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1 **INTRODUCTION**

2 After more than four years of litigation, including a successful appeal before  
3 the Ninth Circuit, plaintiff Michael Bateman ("Plaintiff") achieved an extremely  
4 favorable settlement of his class action lawsuit against defendant American Multi-  
5 Cinema, Inc. ("AMC"). Under the Settlement, AMC will provide hundreds of  
6 thousands of consumers with vouchers worth nearly \$6.5 million. The vouchers will  
7 not cost any amount of money to use, are freely transferable, and will never expire.  
8 Although the vouchers are limited to a single use -- each may be exchanged for a  
9 small popcorn at an AMC theater -- the vouchers are virtually the equivalent of cash.  
10 The Settlement obtained by Plaintiff is one of the best settlements (if not the best)  
11 obtained by any of the many plaintiffs who brought a lawsuit against a merchant for  
12 violation of the Fair and Accurate Credit Transactions Act ("FACTA") after FACTA  
13 became effective in 2006. Most other FACTA lawsuits, including many brought by  
14 Plaintiff's counsel, resulted in far less favorable coupon settlements or no recovery.

15 Plaintiff achieved an excellent result not only because the Settlement provides  
16 a relatively high value of benefits to class members, but also because Plaintiff  
17 obtained a precedent setting decision by the Ninth Circuit. In reversing the Court's  
18 erroneous denial of class certification, the Ninth Circuit repudiated the fallacious  
19 notion, wrongly relied on by this Court and many others, that the speculative  
20 possibility of "excessive damages" disproportionate to harm precluded a finding of  
21 "superiority" under Rule 23(b)(3). This important precedent inures to the benefit of  
22 not only the class members in this case but also to millions of other consumers.

23 In accordance with the Settlement, Plaintiff now moves (in connection with his  
24 motion for final approval) for an award of attorney's fees in the amount of \$1,380,000  
25 (less than 25% of the value of the common fund in this case); an award of costs in the  
26 amount of \$19,675.65; and an enhancement award in the amount of \$7,500. As set  
27 forth below, the amounts of fees, costs and enhancement sought by Plaintiff are not  
28 just reasonable but well deserved.

**ARGUMENT**

**I. THE AMOUNT OF ATTORNEY'S FEES REQUESTED BY PLAINTIFF IS REASONABLE**

Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, a court may award "reasonable attorney's fees" that are "authorized by law or by the parties' agreement." Here, the Settlement expressly provides that "AMC will pay the reasonable attorneys' fees and costs of Class Counsel in an amount to be determined by the Court." Amended Stipulated Settlement Agreement and Release ¶ 23. For the reasons set forth below, the amount of attorney's fees requested by Plaintiff is reasonable and should be awarded to Plaintiff's counsel pursuant to Rule 23(h).

**A. The Amount Of Fees Sought By Plaintiff Does Not Exceed The Benchmark Rate Of 25% In Common Fund Cases**

The Ninth Circuit has established the rate of 25% as the "benchmark" for an award of attorney's fees in common fund cases. *See, Paul, Johnston, Alston & Hunt v. Graulty* (9th Cir. 1989) 886 F.2d 268, 272; *Six (6) Mexican Workers v. Arizona Citrus Growers* (9th Cir. 1990) 904 F.2d 1301, 1311; *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1029; *In re Pacific Enterprises Security Litigation* (9th Cir. 1995) 47 F.3d 373, 379; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1047; *Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 968; *Glass v. UBS Financial Services, Inc.* (9th Cir. 2009) 331 Fed.Appx. 452, 457.

In this case, the Settlement provides benefits whose cumulative value is presently \$6,493,222. (Karasik Decl. ¶ 5). The Settlement requires AMC to distribute 282,314 voucher packets each containing four vouchers for a small popcorn. The value of each voucher packet is currently \$23. The amount of attorney's fees requested by Plaintiff is 21.3% of the present value of all the voucher packets, less than the benchmark rate of 25%. If the price of popcorn increases (as it has since the parties first reached agreement on the terms of the Settlement), the percentage will decrease even further below the benchmark rate.

