SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NASSAU

CLAIR AWAD and VIVIAN PICCIOTTI, on behalf of themselves and all others similarly situated, Plaintiffs, v. AMC ENTERTAINMENT HOLDINGS, INC., Defendant.	Index No. 607322/2024 Motion Seq. No. 004

AFFIRMATION OF PHILIP L. FRAIETTA IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL CERTIFICATION OF THE SETTLEMENT CLASS AND FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT

Philip L. Fraietta, Esq., an attorney duly admitted to practice law in the courts of the State of New York, does state and say under penalty of perjury as follows:

1. I am a partner at Bursor & Fisher, P.A., and I am Class Counsel in this action. I am an attorney at law licensed to practice in the State of New York. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would testify competently thereto.

2. I make this affirmation in support of Plaintiffs' Unopposed Motion for Final Certification of the Settlement Class and Final Approval of the Class Action Settlement. Attached hereto as **Exhibit 1** is a true and correct copy of the Parties' Class Action Settlement Agreement, and the exhibits attached thereto. Attached as **Exhibits B-C** to the Settlement Agreement are the Proposed Class Notices.

3. Beginning in November 2023, my firm commenced a pre-suit investigation of companies' violations of the newly-enacted New York Arts and Cultural Affairs Law ("ACAL")

§ 25.07(4), including Defendant AMC Entertainment Holdings, Inc. ("Defendant"). Our investigation was extensive and involved in-depth research into the legislative history of ACAL § 25.07(4), issues pertaining to statutory interpretation under New York law, as well as factual research regarding Defendant's website and implementation of Convenience Fees.

4. On January 5, 2024, Plaintiff Picciotti and Class Counsel filed a putative class action in the United States District Court for the Southern District of New York. The material allegations of the Complaint center on Defendant's alleged failure to disclose a $2.19 Convenience Fee for tickets to its movie theaters in New York state prior to those tickets being selected for purchase, in alleged violation of ACAL § 25.07(4).

5. On March 22, 2024, the parties to the federal action submitted a joint letter to the federal court in which Defendant asserted that it contested Plaintiff Picciotti's standing to pursue her claims in federal court under Article III of the Constitution, and therefore contested the federal court's subject-matter jurisdiction. On March 29, 2024, Defendant also filed a motion to compel arbitration and stay the federal case.

6. From the outset of the case, the Parties engaged in settlement discussions and, to that end, agreed to participate in a private mediation with Judge Scheindlin.

7. As part of the mediation, the Parties exchanged informal discovery, including on issues such as the size and scope of the putative class, specifically the amount of convenience fees Defendant collected during the relevant time period. That informal discovery showed that Defendant collected $10,789,345 in Convenience Fees from August 29, 2022 through and including January 16, 2024.

8. Given that the information exchanged would have been, in large part, the same information produced in formal discovery related to issues of class certification and summary

judgment, the Parties had sufficient information to assess the strengths and weaknesses of the claims and defenses.

9. On April 24, 2024, the Parties conducted a full-day mediation before Judge Scheindlin at the New York City offices of Boies Schiller Flexner LLP. At the conclusion of the mediation, the Parties reached an agreement on all material terms of a class action settlement and executed a term sheet.

10. On April 26, 2024, Plaintiff Picciotti voluntarily dismissed the federal action without prejudice, and that same day, Plaintiffs filed this case in the Supreme Court of the State of New York, County of Nassau. Attached hereto as **Exhibit 4** is a true and correct copy of the Class Action Complaint.

11. In the weeks following, the Parties engaged a Settlement Administrator and, in consultation with the Settlement Administrator on matters of notice and claims administration, negotiated the full-form Settlement Agreement. *See* Ex. 1. That process included multiple rounds of redlines and phone calls to discuss proposed edits, as well as phone calls with the Settlement Administrator to discuss the most efficient way of compensating Settlement Class Members. No other agreement besides the Settlement Agreement exists in this case.

