EFiled: Jun 09 2023 04:16PM EDT
Transaction ID 70175319
Case No. 2023-0215-MTZ

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

PUBLIC REDACTED VERSION OF EXHIBIT 2 TO THE CORRECTED TRANSMITTAL AFFIDAVIT OF THOMAS CURRY IN SUPPORT OF PLAINTIFFS' REPLY IN FURTHER SUPPORT OF SETTLEMENT, AWARD OF ATTORNEYS' FEES AND EXPENSES, AND INCENTIVE AWARDS

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Dated: June 9, 2023

Exhibit 2

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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

ROSE IZZO'S OBJECTION TO THE PROPOSED SETTLEMENT, AWARD OF ATTORNEYS' FEES AND EXPENSES, AND INCENTIVE AWARDS

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Dated: May 31, 2023

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PRELIMINARY STATEMENT

Objector Rose Izzo, and numerous AMC retail stockholders, reject Plaintiffs' assessment that "[a]t its core, this Action is about voting rights."[1] This case is about a scheme by Defendants—and particularly AMC CEO Adam Aron—to transfer over $1.4 billion of AMC's market capitalization from current Common stockholders to holders of Preferred Equity Units. True, Aron needed to sell millions of votes to a hedge fund in a sweetheart deal to execute this scheme. But the harm to Common stockholders is the crux of this dispute, and an injunction, not a deal that "offsets some of this dilution," is the relief AMC stockholders deserve.

The settling parties offer the prospect of an AMC financial collapse to pressure the Court to approve an expedited settlement. On May 4, 2023, Defendants urged that "[u]nless revenue and attendance levels rise, the failure to obtain additional liquidity through equity capital would likely result in bankruptcy. . . ."[2] The very next day, AMC's first-quarter earnings announcements celebrated increased revenue and attendance. Defendants warn that AMC might not be able to

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1 Plaintiffs' Opening Brief in Support of Settlement, Award of Attorneys' Fees and Expenses, and Incentive Award ("Plaintiffs' Brief" or "PB") at 40. Capitalized words not defined herein have the meaning defined in Plaintiffs' Brief (D.I. 206).

2 Defendants' Brief in Support of Proposed Settlement (D.I. 200, "DB") at 7-8.

access debt capital.[3] Yet Antara's analysis, revealed in discovery, concluded that, without any debt amendments, AMC has over $300 million in existing debt capacity, and could access an additional $2.25 **billion** if certain junior creditors amend their terms.[4] Plaintiffs go along with Defendants' self-serving pessimism. Objectors do not. The Court shouldn't either.

Instead, business judgment commends the rejection of a bad deal. The Settlement abandons valuable claims for less than a tenth of potential, preventable damages. Small stockholders see no benefit. Meanwhile, Plaintiffs will release Defendants not only from the claims in this action, but from any claim, direct or derivative, that any Class Member "ever had, now have, or hereafter can, shall, or may have" that is "in any way connected to" any allegation in either of Plaintiffs' complaints.[5] The Delaware Supreme Court recently cautioned against such expansive releases, and explicitly forbid bargains extending into the future.[6]

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[3] DB at 6-7; PB at 38 ("Wall Street capital raising basically shuts down in August and market volatility or weak earnings could leave AMC scrambling.").

[4] Confidential Discovery Database ("Conf. Disc. DB") at ANTARA-AMC-00000575. *See also* note 34, *infra*.

[5] Settlement ¶ 1(r).

[6] *Griffith v. Stein*, 283 A.3d 1124, 1134 (Del. 2022).

Plaintiffs' willingness to offer so much, especially a release contrary to black-letter law, casts doubt upon whether they ever intended to vigorously prosecute this case.

Due process precludes certification of a non-opt-out settlement that binds absent parties unless "the relief sought by the particular plaintiffs who bring the case can be thought to be what would be desired by other members of the class . . . ."[7] Even if Plaintiffs' efforts were once sincere, Defendants' scare tactics have cowed them from seeking a permanent injunction.[8] Objecting stockholders—particularly the "Apes"[9] who supported AMC through COVID—want that permanent injunction, not "leverage" used to mildly renegotiate Aron's awful deal. Without an opt-out, certifying a settlement class would be a denial of due process. Moreover, information uncovered in discovery—including that Allegheny and Franchi gain more from incentive awards than they lose in the Settlement—weighs against their adequacy as Class Representatives. The Class cannot be equitably certified.

Finally, Plaintiffs' counsel $20 million fee request—almost $6,000 per hour—for a few months of litigation exceeds the bounds of reasonableness. Plaintiffs took

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7 *Prezant v. DeAngelis*, 636 A.2d 915, 924 (Del. 1994) (internal quotation omitted).

8 PB at 40, 9.

9 To avoid confusion: when this brief mentions "Apes," it refers to AMC's retail stockholders, as opposed to "APEs," AMC's Preferred Equity units.

limited discovery (with no depositions) and settled early, much to the disappointment of many retail AMC owners. As this Court has recently stressed, the "base percentage" for early-stage settlements is 10%, not the 22.5% to 25% Plaintiffs contend.[10] Even were the Settlement worth $129 million—and it is not—$20 million exceeds a reasonable award for a hasty settlement. At a minimum, the Court should withhold a decision on a fee award until after the Transaction—if it occurs—to make Plaintiffs and their counsel bear the risks they are imposing on other stockholders.[11]

This Settlement not only allows Aron to cull his troublesome Apes, it sets a disastrous precedent. Plaintiffs cannot realistically expect that, after this Settlement, "no public company board ever again engages in such a heavy-handed and improper abuse of power."[12] Why not? Plaintiffs drafted a playbook: bury inequitable provisions deep in disclosure documents; trade company assets with hedge funds to ensure a desired voting outcome; then quickly settle with compliant stockholders, securing insurance against a wide array of unlitigated claims.

This result is inconsistent with Delaware law and should not be foisted on AMC's unwilling stockholders. The frustration evidenced by the deluge of

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10 *See* Section III.E, *infra*.

11 "Transaction" refers to the Conversion and Reverse Split.

12 PB at 1 (emphasis omitted).

objections on the Court's docket is understandable: Aron disenfranchised the Apes once, the Plaintiffs a second time. Respectfully, the Court should sustain Izzo's objection, reject the settlement, decline to certify the class, and disapprove Plaintiffs' application for excessive fees and incentive awards.

BACKGROUND

A. The Settlement Permits Aron to Crush the Apes.

Plaintiffs' bargain is the culmination of a series of inequitable events. After Common stockholders twice rejected Defendants' attempt to dilute their shares, AMC concocted the Preferred Equity Units, or APEs.[13] In its APE dividend FAQ, dated August 18, 2022, the Company assured stockholders that APES could "[t]echnically" convert into Common stock, but "we do not currently expect the AMC Board to make such a proposal any time soon" and it is "more likely than not" that Common and APES "will trade as two separate securities for **quite some time to come**."[14] The FAQ assured stockholders that each APE "is designed to have the same voting rights as a share of common stock."[15]

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13 DB at 8-9.

14 Compl. ¶ 108 (emphasis added).

15 AMC Preferred Equity unit ("APE") Dividend Frequently Asked Questions, available at https://s25.q4cdn.com/472643608/files/doc_downloads/2022/ape_dividend_faq.pdf (linked from AMC website).

Aron hid his trap fifteen pages deep in an exhibit to an 8-K: "[i]n the absence of specific instructions from Holders of [APEs]," Computershare "will vote the Preferred Stock . . . proportionately with [the] votes cast pursuant to instructions received from the other" holders of APEs.[16] In other words, AMC loudly announced that the new APEs held the "same rights" as Common shares, then whispered *sotto voce* that those rights were subject to new rules.

A few months after assuring Common stockholders that the Board had no plans to convert the APEs, the Board launched a plan to convert the APEs. To render the vote a foregone conclusion, AMC entered into the Antara Transaction, in which Antara purchased millions of APEs for less than a dollar per share, and Antara agreed to vote in favor of the Transaction.[17] With the vote locked up, Aron revealed his plan to the market.

Not coincidentally, Aron owns more APES than Common shares.[18]

1. The Transaction Crushes the Apes.

The Transaction crushes AMC's common stockholders. Using Plaintiffs' own assumptions, the Transaction will cause Common stockholders to lose $1.44

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16 DB at 11 (quoting Deposit Agreement § 4.5, Exhibit 4.1 to AMC Form 8-K at 15 (DB, Ex. N)).

17 PB, Ex. 13, at 2.

18 DB, Ex. W, at 22.

billion. The Settlement marginally reduces this to a $1.31 billion loss. *See* Table 1, below.

Table 1: Effect of Transaction on AMC Stockholders[19]

	Shares	Price	Mkt. Cap.	% Mkt. Cap.
	Status Quo (as of May 3, 2023)			
Common	519,192,390	$ 5.74	$ 2,980,164,318.60	66.33%
APE	995,406,413	$ 1.52	$ 1,513,017,747.76	33.67%
Total	1,514,598,803		$ 4,493,182,066.36	100.00%
	Post-Transaction (if permitted to proceed)			
Common	51,919,239	$29.67	$1,540,226,980.07	34.28%
APE	99,540,641	$29.67	$2,952,955,086.29	65.72%
Total	151,459,880		$4,493,182,066.36	100.00%
	Post-Transaction (with settlement)			
Common	58,841,804	$28.37	$1,669,294,463.06	37.15%
APE	99,540,641	$28.37	$2,823,887,603.30	62.85%
Total	158,382,445		$4,493,182,066.36	100.00%
	Net Loss to Common/Gain to Preferred			
	No Settlement		With Settlement	
	($1,439,937,338.53)		($1,310,869,855.54)	

19 *See* PB at 30-31. Some difference in Market Cap and Price due to rounding.