1           **B.     There Is No Justification For A Downwards Adjustment Of The**  
2           **Benchmark Rate In This Case But Ample Justification For An**  
3           **Upwards Adjustment Of The Benchmark Rate**

4           District courts may adjust the benchmark rate in common fund cases to account  
5 for "unusual" or "special" circumstances. *Paul, Johnson*, 886 F.2d at 272; *Six (6)*  
6 *Mexican Workers*, 904 F.2d at 1311; *Pacific Enterprises*, 47 F.3d at 479. In *Hanlon*,  
7 the Ninth Circuit identified four factors that might warrant an upwards or downwards  
8 adjustment: "the quality of the representation, the benefit obtained for the class, the  
9 complexity and novelty of the issues presented, and the risk of nonpayment."  
10 *Hanlon*, 150 F.3d at 1029.

11           Application of these factors typically results in an upwards adjustment of the  
12 benchmark rate in a case of this size. In *Cicero v. DirecTV, Inc.* (C.D. Cal. 2010)  
13 2010 WL 2991486, at \*6, the Court recognized that "courts usually award attorneys'  
14 fees in the 30-40% range in . . . class actions that result in a recovery of a common  
15 fund under \$10 million." *See, Craft v. County of San Bernardino* (C.D. Cal. 2008)  
16 624 F.Supp.2d 1113, 1125, 1127 (25% "is substantially below the average class fund  
17 fee nationally;" attorney's fees "in cases below \$10 million are often more than the  
18 25% benchmark"); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D.  
19 482, 491092 (citing to five class actions where fee awards ranged from 30% to 33%);  
20 *Singer v. Becton Dickinson and Co.* (S.D. Cal. 2010) 2010 WL 2196104, at \*8  
21 (noting awards in class action cases where fees ranged from 30.3% to 40%).

22           Plaintiff has not requested an upwards adjustment in this case based on his  
23 valuation of the common fund at nearly \$6.5 million. But, if the Court were to  
24 conclude that the value of the settlement benefits in this case were less than \$6.5  
25 million, Plaintiff would seek an upwards adjustment of the benchmark rate to justify  
26 the amount of his fee request. As discussed below, none of the *Hanlon* factors  
27 warrants a downwards adjustment of the benchmark rate in this case. To the contrary,  
28 each of them supports an upwards adjustment of the benchmark rate.

1                   1.     The Quality Of Representation

2                   Plaintiff is represented by counsel with more than 25 year's experience as a  
3 lawyer who, as set forth in his declaration, has had significant success in the class  
4 action arena, at the trial and appellate levels, in both state and federal court. (Karasik  
5 Decl. ¶ 2-4). Plaintiff's counsel vast experience as a class action practitioner in and of  
6 itself substantiates a high quality of representation. The "prosecution and  
7 management of a complex national class action requires unique legal skills and  
8 abilities." *Knight v. Red Door Salons, Inc.* (N.D. Cal. 2009) 2009 WL 248367, at \*6  
9 [citing *Edmonds v. United States* (D. S.C. 1987) 658 F.Supp. 1126, 1137].

10                  The exceptional results in this case reflect with particularity the high quality of  
11 representation provided by Plaintiff's counsel. After two denials by this Court of  
12 Plaintiff's motion for class certification, Plaintiff's counsel filed with the Ninth Circuit  
13 a successful petition for permission to appeal under Rule 23(f) and then prevailed  
14 before the Ninth Circuit on appeal. The Ninth Circuit's decision redounds to the  
15 benefit of not only Plaintiff and other class members, but hundreds of thousands (if  
16 not millions) of other consumers in the Ninth Circuit.

17                  The ability and skill of Plaintiff's counsel can also be measured by the high  
18 quality of AMC's counsel whose skillful advocacy Plaintiff had to overcome. As  
19 reflected by the biography of AMC's lead counsel Robert H. Platt attached to the  
20 declaration of Plaintiff's counsel (Karasik Decl. Ex. 1), Mr. Platt is an extremely  
21 experienced and successful litigator with many notable accomplishments. Among  
22 other successes listed on his resume, Mr. Platt successfully defended other clients in  
23 at least four other FACTA class action lawsuits. There cannot be any doubt that  
24 Plaintiff's counsel faced a formidable adversary. The results obtained by Plaintiff's  
25 counsel against an attorney who, as indicated on his resume, has been annually  
26 recognized as a "Super Lawyer" by both Los Angeles Magazine and the Los Angeles  
27 Times, clearly reflects an exceptionally high quality of representation that supports an  
28 increase in the benchmark rate of 25%.

