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

REGINA PATINO, individually and on behalf
of all others similarly situated,

Plaintiff.,

v.

FILM AT LINCOLN CENTER, INC.,

Defendant.

Index No. 504682/2024

Motion Seq. No. 001

**NOTICE OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 18, 2024 at 9:30 a.m., upon: (1) the accompanying Memorandum of Law, and (2) the Affirmation of Philip L. Fraietta, and the exhibits attached thereto (including the Parties' Class Action Settlement Agreement), Plaintiff Regina Patino, through her undersigned attorneys, will move this Court, at the Supreme Court of the State of New York, County of Kings, 360 Adams St. #4, Brooklyn, New York, for an Order, pursuant to Article 9 of the CPLR: (i) granting preliminary approval of the Class Action Settlement; (ii) provisionally certifying the Settlement Class under CPLR 902 in connection with the settlement process; (iii) appointing Philip L. Fraietta and Stefan Bogdanovich of Bursor & Fisher, P.A. as Class Counsel; (iv) appointing Regina Patino as the Class Representative for the Settlement Class; (v) approving the Notice Plan for the Class Action Settlement described in the Class Action Settlement Agreement and its Exhibits, as well as the specific Notice of Class Action and Proposed Settlement (the "Proposed Notice"), attached as Exhibits B-C to the

Settlement Agreement, and directing distribution of the Proposed Notice; and (vi) granting such other, further, or different relief as the court deems just and proper.

* * *

A Proposed Preliminary Approval Order is submitted herewith.

Dated: July 10, 2024

Respectfully submitted,

BURSOR & FISHER, P.A.

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

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Proposed Class Counsel

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

REGINA PATINO, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

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Index No. 504682/2024

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF’S UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Dated: July 10, 2024

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PRELIMINARY STATEMENT

In this putative class action, Plaintiff Regina Patino alleges that Defendant Film at Lincoln Center, Inc. failed to timely disclose an approximately \$2 convenience fee for online purchases of tickets to its theaters in New York state, in alleged violation of New York Arts and Cultural Affairs Law (“ACAL”) § 25.07(4).

After several substantive settlement discussions, the Parties have reached a proposed settlement (“Settlement” or “Agreement”).¹ Defendant collected approximately \$400,000 in convenience fees during the class period, and under the proposed Settlement Defendant has agreed to create a \$400,000 non-reversionary Settlement Fund, which will be used to pay all approved claims by Settlement Class Members, notice and administration expenses, a Court-approved Service Award to Plaintiff, and attorneys’ fees, costs, and expenses to Class Counsel. The Settlement provides that each claimant who submits a valid and accepted Claim Form will receive a *pro rata* cash payment as a percentage of the total amount of processing fees he or she paid to Defendant during the class period. And equally important, the Settlement also provides meaningful prospective relief as Defendant acknowledges that it has changed the purchase flow for tickets to its 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.

The Court should have no hesitation finding that the Settlement falls within the range of possible approval. Accordingly, Plaintiff respectfully submits this memorandum of law in support of her motion, under Article 9 of the CPLR, for: (i) preliminary approval of the Settlement; (ii) approval of the form and manner of notice to the Settlement Class (“Notice”);

¹ Unless noted, capitalized terms are defined in the Settlement Agreement, dated June 21, 2024, which is attached to the Fraietta Affirmation as Exhibit 1.

(iii) preliminary certification of the Settlement Class, for settlement purposes only; and (iv) the scheduling of a hearing on final approval of the Settlement and various related matters (“Final Approval Hearing”). The requested relief is embodied in the [Proposed] Order Granting Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”), filed herewith.

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 purchaser. 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 a violation of” its provisions. ACAL § 25.33.

B. Plaintiff’s Allegations

Defendant owns and operates numerous theaters throughout New York. *See* Complaint (NYSECF Doc. No. 1) (“Compl.”) ¶ 8. Plaintiff alleges that when consumers purchase tickets to Defendant’s New York-based theaters on Defendant’s website, they are “quoted a fee-less price, only to be ambushed by a \$2.00 per ticket ‘convenience fee’ at checkout after clicking through the various screens required to make a purchase.” *Id.* ¶ 1; *see also id.* ¶¶ 10-15 and Figures 1-6. Plaintiff alleges 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 total cost of its tickets during the purchase process.” *Id.* ¶¶ 28-29. As alleged in the Complaint, Plaintiff is an individual who purchased tickets on Defendant’s website to Film at Lincoln Center theaters in New York and paid convenience fees that were not disclosed to her at the beginning of the purchase process. *Id.* ¶¶ 31-32.

Defendant denies these allegations and denies any wrongdoing.

C. The Litigation and Settlement Negotiations

On February 15, 2024, Plaintiff Patino filed a putative class action in the Supreme Court of the State of New York, Kings County. *Fraietta Aff.* ¶ 4. The material allegations of the complaint centered on Defendant’s alleged failure to disclose a \$2.00 convenience fee for tickets to its theaters in New York state prior to those tickets being selected for purchase, in alleged violation of ACAL § 25.07(4). *Id.*

From the outset of the case, the Parties engaged in settlement discussions. *Id.* ¶ 5. As part of these discussions, 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.* ¶ 6. 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.* ¶ 7. On June 5, 2024, Defendant accepted Plaintiff’s settlement proposal and the Parties reached an agreement on all material terms of a class action settlement and executed a term sheet. *Id.* ¶ 8.

TERMS OF THE SETTLEMENT

The key terms of the Class Action Settlement Agreement, attached to the Fraietta Affirmation as Exhibit 1, are briefly summarized as follows:

A. Class Definition

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

All individuals who purchased electronic tickets and paid a convenience fee to gain entrance to Defendant’s Places of Entertainment from Defendant’s Website from August 29, 2022, and through February 21, 2024.²

Settlement ¶¶ 1.39, 1.40. Defendant’s records confirm that there are approximately 41,304 persons in the Settlement Class. Fraietta Aff. ¶ 12. Defendant’s records also confirm that effective February 22, 2024, it changed the purchase flow for tickets to its New York theaters on its website to disclose the convenience fee at issue in this litigation before the ticket is selected for purchase. *Id.* ¶ 13.

B. Monetary Relief

The Settlement consists of a non-reversionary, all-cash “common fund” in the amount of \$400,000, which will be used to pay all approved claims by Settlement Class Members, notice and administration expenses, a Court-approved Service Award to Plaintiff, and attorneys’ fees, costs, and expenses to Class Counsel to the extent awarded by the Court. Settlement ¶¶ 1.3, 1.4, 1.8, 1.17, 1.35, 1.36, 2.1. 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 *pro rata* payment equal to that

² 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 properly execute and file a timely request for exclusion from the class; and (4) the legal representatives, successors or assigns of any such excluded persons; and (5) Class Counsel.

Settlement Class Member's Out-of-Pocket Percentage multiplied by the Available Settlement Fund. Fraietta Aff. ¶ 11; Settlement ¶¶ 1.4, 1.5; 1.25, 1.26, 2.1(b).

C. Prospective Relief

As part of the Settlement, Defendant acknowledges that it has changed the purchase flow for tickets to its 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.

D. Release

In exchange for the relief described above, Defendant and each of the "Released Parties" as defined at ¶ 1.33 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 for goods and services provided in Defendant's New York-based theatres from August 29, 2022 through and including February 21, 2024. *See id.* ¶¶ 1.32, 3.1 for full release language.

E. Notice And Administration Expenses

The Settlement Fund will be used to 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 ¶ 1.36.

F. Service Award

In recognition of her efforts on behalf of the Settlement Class, Plaintiff may receive, subject to Court approval, a Service Award of \$10,000, as appropriate compensation for her time and effort serving as Class Representative and as a party to the Action. Such awards will be paid by Defendant from the Settlement Fund, within five (5) business days after entry of the Final

Judgment if there have been no objections to the Settlement Agreement, and, if there have been such objections, within five (5) business days after the Effective Date. Settlement ¶ 8.3.

G. Attorneys' Fees, Costs, And Expenses

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 one-third of the Settlement Fund (i.e., \$133,333.33). Settlement ¶ 8.1. Such award will be paid by Defendant from the Settlement Sum, within ten (10) business days after entry of the Court's Final Judgment. Settlement ¶ 8.2.

ARGUMENT

I. PRELIMINARY 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).

The first step is preliminary approval of the settlement. *Id.* at *10. "Preliminary approval requires only an 'initial evaluation' of the fairness of the proposed settlement on the basis of written submissions and an informal presentation by the settling parties." *Id.* (citing *Illoldi v. Koi N.Y. LLC*, 2016 WL 3099372, at *1 (S.D.N.Y. May 31, 2016)). If a settlement is the result of

arm's-length negotiations, does not suffer from "obvious defects," and is within the range of reasonableness, preliminary approval is appropriate. *See id.* (citing *In re Platinum & Palladium Commodities Litig.*, 2014 WL 3500655, at *11 (S.D.N.Y. July 15, 2014)).³

While not the subject of the preliminary approval analysis, a review of the key factors for final approval supports preliminary approval here. New York courts evaluate class action settlements by examining the settlement's fairness, adequacy, and reasonableness, and the best interests of the class members. *Brody v. Catell*, 2007 WL 1865080, at *5 (Sup. Ct., Kings Cnty. June 27, 2007). This determination 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 complexity and nature of the issues of law and fact. *Id.* Here, as set forth below, each factor weights in favor of preliminary approval.

A. The Value Of The Settlement Outweighs The Likelihood Of Plaintiff's 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

³ "Once preliminary approval is bestowed, the second step of the process ensues: notice is given to the class members of a hearing, at which time class members and the settling parties may be heard with respect to final court approval." *In re NASDAQ Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997). Plaintiff will move for final approval at the appropriate time.

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 *pro rata* payment equal to that Settlement Class Member’s Out-of-Pocket Percentage multiplied by the Available Settlement Fund. Settlement ¶ 2.1(b). And equally important, effective February 22, 2024, Defendant changed the purchase flow for tickets to its 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 Plaintiff’s belief that while her alleged claims are meritorious and class treatment is warranted, her ultimate success would require favorable outcomes at all steps of the litigation, including overcoming Defendant’s defenses which include that Plaintiff’s alleged claims are precluded by the voluntary payment doctrine, plaintiff is precluded from seeking a statutory penalty in a class action and the pertinent statute provides for an excessive penalty that is constitutionally infirm, and the fees at issue are authorized by ACAL § 25.29, amongst other defenses. Moreover, Defendant 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.* ¶¶ 18. Proposed Class Counsel is also cognizant of the potential problems of proof and defenses to the alleged claims raised in this action. *Id.* 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.* 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 Parties 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). Notice of the Settlement and its details have not yet been issued to the Settlement Class, but at this stage in the process, the Parties have expressed their approval of the Settlement by negotiating and agreeing to the Agreement.

Plaintiff and Proposed 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.* ¶¶ 6-7. Plaintiff and Proposed Class Counsel believe that the Settlement is fair, adequate, reasonable, and in the best interests of the Settlement Class. *Id.* ¶ 19.

Defendant likewise believes that the Settlement is appropriate. Settlement, Recitals ¶ E. 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 preliminary approval.

C. Proposed 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 In re HSBC Bank U.S.A., N.A., Checking Account Overdraft Litig.*, 2015 WL 6698518, at *10 (Sup. Ct., N.Y. Cnty. Oct. 27, 2015) (finding that the settlement is supported by “experienced counsel” weights in favor of preliminary approval). The Settlement is the product of significant and protracted negotiations involving highly experienced law firms. As set forth more fully in the Fraietta Affirmation, Proposed 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. Counsel for Defendant also has significant experience defending class actions, are well regarded within the class action bar, and support the Settlement as well. *Fraietta Aff.* ¶ 18. This factor favors preliminary approval.

D. The Settlement Is The Result Of Arm’s-Length Negotiations Between The Parties

“[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 multiple conferences involving experienced counsel for the Parties. This factor favors preliminary 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 v. Metropolitan Life Ins. Co., Inc.*, 899 N.Y.S.2d 531 at 540 (2010) (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 Plaintiff believes that her alleged 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 Plaintiff’s favor. 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. *Fraietta Aff.* ¶ 18. While Plaintiff believes that she 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 preliminarily approved.

II. PRELIMINARY CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE

Preliminary certification of the Settlement Class, for settlement purposes only, is also appropriate. Under CPLR 901(a), the class must be sufficiently numerous such that “joinder of

all members . . . is impracticable”; “questions of law or fact common to the class [must] predominate over any questions affecting only individual members”; the claims of the proposed class representatives must be typical of those of the class; the proposed class representatives and their counsel must “fairly and adequately protect the interests of the class”; and a class action must be superior to other means of adjudicating the claims alleged. All of these factors favor preliminary class certification, for settlement purposes only.

A. Numerosity

Based on Defendant’s records, the Settlement Class contains approximately 41,304 persons, and is therefore sufficiently numerous. *See Fraietta Aff.* ¶ 12; *see Borden v. 400 East 55th Street Associates, L.P.*, 24 N.Y.3d 382, 399 (2014) (“numerosity is presumed at a level of 40 members.”). There is no question that joinder of all members of the Settlement Class would be impractical. *Friar v. Vanguard Holding Corp.*, 434 N.Y.S.2d 698, 703 (2d Dep’t 1980).

B. Commonality and Predominance

CPLR 901(a)(2) requires that questions of law and fact common to the class predominate over individual questions. *In re Consolidated Title Ins. Cases*, 2004 WL 690380, at *4 (Sup. Ct., Nassau Cnty., Jan 8, 2004). To meet this standard, Class members’ claims need only be substantially similar, not identical in every aspect. *Dowd v. Alliance Mortg. Co.*, 2008 WL 4587270, at *3 (Sup. Ct., Suffolk Cnty., Sept. 24, 2008) (“[T]he predominance of questions of fact or law over questions affecting only individual members is the test which must be met, not a[n] . . . inspection of the claims of each class member.”). “In deciding whether this . . . prerequisite is satisfied, the Court considers whether the proposed class members are more bound together by a mutual interest in the adjudication of common questions than they are divided by the individual members’ interest in matters peculiar to them.” *In re Coordinated Title Ins. Cases*, 2004 WL 690380, at *5.

Here, there are common questions of law and fact that will generate common answers apt to drive the resolution of the litigation. Plaintiff alleges that Defendant uniformly failed to properly disclose the convenience fee before the ticket was selected for purchase. *See* Compl. ¶¶ 1, 10-15 and Figures 1-6. Common legal and factual questions include, but are not limited to: (a) whether Defendant failed to disclose the total cost of the ticket, including all ancillary fees, prior to the tickets being selected for purchase in violation of New York Arts & Cultural Affairs Law § 25.07(4); and (b) whether the displayed price of Defendant's tickets increases during the purchase process in violation of New York Arts & Cultural Affairs Law § 25.07(4). If Defendant violated the statute, then every Settlement Class Members' rights under the statute have been violated in the exact same (or a substantially similar) manner, and damages can be precisely calculated for each Settlement Class Member. Accordingly, "[c]ourts considering similar claims of unlawful payment policies routinely certify classes based on evidence of a common policy." *Pichardo v. Carmine's Broadway Feast Inc.*, 2016 WL 5338551, at *3 (S.D.N.Y. Sept. 26, 2016).

C. Typicality

CPLR 901(a)(3) requires that: "the claims or defenses of the representative parties are typical of the claims or defense of the class." Where, as here, a Plaintiff's alleged claims derive from the same practice or course of conduct that gives rise to the alleged claims of the other putative Settlement Class Members and is based upon the same legal theory, the requirement of typicality is satisfied. *Cox v. Microsoft Corp.*, 2005 WL 3288130, at *3 (Sup. Ct., New York County 2005) (*citing Friar v. Vanguard Holding Corp.*, 78 A.D.2d 83, 98 (2d Dep't 1980)). "Minor variations in the fact patterns underlying individual claims" do not defeat typicality when the defendant directs "the same unlawful conduct" at the named plaintiff and the class. *Robidoux v. Celani*, 987 F.2d 931, 936-37 (2d Cir. 1993). Courts evaluate typicality "with reference to the

company's actions, not with respect to particularized defenses it might have against certain class members." *Trinidad v. Breakaway Courier Sys., Inc.*, 2007 WL 103073, at *6 (S.D.N.Y. Jan. 12, 2007).

Here, Plaintiff's alleged claims are typical of those of the Settlement Class because they all "arise[] out of the same course of conduct." *Pruitt v. Rockefeller Ctr. Props.*, 167 A.D.2d 14, 22 (1st Dep't 1991). In fact, Plaintiff's alleged "claims derive from the same practice or course of conduct that gives rise to the claims of the other class members and is based upon the same legal theory," since both Plaintiff's and all of the Settlement Class Members' alleged claims derive from the same alleged failure to properly disclose the convenience fee. *Cox*, 2005 WL 3288130, at *3; Compl. ¶¶ 1, 10-15 and Figures 1-6. Therefore, the typicality requirement is satisfied.

D. Adequacy

In addressing adequacy, courts consider: "(1) whether any conflicts exists between class representatives and class members; (2) representatives' familiarity with the lawsuit and their financial resources; and (3) the competence of class counsel." *In re HSBC*, 2015 WL 6698518, at *9.

First, in this case, Plaintiff – like each and every one of the Settlement Class Members – purchased tickets to Defendant's New York-based theaters and paid an allegedly unlawful convenience fee in connection with her purchases. Compl ¶¶ 31-33. Thus, Plaintiff and the Settlement Class Members have the exact same interest in recovering the damages to which they allege to be entitled to recover. *Id.* ¶ 34. As such, Plaintiff does not have any interest antagonistic to those of the proposed Settlement Class and their pursuit of this litigation should be clear evidence of that. *Id.*

Second, Plaintiff has retained counsel with the required experience and competence to serve as Class Counsel, will adequately represent the interests of the Settlement Class, and have done so thus far by framing the alleged claims well and diligently pursuing a favorable recovery. *See Pruitt*, 167 A.D.2d at 24 (finding adequacy where “[t]here is not even a hint of any adverse interest” and the plaintiff’s “counsel is experienced in class action litigation, particularly in the securities law area”); *see also In re Drexel Burnham Lambert Grp., Inc.*, 960 F.2d 285, 291 (2d Cir. 1992) (adequacy satisfied where claimants and the proposed class “share a common interest” and “wish to obtain the highest possible recovery”).

Finally, Proposed Class Counsel – Bursor & Fisher, P.A. – has extensive experience in litigating class actions of similar size, scope, and complexity to the instant action. *Fraietta Aff.* ¶ 15. Proposed Class Counsel regularly engages in major complex litigation, has the resources necessary to conduct litigation of this nature, and has frequently been appointed lead class counsel by courts throughout the country. *Id.*; *see also Fraietta Aff. Ex. 1*; Firm Resume of Bursor & Fisher, P.A.; *Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561 at 566 (S.D.N.Y. Feb. 25, 2014) (“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 [six] class action jury trials since 2008.”). Further, Proposed Class Counsel has devoted substantial resources to the prosecution of this action by investigating Plaintiff’s alleged claims and that of the Settlement Class, aggressively pursuing those alleged claims, conducting informal discovery, participating in months of settlement negotiations, and ultimately, negotiating a favorable class action settlement. *Fraietta Aff.* ¶¶ 4-9. In sum, Proposed Class Counsel has vigorously prosecuted this action and will continue to do so throughout its pendency. *Id.* ¶ 25.

In light of the foregoing, the adequacy requirement is satisfied.

E. A Class Action Is A Superior Mechanism

A class action here is superior to any other method of resolving this Action because it provides many geographically dispersed Settlement Class Members with modest losses with viable means to recover alleged damages tied to Defendant's alleged failure to properly disclose the convenience fee charged in connection with the sale of tickets to its New York theaters. Thus, "a class action is not only superior [here] but, indeed, the only practical method of adjudication." *Pruitt*, 167 A.D.2d at 24; accord *Billhofer v. Flamel Technologies, S.A.*, 281 F.R.D. 150 at 164 (S.D.N.Y. Mar. 15, 2012) (finding superiority and reasoning that "[a]djudicating individual claims would be a significant waste of judicial resources").

Additionally, the factors set forth in CPLR 902 are readily satisfied here. Settlement Class Members have only a minimal interest in individually controlling the prosecution of this case, as evidenced by the fact that no other Settlement Class Member has filed suit; prosecuting and defending individual actions would be inefficient; this Court provides a logical forum within which to adjudicate these alleged claims, and there is no difficulty in proceeding as a class action here. *See Pludeman v. N. Leasing Sys., Inc.*, 74 A.D.3d 420, 421–22 (1st Dep't 2010) (setting forth factors).

Accordingly, all of the relevant factors favor preliminarily certifying the Settlement Class, for settlement purposes only, pending Plaintiff's forthcoming application for final approval on a schedule set by the Court.

III. THE PROPOSED NOTICE PLAN SHOULD BE APPROVED

The Proposed Notice provides detailed information about the Settlement, including: 1) a comprehensive summary of its terms; 2) Proposed Class Counsel's intent to request attorneys' fees, reimbursement of expenses, and a Service Award for the Plaintiff; and 3) detailed information about the Released Claims. *See* Settlement Exhibits B-C. In addition, the Notice

provides information about the Final Approval Hearing date, the right of Settlement Class Members to seek exclusion from the Settlement Class or to object to the proposed Settlement (as well as the deadlines and procedure for doing so), and the procedure to receive additional information. *Id.* In short, the Proposed Notice is intended to fully inform Settlement Class Members of the lawsuit, the proposed Settlement, and the information they need to make informed decisions about their rights. *See Colt*, 155 A.D.2d at 160 (noting “no criteria is set forth in [CPLR 908]” for content of notice, but endorsing similar detail); *see also Puglisi v. TD Bank, N.A.*, 2015 WL 574280, at *5 (E.D.N.Y. Feb. 9, 2015) (class notice “need only describe the terms of the settlement generally”).

Pursuant to the proposed Notice Plan, Defendant will produce an electronic list from its records containing the email addresses of all persons within the Settlement Class. Settlement ¶ 4.1(a). The Settlement Administrator will then send those Settlement Class Members an email, in the form attached to the Settlement Agreement as Exhibit B. *Id.* ¶ 4.1(b). Additionally, the Settlement Administrator will create a dedicated Settlement Website, which will be accessible to the general public and will include notice in the form attached to the Agreement as Exhibit C. *Id.* ¶ 4.1(d). The Settlement Website will also include the ability to file a Claim Form online, as well as copies of important case documents, such as the Agreement and papers filed in support of the Settlement. *Id.*

The form and manner of the detailed notice provided for here far exceeds the minimum requirements and is the best practicable method under the circumstances. The proposed Notice complies with due process, CPLR 904, and CPLR 908, and should thus be approved.

CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that the Court grant her Motion for Preliminary Approval of the Settlement. A Proposed Order granting preliminary

approval, certifying the Settlement Class for settlement purposes only, naming Plaintiff as Class Representative, appointing Class Counsel, and approving the Proposed Notice of Settlement, is submitted herewith.

Dated: July 10, 2024

Respectfully submitted,

BURSOR & FISHER, P.A.

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

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Proposed 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 5,353 words. By operation of Microsoft Word's word count function, this number includes legal citations and certain forms of punctuation.

Dated: July 10, 2024

Respectfully submitted,

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

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Proposed Class Counsel

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

REGINA PATINO, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

FILM AT LINCOLN CENTER, INC.,

Defendant.

Index No. 504682/2024

Motion Seq. No. 001

**AFFIRMATION OF PHILIP L. FRAIETTA IN SUPPORT OF PLAINTIFF’S
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF
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., counsel of record for Plaintiff 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 Plaintiff’s 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”). Attached as **Exhibits B-C** to the Settlement Agreement are the Proposed Class Notices.

4. On February 15, 2024, Plaintiff Regina Patino filed a putative class action in the New York Supreme Court, County of Kings. The material allegations of the complaint centered

on Defendant's alleged failure to disclose a \$2.00 convenience fee for tickets to its 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. From the outset of the case, the Parties engaged in settlement discussions.

6. As part of those discussions, 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. Plaintiff and Proposed 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.

7. 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.

8. On June 5, 2024, the Parties reached an agreement on all material terms of a class action settlement and executed a term sheet.

9. Thereafter, the Parties ultimately drafted and executed the Settlement Agreement, which is annexed to the Fraietta Affirmation as Exhibit 1.

10. Under the Settlement, Defendant has agreed to make up to \$400,000 available to pay approved class member claims in a non-reversionary, all cash common fund. This will be used to pay all approved claims by Settlement Class Members, notice and administration expenses, a Court-approved Service Award to Plaintiff, and attorneys' fees, costs, and expenses to Class Counsel to the extent awarded by the Court.

11. The Settlement provides that each Settlement Class Member will be entitled to submit a claim that will, if approved, entitle him or her to a *pro rata* payment equal to that Settlement Class Member's Out-of-Pocket Percentage multiplied by the Available Settlement Fund.

12. Defendant's records reflect that there are approximately 41,304 persons in the Settlement Class. *See* Settlement ¶¶ 1.39; 1.40.

13. Defendant's records also confirm that effective February 22, 2024, it changed the purchase flow for tickets to its New York theaters on its website to disclose the convenience fee at issue in this litigation before the ticket is selected for purchase.

14. 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.

15. My firm, Bursor & Fisher, P.A., has significant experience in litigating class actions of similar size, scope, and complexity to the instant action. (*See* Firm Resume of Bursor & Fisher, P.A., a true and accurate copy of which is attached hereto as **Exhibit 2**). My firm has also been recognized by courts across the country for its expertise and skilled and effective representation. *See also Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561, 566 (S.D.N.Y. Feb. 25, 2014) ("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.").

16. 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.

17. Plaintiff and Proposed Class Counsel recognize that despite our belief in the strength of Plaintiff's claims, and Plaintiff's 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.