Plaintiffs' Brief incorrectly states that the post-split stock is modeled to trade at $2.97 per share. *Id.* at 31. The Ripley Affidavit uses $29.67. *See* Ripley Aff. ¶ 4(b).

In other words, Plaintiff's purported $129 million settlement "value," 8.96% of potential damages, merely converts a Common stockholder's disaster into a slightly-less-calamitous disaster.

Small stockholders—like the retail Apes—may gain nothing. The settlement notice opaquely (and somewhat circularly) describes what happens to "fractional shares" following the Settlement.[20] For retail stockholders, "banks, brokers, or other nominees . . . may have different procedures for processing the Settlement Payment and handling fractional shares."[21] As explained below, it is uncertain whether small stockholders will recover at all.[22] And of course, the Settlement eliminates any opportunity for Common stockholders to argue that they are entitled to a separate class vote, under 8 *Del. C.* § 242(b) or otherwise. Indeed, that is why Defendants devised this scheme.

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[20] *Compare* Notice ¶ 45 (class members entitled to cash in lieu of fractional shares "will receive a cash payment . . . in the same manner as will be provided in connection with the [Reverse Split], as described above in Paragraph 26") *with id.* ¶ 26 (describing cash payment for fractional shares of Settlement Consideration, not the Reverse Split).

[21] Notice ¶ 26.

[22] *See* Section I.A.2, *infra*.

2. *The April 2023 Vote Fails Without the APE's Proportional Vote.*

Defendants' suggestion that AMC stockholders "resoundingly" supported the Transaction is risible.[23] Only slightly over one-quarter of Common stockholders actually voted in favor, along with a narrow majority of APEs. Without the APE's "proportional vote," both proposals would have failed. *See* Table 2, below.

Table 2: Vote Outcome Without Proportional Vote[24]

	For	**Against**	**Outstanding**	**% Favor**
		Share Increase		
Common	132,182,944	47,356,993	517,580,416	25.5%
APE	530,779,405	48,317,581	929,849,612	57.1%
Total	662,962,349	95,674,574	1,447,430,028	**45.8%**
		Reverse Split		
Common	128,344,709	51,388,638	517,580,416	24.8%
APE	528,679,900	50,542,176	929,849,612	56.9%
Total	657,024,609	101,930,814	1,447,430,028	**45.4%**

Worse, without Antara's bought-and-paid-for vote, it is unlikely that a majority of outstanding APEs would have supported the proposals.[25]

23 DB at 15.

24 *See* DB, Ex. X.

25 According to the Proxy, Antara was entitled to vote 258,439,472 APEs. DB, Ex. W, at 6. It is impossible to tell how non-Antara stockholders would have voted those units, but it is likely that they would have voted similar to how the non-Antara APEs voted (or did not vote).

To interpret these results as stockholder enthusiasm requires, to be polite, motivated reasoning. Defendants' references to "voted shares" ignores the proxy, which was clear: both provisions required a "majority of the shares of Common Stock and [APES]," meaning that a Common stockholders non-vote counted as "no."[26] And it is intuitively absurd: to believe Defendants, one must accept that non-voting stockholders who held Common and APEs both adamantly opposed the transaction (voting 100% of their common shares against) and wildly favored it (effectively voting approximately 9/10ths of their Preferred units in favor). Such tenuous divinations of voter sentiment deserve no deference.

B. AMC's Fortunes Improve.

Defendants' words and deeds don't match. Before this Court, Defendants' offer the looming boogeyman of bankruptcy. Yet Aron, flush with an unexpected windfall from retail stockholders, invested in a gold mine rather than pay down debt.[27] That is not the act of a CEO facing financial oblivion.

To exert pressure on stockholders and the Court, Defendants warned on May 4, 2023, that:

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26 *Compare* DB at 15 *with* DB, Ex. W, at 8.

27 Compl. ¶¶ 80-83.

> Unless **revenue** and **attendance** levels rise, the failure to obtain additional liquidity through equity capital would likely result in bankruptcy. . . .[28]

The very next day, AMC's Earnings Release crowed that, compared to Q1 2022:

- **Total revenue** grew 21.5% year-on-year to $954.4 million;
- **Attendance** rose 21.9%, to 47,621,000; and
- **Adjusted EBIDTA** grew by $68.8 million.[29]

U.S. markets attendance (accounting for the lion's share of audience numbers) showed a 25.5% increase, but even international markets grew by 14.9%.[30]

Aron could hardly contain his excitement: "We believe the first quarter of 2023 is just the tip of the iceberg for what's to come in the remainder of the year."[31] A day after his lawyers predicted doom, he proclaimed, "We could not be more optimistic about the prospect for the 2023 box office, except to say that 2024 looks even better."[32]

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[28] DB at 7-8 (emphasis added). *See also id.* at 3 (if the Transaction does not proceed, "the Company would be put at significant risk of failing to meet its financial obligations beyond 2023, which would result in a bankruptcy. . . .").

[29] *See* Transmittal Affidavit of Theodore A. Kittila ("Kittila Aff."), Ex. A at 1-2 (filed herewith).

[30] *Id*. at 2.

[31] *Id*.

[32] *Id*. at 2.

Finally, AMC announced it had \$703.7 million in available liquidity, including \$208.1 million of undrawn capacity under its revolving credit facility.[33] And document discovery—thankfully permitted by the Court—suggests this may not be the full story. In an internal Antara email dated February 11, 2023, one employee described Antara's internal conclusion that AMC's "Debt Capacity" could, without "any votes/amendments," exceed \$500 million.[34] Further, if "the 2L

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33 *Id*. at 1.

34 Conf. Disc. DB, at ANTARA-AMC-00000575. Two observations about confidential discovery material are necessary. First, Plaintiffs and Defendants insisted that objectors be restricted to "read only" access. *See* Kittila Aff., Ex. B. If the parties permit Ms. Izzo's counsel to do so, they will compile confidential documents referenced herein in a separate affidavit. Alternatively, the Court or discovery master could order Plaintiffs to provide a master submission compiling every confidential document referenced by every objector. Either way, material cited in this Objection (and other objections) should be part of the record for this case and on appeal, but cannot be made part of the accompanying affidavit.

Second, Plaintiffs and Defendants did not make the confidential discovery database searchable using text-recognition software. This made it impossible to review the record effectively: Ms. Izzo's counsel were forced to triage their review to domains that, in their experience, were most likely to lead to relevant information. Candidly, even with a searchable database, a full review would have been an uphill challenge in the time allotted. The Court's permission to review the discovery record was welcome (and should perhaps become standard protocol in other cases). But the Court should not anticipate that this Objection, or any other, has provided it with analyses fully informed by the entire discovery record.

amend" their loan provisions, "all bets are off to the tune of 2.25bn+ of investment capacity."[35]

This, along with the new earnings release, makes clear that Defendants' threats of impending bankruptcy, and Plaintiffs' "belief" that "fully blocking AMC from proceeding ran a serious risk that AMC would ultimately face a true financing crisis"[36] are little more than a jump scare.

C. The Plaintiffs are Not Apes

A typical settlement process uncovers little about class representatives. As the Court recently observed, "stockholder plaintiffs, who are champions of full disclosure, lose their interest in that principle when it comes time for them to act as fiduciaries for a class. . . ."[37] The Court can, and should, require Plaintiffs to divulge

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35 *Id*. Objector's counsel have not reviewed the Antara analyses themselves, if they were ever produced. The email does not include any attachments, but merely instructs the analyst to "Call me . . . ." *Id*.

36 PB at 29.

37 Telephonic Bench Ruling re: Proposed Class Settlement, *In re Symantec Corp. S'holder Deriv. Litig.*, C.A. No. 2019-0224-JTL, at 19 (Del. Ch. May 4, 2023) (Trans.); *id*. at 20 ("If we allowed injunction applications against settlement disclosures using the same standards that we use for public company disclosures, every settlement would get enjoined.").

more before evaluating the settlement.[38] Settling defendants have little reason to take vigorous discovery and plaintiffs may omit relevant information.[39]

The Court's order requiring the parties to give Objectors access to discovery,[40] however, has made a more developed record possible. That record shows that the Plaintiffs have little in common with the typical Ape.

1. Franchi

Franchi is no Ape: he only purports to have owned continuously since November 8, 2022, a few months before his books-and-records demand.[41] Discovery shows that he owns only 32 shares of Common stock and no Preferred.[42]

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[38] *See* Kittila Aff., Ex. C (requiring plaintiffs to submit additional data in advance of settlement hearing).

[39] For instance, in 2021 a California federal judge issued an order requiring BLBG "in future cases . . . seeking appointment as class counsel" to notify courts of his decision criticizing BLBG's failure to disclose a potential conflict. *See SEB Invs. Management AB v. Symantec Corp.*, 2021 WL 1540996, at *2 (N.D. Cal. Apr. 20, 2021). Unless that order has been reversed or rescinded, the lack of citation in Plaintiffs' Brief is curious.

[40] D.I. 312.

[41] D.I. 206, Franchi Aff., ¶ 2. *Compare* C.A. 2023-0216, D.I. 1, Franchi Aff. ¶ 1 (averring that Franchi owned shares "at the time of the wrongs complained of" in his Complaint).

[42] Conf. Disc. DB, at Franchi_0000000001.

