

**SUPREME COURT OF 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

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION  
FOR FINAL CERTIFICATION OF THE SETTLEMENT CLASS AND FINAL  
APPROVAL OF THE CLASS ACTION SETTLEMENT**

Dated: November 14, 2024

**BURSOR & FISHER, P.A.**

Philip L. Fraietta  
1330 Avenue of the Americas, 32nd Floor  
New York, NY 10019  
Telephone: (646) 837-7150  
Facsimile: (212) 989-9163  
Email: pfraietta@bursor.com

Stefan Bogdanovich (*Pro Hac Vice*)  
1990 North California Boulevard, Suite 940  
Walnut Creek, CA 94596  
Telephone: (925) 300-4455  
Facsimile: (925) 407-2700  
Email: sbogdanovich@bursor.com

*Class Counsel*

**TABLE OF CONTENTS**

	<b>PAGE(S)</b>
PRELIMINARY STATEMENT .....	1
FACTUAL AND PROCEDURAL BACKGROUND.....	2
A.    New York Arts & Cultural Affairs Law § 25.07(4).....	2
B.    Plaintiffs’ Allegations .....	3
C.    The Litigation And Settlement Negotiations .....	3
TERMS OF THE SETTLEMENT .....	5
A.    Class Definition .....	5
B.    Monetary Relief .....	5
C.    Prospective Relief .....	6
D.    Release .....	6
E.    Notice And Administration Expenses.....	7
F.    Service Awards, Attorneys’ Fees, Costs, And Expenses.....	7
ARGUMENT .....	8
I.    FINAL APPROVAL OF THE SETTLEMENT IS APPROPRIATE.....	8
A.    The Value Of The Settlement Outweighs The Likelihood Of Plaintiffs’ Success On The Merits .....	8
B.    The Class Members and Parties Unanimously Support The Settlement .....	11
C.    Class Counsel and Defendant’s Counsel Are Experienced Class Action Litigators, And They Support The Settlement .....	12
D.    The Settlement Is The Result Of Arm’s-Length Negotiations Between The Parties After A Mediation With An Experienced Class Action Mediator .....	12
E.    The Nature Of The Legal And Factual Issues Is Complex.....	13
II.   FINAL CERTIFICIATION OF THE SETTLEMENT CLASS IS APPROPRIATE.....	14
CONCLUSION.....	15

## TABLE OF AUTHORITIES

	PAGE(S)
<b>CASES</b>	
<i>Brad H. v. City of New York</i> , 2003 WL 22721558 (Sup. Ct., N.Y. Cnty. Nov. 12, 2003) .....	8
<i>City of Detroit v. Grinnell Corp.</i> , 495 F.2d 448 (2d Cir. 1974).....	9
<i>Colt Indus. Shareholder Litig. v. Colt Indus. Inc.</i> , 77 N.Y.2d 185 (1991) .....	8
<i>Fiala v. Metro. Life Ins. Co.</i> , 899 N.Y.S.2d 531 (Sup. Ct., New York Cnty. 2010) .....	12, 13
<i>Gordon v. Verizon Commc'ns, Inc.</i> , 148 A.D.3d 146 (1st Dep't 2017) .....	13
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. June 9, 1998) .....	11
<i>Hibbs v. Marvel Enters.</i> , 19 A.D.3d 232 (1st Dep't 2005) .....	11
<i>In re Austrian &amp; German Bank Holocaust Litig.</i> , 80 F. Supp. 2d 164 (S.D.N.Y. 2000).....	13
<i>In re Colt Indus. S'holder Litig.</i> , 155 A.D.2d 154 (1st Dep't 1990) .....	9
<i>Lowenschuss v. Bluhdorn</i> , 613 F.2d 18 (2d Cir. 1980).....	13
<i>Massiah v. MetroPlus Health Plan, Inc.</i> , 2012 WL 5874655 (E.D.N.Y. 2012).....	11
<i>Milton v. Bells Nurses Registry &amp; Employment Agency, Inc.</i> , 2015 WL 9271692 (Sup. Ct. Kings Cnty. Dec. 21, 2015).....	8
<i>Saska v. Metropolitan Museum of Art</i> , 2016 WL 6682271 (Sup. Ct., N.Y. Cnty. Nov. 10, 2016) .....	8
<i>Velez v. Majik Cleaning Serv., Inc.</i> , 2007 WL 7232783 (S.D.N.Y. June 25, 2007) .....	9