1                   2.     The Benefits Obtained For The Class

2                   The Settlement provides significant benefits for class members and other  
3 consumers. Not only is the value of each voucher packet (\$23) relatively high for a  
4 FACTA settlement (as demonstrated below), the Settlement in this case, unlike  
5 settlements in many other FACTA cases, requires that settlement benefits be  
6 distributed to as many people whose rights under FACTA may have been violated.  
7 During discovery AMC revealed that it had printed at least 282,314 credit or debit  
8 card receipts that did not comply with the truncation requirements of FACTA. AMC  
9 is required to distribute the exact same number of voucher packets under the  
10 Settlement, regardless of how many class members submitted claims. This non-  
11 reversionary settlement, unlike many less favorable settlements in other FACTA  
12 cases, holds the defendant in this case accountable for each of its alleged violations.

13                  Plaintiff has provided the Court with a list of settlement benefits made  
14 available to class members under various other FACTA settlements (Karasik Decl.  
15 Ex. 2). Comparison with the settlement benefits in this case -- vouchers worth \$23 --  
16 clearly reveals that the Settlement in this case provides a higher value of benefits to  
17 consumers than most other FACTA settlements.

18  
19 *Abiva v. Cache, Inc.*, C.D. Cal. Case No. CV 07-0556

20                  \$15 gift card or certificate towards purchase

21 *Najarian v. Charlotte Russ, Inc.*, C.D. Cal. Case No. CV 07-0501

22                  \$5 gift certificate

23 *Soalian v. International Coffee & Tea*, C.D. Cal. Case No. CV 07-0502

24                  Certificate for one beverage

25 *McGee v. Levy Restaurants*, C.D. Cal. Case No. CV 06-7762

26                  \$15 voucher for food or beverage

27 *Shulman v. Rite Aid*, C.D. Cal. Case No. CV 06-7747

28                  \$6 store coupon

1 *Dudzienski v. GMRI, Inc.*, N.D. Ill. Case No. 07 CV 3911

2 \$9 voucher for purchase of appetizer

3 *Todd v. Retail Concepts, Inc.*, M.D. Tenn. Case No. 07-0788

4 \$15 discount off purchase of \$125

5 *Hughes v. InMotion Entertainment*, W.D. Pa. Case No. 07 CV 1299

6 Free rental of one DVD (up to \$5 value)

7 *Collela v. University of Pittsburgh*, W.D. Pa. Case No. 08 CV 0129

8 Ticket to football game with face value of \$10

9 *Palamara v. Kings Family Restaurants*, W.D. Pa. Case No. 07-317

10 Vouchers for food items with retail value up to \$4.78

11 *Klingensmith v. Max & Erma's Restaurants, Inc.*, W.D. Pa. Case No. 07-0318

12 Two \$4 discount from purchase certificates

13 *Sinatra v. Coventry-Restaurant Systems, Inc.*, W.D. Pa. Case No. 07-445

14 Vouchers for food items with retail value not to exceed \$11.95

15 *Reed v. Whole Enchilada, Inc.*, W.D. Pa. Case No. 07-357

16 Restaurant card worth \$7

17 *Pivarnik v. Lamrite West, Inc.*, W.D. Pa. Case No. 07-321

18 Ccraftbook worth \$8.99

19 *Leowardy v. Oakley, Inc.*, C.D. Cal. Case No. SA CV 07-73

20 vouchers for \$15 (for in store purchases) or \$10 (for online purchases)

21  
22 There are very few FACTA cases that have resulted in a settlement providing a  
23 greater amount of benefits per class member than the settlement achieved by Plaintiff.

24 There are even less where every potential class actually received a benefit. For  
25 example, in *Bateman v. WF Cinema Holdings, LP*, C.D. Cal. Case No. CV 07-0213,  
26 another case brought by Plaintiff, settlement benefits consisted of vouchers for movie  
27 tickets and popcorn at Mann theaters worth \$30. (Karasik Decl. ¶ 8). Yet, the  
28 settlement Plaintiff achieved in this case is superior to the settlement he achieved

1 against Mann. In Mann, there were approximately 50,000 class members but only  
2 10,000 vouchers packages were distributed by Mann. (Karasik Decl. ¶ 8). Thus,  
3 while the Mann settlement had a potential settlement value of \$1.5 million, the total  
4 value of the settlement benefits actually distributed in Mann was only \$300,000.  
5 Here, both the face value of the Settlement and the actual settlement value are the  
6 same because the number of vouchers to be distributed is exactly the same as the  
7 number of alleged class members.