Plaintiffs tout that Franchi "searched for and produced documents and trading records."[43] He produced two documents, one from his counsel.[44]

Franchi's tiny, late-purchased position may be atypical of Apes, but it is consistent with his history of federal and state court litigation. Since 2017, Franchi has filed at least 27 federal and 12 Delaware class actions.[45] In the majority of Franchi's federal cases—mostly disclosure challenges this Court has criticized[46]—he filed notices, required under the PSLRA, showing purchases of small amounts of stock, ranging from slightly over $2,500 to a little under $20.[47] Among Franchi's cases, Objector's counsel have found none that have gone to trial.

2. Allegheny

Based on the discovery record, Allegheny owned 879 shares of Common stock on February 8, 2023, and received a similar number of APEs as a dividend in August 2022.[48] Allegheny claims to have owned continuously since December

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43 PB at 61.

44 Conf. Disc. DB, at Franchi_0000000001; *id.* at Franchi_0000000009.

45 *See* Kittila Aff., Ex. D. There may be more cases: these are all Ms. Izzo's counsel have been able to find in the time allotted.

46 *In re Trulia Inc. S'holder Litig.*, 129 A.3d 884 (Del. Ch. 2016).

47 *See* Kittila Aff., Ex. D.

48 Conf. Disc. DB, at ACR-AMC-00000332; *id.* at ACR-AMC-00000334. It is unclear whether Allegheny still owns the APEs.

2015.[49] But Allegheny is a pension fund, not an Ape—and in fact purports to own fewer Common shares than Ms. Izzo.

This Court, Congress, and academics have sometimes expressed a preference for large institutional stockholders as class representatives.[50] Empirical studies, however, show that some benefits—particularly the lower fees paid to class counsel—disappear when pension fund officials have received campaign contributions from their attorneys.[51] If Defendants inquired into such potential conflicts of interest, it is not evident from the discovery record.

Public data is difficult to analyze, because contributions can be made by relatives or spouses of counsel and are difficult to discern,[52] but they reveal at least one concerning contribution. A political committee related to Allegheny board

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49 D.I. 206, Allegheny Aff. ¶ 2.

50 *See, e.g.*, *Raider v. Sunderland*, 2006 WL 75310, at *2 (Del. Ch. Jan. 4, 2006) (noting that Delaware prefers to name large stockholders as lead plaintiffs); 15 U.S.C. § 78u-4(a)(2)(A)(iv) (establishing rebuttable presumption that "the most adequate plaintiff" in securities class actions "has the largest financial interest in the relief sought by the class"); Stephen J. Choi, Drew T. Johnson-Skinner & A.C. Pritchard, *The Price of Pay to Play in Securities Class Actions*, 8 J. EMPIRICAL LEGAL STUD. 650 (2011).

51 Choi, *supra* note 50, at 678 ("The evidence presented here shows that the hard bargaining by state pension funds disappears when those funds receive political contributions—particularly when those contributions are large.").

52 Defendants, of course, could have asked Allegheny's board members to disclose such contributions in discovery.

member John K. Weinstein received over $112,000 in contributions from Steamfitters Local Union 449 ("Steamfitters") in 2022.[53] Steamfitters' pension fund is another frequent litigator, whose application for a $50,000 incentive award is currently pending before this Court.[54] The web of relationships between counsel, Allegheny, and other frequent-filing plaintiffs is not clear on this record.

3. Munoz

Franchi and Allegheny have moved to withdraw Munoz as a class plaintiff after he failed to provide the affidavit required by Rule 23(e).[55] Mr. Munoz appears to have bought and sold shares throughout the class period and discovery suggests that as of approximately January 31, 2023, he owned approximately 53,787 Common shares and 3,065 Preferred units across multiple accounts.[56]

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53 *See* Kittila Aff., Ex. E.

54 *See* Kittila Aff., Ex. F, at 64.

55 *See* D.I. 344. The Court held Plaintiffs' motion in abeyance. D.I. 369. Plaintiffs speculate that Mr. Munoz has withdrawn due to "online attack," while Ms. Izzo reasons that he may no longer support the settlement, as he is the only Plaintiff who will suffer a financial loss that will not be offset by the requested incentive fee. *Id*. The Court considered both explanations to be "plausible, although the plaintiffs' is more supported; and neither explanation comes from Munoz himself." *Id*. at 4.

56 Conf. Disc. DB, at Munoz_0000257; *id.* at Munoz_0000155; *id.* at Munoz_0000846.

Yet even Mr. Munoz's stockholding is unusual, because nearly half of his shares are held in a margin account.[57] The margin account shows regular trading activity (including one set of trades made after the date Munoz's counsel signed the confidentiality agreement associated with his 220 demand).[58] The discovery record stops in February, however, so it is impossible to determine whether these margin trades have continued.

As the Securities and Exchange Commission notes, "[t]he downside to using margin is that if the stock price decreases, substantial losses can mount quickly."[59] Defendants, of course, never deposed Munoz to ask, among other things, whether the margin account might render him more risk averse than other stockholders to financial distress at AMC.

4. Izzo

Ms. Izzo, meanwhile, is an Ape to the core. She first purchased shares in February 2021 and presently holds 3,106 shares of Common stock and 4,244

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57 *Id.* at Munoz_0000155.

58 *See id.* at Munoz_0000105 (confidentiality agreement signed by counsel on January 30, 2023); *id.* at Munoz_0000443 (confirmations of trades on February 1, 2023).

59 U.S. Securities and Exchange Commission, *Investor Bulletin: Understanding Margin Accounts*, https://www.sec.gov/oiea/investor-alerts-and-bulletins/ib_marginaccount.

Preferred units.[60] Based on the discovery record, she owns more Common shares than every Plaintiff except Munoz, and more APEs than all three Plaintiffs combined.

Unlike Plaintiffs, Ms. Izzo does not believe that this case is merely "about voting rights."[61] It is a case about Defendants' attempts to strip value from Common stockholders because they refused to concede to Aron's demands. Because the lawsuit is about protecting the Apes' investments—not just their suffrage—Ms. Izzo intends to intervene and seek leadership of the Class following resolution of the present motion.

ARGUMENT

Ms. Izzo's objection should be sustained for three reasons. *First*, the Settlement is unfair, inadequate, and inequitable because it trades away claims that are ten time more valuable than the settlement consideration in exchange for a release that exceeds the claims litigated in this action. *Second*, Plaintiffs should not be permitted to impose a non-opt-out class on stockholders who vocally oppose a deal brokered by Plaintiffs who do not adequately represent them. Third, Plaintiffs'

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60 *See* Kittila Aff., Ex. G.

61 PB at 40.

request for attorneys' fees and incentive awards vastly exceed what Delaware law holds reasonable.

I. THE SETTLEMENT SHOULD NOT BE APPROVED.

The Settlement should be rejected as a bad deal for the Class. While many of the *Polk v. Good* factors disfavor this settlement,[62] its fatal flaw lies in the imbalance between the "give"—claims worth in excess of $1.4 billion—and the "get"—consideration worth $129 million (under very charitable assumptions).

In considering whether a settlement is fair and reasonable, the Court "play[s] the role of fiduciary in its review of these settlements and accordingly must engage in more than a cursory examination of the facts underlying each settlement."[63] It "looks to the facts and circumstances upon which the claim is based, the possible defenses thereto, and then exercises a form of business judgment to determine the

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62 These factors are (1) the probable validity of the claims, (2) the apparent difficulties in enforcing the claims through the courts, (3) the collectability of any judgment recovered, (4) the delay, expense and trouble of litigation, (5) the amount of the compromise as compared with the amount and collectability of a judgment, and (6) the views of the parties involved, pro and con. *In re Coleman Co. Inc. S'holders Litig.*, 750 A.2d 1202, 1206 (Del. Ch. 1999) (citing *Polk v. Good*, 507 A.2d 531, 536 (Del. 1986)).

63 *In re Resorts Int'l S'holders Litig. Appeals*, 570 A.2d 259, 266 (Del. 1990).

overall reasonableness of the settlement."[64] Settlements and fee awards are subject to "rigorous scrutiny,"[65] and proponents bear the burden of proving fairness.[66]

A. The Settlement is a Bad Deal for AMC Stockholders.

The "most important yardstick of a settlement's fairness is [the Court's] business judgment."[67] Here, the Settlement abandons claims that would preserve—on Plaintiffs' own assumptions—over $1.4 billion for the Class, in exchange for consideration worth less than 10% of that value. In other words, a rational stockholder would press claims if they believed they had more than a 1-in-10 chance of success. Class claims here are much stronger.

1. The Settlement Gives Away Valuable Claims.

Only a few months ago, Plaintiffs believed in their cause. They alleged that creating the APEs was a "violation of [Defendants'] fiduciary duties and the DGCL."[68] Now, with a fee and incentive award in view, they conclude that "the

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64 *Polk*, 507 A.2d at 536.

65 *See In re Coleman Co.*, 750 A.2d at 1212.

66 *See Lewis v. Hirsch*, 1994 WL 263551, at *3 (Del. Ch. June 1, 1994) (citing *Barkan v. Amsted Industries, Inc.*, 567 A.2d 1279, 1286 (Del. 1989)).

67 *Ryan v. Gifford*, 2009 WL 18143, at *5 (Del. Ch. Jan. 2, 2009) (quoting *Barkan*, 567 A.2d at 1284).

68 Allegheny Compl. ¶ 50; *see also* Compl. ¶ 164 (alleging that "creating and issuing Preferred Stock and APEs" was a breach of fiduciary duty).