18. Plaintiff and Proposed Class Counsel are also mindful that absent a settlement, the success of Defendant's various defenses in this case could deprive the Plaintiff 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, Plaintiff would have to overcome Defendant's defenses which include that Plaintiff's claims are precluded by the voluntary payment doctrine. An adverse ruling on any of those defenses would have resulted in Plaintiff and the Settlement Class receiving a substantially reduced recovery, or no recovery at all. Looking beyond trial, Plaintiff and Proposed Class Counsel are also keenly aware that Defendant could appeal the merits of any adverse decision.

19. Plaintiff 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.

20. Throughout the pendency of this action, Plaintiff has and will continue to adequately and vigorously represent her fellow Class Members. She has spent significant time assisting her counsel, providing information regarding Defendant's alleged practices, providing pertinent documents, and assisting in settlement negotiations.

21. My firm is unaware of any individual actions that have been instituted by Class Members.

22. Proposed Class Counsel has zealously represented the interests of the Class and committed substantial resources to the resolution of the class claims, and will continue to do so through the settlement administration process.

23. Attached hereto as **Exhibit 3** is a true and correct copy of the Complaint in this matter (NYSCEF Doc. No. 1).

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

Executed on July 10, 2024 in New York, New York.

/s Philip L. Fraietta

Philip L. Fraietta

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

REGINA PATINO, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

FILM AT LINCOLN CENTER, INC.,

Defendant.

Index No. 504682/2024

CLASS ACTION SETTLEMENT AGREEMENT

This Agreement (“Agreement” or “Settlement Agreement”) is entered into by and among (i) Plaintiff Regina Patino (“Plaintiff”); (ii) each and every member of the Settlement Class (as defined herein); and (iii) Defendant Film at Lincoln Center, Inc. (“Defendant”). The Settlement Class and Plaintiff are collectively referred to as the “Plaintiffs” unless otherwise noted. The Plaintiff and the Defendant are collectively referred to herein as the “Parties.” This Agreement is intended by the Parties to fully, finally and forever resolve, discharge, and settle the Released Claims (as defined herein), upon and subject to the terms and conditions of this Agreement, and subject to the final approval of the Court.

RECITALS

A. On February 15, 2024, Plaintiff filed a putative class action in the Supreme Court of the State of New York, County of Kings. The material allegations of the Complaint center on Defendant’s alleged failure to disclose a “convenience fee” prior to those tickets being selected for purchase, in alleged violation of New York Arts and Cultural Affairs Law (“ACAL”) § 25.07(4). (NYSCEF Doc. No. 1.)

B. Before Defendant formally responded to the Complaint, Plaintiff and Defendant engaged in direct communication, and as part of their obligation under 22 NYCRR 202.12, discussed the prospect of resolution.

C. As part of the settlement negotiations, Plaintiff and Defendant exchanged informal discovery, including on issues such as the size and scope of the putative class and the amount of convenience fees Defendant collected during the relevant time period. 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.

D. After Plaintiff's counsel received the information, counsel for the Parties had numerous conferences, and, on June 5, 2024, the Parties reached agreement on all material terms of a class action settlement and executed a term sheet.

E. Defendant believes that the claims asserted in the above-captioned action (the "Action") against it have no merit and that it would have prevailed on a motion to compel arbitration, to dismiss, at summary judgment, and/or at trial and that Plaintiff would not have been able to certify a class under the requirements of CPLR 901. Defendant has denied and continues to deny any wrongdoing, liability, or fault whatsoever and has denied and continues to deny that it committed, or attempted to commit, any wrongful act or violation of law or duty alleged in the Action. Defendant has opposed and continues to oppose certification of a litigation class in this Action. Nonetheless, taking into account the uncertainty and risks inherent in any litigation, Defendant has concluded it is desirable and beneficial that the Action be fully and finally settled and terminated in the manner and upon the terms and conditions set forth in this Agreement. This Agreement is a compromise. The Agreement, any related documents, and any negotiations relating to or supporting the Agreement shall not be construed as or deemed to

be evidence of, an admission, or a concession of liability, fault, or wrongdoing on the part of Defendant, or any of the Released Parties (defined below), with respect to any claim of fault or liability or wrongdoing or damage whatsoever, or with respect to the certifiability of a litigation class.

F. Plaintiff believes that the claims asserted in the Action against Defendant have merit and that she would have prevailed at summary judgment and/or trial. Nonetheless, Plaintiff and Class Counsel (defined below) recognize that Defendant has raised factual and legal defenses that present a risk that Plaintiff may not prevail. Plaintiff and Class Counsel also recognize the expense and delay associated with continued prosecution of the Action against Defendant through a motion to dismiss, class certification, summary judgment, trial, and any subsequent appeals. Plaintiff and Class Counsel also have taken into account the uncertain outcome and risks of litigation, especially in complex class actions, as well as the difficulties inherent in such litigation. Therefore, Plaintiff believes it is desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice. Based on its evaluation, Class Counsel has concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to the Settlement Class, and that it is in the best interests of the Settlement Class to settle the claims raised in the Action pursuant to the terms and provisions of this Agreement.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiff, the Settlement Class, and each of them, and Defendant, by and through their undersigned counsel that, subject to final approval of the Court after a hearing or hearings as provided for in this Settlement Agreement, in consideration of the benefits flowing to the Parties from the Agreement set forth herein, that the Action and the Released Claims shall be finally and

fully compromised, settled, and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions of this Agreement.

AGREEMENT

1. DEFINITIONS.

As used in this Settlement Agreement, the following terms have the meanings specified below:

1.1 “Action” means *Patino v. Film at Lincoln Center, Inc.*, Index No. 504682/2024, pending in the Supreme Court of the State of New York, County of Kings.

1.2 “Alternate Judgment” means a form of final judgment that may be entered by the Court herein, but in a form other than the form of Judgment provided for in this Agreement and where none of the Parties elect to terminate this Settlement by reason of such variance.

1.3 “Approved Claim” means a Claim Form submitted by a Settlement Class Member that is: (a) submitted timely and in accordance with the directions on the Claim Form and the provisions of the Settlement Agreement; (b) fully and truthfully completed by a Settlement Class Member with all of the information requested in the Claim Form; (c) signed by the Settlement Class Member, physically or electronically; and (d) approved by the Settlement Administrator pursuant to the provisions of this Agreement.

1.4 “Available Settlement Fund” means the Settlement Fund less any Settlement Administration Expenses, any Service Award to the Class Representative, any Fee Award to Class Counsel, any taxes paid on the Settlement Fund (including any interest or penalties thereon), and any other costs, fees or expenses approved by the Court to be paid from the Settlement Fund.

1.5 “Cash Award” means the cash compensation, payable by the Settlement Administrator from the Settlement Fund on a *pro rata* basis, that each Settlement Class Member who submits an Approved Claim shall be entitled to receive.

1.6 “Claim Form” means the document substantially in the form attached hereto as Exhibit A, as approved by the Court. The Claim Form, to be completed by Settlement Class Members who wish to file a Claim for a payment, shall be available in electronic and paper format in the manner described below.

1.7 “Claims Deadline” means the date by which all Claim Forms must be postmarked or received to be considered timely and shall be set as a date no later than forty-five (45) days after entry of the Final Judgment. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Notice and Claim Form. Failure to submit a timely claim by the Claims Deadline will prevent a Settlement Class Member from receiving a settlement payment from the Settlement Fund.

1.8 “Class Counsel” means Philip L. Fraietta and Stefan Bogdanovich of Bursor & Fisher, P.A.

1.9 “Class Representative” means the named Plaintiff in this Action, Regina Patino.

1.10 “Court” means the Supreme Court of the State of New York, County of Kings.

1.11 “Days” means calendar days, except that when computing any period of time prescribed or allowed by this Settlement Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included. When computing any period of time prescribed or allowed by this Settlement Agreement, the last day of the period so computed shall be included, unless it is a Saturday, Sunday or federal or State of New York legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or federal or State of New York legal holiday.

1.12 “**Defendant**” means Film at Lincoln Center, Inc.

1.13 “**Defendant’s Counsel**” means Bety Javidzad, Norman M. Aspis, and Alyssa J.

Landow of Dentons US LLP.

1.14 “**Defendant’s Website**” means <https://www.filmlinc.org/>.

1.15 “**Effective Date**” means the date ten (10) days after which all of the events and conditions specified in Paragraph 9.1 have been met and have occurred.

1.16 “**Escrow Account**” means the separate, interest-bearing escrow account to be established by the Settlement Administrator under terms acceptable to all Parties at a depository institution insured by the Federal Deposit Insurance Corporation. The Settlement Fund shall be deposited by or on behalf of Defendant into the Escrow Account in accordance with the terms of this Agreement and the money in the Escrow Account shall be invested in the following types of accounts and/or instruments and no other: (i) demand deposit accounts and/or (ii) time deposit accounts and certificates of deposit, in either case with maturities of forty-five (45) days or less. The costs of establishing and maintaining the Escrow Account shall be paid from the Settlement Fund.

1.17 “**Fee Award**” means the amount of attorneys’ fees, costs, and expenses awarded by the Court to Class Counsel, which will be paid out of the Settlement Fund.

1.18 “**Final**” means one business day following the latest of the following events: (i) the date upon which the time expires for filing or noticing any appeal of the Court’s Final Judgment approving the Settlement Agreement; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award, the date of completion, in a manner that finally affirms and leaves in place the Final Judgment without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or *certiorari*, all

proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on *certiorari*.

1.19 “Final Approval Hearing” means the hearing before the Court where the Parties will request the Final Judgment to be entered by the Court approving the Settlement Agreement, the Fee Award, and the service award to the Class Representative.

1.20 “Final Judgment” means the Final Judgment and Order to be entered by the Court approving the Agreement after the Final Approval Hearing.

1.21 “Individual Out-of-Pocket Fees” means the total amount of convenience fees paid to Defendant by any one Settlement Class Member in connection with the Settlement Class Member’s purchase of an electronic ticket or electronic tickets to Defendant’s Places of Entertainment from Defendant’s Website, from August 29, 2022 through and including February 21, 2024.

1.22 “Notice” means the notice of this proposed Class Action Settlement Agreement and Final Approval Hearing, which is to be sent to the Settlement Class substantially in the manner set forth in this Agreement, is consistent with the requirements of Due Process, CPLR 904, and is substantially in the form of Exhibits A, B, and C hereto.

1.23 “Notice Date” means the date by which the Notice set forth in Paragraph 4.1(b) is complete, which shall be no later than twenty-eight (28) days after entry of the Preliminary Approval Order.

1.24 “Objection/Exclusion Deadline” means the date by which a written objection to this Settlement Agreement or a request for exclusion submitted by a Person within the Settlement Class must be made, which shall be designated as a date no later than sixty (60) days after the Notice Date and no sooner than fourteen (14) days after papers supporting the Fee Award are

filed with the Court and posted to the settlement website listed in Paragraph 4.1(d), or such other date as ordered by the Court.

1.25 “Out-of-Pocket Fees” means the total amount of convenience fees paid to Defendant collectively by every Settlement Class Member.

1.26 “Out-of-Pocket Percentage” for a Settlement Class Member means that Settlement Class Member’s Individual Out-of-Pocket Fees divided by Out-of-Pocket Fees.

1.27 “Person” shall mean, without limitation, any individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, affiliates, parents, predecessors, successors, representatives, or assigns, subsidiaries, insurers, and their past, present and future directors, officers, shareholders, members, faculty, employees, agents, and attorneys both individually and in their capacities as directors, officers, shareholders, members, employees, agents, and attorneys. “Person” is not intended to include any governmental agencies or governmental actors, including, without limitation, any state Attorney General office.

1.28 “Places of Entertainment” means Defendant’s theaters, including, but not limited to, Walter Reade Theater and the Elinor Bunin Munroe Film Center.

1.29 “Plaintiffs” means Regina Patino and the Settlement Class Members.

1.30 “Preliminary Approval” means the Court’s certification of the Settlement Class for settlement purposes, preliminary approval of this Settlement Agreement, and approval of the form and manner of the Notice.

1.31 “Preliminary Approval Order” means the order preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, and directing

notice thereof to the Settlement Class, which will be agreed upon by the Parties and submitted to the Court in conjunction with Plaintiffs' motion for Preliminary Approval of the Agreement.

1.32 "Released Claims" means any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, contracts or agreements, extra contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys' fees and or obligations (including "Unknown Claims," as defined below), whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, whether based on the ACAL or other state, federal, local, statutory or common law or any other law, rule or regulation, against the Released Parties, or any of them, arising out of any facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions or failures to act regarding the alleged collection of convenience fees in connection with electronic ticket sales from August 29, 2022 through and including February 21, 2024, including but not limited to all claims that were brought or could have been brought in the Action relating to any and all Releasing Parties.

1.33 "Released Parties" means Film at Lincoln Center, Inc., and all of its current, former, and future parents, predecessors, successors, affiliates, assigns, subsidiaries, divisions, or related corporate entities, and all of their respective current, future, and former employees, officers, directors, shareholders, assigns, agents, representatives, partners, trustees, administrators, executors, insurers, attorneys, and customers, consultants, independent contractors, insurers, directors, managing directors, officers, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, firms, trusts, and corporations.

1.34 “Releasing Parties” means Plaintiff, Settlement Class Members, and all of their respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, associates, affiliates, employers, employees, agents, consultants, independent contractors, insurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and companies, firms, trusts, and corporations.

1.35 “Service Award” means any Court-approved award to the Class Representative, in her capacity as individual class representative, as set forth in Paragraph 8.3, and payable by the Settlement Administrator from the Settlement Fund.

1.36 “Settlement Administration Expenses” means the expenses incurred by the Settlement Administrator in providing Notice, processing claims, responding to inquiries from members of the Settlement Class, mailing checks, and related services, paying taxes and tax expenses related to the Settlement Fund (including all federal, state or local taxes of any kind and interest or penalties thereon, as well as expenses incurred in connection with determining the amount of and paying any taxes owed and expenses related to any tax attorneys and accountants).

1.37 “Settlement Administrator” means Epiq, or such other reputable administration company that has been selected jointly by the Parties and approved by the Court to perform the duties set forth in this Agreement, including but not limited to serving as Escrow Agent for the Settlement Fund, overseeing the distribution of Notice, as well as the processing and payment of any claims to the Settlement Class as set forth in this Agreement, handing all approved payments out of the Settlement Fund, and handling the determination, payment and filing of forms related

to all federal, state and/or local taxes of any kind (including any interest or penalties thereon) that may be owed on any income earned by the Settlement Fund.

1.38 “Settlement Amount” means \$400,000.00 United States Dollars.

1.39 “Settlement Class” means all individuals who purchased electronic tickets and paid a convenience fee to gain entrance to Defendant’s Places of Entertainment from Defendant’s Website from August 29, 2022, and through February 21, 2024. 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; (4) the legal representatives, successors or assigns of any such excluded persons; and (5) Class Counsel.

1.40 “Settlement Class Member” means an individual who falls within the definition of the Settlement Class as set forth above and who has not submitted a timely and valid request for exclusion from the Settlement Class.

1.41 “Settlement Fund” means the non-reversionary cash fund that shall be established by or on behalf of Defendant in the total amount of the Settlement Amount to be deposited into the Escrow Account, according to the schedule set forth herein, plus all interest earned thereon. From the Settlement Fund, the Settlement Administrator shall pay all Cash Awards to Settlement Class Members, Settlement Administration Expenses, any Service Award to the Class Representative, any Fee Award to Class Counsel, and any other costs, fees or expenses approved by the Court to be paid from the Settlement Fund. The Settlement Fund shall be kept in the Escrow Account with permissions granted to the Settlement Administrator to access said funds until such time as the listed payments are made. The Settlement Fund includes

all interest that shall accrue on the sums deposited in the Escrow Account. The Settlement Administrator shall be responsible for all tax filings with respect to any earnings on the Settlement Fund and the payment of all taxes that may be due on such earnings. The Settlement Fund represents the total extent of Defendant’s monetary obligations under this Agreement. Defendant shall not be responsible for paying any interest that may accrue on the sums deposited in the Escrow Account, and shall not be responsible for any banking fees or costs associated with the sums deposited in the Escrow Account. The payment of the Settlement Amount by, or on behalf of, Defendant fully discharges the Defendant and the other Released Parties’ financial obligations (if any) in connection with the Settlement, meaning that no Released Party shall have any other obligation to make any payment into the Escrow Account or to any Class Member, or any other Person, under this Agreement. In no event shall the total monetary obligation with respect to this Agreement on behalf of Defendant exceed \$400,000.00.

1.42 “Settlement Website” means the dedicated website created and maintained by the Settlement Administrator, which will contain relevant documents and information about the Settlement, including this Settlement Agreement, the long-form Notice and the Claim Form, as well as web-based forms for Settlement Class Members and Unidentified Class Members to submit electronic Claim Forms, requests for exclusion from the Settlement, and updated postal addresses to which Cash Awards should be sent after the Settlement becomes Final.

1.43 “Unknown Claims” means claims that could have been raised in the Action and that any or all of the Releasing Parties do not know or suspect to exist, which, if known by him or her, might affect his or her agreement to release the Released Parties or the Released Claims or might affect his or her decision to agree, object or not to object to the Settlement. Upon the Effective Date, the Releasing Parties shall be deemed to have, and shall have, expressly waived

and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of § 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Upon the Effective Date, the Releasing Parties also shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to § 1542 of the California Civil Code. The Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any Unknown Claims they may have, as that term is defined in this Paragraph.

2. SETTLEMENT RELIEF.

2.1 Payments to Settlement Class Members.

(a) Within twenty-eight (28) business days after entry of the Preliminary Approval Order, Defendant shall pay or cause to be paid into the Escrow Account the Settlement Amount.

(b) Settlement Class Members shall have until the Claims Deadline to submit an Approved Claim. Each Settlement Class Member with an Approved Claim shall be entitled to receive as a Cash Award a pro rata payment from the Settlement Fund. The pro rata payment for each Settlement Class Member will be equal to that Settlement Class Member’s Out-of-Pocket Percentage multiplied by the Available Settlement Fund.

(c) The Settlement Administrator shall pay from the Settlement Fund all Cash

Awards to those Settlement Class Members with Approved Claims by check or electronic payment, at the Settlement Class Member’s election. Payments of Cash Awards to all Settlement Class Members with Approved Claims shall be made within twenty-eight (28) days after the Claims Deadline.

(d) To the extent that any Settlement Class Members do not claim their Cash Awards within one-hundred-eighty (180) days after Cash Awards are distributed in accordance with Section 2.1(b), such Settlement Class Members shall have waived their right to a Cash Award and any unclaimed funds shall be redistributed on a *pro rata* basis (after first deducting any necessary settlement administration expenses from such unclaimed funds) to all Settlement Class Members who claimed their payments.

(e) To the extent a secondary distribution would be infeasible, any unclaimed funds shall, subject to Court approval, revert to the Legal Aid Society, a non-sectarian, not-for-profit organization, or another non-sectarian, not-for-profit organization(s) recommended by Class Counsel and approved by the Court.

(f) Subject to the provisions pertaining to the termination or cancellation of the Settlement, as set forth in Paragraph 9, no portion of the Settlement Fund shall revert back to Defendant.

2.2 Prospective Relief. Defendant acknowledges that it has changed the purchase flow for tickets on its website to display the convenience fee that was the subject of this litigation when the ticket is first selected for purchase and will agree to comply with New York Arts & Cultural Affairs Law § 25.07(4).

3. RELEASE.

3.1 The obligations incurred pursuant to this Settlement Agreement shall be a full and final disposition of the Action and any and all Released Claims as against all Released Parties.

3.2 Upon the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties, and each of them.

4. NOTICE TO THE CLASS.

4.1 The Notice Plan shall consist of the following:

(a) *Settlement Class List.* No later than twenty-eight (28) days after the execution of this Agreement, Defendant shall produce to the Settlement Administrator with a copy to Class Counsel an electronic list from its records that includes the names, last known mail and email addresses, and the total amount of Out-of-Pocket Fees paid by each Settlement Class Member, to the extent available. This electronic document shall be called the “Class List”.

(b) *Direct Notice via Email.* No later than twenty-eight (28) days after entry of the Preliminary Approval Order, the Settlement Administrator shall send Notice via email substantially in the form attached as Exhibit B to all Settlement Class Members for whom a valid email address is in the Class List. In the event transmission of email notice results in any “bounce-backs,” the Settlement Administrator shall, if possible, correct any issues that may have caused the “bounce-back” to occur, including running a “skip-trace” to identify any potential alternative email addresses, and make a second attempt to re-send the email notice.

(c) *Reminder Notice.* Both thirty (30) days prior to the Claims Deadline and seven (7) days prior to the Claims Deadline, the Settlement Administrator shall send Notice via email substantially in the form attached as Exhibit B (with minor, non-material modifications to indicate that it is a reminder email rather than an initial notice), along with an electronic link to the Claim Form, to all Settlement Class Members for whom a valid email address is available in the Class List.

(d) *Settlement Website.* Within ten (10) days from entry of the Preliminary Approval Order, Notice shall be provided on a website at an available settlement URL (such as, for example, www.film1cticketfeesettlement.com) which shall be obtained, administered and maintained by the Settlement Administrator and shall provide Settlement Class Members with the ability to file Claim Forms online. Copies of this Settlement Agreement, the long-form Notice, and other pertinent documents and Court filings pertaining to the Settlement (including the motion for attorneys' fees upon its filing), shall be provided on the Settlement Website. The Notice provided on the Settlement Website shall be substantially in the form of Exhibit C hereto.

4.2 The Notice shall advise the Settlement Class of their rights, including the right to be excluded from, comment upon, and/or object to the Settlement Agreement or any of its terms. The Notice shall specify that any objection to the Settlement Agreement, and any papers submitted in support of said objection, shall be considered by the Court at the Final Approval Hearing only if, on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice, the Person making the objection files notice of an intention to do so and at the same time (a) files copies of such papers he or she proposes to be submitted at the Final Approval Hearing with the Clerk of the Court, or alternatively, if the objection is from a Class Member represented by counsel, files any objection through the Court's NYSCEF system, and (b) sends copies of such papers by mail, hand, or overnight delivery service to Class Counsel and Defendant's Counsel.

4.3 Any Settlement Class Member who intends to object to this Agreement must present the objection in writing, which must be personally signed by the objector, and must include: (1) the objector's name and address; (2) an explanation of the basis upon which the objector claims to be a Settlement Class Member; (3) all grounds for the objection, including all

citations to legal authority and evidence supporting the objection; (4) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the “Objecting Attorneys”); and (5) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel who files an appearance with the Court in accordance with the Local Rules).

4.4 If a Settlement Class Member or any of the Objecting Attorneys has/have objected to any class action settlement where the objector or the Objecting Attorneys asked for or received any payment in exchange for dismissal of the objection, or any related appeal, without any modification to the settlement, then the objection described in Paragraph 4.3 above must include a statement identifying each such case by full case caption and amount of payment received.

4.5 A Settlement Class Member may request to be excluded from the Settlement Class by timely submitting a request for exclusion on the Settlement Website or sending a written request to the address identified in the Notice. Any such request for exclusion must be submitted on the Settlement Website or be postmarked on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice. To exercise the right to be excluded, a Person who would otherwise be a Settlement Class Member must timely submit a request for exclusion on the Settlement Website or send a written request for exclusion to the Settlement Administrator that contains his/her name and address, that he/she purchased electronic tickets to Defendant’s Places of Entertainment from Defendant’s Website, from August 29, 2022 through and including February 21, 2024; and paid a convenience fee in connection with such purchase, the name and case number of the Action, and a statement that he or she wishes to be excluded from the Settlement Class for purposes of this Settlement. A

request to be excluded that does not include all of this information, or that is sent to an address other than that designated in the Notice, or that is not postmarked within the time specified, shall be invalid, and the Person(s) serving such a request shall be a member(s) of the Settlement Class and shall be bound as a Settlement Class Member by this Agreement, if approved. Any member of the Settlement Class who validly elects to be excluded from this Agreement shall not: (i) be bound by any orders or the Final Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to object to any aspect of this Agreement. Any request for exclusion must be personally signed by each Person requesting exclusion. So-called “mass” or “class” opt-outs shall not be allowed. To be valid, a request for exclusion must be submitted on the Settlement Website by 11:59 p.m., Eastern Standard Time, on the date specified in the Notice, or be postmarked or received by the date specified in the Notice.

4.6 The Final Approval Hearing shall be no earlier than ninety (90) days after the Notice described in Paragraph 4.1(b) is provided.

4.7 Any Settlement Class Member who does not, in accordance with the terms and conditions of this Agreement, timely and validly seek exclusion from the Settlement Class, will be bound by all of the terms of this Agreement, including the terms of the Final Judgment to be entered in the Action and the Releases provided for in the Agreement, and will be barred from bringing any action against any of the Released Parties concerning the Released Claims.