8 In sum, Plaintiff achieved a very favorable settlement that will provide  
9 hundreds of thousands of consumers millions of dollars worth of freely transferable  
10 vouchers that will not require any consumer to spend a single penny to use. The  
11 sizable benefits obtained for the class members and other consumers in this case,  
12 especially when compared to other FACTA settlements, strongly warrants an upwards  
13 adjustment of the benchmark rate of 25%.

### 14 3. The Complexity And Novelty Of The Issues

15 As one of the first FACTA cases brought after FACTA first took effect in  
16 December 2006, this case involved many complex and novel issues. During the  
17 pendency of this lawsuit, numerous courts issued rulings on questions of first  
18 impression regarding standing under FACTA, the meaning of FACTA, and due  
19 process challenges to lawsuits under FACTA. *See, e.g., Clark v. Marshalls of MA,*  
20 *Inc.* (C.D. Cal. 2007) 2007 WL 100412; *Pirian v. In-N-Out Burgers* (C.D. Cal. 2007)  
21 2007 WL 1040864; *Arcilla v. Adidas Promotional Retail Operations, Inc.* (C.D. Cal.  
22 2007) 488 F.Supp.2d 965; *Lopez v. Gymboree Corp.* (N.D. Cal. 2007) 2007 WL  
23 1690886; *Korman v. Walking Co.* (E.D. Pa. 2007) 503 F.Supp.2d 755; *Follman v.*  
24 *Village Square, Inc.* (N.D. Ill. 2007) 542 F.Supp.2d 816. It was also during the  
25 pendency of this lawsuit that the Supreme Court, resolving an issue of great import to  
26 this case, established the legal standard for proving a "willful" violation of the FCRA  
27 as is required for recovering civil penalties for violation of FACTA. *See, Safeco*  
28 *Insurance Co. of America v. Burr* (2007) 127 S.Ct. 2201.

1 Perhaps no issue was more complex than the requirement of "superiority" for  
2 obtaining class certification under Rule 23(b)(3). Prior to the Ninth Circuit's  
3 precedential decision achieved by Plaintiff, most judges in the Central District  
4 (including this Court twice in this case alone) denied motions for class certification in  
5 FACTA cases on the grounds, later repudiated by the Ninth Circuit, that the  
6 possibility of excessive damages disproportionate to harm precluded a finding of  
7 superiority. *See, e.g., Spikings v. Cost Plus, Inc.*, CV 06-8125 (C.D. Cal. May 25,  
8 2007); *Soalian v. Intl' Coffee and Tea, LLC*, CV 07-502 (C.D. Cal. June 11, 2007);  
9 *Najarian v. Avis Rent A Car Sys. LLC*, CV 07-588 (C.D. Cal. June 11, 2007);  
10 *Najarian v. Charlotte Russe, Inc.*, CV 07-501 (C.D. Cal. June 12, 2007); *Lopez v. KB*  
11 *Toys Retail, Inc.* CV 07-144 (C.D. Cal. July 17, 2007); *Papazian v. Burberry Ltd.*, CV  
12 07-1479 (C.D. Cal. Aug. 3, 2007); *Torossian v. Vitamin Shoppe Indus.*, CV 07-0523  
13 (C.D. Cal. Aug. 8, 2007); *Evans v. U-Haul of Cal., Inc.*, CV 07-2097 (C.D. Cal. Aug  
14 14, 2007); *Medrano v. Modern Parking, Inc.*, CV 0702949 (C.D. Cal. Sept. 17,  
15 2007); *Simon v. Ashworth, Inc.*, CV 07-1324 (C.D. Cal. Sept. 28, 2007); *Serna v. Big*  
16 *A Drug Stores, Inc.*, CV 07-0276 (C.D. Cal. Oct. 9, 2007); *Vasquez-Torres v.*  
17 *McGrath's Publick Fish House, Inc.*, CV 07-1332 (C.D. Cal. Oct. 12, 2007).