Board had the legal authority to create and issue" the APEs and that "a full invalidation of the APEs was always (and remains) highly unlikely."[69] Plaintiffs' newfound pessimism is unfounded. Common stockholders who do not share this bleak outlook should be allowed to pursue viable claims.

a. The Court Can Provide Complete Relief to the Class.

Start with a red herring: that the Court must "wipe out the investment of innocent parties"—*i.e.*, invalidate the issuance of Preferred Equity Units—to provide complete relief to the Class.[70] APE purchasers traded on the basis of AMC's assurances that the Company did not expect to propose the Conversion "any time soon," and that it was "more likely than not that" Common and APEs "will trade as two separate securities for quite some time to come."[71] An injunction maintaining Preferred holders' expectations is no injustice.

The Court possesses multiple tools to achieve this end without invaliding the APEs altogether.[72] It could enjoin enforcement of the Deposit Agreement: absent the APE's proportional voting, the Transaction fails.[73] Similarly, the Court could

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69 PB at 39.

70 *Id.*

71 Compl. ¶ 108.

72 *Id.* ¶ 101.

73 *See* Section A.2, *supra*.

enjoin Antara from exercising voting rights gained as part of an inequitable deal. Any remedy that prevents the Transaction avoids over $1.4 billion in harm to the Class, while respecting the Preferred's reasonable expectations that their units would not convert in the near future.

Second, the unique circumstances of this case allow the Court to provide complete post-trial relief even if a preliminary injunction motion were unsuccessful.[74] Suppose that trial proved that Defendants breached their fiduciary duties by any of (a) issuing the APEs; (b) entering into the Depository Agreement; (c) agreeing to the Antara Transaction; or (d) engineering the Conversion and Reverse Split. The Court could provide equitable relief by to the Class by (a) requiring Defendants to disgorge their interest in the 2.4 million shares and units they own personally[75] and (b) causing AMC to issue additional stock necessary to restore Class Members to their pre-Transaction share of market capitalization.[76] Following the Reverse Split, AMC would have sufficient authorized stock.

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74 Plaintiffs' Brief's does not even ***consider*** the availability of post-trial remedies apart from a permanent injunction. *See* PB at 39-40.

75 DB, Ex. W, at 22.

76 *See* Section A.1, *supra*.

In short, Plaintiffs are not abandoning claims due to "apparent difficulties in enforcing the claims through the courts" or the "collectability of any judgment recovered."[77] The Apes correctly believe the Court can remedy Defendants' harms.

b. The Settling Parties Undervalue the Released Claims.

Nor is Plaintiffs' newfound pessimism concerning the strength of Class claims warranted. The Class holds strong arguments that AMC directors breached their fiduciary duties under *Blasius*.

Schnell v. Chris-Craft Industries, Inc. long ago established that "inequitable action does not become permissible simply because it is legally possible."[78] In this case, even assuming that the Board's actions were legally possible, they were nonetheless inequitable and impermissible under Delaware law. The AMC Board created the APEs—and in particular, entered into the Depository Agreement—for the purpose of circumventing the will of the Class, which had twice denied Defendants' attempt to authorize more common stock.

In *Blasius Industries, Inc. v. Atlas Corp.*, this Court found that "a decision by the board to act for the primary purpose of preventing the effectiveness of a

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77 *Polk*, 507 A.2d at 536.

78 285 A.2d 437, 439 (Del. 1971).

shareholder vote inevitably involves the question who, as between the principal and the agent, has authority with respect to a matter of internal corporate governance."[79] In such cases, even though the board may have acted in good faith in preventing the effectiveness of a stockholder vote, the board "bears the heavy burden of demonstrating a compelling justification for such action."[80]

Defendants argue that *Blasius* applies only in cases involving elections of directors or votes having consequences for corporate control.[81] That is not accurate. *Blasius* applies in *any* case in which a board of directors attempts to interfere with the stockholder franchise: the authority of stockholders applies "in a very specific way in [*Blasius*] which deals with the question who should constitute the board of directors of the corporation," but also applies "*in every instance* in which an incumbent board seeks to thwart a shareholder majority."[82] Chancellor Allen held in *Blasius*:

> Action designed principally to interfere with the effectiveness of a vote inevitably involves a conflict between the board and a shareholder majority. Judicial review of such action involves a determination of the legal and equitable obligations of an agent towards his principal. This is not, in my opinion, a question that

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79 564 A.2d 651, 659-60 (Del. Ch. 1988).

80 *Id.* at 661.

81 DB at 18-19.

82 *Blasius*, 564 A.2d at 660 (emphasis added).

> a court may leave to the agent finally to decide so long as he does so honestly and competently; that is, it may not be left to the agent's business judgment.[83]

Despite the passage of 52 years since Chancellor Allen's decision, the *Blasius* standard is alive and well. In the 2003 case *MM Companies, Inc. v. Liquid Audio, Inc.*, the Delaware Supreme Court cited Chancellor Allen's "cogent explanation" in *Blasius* concerning why the business judgment standard is inappropriate where a Board has tampered with the stockholder franchise: "'[t]he ordinary considerations to which the business judgment rule originally responded are simply not present in the shareholder voting context.'"[84] Rather than limiting *Blasius* to cases involving corporate control, the Supreme Court applied the *Blasius* standard *within* the context of a *Unocal* framework, noting that "[b]oth standards recognize the inherent conflicts of interest that arise when a board of directors acts to prevent shareholders from effectively exercising their right to vote either contrary to the will of the incumbent board members generally *or* to replace the incumbent board members in a contested election."[85]

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83 *Id.*

84 813 A.2d 1118, 1128 (Del. 2003) (quoting *Blasius*, 564 A.2d at 659).

85 *Id.* at 1129 (citing *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946 (Del.1985)) (emphasis added).

Similarly, in the 2021 case, *Coster v. UIP Companies, Inc.*, the Delaware Supreme Court found that "Delaware courts 'have remained assiduous in carefully reviewing *any* board actions designed to interfere with or impede the effective exercise of corporate democracy by shareholders, especially in an election of directors.'"[86] *Liquid Audio* and *Coster* thus confirm the principle that enhanced scrutiny applies outside the context of elections of directors. Here, Defendants cannot bear the heavy burden of demonstrating a compelling justification for circumventing the votes of AMC's common stockholders.

Defendants cite then-Vice Chancellor Strine's 2007 opinion in *Mercier v. Inter-Tel (Delaware), Inc.*, in which the Court proposed that "the *Blasius* standard should be reformulated."[87] However, that proposed reformulation was not adopted by the Delaware Supreme Court in its 2021 decision in *Coster*.[88] Even in *Mercier*, the Court concluded that the corporation's directors had "a compelling justification—the protection of their stockholders' financial best interests—for a

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86 255 A.3d 952, 960-61 (Del. 2021) (quoting *MM Cos.*, 813 A.2d at 1126) (emphasis added).

87 929 A.2d 786, 788 (Del. Ch. 2007).

88 255 A.3d 952.

short postponement in the merger voting process to allow more time for deliberation."[89]

Even if *Mercier* were the final word on *Blasius* (and it is not), *Mercier* is distinguishable. First, more is at stake in this case than in *Mercier*. *Mercier* involved the postponement of a stockholders' meeting, while this case involves the stripping of economic value from the common stockholders, contrary to the stockholders' best interest. Then-Vice Chancellor Strine in *Mercier* stated that post-*Blasius* cases "display understandable discomfort about using such a stringent standard of review in circumstances when a stockholder vote has no bearing on issues of corporate control."[90] But this case does involve corporate control, albeit in a unique way. The typical control dispute involves directors seeking to maintain themselves in office by directly restraining a stockholder vote. Here, Aron is grasping for control by using AMC assets to purchase himself a new, more compliant electorate.[91]

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[89] 929 A.2d at 788.

[90] *Id.* at 809.

[91] Similarly, Plaintiffs have too readily conceded the Section 242(b) arguments. Two precedents they now contend weigh against their Complaints were good law the day Plaintiffs filed, and have gotten no worse since. *See* PB at 36 (citing *Hartford Accident. & Indemnity Co. v. W. S. Dickey Clay Manufacturing Co.*, 24 A.2d 315 (Del. 1942) and *Orban v. Field*, 1997 WL 153831 (Del. Ch. Apr. 1, 1997)). Vice Chancellor Laster's recent opinion, meanwhile, relies upon those decisions at most reluctantly. *See Electrical Workers Pension Fund, Local 103, IBEW v. Fox Corp.*, C.A. No. 2022-1007-JTL (Del. Ch. Mar 29, 2023) (Trans.).

Meanwhile, Plaintiffs' concerns (and Defendants' arguments) about the balance of the equities crumble after the first-quarter earnings results.[92] Defendants' contention that further sales of APEs are "dilutive" to Common stockholders is only true if the APEs convert. If they do not, additional issuance of APEs will likely dilute Preferred holders more than Common—as happened when AMC's exuberant selling streak caused APEs to fall below the $1 per unit threshold.[93] As for the

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The *Fox* opinion virtually invited an appeal, noting that it would be decided otherwise if *Dickey Clay* were not binding precedent. *Id*. at 67-68. And Vice Chancellor Laster's policy argument favoring class votes—Kaldor-Hicks efficiency, the idea "that a transaction is efficient if one side is sufficiently better off that it can compensate the other side for its losses" (*id*. at 56)—applies here. A class vote would permit AMC Common stockholders to withhold approval of the Transaction until the APEs agreed to give up their windfall.

