

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

NATALIE KOVACS, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

FILM FORUM, INC.,

Defendant.

Index No. 650686/2024

CLASS ACTION SETTLEMENT AGREEMENT

This Agreement (“Agreement” or “Settlement Agreement”) is entered into by and among (i) Plaintiff Natalie Kovacs (“Kovacs”)(“Class Representative”); (ii) the Settlement Class (as defined herein); and (iii) Defendant Film Forum, Inc. (“Defendant” or “Film Forum”). The Settlement Class and Class Representative are collectively referred to as the “Plaintiffs” unless otherwise noted. The Class Representative 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 8, 2024, Plaintiff Kovacs filed a putative class action in the Supreme Court of New York, County of New York. The material allegations of the complaint centered on Defendant’s alleged failure to disclose a \$1.50 “Handling Fee,” for online purchase of movie tickets in New York state at the first time that the purchaser saw the purchase price of the tickets, in alleged violation of New York Arts and Cultural Affairs Law (“ACAL”) § 25.07(4).

B. From the outset of the case, the Parties have engaged in settlement discussions and, to that end, exchanged informal discovery, including on issues such as the size and scope of the putative class, specifically the amount of handling fees Defendant collected during the relevant time period. Given that the information exchanged would have been, in large part, the same information that would have been 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 their respective claims and defenses.

C. After substantial negotiations, the Parties reached an agreement on all material terms of a class action settlement and executed a term sheet. Notably, Film Forum agreed to change the purchase flow for tickets on its website to clearly and conspicuously display the handling fee that was the subject of this litigation.

D. Defendant believes that the claims asserted in the Action against it have no merit and that it would have prevailed on a motion to dismiss, a motion for summary judgment, and/or would have ultimately prevailed at trial, and that the Class Representative would not have been able to certify a class under the requirements of CPLR 901. Defendant has denied, and continues to deny, any wrongdoing whatsoever, and has expressly denied, and continues to deny, that it committed, or attempted to commit, any wrongful or unlawful act or violation of law or duty alleged in the Action. Defendant will oppose, and will continue 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 that 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 constitutes a compromise with denial of any liability by Defendant. 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 or wrongdoing of any type or nature on the part of Defendant, or any of the Released Parties (defined below), with respect to any claim of fault, liability, wrongdoing or damage whatsoever, with respect to the Action or with respect to the certifiability of a litigation class. Moreover, this Agreement and Film Forum's participation in the settlement process, shall not be used against Film Forum in any manner whatsoever to the extent the settlement does not ultimately obtain final approval.

E. The Class Representative believes that the claims asserted in the Action against Defendant have merit and that they would have prevailed at summary judgment and/or trial. Nonetheless, the Class Representative and Class Counsel (defined below) recognize that Defendant has raised factual and legal defenses that present a risk that the Class Representative may not prevail. The Class Representative and Class Counsel also recognize the expense and delay associated with continued prosecution of the Action against Defendant through a motion to dismiss, a class certification motion, summary judgment, trial, and any subsequent appeals. The Class Representative 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, the Class Representative 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 the Class Representative, 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 *Kovacs, et. al. v. Film Forum, Inc.*, Index No. 650686/2024, pending in the Supreme Court of the State of New York, County of New York.

1.2 “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.

1.3 “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 elects to terminate this Settlement by reason of such variance.

1.4 “Claim Form” means the document to be submitted by Settlement Class Members seeking a cash payment pursuant to this Settlement Agreement. The Claim Form will be available at the Settlement Website and the contents of the Claim Form will be substantially in the form attached hereto as Exhibit A, approved by the Court.

1.5 “Claims Deadline” means the date by which all Claim Forms must be postmarked or received to be considered timely and will be set as a date no later than sixty (60) days after the Notice Date. The Claims Deadline will be clearly set forth in the Preliminary Approval Order as well as in the Notice and the Claim Form.

1.6 “Class Counsel” means Philip L. Fraietta and Stefan Bogdanovich of Bursor & Fisher, P.A. and Rachel Dapeer of Dapeer Law, P.A.

1.7 “Class Representative” means the named Plaintiff in this Action, Natalie Kovacs.

1.8 “Handling Fee” means any handling fee charged in connection with online purchases made on any online platform owned or operated by or on behalf of Film Forum for movie tickets in New York from August 29, 2022, to and through March 6, 2025.

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

1.10 “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.

1.11 “Defendant” means Film Forum, Inc.

1.12 “Defendant’s Counsel” Tarter Krinsky & Drogin, LLP by Richard Schoenstein, Esq.

1.13 “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.

