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Case No. 2023-0215-MTZ

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

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

# PLAINTIFFS' OPENING BRIEF IN SUPPORT OF SETTLEMENT, AWARD OF ATTORNEYS' FEES AND EXPENSES, AND INCENTIVE AWARDS

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Dated: May 4, 2023

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# GLOSSARY OF DEFINED TERMS

| | |
|---|---|
| "Allegheny" | Plaintiff Allegheny County Employees' Retirement System |
| "AMC" or the "Company" | AMC Entertainment Holdings, Inc. |
| "Antara" | Antara Capital LP |
| "Antara Transaction" | AMC's agreement with Antara, whereby AMC would: (i) sell 106,595,106 APEs to Antara for an aggregate purchase price of $75.1 million, and (ii) simultaneously purchase from Antara, on a private basis, $100 million aggregate principal amount of the Company's 10%/12% Cash/PIK Toggle Second Lien Notes due 2026 in exchange for 91,026,191 APEs; along with Antara's purchase of $60 million of APEs at price of $34.9 million |
| "APEs" | AMC Preferred Equity Units |
| "Aron" | Adam Aron, AMC's Chief Executive Officer, President, and Board member |
| "ATM" | At-the-market stock selling program |
| "Attorney Affidavits" | The affidavits filed by Plaintiffs Counsel in Support of the Settlement |
| "Authorized Share Amendment" | An amendment to the Certificate to increase the number of authorized shares of Common Stock to a number at least sufficient to permit the full conversion of APEs into Common Stock |
| "Board" | AMC's Board of Directors |
| "Broadridge" | Broadridge Financial Solutions, Inc. |
| "Certificate" | AMC's Third Amended and Restated Certificate of Incorporation |
| "Certificate Amendments" | Amendments to the Certificate that would (i) increase the number of authorized Common Stock shares from 524 million to 550 million; and (ii) effect a 10-to-1 Reverse Split of the Common Stock |
| "Citigroup" or "Citi" | Citigroup Global Markets, Inc. |
| "Class" | The class of holders of Common Stock |
| "Common Stock" | AMC Class A common stock |
| "Conversion" | The conversion of all outstanding APEs into shares of Common Stock |

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|---|---|
| "D.F. King" | D.F. King & Co. Inc. |
| "Defendants" | Adam M. Aron, Denise Clark, Howard W. Koch, Jr., Philip Lader, Gary F. Locke, Kathleen M. Pawlus, Keri Putnam, Anthony J. Saich, Adam J. Sussman, Lee Wittlinger, and AMC |
| "Fee and Expense Award" | Plaintiffs' request for attorneys' fees of $20 million, inclusive of expenses |
| "Forward Purchase Agreement" | The transaction through which AMC would: (i) sell 106,595,106 APEs to Antara for an aggregate purchase price of $75.1 million, and (ii) simultaneously purchase from Antara, on a private basis, $100 million aggregate principal amount of the Company's 10%/12% Cash/PIK Toggle Second Lien Notes due 2026 in exchange for 91,026,191 APEs |
| "Franchi" | Plaintiff Anthony Franchi |
| "Goodman" | Sean Goodman, AMC's Executive Vice President and Chief Financial Officer |
| "Loop" | Loop Capital Financial Consulting Services |
| "Merriwether" | John Merriwether, AMC's Vice President, Capital Markets and Investor Relations |
| "Munoz" | Plaintiff Usbaldo Munoz |
| "Okapi" | Okapi Partners LLC |
| "Plaintiffs" | Allegheny County Employees' Retirement System, Usbaldo Munoz, and Anthony Franchi |
| "Preferred Stock" | AMC's Series A Convertible Participating Preferred Stock |
| "Reverse Split" | A 10-to-1 reverse stock split of Common Stock |
| "Reverse Split Amendment" | An amendment to the Certificate to effect a 10-to-1 reverse stock split of Common Stock |
| "Ripley Affidavit" | The affidavit filed by Patrick Ripley in Support of the Settlement |
| "Section 242(b)" | Section 242(b) of the Delaware General Corporation Law |

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|---|---|
| "Settlement" | The agreement memorialized in the Stipulation and Agreement of Compromise, Settlement, and Release, dated April 27, 2023, which generally provides for the issuance of one share of Common Stock for every 7.5 shares of Common Stock owned (after giving effect to the Reverse Split), in exchange for a release of claims |
| "Settlement Class" | A non-opt-out class for settlement purposes only, pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2), consisting of all holders of Common Stock during the class period, whether beneficial or of record, including the legal representatives, heirs, successors-in-interest, transferees, and assignees of all such foregoing holders, but excluding Defendants |
| "Settlement Consideration" | The issuance to the Settlement Class of one share of Common Stock for every 7.5 shares of Common Stock owned (after giving effect to the Reverse Split) |
| "Special Meeting | The March 14, 2023 special meeting of stockholders to vote on the Certificate Amendments |
| "Van Zandt" | Derek Van Zandt, Citigroup investment banker |

## PRELIMINARY STATEMENT

This Action arose because the Board and senior management of AMC combined a penchant for "clever" financial engineering with disregard for their fiduciary duties in forcing through amendments to AMC's Certificate without achieving voting support of a majority of AMC Common Stock's outstanding shares. Good fiduciaries have a clear way to respect stockholder franchise rights and achieve their goal of enticing stockholder approval: with persuasive arguments and valuable consideration supporting their recommendations.

Instead, Defendants weaponized their legal power to issue "blank check" preferred stock and massively diluted their common stockholders. Plaintiffs sued, alleging that Defendants' capital structure gamesmanship was inequitable and breached their fiduciary duties. Plaintiffs hope that unless companies facing imminent bankruptcy must take radical action to save the enterprise, ***no public company board ever again engages in such a heavy-handed and improper abuse of power***.

Criticizing actions taken last August, or even last December, does not mean that litigating an injunction today is the right outcome. AMC did not have to target its own stockholders back then. But at this point in time, it has fewer alternatives to raise new capital and pay down its debt to limit bankruptcy risk. If Defendants were

able to persuade the Court with their expected argument that granting an injunction would imperil the Company in which the Class is invested, Plaintiffs would achieve no injunction and the Class would likely receive nothing. Balancing the opportunity to create a historic issuance of new shares to the Class against the risk of seeking different relief but delivering nothing, Plaintiffs concluded that AMC common stockholders' best overall result ***at this point in time*** was to leverage Plaintiffs' claims into valuable consideration for the Class.

* * *

AMC, a movie theater chain, was hard hit by the COVID-19 pandemic, which shuttered theaters around the world. AMC only survived thanks to the emergence of passionate retail investors who invested in AMC to support the Company and trigger a short squeeze against hedge funds and others betting on AMC's demise. As these retail investors drove AMC's stock price up by as much as 381.6%, AMC management raised nearly $1.9 billion by selling Common Stock at elevated prices. Eventually, however, AMC ran out of new shares to sell, and its stock price fell.

While AMC's post-COVID future appears viable, the Company still must pay off about $5 billion of remaining debt. With interest rates now far higher than when AMC issued that debt and AMC's business still operating at a cash flow deficit, its refinancing options are limited. In 2021, AMC's Board twice asked common

stockholders to approve Certificate amendments that would increase the number of authorized shares of Common Stock to allow it to raise funds, but twice failed to elicit support from the requisite majority of outstanding shares.

In late 2021, AMC began exploring ways to use "blank check" preferred stock authorized under AMC's Certificate to raise capital. In mid-2022, management and their bankers at Citigroup conceived of a way to weaponize the Board's legal power to issue "blank check" preferred stock with voting power amounting to 100 times that of Common Stock to override stockholders' voting rights in a manner that could not meet the equitable component of the "twice tested" maxim of fiduciary conduct.[1]

Specifically, the Board caused AMC to issue 10 million shares of 100-vote-per-share Preferred Stock to its transfer agent. The Board also created one billion AMC Preferred Equity Units, or "APEs", each reflecting a 1/100$^{th}$ interest in one share of Preferred Stock, and approved an early August 2022 "dividend" of one APE for each of the roughly 517 million shares of then-outstanding Common Stock. The financial trickery came in the form of the APEs' "mirror voting" power. AMC instructed its transfer agent that, in connection with any stockholder vote, the agent must vote APEs beneficially held by investors who did not provide voting

[1] *See, e.g.*, *Coster v. UIP Cos., Inc.*, 255 A.3d 952, 960 (Del. 2021).

instructions on a mirrored basis (*i.e.*, in the same proportion) as APE units voted pursuant to instructions. For example, if holders of only 7% of APEs voted in favor of a Board-supported proposal while just 3% voted against, the transfer agent would "mirror vote" such that 70% of ***all*** APEs favored, and 30% opposed, regardless of the fact that holders of 90% of APEs did not provide voting instructions.