5. SETTLEMENT ADMINISTRATION.

5.1 The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Settlement Agreement by processing Claim Forms and requests for exclusion from the Settlement, and disbursing funds from the Settlement Fund in a rational, responsive, cost effective, and timely manner. The terms of this Agreement, upon approval by

the Court, shall at all times govern the scope of the services to be provided by the Settlement Administrator to administer the Settlement, and the terms of any separate contract or agreement entered into between or among the Settlement Administrator and Class Counsel, Defendant's Counsel, or the Defendant to administer the Settlement shall be consistent in all material respects with the terms of this Agreement. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices and such records will be made available to Class Counsel and Defendant's Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall provide Class Counsel and Defendant's Counsel with regular reports at weekly intervals containing information concerning Notice, administration, and implementation of the Settlement Agreement. Should the Court request, the Parties shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator, including a report of all amounts from the Settlement Fund paid to Settlement Class Members. Without limiting the foregoing, the Settlement Administrator shall:

(a) Forward to Defendant's Counsel, with copies to Class Counsel, all original documents and other materials received in connection with the administration of the Settlement, and all copies thereof, within thirty (30) days after the Claims Deadline;

(b) Provide Class Counsel and Defendant's Counsel with drafts of all administration related documents, follow-up class notices or communications with Settlement Class Members, telephone scripts, website postings or language or other communications with the Settlement Class, at least five (5) days before the Settlement Administrator is required to or

intends to publish or use such communications, unless Class Counsel and Defendant’s Counsel agree to waive this requirement in writing on case by case basis;

(c) Receive requests to be excluded from the Settlement Class and other requests and promptly provide to Class Counsel and Defendant’s Counsel copies thereof. If the Settlement Administrator receives any exclusion forms or other requests after the deadline for the submission of such forms and requests, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant’s Counsel;

(d) Provide weekly reports to Class Counsel and Defendant’s Counsel, including without limitation, reports regarding the number of Claim Forms and requests for exclusion and/or objections received; and

(e) Make available for inspection by Class Counsel and Defendant’s Counsel the Claim Forms received by the Settlement Administrator at any time upon reasonable notice.

5.2 The Settlement Administrator shall be obliged to employ reasonable procedures to screen claims for abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud. The Settlement Administrator will reject any claim that does not comply in any material respect with the instructions on the Claim Form or is submitted after the Claims Deadline. Each claimant who submits an invalid Claim Form to the Settlement Administrator must be given a notice of the Claim Form’s deficiency and an opportunity to cure the deficiency within twenty-one (21) days of the date of the notice. The Settlement Administrator may contact any Person who has submitted a Claim Form to obtain additional information necessary to verify the Claim Form.

5.3 Defendant’s Counsel and Class Counsel shall have the right to challenge the acceptance or rejection of a Claim Form submitted by Settlement Class Members and to obtain and review supporting documentation relating to such Claim Form. The Settlement

Administrator shall follow any agreed decisions of Class Counsel and Defendant’s Counsel as to the validity of any disputed submitted Claim Form. To the extent Class Counsel and Defendant’s Counsel are not able to agree on the disposition of a challenge, the disputed claim shall be submitted to the Court for binding determination.

5.4. Defendant, the Released Parties, and Defendant’s Counsel shall have no responsibility for, interest in, or liability whatsoever with respect to: (i) any act, omission, or determination by Class Counsel, or the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the allocation of Settlement Funds to Settlement Class Members or the implementation, administration, or interpretation thereof; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in value of, the Settlement Fund; or (vi) the payment or withholding of any Taxes, Tax Expenses, or costs incurred in connection with the taxation of the Settlement Fund or the filing of any federal, state, or local returns.

5.5. All taxes and tax expenses shall be paid out of the Settlement Fund, and shall be timely paid by the Settlement Administrator pursuant to this Agreement and without further order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with this Agreement and in all events shall reflect that all taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein. The Released Parties shall have no responsibility or liability for the acts or omissions of the Settlement Administrator or its agents with respect to the payment of taxes or tax expenses.

6. TERMINATION OF SETTLEMENT.

6.1 Subject to Paragraphs 9.1-9.3 below, Defendant or the Class Representative on behalf of the Settlement Class, shall have the right but not the obligation to terminate this Agreement by providing written notice of the election to do so (“Termination Notice”) to all other Parties hereto within twenty-one (21) days of any of the following events: (i) the Court’s refusal to grant Preliminary Approval of this Agreement in any material respect; (ii) the Court’s refusal to grant final approval of this Agreement in any material respect; (iii) the Court’s refusal to enter the Final Judgment in this Action in any material respect; (iv) the date upon which the Final Judgment is modified or reversed in any material respect by an appellate court with jurisdiction; or (v) the date upon which an Alternate Judgment, as defined in Paragraph 9.1(d) of this Agreement is modified or reversed in any material respect by an appellate court with jurisdiction.

6.2 Confirmatory Discovery. Defendant has represented that it collected approximately \$400,000.00 in convenience fees and from August 29, 2022 through and including February 21, 2024. Simultaneous with the execution of this Agreement, Defendant has provided an affidavit from an appropriate representative with knowledge attesting to the same.

7. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER.

7.1 Promptly after the execution of this Settlement Agreement, Class Counsel shall file this Agreement together with the Exhibits annexed hereto with the Court and shall move the Court for Preliminary Approval of the settlement set forth in this Agreement; certification of the Settlement Class for settlement purposes only; appointment of Class Counsel and the Class Representatives; and entry of a Preliminary Approval Order, which order shall set a Final Approval Hearing date and approve the Notice and Claim Form for dissemination substantially in the form of Exhibits A, B, and C hereto. The Preliminary Approval Order shall also authorize the Parties, without further approval from the Court, to agree to and adopt such amendments,

modifications and expansions of the Settlement Agreement and its implementing documents (including all exhibits to this Agreement) so long as they are consistent in all material respects with the terms of the Settlement Agreement and do not limit or impair the rights of the Settlement Class or materially expand the obligations of Defendant.

7.2 At the time of the submission of this Agreement to the Court as described above, Class Counsel shall request that, after Notice is given, the Court hold a Final Approval Hearing and finally approve the Settlement of the Action as set forth herein.

7.3 After Notice is given, the Parties shall request and seek to obtain from the Court a Final Judgment, which will (among other things):

(a) find that the Court has personal jurisdiction over all Settlement Class Members and that the Court has subject matter jurisdiction to approve the Agreement, including all exhibits thereto;

(b) approve the Settlement Agreement and the proposed settlement as fair, reasonable, and adequate as to, and in the best interests of, the Settlement Class Members; direct the Parties and their counsel to implement and consummate the Agreement according to its terms and provisions; and declare the Agreement to be binding on, and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and Releasing Parties;

(c) find that the Notice implemented pursuant to the Agreement (1) constitutes the best practicable notice under the circumstances; (2) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action, their right to object to or exclude themselves from the proposed Agreement, and to appear at the Final Approval Hearing; (3) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and (4) meets all applicable

requirements of the CPLR, the Due Process Clauses of the United States and New York Constitutions, and the rules of the Court;

(d) find that the Class Representative and Class Counsel adequately represent the Settlement Class for purposes of entering into and implementing the Agreement;

(e) dismiss the Action (including all individual claims and Settlement Class Claims presented thereby) on the merits and with prejudice, without fees or costs to any party except as provided in the Settlement Agreement;

(f) incorporate the Release set forth above, make the Release effective as of the date of the Effective Date, and forever discharge the Released Parties as set forth herein;

(g) permanently bar and enjoin all Settlement Class Members who have not been properly excluded from the Settlement Class from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any lawsuit or other action in any jurisdiction based on the Released Claims;

(h) without affecting the finality of the Final Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and the Final Judgment, and for any other necessary purpose; and

(i) incorporate any other provisions, as the Court deems necessary and just.

8. CLASS COUNSEL’S ATTORNEYS’ FEES AND REIMBURSEMENT OF EXPENSES; SERVICE AWARD.

8.1 Pursuant to CPLR 909 and ACAL § 25.33, Defendant agrees that Class Counsel shall be entitled to seek an award of reasonable attorneys’ fees and costs out of the Settlement Fund 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 one-third of the Settlement Fund (i.e., \$133,333.33). Payment of the Fee Award

shall be made from the Settlement Fund and should the Court award less than the amount sought by Class Counsel, the difference in the amount sought and the amount ultimately awarded pursuant to this Paragraph shall remain in the Settlement Fund.

8.2 The Fee Award shall be payable by the Settlement Administrator within ten (10) days after entry of the Court’s Final Judgment, subject to Class Counsel executing the Undertaking Regarding Attorneys’ Fees and Costs (the “Undertaking”) attached hereto as Exhibit D, and providing all payment routing information and tax I.D. numbers for Class Counsel. Payment of the Fee Award shall be made from the Settlement Fund by wire transfer to Class Counsel in accordance with wire instructions to be provided by Class Counsel, and completion of necessary forms, including but not limited to W-9 forms. Notwithstanding the foregoing, if for any reason the Final Judgment is reversed or rendered void as a result of an appeal(s) then any Persons or firms who shall have received the funds shall be severally liable for payments made pursuant to this subparagraph, and shall return such funds to the Settlement Fund. Additionally, should any parties to the Undertaking dissolve, merge, declare bankruptcy, become insolvent, or cease to exist prior to the final payment to Class Members, those parties shall execute a new undertaking guaranteeing repayment of funds within fourteen (14) days of such an occurrence.

8.3 Class Counsel intends to file a motion for Court approval of a Service Award to the Class Representative, to be paid from the Settlement Fund, in addition to any funds the Class Representative stands to otherwise receive from the Settlement. With no consideration having been given or received for this limitation, Plaintiff will seek no more than \$10,000 as a Service Award. Should the Court award less than this amount, the difference in the amount sought and the amount ultimately awarded pursuant to this Paragraph shall remain in the Settlement Fund. Such Service Award shall be paid from the Settlement Fund (in the form of a check to the Class

Representative that is sent care of Class Counsel), within five (5) business days after entry of the Final Judgment if there have been no objections to the Settlement Agreement, and, if there have been such objections, within five (5) business days after the Effective Date.

9. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION.

9.1 The Effective Date of this Settlement Agreement shall not occur unless and until each of the following events occurs and shall be the date upon which the last (in time) of the following events occurs:

- (a) The Parties and their counsel have executed this Agreement;
- (b) The Court has entered the Preliminary Approval Order;
- (c) The Court has entered an order finally approving the Agreement,

following Notice to the Settlement Class, as provided in the CPLR, and has entered the Final Judgment, or a judgment consistent with this Agreement in all material respects; and

- (d) The Final Judgment has become Final, as defined above, or, in the event that the Court enters an Alternate Judgment, such Alternate Judgment becomes Final.

9.2 If some or all of the conditions specified in Paragraph 9.1 are not met, or in the event that this Agreement is not approved by the Court, or the Settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Settlement Agreement shall be canceled and terminated subject to Paragraph 6.1, unless Class Counsel and Defendant’s Counsel mutually agree in writing to proceed with this Agreement. If any Party is in material breach of the terms hereof, any other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Agreement on notice to all of the Parties and Settlement Class Members (which notice may be given by the Settlement Administrator via email to the email addresses on record for Settlement Class Members). Notwithstanding anything herein, the Parties agree that the Court’s failure to

approve, in whole or in part, the Fee Award to be requested by Class Counsel and/or the Service Award to be requested for the Class Representative, as set forth in Paragraph 8 above, shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination.

9.3 If this Agreement is terminated or fails to become effective for the reasons set forth in Paragraphs 6.1 and 9.1-9.2 above, the Parties shall be restored to their respective positions in the Action as of the date of the signing of this Agreement. In such event, any Final Judgment or other order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Action as if this Agreement had never been entered into. Within five (5) business days after written notification of termination as provided in this Agreement is sent to the other Parties, the Settlement Fund (including accrued interest thereon), less any Settlement Administration costs actually incurred, paid or payable and less any taxes and tax expenses paid, due or owing, shall be refunded by the Settlement Administrator to Defendant, based upon written instructions provided by Defendant's Counsel. In the event that the Final Judgment or any material part thereof is vacated, overturned, reversed, or rendered void as a result of any timely filed appeal, or the Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, Class Counsel shall, within thirty (30) days thereof repay to Defendant, based upon written instructions provided by Defendant's Counsel, the full amount of the Fee Award, including any accrued interest, and shall cause Class Representative to repay to Defendant, based upon written instructions provided by Defendant's Counsel, the full amount of the Service Award, including any accrued interest. In the event the Fee Award, Service Award, or any part thereof is vacated, modified, reversed, or rendered void as a result of a timely filed appeal, Class Counsel shall within thirty (30) days thereof repay, or cause Class Representative to repay, to the Settlement Fund, based upon written instructions provided by the Settlement

Administrator, the Fee Award and/or Service Award, in the amount vacated or modified, including any accrued interest.

10. MISCELLANEOUS PROVISIONS.

10.1 The Parties (a) acknowledge that it is their intent to consummate this Settlement Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement, to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Agreement, to secure final approval, and to defend the Final Judgment through any and all appeals. Class Counsel and Defendant’s Counsel agree to cooperate with one another in seeking Court approval of the Settlement Agreement, entry of the Preliminary Approval Order, and the Final Judgment, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Agreement.

10.2 The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiff, the Settlement Class and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Action was brought by Plaintiff or defended by Defendant, or each or any of them, in bad faith or without a reasonable basis.

10.3 The Parties have relied upon the advice and representation of counsel, selected by them, concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully the above and foregoing agreement and have been fully advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the same.

10.4 Whether or not the Effective Date occurs or the Settlement Agreement is terminated, neither this Agreement nor the settlement contained herein or any term, provision or definition therein, nor any act or communication performed or document executed in the course of negotiating, implementing or seeking approval pursuant to or in furtherance of this Agreement or the settlement:

(a) is, may be deemed, or shall be used, offered or received in any civil, criminal or administrative proceeding in any court, administrative agency, arbitral proceeding or other tribunal against the Released Parties, or each or any of them, as an admission, concession or evidence of, the validity of any Released Claims, the truth of any fact alleged by the Plaintiff, the deficiency of any defense that has been or could have been asserted in the Action, the alleged violation of any law or statute, the definition or scope of any term or provision, the reasonableness of the Settlement Amount or the Fee Award, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of them;

(b) is, may be deemed, or shall be used, offered or received against any Released Party, as an admission, concession or evidence of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the Released Parties, or any of them;

(c) is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them, as an admission or concession with respect to any liability, negligence, fault or wrongdoing or statutory meaning as against any Released Parties, or supporting the certification of a litigation class, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. However, the Settlement, this Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Agreement and/or Settlement may be used in any proceedings as may be necessary to

effectuate the provisions of this Agreement. Further, if this Settlement Agreement is approved by the Court, any Party or any of the Released Parties may file this Agreement and/or the Final Judgment in any action that may be brought against such Party or Parties in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim;

(d) is, may be deemed, or shall be construed against Plaintiff, the Settlement Class, the Releasing Parties, or each or any of them, or against the Released Parties, or each or any of them, as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than or greater than that amount that could have or would have been recovered after trial; and

(e) is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiff, the Settlement Class, the Releasing Parties, or each and any of them, or against the Released Parties, or each or any of them, that any of Plaintiffs' claims are with or without merit or that damages recoverable in the Action would have exceeded or would have been less than any particular amount.

10.5 The Parties acknowledge that (a) any certification of the Settlement Class as set forth in this Agreement, including certification of the Settlement Class for settlement purposes in the context of Preliminary Approval, shall not be deemed a concession that certification of a litigation class is appropriate, or that the Settlement Class definition would be appropriate for a litigation class, nor would Defendant be precluded from challenging class certification in further proceedings in the Action or in any other action if the Settlement Agreement is not finalized or finally approved; (b) if the Settlement Agreement is not finally approved by the Court for any reason whatsoever, then any certification of the Settlement Class will be void, the Parties and the

Action shall be restored to the status quo ante, and no doctrine of waiver, estoppel or preclusion will be asserted in any litigated certification proceedings in the Action or in any other action; and (c) no agreements made by or entered into by Defendant in connection with the Settlement may be used by Plaintiffs, any person in the Settlement Class, or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in the Action or any other judicial proceeding.

10.6. No person or entity shall have any claim against the Class Representative, Class Counsel, the Settlement Administrator or any other agent designated by Class Counsel, or the Released Parties and/or their counsel, arising from distributions made substantially in accordance with this Agreement. The Parties and their respective counsel and all other Released Parties shall have no liability whatsoever for the investment or distribution of the Settlement Fund or the determination, administration, calculation, or payment of any claim or nonperformance of the Settlement Administrator, the payment or withholding of taxes (including interest and penalties) owed by the Settlement Fund, or any losses incurred in connection therewith.

10.7. All proceedings with respect to the administration, processing and determination of Claim Forms and settlement payments and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of Claim Forms and settlement payments, shall be subject to the jurisdiction of the Court.

10.8 The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

10.9 The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

10.10 All of the Exhibits annexed to this Agreement are material and integral parts thereof and are fully incorporated herein by this reference.

10.11 This Agreement and its Exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements and undertakings with respect to the matters set forth herein. No representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or the Exhibits annexed hereto other than the representations, warranties and covenants contained and memorialized in such documents. This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

10.12 Except as otherwise provided herein, each Party shall bear its own costs.

10.13 Plaintiff represents and warrants that she has not assigned any claim or right or interest therein as against the Released Parties to any other Person or Party and that she is fully entitled to release the same.

10.14 Each counsel or other Person executing this Settlement Agreement, any of the Exhibits annexed hereto, or any related settlement documents on behalf of any Party hereto, hereby warrants and represents that such Person has the full authority to do so and has the authority to take appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its terms.

10.15 This Agreement may be executed in one or more counterparts. Signature by digital means, facsimile, or in PDF format will constitute sufficient execution of this Agreement. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court if the Court so requests. This Agreement is not binding on the Parties until fully executed by each of the Parties hereto.

10.16 This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and the Released Parties.

10.17 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

10.18 This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of New York.

10.19 This Agreement is deemed to have been prepared by counsel for all Parties, as a result of arm's-length negotiations among the Parties. Because all Parties have contributed substantially and materially to the preparation of this Agreement, it shall not be construed more strictly against one Party than another.


10.20 Where this Agreement requires notice to the Parties, such notice shall be sent to the undersigned counsel: Philip L. Fraietta, Bursor & Fisher, P.A., 1330 Avenue of the Americas, 32nd Floor, New York, NY 10019, pfraietta@bursor.com; Bety Javidzad, Dentons US LLP, 601 S. Figueroa Street, Suite 2500, Los Angeles, CA 90017, bety.javidzad@dentons.com.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGES TO FOLLOW]

IT IS SO AGREED TO BY THE PARTIES:

Dated: 06/21/2024

REGINA PATINO

By:  Regina Patino (Jun 21, 2024 17:53 EDT)

Regina Patino, individually and as representative of the Settlement Class

Dated: _____

FILM AT LINCOLN CENTER, INC.

By: _____


Name: _____

Title: _____

IT IS SO STIPULATED BY COUNSEL:

Dated: June 22, 2024

BURSOR & FISHER, P.A.

By: 

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

Stefan Bogdanovich
sbogdanovich@bursor.com
BURSOR & FISHER, P.A.
1990 North California Blvd., Suite 940
Walnut Creek, CA 94596
Tel: (925) 300-4455
Fax: (925) 407-2700

Proposed Class Counsel

Dated: _____

DENTONS US, LLP

By: _____

Bety Javidzad
bety.javidzad@dentons.com
Norman M. Aspis
norman.aspis@dentons.com

IT IS SO AGREED TO BY THE PARTIES:

Dated: _____

REGINA PATINO

By: _____

Regina Patino, individually and as representative of the Settlement Class

Dated: 6/21/2024

FILM AT LINCOLN CENTER, INC.

By: *Lisa Schroeder*
DocuSigned by: 0040199D05BD40A...

Name: Lisa Schroeder

Title: Chief Administrative Officer

IT IS SO STIPULATED BY COUNSEL:

Dated: _____

BURSOR & FISHER, PA

By: _____

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

Stefan Bogdanovich
sbogdanovich@bursor.com
BURSOR & FISHER, P.A.
1990 North California Blvd., Suite 940
Walnut Creek, CA 94596
Tel: (925) 300-4455
Fax: (925) 407-2700

Proposed Class Counsel

Dated: 06/21/2024

DENTONS US, LLP

By: *Bety Javidzad*

Bety Javidzad
bety.javidzad@dentons.com
Norman M. Aspis
norman.aspis@dentons.com

DENTONS US LLP
601 S. Figueroa Street, Suite 2500
Los Angeles, CA 90017
Tel: (213) 623-9300
Fax: (213) 623-9924

Alyssa J. Landow
alyssa.landow@dentons.com
DENTONS US LLP
1221 Avenue of the Americas
New York, NY 10020
Tel: (212) 768-6700
Fax: (212) 768-6800

Attorneys for Defendant

EXHIBIT A

Patino v. Film at Lincoln Center, Inc.
Supreme Court of the State of New York, County of Kings
Index No. 504682/2024
Settlement Claim Form

If you are a Settlement Class Member and wish to receive a cash payment, your completed Claim Form must be postmarked on or before [REDACTED], or submitted online on or before [REDACTED].

Please read the full notice of this settlement (available at [\[hyperlink\]](#)) carefully before filling out this Claim Form.

To be eligible to receive a cash payment from the settlement obtained in this class action lawsuit, you must submit this completed Claim Form online or by mail.

ONLINE: Submit this Claim Form.

MAIL: [\[ADDRESS\]](#)

PART ONE: CLAIMANT INFORMATION & PAYMENT METHOD ELECTION

Provide your name and contact information below. It is your responsibility to notify the Settlement Administrator of any changes to your contact information after the submission of your Claim Form.

FIRST NAME

LAST NAME

STREET ADDRESS

CITY

STATE

ZIP CODE

EMAIL ADDRESS

POTENTIAL CASH PAYMENT: You may be eligible to receive a *pro rata* cash payment, which will be based on the total amount of convenience fees you paid, if you purchased electronic tickets to one of Defendant's theaters from Defendant's website <https://www.filmlinc.org/>, from August 29, 2022 through and including February 21, 2024.

PREFERRED PAYMENT METHOD:

Venmo Venmo Username: _____

PayPal PayPal Email: _____

Zelle Zelle Email: _____

Check

QUESTIONS? VISIT [\[hyperlink\]](#) OR CALL [\[NUMBER\]](#) TOLL-FREE

PART TWO: ATTESTATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury under the laws of the United States of America that: (i) between August 29, 2022, to and through February 21, 2024, I purchased one or more electronic tickets to Defendant’s theaters from Defendant’s website <https://www.filmlinc.org/> and paid a convenience fee in connection with such purchase; (ii) all of the information on this Claim Form is true and correct to the best of my knowledge; and (iii) I am authorized to submit this Claim Form and have not assigned or transferred any rights, claims, or remedies I may be entitled to as a Settlement Class Member in this settlement. I understand that my Claim Form may be subject to audit, verification, and Court review.

[Empty rectangular box for signature]

SIGNATURE

[Empty rectangular box for date]

DATE

Please keep a copy of your Claim Form for your records.

EXHIBIT B

From: SettlementAdministrator@film1cticketfeesettlement.com
To: JonQClassMember@domain.com
Re: Legal Notice of Class Action Settlement

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT
Patino v. Film at Lincoln Center, Inc., Index No. 504682/2024
(Supreme Court of the State of New York, County of Kings)

Our Records Indicate You Purchased Electronic Tickets to Film at Lincoln Center, Inc. theaters between August 29, 2022 and February 21, 2024 and Paid a Convenience Fee In Connection With Such Purchase, and May Be Entitled to a Payment From a Class Action Settlement.

A court authorized this notice. You are not being sued. This is not a solicitation from a lawyer.

This notice is to inform you that a settlement has been reached in a class action lawsuit claiming that Defendant, Film at Lincoln Center, Inc. (“Defendant”), failed to properly disclose a ticket convenience fee for electronic tickets to its theaters prior to those tickets being selected for purchase, in alleged violation of New York Arts and Cultural Affairs Law (“ACAL”) § 25.07(4). Defendant denies that it violated any law, but has agreed to the settlement to avoid the uncertainties and expenses associated with continuing the case.

Am I a Class Member? Our records indicate you purchased electronic tickets to Defendant’s theaters between August 29, 2022 and February 21, 2024, and paid a convenience fee in connection with such purchase.

What Does The Settlement Provide? A Settlement Fund of \$400,000.00 has been established to pay the Settlement Class, together with notice and administration expenses, approved attorneys’ fees and costs, and a service award to the class representative.¹ Additionally, as part of the Settlement, Defendant acknowledges that it has changed the purchase flow for tickets on its website to display the ticket convenience fee that was the subject of this litigation when the ticket is first selected for purchase, and will agree to comply with New York ACAL § 25.07(4).

How Do I Get a Payment? To receive a *pro rata* share of the Settlement Fund, which will be based on the total amount of convenience fees you paid, you **must** submit a timely and complete Claim Form **no later than [claims deadline]**. You can file a claim by clicking [[here](#).] Your payment will be by PayPal, Venmo, Zelle, or check, at your election. Claim Forms must be submitted online by 11:59 p.m. EST on [**DATE**] or postmarked and mailed by [**DATE**] (the “Claims Deadline”). Failure to submit a timely claim by the Claims Deadline will prevent you from receiving a settlement payment from the Settlement Fund.

What are My Other Options? You may exclude yourself from the Settlement Class by sending a letter to the settlement administrator no later than [**objection/exclusion deadline**]. If you exclude

¹ Unless otherwise defined herein, all capitalized terms shall have the meaning set forth in the Settlement Agreement which can be viewed at www.film1cticketfeesettlement.com.

yourself, you cannot get a settlement payment, but you keep any rights you may have to sue the Defendant over the legal issues in the lawsuit. If you start your own lawsuit against Defendant after you exclude yourself, you'll have to hire and pay your own lawyer for that lawsuit, and you'll have to prove your claims. If you do exclude yourself so you can start or continue your own lawsuit against Defendant, you should talk to your own lawyer.

You and/or your lawyer have the right to appear before the Court and/or object to the proposed settlement. Your written objection must be filed no later than [objection/exclusion deadline]. Specific instructions about how to object to, or exclude yourself from, the Settlement are available at www.filmlicticketfeesettlement.com. If you file a claim or do nothing, and the Court approves the Settlement, you will be bound by all of the Court's orders and judgments. In addition, your alleged claims relating to the collection of ticket convenience fees in connection with electronic ticket sales from August 29, 2022 through and including February 21, 2024 by Defendant will be released.