1.14 “Fee Award” means the amount of attorneys’ fees, costs, and expenses awarded by the Court to Class Counsel, which will be paid by Defendant pursuant to the terms set forth herein.

1.15 “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*.

1.16 “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.

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

1.18 “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.

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

1.20 “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.

1.21 “Plaintiff” means the Class Representative and the Settlement Class Members.

1.22 “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.

1.23 “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 Plaintiff’s motion for preliminary approval of the Agreement.

1.24 “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, statutory claims, damages, punitive, exemplary, statutory or multiplied damages, expenses, costs, attorneys’ fees and or obligations (including “Unknown Claims,” as defined below), whether in law or in equity, accrued or un-accrued, 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 charges for and collection of a Handling Fee from August 29, 2022 through and including March 6, 2025, 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.

1.25 “Released Parties” means Film Forum, 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, trustees, administrators, executors, insurers, attorneys, and customers.

1.26 “Releasing Parties” means the Class Representative, those Settlement Class Members who do not timely opt out of the Settlement Class, and all of their respective present, future, 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 representative, successors in interest, assigns and companies, firms, trusts, and corporations.

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

1.28 “Settlement Administration Expenses” means the reasonable 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 (including all federal, state or local taxes of any kind and interest or penalties thereon, as well as reasonable expenses incurred in connection with determining the amount of and paying any taxes owed and expenses related to any tax attorneys and accountants). All Settlement Administration Expenses will be borne by Defendant.

1.29 “Settlement Administrator” means Analytics Consulting LLC, 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 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.

1.30 “Settlement Cap” means the maximum amount of money that Defendant will have to pay under the Settlement, which is inclusive of cash to the Settlement Class, the Fee Award, the Settlement Administration Expenses, and the Service Awards. The Settlement Cap shall be \$413,233.50.

1.31 “Settlement Class” means all individuals who paid a Handling Fee when purchasing electronic movie tickets from Defendant’s website from August 29, 2022, to and through March 6, 2025. 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.

1.32 “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 valid request for exclusion.

1.33 “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 to submit electronic Claim Forms, and requests for exclusion from the Settlement.

1.34 “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 THAT A CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

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 that they may have, as that term is defined in this Paragraph.

2. SETTLEMENT RELIEF.

2.1 Payments to Settlement Class Members.

(a) Settlement Class Members may elect to either:

- i. Do nothing and be bound by the settlement terms;
- ii. File a valid claim and receive a \$4.16 cash payment in the form of a check, or electronic payment via Venmo, PayPal, or Zelle, at the Settlement Class Member's election; or
- iii. Opt out of the settlement.

(b) Settlement Class Members wishing to receive a cash payment must make an election to receive cash by submitting a valid Claim Form to the Settlement Administrator.

Settlement Class Members have until the Claims Deadline to submit a Claim Form for approval by the Settlement Administrator as an Approved Claim. Each Settlement Class Member who submits an Approved Claim will receive a payment in the form of a check, or electronic payment via Venmo, PayPal, or Zelle, at the Settlement Class Member's election. All Approved Claims will be paid by Defendant separate and apart from payment of Settlement Administration Expenses, the Fee Award, and the Service Award. Payment to Settlement Class Members will be issued within 60 days of the Effective Date.

(c) The Settlement Administrator will be responsible for reviewing all claims to determine their validity. 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. Defendant has the right to audit the claims process for evidence of fraud or error; provided, however, that the Court shall be the final arbiter of a claim's validity.

(d) Each claimant who submits an invalid Claim Form to the Settlement Administrator must be given notice of the Claim Form's deficiency and an opportunity to cure the deficiency within 21 days of the date of the notice.

(e) In the event that the total amount of Approved Claims, plus the Fee Award, the Settlement Administration Expenses, and the Service Award exceeds the Settlement Cap, then the amount of each Approved Claim shall be reduced *pro rata*.

2.2 Prospective Relief. Defendant acknowledges that it will modify the purchase flow for tickets on its website to clearly and conspicuously display the handling fee that was the subject of this litigation and agrees to continue to comply with the New York Arts and Cultural Affairs Law § 25.07(4).

3. RELEASE.

3.1 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 to the fullest extent allowed by law.

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 Settlement Agreement, Defendant shall produce a confidential electronic list from its records that includes all of the email addresses for each Settlement Class Member, to

the extent available. This electronic document shall be called the “Class List,” and shall be provided to the Settlement Administrator.

(b) *Direct Notice via Email.* No later than 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 last known email address is contained in the Class List. In the event the transmission of email notice results in any “bounce-backs,” the Settlement Administrator shall take reasonable steps, if possible, to correct any issues that may have caused the “bounce-back” to occur and make a second attempt to re-send the email notice.

