

**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

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION
FOR ATTORNEYS' FEES, COSTS, EXPENSES, AND NAMED PLAINTIFFS'
SERVICE AWARDS**

Dated: October 8, 2024

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PRELIMINARY STATEMENT

The class action settlement between Plaintiffs Clair Awad and Vivian Picciotti (“Plaintiffs”) and Defendant AMC Entertain Holdings, Inc. (“AMC” or “Defendant”), if finally approved, resolves Plaintiffs’ and the Class’s claims against AMC under New York Arts and Cultural Affairs Law (“ACAL”) § 25.07(4). Defendant collected approximately \$10,789,345 in Convenience Fees during the class period, and under the Settlement 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 Class Counsel. Of note, the average 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.

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 to Settlement Class Members, including the ability to purchase convenience fee-free tickets, free concessions, and free concession upgrades. Indeed, Defendant’s internal records confirm that, on average, AMC Stubs Premiere Members save approximately \$40 per year. *See* Affirmation of Philip L. Fraietta In Support of Plaintiffs’ Unopposed Motion for Attorneys’ Fees, Costs, Expenses, and Named Plaintiffs’ Service Awards (“Fraietta Aff.”) ¶ 18. And equally important, the Settlement also provides meaningful prospective relief 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 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.

Obtaining this exceptional relief came with significant risks. ACAL § 25.07(4) became effective on August 29, 2022, and as such, there is no binding case law (and at the time this action was initially filed no case law) on the statute. The case law that does exist is not unanimously in Plaintiffs' favor. *See, e.g., 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). And AMC's Terms and Conditions contains an arbitration clause that arguably would have been deemed applicable to Plaintiffs and the Settlement Class, which would have likely gutted any recovery to the Settlement Class whatsoever. Nonetheless, Class Counsel took this case on contingency despite a significant risk that Plaintiffs, the Settlement Class, and thereby Class Counsel, would receive nothing. Rather than put AMC's arguments to the test and risk everything, Plaintiffs and Class Counsel achieved meaningful, immediate relief for the Settlement Class.

In light of this exceptional result, Plaintiffs respectfully request pursuant to CPLR 909 that the Court approve attorneys' fees, costs, and expenses of \$2,000,000 (or approximately 19% of the cash made available to the Settlement Class), as well as Named Plaintiff Service Awards of \$5,000 for each Plaintiff for their service as class representatives. Critically, the attorneys' fees, costs, and expenses, as well as the Service Awards, will be paid by Defendant *in addition to* (and not from) the relief made available to the Settlement Class. Thus, approving these awards will not derogate from the payments or relief to any other Settlement Class Member.

The requested 19% is well below the one-third or more of the fund that New York courts routinely award in class action settlements. *Milton v. Bells Nurses Registry & Employment Agency, Inc.*, 2015 WL 9271692, at *5 (Sup. Ct. Kings Cnty. Dec. 21, 2015) (collecting cases

and noting that 33.3% is “consistent with the norms of class litigation in this circuit”); *see also Norcross v. Tishman Speyer Properties, L.P.*, Case No. 23-cv-11153 at ECF No. 36 ¶ 14 (S.D.N.Y. Aug. 16, 2024) (awarding one-third of the settlement fund in attorneys’ fees, costs, and expenses in an ACAL § 25.07(4) settlement); *Hayes v. Harmony Gold Min. Co.*, 2011 WL 6019219, at *1 (S.D.N.Y. Dec. 2, 2011) (awarding “attorneys’ fees in the amount of one third” of a \$9 million settlement fund), *aff’d* 509 F. App’x 21, 23-24 (2d Cir. 2013) (affirming same).

For these reasons, and as explained further below, the Court should approve the requested fee and Named Plaintiff Service Awards.

FACTUAL AND PROCEDURAL BACKGROUND

A brief summary of Plaintiffs’ allegations, the litigation performed by Class Counsel for the Settlement Class’s benefit, and the beneficial terms of the Settlement provide necessary context to the reasonableness of the requested fee and Named Plaintiffs’ Service Awards.