The Settlement would allow Defendants to avoid that Kaldor-Hicks-efficient outcome by permitting two shareholders (who stand to gain more in incentive awards than they lose in the Transaction) to bargain away that right for 10% of potential damages. A more vigorous stockholder might use this case as grist for an *amicus* brief in the *Fox* appeal, arguing that a more thorough rethinking of *Dickey Clay* is necessary to deter Delaware directors from ever again engaging in this type of scheme.

[92] PB at 37-38; DB at 28-31. Defendants' appeal to the sanctity of stockholder voting rights (DB at 30) is akin to the proverbial son who murders his parents and pleads for mercy as an orphan. Defendants' actions—including their deliberate concealment of the effect of the Depository Agreement and the Antara transaction—were taken to frustrate Common stockholders' refusal to allow more shares to be issued. There is no equity in sustaining such a scheme.

[93] *See* DB at 13-14 (noting the increasing discount between APEs and Common as Defendants issued more APEs); PB at 20. Absent the Conversion, APE would be dilutive to the Class only under limited circumstances, such as a merger.

possibility of financial catastrophe, AMC's 2023 Q1 Earnings Release and Antara's debt capacity analysis weigh against allowing Defendants to consummate an inequitable transaction based on a phantom financing menace.

c. The Release Violates Griffith v. Stein *and* In re PHLX.

Plaintiffs not only give away the valuable claims they prosecuted, they offer Defendants insurance against tangential claims, causes of action they never pursued, and even future claims. Delaware law does not sanction Plaintiffs' generosity.

As the Delaware Supreme Court recently emphasized, "[t]o satisfy due process concerns, '[a] settlement can release claims that were not specifically asserted in an action but can only release claims that are based on the same identical factual predicate or the same set of operative facts as the underlying action."[94] Thus, "a release may be overbroad if it could be interpreted to 'encompass any claim that has some relationship—however remote or tangential—to any 'fact,' 'act' or conduct 'referred to' in the Action.'"[95] In other words, a release is overbroad if it

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94 *Griffith v. Stein*, 283 A.3d 1124, 1134 (Del. 2022) (quoting *UniSuper Ltd. v. News Corp.*, 898 A.2d 344, 347 (Del. Ch. 2006) (internal quote omitted)).

95 *UniSuper*, 898 A.2d at 347 (quoting *Green v. Phillips*, 2000 WL 33521109, at *1 (Del.Ch. June 28, 2000)).

releases claims based on a set of "tangential facts, as opposed to operative or core facts."[96]

Plaintiffs' Released Claims, as defined in the Settlement, clearly encompasses claims based on tangential facts:

> "Released Plaintiffs' Claims" means any and all actions . . . of every nature and description, whether or not currently asserted, whether known claims or Unknown Claims, suspected, existing, or discoverable, whether arising under federal, state, common, or foreign law, and whether based on contract, tort, statute, law, equity, or otherwise (including, but not limited to, federal and state securities laws), that Plaintiffs or any other Settlement Class Member: (i) asserted in the *Allegheny* Complaint or the *Munoz* Complaint; or (ii) ***ever had, now have, or hereafter can, shall, or may have***, directly, representatively, derivatively, or in any other capacity that, in full or part, ***concern, relate to, arise out of, or are in any way connected to or based upon the allegations, transactions, facts, matters, occurrences, representations, or omissions*** involved, set forth, or referred to in the Complaints ***and that relate to the ownership of Common Stock and/or AMC Preferred Equity Units during the Class Period***, except claims with regard to enforcement of the Settlement and this Stipulation.[97]

This astonishingly broad release would cover not only claims Plaintiff pursued, but potentially:

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96 *Id*.

97 Settlement ¶ 1(r) (emphasis added).

- Derivative claims related to the Hycroft mine or similar investments made by AMC. They are mentioned in the Complaint,[98] and even if the purchases precede the class period, they "relate" to class ownership due to the continuous ownership requirement;[99]

- Derivative challenges to AMC's decision to grant awards under or amend the Company's long-term incentive plan, for the same reasons;[100]

- Any securities lawsuits related Aron's tweets after August 3, 2022;[101]

- Potentially, the Company's decision to approve, on February 23, 2023, "special awards" of compensation in lieu of vesting of the "2022 PSU awards" disclosed in the 2023 Q1 10-Q.[102] It is at best unclear whether the Board's decision was "in any way connected to" Defendants' decisions to pursue the Transaction.

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98 Compl. ¶ 83.

99 *Lewis v. Anderson*, 477 A.2d 1040, 1046 (Del. 1984) ("[A] derivative shareholder must not only be a stockholder at the time of the alleged wrong and at time of commencement of suit but that he must also maintain shareholder status throughout the litigation.").

100 Compl. ¶¶ 92, 93.

101 *See, e.g.*, Allegheny Compl. ¶¶ 57, 59.

102 *See* Kittila Aff. Ex. H, at 38.

The last item illustrates the unknowably broad scope of the release: ***any*** action taken by the Board since August 2, 2023, known or unknown to stockholders, may be subject to the Settlement so long as Defendants can later maintain its action is "relate[d] to" their decision to dilute Common stockholders. In short, the release applies to "any claim that has *some* relationship—however remote or tangential—to any 'fact,' 'act' or conduct 'referred to' in the Action."[103] That is overbroad under Delaware law.[104]

The Release also violates recent Delaware Supreme Court authority by purporting to abandon claims the Class "hereafter can, shall, or may have" against Defendants. It is black letter law that "a release is overly broad if it releases claims based on a set of operative facts that will occur in the future."[105] Yet the release explicitly bars any claim that could arise based on a future event so long as it has "any connection to" any "transaction" or even "fact" in the Complaints. Numerous

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[103] *In re Philadelphia Stock Exchange, Inc.*, 945 A.2d 1123, 1146 (Del. 2008) ("*PHLX*") (quoting *UniSuper*, 898 A.2d at 347).

[104] This Court has recently refused to approve at least two settlements based upon overbreadth following *Griffith v. Stein*. *See Schumacher v. Loscalzo*, C.A. No. 2022-0059-LWW at 54–61 (Del. Ch. Sept. 21, 2022) (Trans.) (refusing approval to settlement that included unlitigated disclosure claims); *Schumacher v. Dukes*, C.A. No. 2020-1049-PAF at 34 (Del. Ch. Nov. 17, 2022) (Trans.) (refusing to approve settlement that released claims through date of settlement approval, rather than those challenged in complaint).

[105] *Griffith*, 283 A.3d at 1134 (quoting *PHLX*, 945 A.2d at 1146).

fact patterns fall within this space. For instance, suppose that a federal investigation discovers health-and-safety or environmental wrongdoing at the Hycroft mine, leading to massive monetary penalties, along with credible evidence that AMC management was aware of this at the time of investment. A *Caremark*-style complaint to recover damages that only arose at the time of the government investigation may nonetheless be barred.

The Settling Parties will no doubt bemoan the "speculation" inherent in the last paragraph, but that is the point. Settlements compliant with *Griffith*, *PHLX*, and *UniSuper* do not invite speculation because they can only release claims relating to past events.

In sum, the Settlement releases the valuable claims Plaintiffs did bring; potentially valuable claims Plaintiff never pursued; and future claims of unknowable value. These clearly exceed the Settlement's benefit.

2. Plaintiffs Exaggerate the Value of the Settlement Consideration.

Plaintiffs' $129 million valuation of the settlement consideration rests on the same flawed assumption Defendants made concerning Preferred Equity Units. Defendants predicted, unreasonably, that the common and preferred would trade at the same price.[106] (Defendants' own authority considered it "most likely" that APEs would trade below Common, as they did.[107]) Plaintiffs, similarly unreasonably, assume that the Settlement and Transaction, which amount to a betrayal of the retail stockholders that sustained the Common share price through the pandemic, will be unaffected.[108] The Settlement and Transaction may destroy value if retail stockholders flee, leaving only former preferred purchasers like Antara, who purchased at less than $1 per share,[109] to sustain the share price. Plaintiffs' settlement valuation would tumble with it.[110] As Plaintiffs concede, "one cannot definitively predict the price at which AMC stock will trade following the Conversion. . . ."[111]

Plaintiffs appear entirely unconcerned with the Settlement's effect on small investors, despite AMC's largely retail stockholder base. Consider a small stockholder holding 79 shares (worth $453.46 under Plaintiffs' assumptions). Will she receive 7 post-Conversion shares (too little to share in the Settlement

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106 DB at 12.

107 *See* DB, Ex. V, at 7.

108 *See* PB at 31; Ripley Aff., ¶ 4(c).

109 *See* PB, Ex. 13, at 2.

110 As noted below, neither Plaintiffs nor their counsel seek to be paid in Common stock. They want cash.

111 PB at 9.

Consideration) or 7.9 (thus, perhaps, benefitting from the Settlement)? Despite the prevalence of Class Members with small holdings, Plaintiffs are coy, with their expert saying only that "predicting the amount of cash payment for fractional shares cannot be done reliably in advance without additional information . . . ."[112] If Plaintiffs' expert cannot know, how can small stockholders?

Finally, it's worth noting that Plaintiffs' assumptions flatter the value of the Settlement relative to the harm the transaction does to AMC's common stockholders. The $1.4 billion estimate described above is based upon the ratio of Common to Preferred prices that prevailed on May 3, 2023—after arbitrageurs had started to bid up the price of APEs in anticipation of Conversion. Were the Settlement rejected and another stockholder allowed to prosecute the case to a permanent injunction, the price of APEs would likely fall, and Common shares rise.[113] In other words, the $1.4 billion estimate of potential damages is conservative, and the difference between the Settlement's value and potential recovery even more stark.