Who Represents Me? The Court has appointed lawyers Philip L. Fraietta and Stefan Bogdanovich of Bursor & Fisher, P.A. to represent the Settlement Class. These attorneys are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense.

When Will the Court Consider the Proposed Settlement? The Court will hold the Final Approval Hearing at [] .m. on [date] in Courtroom [] at the Supreme Court of the State of New York, County of Kings, 360 Adams Street, Brooklyn, NY 11201. At that hearing, the Court will: hear any objections concerning the fairness of the settlement; determine the fairness of the settlement; decide whether to approve Class Counsel's request for attorneys' fees and costs; and decide whether to award Class Representative Regina Patino \$10,000 from the Settlement Fund for her service in helping to bring and settle this case. Defendant has agreed that Class Counsel may be paid reasonable attorneys' fees from the Settlement Fund in an amount to be determined by the Court. Class Counsel will seek no more than one-third of the Settlement Fund, but the Court may award less than this amount.

How Do I Get More Information? For more information, including the full Notice and Settlement Agreement, go to www.filmlicticketfeesettlement.com, contact the settlement administrator at 1-800-___-___ or Film at Lincoln Center Ticket Fee Settlement Administrator, [address], or call Class Counsel at 1-646-837-7150.

EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF KINGS
Patino v. Film at Lincoln Center, Inc., Index No. 504682/2024

If You Purchased An Electronic Ticket to Film at Lincoln Center, Inc.’s Theaters Between August 29, 2022 and February 21, 2024 and Paid a Convenience Fee In Connection With Such Purchase, You May Be Entitled to a Payment From a Class Action Settlement.

A court authorized this notice. You are not being sued. This is not a solicitation from a lawyer.

- A Settlement has been reached in a class action lawsuit claiming that Defendant, Film at Lincoln Center, Inc. (“Defendant”), failed to properly disclose a ticket convenience fee for electronic tickets to its theaters prior to those tickets being selected for purchase, in alleged violation of New York Arts and Cultural Affairs Law (“ACAL”) § 25.07(4). Defendant denies that it violated any law, but has agreed to the settlement to avoid the uncertainties and expenses associated with continuing the case.
- You are included if you purchased an electronic ticket to Defendant’s theaters between August 29, 2022 and February 21, 2024 and paid a convenience fee in connection with such purchase. Persons included in the Settlement will be eligible to receive a *pro rata* portion of the Settlement Fund, which will be based on the total amount of convenience fees they paid.
- Read this notice carefully. Your legal rights are affected whether you act, or don’t act.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM BY [DATE]	This is the only way to receive a payment.
EXCLUDE YOURSELF BY [DATE]	You will receive no benefits, but you will retain any rights you currently have to sue the Defendant about the claims in this case, in which you’ll have to hire and pay your own lawyer for that lawsuit, and you’ll have to prove your claims.
OBJECT BY [DATE]	Write to the Court explaining why you don’t like the Settlement.
GO TO THE HEARING ON [DATE]	Ask to speak in Court about your opinion of the Settlement.
DO NOTHING	You won’t get a share of the Settlement benefits and will give up your rights to sue the Defendant about the claims in the case.

These rights and options—and the deadlines to exercise them—are explained in this Notice.

BASIC INFORMATION

QUESTIONS? CALL (800) 000-0000 TOLL FREE, OR VISIT WWW.FILMLCTICKETFEESSETTLEMENT.COM

1. Why was this Notice issued?

A Court authorized this notice because you have a right to know about a proposed Settlement of this class action lawsuit and about all of your options, before the Court decides whether to give final approval to the Settlement. This Notice explains the lawsuit, the Settlement, and your legal rights.

The case is called *Patino v. Film at Lincoln Center, Inc.*, Index No. 504682/2024. The person who sued is called the Plaintiff. The Defendant is Film at Lincoln Center, Inc.

2. What is a class action?

In a class action, one or more people called class representatives (in this case, Regina Patino) sue on behalf of a group or a “class” of people who have similar claims. In a class action, the court resolves the issues for all class members, except for those who exclude themselves from the Settlement Class.

3. What is this lawsuit about?

This lawsuit claims that Defendant failed to properly disclose a ticket convenience fee for electronic tickets to its theaters prior to those tickets being selected for purchase, in alleged violation of ACAL § 25.07(4). Defendant denies that it violated any law, but has agreed to the settlement to avoid the uncertainties and expenses associated with continuing the case.

4. Why is there a Settlement?

The Court has not decided whether the Plaintiff or the Defendant should win this case. Instead, both sides agreed to a Settlement. That way, they avoid the uncertainties and expenses associated with ongoing litigation, and Settlement Class Members will get compensation sooner rather than, if at all, after the completion of a trial.

WHO’S INCLUDED IN THE SETTLEMENT?

5. How do I know if I am in the Settlement Class?

The Court decided that everyone who fits the following description is a member of the **Settlement Class**:

All individuals who purchased electronic tickets and paid a convenience fee to gain entrance to Defendant’s Places of Entertainment from Defendant’s Website from August 29, 2022, and through February 21, 2024.

“Places of Entertainment” means Defendant’s movie theaters, including, but not limited to, Walter Reade Theater and the Elinor Bunin Munroe Film Center.

“Defendant’s Website” means <https://www.filmlinc.org/>.

THE SETTLEMENT BENEFITS

6. What does the Settlement provide?

Monetary Relief. A Settlement Fund has been created totaling \$400,000.00. Payments to Settlement Class Members, and the cost to administer the Settlement, the cost to inform people about the Settlement, attorneys’ fees (inclusive of litigation costs), and an award to the Class Representative will also come out of this fund (*see* Question 12).

Prospective Relief. Additionally, Defendant acknowledges that it has changed the purchase flow for tickets on its website to display the convenience fee that was the subject of this litigation when the ticket is first selected for purchase and will agree to comply with New York ACAL § 25.07(4).

A detailed description of the settlement benefits can be found in the Settlement Agreement, a copy of which is accessible on the Settlement Website by clicking [here](#).
[insert hyperlink]

7. How much will my payment be?

To receive a *pro rata* share of the Settlement Fund, which will be based on the total amount of convenience fees you paid, you **must** submit a timely and complete Claim Form **no later than** [claims deadline]. You can file a claim by clicking [here.] Your payment will be by PayPal, Venmo, Zelle, or check, at your election. Claim Forms must be submitted online by 11:59 p.m. EST on [DATE] or postmarked and mailed by [DATE]. You can contact Class Counsel at (646) 837-7150 to inquire as to the number of claims and/or requests for exclusion that have been received to date.

8. When will I get my payment?

The hearing to consider the fairness of the settlement is scheduled for [Final Approval Hearing Date]. If the Court approves the settlement, eligible Settlement Class Members whose claims were approved by the Settlement Administrator will receive their payment 28 calendar days after [the Claims Deadline]. The payment will be made in the form of a check, unless you elect to receive payment by PayPal, Zelle, or Venmo, and all checks will expire and become void 180 days after they are issued.

HOW TO GET BENEFITS

QUESTIONS? CALL (800) 000-0000 TOLL FREE, OR VISIT WWW.FILMLCTICKETFEESSETTLEMENT.COM

9. How do I get a payment?

If you are a Settlement Class Member and you want to get a payment, you **must** complete and submit a Claim Form by **[Claims Deadline]**. Claim Forms can be found and submitted by clicking [here](#) [hyperlink], or by printing and mailing a paper Claim Form, copies of which are available for download [here](#) [hyperlink]. Failure to submit a timely claim by the Claims Deadline will prevent you from receiving a settlement payment from the Settlement Fund.

We also encourage you to submit your claim on-line. Not only is it easier and more secure, but it is completely free and takes only minutes!

REMAINING IN THE SETTLEMENT**10. What am I giving up if I stay in the Settlement Class?**

If the Settlement becomes final, you will give up your right to sue the Defendant and other Released Parties for the claims being resolved by this Settlement. The specific claims you are giving up against the Defendant are described in the Settlement Agreement. You will be “releasing” the Defendant and its affiliates, employees, and representatives as described in Section 1.33 of the Settlement Agreement. Unless you exclude yourself (*see* Question 13), you are “releasing” the claims, regardless of whether you claim your electronic payment or not. The Settlement Agreement is available through the “court documents” link on the website.

The Settlement Agreement describes the released claims with specific descriptions, so read it carefully. If you have any questions you can talk to the lawyers listed in Question 11 for free or you can, of course, talk to your own lawyer if you have questions about what this means.

THE LAWYERS REPRESENTING YOU**11. Do I have a lawyer in the case?**

The Court has appointed Philip L. Fraietta and Stefan Bogdanovich of Bursor & Fisher, P.A. to be the attorneys representing the Settlement Class. They are called “Class Counsel.” They believe, after conducting an extensive investigation, that the Settlement Agreement is fair, reasonable, and in the best interests of the Settlement Class. You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense.

12. How will the lawyers be paid?

The Defendant has agreed that Class Counsel's attorneys' fees and costs may be paid out of the Settlement Fund in an amount to be determined by the Court. The fee petition will seek no more than one-third of the Settlement Fund, inclusive of reimbursement of their costs and expenses; the Court may award less than this amount. Under the Settlement Agreement, any amount awarded to Class Counsel will be paid out of the Settlement Fund.

Subject to approval by the Court, Defendant has agreed that the Class Representative may be paid a service award of \$10,000 from the Settlement Fund for her services in helping to bring and resolve this case.

EXCLUDING YOURSELF FROM THE SETTLEMENT

13. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must submit a request for exclusion by 11:59 p.m. EST on [objection/exclusion deadline]. Requests for exclusion may be submitted either on the Settlement Website (via the online form accessible [here](#) [insert hyperlink]) or by mailing or otherwise delivering a letter (or request for exclusion) stating that you want to be excluded from the *Patino v. Film at Lincoln Center, Inc.*, Index No. 504682/2024 settlement. Your letter or request for exclusion must also include your name, your address, a statement that you purchased electronic tickets to Defendant's Places of Entertainment from Defendant's Website, from August 29, 2022 through and including February 21, 2024, and paid a convenience fee in connection with such purchase, your signature, the name and number of this case, and a statement that you wish to be excluded. If you choose to submit a request for exclusion by mail, you must mail or deliver your exclusion request, postmarked no later than [objection/exclusion deadline], to the following address:

Film at Lincoln Center Ticket Fee Settlement
0000 Street
City, ST 00000

14. If I don't exclude myself, can I sue the Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue the Defendant for the claims being resolved by this Settlement.

15. If I exclude myself, can I get anything from this Settlement?

No. If you exclude yourself, you will not receive any payment from the Settlement Fund.

OBJECTING TO THE SETTLEMENT

QUESTIONS? CALL (800) 000-0000 TOLL FREE, OR VISIT WWW.FILMLCTICKETFEESSETTLEMENT.COM

16. How do I object to the Settlement?

If you are a member of the Settlement Class, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must file with the Court a letter or brief stating that you object to the Settlement in *Patino v. Film at Lincoln Center, Inc.*, Index No. 504682/2024 and identify all your reasons for your objections (including citations and supporting evidence) and attach any materials you rely on for your objections. Your letter or brief must also include your name, your address, the basis upon which you claim to be a member of the Settlement Class, the name and contact information of any and all attorneys representing, advising, or in any way assisting you in connection with your objection, and your signature. If you, or an attorney assisting you with your objection, have ever objected to any class action settlement where you or the objecting attorney has asked for or received payment in exchange for dismissal of the objection (or any related appeal) without modification to the settlement, you must include a statement in your objection identifying each such case by full case caption. You must also mail or deliver a copy of your letter or brief to Class Counsel and Defendant's Counsel listed below.

Class Counsel will file with the Court and post on this website its request for attorneys' fees by [two weeks prior to objection deadline].

If you want to appear and speak at the Final Approval Hearing to object to the Settlement, with or without a lawyer (explained below in answer to Question Number 20), you must say so in your letter or brief. File the objection with the Court (or mail the objection to the Court) and mail a copy of the objection to Class Counsel and Defendant's Counsel, at the addresses below, postmarked no later than [objection deadline].

Court	Class Counsel	Defendant's Counsel
Supreme Court of the State of New York, County of Kings 360 Adams Street, Courtroom [redacted] Brooklyn, NY 11201	Philip L. Fraietta Bursor & Fisher P.A. 1330 Avenue of the Americas, 32nd Floor New York, NY 10019	Bety Javidzad Dentons US LLP 601 S. Figueroa Street, Suite 2500 Los Angeles, CA 90017

17. What's the difference between objecting and excluding myself from the Settlement?

Objecting simply means telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself from the Settlement Class is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

QUESTIONS? CALL (800) 000-0000 TOLL FREE, OR VISIT WWW.FILMLCTICKETFEESSETTLEMENT.COM

THE COURT'S FINAL APPROVAL HEARING

18. When and where will the Court decide whether to approve the Settlement?

The Court will hold the Final Approval Hearing at [redacted] .m. on [date] in Courtroom [redacted] at the Supreme Court of the State of New York, County of Kings, 360 Adams Street, Brooklyn, NY 11201. The purpose of the hearing will be for the Court to determine whether to approve the Settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class; to consider the Class Counsel's request for attorneys' fees and expenses; and to consider the request for an incentive award to the Class Representative. At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the Settlement.

The hearing may be postponed to a different date or time without notice, so it is a good idea to check for updates by visiting the Settlement Website at www.filmlcticketfeesettlement.com or calling (800) 000-0000. If, however, you timely objected to the Settlement and advised the Court that you intend to appear and speak at the Final Approval Hearing, you will receive notice of any change in the date of the Final Approval Hearing.

19. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. But, you are welcome to come at your own expense. If you send an objection or comment, you don't have to come to Court to talk about it. As long as you filed and mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend, but it's not required.

20. May I speak at the hearing?

Yes. You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include in your letter or brief objecting to the settlement a statement saying that it is your "Notice of Intent to Appear in *Patino v. Film at Lincoln Center, Inc.*, Index No. 504682/2024." It must include your name, address, telephone number and signature as well as the name and address of your lawyer, if one is appearing for you. Your objection and notice of intent to appear must be filed with the Court and postmarked no later than [objection deadline], and be sent to the addresses listed in Question 16.

GETTING MORE INFORMATION

21. Where do I get more information?

This Notice summarizes the Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement at www.filmlcticketfeesettlement.com. You may also write with questions to Film at Lincoln Center Ticket Fee Settlement, P.O. Box

QUESTIONS? CALL (800) 000-0000 TOLL FREE, OR VISIT WWW.FILMLCTICKETFEESSETTLEMENT.COM

0000, City, ST 00000. You can call the Settlement Administrator at (800) 000-0000 or Class Counsel at (646) 837-7150, if you have any questions. Before doing so, however, please read this full Notice carefully. You may also find additional information elsewhere on the case website.

QUESTIONS? CALL (800) 000-0000 TOLL FREE, OR VISIT WWW.FILMLCTICKETFEESSETTLEMENT.COM

EXHIBIT D

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

REGINA PATINO, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

FILM AT LINCOLN CENTER, INC.,

Defendant.

Index No. 504682/2024

**STIPULATION REGARDING UNDERTAKING RE: ATTORNEYS' FEES, COSTS,
AND EXPENSES**

Plaintiff Regina Patino (“Plaintiff”) and Film at Lincoln Center, Inc. (“Defendant”) (collectively, “the Parties”), by and through and including (as applicable) their undersigned counsel, stipulate and agree as follows:

WHEREAS, Bursor & Fisher, P.A. (the “Firm”) desires to give an undertaking (the “Undertaking”) for repayment of the award of attorneys’ fees, costs, and expenses approved by the Court, and

WHEREAS, the Parties agree that this Undertaking is in the interests of all Parties and in service of judicial economy and efficiency.

NOW, THEREFORE, the undersigned counsel, as agent for his law firm, hereby submits his law firm to the jurisdiction of the Court for the purpose of enforcing the provisions of this Undertaking.

Capitalized terms used herein without definition have the meanings given to them in the Settlement Agreement.

By receiving any payments pursuant to the Settlement Agreement, the Firm and its shareholders, members, and/or partners submit to the jurisdiction of the Supreme Court of the State of New York, County of Kings for the enforcement of and any and all disputes relating to or arising out of the reimbursement obligation set forth herein and in the Settlement Agreement.

In the event that the Final Approval Order or any part of it is vacated, overturned, reversed, or rendered void as a result of a timely filed appeal, or the Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, the Firm shall, within thirty (30) days thereof, repay to Defendant, based upon written instructions provided by Defendant's Counsel, the full amount of the Fee Award, including any accrued interest.

In the event the Final Approval Order is upheld, but the attorneys' fees, costs, and expenses awarded by the Court or any part of them are vacated, modified, reversed, or rendered void as a result of a timely filed appeal, the Firm shall within thirty (30) days thereof repay to the Settlement Fund, based upon written instructions provided by the Settlement Administrator, the attorneys' fees and costs paid to the Firm from the applicable Settlement Fund in the amount vacated or modified, including any accrued interest.

This Undertaking and all obligations set forth herein shall expire upon finality of all direct appeals of the Final Approval Order.

In the event the Firm fails to repay to Defendant any of attorneys' fees and costs that are owed to it pursuant to this Undertaking, the Court shall, upon application of Defendant, and notice to the Firm, summarily issue orders, including but not limited to judgments and attachment orders against the Firm, and may make appropriate findings for sanctions for contempt of court.

The undersigned stipulate, warrant, and represent that he has both actual and apparent authority to enter into this stipulation, agreement, and undertaking on behalf of the Firm.

This Undertaking may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Signatures by facsimile, PDF, or other electronic means shall be as effective as original signatures.

The undersigned declare under penalty of perjury under the laws of the United States that they have read and understand the foregoing and that it is true and correct.

IT IS SO STIPULATED THROUGH COUNSEL OF RECORD:

DATED: June 22, 2024

BURSOR & FISHER, P.A.



By: Scott A. Bursor, on behalf of Bursor & Fisher, P.A.
Attorneys for Plaintiff

DATED: June 24, 2024

DENTONS US LLP



By: Bety Javidzad, on behalf of Defendant Film at Lincoln Center, Inc.



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FIRM RESUME

With offices in Florida, New York, and California, BURSOR & FISHER lawyers have represented both plaintiffs and defendants in state and federal courts throughout the country.

The lawyers at our firm have an active civil trial practice, having won multi-million-dollar verdicts or recoveries in six of six class action jury trials since 2008. Our most recent class action trial victory came in May 2019 in *Perez v. Rash Curtis & Associates*, in which Mr. Bursor served as lead trial counsel and won a \$267 million jury verdict against a debt collector found to have violated the Telephone Consumer Protection Act. During the pendency of the defendant's appeal, the case settled for \$75.6 million, the largest settlement in the history of the Telephone Consumer Protection Act.

In August 2013 in *Ayyad v. Sprint Spectrum L.P.*, in which Mr. Bursor served as lead trial counsel, we won a jury verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

In *Thomas v. Global Vision Products, Inc. (II)*, we obtained a \$50 million jury verdict in favor of a certified class of 150,000 purchasers of the Avacor Hair Regrowth System. The legal trade publication VerdictSearch reported that this was the second largest jury verdict in California in 2009, and the largest in any class action.

The lawyers at our firm have an active class action practice and have won numerous appointments as class counsel to represent millions of class members, including customers of Honda, Verizon Wireless, AT&T Wireless, Sprint, Haier America, and Michaels Stores as well as purchasers of Avacor™, Hydroxycut, and Sensa™ products. Bursor & Fisher lawyers have been court-appointed Class Counsel or Interim Class Counsel in:

1. *O'Brien v. LG Electronics USA, Inc.* (D.N.J. Dec. 16, 2010) to represent a certified nationwide class of purchasers of LG French-door refrigerators,
2. *Ramundo v. Michaels Stores, Inc.* (N.D. Ill. June 8, 2011) to represent a certified nationwide class of consumers who made in-store purchases at Michaels Stores using a debit or credit card and had their private financial information stolen as a result,
3. *In re Haier Freezer Consumer Litig.* (N.D. Cal. Aug. 17, 2011) to represent a certified class of purchasers of mislabeled freezers from Haier America Trading, LLC,
4. *Rodriguez v. CitiMortgage, Inc.* (S.D.N.Y. Nov. 14, 2011) to represent a certified nationwide class of military personnel against CitiMortgage for illegal foreclosures,

5. *Rossi v. The Procter & Gamble Co.* (D.N.J. Jan. 31, 2012) to represent a certified nationwide class of purchasers of Crest Sensitivity Treatment & Protection toothpaste,
6. *Dzielak v. Whirlpool Corp. et al.* (D.N.J. Feb. 21, 2012) to represent a proposed nationwide class of purchasers of mislabeled Maytag Centennial washing machines from Whirlpool Corp., Sears, and other retailers,
7. *In re Sensa Weight Loss Litig.* (N.D. Cal. Mar. 2, 2012) to represent a certified nationwide class of purchasers of Sensa weight loss products,
8. *In re Sinus Buster Products Consumer Litig.* (E.D.N.Y. Dec. 17, 2012) to represent a certified nationwide class of purchasers,
9. *Ebin v. Kangadis Food Inc.* (S.D.N.Y. Feb. 25, 2014) to represent a certified nationwide class of purchasers of Capatriti 100% Pure Olive Oil,
10. *Forcellati v. Hyland's, Inc.* (C.D. Cal. Apr. 9, 2014) to represent a certified nationwide class of purchasers of children's homeopathic cold and flu remedies,
11. *Ebin v. Kangadis Family Management LLC, et al.* (S.D.N.Y. Sept. 18, 2014) to represent a certified nationwide class of purchasers of Capatriti 100% Pure Olive Oil,
12. *In re Scotts EZ Seed Litig.* (S.D.N.Y. Jan. 26, 2015) to represent a certified class of purchasers of Scotts Turf Builder EZ Seed,
13. *Dei Rossi v. Whirlpool Corp., et al.* (E.D. Cal. Apr. 28, 2015) to represent a certified class of purchasers of mislabeled KitchenAid refrigerators from Whirlpool Corp., Best Buy, and other retailers,
14. *Hendricks v. StarKist Co.* (N.D. Cal. July 23, 2015) to represent a certified nationwide class of purchasers of StarKist tuna products,
15. *In re NVIDIA GTX 970 Graphics Card Litig.* (N.D. Cal. May 8, 2015) to represent a proposed nationwide class of purchasers of NVIDIA GTX 970 graphics cards,
16. *Melgar v. Zicam LLC, et al.* (E.D. Cal. March 30, 2016) to represent a certified ten-jurisdiction class of purchasers of Zicam Pre-Cold products,
17. *In re Trader Joe's Tuna Litigation* (C.D. Cal. December 21, 2016) to represent purchaser of allegedly underfilled Trader Joe's canned tuna.
18. *In re Welspun Litigation* (S.D.N.Y. January 26, 2017) to represent a proposed nationwide class of purchasers of Welspun Egyptian cotton bedding products,
19. *Retta v. Millennium Products, Inc.* (C.D. Cal. January 31, 2017) to represent a certified nationwide class of Millennium kombucha beverages,
20. *Moeller v. American Media, Inc.,* (E.D. Mich. June 8, 2017) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
21. *Hart v. BHH, LLC* (S.D.N.Y. July 7, 2017) to represent a nationwide class of purchasers of Bell & Howell ultrasonic pest repellers,
22. *McMillion v. Rash Curtis & Associates* (N.D. Cal. September 6, 2017) to represent a certified nationwide class of individuals who received calls from Rash Curtis & Associates,

23. *Lucero v. Solarcity Corp.* (N.D. Cal. September 15, 2017) to represent a certified nationwide class of individuals who received telemarketing calls from Solarcity Corp.,
24. *Taylor v. Trusted Media Brands, Inc.* (S.D.N.Y. Oct. 17, 2017) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
25. *Gasser v. Kiss My Face, LLC* (N.D. Cal. Oct. 23, 2017) to represent a proposed nationwide class of purchasers of cosmetic products,
26. *Gastelum v. Frontier California Inc.* (S.F. Superior Court February 21, 2018) to represent a certified California class of Frontier landline telephone customers who were charged late fees,
27. *Williams v. Facebook, Inc.* (N.D. Cal. June 26, 2018) to represent a proposed nationwide class of Facebook users for alleged privacy violations,
28. *Ruppel v. Consumers Union of United States, Inc.* (S.D.N.Y. July 27, 2018) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
29. *Bayol v. Health-Ade* (N.D. Cal. August 23, 2018) to represent a proposed nationwide class of Health-Ade kombucha beverage purchasers,
30. *West v. California Service Bureau* (N.D. Cal. September 12, 2018) to represent a certified nationwide class of individuals who received calls from California Service Bureau,
31. *Gregorio v. Premier Nutrition Corporation* (S.D.N.Y. Sept. 14, 2018) to represent a nationwide class of purchasers of protein shake products,
32. *Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast* (S.D.N.Y. Oct. 24, 2018) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
33. *Bakov v. Consolidated World Travel Inc. d/b/a Holiday Cruise Line* (N.D. Ill. Mar. 21, 2019) to represent a certified class of individuals who received calls from Holiday Cruise Line,
34. *Martinelli v. Johnson & Johnson* (E.D. Cal. March 29, 2019) to represent a certified class of purchasers of Benecol spreads labeled with the representation “No Trans Fat,”
35. *Edwards v. Hearst Communications, Inc.* (S.D.N.Y. April 24, 2019) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
36. *Galvan v. Smashburger* (C.D. Cal. June 25, 2019) to represent a proposed class of purchasers of Smashburger’s “Triple Double” burger,
37. *Kokoszki v. Playboy Enterprises, Inc.* (E.D. Mich. Feb. 7, 2020) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
38. *Russett v. The Northwestern Mutual Life Insurance Co.* (S.D.N.Y. May 28, 2020) to represent a class of insurance policyholders that were allegedly charged unlawful paper billing fees,
39. *In re: Metformin Marketing and Sales Practices Litigation* (D.N.J. June 3, 2020) to represent a proposed nationwide class of purchasers of generic diabetes medications that were contaminated with a cancer-causing carcinogen,