A. Plaintiffs’ Allegations

Defendant owns and operates numerous movie theaters throughout New York. *See* Complaint (NYSECF Doc. No. 1) (“Compl.”) ¶ 9. Plaintiffs allege that when consumers purchase 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. 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.

AMC denies these allegations and denies any wrongdoing. Moreover, AMC contends that the plaintiffs agreed to AMC's website terms and conditions which provide for class action waiver and require each plaintiff to individually arbitrate her claims against AMC.

B. The Litigation And Work Performed To Benefit The Class

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.* ¶ 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. *Id.* ¶ 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. *Id.* ¶ 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. *Id.* ¶ 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. *Id.* ¶ 10. 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.*

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.* ¶ 11. Thereafter, Defendant produced confirmatory discovery regarding the size and scope of the putative class, and the Parties ultimately drafted and executed the Settlement Agreement, which is annexed to the Fraietta Affirmation as Exhibit 1. *Id.* ¶¶ 12-13. The Court preliminarily approved the Settlement on August 22, 2024, which is annexed to the Fraietta Affirmation as Exhibit 2. *Id.* ¶ 15.

SUMMARY OF THE SETTLEMENT

The Settlement provides an exceptional result for the class by delivering relief to approximately 1,476,486 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. *Id.* ¶ 12. The Settlement makes up to \$10,335,402 available to pay approved class member claims, and Defendant agrees to separately pay notice and administration costs, enhancement awards to the Plaintiffs, and attorneys' fees, costs, and expenses to Class Counsel. *Id.* ¶ 16; *see also id.* Ex. 1, Class Action Settlement Agreement ("Settlement") ¶ 1.3, 1.15, 1.28, 1.29, 2.1.

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).

Additionally, 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.

ARGUMENT

I. THE REQUESTED ATTORNEYS' FEES, COSTS, AND EXPENSES ARE REASONABLE AND SHOULD BE APPROVED

This case is complex with the added class action procedural issues overlaying the underlying litigation. It has unquestionably been litigated efficiently and with no duplication. The work performed was legal work related to the litigation and to the settlement. All tasks were pursued with one goal in mind: what was in the best interests of the Class.

“In testing the reasonableness of the negotiated fee, [courts] first look[] to the percentage of the recovery approach.” *Michels v. Phoenix Home Life Mut. Ins.*, 1997 WL 1161145, at *31 (Sup. Ct. N.Y. Cnty. Jan. 7, 1997). “Federal courts around the country, including federal district courts in New York, are turning away from the lodestar/multiplier approach and are returning to the percentage of the recovery approach.” *Id.* (citing cases).¹

New York courts “have routinely granted requests for one-third or more of the fund in cases with settlement funds similar to or substantially larger than this one.” *Massiah v. MetroPlus Health Plan, Inc.*, 2012 WL 5874655, at *7 (E.D.N.Y. Nov. 20, 2012) (citing cases); *Milton*, 2015 WL 9271692, at *5 (collecting cases and noting that 33.3% is “consistent with the norms of class litigation in this circuit”); *Cucuzza v. National Debt Relief, LLC*, No. 601631/2021, NYSCEF No. 21 (Sup. Ct. Nassau Cty. Apr. 20, 2022); *Cortes v. Mexican*

¹ “New York’s courts have recognized that its class action statute is similar to the federal statute and have looked to federal case law for guidance.” *Fiala*, 899 N.Y.S.2d at 537 (citing cases); *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.”).

