examples of the Tickets Page in the McGrath Witness Statement as I described above with respect to the Amir Report.
49. I also disagree with Mr. McGrath’s statements about the design of the Tickets Page for the reasons outlined in my initial report.
50. Mr. McGrath states *“The information that is presented on the ‘Tickets’ page of the Website is clearly laid out using a large font that is consistent throughout.”*³⁵ [Emphasis added.] He then states *“I have reviewed the Commissioner’s allegations at paragraph 22 of the Application. Contrary to the Commissioner’s allegations, both the Website and App use **the same font** and font size for pricing throughout the ‘Tickets’ page. Further, the subtotal is shown in a more prominent bold blue font and appears directly*

³⁴ Affidavit of Dr. On Amir (Affirmed January 12, 2024). Page 18, Footnote 26.

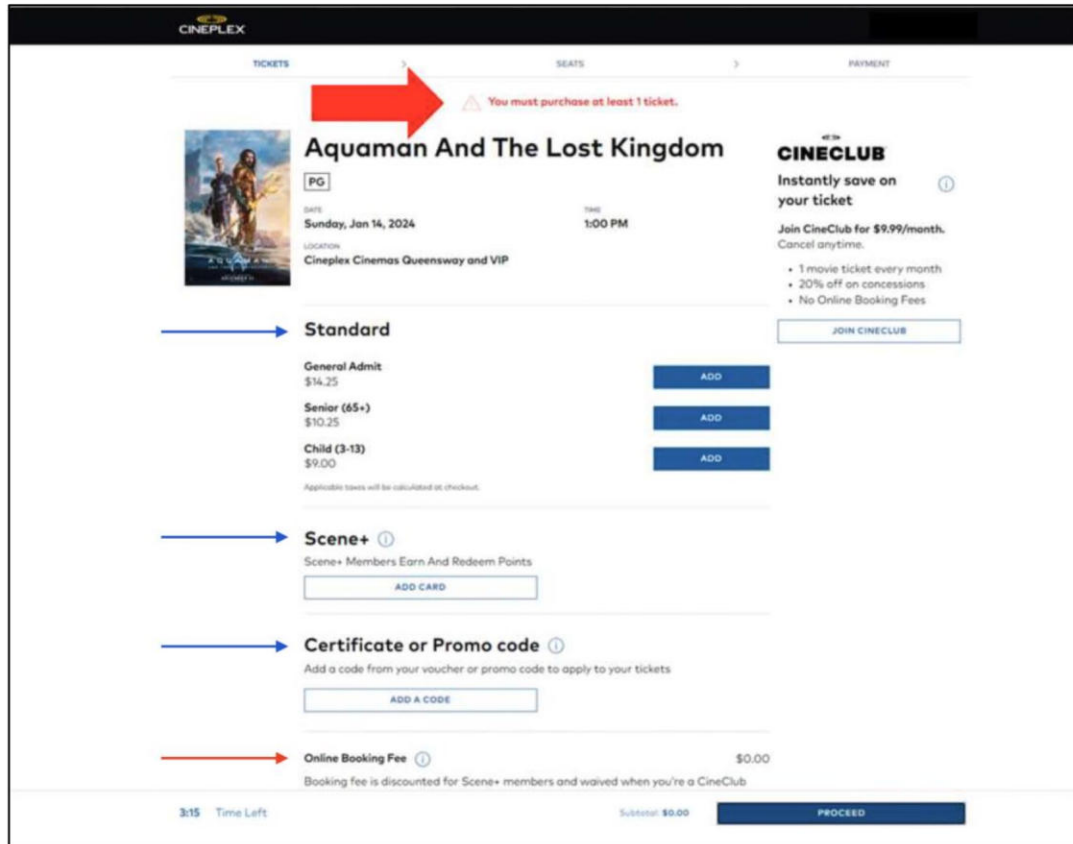
³⁵ Witness Statement of Daniel Francis McGrath, affirmed January 12, 2024 Page 24, Paragraph 84.

beside the prominently displayed 'Proceed' button."³⁶ [Italics added, bold emphasis in the original.]