18 The Ninth Circuit's ruling in this case clearly established an important  
19 precedent with respect to a highly complex issue that, prior to appellate court  
20 guidance, numerous district courts had decided wrongly. There cannot be any doubt  
21 that the extreme novelty and difficulty presented by the legal issues in this case  
22 warrants an upwards adjustment of the benchmark rate of 25%.

#### 23 4. The Risks Of Nonpayment

24 This case presented a significant risk of no recovery. As discussed above, prior  
25 to the Ninth Circuit's precedent setting decision in this case, most judges in the  
26 Central District of California denied class certification in FACTA cases based on the  
27 "excessive damages" rationale ultimately rejected by the Ninth Circuit. This Court  
28 denied Plaintiff's motion for class certification on two occasions for precisely that

1 reason. Plaintiff also faced the risk of AMC moving for summary judgment on the  
2 grounds that its violation of FACTA had not been "willful."

3 Most other FACTA plaintiffs did not fare as well as Plaintiff. As a result of  
4 successful summary judgment motions by defendants, denials of class certification,  
5 and/or passage of the Credit and Debit Card Receipt Clarification Act of 2007  
6 (enacted in 2008), which amended FACTA to provide that the printing of expiration  
7 dates on credit or debit card receipts prior to its amendment was by definition not  
8 "willful," numerous FACTA cases resulted in dismissal and/or no significant recovery  
9 for the plaintiff or other class members. Plaintiff's counsel represented the plaintiff in  
10 many of such cases. (Karasik Decl. ¶ 10, Ex. 3). In each of the cases listed below the  
11 plaintiff was represented by Plaintiff's counsel Spiro Moss and the case resulted in  
12 either a outright dismissal, with no payment recovered by the plaintiff or Spiro Moss,  
13 or a nominal settlement following denial of class certification:

14 *Arcilla v. Adidas Promotional*, C.D. Cal. Case No. CV 07-00211

15 *Arcilla v. Anna's Linens*, C.D. Cal. Case No. SA CV 07-34

16 *Najarian v. Avis Rent A Car*, C.D. Cal. Case No. CV 07-00588

17 *Soualian v. Barney's*, C.D. Cal. Case No. CV 07-05588

18 *Yalengkatian v. Bebe Stores*, N.D. Cal. Case No. C 07-255

19 *Garabedian v. Berberian*. C.D. Cal. Case No. CV 07-0321

20 *Aeschbacher v. California Pizza Kitchen*, C.D. Cal. Case No. CV 07-00215

21 *Blanco v. CEC Entertainment*, C.D. Cal. Case No. WDCV 07-0559

22 *Khachomian v. Chanel, Inc.* C.D. Cal. Case No. CV 07-0586

23 *Bateman v. Discovery Communications, Inc.*, C.D. Cal. Case No. CV 07-00147

24 *Figueroa v. Walt Disney Parks and Resorts, Inc.*, C.D. Cal. Case No. SACV 07-19

25 *Blanco v. El Pollo Loco, Inc.*, C.D. Cal. Case No. SACV 07-54

26 *Vartanian v. E-Style, Inc.*, C.D. Cal. Case No. CV 07-0307

27 *Moon v. FedEx Kinkos*, N.D. Cal. Case No. C 06-07657

28 *Lopez v. Gaucho Grill*, C.D. Cal. Case No. CV 07-0306

- 1 *Lopez v. The Gymboree Corporation*, N.D. Cal. Case No. C 07-0087
- 2 *Eskandari v. IKEA*, C.D. Cal. Case No. SACV 06-1248
- 3 *Lopez v. KB Toys*, C.D. Cal, Case No. CV 07-00144
- 4 *Keoroghlian v. Louis Vuitton*, C.D. Cal. Case No. CV 07-00315
- 5 *Azoiani v. Love's Travel Stops*, C.D. Cal. Case No. EDCV 07-0090
- 6 *Negri v. MCS Burbank*, C.D. Cal. Case No. CV 07-00212
- 7 *Bateman v. Regal Cinemas, Inc.*, C.D. Cal. Case No. CV 07-52
- 8 *Bagumyan v. Shoe Pavilion*, C.D. Cal. Case No. CV 07-00522
- 9 *Rodriguez v. Super A Foods*, C.D. Cal. Case No. CV 07-319
- 10 *Figuroa v. The Swatch Group*, C.D. Cal. Case No. CV 07-00313
- 11 *Tilzer v. Urban Outfitters*, C.D. Cal. Case No. CV 07-106
- 12 *Bagumyan v. Valero Energy*, C.D. Cal. Case No. CV 07-00312
- 13 *Torossian v. Vitamin Shoppe*, C.D. Cal. Case No. CV 07-0523
- 14 *Yalengkation v. The Wet Seal*, C.D. Cal. SACV 07-80