Hospitality Operator LLC, No. 601406/2021, NYSCEF No. 18 (Sup. Ct. Nassau Cty. Feb. 28, 2022; *Gabriel v. Homyn Enterprises Corp.*, No. 504595/2021, NYSCEF No. 15 (Sup. Ct. Kings. Cty. Nov. 23, 2021); *Coba v. Wagamama USA, LLC*, No. 614988/2020, NYSCEF No. 17 (Sup. Ct. Nassau Cty. November 3, 2021); *Flowers v. FSNY Restaurant Associates, LLC*, No. 600976/2021, NYSCEF No. 19 (Sup. Ct. Nassau Cty. Oct. 21, 2021); *Hyken v. Greenwich BBQ, LLC*, No. 608689/2020, NYSCEF No. 19 (Sup. Ct. Nassau Cty. Jun. 3, 2021); *Figueroa v. United American Security, LLC*, No. 613892/2020, NYSCEF No. 21 (Sup. Ct. Nassau Cty. May 24, 2021); *Luna v. Zuma NYC, LLC*, No. 509547/2020, NYSCEF No. 40 (Sup. Ct. Kings Cty. May 10, 2021); *Lemma v. 103W77 Partners LLC*, No. 513125/2019, NYSCEF No. 24 (Sup. Ct. Kings Cty. Mar. 31, 2021); *Guzman v. Del Frisco's of New York, LLC*, No. 617666/2019, NYSCEF No. 61 (Sup. Ct. Nassau Cty. Mar. 18, 2021); *Robinson v. Big City Yonkers, Inc.*, No. 600159/2016, NYSCEF No. 291 (Sup. Ct. Nassau Cty. Feb. 16, 2018). Indeed, as courts have noted, fee requests for one-third of settlement funds “reasonably approximate[] the market for the services rendered,” because they represent what “reasonably paying clients typically pay ... pursuant to contingency retainer agreements.” *In re Nigeria Charter Flights Litig.*, 2011 WL 7945548, at *4 (citing *Arbor Hill*, 522 F.3d 182).

“In a claims-made settlement, attorneys’ fees should be based on the gross settlement amount, regardless of the number of claims actually made, because every putative class member could have claimed a portion of the fund if they wished to do so.” *Lopez*, 2015 WL 5882842, at *6; see also *Behzadi v. International Creative Mgmt Partners, LLC*, 2015 WL 4210906, *2 (S.D.N.Y. July 9, 2015) (“Awarding attorneys’ fees based on a percentage of the settlement amount rather than the amount paid is proper.”); *Alleyne v. Time Moving & Storage, Inc.*, 264 F.R.D. 41, 59 (E.D.N.Y. 2010) (approving one third of total settlement fund, stating that “the proper number against which attorneys’ fees are measured is the amount of the entire fund

created by the efforts of counsel, not the amount actually claimed or collected by the class.”); *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 437 (2d Cir. 2007) (“An allocation of fees by percentage should therefore be awarded on the basis of the total funds made available.”).

A. Plaintiffs’ Request For Approval Of Reimbursement Of Litigation Expenses And Attorneys’ Fees Is Fair And Reasonable And Should Be Granted

Plaintiffs respectfully submit that Class Counsels’ request for \$2,000,000.00, or approximately 19% of the cash made available to the Settlement Class, in attorneys’ fees and reimbursement of expenses for the successful prosecution and resolution of this class action should also be approved by the Court. Like the Settlement, the amount of this inclusive fee and expense request was negotiated at arms-length and those fee and expense negotiations were not commenced until after all the material terms of the Settlement had been agreed to. Maximizing the benefit to the Class was therefore Class Counsels’ paramount consideration. Class Counsels’ efforts to date during litigation have been without compensation of any kind, and receipt of any attorneys’ fee or reimbursement of expenses has been wholly contingent upon the result achieved. For these and the other reasons set forth below, Plaintiffs respectfully submit that the expenses and attorneys’ fees sought meet the applicable legal standards and, considering the contingency risk undertaken and the result achieved, should be approved.

CPLR 909 permits courts to award attorneys’ fees in class action litigation. In order to assess a reasonable fee, a court should consider:

[T]he risks of the litigation, whether counsel had the benefit of a prior judgment, standing at bar of counsel for the plaintiffs and defendants, the magnitude and complexity of the litigation, responsibility undertaken, the amount recovered, the knowledge the court has of the case’s history and the work done by counsel prior to trial, and what it would be reasonable for counsel to charge a victorious plaintiff.