At the time the "dividend" was distributed, management and AMC's advisors purportedly expected APEs to trade close to parity with Common Stock. Thus, while the Common Stock price would necessarily halve because of the dilutive issuance of the APEs, the total value held by AMC investors as of the distribution should not have materially changed, absent significant further APEs issuances.

Unfortunately, in light of forced index fund selling and with retail investors receiving no guidance from their fiduciaries to hold onto the APEs to protect themselves from future gamesmanship, the APEs did not trade as well as expected, making them an unattractive financing option.

Rather than looking for appropriate alternative ways to raise capital, AMC management effected a scheme to forcibly converge APEs with Common Stock, manipulating APEs' mirror voting and "buying" votes from a chosen hedge fund, Antara, in a manner that would give APE holders a massive windfall at the expense of common stockholders. In short, AMC sold almost 30% of the total outstanding

APEs to Antara at an average price of just $0.66 per unit. With mirror voting, Antara's bloc of APEs would carry nearly dispositive weight.

Antara contractually agreed to vote its APEs in favor of proposals that the common stockholders would rationally oppose unless they received a separate benefit. Specifically, Antara agreed to vote, at AMC's March 14, 2023 Special Meeting, in favor of proposed Certificate Amendments that would: (i) increase the number of authorized Common Stock shares from 524 million to 550 million; and (ii) effect a 10-to-1 Reverse Split of the Common Stock. Upon the effectuation of the Certificate Amendments, the APEs would automatically convert on a 10-to-1 basis into post-Reverse Split Common Stock. By diluting the common stockholders and granting Antara and other APE holders a massive windfall, Defendants made holders of Common Stock bear the entire burden of AMC's financing problems.

The anticipated Conversion caused the price of APEs to increase and the price of Common Stock to fall. The Certificate Amendments and Conversion would leave only about 150 million shares Common Stock outstanding, affording management roughly 400 million "dry powder" shares to conduct future dilutive capital raises without needing to seek stockholder approval.

As the market saw how the Antara Transaction and previously unexplained APE mirror voting power made passage of the Certificate Amendments a *fait*

*accompli*, Plaintiffs explored how fiduciary duty claims might protect AMC common stockholders. Among two categories of fiduciary acts Plaintiffs could challenge, only one proved realistic.

To secure an injunction, Plaintiffs had to prove three elements: (i) likelihood of success on the merits; (ii) irreparable harm to the class; and (iii) that the balancing of the equities favored an injunction. Plaintiffs' core claim, concerning the Board inequitably overriding the Common Stock franchise through the Antara Transaction, would be governed by the *Blasius* doctrine.[2] Efforts to invalidate the APEs would rest principally on statutory grounds, namely: Section 242(b)(2) of the Delaware General Corporation Law.

Plaintiffs firmly believe they would show that the Antara Transaction was inequitable and that thwarting stockholder franchise rights constitutes irreparable harm. Proving the balance of the equities ***at the time of the Antara Transaction***

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[2] *Blasius Indus., Inc. v. Atlas Corp.*, 564 A.2d 651 (Del. Ch. 1988); *see also Coster*, 255 A.3d at 963 n.65 ("Under [*Blasius*], first the plaintiff must establish that the board acted for the primary purpose of thwarting the exercise of a shareholder vote. Second, the board has the burden to demonstrate a compelling justification for its actions. Under this second prong, even where the Court finds that the action taken by the board was made in good faith, it may still constitute a violation of the duty of loyalty.").

would be challenging, but feasible. In contrast, invalidating the APEs in April 2023 became very unlikely.

The Antara Transaction smacked of improper vote-buying to obviate the Board's need to get common stockholders to support the Certificate Amendments. Considering AMC's prior optimistic public statements about its ability to manage its debt and a history of AMC's chief executive officer Adam Aron squandering capital on frivolous ventures, such as a gold mining investment, Defendants would likely struggle to show a "compelling justification."

In assessing Plaintiffs' injunction application, the Court would examine the December 2022 timeframe to assess the merits of Plaintiffs' claims. In assessing the balance of equities, however, the Court would likely look to AMC's condition at the time of the hearing. Plaintiffs anticipate that AMC's need to raise capital was known in August 2022 and was marginally more significant by December 2022, but firmly believe that AMC had better (and less inequitable) options to raise capital at that time. However, Defendants repeatedly indicated that they would likely argue that enjoining the Certificate Amendments in April 2023 would imperil AMC's ability to manage its debt and maintain financial viability.

Plaintiffs were prepared to fight for an injunction despite Defendants' threats. Yet Plaintiffs determined that their best-case outcome would come from leveraging

potential entry of a preliminary injunction into the payment of reasonable consideration to the Class, rather than permanently blocking the Certificate Amendments.

Plaintiffs thoroughly explored invalidating the APEs under Section 242(b). That claim faced significant hurdles because of: (i) a specific exemption in the Certificate from the statute's class vote requirement; (ii) longstanding interpretations of Section 242(b), including in *Hartford Accident. & Indemnity Co. v. W. S. Dickey Clay Manufacturing Co.*,[3] and *Orban v. Field*;[4] and (iii) Vice Chancellor Laster's recent ruling in *Electrical Workers Pension Fund, Local 103, IBEW v. Fox Corp.*,[5] which effectively foreclosed class voting on a dilutive offering that did not directly alter the innate "powers, preferences or special rights" of the Common Stock itself.

Even if Plaintiffs somehow showed likely success on the merits on a Section 242(b)-based challenge, proving that the balance of equities favored them seemed unlikely. The originally issued APEs were sold to thousands of *bona fide* third-party purchasers on the market, including by AMC through its ATM program. The Court's balancing of equities would likely weigh these innocent parties' interests

[3] 24 A.2d 315 (Del. 1942).

[4] 1997 WL 153831 (Del. Ch. Apr. 1, 1997).

[5] C.A. No. 2022-1007-JTL (Del. Ch. Mar 29, 2023) (TRANSCRIPT).

before invalidating those securities entirely.

Given the extreme challenges presented by the foregoing considerations, Plaintiffs do not believe they could put the proverbial genie back in the bottle. Plaintiffs thus focused on their strong equitable claims against the Certificate Amendments. Plaintiffs negotiated, entered into, and continue to support the proposed Settlement because, if approved, it will provide current AMC common stockholders with significant, valuable consideration for effectuation of the Certificate Amendments that they otherwise would not have received. The Settlement offers Class members one new share of Common Stock for every 7.5 shares of Common Stock held after the Reverse Split but before the Conversion. This proposed Settlement Consideration increases common stockholders' relative equity ownership of AMC without costing them new money. If the problem with APEs is that they diluted the Common Stock, the Proposed Settlement is directly curative because it offsets some of this dilution.

As further explained at Section 3.G below, although one cannot definitively predict the price at which AMC stock will trade following the Conversion, using reasonable assumptions, the Settlement is among the largest negotiated resolutions in Delaware class action history. Over 6.9 million shares of Common Stock will be issued as Settlement Consideration if the Settlement is approved. Based on the

trading prices of shares of Common Stock and APE units on May 3, 2023, the total Settlement Consideration is worth approximately $129 million.

Had Plaintiffs obtained a preliminary injunction, they would have negotiated for an economic payment to resolve it rather than making the injunction permanent and running the real risk of causing AMC's financial demise. Thus, if AMC investors or the Court wish to compare the proposed Settlement to a litigated alternative, they must assume an injunction would be issued and compare the certainty of the one to 7.5 distribution ratio with a potential one to six or one to five ratio. Put bluntly, it was plainly reasonable to achieve the certainty of the proposed Settlement for the benefit of the Class rather than risking no recovery in the hopes of getting a marginally better negotiated recovery following issuance of an injunction.

In sum, absent this litigation, AMC would have effected the Conversion and Reverse Split and then used new "dry powder" equity to pay down debt, leaving common stockholders with nothing other than immediate dilution. Plaintiffs challenged a serious violation of stockholder voting rights. The Settlement successfully offsets some of the near-term harm of the Certificate Amendments by giving the Class a larger relative interest in an AMC with a cleaner capital structure and the ability to pay its debts, which will hopefully create long-term Common Stock

value. For creating a pool of shares currently worth approximately $129 million, Plaintiffs' Counsel seek an award of fees and expenses equal to $20 million, reflecting approximately 15.5% of what they exclusively created for the Class.

