IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE AMC ENTERTAINMENT HOLDINGS, INC. STOCKHOLDER LITIGATION	))))	CONSOLIDATED C.A. No. 2023-0215-MTZ

UNOPPOSED MOTION TO LIFT THE *STATUS QUO* ORDER DUE TO THE PARTIES' PROPOSED SETTLEMENT

Plaintiffs Allegheny County Employees' Retirement System, Usbaldo Munoz, and Anthony Franchi ("Plaintiffs") hereby move the Court to lift the stipulated *status quo* order entered on February 27, 2023 (Trans. ID 69229170) due to a proposed settlement between the parties (the "Settlement"). AMC Entertainment Holdings, Inc. ("AMC") and its board of directors (the "Board" and, together with AMC, "Defendants") do not oppose, and support, this motion.

PRELIMINARY STATEMENT

1. Plaintiffs are pleased to report that—following extensive adversarial litigation amidst expedited discovery, consultation with multiple experts, and a mediation process facilitated by former Vice Chancellor Joseph R. Slights, III—the parties have agreed to a Settlement pursuant to which AMC will issue class members new shares of AMC common stock ("Common Stock") collectively valued, based on recent market prices, at more than $100 million.

2. Plaintiffs believe that the Settlement constitutes a "win, win, win" for all parties affected, in light of the immediate nine-figure value it should provide to

the class and the flexibility it provides AMC for managing its balance sheet going forward. The Settlement is an extraordinary result for AMC's Common Stockholders and justifies lifting the *status quo* order currently preventing AMC from converging its two publicly traded securities.

3. The parties have entered into a term sheet and are working to promptly finalize a stipulation of settlement. Defendants will receive no release (and Plaintiffs will make no application for fees or expenses) unless and until, following orderly settlement approval proceedings, the Court grants final approval of the Settlement. In the meantime, however, the parties agree that the stipulated *status quo* order should be lifted, and respectfully ask that the Court enter an order to that end, so the issuance of new shares to Common Stockholders can take place at the earliest possible date.

4. The *status quo* order, put in place pending a preliminary injunction hearing scheduled for April 27, 2023, is preventing AMC from effectuating the results of a March 14, 2023 vote (which Plaintiffs had challenged on multiple grounds) on proposals to amend AMC's Third Amended and Restated Certificate of Incorporation (the "Certificate") to: (i) increase the authorized number of shares of Common Stock; and (ii) thereafter effect a 1-to-10 reverse split of AMC equity (the "Amendments"). If the Amendments are implemented, AMC will, prior to the reverse split, convert the Company's outstanding AMC Preferred Equity Units

("APEs") into shares of Common Stock. Plaintiffs alleged in this action that effecting the Amendments would improperly override the Common Stockholders' franchise rights and transfer significant economic value to APE holders.

5. The parties' pending Settlement contemplates that ***following*** and subject to AMC's completion of the conversion and reverse split, the Company will issue to its existing Common Stockholders as of immediately ***prior to*** the conversion one additional share of Common Stock for every seven-and-one-half (7.5) shares of Common Stock held as of the issuance. The conversion and reverse split require a ten (10) day notice period under NYSE rules.

6. While the precise implied value of that Settlement consideration changes with the trading prices of both Common Stock and APE, this issuance would be worth between approximately $107 million and $118 million based on the prices of Common Stock and APE at market close on the five trading days from March 27 through March 31 – a significant result for a case asserting a *Blasius* claim that faced certain meaningful defenses.

7. In light of Defendants' agreement to issue Settlement consideration to the class promptly after the conversion, Plaintiffs no longer intend to pursue their preliminary injunction motion and all parties agree that the *status quo* order should be lifted. Lifting the order now will remove significant uncertainty currently weighing on AMC's business and the market and expedite the class's receipt of the

significant benefit created by the Settlement.