40. *Hill v. Spirit Airlines, Inc.* (S.D. Fla. July 21, 2020) to represent a proposed nationwide class of passengers whose flights were cancelled by Spirit Airlines due to the novel coronavirus, COVID-19, and whose tickets were not refunded,
41. *Kramer v. Alterra Mountain Co.* (D. Colo. July 31, 2020) to represent a proposed nationwide class of purchasers to recoup the unused value of their Ikon ski passes after Alterra suspended operations at its ski resorts due to the novel coronavirus, COVID-19,
42. *Qureshi v. American University* (D.D.C. July 31, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by American University due to the novel coronavirus, COVID-19,
43. *Hufford v. Maxim Inc.* (S.D.N.Y. Aug. 13, 2020) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
44. *Desai v. Carnegie Mellon University* (W.D. Pa. Aug. 26, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by Carnegie Mellon University due to the novel coronavirus, COVID-19,
45. *Heigl v. Waste Management of New York, LLC* (E.D.N.Y. Aug. 27, 2020) to represent a class of waste collection customers that were allegedly charged unlawful paper billing fees,
46. *Stellato v. Hofstra University* (E.D.N.Y. Sept. 18, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by Hofstra University due to the novel coronavirus, COVID-19,
47. *Kaupelis v. Harbor Freight Tools USA, Inc.* (C.D. Cal. Sept. 23, 2020), to represent consumers who purchased defective chainsaws,
48. *Soo v. Lorex Corporation* (N.D. Cal. Sept. 23, 2020), to represent consumers whose security cameras were intentionally rendered non-functional by manufacturer,
49. *Miranda v. Golden Entertainment (NV), Inc.* (D. Nev. Dec. 17, 2020), to represent consumers and employees whose personal information was exposed in a data breach,
50. *Benbow v. SmileDirectClub, Inc.* (Cir. Ct. Cook Cnty. Feb. 4, 2021), to represent a certified nationwide class of individuals who received text messages from SmileDirectClub, in alleged violation of the Telephone Consumer Protection Act,
51. *Suren v. DSV Solutions, LLC* (Cir. Ct. DuPage Cnty. Apr. 8, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
52. *De Lacour v. Colgate-Palmolive Co.* (S.D.N.Y. Apr. 23, 2021), to represent a certified class of consumers who purchased allegedly “natural” Tom’s of Maine products,
53. *Wright v. Southern New Hampshire University* (D.N.H. Apr. 26, 2021), to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by Southern New Hampshire University due to the novel coronavirus, COVID-19,

54. *Sahlin v. Hospital Housekeeping Systems, LLC* (Cir. Ct. Williamson Cnty. May 21, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
55. *Landreth v. Verano Holdings LLC, et al.* (Cir. Ct. Cook Cnty. June 2, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act.
56. *Rocchio v. Rutgers, The State University of New Jersey*, (Sup. Ct., Middlesex Cnty. October 27, 201), to represent a certified nationwide class of students for fee refunds after their classes were moved online by Rutgers due to the novel coronavirus, COVID-19,
57. *Malone v. Western Digital Corp.*, (N.D. Cal. Dec. 22, 2021), to represent a class of consumers who purchased hard drives that were allegedly deceptively advertised,
58. *Jenkins v. Charles Industries, LLC*, (Cir. Ct. DuPage Cnty. Dec. 21, 2021) to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
59. *Frederick v. Examsoft Worldwide, Inc.*, (Cir. Ct. DuPage Cnty. Jan. 6, 2022) to represent a certified class of exam takers who used virtual exam proctoring software, in alleged violation of the Illinois Biometric Information Privacy Act,
60. *Isaacson v. Liqui-Box Flexibles, LLC, et al.*, (Cir. Ct. Will Cnty. Jan. 18, 2022) to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
61. *Goldstein et al. v. Henkel Corp.*, (D. Conn. Mar. 3, 2022) to represent a proposed class of purchasers of Right Guard-brand antiperspirants that were allegedly contaminated with benzene,
62. *McCall v. Hercules Corp.*, (N.Y. Sup. Ct., Westchester Cnty. Mar. 14, 2022) to represent a certified class of who laundry card purchasers who were allegedly subjected to deceptive practices by being denied cash refunds,
63. *Lewis v. Trident Manufacturing, Inc.*, (Cir. Ct. Kane Cnty. Mar. 16, 2022) to represent a certified class of workers who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
64. *Croft v. Spinx Games Limited, et al.*, (W.D. Wash. Mar. 31, 2022) to represent a certified class of Washington residents who lost money playing mobile applications games that allegedly constituted illegal gambling under Washington law,
65. *Fischer v. Instant Checkmate LLC*, (N.D. Ill. Mar. 31, 2022) to represent a certified class of Illinois residents whose identities were allegedly used without their consent in alleged violation of the Illinois Right of Publicity Act,
66. *Rivera v. Google LLC*, (Cir. Ct. Cook Cnty. Apr. 25, 2022) to represent a certified class of Illinois residents who appeared in a photograph in Google Photos, in alleged violation of the Illinois Biometric Information Privacy Act,
67. *Loftus v. Outside Integrated Media, LLC*, (E.D. Mich. May 5, 2022) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,

68. *D'Amario v. The University of Tampa*, (S.D.N.Y. June 3, 2022) to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by The University of Tampa due to the novel coronavirus, COVID-19,
69. *Fittipaldi v. Monmouth University*, (D.N.J. Sept. 22, 2022) to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by Monmouth University due to the novel coronavirus, COVID-19,
70. *Armstead v. VGW Malta Ltd. et al.* (Cir. Ct. Henderson Cnty. Oct. 3, 2022) to present a certified class of Kentucky residents who lost money playing mobile applications games that allegedly constituted illegal gambling under Kentucky law,
71. *Cruz v. The Connor Group, A Real Estate Investment Firm, LLC*, (N.D. Ill. Oct. 26, 2022) to represent a certified class of workers who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
72. *Delcid et al. v. TCP HOT Acquisitions LLC et al.* (S.D.N.Y. Oct. 28, 2022) to represent a certified nationwide class of purchasers of Sure and Brut-brand antiperspirants that were allegedly contaminated with benzene,
73. *Kain v. The Economist Newspaper NA, Inc.* (E.D. Mich. Dec. 15, 2022) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
74. *Strano v. Kiplinger Washington Editors, Inc.* (E.D. Mich. Jan. 6, 2023) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
75. *Moeller v. The Week Publications, Inc.* (E.D. Mich. Jan. 6, 2023) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
76. *Ambrose v. Boston Globe Media Partners, LLC* (D. Mass. May 25, 2023) to represent a nationwide class of newspaper subscribers who were also Facebook users under the Video Privacy Protection Act,
77. *In re: Apple Data Privacy Litigation*, (N.D. Cal. July 5, 2023) to represent a putative nationwide class of all persons who turned off permissions for data tracking and whose mobile app activity was still tracked on iPhone mobile devices,
78. *Young v. Military Advantage, Inc. d/b/a Military.com* (Cir. Ct. DuPage Cnty. July 26, 2023) to represent a nationwide class of website subscribers who were also Facebook users under the Video Privacy Protection Act,
79. *Whiting v. Yellow Social Interactive Ltd.* (Cir. Ct. Henderson Cnty. Aug. 15, 2023) to represent a certified class of Kentucky residents who lost money playing mobile applications games that allegedly constituted illegal gambling under Kentucky law,
80. *Kotila v. Charter Financial Publishing Network, Inc.* (W.D. Mich. Feb. 21, 2024) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
81. *Schreiber v. Mayo Foundation for Medical Education and Research* (W.D. Mich. Feb. 21, 2024) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,

82. *Norcross v. Tishman Speyer Properties, et al.* (S.D.N.Y. May 17, 2024) to represent a class of online ticket purchasers under New York Arts & Cultural Affairs Law § 25.07(4).

SCOTT A. BURSOR

Mr. Bursor has an active civil trial practice, having won multi-million verdicts or recoveries in six of six civil jury trials since 2008. Mr. Bursor's most recent victory came in May 2019 in *Perez v. Rash Curtis & Associates*, in which Mr. Bursor served as lead trial counsel and won a \$267 million jury verdict against a debt collector for violations of the Telephone Consumer Protection Act (TCPA).

In *Ayyad v. Sprint Spectrum L.P.* (2013), where Mr. Bursor served as lead trial counsel, the jury returned a verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

In *Thomas v. Global Vision Products, Inc.* (2009), the jury returned a \$50 million verdict in favor of the plaintiff and class represented by Mr. Bursor. The legal trade publication VerdictSearch reported that this was the second largest jury verdict in California in 2009.

Class actions are rarely tried to verdict. Other than Mr. Bursor and his partner Mr. Fisher, we know of no lawyer that has tried more than one class action to a jury. Mr. Bursor's perfect record of six wins in six class action jury trials, with recoveries ranging from \$21 million to \$299 million, is unmatched by any other lawyer. Each of these victories was hard-fought against top trial lawyers from the biggest law firms in the United States.

Mr. Bursor graduated from the University of Texas Law School in 1996. He served as Articles Editor of the Texas Law Review, and was a member of the Board of Advocates and Order of the Coif. Prior to starting his own practice, Mr. Bursor was a litigation associate at a large New York based law firm where he represented telecommunications, pharmaceutical, and technology companies in commercial litigation.

Mr. Bursor is a member of the state bars of New York, Florida, and California, as well as the bars of the United States Court of Appeals for the Second, Third, Fourth, Sixth, Ninth and Eleventh Circuits, and the bars of the United States District Courts for the Southern and Eastern Districts of New York, the Northern, Central, Southern and Eastern Districts of California, the Southern and Middle Districts of Florida, and the Eastern District of Michigan.

Representative Cases

Mr. Bursor was appointed lead or co-lead class counsel to the largest, 2nd largest, and 3rd largest classes ever certified. Mr. Bursor has represented classes including more than 160 million class members, roughly 1 of every 2 Americans. Listed below are recent cases that are representative of Mr. Bursor's practice:

Mr. Bursor negotiated and obtained court-approval for two landmark settlements in *Nguyen v. Verizon Wireless* and *Zill v. Sprint Spectrum* (the largest and 2nd largest classes ever certified). These settlements required Verizon and Sprint to open their wireless networks to

third-party devices and applications. These settlements are believed to be the most significant legal development affecting the telecommunications industry since 1968, when the FCC's Carterfone decision similarly opened up AT&T's wireline telephone network.

Mr. Bursor was the lead trial lawyer in *Ayyad v. Sprint Spectrum, L.P.* representing a class of approximately 2 million California consumers who were charged an early termination fee under a Sprint cellphone contract, asserting claims that such fees were unlawful liquidated damages under the California Civil Code, as well as other statutory and common law claims. After a five-week combined bench-and-jury trial, the jury returned a verdict in June 2008 and the Court issued a Statement of Decision in December 2008 awarding the plaintiffs \$299 million in cash and debt cancellation. Mr. Bursor served as lead trial counsel for this class again in 2013 during a month-long jury trial in which Sprint asserted a \$1.06 billion counterclaim against the class. Mr. Bursor secured a verdict awarding Sprint only \$18.4 million, the exact amount calculated by the class's damages expert. This award was less than 2% of the damages Sprint sought, less than 6% of the amount of the illegal termination fees Sprint charged to class members. In December 2016, after more than 13 years of litigation, the case was settled for \$304 million, including \$79 million in cash payments plus \$225 million in debt cancellation.

Mr. Bursor was the lead trial lawyer in *White v. Cellco Partnership d/b/a Verizon Wireless* representing a class of approximately 1.4 million California consumers who were charged an early termination fee under a Verizon cellphone contract, asserting claims that such fees were unlawful liquidated damages under the California Civil Code, as well as other statutory and common law claims. In July 2008, after Mr. Bursor presented plaintiffs' case-in-chief, rested, then cross-examined Verizon's principal trial witness, Verizon agreed to settle the case for a \$21 million cash payment and an injunction restricting Verizon's ability to impose early termination fees in future subscriber agreements.

Mr. Bursor was the lead trial lawyer in *Thomas v. Global Visions Products Inc.* Mr. Bursor represented a class of approximately 150,000 California consumers who had purchased the Avacor® hair regrowth system. In January 2008, after a four-week combined bench-and-jury trial, Mr. Bursor obtained a \$37 million verdict for the class, which the Court later increased to \$40 million.

Mr. Bursor was appointed class counsel and was elected chair of the Official Creditors' Committee in *In re Nutraquest Inc.*, a Chapter 11 bankruptcy case before Chief Judge Garrett E. Brown, Jr. (D.N.J.) involving 390 ephedra-related personal injury and/or wrongful death claims, two consumer class actions, four enforcement actions by governmental agencies, and multiple adversary proceedings related to the Chapter 11 case. Working closely with counsel for all parties and with two mediators, Judge Nicholas Politan (Ret.) and Judge Marina Corodemus (Ret.), the committee chaired by Mr. Bursor was able to settle or otherwise resolve every claim and reach a fully consensual Chapter 11 plan of reorganization, which Chief Judge Brown approved in late 2006. This settlement included a \$12.8 million recovery to a nationwide class of consumers who alleged they were defrauded in connection with the purchase of Xenadrine® dietary supplement products.

Mr. Bursor was the lead trial lawyer in *In re: Pacific Bell Late Fee Litigation*. After filing the first class action challenging Pac Bell's late fees in April 2010, winning a contested

motion to certify a statewide California class in January 2012, and defeating Pac Bell's motion for summary judgment in February 2013, Mr. Bursor obtained final approval of the \$38 million class settlement. The settlement, which Mr. Bursor negotiated the night before opening statements were scheduled to commence, included a \$20 million cash payment to provide refunds to California customers who paid late fees on their Pac Bell wireline telephone accounts, and an injunction that reduced other late fee charges by \$18.6 million.

L. TIMOTHY FISHER

L. Timothy Fisher has an active practice in consumer class actions and complex business litigation and has also successfully handled a large number of civil appeals.

Mr. Fisher has been actively involved in numerous cases that resulted in multi-million dollar recoveries for consumers and investors. Mr. Fisher has handled cases involving a wide range of issues including nutritional labeling, health care, telecommunications, corporate governance, unfair business practices and consumer fraud. With his partner Scott A. Bursor, Mr. Fisher has tried five class action jury trials, all of which produced successful results. In *Thomas v. Global Vision Products*, Mr. Fisher obtained a jury award of \$50,024,611 — the largest class action award in California in 2009 and the second-largest jury award of any kind. In 2019, Mr. Fisher served as trial counsel with Mr. Bursor in *Perez v. Rash Curtis & Associates*, where the jury returned a verdict for \$267 million in statutory damages under the Telephone Consumer Protection Act.

Mr. Fisher was admitted to the State Bar of California in 1997. He is also a member of the bars of the United States Court of Appeals for the Ninth Circuit, the United States District Courts for the Northern, Central, Southern and Eastern Districts of California, the Northern District of Illinois, the Eastern District of Michigan, and the Eastern District of Missouri. Mr. Fisher taught appellate advocacy at John F. Kennedy University School of Law in 2003 and 2004. In 2010, he contributed jury instructions, a verdict form and comments to the consumer protection chapter of Justice Elizabeth A. Baron's *California Civil Jury Instruction Companion Handbook* (West 2010). In January 2014, Chief Judge Claudia Wilken of the United States District Court for the Northern District of California appointed Mr. Fisher to a four-year term as a member of the Court's Standing Committee on Professional Conduct.

Mr. Fisher received his Juris Doctor from Boalt Hall at the University of California at Berkeley in 1997. While in law school, he was an active member of the Moot Court Board and participated in moot court competitions throughout the United States. In 1994, Mr. Fisher received an award for Best Oral Argument in the first-year moot court competition.

In 1992, Mr. Fisher graduated with highest honors from the University of California at Berkeley and received a degree in political science. Prior to graduation, he authored an honors thesis for Professor Bruce Cain entitled "The Role of Minorities on the Los Angeles City Council." He is also a member of Phi Beta Kappa.

Representative Cases

Thomas v. Global Vision Products, Inc. (Alameda County Superior Court). Mr. Fisher litigated claims against Global Vision Products, Inc. and other individuals in connection with the sale and marketing of a purported hair loss remedy known as Avacor. The case lasted more than seven years and involved two trials. The first trial resulted in a verdict for plaintiff and the class in the amount of \$40,000,000. The second trial resulted in a jury verdict of \$50,024,611, which led to a \$30 million settlement for the class.

In re Cellphone Termination Fee Cases - Handset Locking Actions (Alameda County Superior Court). Mr. Fisher actively worked on five coordinated cases challenging the secret locking of cell phone handsets by major wireless carriers to prevent consumers from activating them on competitive carriers' systems. Settlements have been approved in all five cases on terms that require the cell phone carriers to disclose their handset locks to consumers and to provide unlocking codes nationwide on reasonable terms and conditions. The settlements fundamentally changed the landscape for cell phone consumers regarding the locking and unlocking of cell phone handsets.

In re Cellphone Termination Fee Cases - Early Termination Fee Cases (Alameda County Superior Court and Federal Communications Commission). In separate cases that are a part of the same coordinated litigation as the Handset Locking Actions, Mr. Fisher actively worked on claims challenging the validity under California law of early termination fees imposed by national cell phone carriers. In one of those cases, against Verizon Wireless, a nationwide settlement was reached after three weeks of trial in the amount of \$21 million. In a second case, which was tried to verdict, the Court held after trial that the \$73 million of flat early termination fees that Sprint had collected from California consumers over an eight-year period were void and unenforceable.

Selected Published Decisions

Melgar v. Zicam LLC, 2016 WL 1267870 (E.D. Cal. Mar. 30, 2016) (certifying 10-jurisdiction class of purchasers of cold remedies, denying motion for summary judgment, and denying motions to exclude plaintiff's expert witnesses).

Salazar v. Honest Tea, Inc., 2015 WL 7017050 (E.D. Cal. Nov. 12, 2015) (denying motion for summary judgment).

Dei Rossi v. Whirlpool Corp., 2015 WL 1932484 (E.D. Cal. Apr. 27, 2015) (certifying California class of purchasers of refrigerators that were mislabeled as Energy Star qualified).

Bayol v. Zipcar, Inc., 78 F.Supp.3d 1252 (N.D. Cal. 2015) (denying motion to dismiss claims alleging unlawful late fees under California Civil Code § 1671).

Forcellati v. Hyland's, Inc., 2015 WL 9685557 (C.D. Cal. Jan. 12, 2015) (denying motion for summary judgment in case alleging false advertising of homeopathic cold and flu remedies for children).

Bayol v. Zipcar, Inc., 2014 WL 4793935 (N.D. Cal. Sept. 25, 2014) (denying motion to transfer venue pursuant to a forum selection clause).

Forcellati v. Hyland's Inc., 2014 WL 1410264 (C.D. Cal. Apr. 9, 2014) (certifying nationwide class of purchasers of homeopathic cold and flu remedies for children).

Hendricks v. StarKist Co., 30 F.Supp.3d 917 (N.D. Cal. 2014) (denying motion to dismiss in case alleging underfilling of 5-ounce cans of tuna).

Dei Rossi v. Whirlpool Corp., 2013 WL 5781673 (E.D. Cal. October 25, 2013) (denying motion to dismiss in case alleging that certain KitchenAid refrigerators were misrepresented as Energy Star qualified).

Forcellati v. Hyland's Inc., 876 F.Supp.2d 1155 (C.D. Cal. 2012) (denying motion to dismiss complaint alleging false advertising regarding homeopathic cold and flu remedies for children).

Clerkin v. MyLife.com, 2011 WL 3809912 (N.D. Cal. August 29, 2011) (denying defendants' motion to dismiss in case alleging false and misleading advertising by a social networking company).

In re Cellphone Termination Fee Cases, 186 Cal.App.4th 1380 (2010) (affirming order approving \$21 million class action settlement).

Gatton v. T-Mobile USA, Inc., 152 Cal.App.4th 571 (2007) (affirming order denying motion to compel arbitration).

Selected Class Settlements

Melgar v. Zicam (Eastern District of California) - \$16 million class settlement of claims alleging cold medicine was ineffective.

Gastelum v. Frontier California Inc. (San Francisco Superior Court) - \$10.9 million class action settlement of claims alleging that a residential landline service provider charged unlawful late fees.

West v. California Service Bureau, Inc. (Northern District of California) - \$4.1 million class settlement of claims under the Telephone Consumer Protection Act.

Gregorio v. Premier Nutrition Corp. (Southern District of New York) - \$9 million class settlement of false advertising claims against protein shake manufacturer.

Morris v. SolarCity Corp. (Northern District of California) - \$15 million class settlement of claims under the Telephone Consumer Protection Act.

Retta v. Millennium Products, Inc. (Central District of California) - \$8.25 million settlement to resolve claims of bottled tea purchasers for alleged false advertising.

Forcellati v. Hyland's (Central District of California) – nationwide class action settlement providing full refunds to purchasers of homeopathic cold and flu remedies for children.

Dei Rossi v. Whirlpool (Eastern District of California) – class action settlement providing \$55 cash payments to purchasers of certain KitchenAid refrigerators that allegedly mislabeled as Energy Star qualified.

In Re NVIDIA GTX 970 Graphics Chip Litigation (Northern District of California) - \$4.5 million class action settlement of claims alleging that a computer graphics card was sold with false and

misleading representations concerning its specifications and performance.

Hendricks v. StarKist Co. (Northern District of California) – \$12 million class action settlement of claims alleging that 5-ounce cans of tuna were underfilled.

In re Zakskorn v. American Honda Motor Co. Honda (Eastern District of California) – nationwide settlement providing for brake pad replacement and reimbursement of out-of-pocket expenses in case alleging defective brake pads on Honda Civic vehicles manufactured between 2006 and 2011.

Correa v. Sensa Products, LLC (Los Angeles Superior Court) - \$9 million settlement on behalf of purchasers of the Sensa weight loss product.

In re Pacific Bell Late Fee Litigation (Contra Costa County Superior Court) - \$38.6 million settlement on behalf of Pac Bell customers who paid an allegedly unlawful late payment charge.

In re Haier Freezer Consumer Litigation (Northern District of California) - \$4 million settlement, which provided for cash payments of between \$50 and \$325.80 to class members who purchased the Haier HNCM070E chest freezer.

Thomas v. Global Vision Products, Inc. (Alameda County Superior Court) - \$30 million settlement on behalf of a class of purchasers of a hair loss remedy.

Guyette v. Viacom, Inc. (Alameda County Superior Court) - \$13 million settlement for a class of cable television subscribers who alleged that the defendant had improperly failed to share certain tax refunds with its subscribers.

JOSEPH I. MARCHESE

Joseph I. Marchese is a Partner with Bursor & Fisher, P.A. Joe focuses his practice on consumer class actions, employment law disputes, and commercial litigation. He has represented corporate and individual clients in a wide array of civil litigation, and has substantial trial and appellate experience.

Joe has diverse experience in litigating and resolving consumer class actions involving claims of mislabeling, false or misleading advertising, privacy violations, data breach claims, and violations of the Servicemembers Civil Relief Act.

Joe also has significant experience in multidistrict litigation proceedings. Recently, he served on the Plaintiffs' Executive Committee in *In Re: Blue Buffalo Company, Ltd. Marketing And Sales Practices Litigation*, MDL No. 2562, which resulted in a \$32 million consumer class settlement. Currently, he serves on the Plaintiffs' Steering Committee for Economic Reimbursement in *In Re: Valsartan Products Liability Litigation*, MDL No. 2875.

Joe is admitted to the State Bar of New York and is a member of the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, and the Eastern District of Michigan, as well as the United States Court of Appeals for the Second Circuit.

Joe graduated from Boston University School of Law in 2002 where he was a member of The Public Interest Law Journal. In 1998, Joe graduated with honors from Bucknell University.

Selected Published Decisions:

Boelter v. Hearst Communications, Inc., 269 F. Supp. 3d 172 (S.D.N.Y. Sept. 7, 2017), granting plaintiff's motion for partial summary judgment on state privacy law violations in putative class action.

Boelter v. Hearst Communications, Inc., 192 F. Supp. 3d 427 (S.D.N.Y. June 17, 2016), denying publisher's motion to dismiss its subscriber's allegations of state privacy law violations in putative class action.

In re Scotts EZ Seed Litigation, 304 F.R.D. 397 (S.D.N.Y. 2015), granting class certification of false advertising and other claims brought by New York and California purchasers of grass seed product.

Ebin v. Kangadis Food Inc., 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported "100% Pure Olive Oil" product.

In re Michaels Stores Pin Pad Litigation, 830 F. Supp. 2d 518 (N.D. Ill. 2011), denying retailer's motion to dismiss its customers' state law consumer protection and privacy claims in data breach putative class action.

Selected Class Settlements:

Edwards v. Mid-Hudson Valley Federal Credit Union, Case No. 22-cv-00562-TJM-CFH (N.D.N.Y. 2023) – final approval granted for \$2.2 million class settlement to resolve claims that an upstate New York credit union was unlawfully charging overdraft fees on accounts with sufficient funds.

Edwards v. Hearst Communications, Inc., Case No. 15-cv-09279-AT (S.D.N.Y. 2019) – final approval granted for \$50 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast, Case No. 15-cv-05671-NRB (S.D.N.Y. 2019) – final approval granted for \$13.75 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

In re Scotts EZ Seed Litigation, Case No. 12-cv-4727-VB (S.D.N.Y. 2018) – final approval granted for \$47 million class settlement to resolve false advertising claims of purchasers of combination grass seed product.