51. Mr. McGrath's statement of font size and treatment being consistent throughout the Tickets Page is inaccurate as shown in his own screenshot references. Using Figure 4 of the McGrath Witness Statement as a reference, it is clear that the Online Booking Fee heading is presented at a significantly smaller font size than similar headings around it.
52. Included below as Figure K is a modified version of Figure 5 of the McGrath Witness Statement, with references to headings and font size. Note, the large red arrow at the top of the image was inserted by Mr. McGrath in Figure 5 of the McGrath Witness Statement. The small red arrow added at the bottom of the page, points to the smaller font of a pricing-related representation.

³⁶ Witness Statement of Daniel Francis McGrath, affirmed January 12, 2024 Page 27, Paragraph 88.

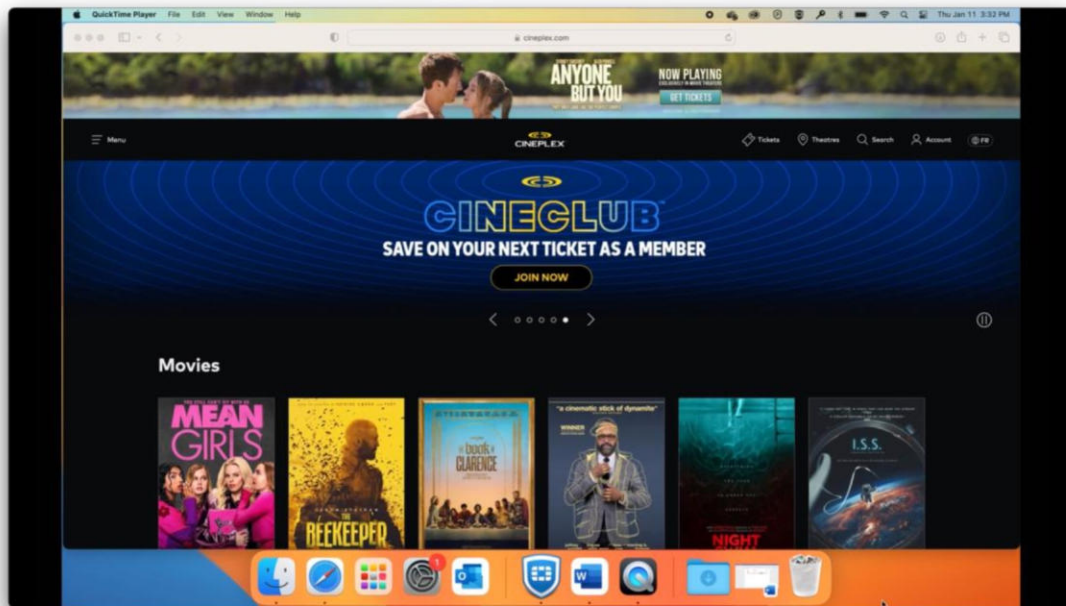
Figure K – Modified version of Figure 5 of the McGrath Witness Statement with headings and font size references.



f. Analysis of The Video: Exhibit A

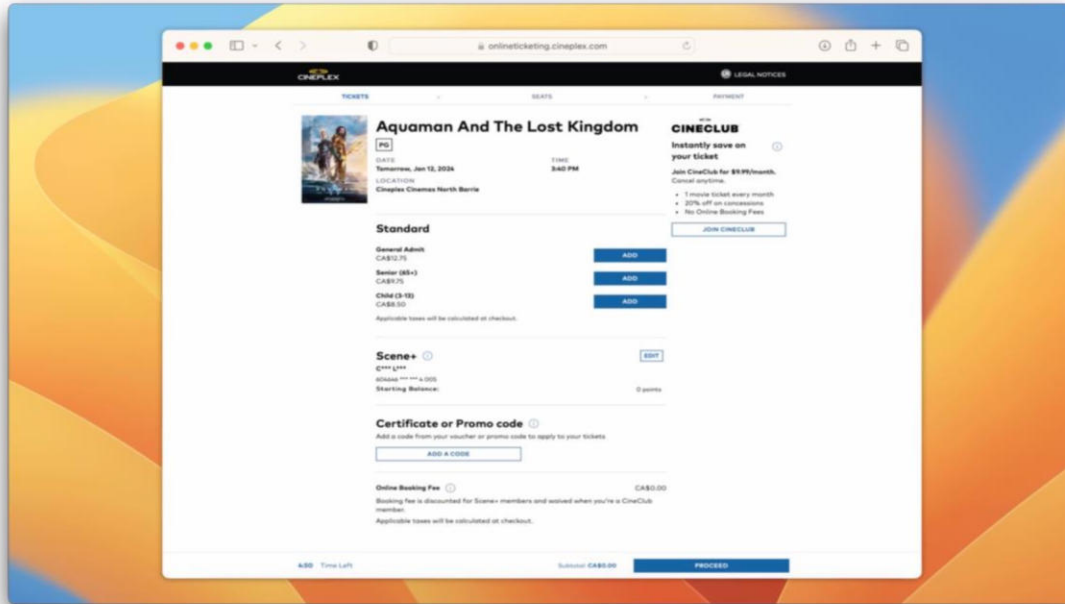
53. The video presented by Mr. McGrath as Exhibit A helps to illustrate that the screenshots are captured at unrealistic screen resolutions that do not reflect the common user experience for the vast majority of users presented by both Dr. Amir and Mr. McGrath.
54. For the first 5 minutes and 46 seconds of the video we see Mr. McGrath interacting with the live Cineplex Website at what appears to be a common screen resolution determined by the amount of information available in the browser above the page fold, even as he presents the website at full screen. Figure L captures the first phase of the video featuring the live Website as Mr. McGrath provides a tour through the different features and pages.

