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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

MICHAEL BATEMAN, individually  
and on behalf of all others similarly  
situated,

Plaintiffs

v.

AMERICAN MULTI-CINEMA, INC.;  
and DOES 1-10,

Defendants.

) Case No. CV 07-00171 JHN-AJWx

) **CLASS ACTION**

) **MEMORANDUM IN SUPPORT OF**  
) **MOTION FOR FINAL APPROVAL**  
) **OF CLASS ACTION SETTLEMENT**

) Date: September 26, 2011  
) Time: 10:00 a.m.  
) Ctrm: 790 (Roybal)

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1 **INTRODUCTION**

2 Plaintiff Michael Bateman ("Plaintiff") brought a class action lawsuit to  
3 recover statutory damages Plaintiff contends are owed to thousands of consumers  
4 because defendant American Multi-Cinema, Inc. ("AMC") willfully failed to comply  
5 with the Fair and Accurate Credit Transactions Act ("FACTA"). FACTA prohibits a  
6 merchant from printing more than the last five digits of a credit or debit card number  
7 on an electronically printed receipt provided to a consumer at the point of sale or  
8 transaction. Following the precedent setting decision in this case of *Bateman v.*  
9 *American Multi-Cinema, Inc.* (9th Cir. 2010) 623 F.3d 708, in which the Ninth  
10 Circuit reversed the legally erroneous denial of Plaintiff's motion for class  
11 certification, the parties reached agreement on the terms of a class action settlement  
12 (the "Settlement"). Under the Settlement, AMC is required to distribute more than  
13 280,000 Voucher Packets to class members and other consumers, each containing  
14 four vouchers for a free small popcorn at an AMC theater. Based on the current price  
15 of popcorn, the vouchers are presently worth approximately \$6.5 million.

16 On March 22, 2011, the Court granted preliminary approval of the Settlement.  
17 Thereafter, notice was given to class members in accordance with the Settlement. In  
18 response, more than 900 class members submitted a claim for vouchers under the  
19 Settlement, not a single class member requested exclusion from the Settlement, and  
20 only one class member objected to the Settlement (Karasik Decl. ¶ 2).

21 Plaintiff now moves under Rule 23(e) of the Federal Rules of Civil Procedure  
22 for final approval of the Settlement. As set forth below, the lone objection to the  
23 Settlement has no merit and the Settlement is fair, adequate and reasonable. So that  
24 AMC can be held accountable for its widespread violation of FACTA, and thousands  
25 of consumers who experienced no actual economic harm can receive freely  
26 transferable vouchers that are functionally equivalent to cash, Plaintiff respectfully  
27 requests that the single objection to the Settlement be overruled and that the Court  
28 grant final approval to the Settlement.



1 Plaintiff would have had to prove that AMC's violation of FACTA was willful.  
2 Plaintiff believes that AMC acted with a reckless disregard for the truncation  
3 requirements of FACTA because AMC took no steps whatsoever to ensure that  
4 ABO's at the theaters it acquired from Loews were programmed to comply with the  
5 truncation requirements of FACTA. Reckless disregard suffices to establish the  
6 willfulness requirement for an award of statutory damages under the FRCA. *See,*  
7 *Safeco Insurance Co. of America v. Burr* (2007) 127 S.Ct. 2201.

8 AMC, on the other hand, vigorously disputes that its violation of FACTA was  
9 willful. AMC steadfastly maintains that its failure to comply with the truncation  
10 requirements of FACTA was merely technical and inadvertent. The high level of  
11 uncertainty in this case, which makes it extremely difficult to predict whether Plaintiff  
12 or AMC would prevail at trial, strongly supports approval of the Settlement.

13 **B. The Risk, Expense, Complexity and Likely Duration of Further**  
14 **Litigation**

15 Continued litigation of this case would have exposed Plaintiff to substantial  
16 expense and risks. There are approximately 280,000 class members. If Plaintiff had  
17 prevailed on a contested motion for class certification, Plaintiff would have had to  
18 pay the costs of providing class notice. The cost of providing notice to more than  
19 280,000 consumers throughout the United States would have been substantial.  
20 Moreover, Plaintiff ran the risk of denial of class certification (discussed below) or  
21 losing at trial on the willfulness issue. The prospect of "lengthy and expensive  
22 litigation with uncertain results" clearly supports settlement. *See, Nat'l Rural*  
23 *Telecomms. Coop v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 526.

