

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

CLAIR AWAD and VIVIAN PICCIOTTI,
individually and on behalf of all others similarly
situated,

Plaintiff.,

v.

AMC ENTERTAINMENT HOLDINGS, INC.,

Defendant.

Index No. 607322/2024

Motion Seq. No. 003

**AFFIRMATION OF PHILIP L. FRAIETTA IN SUPPORT OF PLAINTIFFS’
UNOPPOSED MOTION FOR ATTORNEYS’ FEES, COSTS, EXPENSES, AND NAMED
PLAINTIFFS’ SERVICE AWARDS**

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., counsel of record for Plaintiffs 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 affirmation 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 preliminary approval of class action settlement filed herewith.

3. Attached hereto as **Exhibit 1** is a true and correct copy of the Parties’ Class Action Settlement Agreement (the “Settlement Agreement” or “Settlement”).

4. On January 5, 2024, Plaintiff Picciotti filed a putative class action in the United States District Court for the Southern District of New York. The material allegations of the complaint centered 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 New York Arts & Cultural Affairs Law (“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.

6. On March 29, 2024, Defendant also filed a motion to compel arbitration and stay the federal case.

7. From the outset of the case, the Parties engaged in settlement discussions and, to that end, agreed to participate in a private mediation with former United States District Judge Shira A. Scheindlin (of the U.S. District Court for the Southern District of New York), who is a neutral mediator affiliated with Boies Schiller Flexner LLP, and an experienced and well-regarded class action mediator.

8. 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.

9. 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.

10. 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.

11. 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.

12. Thereafter, Defendant produced confirmatory discovery regarding the size and scope of the putative class, which showed that from August 29, 2022 to and through January 16, 2024, Defendant collected \$10,789,345 in convenience fees from 1,476,486 purchasers on its owned and/or operated online platforms in connection with transactions to New York theatres. The discovery also confirmed that that effective January 17, 2024, Defendant 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.

13. My firm then worked extensively with defense counsel to finalize and memorialize the agreement into a formal Class Action Settlement Agreement, including proposed class notice documents. That process included multiple rounds of redlines and phone calls to discuss proposed edits.

14. After finalizing and executing the Class Action Settlement Agreement, my firm prepared Plaintiffs' Motion for Preliminary Approval, which was filed on May 27, 2024.

15. The Court preliminary approved the Settlement on August 22, 2024. A true and correct copy of the Court's August 22, 2024 Preliminary Approval Order is attached hereto as **Exhibit 2**.

16. Under the Settlement, Defendant has agreed to make up to \$10,335,402 available to pay approved class member claims to those class members who elect the cash option, and to separately pay notice and administration costs, service awards of the Plaintiffs, and attorneys'

fees, costs, and expenses to Proposed Class Counsel. This includes relief for approximately 1,476,486 class members. This settlement benefits all individuals who paid a Convenience Fee to gain entrance to any of Defendant's theaters located in New York state from Defendant's website, mobile application, or any other AMC owned or operated online platform from August 29, 2022, to and through January 16, 2024

17. Defendant's records reflect that, on average, each Settlement Class Member expended approximately \$7.00 in Convenience Fees during the class period, and the Settlement provides that each Settlement Class Member will be entitled to submit a claim that will, if valid, entitle him or her to a \$7.00 cash payment. *See* Settlement ¶¶ 1.9; 2.1(a).

18. Moreover, those Settlement Class Members who do not submit a Claim Form electing to receive cash will automatically receive an invitation for a free one-year enrollment into the AMC Stubs Premiere Membership that retails for \$15 per year and 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). Defendant's records confirm that, on average, AMC Stubs Premiere Members save approximately \$40 per year.

19. The Settlement also provides meaningful prospective relief as, part of the Settlement, Defendant acknowledges that 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 ACAL § 25.07(4) going forward. Settlement ¶ 2.2.