Figure L: The Video Introduction.



55. Once Mr. McGrath selects a movie and a theatre and enters the Tickets Page, we are suddenly presented with a much different view of the Website which creates an inaccurate impression that the entire Tickets Page is visible on the screen without the need for the user to scroll to discover the Online Booking Fee. Additionally, the Mac OS information bar at the top of the screen and the menu or task bar at the bottom of the screen are missing. Figure M captures the change in resolution and presentation of the website at 5 minutes and 47 seconds in the video.

Figure M: McGrath Witness Statement Exhibit A – The Video, Tickets Page.



56. Throughout the next minute and 35 seconds the browser changes shape, dimension and zoom level multiple times as Mr. McGrath continues his tour. Multiple Cineplex accounts are used during this sequence indicated in the top right corner of the browser, including "Legal Notices", "Expert One" and "Blank." Through parts of this segment of the video the countdown timer in the bottom left corner of the floating ribbon is static and not counting down.
57. All of these factors indicate that this is not the true Website experience presented in the web browser as suggested in the beginning of Mr. McGrath's video, but instead a series of static screenshots that have been manipulated.
58. This segment of the video, relating to the Tickets Page only, has been manipulated to present an image that the majority of web users will not experience. In reality, the countdown timer runs for 5 minutes, while Mr. McGrath spends approximately 1 minute and 35 seconds explaining the Tickets page. Therefore, there is no reason to change course from using a live web browser to displaying static images of the Tickets Page.

59. At 7 minutes and 38 seconds the video returns to the live browser and displays the Tickets Page again, now at what appears to be a significantly “zoomed out” scale that presents the appearance that the Online Booking Fee is visible to users without requiring them to scroll down.
60. The adjustment in page zoom is evident as the scale of common page elements have changed compared to the first portion of the video. Figures N and O below measure the height of the header on the Website’s homepage and the Tickets Page as they appear in the video attached as Exhibit A of the McGrath Witness Statement.

Figure N – Mr. McGrath’s initial representation at normal resolution in the video, appended as Exhibit A to the McGrath Witness Statement.