(c) *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.FilmForumticketfeesettlement.com) which shall be obtained, administered and maintained by the Settlement Administrator and shall include 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 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 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 movie tickets from Defendant's website and paid a Handling Fee from August 29, 2022, to and through March 6, 2025, 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 monetary relief provided by this Settlement Agreement by processing Claim Forms and disbursing funds in a rational, responsive, cost effective, and timely manner, consistent with the terms of this Agreement. 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 monetary relief provided by the Settlement, and the terms of any separate contract or agreement entered into between 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 claims, 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 cash amounts 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 Claim Deadline;

(b) Provide Class Counsel and Defendant's Counsel with drafts of all administration related documents, including but not limited to Notices, 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.

(e) Cap the settlement administration costs at \$30,000.00.

5.2 All taxes and tax expenses, if any, shall be timely paid by the Settlement Administrator and reimbursed by Defendant pursuant to this Agreement and without further order of the Court. Any tax returns prepared for the Settlement (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 shall be paid out of the Settlement 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 the presiding Court, the Appellate Division, Second Department or the Court of Appeals ; 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 the Court of Appeals or the Supreme Court.

6.2 Confirmatory Discovery. Defendant’s records confirm that it collected \$413,233.50 in Handling Fees from its online platform to purchasers from August 29, 2022, to and through March 6, 2025.

7. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER.

7.1 Promptly after the execution of this Settlement Agreement, Class Counsel shall submit this Agreement together with its Exhibits to 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 Representative; and entry of a Preliminary Approval Order, which order shall set a Final Approval Hearing date and approve the Notice 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 Plaintiff 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 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

\$100,000.00. Payment of the Fee Award shall be made by Defendant separate and apart from Defendant's other payment obligations under this Agreement.

8.2 The Fee Award shall be payable 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 by Defendant 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 Defendant within fourteen (14) business days. 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 14 days of such an occurrence.

8.3 Subject to Court approval, the Class Representative may be paid Service Awards by the Defendant, in addition to any settlement benefit as a result of being a Settlement Class Member pursuant to this Agreement, and in recognition for their efforts on behalf of the Settlement Class, in the amount of \$5,000.00 each. Such awards will be paid by Defendant (in the form of checks to the Class Representative that are sent care of Class Counsel) within ten (10) business days of the Effective Date.

8.4 The Fee Award and Service Awards shall be in addition to the other benefits provided to the Settlement Class under this Agreement and shall not derogate in any way from payments owed to Settlement Class Members.

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. 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 Awards 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.

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 the Class Representative, 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 the Class Representative 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 evidence 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 validity of a class certification, the truth of any fact alleged by the Class Representative, the deficiency of any defense that has been or could have been asserted in the Action, the 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 in evidence against any Released Party, as an admission, concession or evidence of any fault, or other wrongdoing, or any 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 in evidence against the Released Parties, or each or any of them, as an admission or concession with respect to any liability, statutory violation, negligence, fault or wrongdoing by anyone in the settlement

class 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 the Class Representative, 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 Plaintiff's 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 representations or agreements made by or entered into by Defendant in connection with the Settlement may be used by the Class Representative, 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 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.

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

10.8 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.

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

10.10 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 its Exhibits 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.

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

10.12 The Class Representative represent and warrant that they have not assigned any claim or right or interest therein as against the Released Parties to any other Person or Party and that they are fully entitled to release the same.

10.13 Each counsel or other Person executing this Settlement Agreement, any of its Exhibits, 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.

10.14 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.

10.15 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.

10.16 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.

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

10.18 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.

10.19 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; Richard Schoenstein, Tarter Krinsky & Drogin, LLP, 1350 Broadway, New York, NY 10018.

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

IT IS SO AGREED TO BY THE PARTIES:

Dated: _____

NATALIE KOVACS

By: _____

Natalie Kovacs, individually and as representative
of the Settlement Class

Dated: _____

FILM FORUM, INC.

By: _____

Name:

Title:

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
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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: _____

TARTER KRINKSY & DROGIN, LLP

By: _____

Richard C. Schoenstein
rschoenstein@tarterkrinsky.com

Tarter Krinsky & Drogin, LLP
1350 Broadway
New York, NY 10018
Tel: (212) 216-1120
Fax: (212) 216-8001

Attorneys for Defendant

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [\\$413K+ Film Forum Settlement Ends Class Action Lawsuit Over Theater's Alleged Failure to Disclose Ticket Handling Fee](#)