In Re: Blue Buffalo Marketing And Sales Practices Litigation, Case No. 14-MD-2562-RWS (E.D. Mo. 2016) – final approval granted for \$32 million class settlement to resolve claims of pet owners for alleged false advertising of pet foods.

Rodriguez v. Citimortgage, Inc., Case No. 11-cv-4718-PGG (S.D.N.Y. 2015) – final approval granted for \$38 million class settlement to resolve claims of military servicemembers for alleged foreclosure violations of the Servicemembers Civil Relief Act, where each class member was entitled to \$116,785 plus lost equity in the foreclosed property and interest thereon.

O'Brien v. LG Electronics USA, Inc., et al., Case No. 10-cv-3733-DMC (D.N.J. 2011) – final approval granted for \$23 million class settlement to resolve claims of Energy Star refrigerator purchasers for alleged false advertising of the appliances' Energy Star qualification.

SARAH N. WESTCOT

Sarah N. Westcot is the Managing Partner of Bursor & Fisher's Miami office. She focuses her practice on consumer class actions, complex business litigation, and mass torts.

She has represented clients in a wide array of civil litigation, and has substantial trial and appellate experience. Sarah served as trial counsel in *Ayyad v. Sprint Spectrum L.P.*, where Bursor & Fisher won a jury verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

Sarah also has significant experience in high-profile, multi-district litigations. She currently serves on the Plaintiffs' Steering Committee in *In re Zantac (Ranitidine) Products Liability Litigation*, MDL No. 2924 (S.D. Florida). She also serves on the Plaintiffs' Executive Committee in *In re Apple Inc. App Store Simulated Casino-Style Games Litigation*, MDL No. 2985 (N.D. Cal.) and *In Re: Google Play Store Simulated Casino-Style Games Litigation*, MDL No. 3001 (N.D. Cal.).

Sarah is admitted to the State Bars of California and Florida, and is a member of the bars of the United States District Courts for the Northern, Central, Southern, and Eastern Districts of California, the United States District Courts for the Southern and Middle Districts of Florida, and the bars of the United States Courts of Appeals for the Second, Eighth, and Ninth Circuits.

Sarah received her Juris Doctor from the University of Notre Dame Law School in 2009. During law school, she was a law clerk with the Cook County State's Attorney's Office in Chicago and the Santa Clara County District Attorney's Office in San Jose, CA, gaining early trial experience in both roles. She graduated with honors from the University of Florida in 2005.

Sarah is a member of The National Trial Lawyers Top 100 Civil Plaintiff Lawyers, and was selected to The National Trial Lawyers Top 40 Under 40 Civil Plaintiff Lawyers for 2022.

JOSHUA D. ARISOHN

Joshua D. Arisohn is a Partner with Bursor & Fisher, P.A. Josh has litigated precedent-setting cases in the areas of consumer class actions and terrorism. He participated in the first ever trial to take place under the Anti-Terrorism Act, a statute that affords U.S. citizens the right to assert federal claims for injuries arising out of acts of international terrorism. Josh's practice continues to focus on terrorism-related matters as well as class actions.

Josh is admitted to the State Bar of New York and is a member of the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, the District Court for the District of Columbia, and the United States Courts of Appeals for the Second and Ninth Circuits.

Josh previously practiced at Dewey & LeBoeuf LLP and DLA Piper LLP. He graduated from Columbia University School of Law in 2006, where he was a Harlan Fiske Stone Scholar, and received his B.A. from Cornell University in 2002. Josh has been honored as a 2015, 2016 and 2017 Super Lawyer Rising Star.

Selected Published Decisions:

Fields v. Syrian Arab Republic, Civil Case No. 18-1437 (RJL), entering a judgment of approximately \$850 million in favor of the family members of victims of terrorist attacks carried out by ISIS with the material support of Syria.

Farwell v. Google LLC, 2022 WL 1568361 (C.D. Ill. Mar. 31, 2022), denying social media defendant's motion to dismiss BIPA claims brought on behalf of Illinois school students using Google's Workspace for Education platform on laptop computers.

Weiman v. Miami University, Case No. 2020-00614JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

Smith v. The Ohio State University, Case No. 2020-00321JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

Waitt v. Kent State University, Case No. 2020-00392JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

Duke v. Ohio University, Case No. 2021-00036JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

Keba v. Bowling Green State University, Case No. 2020-00639JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

Kirkbride v. The Kroger Co., Case No. 2:21-cv-00022-ALM-EPD, denying motion to dismiss claims based on the allegation that defendant overstated its usual and customary prices and thereby overcharged customers for generic drugs.

Selected Class Settlements:

Morris v. SolarCity Corp., Case No. 3:15-cv-05107-RS (N.D. Cal.) - final approval granted for \$15 million class settlement to resolve claims under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*

Marquez v. Google LLC, Case No. 2021-CH-1460 (Cir. Ct. Cook Cnty. 2022) – final approval granted for \$100 million class settlement to resolve alleged BIPA violations of Illinois residents appearing in photos on the Google Photos platform.

NEAL J. DECKANT

Neal J. Deckant is a Partner with Bursor & Fisher, P.A., where he serves as the firm's Head of Information & e-Discovery. Neal focuses his practice on complex business litigation and consumer class actions. Prior to joining Bursor & Fisher, Neal counseled low-income homeowners facing foreclosure in East Boston.

Neal is admitted to the State Bars of California and New York, and is a member of the bars of the United States District Court for the Northern District of California, the United States District Court for the Eastern District of California, the United States District Court for the Central District of California, the United States District Court for the Southern District of California, the United States District Court for the Southern District of New York, the United States District Court for the Eastern District of New York, and the bars of the United States Courts of Appeals for the Second and Ninth Circuits.

Neal received his Juris Doctor from Boston University School of Law in 2011, graduating cum laude with two Dean’s Awards. During law school, Neal served as a Senior Articles Editor for the Review of Banking and Financial Law, where he authored two published articles about securitization reforms, both of which were cited by the New York Court of Appeals, the highest court in the state. Neal was also awarded Best Oral Argument in his moot court section, and he served as a Research Assistant for his Securities Regulation professor. Neal has also been honored as a 2014, 2015, 2016, and 2017 Super Lawyers Rising Star. In 2007, Neal graduated with Honors from Brown University with a dual major in East Asian Studies and Philosophy.

Selected Published Decisions:

Martinelli v. Johnson & Johnson, 2019 WL 1429653 (N.D. Cal. Mar. 29, 2019), granting class certification of false advertising and other claims brought by purchasers of Benecol spreads labeled with the representation “No Trans Fats.”

Dzielak v. Whirlpool Corp., 2017 WL 6513347 (D.N.J. Dec. 20, 2017), granting class certification of consumer protection claims brought by purchasers of Maytag Centennial washing machines marked with the “Energy Star” logo.

Duran v. Obesity Research Institute, LLC, 204 Cal. Rptr. 3d 896 (Cal. Ct. App. 2016), reversing and remanding final approval of a class action settlement on appeal, regarding allegedly mislabeled dietary supplements, in connection with a meritorious objection.

Marchuk v. Faruqi & Faruqi, LLP, et al., 100 F. Supp. 3d 302 (S.D.N.Y. 2015), granting individual and law firm defendants' motion for judgment as a matter of law on plaintiff's claims for retaliation and defamation, as well as for all claims against law firm partners, Nadeem and Lubna Faruqi.

Ebin v. Kangadis Food Inc., 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported "100% Pure Olive Oil" product.

Ebin v. Kangadis Food Inc., 2014 WL 737878 (S.D.N.Y. Feb. 25, 2014), denying distributor's motion for summary judgment against nationwide class of purchasers of purported "100% Pure Olive Oil" product.

Selected Class Settlements:

In Re NVIDIA GTX 970 Graphics Chip Litigation, Case No. 15-cv-00760-PJH (N.D. Cal. Dec. 7, 2016) – final approval granted for \$4.5 million class action settlement to resolve claims that a computer graphics card was allegedly sold with false and misleading representations concerning its specifications and performance.

Hendricks v. StarKist Co., 2016 WL 5462423 (N.D. Cal. Sept. 29, 2016) – final approval granted for \$12 million class action settlement to resolve claims that 5-ounce cans of tuna were allegedly underfilled.

In re: Kangadis Food Inc., Case No. 8-14-72649 (Bankr. E.D.N.Y. Dec. 17, 2014) – class action claims resolved for \$2 million as part of a Chapter 11 plan of reorganization, after a corporate defendant filed for bankruptcy, following claims that its olive oil was allegedly sold with false and misleading representations.

Selected Publications:

Neal Deckant, *X. Reforms of Collateralized Debt Obligations: Enforcement, Accounting and Regulatory Proposals*, 29 Rev. Banking & Fin. L. 79 (2009) (cited in *Quadrant Structured Products Co., Ltd. v. Vertin*, 16 N.E.3d 1165, 1169 n.8 (N.Y. 2014)).

Neal Deckant, *Criticisms of Collateralized Debt Obligations in the Wake of the Goldman Sachs Scandal*, 30 Rev. Banking & Fin. L. 407 (2010) (cited in *Quadrant Structured Products Co., Ltd. v. Vertin*, 16 N.E.3d 1165, 1169 n.8 (N.Y. 2014)); *Lyon Village Venetia, LLC v. CSE Mortgage LLC*, 2016 WL 476694, at *1 n.1 (Md. Ct. Spec. App. Feb. 4, 2016); Ivan Ascher, *Portfolio Society: On the Capitalist Mode of Prediction*, at 141, 153, 175 (Zone Books / The MIT Press 2016); Devon J. Steinmeyer, *Does State National Bank of Big Spring v. Geithner Stand a Fighting Chance?*, 89 Chi.-Kent. L. Rev. 471, 473 n.13 (2014)).

YITZCHAK KOPEL

Yitzchak Kopel is a Partner with Bursor & Fisher, P.A. Yitz focuses his practice on consumer class actions and complex business litigation. He has represented corporate and individual clients before federal and state courts, as well as in arbitration proceedings.

Yitz has substantial experience in successfully litigating and resolving consumer class actions involving claims of consumer fraud, data breaches, and violations of the telephone consumer protection act. Since 2014, Yitz has obtained class certification on behalf of his clients five times, three of which were certified as nationwide class actions. Bursor & Fisher was appointed as class counsel to represent the certified classes in each of the cases.

Yitz is admitted to the State Bars of New York and New Jersey, the bar of the United States Court of Appeals for the Second, Eleventh, and Ninth Circuits, and the bars of the United States District Courts for the Southern District of New York, Eastern District of New York, Eastern District of Missouri, Eastern District of Wisconsin, Northern District of Illinois, and District of New Jersey.

Yitz received his Juris Doctorate from Brooklyn Law School in 2012, graduating *cum laude* with two Dean's Awards. During law school, Yitz served as an Articles Editor for the Brooklyn Law Review and worked as a Law Clerk at Shearman & Sterling. In 2009, Yitz graduated *cum laude* from Queens College with a B.A. in Accounting.

Selected Published Decisions:

Bassaw v. United Industries Corp., 482 F.Supp.3d 80, 2020 WL 5117916 (S.D.N.Y. Aug. 31, 2020), denying motion to dismiss claims in putative class action concerning insect foggers.

Poppiti v. United Industries Corp., 2020 WL 1433642 (E.D. Mo. Mar. 24, 2020), denying motion to dismiss claims in putative class action concerning citronella candles.

Bakov v. Consolidated World Travel, Inc., 2019 WL 6699188 (N.D. Ill. Dec. 9, 2019), granting summary judgment on behalf of certified class in robocall class action.

Krumm v. Kittrich Corp., 2019 WL 6876059 (E.D. Mo. Dec. 17, 2019), denying motion to dismiss claims in putative class action concerning mosquito repellent.

Crespo v. S.C. Johnson & Son, Inc., 394 F. Supp. 3d 260 (S.D.N.Y. 2019), denying defendant's motion to dismiss fraud and consumer protection claims in putative class action regarding Raid insect fogger.

Bakov v. Consolidated World Travel, Inc., 2019 WL 1294659 (N.D. Ill. Mar. 21, 2019), certifying a class of persons who received robocalls in the state of Illinois.

Bourbia v. S.C. Johnson & Son, Inc., 375 F. Supp. 3d 454 (S.D.N.Y. 2019), denying defendant's motion to dismiss fraud and consumer protection claims in putative class action regarding mosquito repellent.

Hart v. BHH, LLC, 323 F. Supp. 3d 560 (S.D.N.Y. 2018), denying defendants' motion for summary judgment in certified class action involving the sale of ultrasonic pest repellers.

Hart v. BHH, LLC, 2018 WL 3471813 (S.D.N.Y. July 19, 2018), denying defendants' motion to exclude plaintiffs' expert in certified class action involving the sale of ultrasonic pest repellers.

Penrose v. Buffalo Trace Distillery, Inc., 2018 WL 2334983 (E.D. Mo. Feb. 5, 2018), denying bourbon producers' motion to dismiss fraud and consumer protection claims in putative class action.

West v. California Service Bureau, Inc., 323 F.R.D. 295 (N.D. Cal. 2017), certifying a nationwide class of "wrong-number" robocall recipients.

Hart v. BHH, LLC, 2017 WL 2912519 (S.D.N.Y. July 7, 2017), certifying nationwide class of purchasers of ultrasonic pest repellers.

Browning v. Unilever United States, Inc., 2017 WL 7660643 (C.D. Cal. Apr. 26, 2017), denying motion to dismiss fraud and warranty claims in putative class action concerning facial scrub product.

Brenner v. Procter & Gamble Co., 2016 WL 8192946 (C.D. Cal. Oct. 20, 2016), denying motion to dismiss warranty and consumer protection claims in putative class action concerning baby wipes.

Hewlett v. Consolidated World Travel, Inc., 2016 WL 4466536 (E.D. Cal. Aug. 23, 2016), denying telemarketer's motion to dismiss TCPA claims in putative class action.

Bailey v. KIND, LLC, 2016 WL 3456981 (C.D. Cal. June 16, 2016), denying motion to dismiss fraud and warranty claims in putative class action concerning snack bars.

Hart v. BHH, LLC, 2016 WL 2642228 (S.D.N.Y. May 5, 2016) denying motion to dismiss warranty and consumer protection claims in putative class action concerning ultrasonic pest repellers.

Marchuk v. Faruqi & Faruqi, LLP, et al., 100 F. Supp. 3d 302 (S.D.N.Y. 2015), granting clients' motion for judgment as a matter of law on claims for retaliation and defamation in employment action.

In re Scotts EZ Seed Litigation, 304 F.R.D. 397 (S.D.N.Y. 2015), granting class certification of false advertising and other claims brought by New York and California purchasers of grass seed product.

Brady v. Basic Research, L.L.C., 101 F. Supp. 3d 217 (E.D.N.Y. 2015), denying diet pill manufacturers' motion to dismiss its purchasers' allegations for breach of express warranty in putative class action.

Ward v. TheLadders.com, Inc., 3 F. Supp. 3d 151 (S.D.N.Y. 2014), denying online job board's motion to dismiss its subscribers' allegations of consumer protection law violations in putative class action.

Ebin v. Kangadis Food Inc., 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported "100% Pure Olive Oil" product.

Ebin v. Kangadis Food Inc., 2014 WL 737878 (S.D.N.Y. Feb. 25, 2014), denying distributor's motion for summary judgment against nationwide class of purchasers of purported "100% Pure Olive Oil" product.

Selected Class Settlements:

Hart v. BHH, LLC, Case No. 1:15-cv-04804 (S.D.N.Y. Sept. 22, 2020), resolving class action claims regarding ultrasonic pest repellers.

In re: Kangadis Food Inc., Case No. 8-14-72649 (Bankr. E.D.N.Y. Dec. 17, 2014), resolving class action claims for \$2 million as part of a Chapter 11 plan of reorganization, after a corporate defendant filed for bankruptcy following the certification of nationwide claims alleging that its olive oil was sold with false and misleading representations.

West v. California Service Bureau, Case No. 4:16-cv-03124-YGR (N.D. Cal. Jan. 23, 2019), resolving class action claims against debt-collector for wrong-number robocalls for \$4.1 million.

PHILIP L. FRAIETTA

Philip L. Fraietta is a Partner with Bursor & Fisher, P.A. Phil focuses his practice on data privacy, complex business litigation, consumer class actions, and employment law disputes. Phil has been named a "Rising Star" in the New York Metro Area by Super Lawyers[®] every year since 2019.

Phil has significant experience in litigating consumer class actions, particularly those involving privacy claims under statutes such as the Michigan Preservation of Personal Privacy Act, the Illinois Biometric Information Privacy Act, and Right of Publicity statutes. Since 2016, Phil has recovered over \$100 million for class members in privacy class action settlements. In addition to privacy claims, Phil has significant experience in litigating and settling class action claims involving false or misleading advertising.

Phil is admitted to the State Bars of New York, New Jersey, Illinois, Michigan, and California, the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, the Western District of New York, the Northern District of New York, the District of New Jersey, the Eastern District of Michigan, the Western District of Michigan, the Northern District of Illinois, the Central District of Illinois, and the United States Court of Appeals for the Second, Third, and Ninth Circuits. Phil was a Summer Associate with Bursor & Fisher prior to joining the firm.

Phil received his Juris Doctor from Fordham University School of Law in 2014, graduating cum laude. During law school, Phil served as an Articles & Notes Editor for the Fordham Law Review, and published two articles. In 2011, Phil graduated cum laude from Fordham University with a B.A. in Economics.

Selected Published Decisions:

Fischer v. Instant Checkmate LLC, 2022 WL 971479 (N.D. Ill. Mar. 31, 2022), certifying class of Illinois residents for alleged violations of Illinois' Right of Publicity Act by background reporting website.

Kolebuck-Utz v. Whitepages Inc., 2021 WL 157219 (W.D. Wash. Apr. 22, 2021), denying defendant's motion to dismiss for alleged violations of Ohio's Right to Publicity Law.

Bergeron v. Rochester Institute of Technology, 2020 WL 7486682 (W.D.N.Y. Dec. 18, 2020), denying university's motion to dismiss for failure to refund tuition and fees for the Spring 2020 semester in light of the COVID-19 pandemic.

Porter v. NBTY, Inc., 2019 WL 5694312 (N.D. Ill. Nov. 4, 2019), denying supplement manufacturer's motion for summary judgment on consumers' allegations of false advertising relating to whey protein content.

Boelter v. Hearst Communications, Inc., 269 F. Supp. 3d 172 (S.D.N.Y. 2017), granting plaintiff's motion for partial summary judgment on state privacy law violations in putative class action.

Selected Class Settlements:

Edwards v. Hearst Communications, Inc., Case No. 15-cv-09279-AT (S.D.N.Y. 2019) – final approval granted for \$50 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Ruppel v. Consumers Union of United States, Inc., Case No. 16-cv-02444-KMK (S.D.N.Y. 2018) – final approval granted for \$16.375 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast, Case No. 15-cv-05671-NRB (S.D.N.Y. 2019) – final approval granted for \$13.75 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Benbow v. SmileDirectClub, LLC, Case No. 2020-CH-07269 (Cir. Ct. Cook Cnty. 2021) – final approval granted for \$11.5 million class settlement to resolve claims for alleged TCPA violations.

Gregorio v. Premier Nutrition Corp., Case No. 17-cv-05987-AT (S.D.N.Y. 2019) – final approval granted for \$9 million class settlement to resolve claims of protein shake purchasers for alleged false advertising.

Taylor v. Trusted Media Brands, Inc., Case No. 16-cv-01812-KMK (S.D.N.Y. 2018) – final approval granted for \$8.225 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Moeller v. American Media, Inc., Case No. 16-cv-11367-JEL (E.D. Mich. 2017) – final approval granted for \$7.6 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Rocchio v. Rutgers, The State University of New Jersey, Case No. MID-L-003039-20 (Sup. Ct. Middlesex Cnty. 2022) – final approval granted for \$5 million class settlement to resolve claims for failure to refund mandatory fees for the Spring 2020 semester in light of the COVID-19 pandemic.

Heigl v. Waste Management of New York, LLC, Case No. 19-cv-05487-WFK-ST (E.D.N.Y. 2021) – final approval granted for \$2.7 million class settlement to resolve claims for charging allegedly unlawful fees pertaining to paper billing.

Frederick v. Examsoft Worldwide, Inc., Case No. 2021L001116 (Cir. Ct. DuPage Cnty. 2022) – final approval granted for \$2.25 million class settlement to resolve claims for alleged BIPA violations.

ALEC M. LESLIE

Alec Leslie is a Partner with Bursor & Fisher, P.A. He focuses his practice on consumer class actions, employment law disputes, and complex business litigation.

Alec is admitted to the State Bar of New York and is a member of the bar of the United States District Courts for the Southern and Eastern Districts of New York. Alec was a Summer Associate with Bursor & Fisher prior to joining the firm.

Alec received his Juris Doctor from Brooklyn Law School in 2016, graduating *cum laude*. During law school, Alec served as an Articles Editor for Brooklyn Law Review. In addition, Alec served as an intern to the Honorable James C. Francis for the Southern District of New York and the Honorable Vincent Del Giudice, Supreme Court, Kings County. Alec graduated from the University of Colorado with a B.A. in Philosophy in 2012.

Selected Class Settlements:

Gregorio v. Premier Nutrition Corp., Case No. 17-cv-05987-AT (S.D.N.Y. 2019) – final approval granted for class settlement to resolve claims of protein shake purchasers for alleged false advertising.

Wright v. Southern New Hampshire Univ., Case No. 1:20-cv-00609-LM (D.N.H. 2021) – final approval granted for class settlement to resolve claims over COVID-19 tuition and fee refunds to students.

Mendoza et al. v. United Industries Corp., Case No. 21PH-CV00670 (Phelps Cnty. Mo. 2021) – final approval granted for class settlement to resolve false advertising claims on insect repellent products.

Kaupelis v. Harbor Freight Tools USA, Inc., Case No. 8:19-cv-01203-JVS-DFM (C.D. Cal. 2021) – final approval granted for class settlement involving allegedly defective and dangerous chainsaws.

Rocchio v. Rutgers Univ., Case No. MID-L-003039-20 (Middlesex Cnty. N.J. 2021) – final approval granted for class settlement to resolve claims over COVID-19 fee refunds to students.

Malone v. Western Digital Corporation, Case No. 5:20-cv-03584-NC (N.D. Cal.) – final approval granted for class settlement to resolve false advertising claims on hard drive products.

Frederick et al. v. ExamSoft Worldwide, Inc., Case No. 2021L001116 (DuPage Cnty. Ill. 2021) – final approval granted for class settlement to resolve claims over alleged BIPA violations with respect to exam proctoring software.

D’Amario et al. v. Univ. of Tampa, Case No. 7:20-cv-07344 (S.D.N.Y. 2022) – final approval granted for class settlement to resolve claims over COVID-19 fee refunds to students.

Olin et al. v. Meta Platforms, Inc., Case No. 3:18-cv-01881-RS (N.D. Cal. 2022) – final approval granted for class settlement involving invasion of privacy claims.

Croft v. SpinX Games et al., Case No. 2:20-cv-01310-RSM (W.D. Wash. 2022) – final approval granted for class settlement involving allegedly deceptive and/or illegal gambling practices.

Armstead v. VGW Malta Ltd. et al., Case No. 22-CI-00553 (Henderson Cnty. Ky. 2023) – final approval granted for class settlement involving allegedly deceptive and/or illegal gambling practices.

Barbieri v. Tailored Brands, Inc., Index No. 616696/2022 (Nassau Cnty. N.Y.) – final approval granted for class settlement involving untimely wage payments to employees.

Metzner et al. v. Quinnipiac Univ., Case No. 3:20-cv-00784 (D. Conn.) – final approval granted for class settlement to resolve claims over COVID-19 fee refunds to students.

In re GE/Canon Data Breach, Case No. 1:20-cv-02903 (S.D.N.Y.) – final approval granted for class settlement to resolve data breach claims.

Davis v. Urban Outfitters, Inc., Index No. 612162/2022 (Nassau Cnty. N.Y.) – final approval granted for class settlement involving untimely wage payments to employees.

Armstead v. VGW Malta LTD et al., Civil Action No. 22-CI-00553 (Henderson Cir. Ct. Ky.) – final approval granted for class settlement involving allegedly deceptive and/or illegal gambling practices.

Casler et al. v. Mclane Company, Inc. et al., Index No. 616432/2022 (Nassau Cnty. N.Y.) – final approval granted for class settlement involving untimely wage payments to employees.

Wyland v. Woopla, Inc., Civil Action No. 2023-CI-00356 (Henderson Cir. Ct. Ky.) – final approval granted for class settlement involving allegedly deceptive and/or illegal gambling practices.

Graziano et al. v. Lego Systems, Inc., Index No. 611615/2022 (Nassau Cnty. N.Y.) – final approval granted for class settlement involving untimely wage payments to employees.

Lipsky et al. v. American Behavioral Research Institute, LLC, Case No. 50-2023-CA-011526-XXXX-MB (Palm Beach Cnty. Fl.) – final approval granted to resolve allegedly deceptive automatic renewal and product efficacy claims.

Whiting v. Yellow Social Interactive Ltd., Civil Action No. 2023-CI-00358 (Henderson Cir. Ct. Ky.) – final approval granted for class settlement involving allegedly deceptive and/or illegal gambling practices.

STEPHEN BECK

Stephen is an Associate with Bursor & Fisher, P.A. Stephen focuses his practice on complex civil litigation and class actions.

Stephen is admitted to the State Bar of Florida and is a member of the bars of the United States District Courts for the Southern and Middle Districts of Florida, the Eastern District of Missouri, and the Northern District of Illinois.