*Williams v. Reckitt Benckiser LLC*,  
 2022 WL 1176959 (S.D. Fla. Mar. 17, 2022)..... 12

**STATUTES**

New York Arts & Cultural Affairs Law § 25.07(4)..... passim

**RULES**

CPLR 909..... 7

**REGULATIONS**

22 N.Y.C.R.R. §202.8-b ..... 1

## PRELIMINARY STATEMENT

On August 22, 2024, this Court preliminarily approved the class action settlement between Plaintiffs Clair Awad and Vivian Picciotti (“Plaintiffs”) and Defendant AMC Entertainment Holdings, Inc. (“Defendant”) and directed that notice be sent to the Settlement Class. *See* Affirmation of Philip L. Fraietta (“Fraietta Aff.”) Ex. 2, Preliminary Approval Order (NYSCEF Doc. No. 29) (“Prelim. App. Order”). The settlement administrator has implemented the Court-approved notice plan and direct notice has reached 91.9% of the certified Settlement Class.<sup>1</sup> *See* Affirmation of Cameron R. Azari, Esq. Regarding Implementation Of Notice And Claims Administration (“Epiq Aff.”) ¶ 26. The reaction from the Settlement Class has been overwhelmingly positive. Specifically, of the 1,301,578 Settlement Class Members, **zero** objected and only one requested to be excluded.<sup>2</sup> *Id.* ¶ 31. The Settlement is an excellent result for the Class and the Court should grant final approval.

The strength of the Settlement speaks for itself. Defendant collected approximately \$10,789,345 in Convenience Fees during the class period. *Fraietta Aff.* ¶ 7. And after extensive negotiations – including a full-day mediation with The Honorable Shira A. Scheindlin (Ret.), formerly of the Southern District of New York, the Parties reached a Settlement under which Defendant has agreed to make up to \$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. *Id.* ¶¶ 9, 12. Of note, the average Settlement Class Member paid approximately \$7.00

---

<sup>1</sup> Capitalized terms used in this memorandum are defined in the Class Action Settlement Agreement (the “Settlement”), attached to the Fraietta Affirmation as Exhibit 1.

<sup>2</sup> The deadline for Settlement Class Members to object or request exclusion was November 8, 2024. *See* Prelim. App. Order ¶¶ 16, 21.

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. *Id.* ¶ 13.

What's more, the Settlement also provides that those Settlement Class Members who do not exclude themselves from the Settlement or file a claim to receive a cash payment will automatically receive an invitation to a free one-year enrollment into AMC Stubs Premiere Membership, an elevated tier of AMC's customer loyalty program that retails for \$15 and provides meaningful benefits, including the ability to purchase convenience fee-free tickets, free concessions, and free concession upgrades. *Id.* Indeed, Defendant's internal records confirm that, on average, AMC Stubs Premiere Members save approximately \$40 per year. *Id.* And, just as important, the Settlement also provides meaningful prospective relief aimed at the challenged conduct, as Defendant acknowledges that it has changed the purchase flow for tickets to New York theaters on its website and online platforms to disclose the Convenience Fee that was the subject of this litigation before the ticket is selected for purchase and agrees to comply with New York Arts & Cultural Affairs Law ("ACAL") § 25.07(4) going forward. *Id.* ¶ 14.

Given the relief provided by the Settlement, the Court should not hesitate to grant final approval.