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

the proposed class, and reach a fair and reasonable compromise after negotiating the terms of the Settlement at arm's length and with the assistance of a neutral mediator.

21. Plaintiffs and Class Counsel recognize that despite our belief in the strength of Plaintiffs' claims, and Plaintiffs' and the Class's ability to ultimately secure a favorable judgment at trial, the expense, duration, and complexity of protracted litigation would be substantial and the outcome of trial uncertain. Indeed, Proposed Class Counsel filed the very first case under the newly enacted ACAL § 25.07(4) in December 2023, and thus far none have advanced to contested class certification, summary judgment, or trial.

22. Plaintiffs and 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. Defendant is represented by highly experienced attorneys who have made clear that absent a settlement, they are prepared to continue their vigorous defense of this case, including by opposing the class certification and moving for summary judgment. Indeed, had the case not settled, Plaintiffs would have to overcome Defendant's defenses, including that Plaintiffs and the Settlement Class's claims are subject to arbitration and a class action waiver. If Plaintiffs survived that challenge, Defendant would likely argue that none of the Settlement Class Members were injured because the convenience fee was disclosed prior to purchase and any violation of ACAL § 25.07(4) is merely procedural and barred by the voluntary payment doctrine since the convenience fees were ultimately disclosed to the Settlement Class Members prior to completing their purchases. *Fraietta Aff.* ¶ 21; *see also Curanaj v. Tao Group, Inc.*, Index No. 56152/2024 at NYSCEF No. 36 (Sup. Ct. Westchester Cnty. July 25, 2024) (granting motion to dismiss similar ACAL ticket fee case). An adverse ruling on any of those defenses may have resulted in Plaintiffs and the Settlement Class

receiving no recovery at all. Looking beyond trial, Plaintiffs and Class Counsel are also keenly aware that Defendant could appeal the merits of any adverse decision.

23. Plaintiff and 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.

24. Since the Court granted preliminary approval, my firm has worked with the Settlement Administrator, Epiq, to carry out the Court-ordered notice plan. Specifically, my firm reviewed and approved the final claim and notice forms, and tested and approved the settlement website before it launched live.

25. Since class notice has been disseminated, my firm has worked with Epiq on a weekly basis to monitor settlement claims and any other issues that may arise. My firm has also fielded calls from Settlement Class Members and, where applicable, assisting them with filing claims. Class Counsel anticipates expending additional time administering the Settlement after final approval.

26. My firm undertook this matter on a contingency basis.

27. To date, my firm has expended \$11,979.18 in out-of-pocket costs and expenses in connection with the prosecution of this case. These costs and expenses, which include filing fees, process server fees, and mediation fees, are reflected in the records of my firm, and were necessary to prosecute this litigation.

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

29. 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. 3; Firm Resume of Bursor & Fisher, P.A.*).

30. In addition, my firm has also been recognized by courts across the country for its expertise. (*See Ex. 3*); *see also Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561, 566 (S.D.N.Y. 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

31. 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

32. I am of the opinion that Ms. Awad’s and Ms. Picciotti’s active involvement in this case was critical to its ultimate resolution. They took their role as class representatives seriously, devoting time and effort to protecting the interests of the class. Without their willingness to assume the risks and responsibilities of serving as class representatives, I do not believe such a strong result could have been achieved.

33. Ms. Awad and Ms. Picciotti equipped my firm with critical details regarding their experiences with Defendant. They assisted my firm in investigating their claims, detailing their transaction histories, supplying supporting documentation, and aiding in drafting the Complaint. Ms. Awad and Ms. Picciotti were prepared to testify at deposition and trial, if necessary. And they were actively consulted during the settlement process.

34. In short, Ms. Awad and Ms. Picciotti assisted my firm in pursuing this action on behalf of the class, and their involvement in this case has been nothing short of essential.

I affirm under penalty of perjury that the above and foregoing is true and accurate.

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.

Executed on October 8, 2024 in New York, New York.

/s Philip L. Fraietta

Philip L. Fraietta