## FACTUAL AND PROCEDURAL BACKGROUND

### A. Retail Investors Save AMC During the COVID-19 Pandemic.

The COVID-19 pandemic was disastrous for the movie theater industry, leaving Cineworld Group plc, the world's second-largest cinema chain, bankrupt.[6] The world's largest cinema chain, AMC, faced a similar crisis until it was bailed out by unlikely heroes: retail investors banding together to bid up AMC shares and squeeze short sellers that had bet on AMC's bankruptcy.[7]

These investors, who communicated with one another chiefly on Reddit and Twitter, branded themselves "Apes" after a quote from the movie *Rise of the Planet of the Apes* (*to wit*: "Apes together strong"). Under the banner "#SaveAMC," they fostered an online community prioritizing long positions to fight AMC short sellers. Thanks to the Apes' efforts, the trading price of AMC Common Stock rose from $2.12 per share on December 31, 2020, to $10.21 per share by March 31, 2021.[8]

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[6] AMC_00003893, 3904.

[7] ¶55; AMC_00003947 (discussing the "Reddit short-squeeze rally" in January 2021).

[8] ¶56.

Aron embraced his nickname of "Silverback" and publicly thanked retail investors for helping AMC survive the pandemic as a going concern.[9]

### B. Common Stockholders Reject Proposals to Increase the Number of Common Shares.

The Company took advantage of AMC's retail investor-boosted trading price to sell new shares, raising nearly $1.9 billion in gross proceeds.[10] In so doing, however, the Company exhausted its reserve of authorized Common Stock. At a January 27, 2021 meeting, the Board proposed to amend AMC's Certificate to increase the number of authorized shares of Common Stock by 500,000,000.[11]

Retail investors, however, had misgivings about dilution and opposed the increase.[12] At a meeting of the Board on April 27, 2021, "management ... recommend[ed] that AMC begin a new ATM program for 43M shares which could yield up to $500M at current share prices", with "Aron indicat[ing AMC needed] the

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[9] "I feel very lucky to have had these retail investors care about our company because if they hadn't been there, we wouldn't be here today," Interview of Aron on with CNBC's Squawk Box (Nov. 14, 2022).

@CEOAdam Sep. 7, 2022 ("[R]etail investors embraced us and let us raise boatloads of cash. Thank you to retail! You really did save AMC."), https://twitter.com/CEOAdam/status/1567532107815075841.

[10] AMC Feb. 28, 2023 10-K at 49.

[11] AMC_00003941.

[12] AMC_00033842 (Broadridge results for May 4, 2021 meeting); AMC_00026252 (D.F. King); AMC_00033796 (D.F. King).

money even though [the Company had] over $1B of liquidity on [its] March balance sheet as Company [was] losing approximately $150M per month."[13]

At that meeting, Aron "explained that [AMC] now ha[d] an approximate 85% retail shareholder base" and "[m]ost of those stockholders are voting 'no' on share authorization because they want fewer shares, not more, to create scarcity to make it harder for the short sellers to borrow shares."[14] He also noted that "even securing a 50% voting quorum is proving to be a challenge with this retail stockholder base as many don't vote and many of the shares have changed hands since the record date." The Board withdrew the proposal.[15]

The Board met again on May 4, 2021, and Aron "discussed the propriety of postponing Company's annual stockholder meeting and setting a new record date to provide a better opportunity to pass ... the share authorization proposals."[16] The Board materials for this meeting reflect that "[a]uthorization may be difficult" because the share increase proposal would "[r]equire[] majority votes outstanding (225M votes)" and the "[i]nvestor base is widely dispersed, and heavily weighted

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[13] AMC_00003992.

[14] *Id.*

[15] *Id.* at 3994.

[16] AMC_00004343.

towards retail investors."[17]

On June 3, 2021, the Company filed a proxy statement soliciting support of another amendment of the Certificate, this time seeking authority to issue just 25,000,000 additional shares.[18] Notwithstanding the Company's modest proposal, an insufficient number of stockholders supported the share increase.[19] The Board again pulled the proposal before the vote.[20]

### C. Defendants Devise the APEs to Obviate Retail Investors.

As 2021 drew to a close, the Company remained unable to raise capital, yet its debt problems and liquidity concerns persisted.[21] In November 2021, the Company's banker, Citigroup, began work on "Project Popcorn," a prospective issuance of an alternative form of equity that could convert into Common Stock.[22]

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[17] AMC_00003995 at 4155.

[18] June 3, 2021 Proxy Statement.

[19] AMC_00021609 (D.F. King); AMC_00026254 (AMC Vote Summary); AMC_00033798 (D.F. King); AMC_00033845 (Broadridge).

[20] https://twitter.com/CEOAdam/status/1412376829688680453.

[21] *See, e.g.*, AMC_00004666, 4744 (reflecting that AMC needed "$800M incremental cash to service debt after balance sheet restructuring"); AMC_00004666, 4762 (reflecting the "Pathway to Recovery" was to "Raise additional capital (preferred share structure)" allowing to "Repay debt" and "Refinance/restructure debt").

[22] AMC_00047570.

AMC and Citigroup considered plans for a potential rights offering that would allow investors to buy a Common Stock equivalent that could eventually convert into Common Stock.[23] By February 2022, Citigroup proposed that "AMC could call [the rights] AMC Preferred Equity Units ("APEs")."[24] Van Zandt expounded upon this proposal at a Board meeting held on February 17, 2022:

> [Van Zandt] explained that Company was short on common shares but had 50M shares of preferred stock which might be used to raise cash…. Company … plans to offer the preferred shares to its retail stockholder base through a rights offering which is common in Europe but less so in the US. One AMC preferred unit would convert into one share of common stock, subject to shareholder authorization…. Our retail stockholders can purchase the preferred unit or sell the right which is itself a tradable security. ***The rights are dilutive so the shareholders are incented to buy the shares to avoid dilution***. Mr. Van Zandt … reviewed the decision tree each shareholder would process. He explained that short sellers would need to deliver the right to the shareholder from whom they borrowed their shares which would create demand and put pressure on short sellers.[25]

By March 2022, AMC and Citigroup looped in D.F. King, the Company's proxy solicitor, as well as Computershare, the Company's transfer agent.[26] By April 2022, Citigroup had a "storyboard draft", including a video of Aron explaining the

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[23] AMC_00016810; AMC_00016817.

[24] AMC_00039428. AMC would ultimately reserve the APE ticker symbol by no later than February 2022. *See* AMC_00022113.

[25] AMC_00004984.

[26] AMC_00016727.

potential offering.[27]

Notwithstanding Aron's rosy public statements about AMC's financial outlook, by no later than mid-May 2022, AMC's executives were exploring giving APEs special voting powers that could be maneuvered so management could force amendment of its Certificate. Specifically, on May 17, 2022, D.F. King and the Company's attorneys discussed using supervoting preferred stock and proportional voting to effectively lower the standard for an amendment.[28] On May 27, 2022, B. Riley Financial, one of the Company's advisors, sent AMC executives Sean Goodman and John Merriwether a number of prospectuses from issuers that had used supervoting preferred shares to force through Certificate amendments.[29]

A July 20, 2022 memorandum about the potential APE issuance showed that AMC was by then already planning an ATM offering of APEs.[30] Goodman acknowledged that "[i]ndex funds that own AMC common shares will likely be required to sell the Preferred Equity Units, while this may put pressure on the value of the Preferred Equity Units, lower index fund ownership also means less shares

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[27] AMC_00045684.

[28] AMC_00019706.

[29] AMC_00019350.

[30] AMC_00047255.

available for short sellers to borrow and this could have an offsetting positive impact on the trading value of the Preferred Equity Units."[31] In a contemporaneous email exchange, Goodman agreed that registration of one billion preferred equity units would make sense (with approximately 517 million to be used for the dividend and the remainder to be sold through an ATM offering), with Merriwether asserting that "[t]here is a sweet spot somewhere that doesn't raise the shareholders' ire about dilution but also gives us the flexibility to raise the capital we want. I think we will get ire no matter what the number is, so does it make sense to get the ire out all at once at 1B."[32]

On July 27, 2022, Aron wrote the Board, touting the APEs as "the single most impactful action that AMC will take in all of calendar year 2022," giving AMC a new currency to pay down debt and "avoid any future liquidity traps."[33] The Board met on July 28, 2022, and approved a "dividend" of one APE on every outstanding share of common stock, with Aron explaining:

> Mr. Aron indicated that AMC needed to raise more capital but was out of common shares.... ***The dividend will halve the price of our common stock, but shareholders will also own an APE and have close to the same combined value after the split***.… Mr. Aron indicated that many

[31] AMC_00047255.