Milton, 2015 WL 9271692, at *7 (citing *Fiala v. Metro. Life Ins. Co.*, 899 N.Y.S.2d 531, 610

(Sup. Ct. N.Y. Cnty. 2010)). Each of these factors supports approval of Class Counsel's fee and expense request here.

1. The Risk Of Litigation

This factor recognizes the risk of non-payment in cases prosecuted on a contingency basis where claims are not successful, which can justify higher fees. *See, e.g., In re Marsh ERISA Litig.*, 265 F.R.D. 128, 148 (S.D.N.Y. 2010) ("There was significant risk of non-payment in this case, and Plaintiffs' Counsel should be rewarded for having borne and successfully overcome that risk."); *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 592 (S.D.N.Y. 2008) (noting risk of non-payment in cases brought on contingency basis). "It is well settled that class actions are notoriously complex and difficult to litigate." *Shapiro v. JPMorgan Chase & Co.*, 2014 WL 1224666, at *21 (S.D.N.Y. Mar. 24, 2014).

The same novelty that made this case complex also presented a substantial risk of non-payment for Class Counsel. As aforementioned, ACAL § 25.07(4) has not been heavily litigated and numerous legal issues would need to be decided in Plaintiffs' favor. For example, Defendant would argue that the Settlement Class Members are subject to an arbitration agreement and class action waiver, and if that were unsuccessful, 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.* ¶ 22; *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). This risk was exacerbated by the fact that Defendant retained highly qualified defense counsel. *Id.* Nonetheless, Class Counsel embarked on a fact-intensive investigation of Defendant's practices, engaged in informal

discovery, and spent months negotiating with defense counsel – including preparing for and participating in a full-day mediation – to try and resolve this case. *Id.* ¶¶ 4-16. Class Counsel fronted this investment of time and resources, despite the significant risk of nonpayment inherent in this case. *Id.* ¶¶ 24-28.

The fact that Class Counsel undertook this representation, despite the significant risk of nonpayment, supports the requested fee award.

2. Whether Counsel Had the Benefit of a Prior Judgment

At the time Class Counsel originally filed this action, there were no cases interpreting ACAL § 25.07(4). Even today, there are only a few other cases interpreting ACAL § 25.07(4), none of which are binding or procedurally advanced beyond a motion to dismiss. Instead of relying on a prior judgment, Class Counsel took on the associated risk of filing this class action on a full contingency basis. This action and the instant Settlement provided a substantial benefit to millions of AMC’s customers in New York and elsewhere.

3. Standing at Bar of Counsel for the Plaintiffs and Defendant

Class action litigation presents unique challenges and – by achieving a meaningful settlement over alleged violations of an untested statute – Class Counsel proved that they have the ability and resources to litigate this case zealously and effectively.

Class Counsel are well-respected attorneys with significant experience litigating consumer class actions of similar size, scope, and complexity. *Fraietta Aff.* ¶¶ 28-31. Moreover, Class Counsel has been recognized by courts across the country for its expertise. *See Firm Resume, Fraietta Aff. 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.”²

Furthermore, “[t]he quality of the opposition should be taken into consideration in assessing the quality of the plaintiffs’ counsel’s performance.” *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 362 (E.D.N.Y. 2010). Class Counsel achieved an exceptional result in this case while facing well-resourced and experienced defense counsel.

Class Counsel litigated this case efficiently, effectively, and civilly. The excellent result is a function of the high quality of that work, which supports the requested fee award.

4. The Magnitude And Complexity Of The Litigation

“[C]lass actions have a well deserved reputation as being most complex.” *In re Nasdaq Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 477 (S.D.N.Y. 1998). This case was no exception. AMC’s Convenience Fees impacted millions of customers in New York and elsewhere and presented many novel and complex issues. While Plaintiffs believe that their claims are strong, they are not without risk. For example, any allegation that AMC engaged in deceptive conduct with its customers is vigorously disputed. The Settlement eliminates these risks and will provide substantial recovery for the Class without the risk and delay of continued litigation.