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### **A. New York Arts & Cultural Affairs Law § 25.07(4)**

Effective August 29, 2022, New York enacted Arts & Cultural Affairs Law § 25.07(4), which provides that:

Every operator or operator's agent of a place of entertainment ... shall disclose the total cost of the ticket, inclusive of all ancillary fees that must be paid in order to purchase the ticket, and disclose in a clear and conspicuous manner the portion of the ticket price stated in dollars that represents a service charge, or any other fee or surcharge to the purchase. Such disclosure of the total cost and fees shall be displayed in the ticket listing prior to the ticket being

selected for purchase. ... The price of the ticket shall not increase during the purchase process.

*Id.* (emphasis added).

The ACAL provides a private right of action to “any person who has been injured by reason of violation of” its provisions. ACAL § 25.33.

### **B. Plaintiffs’ Allegations**

Defendant owns and operates numerous movie theaters throughout New York. *See* Fraietta Aff. Ex. 4, Complaint (NYSCEF Doc. No. 1) (“Compl.”) ¶ 9. Plaintiffs allege that when consumers purchase admission tickets to AMC’s New York-based movie theaters on Defendant’s website, they are “quoted a fee-less price, only to be ambushed by a convenience fee at checkout after clicking through the various screens required to make a purchase.” *Id.* ¶ 1; *see also id.* ¶¶ 10-16 and Figures 1-8. Plaintiffs allege that this conduct violates ACAL § 25.07(4) because Defendant failed to “disclose the ‘total cost of a ticket, inclusive of all ancillary fees that must be paid in order to purchase the ticket’ after a ticket is selected” and because Defendant “increase[ed] the price of their tickets during the purchase process.” *Id.* ¶¶ 29-30. As alleged, Plaintiffs are individuals who purchased tickets on Defendant’s website to AMC movie theaters in New York and paid convenience fees that were not disclosed to them at the beginning of the purchase process. *Id.* ¶¶ 32-33. As alleged, “Plaintiff[s] w[ere] harmed by paying this convenience fee, even though that total cost was not disclosed to Plaintiff[s] at the beginning of the purchase process, and therefore, is unlawful pursuant to New York Arts & Cultural Affairs Law § 25.07(4).” *Id.* ¶¶ 32-33.

### **C. The Litigation And Settlement Negotiations**

On January 5, 2024, Plaintiff Picciotti filed a putative class action in the United States District Court for the Southern District of New York. Fraietta Aff. ¶ 4. 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 ACAL § 25.07(4). *Id.*

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. *Id.* ¶ 5. On March 29, 2024, Defendant also filed a motion to compel arbitration and stay the federal case. *Id.*

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. *Id.* ¶ 6. 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. *Id.* ¶ 7. That informal discovery showed that Defendant collected \$10,789,345 in Convenience Fees from August 29, 2022 through and including January 16, 2024. *Id.* 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. *Id.* ¶ 8. 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. *Id.* ¶ 9. 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. *Id.* The Parties ultimately drafted and executed the Settlement Agreement, which is annexed to the Fraietta Affirmation as Exhibit 1. *Id.* ¶ 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. *Id.* ¶ 10.

### **TERMS OF THE SETTLEMENT**

The key terms of the Settlement are briefly summarized as follows:

#### **A. Class Definition**

The “Settlement Class” or “Settlement Class Members” is defined as:

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.<sup>3</sup>

Prelim App. Order ¶ 9.<sup>4</sup> AMC’s records confirm that there are 1,301,578 unique persons in the Settlement Class. Epiq Aff. ¶ 22. AMC’s records also confirm that effective January 17, 2024, it 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. Fraietta Aff. ¶ 14.

#### **B. Monetary Relief**

Defendant has agreed to make up to \$10,335,402 available to pay approved class member claims 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. Settlement ¶¶ 1.3, 1.15, 1.28, 1.29, 2.1.

---

<sup>3</sup> 232 individuals – represented by the same law firm – settled claims with Defendant outside of this litigation. Accordingly, those individuals are not included in this settlement class.

<sup>4</sup> Excluded from the Settlement Class are (1) any Judge or Magistrate presiding over this Action and members of their families; (2) the Defendant, Defendant’s subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees; (3) persons who submit a timely and valid request for exclusion from the class; and (4) the legal representatives, successors or assigns of any such excluded persons. *Id.*

AMC'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. Fraietta Aff. ¶ 13; Settlement ¶¶ 1.9; 2.1(a).