FACTUAL AND PROCEDURAL BACKGROUND

8. On February 20, 2023, Plaintiffs filed class action complaints challenging the Board's actions concerning proposals to amend AMC's Certificate to allow the conversion of APEs into Common Stock. Plaintiffs sought injunctive relief preventing the Company from filing Amendments to its Certificate with the Delaware Secretary of State. The complaints alleged that, in 2021, AMC twice sought stockholder approval to amend its Certificate to increase the number of authorized shares of Common Stock. These proposals were met with substantial resistance by AMC's stockholder base, which primarily consisted of retail investors, and were ultimately withdrawn by the Company.

9. In 2022, the Board created a new form of preferred stock, as well as a depositary receipt for the preferred stock, APEs. Each APE represents a 1/100 interest in a share of preferred stock, is convertible into one share of Common Stock, and—Plaintiffs allege—provided the APEs with superior voting power compared to the Common Stock for the reasons described in the following paragraph.

10. Before issuing APEs, the Company entered into a deposit agreement, pursuant to which the depositary for the preferred shares would vote preferred stock as instructed by the holders of then-issued APEs. Where investors did not provide voting instructions for their APEs, however, the depositary would vote those

uninstructed APEs on a "mirrored" basis in the same proportion as the APEs for which the depositary received voting instructions.

11. On August 15, 2022, AMC declared a special dividend of one APE to be paid on each share of Common Stock outstanding and issued a total of 516,820,595 APEs. Thereafter, AMC sold additional APEs through an at-the-market program.

12. Though APEs were designed to be functionally equivalent to shares of Common Stock, they traded at a deep discount (*e.g.*, on December 21, 2022, Common Stock closed at $5.30 per share and APEs closed at $0.685 per unit).

13. In December 2022, AMC entered into transactions with Antara Capital LP ("Antara"), pursuant to which Antara would own almost 30% of the issued APEs. Antara agreed to vote its shares in favor of proposals to approve the Amendments that would allow the conversion of APEs into Common Stock.

14. At the same time as the transaction with Antara, AMC announced a special meeting of stockholders, scheduled for March 14, 2023 (the "Special Meeting"), to vote on proposals to approve the Amendments, which would result in the conversion of all APEs to Common Stock. As of the record date of the Special Meeting, AMC had 517,580,416 shares of Common Stock and 929,849,612 APEs outstanding.

15. In the Complaints, Plaintiffs alleged, *inter alia*, that the creation and issuance of APEs undermined the voting rights of Common Stockholders because of the APEs' mirrored voting power and that the voting agreement with Antara rendered the outcome of the anticipated March 14 vote a *fait accompli*. Plaintiffs further alleged that the conversion of APEs into Common Stock would cause the APE holders to reap a financial windfall while Common Stockholders would suffer economic harm and dilution.

16. On February 27, 2023, following a stipulation of the parties, the Court entered a *status quo* order allowing AMC to hold the Special Meeting but prohibiting AMC from filing the Amendments pending a ruling by the Court on Plaintiffs' to-be-filed preliminary injunction motion. Trans. ID 69229170. The Court set a preliminary injunction hearing for April 27, 2023 and the parties commenced expedited discovery. *Id*. The Court ordered consolidation of this action on March 2, 2023. Trans. ID 69257686.

17. On March 14, 2023, AMC convened the Special Meeting, at which the Amendments were approved. Without the mirrored voting feature of the APEs, the proposals to approve the Amendments would not have passed.

18. Following entry of the scheduling order on March 2, 2023, the parties engaged in extensive expedited discovery. Defendants produced, and Plaintiffs reviewed, over 59,000 pages of documents. Plaintiffs also served subpoenas on

multiple third parties, who produced over 3,200 pages of documents as of the time of proposed Settlement. Likewise, Plaintiffs collected and produced over 3,700 pages of documents.