Stephen received his Juris Doctor from the University of Miami School of Law in 2018. During law school, Stephen received an Honors distinction in the Litigation Skills Program and was awarded the Honorable Theodore Klein Memorial Scholarship for excellence in written and oral advocacy. Stephen also received the CALI Award in Legislation for earning the highest grade on the final examination. Stephen graduated from the University of North Florida with a B.A. in Philosophy in 2015.

STEFAN BOGDANOVICH

Stefan Bogdanovich is an Associate with Bursor & Fisher, P.A. Stefan litigates complex civil and class actions typically involving privacy, intellectual property, entertainment, and false advertising law.

Prior to working at Bursor & Fisher, Stefan practiced at two national law firms in Los Angeles. He helped represent various companies in false advertising and IP infringement cases, media companies in defamation cases, and motion picture producers in royalty disputes. He also advised corporations and public figures on complying with various privacy and advertising laws and regulations.

Stefan is admitted to the State Bar of California and all of the California Federal District Courts. He is also a Certified Information Privacy Professional.

Stefan received his Juris Doctor from the University of Southern California Gould School of Law in 2018, where he was a member of the Hale Moot Court Honors Program and the Trial Team. He received the highest grade in his class in three subjects, including First Amendment Law.

BRITTANY SCOTT

Brittany Scott is an Associate with Bursor & Fisher, P.A. Brittany focuses her practice on data privacy, complex civil litigation, and consumer class actions. Brittany was an intern with Bursor & Fisher prior to joining the firm.

Brittany has substantial experience litigating consumer class actions, including those involving data privacy claims under statutes such as the Illinois Biometric Information Privacy Act, the Fair Credit Reporting Act, and the Michigan Preservation of Personal Privacy Act. In addition to data privacy claims, Brittany has significant experience in litigating class action claims involving false and misleading advertising.

Brittany is admitted the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Central, Southern, and Eastern Districts of California, the Eastern District of Wisconsin, the Northern District of Illinois, the Ninth Circuit Court of Appeals, the Seventh Circuit Court of Appeals, and Second Circuit Court of Appeals.

Brittany received her Juris Doctor from the University of California, Hastings College of the Law in 2019, graduating cum laude. During law school, Brittany was a member of the Constitutional Law Quarterly, for which she was the Executive Notes Editor. Brittany published a note in the Constitutional Law Quarterly entitled “Waiving Goodbye to First Amendment Protections: First Amendment Waiver by Contract.” Brittany also served as a judicial extern to the Honorable Andrew Y.S. Cheng for the San Francisco Superior Court. In 2016, Brittany graduated from the University of California Berkeley with a B.A. in Political Science.

Selected Class Settlements:

Morrissey v. Tula Life, Inc., Case No. 2021L0000646 (Cir. Ct. DuPage Cnty. 2021) – final approval granted for \$4 million class settlement to resolve claims of cosmetics purchasers for alleged false advertising.

Clarke et al. v. Lemonade Inc., Case No. 2022LA000308 (Cir. Ct. DuPage Cnty. 2022) – final approval granted for \$4 million class settlement to resolve claims for alleged BIPA violations.

Whitlock v. Jabil Inc., Case No. 2021CH00626 (Cir. Ct. Cook Cnty. 2022) – final approval granted for \$995,000 class settlement to resolve claims for alleged BIPA violations.

MAX S. ROBERTS

Max Roberts is an Associate in Bursor & Fisher's New York office. Max focuses his practice on class actions concerning data privacy and consumer protection. Max was a Summer Associate with Bursor & Fisher prior to joining the firm and is now Co-Chair of the firm's Appellate Practice Group.

In 2023, Max was named "Rising Star" in the New York Metro Area by Super Lawyers®.

Max received his Juris Doctor from Fordham University School of Law in 2019, graduating *cum laude*. During law school, Max was a member of Fordham's Moot Court Board, the Brennan Moore Trial Advocates, and the Fordham Urban Law Journal, for which he published a note entitled [Weaning Drug Manufacturers Off Their Painkiller: Creating an Exception to the Learned Intermediary Doctrine in Light of the Opioid Crisis](#). In addition, Max served as an intern to the Honorable Vincent L. Briccetti of the Southern District of New York and the Fordham Criminal Defense Clinic. Max graduated from Johns Hopkins University in 2015 with a B.A. in Political Science.

Outside of the law, Max is an avid triathlete.

Selected Published Decisions:

Jackson v. Amazon.com, Inc., 65 F.4th 1093 (9th Cir. 2023), affirming district court's denial of motion to compel arbitration. Max personally argued the appeal before the Ninth Circuit, which can be viewed [here](#).

Javier v. Assurance IQ, LLC, 2022 WL 1744107 (9th Cir. May 31, 2022), reversing district court and holding that Section 631 of the California Invasion of Privacy Act requires prior consent to wiretapping. Max personally argued the appeal before the Ninth Circuit, which can be viewed [here](#).

Mora v. J&M Plating, Inc., 213 N.E.3d 942 (Ill. App. Ct. 2d Dist. 2022), reversing circuit court and holding that Section 15(a) of Illinois' Biometric Information Privacy Act requires an entity to establish a retention and deletion schedule for biometric data at the first moment of possession. Max personally argued the appeal before the Second District, which can be listened to [here](#).

James v. Walt Disney Co., --- F. Supp. 3d ---, 2023 WL 7392285 (N.D. Cal. Nov. 8, 2023), largely denying motion dismiss alleged violations of California and Pennsylvania wiretapping statutes.

Yockey v. Salesforce, Inc., 2023 WL 5519323 (N.D. Cal. Aug. 25, 2023), denying in part motion dismiss alleged violations of California and Pennsylvania wiretapping statutes.

Cristostomo v. New Balance Athletics, Inc., 647 F. Supp. 3d 1 (D. Mass. 2022), denying motion to dismiss and motion to strike class allegations in case involving sneakers marketed as "Made in

the USA.”

Carroll v. Myriad Genetics, Inc., 2022 WL 16860013 (N.D. Cal. Nov. 9, 2022), denying in part motion to dismiss in case involving non-invasive prenatal testing product.

Louth v. NFL Enterprises LLC, 2022 WL 4130866 (D.R.I. Sept. 12, 2022), denying motion to dismiss alleged violations of the Video Privacy Protection Act.

Soo v. Lorex Corp., 2020 WL 5408117 (N.D. Cal. Sept. 9, 2020), denying defendants’ motion to compel arbitration and denying in part motion dismiss consumer protection claims in putative class action concerning security cameras.

Selected Class Settlements:

Sholopa v. Turk Hava Yollari A.O. (d/b/a Turkish Airlines), Case No. 1:20-cv-3294-ALC (S.D.N.Y. 2023) – final approval granted for \$14.1 million class settlement to resolve claims of passengers whose flights with Turkish Airlines were cancelled due to COVID-19 and who did not receive refunds.

Payero v. Mattress Firm, Inc., Case No. 7:21-cv-3061-VB (S.D.N.Y. 2023) – final approval granted for \$4.9 million class settlement to resolve claims of consumers who purchased allegedly defective bed frames.

Miranda v. Golden Entertainment (NV), Inc., Case No. 2:20-cv-534-AT (D. Nev. 2021) – final approval granted for class settlement valued at over \$4.5 million to resolve claims of customers and employees of casino company stemming from data breach.

Malone v. Western Digital Corp., Case No. 5:20-cv-3584-NC (N.D. Cal. 2021) – final approval granted for class settlement valued at \$5.7 million to resolve claims of hard drive purchasers for alleged false advertised.

Frederick v. ExamSoft Worldwide, Inc., Case No. 2021-L-001116 (18th Judicial Circuit Court DuPage County, Illinois 2021) – final approval granted for \$2.25 million class settlement to resolve claims of Illinois students for alleged violations of the Illinois Biometric Information Privacy Act.

Bar Admissions

- New York State
- Southern District of New York
- Eastern District of New York
- Northern District of New York
- Northern District of Illinois
- Central District of Illinois
- Eastern District of Michigan
- District of Colorado
- Third Circuit Court of appeals

- Seventh Circuit Court of Appeals
- Ninth Circuit Court of Appeals

JULIA K. VENDITTI

Julia Venditti is an Associate with Bursor & Fisher, P.A. Julia focuses her practice on complex civil litigation and class actions. Julia was a Summer Associate with Bursor & Fisher prior to joining the firm.

Julia is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts of California.

Julia received her Juris Doctor in 2020 from the University of California, Hastings College of the Law, where she graduated *cum laude* with two CALI Awards for the highest grade in her Evidence and California Community Property classes. During law school, Julia was a member of the UC Hastings Moot Court team and competed at the Evans Constitutional Law Moot Court Competition, where she finished as a national quarterfinalist and received a best brief award. Julia was also inducted into the UC Hastings Honors Society and was awarded Best Brief and an Honorable Mention for Best Oral Argument in her First-Year Moot Court section. In addition, Julia served as a Research Assistant for her Constitutional Law professor, as a Teaching Assistant for Legal Writing & Research, and as a Law Clerk at the San Francisco Public Defender's Office. In 2017, Julia graduated *magna cum laude* from Baruch College/CUNY, Weissman School of Arts and Sciences, with a B.A. in Political Science.

JULIAN DIAMOND

Julian Diamond is an Associate with Bursor & Fisher, P.A. Julian focuses his practice on privacy law and class actions. Julian was a Summer Associate with Bursor & Fisher prior to joining the firm.

Julian received his Juris Doctor from Columbia Law School, where he was a Harlan Fiske Stone Scholar. During law school, Julian was Articles Editor for the Columbia Journal of Environmental Law. Prior to law school, Julian worked in education. Julian graduated from California State University, Fullerton with a B.A. in History and a single subject social science teaching credential.

MATTHEW GIRARDI

Matt Girardi is an Associate with Bursor & Fisher, P.A. Matt focuses his practice on complex civil litigation and class actions, and has focused specifically on consumer class actions involving product defects, financial misconduct, false advertising, and privacy violations. Matt was a Summer Associate with Bursor & Fisher prior to joining the firm.

Matt is admitted to the State Bar of New York, and is a member of the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, and the Eastern District of Michigan

Matt received his Juris Doctor from Columbia Law School in 2020, where he was a Harlan Fiske Stone Scholar. During law school, Matt was the Commentary Editor for the Columbia Journal of Tax Law, and represented fledgling businesses for Columbia's Entrepreneurship and Community Development Clinic. In addition, Matt worked as an Honors Intern in the Division of Enforcement at the U.S. Securities and Exchange Commission. Prior to law school, Matt graduated from Brown University in 2016 with a B.A. in Economics, and worked as a Paralegal Specialist at the U.S. Department of Justice in the Antitrust Division.

JENNA GAVENMAN

Jenna Gavenman is an Associate with Bursor & Fisher, P.A. Jenna focuses her practice on complex civil litigation and consumer class actions. Jenna was a Summer Associate and a part-time intern with Bursor & Fisher prior to joining the firm as a full-time Associate in September 2022.

Jenna is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts of California.

Jenna received her Juris Doctor in 2022 from the University of California, Hastings College of the Law (now named UC Law SF). During law school, she was awarded an Honorable Mention for Best Oral Argument in her First-Year Moot Court section. Jenna also participated in both the Medical Legal Partnership for Seniors (MLPS) and the Lawyering for Children Practicum at Legal Services for Children—two of UC Hastings's nationally renowned clinical programs. Jenna was awarded the Clinic Award for Outstanding Performance in MLPS for her contributions to the clinic. In addition, Jenna volunteered with her law school's Legal Advice and Referral Clinic and as a LevelBar Mentor.

In 2018, Jenna graduated *cum laude* from Villanova University with a B.A. in Sociology and Spanish (double major). Jenna was a Division I athlete, competing on the Villanova Women's Water Polo varsity team for four consecutive years.

EMILY HORNE

Emily Horne is an Associate with Bursor & Fisher, P.A. Emily focuses her practice on complex civil litigation and consumer class actions. Emily was a Summer Associate with Bursor & Fisher prior to joining the firm.

Emily is admitted to the State Bar of California.

Emily received her Juris Doctor from the University of California, Hastings College of the Law in 2022 (now UC, Law SF). During law school, Emily served as Editor-in-Chief for the UC Hastings Communications and Entertainment Law Journal, and she competed on the Moot Court team. Emily also served as a judicial extern in the Northern District of California and as a Teaching Assistant for Legal Writing & Research. In 2015, Emily graduated from Scripps College with a B.A. in Sociology.

IRA ROSENBERG

Ira Rosenberg is an Associate with Bursor & Fisher, P.A. Ira focuses his practice on complex civil litigation and class actions.

Ira received his Juris Doctor in 2022 from Columbia Law School. During law school, Ira served as a Student Honors Legal Intern with Division of Enforcement at the U.S. Securities and Exchange Commission. Ira also interned during law school in the Criminal Division at the United States Attorney's Office for the Southern District of New York and with the Investor Protection Bureau at the Office of the New York State Attorney General. Ira graduated in 2018 from Beth Medrash Govoha with a B.A. in Talmudic Studies.

LUKE SIRONSKI-WHITE

Luke Sironski-White is an Associate with Bursor & Fisher, P.A., focusing on complex civil litigation and consumer class actions. Luke joined the firm as a full-time Associate in August 2022.

Luke is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts of California.

Luke received his Juris Doctor in 2022 from the University of California, Berkeley School of Law. During law school, Luke was on the board of the Consumer Advocacy and Protection Society (CAPS), edited for the Berkeley Journal of Employment and Labor Law, and volunteered with the Prisoner Advocacy Network.

In 2017, Luke graduated from the University of Chicago with a B.A. in Anthropology. Before entering the field of law Luke was a professional photographer and filmmaker.

JONATHAN L. WOLLOCH

Jonathan L. Wolloch is an Associate with Bursor & Fisher, P.A. Jonathan focuses his practice on complex civil litigation and class actions. Jonathan was a Summer Associate with Bursor & Fisher prior to joining the firm.

Jonathan is admitted to the State Bar of Florida and the bars of the United States District Courts for the Southern and Middle Districts of Florida.

Jonathan received his Juris Doctor from the University of Miami School of Law in 2022, graduating magna cum laude. During law school, Jonathan served as a judicial intern to the Honorable Beth Bloom for the Southern District of Florida. He received two CALI Awards for earning the highest grade in his Trusts & Estates and Substantive Criminal Law courses, and he was elected to the Order of the Coif. Jonathan was also selected for participation in a semester long externship at the Florida Supreme Court, where he served as a judicial extern to the Honorable John D. Couriel. In 2018, Jonathan graduated from the University of Michigan with a B.A. in Political Science.

INES DIAZ

Ines Diaz is an Associate with Bursor & Fisher, P.A. Ines focuses her practice on complex civil litigation and class actions.

Ines is admitted to the State Bar of California.

Ines received her Juris Doctor in 2023 from the University of California, Berkeley School of Law. During law school, Ines served as an Executive Editor of the California Law Review. She also served as an intern with the East Bay Community Law Center's Immigration Clinic and as a Fellow of the Berkeley Law Academic Skills Program. Additionally, Ines served as an instructor with the University of California, Berkeley Extension, Legal Studies Global Access Program where she taught legal writing to international law students. In 2021, Ines was selected for a summer externship at the California Supreme Court where she served as a judicial extern for the Honorable Mariano-Florentino Cuéllar.

CAROLINE C. DONOVAN

Caroline C. Donovan is an Associate with Bursor & Fisher, P.A. Caroline focuses her practice on complex civil litigation, data protection, mass arbitration, and class actions. Caroline interned with Bursor & Fisher during her third year of law school before joining full time in Fall 2023.

Caroline is admitted to the State Bar of New York.

Caroline received her Juris Doctor in 2023 from Brooklyn Law School. During law school, Caroline was a member of the Moot Court Honor Society Trial Division, where she was chosen to serve as a National Team Member. Caroline competed and coached in numerous competitions across the country, and placed second at regionals in AAJ's national competition in both her second and third year of law school. Caroline was also the President of the Art Law Association, and the Treasurer of the Labor and Employment Law Association.

During law school, Caroline was a judicial intern for Judge Kenneth W. Chu of the National Labor Relations Board. She also interned at the United States Attorney's Office in the Eastern District of New York, as well as a securities class action firm.

JOSHUA B. GLATT

Joshua Glatt is an Associate with Bursor & Fisher, P.A. Joshua focuses his practice on complex civil litigation and consumer class actions. Joshua was a Summer Associate with Bursor & Fisher prior to joining the firm as an Associate.

Joshua earned his Juris Doctor from the University of California College of the Law, San Francisco (formerly U.C. Hastings). While there, he received a CALI Award for earning the highest grade in Constitutional Law II and served on the executive boards of the Jewish Law Students Association and the American Constitution Society. Prior to law school, Joshua graduated *summa cum laude* from the Walter Cronkite School of Journalism and Mass

Communication at Arizona State University in 2016 and earned a master's degree from the University of Southern California in 2018.

JOSHUA R. WILNER

Joshua Wilner is an Associate with Bursor & Fisher, P.A. Joshua focuses his practice on complex civil litigation, data privacy, consumer protection, and class actions. Joshua was a Summer Associate at Bursor & Fisher prior to joining the firm full time in Fall 2023.

Joshua is admitted to the State Bar of California.

Joshua received his Juris Doctor in 2023 from Berkeley Law. During law school, he received the American Jurisprudence Award for Constitutional Law.

During law school, Joshua served on the board of the Berkeley Journal of Employment and Labor Law. Joshua also interned at Disability Rights California, Legal Aid at Work, and a private firm that worked closely with the ACLU of Northern California to enforce the California Racial Justice Act. In 2022 and 2023, Joshua worked as a research assistant for Professor Abbye Atkinson.

VICTORIA ZHOU

Victoria Zhou is an Associate in Bursor & Fisher's New York office. Victoria focuses her practice on class actions concerning data privacy and consumer protection.

Victoria is admitted to the State Bar of New York.

Victoria received her Juris Doctor from Fordham Law School in 2023. During law school, Victoria served as an Associate Editor of the Moot Court Board and competed in multiple mock trial competitions as a member of the Brendan Moore Trial Advocates. In addition, Victoria served as a judicial extern to Chief Judge Mark A. Barnett of the United States Court of International Trade. In 2019, Victoria graduated *magna cum laude* from Fei Tian College with a B.F.A. in Classical Dance.

KYLE D. GORDON

Kyle Gordon is an Associate with Bursor & Fisher, P.A. Kyle focuses his practice on class actions concerning data privacy and consumer protection. Kyle was a Summer Associate with Bursor & Fisher prior to joining the firm.

Kyle is admitted to the State Bar of New York.

Kyle received his Juris Doctor from Columbia Law School in 2023, where he was a Harlan Fiske Stone Scholar. During law school, Kyle was a Staff Editor for the Columbia Science and Technology Law Review. In 2020, Kyle graduated *summa cum laude* from New York University with a B.A. in Politics and became a member of Phi Beta Kappa. Prior to law school, Kyle interned in the Clerk's Office of the United States District Court for the District of Columbia.

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

REGINA PATINO, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

FILM AT LINCOLN CENTER, INC.,

Defendant.

Index No.:

SUMMONS

Plaintiff designates KINGS COUNTY as the
place of trial

The basis of venue is: PLAINTIFF'S
RESIDENCE

To the above named Defendant:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's Attorney within twenty days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: February 15, 2024
New York, New York

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

Attorney for Plaintiff

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

<p>REGINA PATINO, individually and on behalf of all others similarly situated,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>FILM AT LINCOLN CENTER, INC.,</p> <p style="text-align: right;">Defendant.</p>

Index No.:

**CLASS ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL**

Plaintiff Regina Patino brings this action on behalf of herself, and all others similarly situated against Film at Lincoln Center, Inc. (“Defendant”). Plaintiff makes the following allegations pursuant to the investigation of her counsel and based upon information and belief, except as to the allegations specifically pertaining to herself, which are based on personal knowledge.

NATURE OF THE ACTION

1. For over a year, Defendant has been nickel and diming visitors of its theatres on its website in violation of the New York Arts and Cultural Affairs Law § 25.07(4). Whenever a consumer selects an admission ticket on the website <https://www.filmlinc.org/>, she is quoted a fee-less price, only to be ambushed by a \$2.00 per ticket “convenience fee” at checkout after clicking through the various screens required to make a purchase – all while a clocking is ticking down for the consumer to complete the transaction. This cheap trick has enabled Defendant to swindle substantial sums of money from their customers.

2. To stop this hustle, New York passed Arts and Cultural Affairs Law § 25.07(4), which provides that “every operator ... 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.”

“Such disclosure of the total cost and fees shall be displayed in the ticket listing *prior to* the ticket being selected for purchase.” *Id.* (emphasis added). And “[t]he price of the ticket shall not increase during the purchase process.” *Id.* This latest version of the law went into effect August 29, 2022. *See* Exhibit A.

3. For these reasons, Plaintiff seeks relief in this action individually, and on behalf of all other ticket purchasers for Defendant’s theatres for actual damages, reasonable attorneys’ fees and costs, and injunctive relief under New York Arts and Cultural Affairs Law § 25.33.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action as a court of general jurisdiction.

5. Venue is proper in this district pursuant to CPLR 503 because Plaintiff resides in this County and because a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this County.

6. This Court has personal jurisdiction over Defendant because Defendant is a New York non-for-profit corporation and maintains its principal place of business in New York.

PARTIES

7. Plaintiff Regina Patino is an individual consumer who, at all times material hereto, was a citizen and resident of Brooklyn, New York. Between October 1, 2023 and October 7, 2023, Plaintiff purchased five admission tickets to see various films at Defendant’s theatres through Defendant’s website, <https://www.filmlinc.org/>. The transaction flow process she viewed on Defendant’s website was substantially similar as that depicted in Figures 1 through 6 in this Complaint.

8. Defendant Film at Lincoln Center, Inc. is a New York not-for-profit corporation with its principal place of business in New York, New York. Defendant Film at Lincoln Center, Inc. owns and operates the brick-and-mortar theatres throughout New York.

RELEVANT FACTUAL ALLEGATIONS

9. When a person visits Defendant’s website, <https://www.filmlinc.org/>, on the left-hand side of the main page, she can select a film she would like to purchase tickets to see at Defendant’s theatres on select dates and times. See Figure 1.

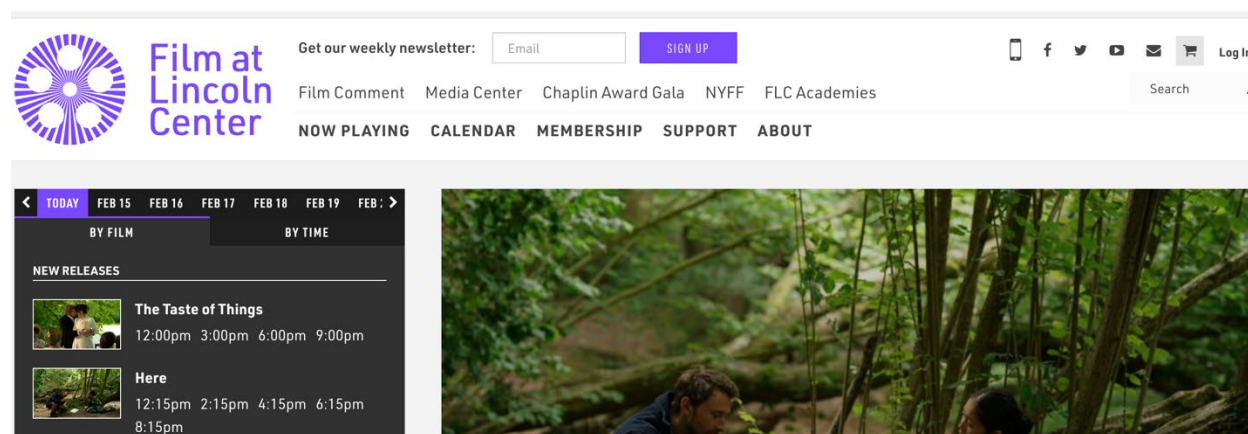


Figure 1

10. After a consumer selects the film she would like to see, and the date and time on which she would like to see it, she is taken to a screen which provides a list of various ticket types with displayed prices for each. See Figure 2. The “total cost” of any ticket, inclusive of fees, is not shown on this screen, in violation of New York Arts & Cultural Affairs Law § 25.07(4). *Id.*

The Taste of Things

[Continue Shopping](#)

February 15, 2024 3:00PM
EBM Film Center (FBT)

The Taste of Things

	Price	Quantity
General Public	\$17.00	0
Dinner + Movie (\$30 total, \$15 dinner fee added at checkout)	\$15.00	0
Senior (62+)	\$14.00	0
Student (valid ID)	\$14.00	0
Persons with Disabilities	\$14.00	0

[ADD TO CART](#)

Figure 2

11. After a consumer selects the type and quantity of tickets she would like to purchase and clicks the purple “ADD TO CART” button in Figure 2, the consumer is taken to another page which again displays the purported ticket price, here \$17.00, and begins a 30-minute timer to complete the purchase process. *See* Figure 3, next page. The total cost of the ticket is also not displayed on this page, in violation of New York Arts & Cultural Affairs Law § 25.07(4). *Id.*

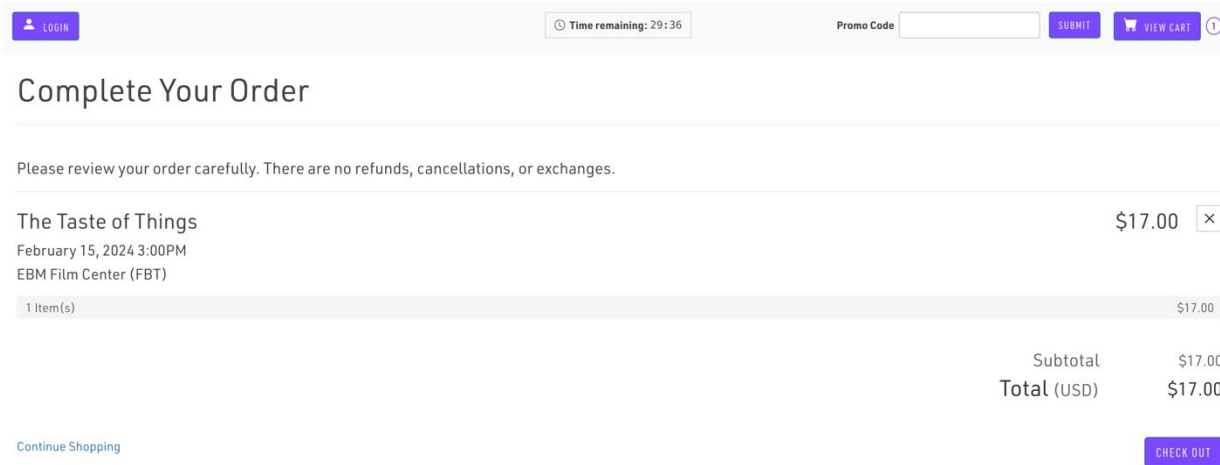


Figure 3

12. After a consumer clicks the purple “CHECK OUT” button in Figure 3, the consumer is taken to another page where she is prompted to either log in to her account or create an account. See Figure 4.