15 To say that prosecution of this case against AMC was "risky" would be a gross  
16 understatement. Plaintiff had to win on appeal to reverse the Court's erroneous denial  
17 of class certification and still faced the possibility of a summary judgment motion.  
18 The fact that Plaintiff's counsel obtained a monetary recovery in only a small fraction  
19 of FACTA cases leaves no doubt that this case presented an exceptionally high risk of  
20 nonpayment. Having achieved an extremely good result in the face of such high risk  
21 warrants a significant upwards adjustment of the benchmark rate.

22 **C. Although Unnecessary, A Lodestar Cross Check Confirms The**  
23 **Reasonableness Of The Requested Fee Award**

24 When a class action plaintiff requests a fee within the 25% benchmark, "a  
25 lodestar analysis is not necessary." *HCL Partners Ltd. Partnership v. Leap Wireless*  
26 *Intern., Inc.* (S.D. Cal. 2010) 2010 WL 4156342, at \*2. *See also, Craft*, 624  
27 F.Supp.2d at 1122 ("a lodestar cross check is not required in this circuit"). Although  
28 this Court need not conduct a lodestar cross check to evaluate the reasonableness of

1 Plaintiff's fee request, Plaintiff has nevertheless provided the Court with lodestar  
2 information so that the Court, should it choose to do a lodestar cross check, can.

3 As set forth in the declaration of Plaintiff's counsel, a lodestar analysis of  
4 Plaintiff's fee request would result in a lodestar multiplier of approximately 4.6  
5 (Karasik Decl. ¶ 11-14). Under the circumstances of this case, which resulted in a  
6 precedent setting decision by the Ninth Circuit and one of the most favorable FACTA  
7 settlements ever, a 4.6 multiplier falls well within the range of reasonableness.

8 In numerous other class action cases, courts have approved of lodestar  
9 multipliers much higher than 4.6 to reward the plaintiff's counsel for superior results.  
10 (Karasik Decl. Ex. 6). *See, e.g., Craft*, 624 F.Supp.2d at 1125 (multiplier of 5.2); *In*  
11 *re Merry-Go-Round Enterprises, Inc.* (Bankry. D. Md. 2000) 244 B.R. 327  
12 (multiplier of 19.6); *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*  
13 (E.D. Pa. 2005) 2005 WL 123926 (multiplier of 15.6); *In re Rite Aid Corp. Sec.*  
14 *Litigation* (E.D. Pa. 2001) 146 F.Supp.2d 706 (multiplier of 4.5 - 8.5); *In re Cendant*  
15 *Corp. PRIDES Litigation* (3d Cir. 2001) 243 F.3d 722, 732 (multiplier of 7); *In re*  
16 *Rite Aid Corp. Sec. Litigation* (E.D. Pa. 2005) 362 F.Supp.2d 587 (multiplier of 6.96);  
17 *In re Charter Communications, Inc. Securities Litigation* (E.D. Mo. 2005) 2005 WL  
18 4045741 (multiplier of 5.61); *In re Beverly Hills Fire Litigation* (E.D. Ky. 1986) 639  
19 F.Supp. 915 (multiplier of 5); *In re Xcel Energy, Inc. Sec., Derivative & ERISA*  
20 *Litigation* (D. Minn. 2005) (multiplier of 4.7); *Steiner v. American Broadcasting Co.*  
21 (9th Cir. 2007) 248 Fed.Appx. 780, 783 (multiplier of 6.85).

22 A multiplier of 4.6 falls well within the range of multipliers allowed by courts  
23 and, in light of the exceptional result achieved by Plaintiff, is well deserved here.  
24 Like the multiplier of 4.5 - 8.5 that resulted after the court awarded fees equal to 25%  
25 of the common fund in *In re Rite Aid Corp. Sec. Litigation*, the multiplier of 4.6 that  
26 would result from a fee award of less than 25% of the value of the common fund in  
27 this case reflects an amount of fees that, while "handsome," is nevertheless  
28 "unquestionably reasonable." *Id.*, 146 F.Supp.2d at 736, n. 44.