19. Plaintiffs also retained and worked closely with financial and proxy solicitation experts to prepare expert analyses to submit with their anticipated injunction brief. At the time the parties entered into the proposed Settlement, Plaintiffs were preparing to take six fact depositions and defend three Plaintiff depositions, all to be conducted in an eight-day span, with a fact discovery deadline of April 6.

20. On March 25, the parties asked former Vice Chancellor Joseph R. Slights, III, to provide facilitation and mediation services in connection with settlement discussions that the parties anticipated would likely require both lifting of the *status quo* order and performance of Defendants' potential obligations to the Common Stockholders at the earliest possible dates. On March 28, the parties participated in a formal mediation session, with extensive follow-up negotiations over the next several days.

21. Following adversarial and arms'-length negotiations, the parties executed a term sheet documenting the proposed Settlement on April 2, 2023.

THE *STATUS QUO* ORDER SHOULD BE LIFTED BECAUSE THE PROPOSED SETTLEMENT'S SUBSTANTIAL BENEFITS TO THE CLASS SHOULD BE EFFECTED AS SOON AS FEASIBLE

22. "The decision to enter a status quo order is within the discretion of the trial judge." *R & R Capital LLC v. Merritt*, 2013 WL 1008593, at *8 (Del. Ch. Mar. 15, 2013) (citations omitted). "Once the status quo order is in place, the party seeking modification bears the burden of showing why it should be modified." *Id.* (citation omitted).

23. Here, the parties agree that the Court should lift the *status quo* order because the proposed Settlement would provide a substantial benefit to the settlement class—namely, receipt of Common Stock that will likely be worth more than $100 million—but contingent upon lifting of the *status quo* order and the conversion and reverse split being consummated. Importantly, while the term sheet contemplates that the parties will work in good faith to achieve final approval of the Settlement at an anticipated future hearing following proper notice to Class members, the Settlement terms contemplate performance ***before*** such hearing takes place.

24. In Delaware, "voluntary settlements are highly favored and will be enforced whenever possible." *Trexler v. Billingsley*, 166 A.3d 101 (Del. 2017); *see also Kahn v. Sullivan*, 594 A.2d 48, 58-59 (Del. 1991); *Polk v. Good*, 507 A.2d 531, 535 (Del. 1986). In reviewing the settlement of a class action, the Court considers

". . . the probable validity of the claims . . . the delay, expense and trouble of litigation . . . the amount of the compromise as compared with the amount and collectability of a judgment, and . . . the views of the parties involved, pro and con." *Polk*, 507 A.2d at 536 (citation and quotation omitted). As will be briefed in detail at final approval of the proposed Settlement, the contemplated recovery here more than adequately satisfies the requirements of Delaware law, compensates the class members for the harm alleged, and warrants lifting of the *status quo* order.

25. Specifically, the Settlement provides the class with a valuable new share issuance in exchange for permitting the implementation of the Amendments, which would have happened without ***any*** consideration to the Common Stockholders absent this lawsuit. It therefore redresses the core harm in the Complaint – *i.e.*, that the Amendments dilute the Common Stockholders compared to APE holders.

26. Under its terms, each record holder of Common Stock who holds Common Stock prior to convergence and at the time of the reverse split will receive as a settlement payment one share of Common Stock for every 7.5 shares of Common Stock they hold (calculated on a post-split basis), with such holders receiving, post-split and convergence, the equivalent of 6,992,565 shares.[1] AMC anticipates executing the convergence, and issuance of settlement shares, as soon as

[1] The Settlement contemplates that fractional shares will be settled in cash.

practicable after the lifting of the *status quo* order. AMC must provide the NYSE ten (10) days prior notice before effecting the reverse split and conversion.

27. While the value of the proposed Settlement will be based on the stock price at the time of the issuance, an analysis of the Settlement based on the last five closing prices of shares of Common Stock and APE units demonstrates the significant value of the Settlement:

Date	**Value**
March 27, 2023	$107,966,440.77
March 28, 2023	$118,658,279.33
March 29, 2023	$115,844,551.81
March 30, 2023	$113,986,741.82
March 31, 2023	$116,557,667.07

See April 3, 2023 Affidavit of Patrick Ripley, ¶¶3-7.