Log In To Your Account:

An account is required to purchase tickets.
 If you have previously purchased tickets, received our newsletter, are a current member or patron, you have an account! Please log in using the email address associated with your account. If you need to reset your password, please select **Forgot Your Password** below.

If you are new to Film at Lincoln Center, please create an account by clicking [here](#) or on the Register button below.
 Please contact ticketing@filmlinc.org if you need assistance.

Login Information

Email Address Required

Password Required

LOGIN

[FORGOT YOUR PASSWORD?](#)

Not Registered Yet?

Click below to register for a new account.

REGISTER

Figure 4

13. After a consumer logs in or creates an account, she is taken to a final checkout screen where, for the first time, the “order total” reflects an additional \$2.00 charge per ticket, or \$19.00 in the example below. See Figure 5.

Payment Information

Please review your order carefully. All sales are final. There are no refunds, cancellations or exchanges.

Consider Making an Additional Gift

Current Order Total: \$19.00

- Round up your cart to \$30.00 with a gift of \$11.00
- Add our suggested amount of \$20.00
- Add another amount

As a nonprofit cinema, our efforts are made possible in part by your generous support. All gifts are tax-deductible and will ensure Film at Lincoln Center remains a vibrant community.

Figure 5

14. Only upon scrolling down to the bottom of the checkout page, does the page display to the consumer that a \$2.00 per ticket “convenience fee” is added to the price of the tickets. See Figure 6.

The Taste of Things \$17.00
 February 15, 2024 3:00PM
 EBM Film Center (FBT)

1 Item(s) \$17.00

Subtotal	\$17.00
Convenience Fee	\$2.00
Total (USD)	\$19.00

Apply Gift Certificate

Gift Certificate ID:

Payment Method

Select a payment method and enter additional information.

Credit or debit card

All fields are required unless marked otherwise.

Card Number

Expiration Date (MM/YY) **CVC / CVV**

Name on Card

Save Payment Information

Figure 6

15. By this point, the price has increased from the original displayed price of \$17.00 per general public ticket, to \$19.00 per general public ticket.

NEW YORK ARTS & CULTURAL AFFAIRS LAW

16. Effective August 29, 2022, New York enacted Arts & Cultural Affairs Law § 25.07(4), which provides that “[e]very 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 purchaser. Such disclosure of the total cost and fees shall be displayed in the ticket listing prior to the ticket being selected for purchase.” *Id.* (emphasis added). And “[t]he price of the ticket shall not increase during the purchase process.” *Id.*; *Compare with* Figures 2 through 6.

17. Shortly after the law was enacted, ticketing websites peppered the State of New York’s Division of Licensing Services with questions about the scope of the law. As explained by the Division of Licensing Services, “the ticket purchasing process begins once a consumer visits a ticket marketplace and first sees a list of seat prices.” *See* N.Y. Dep’t of State, Div. Licens. Servs., *Request for Additional Guidance – New York State Senate Bill S.9461*, attached hereto as **Exhibit A**, at 1. “From the moment the prospective purchaser assesses the [] ticket lists through the final payment ... there should be no price increases to the purchaser for the ticket itself.” *Id.* “When a prospective purchaser selects a ticket with full disclosure of the ticket price, the purchaser should not then have to search for the total price of the ticket as the purchaser proceeds through the purchasing process, it should continue to be readily available to the purchaser.” *Id.* at 2 (emphasis added). “In short, the ticket listing must include the total cost of the ticket, with a breakdown of all service charges, fees and surcharges, that the purchaser must pay just to purchase the ticket.” *Id.* (emphasis added).

CLASS REPRESENTATION ALLEGATIONS

18. Plaintiff seeks to represent a class defined as all individuals in the United States who purchased electronic tickets to any film screenings in any cinema location in the State of New York from Defendant's website on or after August 29, 2022 (the "Nationwide Class"). Excluded from the Nationwide Class is any entity in which Defendant has a controlling interest, and officers or directors of Defendant.

19. Plaintiff also seeks to represent a subclass defined as all individuals in New York who purchased electronic tickets to any film screenings in any cinema location in the State of New York from Defendant's website on or after August 29, 2022 (the "New York Subclass"). Excluded from the New York Subclass is any entity in which Defendant has a controlling interest, and officers or directors of Defendant.

20. Members of the Nationwide Class and New York Subclass are so numerous that their individual joinder herein is impracticable. On information and belief, members of the Nationwide Class and New York Subclass are at least in the thousands. The precise number of Nationwide Class and New York Subclass members and their identities are unknown to Plaintiff at this time but may be determined through discovery. Nationwide Class and New York Subclass members may be notified of the pendency of this action by mail, email, and/or publication through the distribution records of Defendant.

21. Common questions of law and fact exist as to all Nationwide Class and New York Subclass members and predominate over questions affecting only individual Nationwide Class and New York Subclass members. Common legal and factual questions include, but are not limited to: (a) whether Defendant failed to disclose the total cost of the ticket, including all ancillary fees, prior to the tickets being selected for purchase in violation of New York Arts &

Cultural Affairs Law § 25.07(4); (b) whether the displayed price of Defendant's tickets increases during the purchase process in violation of New York Arts & Cultural Affairs Law § 25.07(4); and (c) whether Defendant failed to disclose its booking fee in a clear and conspicuous manner in violation of New York Arts & Cultural Affairs Law § 25.07(4).

22. The claims of the named Plaintiff are typical of the claims of the Nationwide Class and New York Subclass in that the named Plaintiff and the Nationwide Class and New York Subclass sustained damages as a result of Defendant's uniform wrongful conduct, based upon Defendant's failure to disclose the total cost of its tickets, including Defendant's convenience fees, throughout the online ticket purchase process.

23. Plaintiff is an adequate representative of the Nationwide Class and New York Subclass because her interests do not conflict with the interests of the Nationwide Class and New York Subclass members she seeks to represent, she has retained competent counsel experienced in prosecuting class actions, and she intends to prosecute this action vigorously. The interests of Nationwide Class and New York Subclass members will be fairly and adequately protected by Plaintiff and her counsel.

24. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Nationwide Class and New York Subclass members. Each individual Nationwide Class and New York Subclass member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendant's liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer

management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendant's liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

FIRST CAUSE OF ACTION

New York Arts & Cultural Affairs Law § 25.07

(On Behalf Of The Nationwide Class and New York Subclass)

25. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set forth herein.

26. Plaintiff brings this claim individually and on behalf of the members of the Nationwide Class and New York Subclass against Defendant.

27. Defendant is an "operator... of a place of entertainment" because Defendant owns, operates, or controls movie theatres. "Place of entertainment" means any privately or publicly owned and operated entertainment facility such as a theatre, stadium, arena, racetrack, museum, amusement park, or other place where performances, concerts, exhibits, athletic games or contests are held for which an entry fee is charged." N.Y. Arts & Cult. Aff. Law § 25.03(6) (emphasis added). "Operator" means any person who owns, operates, or controls a place of entertainment." N.Y. Arts & Cult. Aff. Law § 25.03(5).

28. Defendant violated New York Arts & Cultural Affairs Law § 25.07(4) by failing 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, as depicted in Figures 2 through 6 of this Complaint.

29. Defendant also violated New York Arts & Cultural Affairs Law § 25.07(4) by increasing the total cost of its tickets during the purchase process, as depicted in Figures 2 through 6 of this Complaint.

30. Defendant's "convenience fee" is an "ancillary fee[]" that must be paid in order to purchase the ticket." N.Y. Arts & Cult. Aff. Law § 25.07(4).

31. Between October 1, 2023 and October 7, 2023, Plaintiff purchased five admission tickets to see various films at Defendant's theatres and was forced to pay Defendant's convenience fees in the total amount of \$12.50.¹ Plaintiff was harmed by paying these convenience fees, even though the total cost was not disclosed to Plaintiff at the beginning of the purchase process, and therefore, are unlawful pursuant to New York Arts & Cultural Affairs Law § 25.07(4).

32. Plaintiff was also harmed by paying these convenience fees, even though they were not clearly and conspicuously disclosed on the final checkout page, and therefore, are unlawful pursuant to New York Arts & Cultural Affairs Law § 25.07(4).

33. On behalf of herself and members of the Nationwide Class and New York Subclass, Plaintiff seeks to enjoin the unlawful acts and practices described herein, to recover her actual damages and reasonable attorneys' fees. *See* N.Y. Arts & Cult. Aff. Law § 25.33.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks judgment against Defendant, as follows:

- (a) For an order certifying the Nationwide Class and the New York Subclass under CPLR 901 and naming Plaintiff as representative of the Class and New York

¹ Plaintiff was charged fees of \$2.50 per ticket, rather than the \$2.00 per ticket Defendant charges today. The purchase flow was otherwise substantially similar to what is depicted in this Complaint and the difference in the fee is immaterial to this lawsuit.

Subclass and Plaintiff's attorneys as Class Counsel to represent the Nationwide Class and New York Subclass members;

- (b) For an order declaring that Defendant's conduct violates the statutes referenced herein;
- (c) For an order finding in favor of Plaintiff, the Nationwide Class, and the New York Subclass on all counts asserted herein;
- (d) For compensatory and punitive damages in amounts to be determined by the Court and/or jury;
- (e) For prejudgment interest on all amounts awarded;
- (f) For an order of restitution and all other forms of equitable monetary relief;
- (g) For injunctive relief as pleaded or as the Court may deem proper; and
- (h) For an order awarding Plaintiff and the Nationwide Class and New York Subclass their reasonable attorneys' fees and expenses and costs of suit.

JURY TRIAL DEMANDED

Pursuant to CPLR 4102(a), Plaintiff demands a trial by jury on all claims so triable.

Dated: February 15, 2024

Respectfully submitted,

BURSOR & FISHER, P.A.

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

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Attorneys for Plaintiff

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

REGINA PATINO, individually and on behalf
of all others similarly situated,

Plaintiff.,

v.

FILM AT LINCOLN CENTER, INC.,

Defendant.

Index No. 504682/2024

Motion Seq. No. 001

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT AGREEMENT, CERTIFYING
SETTLEMENT CLASS, APPOINTING A CLASS REPRESENTATIVE,
APPOINTING CLASS COUNSEL, AND APPROVING NOTICE PLAN**

WHEREAS, a class action is pending before the Court entitled *Patino v. Film at Lincoln Center, Inc.*, Index No. 504682/2024; and

WHEREAS, Plaintiff Regina Patino (“Plaintiff”) and Defendant Film at Lincoln Center, Inc. (“Defendant”) have entered into a Class Action Settlement Agreement, which, together with the exhibits attached thereto, sets forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice as to Defendant upon the terms and conditions set forth therein (the “Settlement Agreement”), and the Court having read and considered the Settlement Agreement and exhibits attached to;

This matter coming before the Court upon the agreement of the parties, good cause being shown, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED, DECREED, AND ADJUDGED AS FOLLOWS:

1. Terms and phrases in this Order shall have the same meaning as ascribed to them in the Settlement Agreement.

2. The Parties have moved the Court for an order approving the settlement of the Action in accordance with the Settlement Agreement, which, together with the documents incorporated therein, sets forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice, and the Court having read and considered the Settlement Agreement and having heard the parties and being fully advised in the premises, hereby preliminarily approves the Settlement Agreement in its entirety subject to the Final Approval Hearing referred to in paragraph 5 of this Order.

3. This Court finds that it has jurisdiction over the subject matter of this action and over all Parties to the Action.

4. The Court finds that, subject to the Final Approval Hearing, the Settlement Agreement is fair, reasonable, and adequate, within the range of possible approval, and in the best interests of the Settlement Class set forth below. The Court further finds that the Settlement Agreement substantially fulfills the purposes and objectives of the class action, and provides substantial relief to the Settlement Class without the risks, burdens, costs, or delay associated with continued litigation, trial, and/or appeal. The Court also finds that the Settlement Agreement (a) is the result of arm's-length negotiations between experienced class action attorneys; (b) is sufficient to warrant notice of the settlement and the Final Approval Hearing to be disseminated to the Settlement Class; (c) meets all applicable requirements of law, including CPLR Article 9; and (d) is not a finding or admission of liability by the Defendant or any other person, nor a finding of the validity of any claims asserted in the Action or of any wrongdoing or any violation of law.

Final Approval Hearing

5. The Final Approval Hearing shall be held before this Court on

_____, at _____. [*suggested date of 90 days after entry of this Order*] at the Supreme Court of the State of New York, County of Kings, 360 Adams St. #4, Brooklyn, NY to determine (a) whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate and should be given final approval by the Court; (b) whether a judgment and order of dismissal with prejudice should be entered; (c) whether to approve the payment of attorneys' fees, costs, and expenses to Class Counsel; and (d) whether to approve the payment of a Service Award to the Class Representative. The Court may adjourn the Final Approval Hearing without further notice to members of the Settlement Class.

6. Class Counsel shall file papers in support of their Fee Award and Class Representative's Service Award (collectively, the "Fee Petition") with the Court on or before _____ [*suggested date of 52 days after entry of this Order, (i.e., 14 days before the Objection/Exclusion Deadline).*] Defendant may, but is not required to, file a response to Class Counsel's Fee Petition with the Court on or before _____ [*suggested date of 21 days before Final Approval hearing.*] Class Counsel may file a reply in support of their Fee Petition with the Court on or before _____ [*suggested date of 14 days before Final Approval hearing.*]

7. Papers in support of final approval of the Settlement Agreement and any supplementation to the Fee Petition shall be filed with the Court on or before _____ [*suggested date of 14 days before Final Approval hearing.*]

Certification of the Settlement Class

8. For purposes of settlement only: (a) Philip L. Fraietta and Stefan Bogdanovich of Bursor & Fisher, P.A. are appointed Class Counsel for the Settlement Class; and (b) Regina

Patino is named Class Representative. The Court finds that these attorneys are competent and capable of exercising the responsibilities of Class Counsel and that Plaintiff will adequately protect the interests of the Settlement Class defined below.

9. For purposes of settlement only, the Court conditionally certifies the following Settlement Class as defined in the Settlement Agreement:

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 Defendant's owned or operated online platform from August 29, 2022, to and through February 21, 2024.¹

10. The Court finds, subject to the Final Approval Hearing referred to in Paragraph 5 above, that the Settlement Agreement is fundamentally fair, adequate, and reasonable, and, solely within the context of and for the purposes of settlement only, that the Settlement Class satisfies the requirements of CPLR 901, specifically, that: the Settlement Class is so numerous that joinder of all members is impracticable; there are questions of fact and law common to the Settlement Class (*e.g.*, whether Defendant failed to timely disclose the total cost of the ticket, including all ancillary fees, in violation of New York Arts & Cultural Affairs Law § 25.07(4); and whether the displayed price of Defendant's tickets increased during the purchase process in violation of New York Arts & Cultural Affairs Law § 25.07(4)); the claims of the Class Representative is typical of the claims of the members of the Settlement Class; the Class Representative and Class Counsel will fairly and adequately protect the interests of the members

¹ 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 properly execute and file a timely request for exclusion from the class; (4) Class Counsel; and (5) the legal representatives, successors or assigns of any such excluded persons.

of the Settlement Class; common questions of law or fact predominate over questions affecting individual members; and a class action is a superior method for fairly and efficiently adjudicating the Action.

11. If the Settlement Agreement does not receive the Court's final approval, or if final approval is reversed on appeal, or if the Settlement Agreement is terminated or otherwise fails to become effective, the Court's grant of class certification shall be vacated, and the Class Representative and the Settlement Class will once again bear the burden of establishing the propriety of class certification. In such case, neither the certification of the Settlement Class for settlement purposes, nor any other act relating to the negotiation or execution of the Settlement Agreement or the motion for preliminary approval shall be considered as a factor in connection with any class certification issue(s).

Notice and Administration

12. The Court approves, as to form, content, and distribution, the Notice Plan set forth in the Settlement Agreement, including the Claim Form attached to the Settlement Agreement as Exhibit A, the Notice Plan and all forms of Notice to the Settlement Class as set forth in the Settlement Agreement and Exhibits B and C, thereto, and finds that such Notice is the best notice practicable under the circumstances, and that the Notice complies fully with the requirements of CPLR 904 and 908. The Court also finds that the Notice constitutes valid, due and sufficient notice to all persons entitled thereto, and meets the requirements of due process. The Court further finds that the Notice is reasonably calculated to, under all circumstances, reasonably apprise members of the Settlement Class of the pendency of this action, the terms of the Settlement Agreement, and the right to object to the settlement and to exclude themselves from the Settlement Class. In addition, the Court finds that no notice other than that specifically

identified in the Settlement Agreement is necessary in this Action. The Parties, by agreement, may revise the Notice and Claim Form in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting.

13. The Court approves the request for the appointment of Epiq as Settlement Administrator of the Settlement Agreement.

14. Pursuant to paragraph 4.1 of the Settlement Agreement, the Settlement Administrator is directed to publish the Notice and Claim Form on the Settlement Website and to send direct notice via email in accordance with the Notice Plan called for by the Settlement Agreement. The Settlement Administrator shall also maintain the Settlement Website to provide full information about the Settlement and allow for the filing of claims online.

Submission of Claims and Requests for Exclusion from Class

15. Members of the Class who wish to receive benefits under the Settlement Agreement must complete and submit a timely and valid Claim Form(s) in accordance with the instructions contained therein. All Claim Forms must be postmarked or received by the Settlement Administrator within sixty (60) days after the Notice Date.

16. Any person falling within the definition of the Settlement Class may, upon valid and timely request, exclude themselves or “opt out” from the Class. Any such person may do so if, on or before the Objection/Exclusion Deadline of _____ [*suggested date of 60 days after the Notice Date*] they comply with the exclusion procedures set forth in the Settlement Agreement and Notice. Any members of the Class so excluded shall neither be bound by the terms of the Settlement Agreement nor entitled to any of its benefits.

17. Any members of the Settlement Class who elect to exclude themselves or “opt out” of the Settlement Agreement must file a written request with the Settlement Administrator,

received or postmarked no later than the Objection/Exclusion Deadline. The request for exclusion must comply with the exclusion procedures set forth in the Settlement Agreement and Notice and include the Settlement Class member's name and address, a signature, a statement that he/she purchased online tickets and paid an online Convenience Fee for any goods or services provided in any of Defendant's theatres located in New York State from Defendant's website, mobile application, or any other Defendant owned or operated online platform from August 29, 2022, to and through February 21, 2024, and a statement that he or she wishes to be excluded from the Settlement Class for purposes of this Settlement. Each request for exclusion must be submitted individually. So called "mass" or "class" opt-outs shall not be allowed.

18. Individuals who opt out of the Class relinquish all rights to benefits under the Settlement Agreement and will not release their claims. However, members of the Settlement Class who fail to submit a valid and timely request for exclusion shall be bound by all terms of the Settlement Agreement and the Final Judgment, regardless of whether they have requested exclusion from the Settlement Agreement.

Appearances and Objections

19. At least twenty-one (21) calendar days before the Final Approval Hearing, any person who falls within the definition of the Settlement Class and who does not request exclusion from the Class may enter an appearance in the Action, at their own expense, individually or through counsel of their own choice. Any Settlement Class Member who does not enter an appearance will be represented by Class Counsel.

20. Any members of the Settlement Class who have not timely filed a request for exclusion may object to the fairness, reasonableness, or adequacy of the Settlement Agreement or to a Final Judgment being entered dismissing the Action with prejudice in accordance with the

terms of the Settlement Agreement, or to the attorneys' fees and expense reimbursement sought by Class Counsel in the amounts specified in the Notice, or to the award to the Class Representative as set forth in the Notice and Settlement Agreement. At least fourteen (14) days prior to the Objection/Exclusion Deadline, papers supporting the Fee Award shall be filed with the court and posted to the Settlement Website. Members of the Class may object on their own, or may do so through separate counsel at their own expense.

21. To object, members of the Class must sign and file a written objection no later than on or before the Objection/Exclusion Deadline of _____. To be valid, the objection must comply with the objection procedures set forth in the Settlement Agreement and Notice, and include his or her name and address; an explanation of the basis upon which he or she claims to be a Settlement Class Member; a signature; all grounds for the objection, including all citations to legal authority and evidence supporting the objection; the name and contact information of any and all attorneys representing, advising, or in any way assisting him or her in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the "Objecting Attorneys"); and a statement indicating whether he or she intends to appear at the Final Approval Hearing (either personally or through counsel who files an appearance with the Court in accordance with the Court Rules). If a Settlement Class Member or any of the Objecting Attorneys has objected to any class action settlement where the objector or the Objecting Attorneys asked for or received any payment in exchange for dismissal of the objection, or any related appeal, without any modification to the settlement, then the objection must include a statement identifying each such case by full case caption.

22. Members of the Class who fail to file and serve timely written objections in compliance with the requirements of this Order and the Settlement Agreement shall be deemed

to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement Agreement or to any of the subjects listed in paragraph 5, above, *i.e.* (a) whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate and should be given final approval by the Court; (b) whether a judgment and order of dismissal with prejudice should be entered; (c) whether to approve the payment of attorneys' fees and expenses to Class Counsel; and (d) whether to approve the payment of a service award to the Class Representative.

23. To be valid, objections must be filed with the Court and sent to the following: Class Counsel, Philip L. Fraietta, Bursor & Fisher, P.A., 1330 Avenue of the Americas, 32nd Floor, New York, NY 10019; and Defendant's Counsel, Bety Javidzad, Dentons US LLP, 601 S. Figueroa St., Suite 2500, Los Angeles, CA, 90017. In addition, any objections made by a Class member represented by counsel must be filed through the Court's electronic filing system.

Further Matters

24. All further proceedings in the Action are ordered stayed until Final Judgment or termination of the Settlement Agreement, whichever occurs earlier, except for those matters necessary to obtain and/or effectuate final approval of the Settlement Agreement. Defendant's time to answer, move or otherwise respond to the complaint herein is hereby tolled effective from the date of the execution of the Settlement Agreement.

25. Members of the Settlement Class shall be bound by all determinations and judgments in the Action concerning the Action and/or Settlement Agreement, whether favorable or unfavorable.

26. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement Agreement. The Court may approve the Settlement,

with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Class.

27. All Settlement Class Members who do not timely exclude themselves from the Settlement: (a) shall be bound by the provisions of the Settlement Agreement and all proceedings, determinations, orders and judgments in the Action relating thereto, including, without limitation, the Judgment or Alternate Judgment, if applicable, and the Releases provided for therein, whether favorable or unfavorable to the Class; and (b) shall forever be barred and enjoined from directly or indirectly filing, commencing, instituting, prosecuting, maintaining, or intervening in any action, suit, cause of action, arbitration, claim, demand, or other proceeding in any jurisdiction, whether in the United States or elsewhere, on their own behalf or in a representative capacity, that is based upon or arises out of any or all of the Released Claims against any of the Defendant and the other Released Parties, as more fully described in the Settlement Agreement.

28. If the Settlement Agreement is not approved by the Court in complete accordance with its terms, each party will have the option of having the Action revert to its status as if the Settlement Agreement had not been negotiated, made, or filed with the Court. In such event, the parties will retain all rights as if the Settlement Agreement was never agreed upon.

29. If the Settlement Agreement is terminated pursuant to the provisions of the Settlement Agreement or for any reason whatsoever the approval of it does not become final then (i) the Settlement Agreement shall be null and void, including any provision related to the award of attorneys' fees, and shall have no further force and effect with respect to any party in this Action, and shall not be used in this Action or in any other proceeding for any purpose; (ii) all negotiations, proceedings, documents prepared, and statements made in connection therewith,

including the submissions made in support of preliminary approval, shall be without prejudice to any person or party hereto, shall not be deemed or construed to be an admission by any party of any act, matter, or proposition, and shall not be used in any manner or for any purpose in any subsequent proceeding in this Action or in any other action in any court or other proceeding, provided, however, that the termination of the Settlement Agreement shall not shield from subsequent discovery any factual information provided in connection with the negotiation of this Settlement Agreement that would ordinarily be discoverable but for the attempted settlement; and (iii) other than as expressly preserved by the Settlement Agreement in the event of its termination, the Settlement Agreement shall have no further force and effect with respect to any party and shall not be used in the Action or any other proceeding for any purpose.

IT IS SO ORDERED, this _____ day of _____, 2024.

The Honorable _____, J.S.C.