12. Defendant has agreed to make $10,335,402 available to pay approved class member claims who opt for the cash settlement option, and to separately pay notice and administration costs, service awards of the Plaintiffs, and attorneys' fees, costs, and expenses to Proposed Class Counsel. The resulting $10,335,402 Proposed Settlement secures extraordinary relief for the class. Based on Defendant's records the proposed Settlement Class includes approximately 1,476,486 persons who (i) purchased electronic tickets to Defendant's Places of Entertainment on Defendant's website https://www.amctheatres.com/ and mobile application,

from August 29, 2022 through and including January 16, 2024; and (ii) paid a Convenience Fee in connection with such purchase.

13. Defendant's records reflect that, on average, each Settlement Class Member paid approximately $7.00 in Convenience Fees during the class period, and the Settlement provides that each valid claimant who chooses the cash option will receive $7.00, in essence, a full refund. Settlement ¶¶ 1.9; 2.1(a). Settlement Class Members who do not submit a claim form electing to receive a cash payment will automatically receive an invitation for a free one-year enrollment into the AMC Stubs Premiere Membership, which provides meaningful benefits to Settlement Class Members, including the ability to purchase convenience fee-free tickets, free concessions, and free concession upgrades. Settlement ¶¶ 1.2, 2.1(b). AMC's internal records confirm that, on average, AMC Stubs Premiere Members save approximately $40 per year.

14. The Settlement also provides meaningful prospective relief. Defendant acknowledges that effective January 17, 2024, it has changed the purchase flow for tickets to New York theaters on its website to disclose the convenience fee at issue in this litigation before the ticket is selected for purchase, and agrees to continue to comply with New York Arts & Cultural Affairs Law § 25.07(4) going forward. Settlement ¶ 2.2.

15. After finalizing and executing the Class Action Settlement Agreement, my firm prepared Plaintiffs' Motion For Preliminary Approval, which was filed on May 27, 2024. *See* NYSCEF Doc. No. 16.

16. The Court preliminarily approved the Settlement on August 22, 2024. *See* NYSCEF Doc. No. 29. Attached hereto as **Exhibit 2** is the Court's Preliminary Approval Order.

17. The Parties agreed to the terms of the Settlement through experienced counsel who possessed all the information necessary to evaluate the case, determined all the contours of

the proposed class, and reached a fair and reasonable compromise after negotiating the terms of the Settlement at arms' length.

18. Plaintiffs and Class Counsel recognize that despite our belief in the strength of Plaintiffs' claims, and Plaintiffs' and the Class's ability to secure an award of damages under ACAL §§ 25.07(4) and 25.33, the expense, duration, and complexity of protracted litigation would be substantial and the outcome of trial uncertain. Thus, the Settlement secures a more proximate and more certain monetary benefit to the Class than continued litigation.

19. Plaintiffs and proposed Class Counsel are also mindful that absent a settlement, the success of Defendant's various defenses in this case could deprive the Plaintiffs and the Settlement Class Members of any potential relief whatsoever. Proposed Class Counsel filed the very first case under the newly enacted ACAL § 25.07(4) in December 2023, and still today none have advanced to contested class certification, summary judgment, or trial. Numerous motions to dismiss also remain pending. *See, e.g.*, *Summerville v. Gotham Comedy Foundation, Inc.*, Case No. 24-cv-01484-ER, ECF No. 15 (S.D.N.Y. June 21, 2024); *Presson v. Alamo Intermediate II Holdings, LLC*, Case No. 24-cv-00170-ER (S.D.N.Y. June 21, 2024); *Bingahlan v. American Museum of the Moving Image d/b/a Museum of the Moving Image*, Index No. 703696/2024, NYSCEF No. 15 (Sup. Ct. Queens Cnty. July 2, 2024); *Cammayo v. 1and8, Inc. d/b/a Museum of Ice Cream*, Index No. 150173/2024, NYSCEF No. 29 (Sup. Ct. Richmond Cnty. Aug. 26, 2024). Proposed Class Counsel is experienced and realistic, and understands that the resolution of class certification, liability issues, the outcome of the trial, and the inevitable appeals, all pose meaningful risks in terms of outcome and duration.