24 **C. The Risk of Maintaining Class Action Status**

25 Although the Ninth Circuit ruled that this Court erred when it denied Plaintiff's  
26 motion for class certification because it did not analyze correctly the requirement of  
27 superiority, the Ninth Circuit did not opine on any of the other requirements for class  
28 certification. Thus, since AMC advanced other arguments against certification,

1 Plaintiff still ran the risk of a denial of certification. Plaintiff believes that none of  
2 AMC's arguments against certification have merit and that, upon rehearing of his  
3 motion for class certification, this Court would have granted certification. However,  
4 the propriety of class certification ultimately rests within a district court's discretion.  
5 Thus, notwithstanding the favorable decision by the Ninth Circuit, Plaintiff still faced  
6 the risk of an adverse result on the class certification issue which would have resulted  
7 in class members getting absolutely nothing.

#### 8 **D. The Amount Offered in Settlement**

9 Each Voucher Packet is presently worth \$23. \$23 in settlement benefits gives  
10 consumers 23% value compared to the minimal level of statutory damages available  
11 for willful violation of FACTA (\$100). As reflected by the numerous settlements of  
12 other FACTS cases providing far less settlement value, Plaintiff achieved not just a  
13 reasonable settlement, but an extremely good settlement. Although \$23 only presents  
14 a 2.3% value compared to the maximum possible recovery of \$1,000 in statutory  
15 damages, the propriety of awarding full statutory damages to class members who do  
16 not claim actual monetary loss is strongly disputed. Many FACTA defendants have  
17 argued that lack of "actual harm" precludes, if not any award of statutory damages to  
18 begin with, at the very least "excessive" statutory damages that threaten merchants  
19 with staggering or annihilating liabilities. Since it remains to be seen how courts will  
20 resolve due process challenges to statutory damage awards under FACTA, the  
21 relatively high settlement value negotiated by the parties in this case represents a fair  
22 compromise well within the range of reasonableness. *See, In re Cendant Corp.,*  
23 *Derivative Action Litigation* (D. N.J. 2002) 232 F.Supp.2d 327 (approving settlement  
24 which provided 2% value compared to maximum possible recovery).

#### 25 **E. The Extent of Discovery Completed and the Stage of the Proceedings**

26 Approval of a class action settlement does not require that discovery be  
27 exhaustive or that the parties engage in formal discovery procedures. *See, e.g., In re*  
28 *Immune Response Securities Litigation* (S.D. Cal. 2007) 497 F.Supp.2d 1166, 1174

1 (settlement approved where informal discovery gave the parties "a clear view of the  
2 strength and weaknesses of their cases"). The fact that settlement results from arms  
3 length negotiations following "relevant discovery" creates "a presumption that the  
4 agreement is fair." *Linney v. Cellular Alaska Partnership* (N.D. Cal. 1997) 1997 WL  
5 450064, at \*5.

6 Here, the parties engaged in significant, formal discovery that enabled them to  
7 intelligently assess the risks of proceeding with litigation as opposed to settlement.  
8 Plaintiff propounded interrogatories and document requests, in response to which  
9 AMC produced hundreds of pages of documents. Plaintiff also took several  
10 depositions of AMC witnesses designated most knowledgeable about certain topics.  
11 AMC took Plaintiff's deposition. The substantial discovery taken by the parties,  
12 which clearly enabled the parties and their counsel to formulate "a clear view of the  
13 strengths and weaknesses of their cases," strongly supports final approval. The fact  
14 that a settlement was not reached until more than four years of protracted litigation,  
15 including numerous motions and an appeal, further supports final approval.

#### 16 **F. The Experience and Views of Counsel**

17 The opinions of experienced class counsel are entitled to "considerable  
18 weight." *West v. Circle K Stores, Inc.* (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS  
19 76558, \*17-18. *See also, Vasquez*, 266 F.R.D. at 489 (courts should give great  
20 weight to counsel's recommendations).

21 As set forth in the papers filed by Plaintiff in support of his motions for  
22 preliminary approval and an award of costs, fees and an enhancement, Plaintiff's  
23 counsel has substantial experience litigating class actions in general and FACTA  
24 class actions in particular. The opinion of Plaintiff's counsel that the Settlement is  
25 fair and reasonable, and that final approval of the Settlement would best serve the  
26 interests of class members because the extremely favorable result achieved by the  
27 Settlement outweighs the risks and uncertainty of continued litigation (Karasik Decl.  
28 ¶ 3), weighs strongly in favor of final approval.

1           **G.    The Reaction of Class Members to the Settlement**

2           Not a single class member opted out of the Settlement and only one class  
3 member objected to the Settlement. (Karasik Decl. ¶ 2). These facts demonstrate an  
4 overwhelmingly positive response to the Settlement that strongly supports final  
5 approval. *See, Reynolds v. National Football League* (8th Cir. 1978) 584 F.3d 280  
6 (16 objectors out of 5,400 class members provided strong evidence of no significant  
7 dissatisfaction with settlement); *In re Lifelock, Inc. Marketing and Sales Practices*  
8 *Litigation* (D. Ariz. 2010) 2010 WL 3715138, \*6 (relatively few objections and  
9 requests for exclusion supported approval).