B. The Other *Polk* Factors Weigh Against Approval.

As for the other *Polk* factors, Plaintiffs can hardly invoke the "delay and expense of litigation" to justify their settlement. While the Settlement process has

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[112] Ripley Aff. ¶ 5.

[113] As noted in the Complaint, the price of APEs jumped after AMC announced its intent to convert them into Common stock. Compl. ¶ 36.

been complex, the litigation itself has proven no more costly or lengthy than a typical expedited Chancery claim. Certainly, the cost is insignificant in comparison to a possible $1.4 billion dollar benefit to the Class.

And Plaintiffs only obliquely address the elephant in the room: the views of the parties involved, pro and con. This Settlement has evoked stockholder hostility likely unprecedented in Chancery history. Most settlements draw no objections;[114] a handful draw one or two. The docket in this case contains over 350 entries, mostly generated by stockholders dissatisfied with Plaintiffs' bargain.

In sum, the Settlement offers too little consideration to compensate the Class for the harms actually litigated in this case, much less the overbroad and unlawful release offered by Plaintiffs. The Court, in exercising its business judgment, should reject it.

II. THE CLASS SHOULD NOT BE CERTIFIED AS PROPOSED.

Of course, Plaintiffs are free to exercise their own business judgment and settle their individual claims. (Franchi has dismissed dozens of cases with prejudice only to himself.[115]) They should not be permitted to drag nonconsenting

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[114] *See In re Trulia, Inc. S'holder Litig.*, 129 A.3d 884, 893 (Del. Ch. 2016) (at settlement, the Court "rarely receives any submissions expressing an opposing viewpoint").

[115] *See* Kittila Aff., Ex. D.

stockholders along with them. AMCs stockholders never voted to be represented by a professional plaintiff and a pension fund.

At the very least, the Court should permit non-consenting stockholders to opt out to pursue their own claims. The arguments against class certification are particularly acute here, where Plaintiffs and their fellow class members seek different forms of relief and there are valid concerns about Plaintiffs' adequacy unexplored by Defendants' discovery.

A. Due Process Requires Providing an Opt-Out to the Apes.

A settlement cannot "deny a discretionary opt-out right where the policy favoring global settlement [is] outweighed by due process concerns."[116] The decision "must be assessed based on the facts and circumstances at the time of the settlement/certification hearing."[117] In *In re Celera Corporation Shareholder Litigation*, the Supreme Court reversed approval of a non-opt-out settlement where a class plaintiff was "barely" adequate and a significant stockholder was ready to prosecute identifiable and supportable claims for money damages.[118] The due process concern here, while different, is of equal significance.

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116 *In re Celera Corp. S'holder Litig.*, 59 A.3d 418, 436 (Del. 2012).

117 *Id*.

118 *Id*.

"[U]nless the relief sought by the particular plaintiffs who bring the suit can be thought to be what would be desired by the other members of the class, it would be inequitable to recognize plaintiffs as representative, and **a violation of due process** to permit them to obtain a judgment binding absent plaintiffs."[119] Here, Ms. Izzo and other dissenting stockholders desire a permanent injunction preventing over $1.4 billion in harm to Common stockholders (under Plaintiffs' assumptions), or a post-Transaction damages ruling restoring their ownership stake. Plaintiffs, on the other hand, admit that even had they won a preliminary injunction, they would only have "leverage[d] the injunction to achieve an economic benefit for Class members" to "offset[] some of this dilution."[120] Plaintiffs' desire is consistent with their decision, in selecting an operative complaint, to select the one that did not threaten Defendants with damages.[121]

The parties' citations to cases involving merger settlements or compensation plans are not compelling.[122] As Chancellor Allen noted, in a merger case "all

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119 *Prezant*, 636 A.2d at 915 (emphasis added).

120 PB at 40, 9; *see also* PB at 2, 38.

121 *See* DB at 33 n.114.

122 *See* PB at 46-47; DB at 31-34. Notably, Defendants cite to several certification orders that contain no evidence of having been contested by any objector. *See* DB at 32 (citing *Turberg v. ArcSight, Inc.*, 2011 WL 4445653, at *1 (Del. Ch. Sept. 20, 2011)).

members of the stockholder class are situated *precisely similarly* with respect to every issue of liability and damages" and "to litigate matters separately would subject the defendant to the risk of different standards of conduct with respect to the same action."[123] That is not the case here: the conflict involves antagonistic interests between AMC Common stockholders and Preferred unitholders as much as between the Class and directors.[124] Apart from Defendants, all AMC Common stockholders during the class period are members—even if they own more APEs than Common, would profit from the Transaction, and would lose their windfall if it were enjoined. All Class members are thus not "situated precisely similarly" with respect to damages—some lose, and some win, if the Settlement and Transaction proceed. As for inconsistent adjudication, without an opt-out, the propriety of Aron's actions will never be adjudicated at all.[125]

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123 *Turner v. Bernstein*, 768 A.2d 24, 30 (Del. Ch. 2000) (emphasis added) (quoting *In re Mobile Communications Corp. of Am., Inc. Consol. Litig.*, 1991 WL 1392, at **15, 16 (Del. Ch. Jan. 7, 1991) (emphasis omitted)).

124 Nor does *In re Straight Path Communications Inc. Consolidated Stockholder Litigation* weigh against an opt-out right. 2022 WL 2236192, at *10 (Del. Ch. June 14, 2022) (cited PB at 47; DB at 32). *Straight Path* rejected a class certification challenge ***by defendants*** who speculated that some stockholders might own shares in both a company and its former parent. *Id*. at *2. It did not address whether opt-out rights are appropriate where, as here, dozens of stockholders have appeared to oppose their purported representatives.

125 The Court could potentially address some issues by dividing the class into sub-classes. *See Goodrich v. E.F. Hutton Group, Inc.*, 1993 WL 94456, at *4 (Del.

Plaintiffs' "pragmatic" concerns are, in fact, self-inflicted wounds.[126] The Parties chose to settle without first certifying a class and allowing stockholders to litigate the question of opt-outs. If Plaintiffs believe it too burdensome to construct a process that permits dissenting stockholders to make their own decision, the solution is to reject the settlement, not drag along dissenters. Similarly, Plaintiffs should not be permitted to choose settlement consideration in a form that they say is too burdensome to allow opt outs, and then argue that their unilateral decision requires a non-opt-out settlement.

The number of stockholder objectors in this case is unprecedented. Given the level of dissent and the significant damage that the Settlement and Transaction inflict upon the "Apes," not permitting them to opt out would be fundamentally inequitable.

Ch. Mar. 24, 1993) (dividing a class into two subclasses rather than ruling on the merits of a statute-of-limitations defense that applied to only some class members). For instance, a subclass of stockholders who owned before Defendants issued the Preferred Equity Units (and thus possess derivative claims Plaintiffs propose to release) could be separated from a subclass who purchased after. Given the breadth of claims Plaintiffs propose to release, however, attempting to divine appropriate subclasses could be more unwieldy than simply permitting dissenting stockholders to opt out.

[126] PB at 49-50.

B. The Settlement Cannot Be Certified Under Rule 23(a)(4).

Approving the Settlement in its present, non-opt-out form would offend due process. It is not a question of whether "the relief sought by the particular plaintiffs . . . can **be thought to be** what would be desired by the other members of the class."[127] An economic "offset" to dilution is not what many members of the Class desire, as attested by the very high number of objectors. Now that Plaintiffs admit they will no longer seek a permanent injunction, they should not be permitted to represent stockholders who would.

A "determination of the adequacy of a class representative is an 'essential component' of the settlement approval process."[128] A settlements' proponents bear the burden of establishing adequacy, as they do with all class certification elements.[129] Plaintiffs offer no facts on this point, asserting merely that the Settlement itself satisfies the mandated inquiry.[130] This is pure *ipse dixit*.

The Court's grant of objector access to the discovery record, however, separates this case from the typical settlement where such bare-bones presentations

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127 *Prezant*, 636 A.2d at 924 (emphasis added).

128 *In re Infinity Broadcasting Corp. S'holders Litig.*, 802 A.2d 285, 291 (Del. 2002) (quotation omitted).

129 *Dieter v. Prime Computer, Inc.*, 681 A.2d 1068, 1071 (Del. Ch. 1996).

130 PB at 43. If Plaintiffs withheld facts relevant to this argument for reply, objectors should have the opportunity to address any new information in a sur-reply.

prevail unopposed. Even apart from Plaintiffs' abandonment of a permanent injunction as a form of relief, the record casts doubt upon their ability to represent the Class. The discovery record reveals disquieting facts about each Plaintiff.

Franchi. Franchi, who produced only two documents in discovery, owns only 32 shares and offers no evidence that he purchased them before November 2022.[131] He may receive nothing in the Settlement. It is unclear how he could swear, in his complaint, to have owned AMC stock "at the time of the wrongs complained of"—including, for instance, issuance of APEs—in his complaint.[132] His history of sue-and-settle litigation and frequent pursuit of mootness fees for his counsel raises doubts that he ever intended to pursue a permanent injunction.

Allegheny. Institutional stockholders are often touted as superior representatives due to their generally larger investments and their superior oversight of class counsel. Allegheny, however, owns relatively few shares: Izzo alone holds more than three times more Common shares and Preferred units.[133] Allegheny is also a frequent litigator, but typically pursues cases where the fund has much greater

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131 Conf. Disc. DB, at Franchi_0000000001; D.I. 206, Franchi Aff. ¶ 2.

132 2023-0216, D.I. 1, Franchi Aff. ¶ 1.