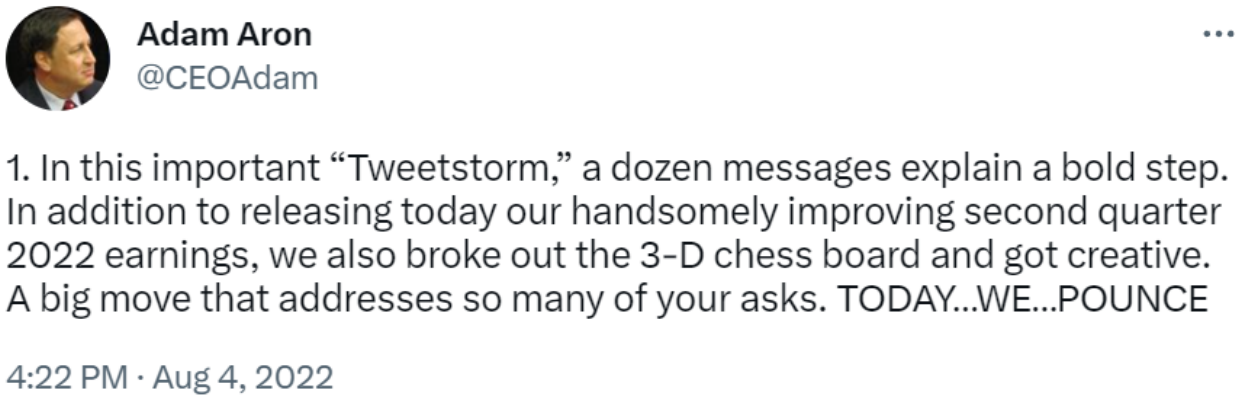
[32] AMC_00020295.

[33] AMC_00021432.

> retail shareholders were begging for a dividend to validate a proper share count, that the dividend does not change their economic holdings at all (it is the equivalent of a stock split) and that the dividend was vital to shore up Company's liquidity.... Mr. Aron outlined the downside scenario, if shareholders react negatively, if there is negative social media, if the share prices fall and people start selling. He explained he would still rather have another currency to leverage for sale to strengthen Company's balance sheet.[34]

The Board materials also reflect the Company's expectation that index funds would sell off APEs, potentially driving the price of APEs lower.[35]

AMC announced the APE "dividend" on August 4, 2022 via a "tweetstorm"[36] from Adam Aron:




Specifically, AMC declared that it would, at the close of business on August 19,

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[34] AMC_00005299 at 5301.

[35] AMC_00005151 at 5224 ("Index funds will retain ownership in AMC common stock but will not be able to continue to hold the APEs ... Any index funds that own AMC and receive the APE dividend will need to sell the APE.").

[36] https://twitter.com/CEOAdam/status/1555288043317350406.

2022, distribute one APE to the holders of each of the Company's 516,820,595 outstanding shares of Common Stock.[37]

Nowhere in Aron's "tweetstorm," the press release,[38] the APE FAQ,[39] or any other public statement by the Company did Defendants disclose that Computershare, the Company's transfer agent, was required to vote uninstructed APEs proportionally with instructed APEs, effectively giving APEs superior voting power. Instead, AMC disclosed that the APEs had the same voting power as shares of AMC Common Stock.[40] Nor did Defendants advise common stockholders to hold onto the APEs issued to them so they could maintain their voting control over AMC.

On September 26, 2022, AMC disclosed that it had entered into an equity distribution agreement with Citigroup to offer and sell 425,000,000 APEs from time to time in a new ATM.[41] Soon after, the Company started selling APEs to the

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[37] Aug. 4, 2022 Form 8-K.

[38] https://s25.q4cdn.com/472643608/files/doc_financials/2022/q2/FINAL-APE-Dividend-Press-Release-20220804-0930-v.F-clean.pdf.

[39] https://s25.q4cdn.com/472643608/files/doc_downloads/2022/ape_dividend_faq.pdf.

[40] To learn this material fact, stockholders would have to dig deep into a deposit agreement between the Company and Computershare that AMC filed on August 4, 2022. Aug. 4, 2022 Form 8-K, Exhibit 4.1.

[41] Prospectus Supplement.

market. Through December 19, 2022, AMC sold 125.9 APEs for a mere $162.4 million of gross cash proceeds before fees and commissions through the ATM.[42]

Initially, the minimum price that APEs could be sold was $2 per unit.[43] Following a plea from Aron after the share price for APEs fell below $2 per unit, the Pricing Committee lowered the minimum to $1 per unit.[44] APEs then traded below $1 per unit, forcing AMC to stop selling APEs through the ATM.[45]

### D. Aron and the Board Effect the Antara Transaction to Force through the Certificate Amendments.

After Citigroup introduced Aron to Antara, they explored a potential transaction in early December 2022.[46] On December 8, 2022, Van Zandt relayed to Aron a discussion he had with Antara, including that "Antara agree[d] to hold shares until vote and vote in favor [of conversion]," demonstrating that the Antara Transaction was not about raising capital from Antara, but rather about giving

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[42] December 19, 2022 Form 8-K.

[43] AMC_00005326, 5327.

[44] AMC_00029357 ("I would strongly urge us as the Pricing Committee to lower the price floor to $1.00.").

[45] AMC_00005967, 5968 ("[Aron] was pleased to report that Company had raised approximately $162M from its Fall ATM efforts but that the APE price had fallen below $1.00 causing AMC to stop selling shares in the open market.")

[46] AMC_00000050 (email from Citigroup banker describing discussions he had with Antara).

Antara a windfall to ensure it would vote in favor of the Certificate Amendments.[47]

At the December 21, 2022 Board meeting, "Mr. Aron updated the board on a proposed financing transaction with Antara Capital, which had been introduced to AMC by Citi."[48] He "report[ed] that [the] Company had raised approximately $162M from its Fall ATM efforts but that the APE price had fallen below $1.00 causing AMC to stop selling shares in the open market" and that AMC forecasted "approximately $750M of liquidity for the end of the year including its $200M revolver."[49] Aron then outlined the terms of the Antara Transaction and told the Board that "AMC would schedule a special shareholder vote to authorize additional common stock such that Company's APE securities would convert to common stock on a 1-1 basis" and at which the "Company would also recommend a 10-1 reverse stock split."[50] Aron added that "the resulting increase in liquidity to approximately $900M would be very desirable."[51]

During the ensuing Board discussion, "Aron outlined the voting dynamics for the special shareholder meeting indicating that there were presently considerably

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[47] *Id.*

[48] AMC_00005967 at 5968.

[49] *Id.*

[50] *Id.*

[51] *Id.*

more APEs in the float than common stock, that the APEs presumably would all want to convert and that the non-voting APE shares would be voted proportionately rather than as 'no votes,' all of which factors gave AMC a good chance to secure approval for conversion."[52] Thereafter, the directors "commented that Antara might enjoy a windfall if the APE price escalates but that AMC benefitted as well if the APE price increased" noting that, in any event, "there was no assurance that the APE price would rise or that the APEs would convert".[53] Aron noted that "one risk was if the retail investors were upset by the transaction and began selling their shares, causing the price of AMC equity to decline." Notably, Aron held more APEs than shares of Common Stock.[54]

At the close of the meeting, the Board approved the Antara Transaction.[55] The Board also approved, subject to stockholder approval, the Certificate Amendments.[56]

On December 22, 2022, AMC filed a Form 8-K, announcing the Forward Purchase Agreement, through which AMC would: (i) sell 106,595,106 APEs to

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[52] *Id.*

[53] *Id.*

[54] https://www.sec.gov/Archives/edgar/data/1411579/000110465923020458/tm232700-2_def14a.htm at page 22.

[55] AMC_00005967 at 5968-70.

[56] *Id.* at 5971.