28. The proposed Settlement, which is the product of a mediation by former Vice Chancellor Joseph R. Slights, III, is a significant recovery for the class at the injunction stage and one of the largest financial recoveries in a Delaware stockholder voting rights case.

29. While Plaintiffs believe in the strength of their claims, there are defenses under *Blasius Indus. Inc. v. Atlas Corp.*, 564 A.3d 651 (Del. Ch. 1988), including under the "compelling justification" prong. Defendants have argued that

AMC faces a significant debt load and, without any ability to raise capital through the issuance of additional shares, it would have faced financial calamity.[2]

30. Plaintiff Allegheny also alleged that, under 8 *Del. C.* § 242(b), the creation of the preferred shares that underlie the APEs required a separate vote of Common Stockholders because they had the effect of eliminating the voting control of the common shares, thus impairing a "special right" of the common stock. Defendants would argue that voting rights standing alone cannot constitute a "special right" under the language of the statute and applicable precedent. *See Orban v. Field*, 1993 WL 547187 (Del. Ch.) ("[T]he right to vote is not a peculiar or special characteristic of common stock in the capital structure of Office Mart.").[3]

31. Thus, although Plaintiffs believed their claims to be strong, and would have contested these and other defenses, the class faced a real risk of recovering nothing.

[2] Thus, the Settlement is good for the Company as well, as it will allow it to raise equity capital based on post-convergence share prices.

[3] Vice Chancellor Laster's decision last week in *Electrical Workers Pension Fund, Local 103, IBEW v. Fox Corp.*, C.A. No. 2022-1007-JTL, Tr. Ruling (Del. Ch. Mar 29, 2023), holding that a separate stockholder vote was not required to expand a corporation's exculpation of corporate officers, casts further doubt on the viability of any statutory claim here.

CONCLUSION

32. The proposed Settlement is a significant recovery on behalf of the class. It is the product of extensive expedited litigation and mediation with former Vice Chancellor Joseph R. Slights, III. Unlike the more typical recovery of cash in exchange for release of claims, which this Court addresses in full at a final approval hearing, the settlement that Plaintiffs are prepared to support in exchange for a release of claims—the lifting of the *status quo* order and the effectuation of the issuance at the earliest possible date—requires performance before the final approval hearing can take place.

33. Accordingly, Plaintiffs respectfully request that the Court lift the *status quo* order so that the class can receive the value created by the Settlement and the parties can proceed towards a request for final approval by the Court.

Dated: April 3, 2023

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CERTIFICATE OF SERVICE

I, Gregory V. Varallo, hereby certify that, on April 3, 2023, a copy of the foregoing *Plaintiffs' Unopposed Motion to Lift the Status Quo Order Due to the Parties Proposed Settlement,* along with supporting *Affidavit,* was filed and served electronically via File & Serve*Xpress* upon the following counsel of record:

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IN RE AMC ENTERTAINMENT HOLDINGS, INC. STOCKHOLDER LITIGATION	))))	CONSOLIDATED C.A. No. 2023-0215-MTZ

[PROPOSED] ORDER LIFTING *STATUS QUO* ORDER

WHEREAS, on February 27, 2023, the Court issued the *Order Concerning Plaintiffs' Motions for Expedited Proceedings and Entry of a Status Quo Order*;

WHEREAS, on April 3, 2023, Plaintiffs filed their *Unopposed Motion to Lift the Status Quo Order Due to the Parties' Proposed Settlement* (the "Motion"); and

WHEREAS, the Court has considered the Motion and supporting materials, and has found good cause for the issuance of this Order;

IT IS HEREBY ORDERED this__ day of _____, 2023, that:

1. Plaintiffs' Motion is **GRANTED**.

_____
Vice Chancellor Morgan T. Zurn