This factor therefore also supports Court approval of the requested attorneys’ fee and expense award.

5. The Case History and the Responsibility Undertaken by Class Counsel

As discussed in Point I, above, Class Counsel’s activities included, but were not limited to: conducting an extensive pre-filing investigation of Plaintiffs and Class Members’ claims and damages and vigorously prosecuting those claims. Class Counsel engaged in informal discovery

² 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.

and prepared for and participated in a full-day mediation with Judge Scheindlin. Fraietta Aff. ¶¶ 4-16.

Class Counsel also negotiated a comprehensive settlement agreement and prepared a motion for preliminary approval of the Settlement. *Id.* ¶¶ 16-17. Since reaching the Settlement, Class Counsel have also responded to inquiries from numerous Class Members and coordinated the settlement process with the Settlement Administrator. *Id.* ¶¶ 24-25. Class Counsel anticipates expending additional time administering the Settlement after final approval. *Id.* ¶ 25.

Thus, the work performed by Class Counsel to date has been comprehensive, complex, and wide ranging. This factor supports the requested fee award.

6. The Amount Recovered

Class Counsel's work has led to the creation of a substantial recovery on behalf of the Class. The Settlement provides for up to \$10,335,402 to pay approved class member claims. Fraietta Aff. ¶ 16. This includes relief for approximately 1,476,486 class members. *Id.* 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 and, as discussed herein, provides them a substantial percentage of the maximum recovery they could hope to recover after trial and a successful appeal. *Id.* Indeed, AMC's records confirm that the average 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. *Id.* ¶ 17.

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 at \$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. *Fraietta Aff.* ¶ 18. Indeed, Defendant's internal records confirm that, on average, AMC Stubs Premiere Members save approximately \$40 per year. *Id.* And equally important, the Settlement also provides meaningful prospective relief 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 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. *Id.* ¶ 19.

The Settlement is clearly an excellent result.

7. What It Would Be Reasonable for Counsel To Charge A Victorious Plaintiff

Under CPLR 909, “[i]f a judgment in an action maintained as a class action is rendered in favor of the class, the court in its discretion may award attorneys’ fees ... based on the reasonable value of legal services rendered and if justice requires, allow recovery of the amount awarded from the opponent of the class.”³ Here, the Settlement provides that Class Counsel may petition the Court for an award up to \$2,000,000. Settlement ¶ 8.1. The “Fee Award” also includes all costs and expenses incurred by Class Counsel. As mentioned above, New York courts routinely approve fee requests for one-third of a fund. *See* cases cited in Argument § I, *supra*. Thus, Class Counsel’s fee request of only approximately 19% of the cash made available

³ The requested fee award also encompasses unreimbursed litigation costs and expenses. Settlement ¶ 8.1. Reasonable litigation-related costs and expenses are customarily awarded in class action cases and include costs such as document preparation and travel. *See, e.g., Yuzary v. HSBC Bank USA, N.A.*, 2013 WL 5492998, at *11 (S.D.N.Y. Oct. 2, 2013) (“Class Counsel’s unreimbursed expenses, including court and process server fees, postage and courier fees, transportation, working meals, photocopies, electronic research, expert fees, and Plaintiffs’ share of the mediator’s fees, are reasonable and were incidental and necessary to the representation of the class.”). Thus, included in the requested fee award, Class Counsel respectfully seeks reimbursement of \$11,979.18 for out-of-pocket costs and expenses in these standard categories. *See Fraietta Aff.* ¶ 27.

to the Settlement Class is more than reasonable.