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, which provides meaningful benefits to Settlement Class Members, including the ability to purchase convenience fee-free tickets, free concessions, and free concession upgrades. Fraietta Aff. ¶ 13; Settlement ¶¶ 1.2, 2.1(b). Emails with instructions for how to enroll into the AMC Stubs Premiere Membership will be sent to Settlement Class Members within 60 days of the Effective Date. Settlement ¶ 2.1(b). AMC's internal records confirm that, on average, AMC Stubs Premiere Members save approximately \$40 per year. Fraietta Aff. ¶ 13.

### **C. Prospective Relief**

As a 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 New York Arts & Cultural Affairs Law § 25.07(4) going forward. Settlement ¶ 2.2.

### **D. Release**

In exchange for the relief described above, Defendant and each of the "Released Parties" as defined at ¶ 1.26 of the Settlement will receive a full release of all claims arising out of any facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions or failures to act regarding the alleged collection of online convenience fees in

connection with online ticket sales to AMC's New York-based theaters from August 29, 2022, through and including January 16, 2024. *See id.* ¶¶ 1.23, 3.1 for full release language.

**E. Notice And Administration Expenses**

Defendant will pay the Settlement Administration Expenses, which includes sending the Notice set forth in the Agreement and any other notice as required by the Court as well as all costs of administering the Settlement. Settlement ¶ 1.29. These expenses will be paid separately from the monetary relief and will not derogate from the Settlement Class Members' recoveries. *Id.* ¶ 2.1(c).

**F. Service Awards, Attorneys' Fees, Costs, And Expenses**

In recognition for their efforts on behalf of the Settlement Class, Plaintiffs may receive, subject to Court approval, a service award of \$5,000 each, as appropriate compensation for their time and effort serving as Class Representatives and as parties to the Action. Such awards will be paid by Defendant within ten (10) business days of the Effective Date. Settlement ¶¶ 8.3, 8.4. The Service Awards shall be in addition to the other benefits provided to the Settlement Class under this Agreement and shall not derogate in any way from payments owed to Settlement Class Members. *Id.* ¶ 8.4.

Furthermore, pursuant to CPLR 909 and ACAL § 25.33 Defendant agrees that Class Counsel shall be entitled to an award of reasonable attorneys' fees and costs in an amount to be determined by the Court as the Fee Award. With no consideration given or received, Class Counsel will limit its petition for attorneys' fees, costs, and expenses to no more than \$2,000,000. Settlement ¶ 8.1. Such award will be paid by Defendant within ten (10) business days after entry of the Court's Settlement Approval Order and Final Judgment. Settlement ¶¶ 8.2, 8.4. Payment of the Fee Award shall be made by Defendant separate and apart from Defendant's other payment obligations under this Agreement. *Id.* ¶ 8.3.

Plaintiffs and Class Counsel moved for these awards separately on October 8, 2024. *See* Mot. Seq. No. 003. That motion is unopposed.

### ARGUMENT

#### **I. FINAL APPROVAL OF THE SETTLEMENT IS APPROPRIATE**

New York has a well-established public policy favoring settlement, especially in the class action context. *Brad H. v. City of New York*, 2003 WL 22721558, at \*1 (Sup. Ct., N.Y. Cnty. Nov. 12, 2003). Although the CPLR does not define the specific mechanism for approval of class action settlements, New York courts look to federal case law for guidance. *See, e.g., Colt Indus. Shareholder Litig. v. Colt Indus. Inc.*, 77 N.Y.2d 185, 194 (1991) (“New York’s class action statute has much in common with Federal Rule 23.”) Federal courts use a two-step class settlement approval process which has routinely been followed by New York state courts. *See, e.g., Saska v. Metropolitan Museum of Art*, 2016 WL 6682271, at \*9-10 (Sup. Ct., N.Y. Cnty. Nov. 10, 2016) (setting forth procedure). This is the second step of the two-step process.