Antara for an aggregate purchase price of $75.1 million and (ii) simultaneously purchase from Antara, on a private basis, $100 million aggregate principal amount of the Company's 10%/12% Cash/PIK Toggle Second Lien Notes due 2026 in exchange for 91,026,191 APEs.[57] AMC disclosed that immediately prior to entry into the Forward Purchase Agreement, Antara had purchased 60 million APEs at a price of $34.9 million through the ATM program.[58] On February 7, 2023, the share issuances contemplated by the Antara Transaction occurred.[59]

In the Form 8-K, the Company further disclosed that, within 90 days, it would hold a special meeting of stockholders to solicit stockholder approval of the Authorized Share Amendment and Reverse Split Amendment.[60] Antara agreed to vote all its holdings in favor of these Certificate Amendments.[61]

On February 9, 2023, the day after the record date for voting purposes, AMC and Antara agreed to a mutual waiver of the lock-up restrictions in the Forward Purchase Agreement restricting the sale of APEs, allowing Antara to sell up to 26

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[57] December 22, 2022 Form 8-K.

[58] *Id.*

[59] February 8, 2023 Form 8-K.

[60] December 22, 2022 Form 8-K.

[61] December 22, 2022 Form 8-K.

million APEs, and AMC to sell up to $100 million worth of additional APEs.[62] Since the record date for the Special Meeting was February 8, Antara was able to lock in a windfall and still vote all of its APEs in favor of the Certificate Amendments.[63]

On February 14, 2023, the Company filed its Proxy in connection with the Special Meeting scheduled for March 14, 2023.[64] In the Proxy, the Company disclosed that the Certificate Amendments required the affirmative vote of at least a majority of the outstanding Common Stock and Preferred Stock, voting together as one class.[65] The Company also disclosed that, as of the record date for the Special Meeting, Antara owned 258,439,472 APEs, representing approximately 17.8% of the Company's total voting power and approximately 27.8% of all outstanding APEs.[66] The Company did not highlight how much the mirror-voting instruction to Computershare would likely increase the power of Antara's votes, or that APEs would assuredly carry more voting power per unit than shares of Common Stock.

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[62] February 8, 2023 Form 8-K.

[63] Proxy at 2.

[64] AMC had filed a preliminary proxy statement on January 27, 2023.

[65] Proxy at 8.

[66] *Id.* at 14.

### E. The Books and Records Inspections, the Commencement of Litigation, the *Status Quo* Order, and the Special Meeting

On December 27, 2022 and February 6, 2023, respectively, Munoz and Franchi served demands on the Company seeking books and records pursuant to 8 *Del. C.* § 220. The Company produced Board materials related to the APEs, the Antara Transaction, and the Certificate Amendments. Based on public information about the Antara Transaction and the inevitable approval of the Certificate Amendments, the main focus of the inspection was determining whether AMC's financial situation was so precarious that otherwise valid efforts to vindicate the stockholder franchise could become pointless because injunctive relief could trigger bankruptcy. Counsel's review of the books and records produced by AMC suggested that while the Company clearly needed new capital, Defendants' heavy-handed and inequitable thwarting of the stockholder franchise was unjustified, much less compellingly justified.

On February 20, 2023, Munoz and Franchi filed a class action complaint challenging the Board's actions.[67] Allegheny filed its own class action complaint that day.[68] In both complaints Plaintiffs asserted *Blasius* breach of fiduciary duty

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[67] *Munoz et al. v. Adam M. Aron, et al.*, C.A. No. 2023-0216-MTZ.

[68] *Allegheny Cty. Emples' Ret. Sys. v. AMC Entm't Holdings, Inc., et al.*, C.A. No. 2023-0215-MTZ.

claims and sought equitable relief to protect the voting rights of common stockholders. Allegheny also sued for violation of Section 242(b). Both plaintiff groups sought expedited treatment of their requests for injunctive relief, which were heard on February 23, 2023. The two actions were consolidated on March 2, 2023.[69]

On February 27, 2023, the Court entered a *Status Quo* Order allowing AMC to hold the Special Meeting but prohibiting AMC from filing the Certificate Amendments pending a ruling by the Court on Plaintiffs' to-be-filed preliminary injunction motion,[70] which was set for hearing on April 27, 2023.[71]

A scheduling order was entered on March 2, 2023, but the parties had commenced serving and negotiating discovery well before that. After extensive negotiations over the scope of discovery, Defendants ultimately produced, and Plaintiffs reviewed, over 56,000 pages of documents.

Plaintiffs also served subpoenas on four third parties: Citigroup (AMC's financial advisor); D.F. King (AMC's proxy advisor); Antara; and Broadridge (a proxy voting tabulator). Plaintiffs engaged in extensive negotiations with the third parties over the scope of production, resulting in production of 2,500 pages of

[69] Trans. ID 69257686.

[70] Trans. ID 69229170.

[71] *Id.*

documents when the term sheet was signed.

Defendants served requests for production on Plaintiffs, who collected and produced over 3,700 pages of documents. At the time the parties entered into the proposed Settlement, Plaintiffs were rapidly preparing to take six fact depositions and defend three Plaintiff depositions, in an eight-day span, with a fact discovery deadline of April 6.

Plaintiffs also retained and worked closely with multiple experts on key issues in the case and expected to provide reports and testimony from Loop, a financial consulting expert, and Okapi, a proxy solicitor. Loop provided expert advice on financial aspects of the Action, including the impact of the Certificate Amendments, AMC's debt, and the valuation of the proposed settlement. Okapi provided expert advice on, *inter alia*, proxy solicitation, the unique issues for a company soliciting votes with a large retail base, non-routine voting, proportional and mirror voting, and the effect of the Antara Transaction on the vote on the Certificate Amendments.

On March 14, 2023, the Certificate Amendments passed at the Special Meeting. Without the mirrored voting and the Antara Transaction, the proposals would not have passed—a fact acknowledged by AMC internally.[72]

[72] AMC_00049559.

During discovery, the parties retained former Vice Chancellor Joseph R. Slights III as a mediator. On March 28, the parties participated in a formal mediation session, with extensive follow-up negotiations over the next several days. Thanks to those discussions, the Parties executed a settlement term sheet on April 2, 2023.

On April 3, 2023, Plaintiffs filed an unopposed motion to lift the *Status Quo* Order, focusing on Plaintiffs' insistence that if the *Status Quo* Order was lifted (as Defendants had demanded as a condition of any deal), the Class should receive its Settlement Consideration as promptly thereafter as possible.[73] Defendants did not make their own filing. Noting the absence of support for immediate performance of the Settlement's core exchange of benefits, the Court denied Plaintiffs' motion to lift the *Status Quo* Order on April 5, 2023.[74]

The Parties signed a Stipulation of Settlement, which was filed with the Court. After receiving guidance from the Court on the type and form of notice, on May 1, 2023, the Court issued the Scheduling Order for the proposed Settlement.

### F. The Settlement Terms

In reviewing the evidentiary record and assessing the circumstances facing AMC, Plaintiffs came to believe that, although AMC was not facing an imminent

[73] Trans. ID 69715668.

[74] Trans. ID 69739520.

financial crisis if it could not file the Certificate Amendments immediately, fully blocking AMC from proceeding ran a serious risk that AMC would ultimately face a true financing crisis. Plaintiffs also recognized that despite their strong arguments that the Antara Transaction was inequitable, the Court would hear vigorous assertions from Defendants that Plaintiffs' requested relief could leave AMC in acute financial distress (or worse), which could prove persuasive and leave the Class without anything of value despite the harm they suffered.

The core purpose of the proposed Settlement is to provide common stockholders with valuable equity consideration providing all stockholders to enjoy some immediate benefit, and allow the Certificate Amendments to be filed, which is needed for AMC to pay down its debt, thus benefitting the Company and its stockholders generally.

If the Court approves the proposed Settlement, AMC will effectively take a "snapshot" of all common stockholders immediately before the Conversion takes place to set a "record date" for distributing the Settlement Consideration. AMC will then issue one share of Common Stock for every 7.5 shares of Common Stock owned (after giving effect to the Reverse Split). If the share issuance would result in record holders receiving a fraction of a share of Common Stock, AMC will arrange for a

cash payment in lieu of issuing fractional shares.[75]

### G. Value of the Settlement

Plaintiffs, with assistance from their financial advisors, believe that the value of the Settlement, based on recent market prices, ***exceeds $129 million***. For illustrative purposes, on May 3, 2023, AMC Common Stock closed at a price of $5.74 per share and APE closed at a price of $1.52 per unit. Accordingly, as of this date, the total market capitalization of Common Stock was $2,980,164,319 (based on 519,192,390 issued and outstanding shares of Common Stock)[76] and the total market capitalization of APE was $1,513,017,748 (based on 995,406,413 issued and outstanding APEs).[77] Based on the foregoing, the Common Stock and APE then accounted for approximately 66.33% and 33.67% of the Company's market capitalization, respectively.