10           Apart from the strong class member support for the Settlement that far  
11 outweighs the objections of lone class member Cassie Grimes Hampe, the substance  
12 of her objections do not withstand scrutiny. Hampe first contends that the class  
13 notice is inadequate and violates due process because it "does not disclose anything  
14 about the attorney's fees sought or how they will be calculated." This objection has  
15 no merit because, as directed by the Court, Plaintiff gave separate notice of his  
16 motion for attorney's fees by posting his motion on the Spiro Moss website on June  
17 27, 2011, more than two weeks before the July 11, 2011 deadline for objecting to the  
18 request for fees. Hampe's objection makes clear that she visited the Spiro Moss  
19 website. She is in no position to claim inadequate notice.

20           Hampe also complains that settlement benefits consist of "coupons" that are not  
21 free because vouchers can only be redeemed by a class member after the class  
22 member pays for a movie ticket. This complaint has no merit for two reasons.

23           First, there is no requirement that an admission ticket to a movie be purchased  
24 before using or getting benefits from a voucher. Indeed, there are at least three  
25 circumstances under which benefits from vouchers can be derived without a class  
26 member having to purchase a ticket: a) the concession stand can be visited without  
27 purchasing a movie ticket; b) a class member, such as a spouse, date or friend, may  
28 visit a theater as the non-paying guest of another patron who pays for both person's

1 tickets; and c) a class member can trade or sell the vouchers, which are freely  
2 transferable. Obviously, Hampe has not contemplated any of the situations where a  
3 voucher can be used by a class member without having to buy a movie ticket.  
4 Second, approximately 99.7% of the Voucher Packets (281,416 out of 282,314) will  
5 be distributed to consumers after they have already purchased a movie ticket (Karasik  
6 Decl. ¶ 2). None of the class members or other consumers who receive vouchers as a  
7 result of purchasing a ticket (which will in many cases come as a surprise to them)  
8 will have to purchase a single ticket to use the vouchers.

9 To be sure, it is not likely that every consumer who receives a Voucher Packet  
10 will use all four vouchers at one visit to an AMC theater. However, the consumers  
11 who receive Voucher Packets are movie patrons who are likely to visit AMC theaters  
12 in the future, not just so they can use a voucher, but because they like to go to the  
13 movies. That is the concept underlying the principal mechanism the parties agreed  
14 on, and the Court approved, for distributing settlement benefits. Voucher Packets  
15 will be distributed to consumers who, because they are AMC patrons, were likely  
16 AMC patrons in the past whose rights under FACTA were violated. These same  
17 patrons are likely to keep going to movies in the future and, when they do, having  
18 already decided to see a movie, they can use a voucher for free popcorn without  
19 having to pay anything to use the voucher.

20 Finally,<sup>1</sup> Hampe objects on the grounds that, because she lives in Dallas, she  
21 does not stand to benefit from the Settlement because there are no AMC theaters in  
22 Dallas or anywhere else in Texas. This objection raises a question about Hampe's  
23 standing to complain about the Settlement. Since Hampe lives in Dallas, how can she  
24 be a class member? Hampe offers no explanation as to how she could possibly have  
25 received a receipt that did not comply with FACTA from an AMC theater when AMC  
26 did not operate, let alone print out any receipts that did not comply with FACTA, in

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27  
28 <sup>1</sup> Plaintiff addresses Hampe's objection to the amount of attorney's fees in the  
reply papers in support of his fee motion.

1 any theater in Dallas or elsewhere in Texas.

2 In any event, the mere fact that one class member is dissatisfied with a  
3 settlement because of unusual personal circumstances does not remotely warrant the  
4 conclusion that the settlement is not fair, adequate or reasonable. Since Hampe lives  
5 in a city where there are no AMC theaters, she is clearly an outlier not similarly  
6 situated to the vast majority of class members. Ultimately, the fact that more than 900  
7 class members by submitting claims expressed a desire to get Voucher Packets before  
8 their distribution at AMC theaters demonstrates an extremely positive response to the  
9 Settlement that far outweighs the lone, peculiar complaint of Hampe.

10 **CONCLUSION**

11 The Settlement provides substantial benefits to class members and is "fair,  
12 reasonable and adequate" within the meaning of Rule 23(e). Plaintiff respectfully  
13 requests the Court to overrule the solitary objection to the Settlement and grant  
14 Plaintiff's motion for final approval of the Settlement.

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16 Dated: July 15, 2011

SPIRO MOSS LLP

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By: /s/ Gregory N. Karasik  
Gregory N. Karasik

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Attorneys for Plaintiff

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