In ruling on final approval motions, New York Courts looks to: (1) the likelihood of success on the merits; (2) the extent of support from the parties; (3) the judgment of counsel; (4) the presence of good faith bargaining; and (5) the nature of the issues of law and fact. *Milton v. Bells Nurses Registry & Employment Agency, Inc.*, 2015 WL 9271692, at \*1-2 (Sup. Ct. Kings Cnty. Dec. 21, 2015).

A review of the key factors for final approval supports approval here. Here, as set forth below, each factor weighs in favor of final approval.

#### **A. The Value Of The Settlement Outweighs The Likelihood Of Plaintiffs’ Success On The Merits**

The first factor in determining fairness, adequacy, and reasonableness of a proposed settlement is to “balance[e] the value of th[e] settlement against the present value of the

anticipated recovery following a trial on the merits, discounted for the inherent risks of litigation.” *In re Colt Indus. S’holder Litig.*, 155 A.D.2d 154, 160 (1st Dep’t 1990). Litigation inherently involves risks, and the settlement benefits the class by ensuring some measure of relief and eliminating the “risk that an outcome unfavorable to plaintiffs will emerge from a trial.” *Velez v. Majik Cleaning Serv., Inc.*, 2007 WL 7232783, at \*6 (S.D.N.Y. June 25, 2007). Thus, “there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery.” *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 n.2 (2d Cir. 1974).

Here, the Settlement provides a substantial benefit to Settlement Class Members. 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. Settlement ¶ 2.1(a). This recovery is exceptional given that the allegedly deceptive Convenience Fee at issue was only about \$2 per ticket, and the average Settlement Class Member incurred approximately \$7.00 in Convenience Fees during the class period. *Fraietta Aff.* ¶¶ 4, 21; Settlement ¶ 1.9. 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, which 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). Indeed, AMC’s internal records confirm that, on average, AMC Stubs Premiere Members save approximately \$40 per year. *Fraietta Aff.* ¶ 13. And equally important, effective January 17, 2024, Defendant changed the purchase flow for tickets to New York theaters on its website and online platforms to disclose the convenience fee at issue in this litigation before the ticket is selected for purchase and, as part of the Settlement, agrees to

continue to comply with ACAL § 25.07(4) going forward. Fraietta Aff. ¶ 14; Settlement ¶ 2.2.

The Settlement reflects Plaintiffs' belief that while their claims are meritorious and class treatment is warranted, their ultimate success would require favorable outcomes at all steps of the litigation, including overcoming AMC's defenses which include that Plaintiffs' claims are precluded by the voluntary payment doctrine, 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, plaintiffs have agreed to a class action waiver and plaintiffs are obligated to arbitrate their claims. Fraietta Aff. ¶ 20. 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). *Id.*

Moreover, AMC intends to vigorously contest class certification and raise its defenses with a motion to dismiss, a motion for summary judgment, as well as at trial and on appeal, all of which are inherently uncertain and lengthy. Fraietta Aff. ¶ 20. Proposed Class Counsel is also cognizant of the potential problems of proof and defenses to the claims raised in this action. *Id.* ¶ 19. 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. *Id.* In sum, 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. *Id.* Moreover, Defendant is represented by experienced and capable counsel who made clear that, absent the Settlement, they were prepared to vigorously defend this case and oppose certification of a litigated class. *Id.* ¶ 20. The proposed Settlement alleviates these risks and provides a

substantial benefit to the Settlement Class in a timely fashion. This factor favors preliminary approval.

**B. The Class Members and Parties Unanimously Support The Settlement**

Under New York law, support for a proposed Settlement from the opposing parties and Settlement Class Members demonstrates its fairness and reasonableness. *See, e.g., Hibbs v. Marvel Enters.*, 19 A.D.3d 232, 233 (1st Dep’t 2005).