Were the Common Stock and APE converged into a single class of stock based on these May 3, 2022 figures, the Common Stock would (all other things being equal) have a post-Conversion price of $2.97 per share. Pre-Conversion common

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[75] The record time for payment of the Settlement is expected to be set as of the close of business on the business day prior to the Conversion on which the Reverse Split is effective.

[76] $5.74 per share of Common Stock × 519,192,390 shares of Common Stock = $2,980,164,318.60.

[77] $1.52 per unit of APE × 995,406,413 APE units = $1,513,017,747.76.

stockholders would comprise approximately 34.28% of this post-Conversion structure, representing a market capitalization of $1,540,226,977. Former APE holders would comprise approximately 65.72% of this post-Conversion structure, representing a market capitalization of $2,952,955,089. The total market capitalization of the Company would, for purposes of this illustration, remain an unaffected $4,493,182,066. Were the Company then to undergo a 1:10 reverse split of the new equity structure, holders of pre-collapse Common Stock would hold 51,919,239 shares and former APE holders would hold 99,540,641 shares, all of which would trade at a price of $2.97 per share.

If the Company were to issue shares of this new equity structure to holders of pre-collapse Common Stock at a ratio of one new share for every 7.5 new shares held, those holders would receive an issuance of 6,922,565 additional shares, such that there would be 158,382,446 shares in the Company's new equity structure. The holders of pre-collapse Common Stock would hold 58,841,804 new shares, representing approximately 37.15% of the new equity structure—***an approximately 2.87% increase*** from their position prior to the issuance.

Based on the Company's unaffected overall market capitalization of $4,493,182,066, the Settlement Consideration would have a value to the Class of ***$129,067,486***.

## ARGUMENT

### I. APPROVAL OF THE SETTLEMENT AS FAIR AND REASONABLE IS WARRANTED.

Delaware law favors the voluntary settlement of class actions.[78] In reviewing whether a settlement is fair, reasonable, and adequate, the Court analyzes the facts and circumstances underlying the claims and the possible defenses thereto to "determine whether the settlement falls within a range of results that a reasonable party in the position of the plaintiff, not under any compulsion to settle and with the benefit of the information then available, reasonably could accept."[79] The Court does not have to "decide any of the issues on the merits."[80] Rather, the Court considers the: (1) probable validity of the claims; (2) apparent difficulties in enforcing the claims through the courts; (3) collectability of any judgment recovered; (4) delay and expense of litigation; (5) amount of the compromise as compared with any judgment amount; and (6) views of the parties involved.[81]

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[78] *See, e.g.*, *In re Resorts Int'l S'holders Litig. Appeals*, 570 A.2d 259, 265-66 (Del. 1990); *Rome v. Archer*, 197 A.2d 49, 53 (Del. 1964); *In re Activision Blizzard, Inc. S'holder Litig.*, 124 A.3d 1025, 1042 (Del. Ch. 2015); *In re Triarc Cos. Class & Deriv. Litig.*, 791 A.2d 872, 876 (Del. Ch. 2001).

[79] *Activision*, 124 A.3d at 1064 (quoting *Forsythe v. ESC Fund Mgmt. Co. (U.S.)*, 2013 WL 458373, at *2 (Del. Ch. Feb. 6, 2013)).

[80] *Polk v. Good*, 507 A.2d 531, 536 (Del. 1986).

[81] *See Activision*, 124 A.3d at 1063.

The Settlement is a boon for the Class. As detailed above, the Settlement Consideration, which is estimated to provide immediate value exceeding $129 million is one of the largest class action financial recoveries in Delaware history.

The Settlement reflects the strength of Plaintiffs' claims, taking into account the potential outcomes of continued litigation. Plaintiffs brought a *Blasius* Claim and Allegheny brought Section 242(b) Claim. To secure an injunction, Plaintiffs had to prove three elements: (i) likelihood of success on the merits; (ii) irreparable harm to the class; and (iii) the balancing of the equities favored an injunction.[82]

Plaintiffs had a strong *Blasius* Claim. Under *Blasius*, if a board of directors acts for the primary purpose of impeding stockholders' voting rights, the board must prove a "compelling justification" for its actions, even when it acts in good faith.[83] Plaintiffs believe they would have shown likely success on the *Blasius* Claim, establishing that Defendants used the Antara Transaction to subvert the common stockholders' franchise, rather than providing value to entice their beneficiaries to support the Board's desired use of new equity to raise needed capital.

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[82] *Alpha Builders, Inc. v. Sullivan*, 2004 WL 2694917, at *3 (Del. Ch. Nov. 5, 2004).

[83] *See Coster*, 255 A.3d at 963 ("under *Blasius*, even if the court finds that the board acted in good faith when it approved the Stock Sale, if it approved the sale for the primary purpose of interfering with Coster's statutory or voting rights, the Stock Sale will survive judicial scrutiny only if the board can demonstrate a compelling justification for the sale.").

After common stockholders twice rejected Defendants' proposals to increase the number of authorized shares, Defendants weaponized APEs' mirrored voting power and entered into the Antara Transaction to force through the Certificate Amendments.[84] From the very beginning of discussions, ensuring that Antara voted its shares in favor of the Conversion was of primary concern to AMC's senior management, with Van Zandt confirming, in his initial discussions with Antara, that "Antara agree[d] to hold shares until vote and vote in favor [of conversion]".[85] While negotiating with Antara, Defendants knew that APE's mirrored voting power could be weaponized against holders of Common Stock.[86]

Plaintiffs believe that while Defendants would try to show a "compelling justification" at that time, Plaintiffs had the stronger arguments. Defendants would

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[84] AMC_00012231 (12/6/22 email to Goodman and Merriwether from D.F. King, "[a]ttach[ing] … a model designed to show which combinations of APE and AMC support (as a % of votes cast collectively in favor) would get us to the requisite vote requirement of the majority of the combined outstanding shares."

[85] AMC_00000050; *see also* AMC_00006419 (email from Van Zandt to Aron and Goodman, attaching "preliminary ownership and vote analysis based on various investment scenarios with Antara", demonstrating that AMC was concerned about the impact an Antara investment would have on Antara's share total and, by extension, its voting percentage).

[86] *See, e.g.*, AMC_00019706, 19707 (5/31/2022 email chain involving Goodman and Merriwether outlining how preferred equity could be used to turn the required vote from a majority of shares outstanding" standard to "a majority of votes cast standard"; something can only be achieved via proportional voting).

argue that the Company needed additional capital, pointing to contemporaneous documents.[87] Plaintiffs would argue that Defendants could not show that, at the time of their breaches in December 2022, AMC was on the immediate verge of bankruptcy, pointing to AMC's public statements to the contrary, AMC investment in the Hycroft gold mine, and AMC's own internal documents.[88] All things considered, Plaintiffs believe they would have succeeded on *Blasius'*s second prong and the merits for their *Blasius* Claim generally.

The same is not true for Plaintiffs' Section 242(b) Claim. The Antara Transaction would have the ultimate effect of increasing the number of shares of Common Stock outstanding. While Section 242(b)(2) normally requires a class vote when the number of shares of that class is increased, AMC's Certificate has had a

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[87] *See, e.g.*, AMC_00029358 (10/12/22 Aron text message explaining that AMC needed to raise cash because "Disney shifted a $350 million movie from 2023 to 2024"; "Current industry box office forecast for next year is now more like $9.5 billion — not the $[1]0.5 billion people hoped"; AMC needed to refinance its European debt which likely cost between "$50-$100 million of cash"; and "[s]urging interest rates could increase our interest expense by $40-$60 million next year").

[88] *See, e.g.*, *id.*; AMC Entertainment Holdings, Inc., *Q4 2022 Earning Call* (Feb. 28, 2023) (Aron: "Since September of 2022, the creation of APE units resulted in AMC successfully raising $314 million of gross cash proceeds and allowed us to reduce the principal balance of our debt by more than $221 million, most of which was profitably repurchased at a substantial discount. Indeed, AMC is unequivocally a stronger company today as a result of the creation of the APE dividend, and it's allowing us to raise cash and reduce debt.....").

carveout since its IPO exempting the Company from this class vote requirement.