Public policy also favors Class Counsels' requested fee. "Consumer class actions . . . have value to society . . . both as deterrents to unlawful behavior . . . and as private law enforcement regimes that free public sector resources. If we are to encourage these positive societal effects, class counsel must be adequately compensated." *Gascho v. Glob. Fitness Holdings, LLC*, 822 F3d 269, 287 (6th Cir. 2016). *See also* Myriam Gilles & Gary B. Friedman, *Exploding the Class Action Agency Costs Myth: The Social Utility of Entrepreneurial Lawyers*, 155 U. PA. L. REV. 103, 106 (2006) ("[T]he deterrence of corporate wrongdoing is what we can and should expect from class actions."); William B. Rubenstein, *On What A "Private Attorney General" Is—and Why It Matters*, 57 VAND. L. REV. 2129, 2168 (2004) ("[Class counsel's] clients are not just the class members, but the public and the class members; their goal is not just compensation, but deterrence and compensation."); William B. Rubenstein, *Why Enable Litigation?: A Positive Externalities Theory of the Small Claims Class Action*, 74 UMKC L. REV. 709, 724-25 (2006) ("By enabling litigation, the class action has the structural consequence of dividing law enforcement among public agencies and private attorneys general and of shifting a significant amount of that enforcement to the private sector."). Indeed, "many courts have recognized that generous fee awards . . . serve the dual purpose of encouraging plaintiffs' attorneys to act as private attorneys general and discouraging wrongdoing." *Michels*, 1997 WL 1161145, at *31.

Here, ACAL § 25.07(4) sat on the books for more than a year—*completely unenforced*—before Class Counsel first began filing this action and others. During that time, AMC collected over \$10 million in allegedly unlawful Convenience Fees. But for Class Counsel's efforts, AMC's conduct likely would have continued unabated. This factor therefore supports the requested fee award.

II. PLAINTIFFS' REQUESTED SERVICE AWARDS ARE FAIR AND REASONABLE AND SHOULD BE GRANTED

Under the Settlement, AMC does not object to Named Plaintiff Service Awards for Plaintiffs Awad and Picciotti in the amount of \$5,000 each, as compensation for their efforts in bringing the Actions and achieving the benefits of the Settlement on behalf of the Settlement Class. Settlement ¶ 8.3.

It is common for courts to grant service awards in class action suits. Such awards “reward[] the named plaintiffs for the effort and inconvenience of consulting with counsel over the many years [a] case was active and for participating in discovery, including depositions.” *Milton*, 2015 WL 9271692, *2-3 (citing *Cox v. Microsoft Corp.*, 26 Misc. 3d 1220(A), at *4 (Sup. Ct. N.Y. Cnty. 2007)).

Here, Plaintiffs made significant contributions to this litigation by bringing these lawsuits, providing counsel with relevant documents, actively participating in the litigation, and providing important information used to prosecute this action and to achieve the Settlement. *Fraietta Aff.* ¶¶ 32-34. Additionally, Plaintiffs were prepared to sit through depositions and trial, if necessary. *See id.* ¶ 33; *Milton*, 2015 WL 9271692, *3 (recognizing the important role that plaintiffs play as the “primary source of information concerning the claim[,]” including by responding to counsel’s questions and reviewing documents).

The requested Service Award is also well within the range previously approved by the New York courts. *See, e.g., Norcross*, Case No. 23-cv-11153 at ECF No. 36 ¶ 15 (awarding \$5,000 service award for plaintiff in ACAL § 25.07(4) settlement); *Milton*, 2015 WL 9271692, *3 (awarding \$8,000 Service Award and citing several decisions in which a Service Award of \$10,000 was awarded). Given that the Named Plaintiffs’ contributions of time and assistance to this litigation, the requested Service Awards are reasonable, appropriate, and should be approved by the Court.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court (1) approve attorneys' fees, costs, and expenses in the amount of \$2,000,000.00, (2) grant Plaintiff Awad and Plaintiff Picciotti Service Awards of \$5,000 each in recognition of their efforts on behalf of the class, and (3) award such other and further relief as the Court deems reasonable and just.

Dated: October 8, 2024

Respectfully submitted,

By: /s/ Philip L. Fraietta
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