Here, the reaction of the Class Members to the Settlement has been overwhelmingly positive. Class Notice has been provided to the Settlement Class Members in accordance with the requirements of the CPLR and the Preliminary Approval Order (NYCSEF Doc. No. 29 at 12-14), and direct notice reached 91.9% Settlement Class. *See* Epiq Aff. ¶ 26. As of November 7, 2024, zero class members objected to the Settlement, and only one opted-out. *See* Epiq Aff. ¶ 31. This exceptional participation rate and lack of objections from the Settlement Class leaves no question that the class members view the Settlement favorably, which weighs heavily in favor of final approval and further supports the “presumption of fairness.” *See, e.g., Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. June 9, 1998) (“[T]he fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness.”); *Massiah v. MetroPlus Health Plan, Inc.*, 2012 WL 5874655, at \*4 (E.D.N.Y. 2012) (“The fact that the vast majority of class members neither objected nor opted out is a strong indication of fairness.”).

Moreover, Plaintiffs and Class Counsel have reviewed and analyzed the disclosures and documents provided by Defendant and those obtained via their own investigation, considered and researched Defendant’s defenses, and examined the benefits made available by the Settlement. *Fraietta Aff.* ¶¶ 6-14. Plaintiffs and Class Counsel believe that the Settlement is fair, adequate, reasonable, and in the best interests of the Settlement Class. *Id.* ¶¶ 18-21, 26.

Defendant likewise believes that the Settlement is appropriate. Settlement, Recitals ¶ I. Defendant denies each and every one of the allegations of wrongdoing or liability and has asserted numerous defenses. *Id.* Defendant has also engaged well-qualified counsel with extensive complex class action experience and recognizes the risks and uncertainties inherent in litigation, the significant expense associated with defending the action, the costs of any appeals, and the disruption to its business operations arising out of burdensome and protracted litigation. *Id.* This factor favors final approval.

**C. Class Counsel and Defendant’s Counsel Are Experienced Class Action Litigators, And They Support The Settlement**

New York courts grant significant weight to the judgment of experienced counsel in determining the fairness of a class action settlement. *See Fiala v. Metro. Life Ins. Co.*, 899 N.Y.S.2d 531, 538 (Sup. Ct., New York Cnty. 2010) (finding that the settlement is supported by the “judgment of counsel” weights in favor of approval). The Settlement is the product of intense and protracted negotiations involving highly experienced law firms. As set forth more fully in the Fraietta Affirmation, Class Counsel has years of experience litigating and settling consumer class actions, and in their view, the Settlement represents a fair value and commendable result. Fraietta Aff. ¶¶ 23-25. Counsel for Defendant also has significant experience defending class actions, are well regarded within the class action bar, and support the Settlement as well. *See Williams v. Reckitt Benckiser LLC*, 2022 WL 1176959 (S.D. Fla. Mar. 17, 2022). This factor favors final approval.

**D. The Settlement Is The Result Of Arm’s-Length Negotiations Between The Parties After A Mediation With An Experienced Class Action Mediator**

“[N]egotiations are presumed to have been conducted at arm’s length and in good faith where there is no evidence to the contrary[.]” *Gordon v. Verizon Commc’ns, Inc.*, 148 A.D.3d 146, 157 (1st Dep’t 2017). As detailed above, this Settlement is the result of informed, arm’s-



length negotiations, which included a full-day mediation and extensive discussions involving experienced counsel for the Parties under the direction of Judge Scheindlin. Fraietta Aff. ¶ 9. Additionally, the fact that the Settlement was reached with the assistance of a highly-regarded class action mediator, following a full-day mediation and subsequent negotiations in the following weeks, further supports preliminary approval. *See, e.g., Fiala v. Metropolitan Life Ins. Co.*, 899 N.Y.S.2d 531, 539 (Sup. Ct., New York Cnty. Mar. 3, 2010) (finding that settlement occurred “with the help of an accomplished and scrupulous mediator” weights in favor of approval). This factor favors final approval.