Thus, the Section 242(b) Claim hinged on whether the APE issuance adversely affected the "powers, preferences or special rights" of Common Stock by relegating the common stockholders to a minority of the Company's voting power.[89] Longstanding interpretations of Section 242(b)(2), including in *Hartford Accident. & Indemnity Co. v. W. S. Dickey Clay Manufacturing Co.*[90] and *Orban v. Field*,[91] made clear that the creation of a new class of stock that merely harmed the "relative position" of a preexisting class of stock does not trigger a class vote. Removing doubt, Vice Chancellor Laster's recent ruling in *Electrical Workers Pension Fund, Local 103, IBEW v. Fox Corp.*,[92] slammed the door on the Section 242(b) Claim, confirming that a dilutive offering that did not directly alter the innate "powers, preferences or special rights" of a class of stock does not trigger Section 242(b)(2)'s

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[89] AMC's Certificate contains a specific exemption from Section 242(b)(2)'s baseline requirement of separate class votes to approve any increase in the number of authorized shares of Common Stock. As such, AMC did not need to solicit a separate vote of the Common Stock. Certificate, Article IV, D.

[90] 24 A.2d 315.

[91] 1997 WL 153831.

[92] C.A. No. 2022-1007-JTL (Del. Ch. Mar 29, 2023) (TRANSCRPT).

class voting requirement.[93]

Plaintiffs likely would show imminent, irreparable harm. Under Delaware law, interference with the stockholder franchise constitutes quintessential irreparable harm.[94] The Company's circumvention of common stockholders' franchise amounts to such harm and effectuating the Certificate Amendments would have irreversibly altered AMC's capital structure.

The principal hurdle facing the Class was the balancing of the equities. Plaintiffs expect that, had there been a preliminary injunction hearing, AMC would have focused on AMC's very real need to raise additional capital without further delay. Regardless of whether Defendants needed to act the way they did when they weaponized APEs and entered into the Antara Transaction, AMC's documents show that, if AMC does not raise significant additional capital by late 2023, it will be in a

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[93] One of Lead Counsel represents the plaintiffs in *Fox* and has recently appealed that decision to the Delaware Supreme Court. The arguments presented to the Court in *Fox* concede, consistent with precedent, that an issuance that is merely dilutive of another class but does not alter the characteristics of the class of stock itself does not require a separate class vote. The arguments on appeal in that case are not expected to alter this aspect of how Section 242 is interpreted. In any event, given AMC's precarious financial position, AMC was unlikely to survive long enough for an appeal in *Fox* to be resolved.

[94] *See, e.g.*, *EMAK Worldwide, Inc. v. Kurz*, 50 A.3d 429, 433 (Del. 2012) ("Shareholder voting rights are sacrosanct.").

precarious financial situation.[95] During the course of litigation, Plaintiffs became concerned that absent a capital raise during the early summer of 2023, AMC could find itself struggling to raise money. Wall Street capital raising basically shuts down in August and market volatility or weak earnings could leave AMC scrambling.

Regardless of Plaintiffs' views about the equities, at the preliminary injunction hearing, the Court would have heard Defendants argue about AMC's financing needs, and the harm to AMC (and the Class) if an injunction prevented AMC from paying down its debt. Thus, Plaintiffs appreciated that there was a very real possibility that the Court could have been persuaded that there was good cause to lift the *Status Quo* Order despite the substantive strength of their claims, because AMC needs to raise capital. Although the process was unfolding, Plaintiffs tentatively concluded that in lieu of seeking to permanently enjoin the Certificate Amendments, they may have to make clear to the Court that they would use a preliminary injunction as leverage to force the Company to make the convergence of APEs and Common Stock less dilutive to the Common Stock.

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[95] *See, e.g.*, AMC_00029358 (10/12/22 Aron text message explaining that AMC needed to raise cash because "Disney shifted a $350 million movie from 2023 to 2024"; "Current industry box office forecast for next year is now more like $9.5 billion — not the $[1]0.5 billion people hoped"; AMC needed to refinance its European debt which likely cost between "$50-$100 million of cash"; and "[s]urging interest rates could increase our interest expense by $40-$60 million next year").

While many Common Stock investors abhor the harm the APEs have done to their equity interests, Plaintiffs also determined that it was unlikely the Court would have invalidated the APEs entirely. The Board had the legal authority to create and issue them, and any claim concerning APEs did not arise until Defendants weaponized them alongside the Antara Transaction.[96] Moreover, as detailed above, there is no valid Section 242(b) challenge to the creation of the APEs.

In any event, a full invalidation of the APEs was always (and remains) highly unlikely. Hundreds of millions of APEs were sold by the Class or AMC to *bona fide* third-party purchasers on the market. Plaintiffs assumed that the Court would be loath to wipe out the investments of innocent third parties. Moreover, were the Court to do so, it would cause chaos in the market for AMC, harm innocent third parties, and likely result in AMC being sued by those who bought APEs from the Company. In other words, while Plaintiffs believe Defendants never should have turned to the APEs and the Antara Transaction in the first place, the litigation was not a realistic means to turn back the proverbial clock. Instead, the litigation was a way to improve the outcome for common stockholders going forward.

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[96] There is no evidence that Defendants contemplated the Antara Transaction or a similar transaction when the APEs were first created and issued.

At bottom, given a credible assessment of their claims and consideration of the relief realistically attainable, Plaintiffs respectfully submit that the Settlement is an outstanding result for the proposed Class. At its core, this Action is about voting rights. But there are competing practical considerations, including the Company's need to raise capital and the near impossibility of reversing the APE issuance. Frankly, had the Court granted the injunction, Plaintiffs' most logical course of action would have been to leverage the injunction to achieve an economic benefit for Class members. While one can debate whether that economic benefit would be greater or less than the value of the proposed Settlement, that is a dispute of degree.

Given those constraints, the proposed Settlement, which is the product of an intense mediation led by former Vice Chancellor Joseph R. Slights III—another factor weighing in favor of approving the Settlement[97]—is beneficial to both common stockholders and the Company. The new stock issuance compensates common stockholders for the dilution suffered on account of the APEs issuance to

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[97] *Id.*; *see also Voigt v. Metcalf*, C.A. No. 2018-0828-JTL,. at 48 (Del. Ch. Jan. 19, 2022) (TRANSCRIPT) ("I also take into account that the settlement was achieved with the assistance of an outstanding mediator, which I think is an important bona fide."); *Cumming v. Edens*, C.A. No. 13007-VCS, at 17 (Del. Ch. July 31, 2019) (TRANSCRIPT) ("I'm always comforted when settlements presented to me are the product of mediation. I think that suggests a vigorous vetting of risk, which is what a good mediation is all about, especially when qualified counsel is involved on both sides of the V[.]").

the expected tune of approximately ***$129 million***. Indeed, an economic recovery of this magnitude is rare in cases before this Court.

## II. CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE.

The requirements for class certification, as set forth in Court of Chancery Rule 23, are met. Consequently, class certification is appropriate.

### A. The Class Satisfies Rule 23(a).

For a class to be certified, "(1) the class [must be] so numerous that joinder of all members is impracticable, (2) there [must be] questions of law or fact common to the class, (3) the claims or defenses of the representative parties [must be] typical of the claims or defenses of the class, and (4) the representative parties [must] fairly and adequately protect the interests of the class."[98]

#### i. The Class Is So Numerous That Joinder of All Members Is Not Practical.

The numerosity requirement of Rule 23(a)(1) may be satisfied by "numbers in the proposed class in excess of forty, and particularly in excess of one hundred."[99] As of the February 8, 2023, record date for the Special Meeting, there were over 517

[98] DEL. CT. CH. R. 23(a).

[99] *Marie Raymond Revocable Tr. v. MAT Five LLC*, 980 A.2d 388, 400 (Del. Ch. 2008) (quoting DEL. CT. CH. R. 23).

million shares of Common Stock outstanding.[100] Joinder of the diffuse holders of hundreds of millions of shares is not practical and numerosity is satisfied.

ii. Questions of Law Are Common to the Class Members.

Commonality is "met where the question of law linking the class members is substantially related to the resolution of the litigation even though the individuals are not identically situated."[101] Here, common questions of law include whether: (i) Defendants breached their fiduciary duties by attempting to circumvent the voting rights the holders of the Common Stock; (ii) Defendants violated Section 242(b); and (iii) Plaintiffs and the Class have been injured by Defendants' conduct.[102] This Court routinely certifies classes in analogous circumstances.[103]

iii. Plaintiffs' Claims Are Typical of the Class's Claims.

"The test of typicality is that the legal and factual position of the class representative must not be markedly different from that of the members of the class" and "focuses on whether the class representative claim (or defense) fairly presents

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[100] ¶155; Proxy at 4.

[101] *Leon N. Weiner & Assocs., Inc. v. Krapf*, 584 A.2d 1220, 1225 (Del. 1991) (citations and internal quotation marks omitted).