133 *Compare* Kittila Aff., Ex. G (3,106 AMC and 4,244 APEs) *with* Conf. Disc. DB at ACR-AMC-00000332-34 (879 AMCs and 879 APEs).

exposure.[134] And the presumed advantages of institutional stockholding disappear when the individuals who manage pension funds receive political donations.[135] Publicly available documents show large and concerning contributions to at least one Allegheny board from another frequent litigator.[136] If Defendants took any discovery on this issue, it is not reflected in the documents Allegheny produced.

Munoz. Even before his apparent withdrawal, Munoz's large margin positions—a little less than half his shares, with the extent of his margin exposure unknown—raise questions concerning his risk aversion. Margin investments are riskier than typical investments, which may render his concern about AMC's supposed "financial distress" more keen than other Common stockholders.

Significantly, Plaintiffs admit that they settled on the eve of the Munoz deposition, while Munoz and Allegheny were preparing to testify.[137] Had those depositions taken place, Defendants would have been able to fill holes in the discovery record that might have cast more doubt on Plaintiffs' adequacy. They could also have sought information concerning whether Munoz's margin trades

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134 *See* Kittila Aff., Ex. I.

135 *See* note 51, *supra*.

136 *See id.* at Ex. E.

137 PB at 61-62.

continued after February. Absent further information, the Court should not be satisfied that the Rule 23(a)(4) requirement has been met.

In sum, the conflict between the Class and its purported representatives—made obvious through the unprecedented resistance shown on the docket—renders a non-opt-out class uncertifiable. On her own, Ms. Izzo's financial interest in the Settlement outweighs that of every Plaintiff except Munoz—concerning whom a motion to withdraw is pending—and other objecting stockholders doubtlessly hold more significant positions. Those class members should be able to choose to pursue real, meaningful relief through a permanent injunction. They are not adequately represented by Plaintiffs who have forsaken valuable remedies, two of whom stand to gain more from incentive awards than they will lose from the Settlement.[138]

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[138] Multiple objectors have contended that Class Members' due process rights have been endangered because stockholders did not receive their postcard notices. *See, e.g.*, D.I. 343, 345. Historically, this Court has not been sympathetic to such arguments. *See In re Activision Blizzard, Inc. S'holder Litig.*, 124 A.3d 1025, 1061 (Del. Ch. 2015) (noting that a stockholder who chooses to register shares in the name of a nominee "takes the risks attendant with such an arrangement, including the risk that he may not receive notice of corporate proceedings" (citation omitted)). Thus, Ms. Izzo has not joined these motions.

However, this case provides a vehicle to revisit *Activision*'s thesis. Class plaintiffs typically propose a process that provides a semblance of notice, rather than notice in fact. As this case makes manifest, record holders frequently fail to forward notice to stockholders, especially in a short one-month period, and class plaintiffs tend not to sue brokers for that breach of duty. Thus, as late as the day before the objection deadline, Plaintiffs' counsel received emails from stockholders stating that they had only recently received their postcard. *See, e.g.*, Kittila Aff., Ex. J. This is

III. PLAINTIFFS' FEE AND INCENTIVE REQUESTS ARE EXCESSIVE.

Plaintiff's $20 million fee request is excessive under the precedent of this Court and the Delaware Supreme Court. This is especially true because, despite Plaintiff's purported concern for AMC's cash burn rate, their counsel insist on payment in cash. The Court should either dramatically slash any fee to reflect the uncertain value of the settlement consideration; order that any fee or incentive award be paid in stock (to be held for a set period); or defer any decision on fees until after the Settlement is executed and final.

Delaware courts subject fee requests to rigorous scrutiny, using the familiar *Sugarland* factors to ensure that fees are reasonable.[139] Movants bear the burden of establishing reasonableness.[140] Plaintiffs cannot do so here.

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consistent with the observation of Professor Sean Griffith that he "received formal notice in less than half of the settlements in his portfolio of merger claims." Sean J. Griffith & Anthony A. Rickey, *Objections to Disclosure Settlements: A How-To Guide*, 70 Okla. L. Rev. 281, 291 (2017). Especially in cases involving companies with a largely retail stockholder base, more vigorous notice procedures (and longer notice periods) may be advisable.

139 *In re Cox Radio, Inc. S'holders Litig.*, 2010 WL 1806616, at *20 (Del. Ch. May 6, 2010), *aff'd*, 9 A.3d 475 (Del. 2010) (citing *Sugarland Indus., Inc. v. Thomas*, 420 A.2d 142, 149 (Del. 1980)).

140 *See Boyer v. Wilmington Materials, Inc.*, 1999 WL 342326, at *1 (Del. Ch. May 17, 1999).

A. The "Benefit" of the Settlement is Trivial in Comparison to the Harm the Transaction Inflicts on the Apes.

As discussed above,[141] Plaintiffs exaggerate the Settlement's value, assuming that the Settlement and Transaction—which amount to a betrayal of the retail stockholders that have sustained the Common share price through the pandemic—will not affect AMC's market capitalization.[142] If the Settlement and Transaction destroy value—because retail shareholders flee, leaving only former preferred purchasers like Antara to sustain the share price—AMC's market capitalization may tumble. Plaintiffs' settlement valuation would tumble with it. Notably, neither Plaintiffs nor their counsel wish to be paid in post-Transaction AMC Common stock—they want cash. As they concede, "one cannot definitively predict the price at which AMC stock will trade following the Conversion. . . ."[143]

The Court could account for this uncertainty in three ways. First, it could heavily discount Plaintiffs' valuation, perhaps by 50% or more.[144] Second, it could

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141 *See* Section I.A.2, *supra*.

142 *See* PB at 31; Ripley Aff. ¶ 4(c).

143 PB at 9.

144 Fifty percent may be too conservative given the speculative value of the consideration. As already noted, Defendants believed that APEs would trade at the same value as common, but APEs then traded at a 64% discount by February 2023. DB at 12. If Plaintiffs are similarly mistaken and the post-Transaction Common stock veers toward APE-level prices, a 50% discount will be generous.

require that any fee or incentive award be paid in common stock, to be held for a short period (perhaps a month), so that Plaintiffs and their counsel accept some of the same risk they would impose on the class.[145] However, given that the effect of the Transaction will likely be obvious shortly after the Conversion, the most easily administrable solution would be to rule first on the Settlement and then, if it becomes final, address Plaintiffs' fee petition after the Conversion. This has the additional advantage of allowing Plaintiff- and Objector-fee petitions to be decided simultaneously, as this Court has required in another recent case.[146] Plaintiffs could hardly complain: if, as Defendants contend, the Transaction is value-creating, Plaintiffs' fees would increase.

Ultimately, Plaintiffs' counsel should share in the risk their Settlement imposes on unwilling class members. Plaintiffs purport to have abandoned their case out of fear that "AMC would ultimately face a true financing crisis."[147] In that case, they should not be paid in cash, at least until the Settlement's "benefits" are more than theoretical.

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145 Requiring in-kind fee payment is not only appropriate, in at least once jurisdiction it is mandatory in class actions. *See* Tex. R. Civ. P. 42(i)(1) (attorneys' fees must be in the same proportion of cash and noncash benefits as class recovery).

146 *See* Kittila Aff., Ex. K, ¶ 4.

147 PB at 29.

B. A Quick Settlement Posed Little Contingency Risk.

Taking this case to trial and obtaining a permanent injunction would have been risky. Settling early after little discovery and no depositions was not. Plaintiffs came to this Court insisting that "AMC did not face any crisis, existential or otherwise, that might justify radical action" when it created the APEs, and that AMC's future was bright.[148] In fact, AMC's fortunes continue to improve.[149] Yet now, with the prospect of a settlement and a fee, Plaintiffs contend that AMC might, absent the Settlement, face financial disaster.[150]

Plaintiffs filed suit supposedly eager to invalidate the Transaction, but quickly changed tactics, preferring to "leverage [an] injunction to achieve an economic benefit for Class members"[151] for a benefit that is less than one-tenth the value of an injunction. Counsel representing Plaintiffs that are so willing to change their goals face little, if any, contingency risk. On the day Plaintiffs filed their complaints, the odds that Defendants would reject a ten-cent-on-the-dollar settlement, especially to obtain a broader-than-legal release, were slim-to-none.

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148 Compl. ¶ 132.

149 *See* Section B, *supra*.

150 PB at 29.

151 *Id*. at 40.

C. The Quality of Representation Warrants a Downward Departure.

The standing of Plaintiffs' counsel is beyond question, but the prosecution of this case warrants a downward departure from the *Sugarland* norm. Ms. Izzo echoes the Court's frustration with Plaintiff and Defendants' conduct concerning confidential information.[152] Once Plaintiff's transmittal affidavit was unsealed, it became obvious that the parties withheld documents that could never have survived a Rule 5.1 challenge, including a transcript of a public earnings call.[153] Plaintiffs refusal to even answer Ms. Izzo's counsels' email has made the objection process more burdensome for counsel and the Court.[154]

Other problems have beset this litigation. Plaintiffs' Brief violates two rules: it is overlong[155] and was not accompanied by the Munoz affidavit. In opposing access to discovery, Plaintiffs offered at least one argument against *pro se* litigants

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[152] *See, e.g.*, D.I. 312.

[153] D.I. 206, Meyer Aff., Ex. 2.

[154] D.I. 357, 366.