**E. The Nature Of The Legal And Factual Issues Is Complex**

Finally, courts consider the complexity of the case and whether continued litigation would be “expensive and protracted” in determining whether to approve a settlement. *Lowenschuss v. Bluhdorn*, 613 F.2d 18, 19 (2d Cir. 1980) (affirming approval of a settlement where further litigation would have been “expensive and protracted” with no guarantee of any relief to the class). “Most class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them.” *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000); *see also Fiala*, 899 N.Y.S.2d at 540 (noting that “the complexity of the litigation, its expenses and its duration favored settlement for both the plaintiffs and defendant”).

Here, the legal and factual issues support approval of the Settlement. While Plaintiffs believe that their claims are strong, they are not without risk. As aforementioned, ACAL § 25.07(4) has not been heavily litigated and numerous legal issues would need to be decided in Plaintiffs’ favor. Fraietta Aff. ¶¶ 19-20. For example, 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. *Id.* ¶ 20. While Plaintiffs believe that they would ultimately prevail at trial, the Settlement eliminates these risks and will provide substantial recovery for the Settlement Class without the risk and delay of continued litigation.

In sum, the Settlement readily meets all the factors weighted by courts in determining whether it is fair, reasonable, adequate, and in the best interests of the Settlement Class, and therefore should be finally approved.

## II. FINAL CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE

At the preliminary approval stage, the Court certified the following Settlement Class for settlement purposes:

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.

Preliminary App. Order ¶ 9. The Court's preliminary approval order also appointed Philip L. Fraietta and Stefan Bogdanovich of Bursor & Fisher, P.A. as Class Counsel and Plaintiffs Vivian Picciotti and Clair Awad as Class Representatives, both for settlement purposes. *Id.* ¶ 8.

Having already notified Class Members of the Settlement and having received no objection that would call into question the Court's findings in its Preliminary Approval Order, final certification of the Class is appropriate and warranted.<sup>5</sup> Fraietta Aff. ¶ 26. The Settlement's benefits can be realized only through final certification of the Class and entry of a Final Order.

---

<sup>5</sup> Those findings were based on Plaintiffs' Memorandum of Law in Support of Unopposed Motion For Preliminary Approval of Class Action Settlement, filed May 27, 2024 (NYSCEF No. 16), which Plaintiffs incorporate by reference herein.

**CONCLUSION**

For the reasons set forth above, Plaintiffs respectfully request that the Court grant their Motion for Final Approval of the Settlement and enter Final Judgment in the form submitted herewith.

Dated: November 14, 2024

Respectfully submitted,

**BURSOR & FISHER, P.A.**

By: /s/ Philip L. Fraietta  
Philip L. Fraietta

Philip L. Fraietta  
1330 Avenue of the Americas, 32nd Floor  
New York, NY 10019  
Telephone: (646) 837-7150  
Facsimile: (212) 989-9163  
Email: pfraietta@bursor.com

Stefan Bogdanovich (*pro hac vice*)  
1990 North California Blvd., Suite 940  
Walnut Creek, CA 94596  
Telephone: (925) 300-4455  
Facsimile: (925) 407-2700  
E-mail: sbogdanovich@bursor.com

*Class Counsel*

**PRINTING SPECIFICATION STATEMENT**

1. Pursuant to 22 N.Y.C.R.R. §202.8-b, the undersigned counsel certifies that the foregoing brief was prepared on a computer using Microsoft Word. A proportionally spaced typeface was used as follows:

Name of Typeface: Times New Roman  
Point Size: 12  
Line Spacing: Double

2. The total number of words in the brief, inclusive of point headings and footnotes and exclusive of the caption, table of contents, table of authorities, signature block, and this Certification, is 4,647 words. By operation of Microsoft Word's word count function, this number includes legal citations and certain forms of punctuation.

Dated: November 14, 2024

Respectfully submitted,

By: /s/ Philip L. Fraietta  
Philip L. Fraietta

**BURSOR & FISHER, P.A.**  
Philip L. Fraietta  
1330 Avenue of the Americas, 32nd Floor  
New York, NY 10019  
Telephone: (646) 837-7150  
Facsimile: (212) 989-9163  
Email: pfraietta@bursor.com

*Class Counsel*