1 **II. THE AMOUNT OF COSTS REQUESTED BY PLAINTIFF IS**  
2 **REASONABLE**

3 The Settlement expressly provides that "AMC will pay the reasonable  
4 attorneys' fees and costs of Class Counsel in an amount to be determined by the  
5 Court." Amended Stipulated Settlement Agreement and Release ¶ 23. Pursuant to  
6 this provision, which authorizes an award of costs under Rule 23(h), Plaintiff requests  
7 an award of costs in the amount of \$19,675.65.

8 As set forth in the declaration of Plaintiff's counsel, \$19,675.65 is the amount  
9 of costs incurred in prosecution of this lawsuit to date. (Karasik Decl. ¶ 15, Ex. 7).  
10 Plaintiff's costs include the expenses of attorney services, copying, court reporting,  
11 filing fees, mediator fees, postage and delivery fees, research fees, and travel  
12 expenses. Plaintiff's costs also include the expense of publicizing the Settlement,  
13 beyond the parameters of the Notice Program set forth in the Settlement, after the  
14 Settlement was modified to provide for a claims procedure before distribution of  
15 voucher packets. Plaintiff incurred this expense to provide additional notification of  
16 the Settlement, beyond the requirements of due process, to generate a higher claims  
17 rate. (Karasik Decl. ¶ 15).

18 The amount of costs sought by Plaintiff does not include additional costs that  
19 Plaintiff has yet to incur. Upon final approval of the Settlement, Plaintiff will incur  
20 approximately \$400 in postage costs distributing approximately 900 voucher packets  
21 to class members who submitted claims. (Karasik Decl. ¶ 15). Plaintiff will also  
22 incur additional expenses for appearing at subsequent court hearings. AMC has no  
23 basis for disputing the reasonableness of any of Plaintiff's litigation costs.

24 **III. THE AMOUNT OF ENHANCEMENT PAYMENT REQUESTED BY**  
25 **PLAINTIFF IS REASONABLE**

26 "It is well established in this circuit that named plaintiffs in a class action are  
27 eligible for reasonable incentive payments, also known as service payments." *Wren v.*  
28 *RGIS Inventory Specialists* (N.D. Cal. 2011) 2011 WL 1230826, at \*31. As the Ninth

1 Circuit has observed, incentive payments to named plaintiffs are now "fairly typical."  
2 *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958.

3 Plaintiff seeks an incentive award in this case in the amount of \$7,500 which,  
4 as compared to the value of the Settlement, is extremely modest. Indeed, Plaintiff  
5 requested and was awarded an incentive of \$5,000 in the FACTA case he brought  
6 against Mann even though the value of the common fund in that case was only  
7 \$300,000. As was the case in Mann, awarding an incentive to Plaintiff here will not  
8 have any effect on the settlement benefits to be received by class members.

9 Plaintiff well deserves the incentive of \$7,500 he seeks because, despite the  
10 great risks this case presented of losing on the merits and having to pay AMC's costs,  
11 Plaintiff spent much time over more than four years participating in this litigation and  
12 assisting counsel. Plaintiff sat through a whole day of deposition, participated in two  
13 mediations, and had numerous communications with counsel to stay abreast of the  
14 case and legal developments. Demonstrating his great interest and dedication,  
15 Plaintiff attended the oral argument before the Ninth Circuit. (Karasik Decl. ¶ 16).

16 As set forth in the Settlement, AMC has no objection to Plaintiff's request for  
17 an incentive payment in the amount of \$7,500. In light of the remarkable effort  
18 achieved by Plaintiff after many long years, Plaintiff's request for an incentive of  
19 \$7,500 is reasonable and should be granted.

20 **CONCLUSION**

21 Plaintiff's requests for an award of fees in the amount of \$1,380,000; an award  
22 of costs in the amount of \$19,675.65; and an enhancement payment of \$7,500 are  
23 reasonable. Plaintiff respectfully requests that his motion for an award of fees, costs  
24 and an enhancement payment be granted in its entirety.

25 Dated: June 27, 2011 SPIRO MOSS LLP

26  
27 By: /s/ Gregory N. Karasik  
Gregory N. Karasik

28 Attorneys for Plaintiff