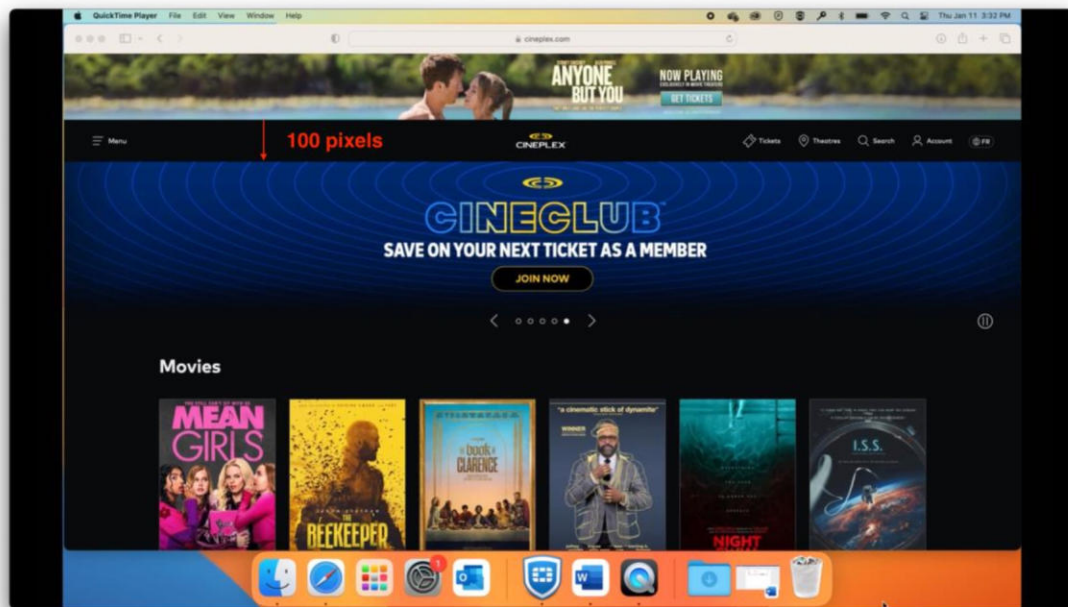
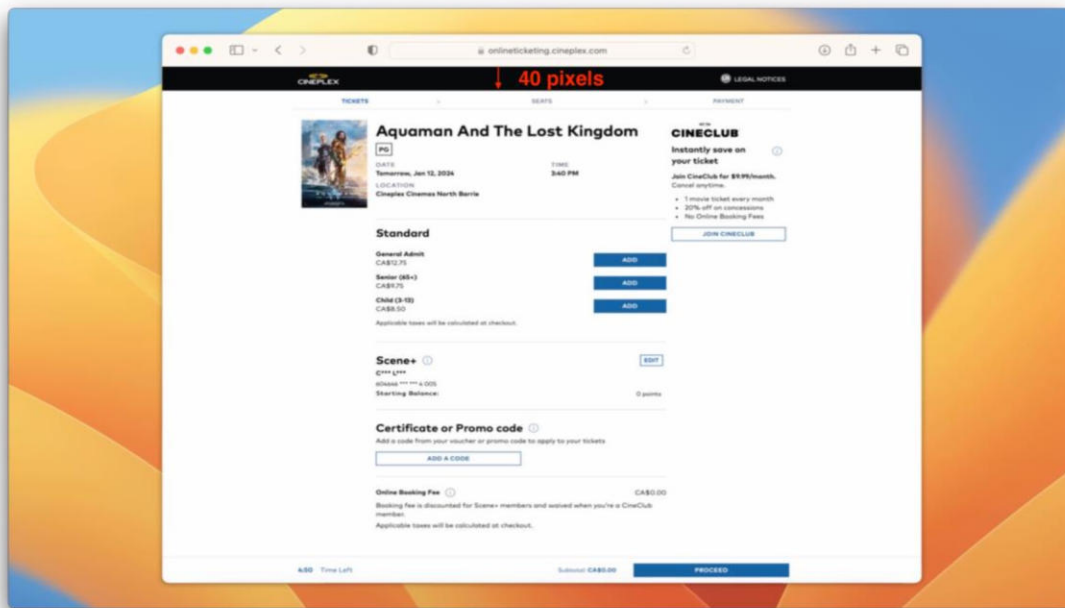


Figure O – Mr. McGrath’s altered representation of the Ticket’s Page using the browser zoom function in the video, appended as Exhibit A to the McGrath Witness Statement.



61. With the header shrinking from 100 pixels to 40 pixels in height, it is clear that the presentation of the Tickets page, as displayed in Figure O, in Mr. McGrath’s video has been zoomed out at least 50%.
62. Mr. McGrath attempts to present an image of the user experience and presentation of information regarding the Online Booking Fee on the Tickets Page using a similar technique to Dr. Amir that creates a depiction that does not represent the true viewable state of the Tickets page for the majority of users. Mr. McGrath also chooses to present only the desktop computer environment where browser behaviour may be manipulated and fails to present any references to the mobile web view of the Website and App where screen dimensions are fixed by the device.

CT-2023-003

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34,
as amended;

AND IN THE MATTER OF an application by the Commissioner
of Competition for an order pursuant to section 74.1 of the
Competition Act and subsection 74.01(1.1) of the *Competition
Act*;

BETWEEN:

COMMISSIONER OF COMPETITION

Applicant

– and –

CINEPLEX INC.

Respondent

**AFFIDAVIT OF JAY ECKERT
(AFFIRMED JANUARY 29, 2024)**