[155] Plaintiffs' Brief exceeds the word count if the 620-word glossary is included. And it clearly must be: "The front cover, table of contents, table of citations, signature block, and any footer included pursuant to Rule 5.1(c) do not count toward the limitation. ***All other text counts toward the limitation***." Ct. Ch. R. 171(f)(1)(A) (emphasis added).

that overlooked controlling Supreme Court precedent.[156] Having successfully opposed *pro se* stockholders' intervention attempts for, *inter alia*, failure to comply with the Court's rules,[157] a downward departure from a *Sugarland* award is the minimum Plaintiffs should expect.[158]

D. The Result Does Not Warrant Nearly $6,000/hr. in Fees.

Plaintiffs' $2,361,086.50 lodestar also supports a downward departure. Delaware courts use lodestar as a "backstop check" on the reasonableness of a fee.[159] A $20 million fee represents an 8.4x multiplier.[160] At this rate, the highest-paid attorney would earn approximately $9,660 per hour.[161]

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[156] Plaintiffs contended that objectors should not have access to their documents because they "go almost exclusively to standing and class certification issues, neither of which is relevant to assessing whether the settlement is fair or whether to make an objection." D.I. 295, ¶ 22. The Court was clear that stockholders may object to, *inter alia*, "Incentive Awards." D.I. 185, ¶ 18. In evaluating such awards, the Supreme Court requires this Court to consider the size of a plaintiff's investment. *See Isaacson v. Niedermayer*, 200 A.3d 1205, at 1 n.1 (Del. 2018) (Table); *Raider v. Sunderland*, 2006 WL 75310, at *2 (Del. Ch. Jan 4, 2006). Thus, Plaintiffs' documents, including those related to standing, were clearly relevant to objectors.

[157] *See* D.I. 195 at 4 n.3; D.I. 196 at 4 n.3.

[158] Consistent with the Special Master's report on intervention, Plaintiffs' motion could be denied on this basis alone. *See, e.g.*, D.I. 292 at 4.

[159] *See In re Abercrombie & Fitch Co. S'holders Deriv. Litig.*, 886 A.2d 1271, 1274 (Del. 2005).

[160] *See* Kittila Aff., Ex. L.

[161] *Id*.

The lodestar itself raises serious concerns regarding the efficiency of litigation. Plaintiffs dedicated ***at least*** 6 firms and 46 timekeepers to litigation that lasted seventy days.[162] These timekeepers include not just attorneys, but a "Managing Clerk," "Director of Investor Services," and "Corporate Governance Analyst" priced at $425/hr., $600/hr., and $425/hr., respectively.[163] The ***lowest*** paid staff attorney bills at $400/hr.[164] And these may not be the only attorneys on the roster: in a recent case, one of Plaintiffs' current counsel revealed (in response to a Court query) that it had promised to pay a percentage of any fees received to a previously undisclosed law firm that secured the client.[165]

Had Plaintiffs achieved what they set out to accomplish—invalidating the Transaction—eight-figure fees might be equitable. But an 8.4x multiplier exceeds what is necessary to "encourage future meritorious lawsuits" that settle early.[166]

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[162] *See* Kittila Aff., Ex. L.

[163] *See* D.I. 206, Lebovitch Aff., ¶ 3.

[164] *Id*.

[165] *See* Kittila Aff., Ex. M, ¶ 5.

[166] *Franklin Balance Sheet Inv. Fund v. Crowley*, 2007 WL 2495018, at **12, 14 (Del. Ch. Aug. 30, 2007) (noting that a $4,023 hourly rate was "at the high end of the spectrum").

E. An Early-Stage Settlement Warrants No More Than a 10% Fee Award.

Finally, Plaintiffs' selective quotation of *In re Activision* to support a 15.5% fee award misreads that decision, which addressed cases that settled shortly before trial.[167] When a case settles early, the appropriate range tends towards 10-15%.[168] Higher awards "typically includ[e] multiple depositions and some level of motion practice. . . ."[169] As this Court recently pointed out in the *Symantec* case, "[t]hat fee structure is intended to incentivize plaintiffs and provide them with a return commensurate with taking the additional risk of going deeper into a case and incurring the expenses to do so."[170]

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[167] *Activision*, 124 A.3d at 1071 (quoted PB at 58); *see also In re Orchard Enters., Inc. S'holder Litig.*, 2014 WL 4181912, at *8 (Del. Ch. Aug. 22, 2014) (case settled two months before trial). Plaintiffs' citations to other cases in the 20-25% range also involved cases that settled at a later stage. *See* PB at 59 n. 142; *In re Jefferies Grp., Inc. S'holders Litig.*, 2015 WL 3540662, at *2 (Del. Ch. June 5, 2015) (five weeks); BLBG website, https://www.blbglaw.com/cases-investigations/acs/_pdfx/acs.pdf (noting that *In re ACS S'holder Litig.* settled after motion for partial summary judgment); Labaton website, https://www.labaton.com/cases/el-paso (noting that *In re El Paso Corp.* involved post-closing damages litigation); Notice, *In re News Corp. S'holder Litig.*, C.A. 6285-VCN, at 3-4 (Del. Ch. June 26, 2013), https://static.blbglaw.com/docs/Final%20Notice.pdf (case settled after motion to dismiss on third amended complaint).

[168] *Ams. Mining Corp. v. Theriault*, 51 A.3d 1213, 1259 (Del. 2012).

[169] *Id.*

[170] *In re Symantec Corp. S'holder Deriv. Litig.*, C.A. No. 2019-0224-JTL, at 42-43 (Del. Ch. May 4, 2023) (Trans.).

Here, Plaintiffs took no depositions, filed no preliminary injunction brief, and have mostly litigated in support of the Settlement—*i.e.*, ***against*** fellow stockholders and ***allied with*** Defendants. Recognizing that the "base percentage" in an early-stage case is 10%, the *Symantec* Court recently set a fee on that basis, adding a $100,000 bonus for earlier books-and-records litigation, which it described as "generous."[171] If any fee is awarded, 10% is the appropriate starting point.

But any award should require Plaintiffs and their counsel to share the risk that the Transaction will harm the class. This could be accomplished by awarding 10% of a far smaller risk-adjusted "benefit." But the better course would be either to award fees in stock or set a fee after the Settlement is accomplished and becomes final.

F. No Incentive Awards are Warranted.

Finally, no incentive award should be permitted. Plaintiffs' Brief omits one of the three factors of the relevant test recently approved by the Supreme Court.[172] In *Raider v. Sunderland*, Chancellor Chandler explicitly examined the size of a

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171 *Id*. at 43-44.

172 PB at 60 (citing *Isaacson v. Niedermayer*, 200 A.3d 1205, 1205 n.1 (Del. 2018)).

plaintiff's investment.[173] Plaintiffs not only withheld this information in their opening papers—and failed to mention it as a *Raider* factor—they argued to the Special Master that further information was irrelevant.[174] Incentives should be denied for this reason alone.

Moreover, while online abuse is a serious matter and should not be countenanced, Plaintiffs' newfound concern rings hollow. AMC's stockholders hold various opinions, sometimes strongly. Any stockholder objector (or their counsel) exposes themselves to online abuse. Yet Plaintiffs—who now complain of "doxing," the public disclosure of a person's contact information[175]—conditioned objecting stockholders' participation on the submission of their address and phone numbers, even if represented.[176] Plaintiffs can't use a represented objectors' contact information without committing an ethics violation.[177] It is merely a deterrent to objections.

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173 *Compare Raider v. Sunderland*, 2006 WL 75310, at *2 (noting "three factors" underlying incentive award) *with* PB at 60 (listing two factors).

174 D.I. 295 ¶ 22 (arguing plaintiff's documents were not relevant to "whether to make an objection").

175 https://en.wikipedia.org/wiki/Doxing.

176 D.I. 165, Ex. A, ¶ 17.

177 *See* Del. R. Prof. Conduct 4.2.

As vigorous proponents of the self-doxing of their fellow stockholders, Plaintiffs merit little sympathy. Plaintiffs could have—and if they wanted separate payments, should have—acted to protect other stockholders, even if those class members chose to object. Instead, they proposed that class members put addresses, email addresses, and stock purchase information on an open docket—while refusing to do so themselves.

Besides, while abuse is deplorable, criticism is not. Plaintiffs are engaged in a serious endeavor: they intend to strip away the litigation rights of ***every*** class member, rights potentially worth over a billion dollars, against many stockholders' express desires. Like politicians, class plaintiffs who would wield power in the name of others should not expect to be above criticism.

CONCLUSION

The Settlement is a bad deal. The Court should reject it, withhold certification from a non-opt-out class, and deny Plaintiffs' request for attorneys' fees and incentive awards.[178] Ms. Izzo intends to intervene and seek leadership of the Class following the defeat of the Settlement.

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[178] Ms. Izzo respectfully asks the Court to retain jurisdiction to permit her counsel to submit a petition for an award of attorneys' fees and expenses, as it has done when objectors have provided a benefit to absent stockholders. *See, e.g.*, *In re Riverbed Tech., Inc. S'holders Litig*., 2015 WL 7769861, at **2-3 (Del. Ch. Dec. 2, 2015) (awarding fee to unsuccessful objector); *Griffith v. Stein*, 283 A.3d 1124, 1139 (Del. 2022) (affirming fee award for successful objection).

Dated: May 31, 2023

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CERTIFICATE OF SERVICE

I, Thomas Curry, hereby certify that on June 9, 2023, I caused true and correct copies of the foregoing *Redacted Public Version of Exhibit 2 to the Corrected Transmittal Affidavit of Thomas Curry in Support of Plaintiffs' Reply in Further Support of Settlement, Award of Attorneys' Fees and Expenses, and Incentive Awards*, to be served upon the following counsel of record via File & Serve*X*press:

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