20. Defendant is also represented by highly experienced attorneys who have made clear that absent a settlement, they were prepared to continue their vigorous defense of this case,

including by moving to dismiss the Complaint, and, if unsuccessful, moving for summary judgment after discovery. More specifically, Plaintiffs and Class Counsel are aware that Defendant would continue to assert a number of defenses on the merits, including that Plaintiffs' allegations are insufficient because: (i) Plaintiff fails to allege more than a "bare procedural violation" of the ACAL, (ii) Plaintiffs' claims are barred by the voluntary payment doctrine; (iii) Plaintiffs are precluded from seeking a statutory penalty in a class action and the pertinent statute provides for an excessive penalty that is constitutionally infirm; and (iv) Plaintiffs have agreed to a class action waiver and are required to arbitrate their claims. Indeed, two New York state courts have dismissed similar ACAL claims on motions to dismiss. *See Curanaj v. Tao Group, Inc.*, Index No. 56152/2024, NYSCEF No. 36 (Sup. Ct. Westchester Cnty. July 25, 2024); *Frias v. City Winery New York, LLC*, Index No. 651284/2024 (Sup. Ct. New York Cnty. Oct. 15, 2024). Defendant would have also vigorously contested the certification of a litigation class. An adverse ruling on any of those defenses would have resulted in Plaintiffs and the Settlement Class receiving a substantially reduced recovery, or no recovery at all. Looking beyond trial, Plaintiffs are keenly aware that Defendant could appeal the merits of any adverse decision.

21. Plaintiffs and Class Counsel believe that the monetary relief provided by the settlement weighs heavily in favor of a finding that the settlement is fair, reasonable, and adequate, and well within the range of approval. Indeed, the average Settlement Class Member incurred approximately $7.00 in Convenience Fees during the class period.

22. Attached hereto as **Exhibit 3** is a current firm resume for Bursor & Fisher, P.A.

23. As aforementioned, my firm, Bursor & Fisher, P.A., has significant experience in litigating class actions of similar size, scope, and complexity to the instant action. (*See* Ex. 13; Firm Resume of Bursor & Fisher, P.A.). Indeed, my firm has brought several other cases on

behalf of putative class members for violations of ACAL § 25.07(4). *See*, *e.g.*, cases cited at Paragraph 19, *supra*.

24. In addition, my firm has also been recognized by courts across the country for its expertise. (*See* Ex. 13); *see also Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561, 566 (S.D.N.Y. Feb. 25, 2014) (Rakoff, J.) ("Bursor & Fisher, P.A., are class action lawyers who have experience litigating consumer claims. … The firm has been appointed class counsel in dozens of cases in both federal and state courts, and has won multi-million dollar verdicts or recoveries in five class action jury trials since 2008.") [1]; *In re Welspun Litigation*, Case No. 16-cv-06792-RJS (S.D.N.Y. January 26, 2017) (appointing Bursor & Fisher interim lead counsel to represent a proposed nationwide class of purchasers of mislabeled Welspun Egyptian cotton bedding products).

25. Moreover, my firm has served as trial counsel for class action plaintiffs in six jury trials and has won all six, with recoveries ranging from $21 million to $299 million.

26. Plaintiffs and proposed Class Counsel believe that the relief provided by the settlement weighs heavily in favor of a finding that the settlement is fair, reasonable, and adequate, and well within the range of approval.

27. The Settlement Agreement attached hereto as Exhibit 1 is the only agreement in connection with the proposed settlement.

I declare under penalty of perjury that the above and foregoing is true and accurate. Executed this 14th day of November, 2024 at New York, New York.

/s Philip L. Fraietta
Philip L. Fraietta

[1] Bursor & Fisher has since won a sixth jury verdict in *Perez v. Rash Curtis & Associates*, Case No. 4:16-cv-03396-YGR (N.D. Cal.), for $267 million.