[102] ¶156.

[103] *See*, *e.g.*, *In re Phila. Stock Exch., Inc.*, 945 A.2d 1123, 1141-43 (Del. 2008) (rejecting objection to certification of stockholder class based on commonality).

the issues on behalf of the represented class."[104] Plaintiffs are similarly situated to the other unaffiliated holders of Common Stock and their claims "arise[] from the same event or course of conduct that gives rise to the claims … of other class members and [are] based on the same legal theory."[105]

iv. The Class's Interests Are Fairly and Adequately Protected.

There is no divergence of interest between Plaintiffs, who include an institutional investor and retail investors, and absent Class members. Moreover, the recovery achieved through this litigation—a distribution of newly issued shares to all holders of Common Stock immediately before the Conversion and without any special treatment of Plaintiffs—demonstrates that Plaintiffs' interests were aligned with those of absent class members and is likewise indicative of the competence and effectiveness of Class Counsel.[106]

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[104] *Weiner & Assocs.*, 584 A.2d at 1225-26 (citations and internal quotation marks omitted).

[105] *Id.* at 1226 (citation omitted).

[106] *See Haverhill Ret. Sys. v. Kerley*, C.A. No. 11149-VCL, at 20-21 (Del. Ch. Sept. 28, 2017) (TRANSCRIPT) ("Given that I am approving the settlement as fair and adequate, it follows that I necessarily believe that the class representatives, as well as the derivative action representatives, provided adequate representation in this matter.").

### B. The Settlement Class Satisfies Rule 23(b)(1) and 23(b)(2).

Rule 23 enumerates when certification is appropriate.[107] Consistent with longstanding Delaware corporate law practice, the Stipulation of Settlement binds the parties to seek certification of a non-opt-out settlement class pursuant to Rule 23(b)(1) and (2).

The Class satisfies Rule 23(b)(1). All Class members are unaffiliated holders of Common Stock who suffered the same harm from Defendants. The definition of the Class expressly excludes Defendants. The relief afforded through the proposed Settlement would impact all stockholders equally, and approval of the proposed Settlement would protect all absent Class members' interests in uniform fashion.[108]

The Class also satisfies Rule 23(b)(2). Defendants' actions impacted Class members in uniform fashion, and the Proposed Settlement would afford final relief with respect to the Class as a whole.[109]

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[107] DEL. CT. CH. R. 23(b)(1)-(2).

[108] *See Haverhill*, C.A. No. 11149-VCL, Tr. at 21 ("The class is appropriately certified pursuant to Rule 23(b)(1) as a non-opt-out class, because had this action been prosecuted separately by individual class members, there would have been a risk of inconsistent or varying results, and effectively, adjudication with respect to one would have been dispositive of everyone's interests.").

[109] *See generally Nottingham Partners v. Dana*, 564 A.2d 1089, 1096-97 (Del. 1989) (affirming class certification where primary relief in settlement was declaratory,

The Court's letter of April 28, 2023, explained: "Whether the settlement class will be certified as a non-opt-out class is a decision the Court will make, in its sole discretion, when the Court rules on class certification and the settlement terms." [footnote omitted]. While the Court in its discretion can determine whether to "extend an opt out privilege as part of a subsection (b)(2) certification," it must first, "balance the equities of the defendants' desire to resolve all claims in a single proceeding against the individuals' interest in having their own day in Court."[110] As the Delaware Supreme Court held in *Nottingham Partners*, "[t]he ability to opt out of the class always involves the potential for a multiplicity of lawsuits and variations in adjudication which class actions are intended to prevent."[111]

The terms of the Settlement Stipulation specifically contemplate a non-opt-out Settlement Class under Rules 23(b)(1) and (2). Delaware Courts have long recognized that breach of duty class actions are properly certified pursuant to Rule 23(b)(1) and (2). In *In re Celera Corporation Shareholder Litigation*, the Delaware Supreme Court explained:

Delaware courts "repeatedly have held that actions challenging the

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injunctive, and rescissory and thus afforded "similar equitable relief with respect to the class as a whole").

[110] *Nottingham Partners v. Trans-Lux Corp.*, 564 A.2d 1089, 1101 (Del. 1989).

[111] *Id.*

> propriety of director conduct in carrying out corporate transactions are properly certifiable under both subdivisions (b)(1) and (b)(2)." . . . Rather, certification under Rule 23(b)(2) is appropriate when the rights and interests of the class members are homogeneous. A Rule 23(b)(2) class may seek monetary damages in addition to declaratory or injunctive relief, so long as the claim for equitable relief predomina[te]s.[112]

There are no mandatory opt-out rights for classes certified pursuant to Rule 23(b)(1) and (2).[113] While this Court has discretion to grant opt-out rights in peculiar circumstances, that discretion is rarely so exercised, and this case does not fit the mold established by prior precedent. In *Nottingham Partners v. Trans-Lux Corporation*, the Delaware Supreme Court upheld a non-opt-out 23(b)(2) class explaining: "[t]he ability to opt out of the class always involves the potential for a multiplicity of lawsuits and variations in adjudication which class actions are intended to prevent."[114]

Delaware courts have also repeatedly rejected attempts to challenge (b)(1) and (b)(2) class actions as taking over the proper place of (b)(3) class actions, which have mandatory opt-outs.[115]

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[112] 59 A.3d 418, 432-33 (Del. 2012).

[113] *Id.* at 432.

[114] 564 A.2d 1089, 1101 (Del. 1989)

[115] *See, e.g.*, *Turner v. Bernstein*, 768 A.2d 24, 30 (Del. Ch. 2000) (rejects argument that merger case should be certified as a (b)(3) rather than a (b)(1) case, noting it is

In certifying a non-opt-out class in *In re Mobile Communications Corporation of America, Inc. Consolidated Litigation*,[116] Chancellor Allen explained:

> In addressing whether non-settling plaintiffs or absent class members must necessarily be afforded an opt-out right, one must consider not only the nature of the claims stated but also the nature of the claims to be released ... The propriety of director action should be adjudicated, if it is to be adjudicated, once with respect to all similarly situated shareholders.

Delaware Courts have repeatedly declined to require opt-out rights in class actions. Most recently, in *In re Straight Path Communications Inc. Consolidated Stockholder Litigation*,[117] Vice Chancellor Glasscock rejected the defendants' insistence on providing opt-out rights, noting in relevant part, "[t]he pertinent facts here—Howard Jonas's alleged behavior with respect to a forced settlement of the Indemnification Claim—will be equally applicable to all stockholders ... '[B]asically only one recovery is sought and the determination of the overall amount and the sum due each class member is not difficult.'"[118]

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"at odds with this court's prior practice in addressing challenges to the conduct of corporate directors in implementing mergers.").

[116] 1991 WL 1392, at *15-16 (Del. Ch. Jan. 7, 1991).

[117] 2022 WL 2236192, at *10 (Del. Ch. June 14, 2022).

[118] *See also In re EBIX, Inc. Stockholder Litig.*, 2018 WL 3570126 (Del. Ch. July 17, 2018) (Court rejected challenge and certified a non-opt-out 23(b)(1) and (b)(2) class).

These legal concerns are particularly applicable here. The claims against the AMC Board for its conduct involve both equitable relief and monetary damages. Plaintiffs have enjoined the Certificate Amendments and the Conversion that would ensue. There can be no compromise of that injunction on a partial basis because AMC cannot conduct the exchange and reverse split for some stockholders and not others. Thus, at the very least, all claims seeking (and obtaining) injunctive relief must rise and fall on a non-opt-out basis.

Moreover, allowing opt-outs would risk different and conflicting results and damages. The Settlement including the non-opt-out settlement Class, if approved, will provide final resolution of this episode in AMC's history and provide AMC the opportunity to quickly begin raising capital so it can address its immediate financial needs.

Beyond legal precedent, there are pragmatic reasons why this case is not well suited to an opt-out process. First, providing an opt-out right requires providing notice sufficient to satisfy due process and a mechanism for class members to know how to opt out.[119] Since the current notice does not provide any structure or

[119] *MCA, Inc. v. Matsushita Elec. Indus. Co*., 785 A.2d 625, 635 (Del. 2001) (holding that due process requires that class members in an opt-out class be given notice of their ability to opt out and the opportunity to do so); *see also* Ct. Ch. R. 23(c)(2)(A) (requiring that notice with regard to certification of a (b)(3) class provide notice that

mechanism for opting out, a subsequent notice would be required, setting forth the instruction for how a person can opt out.

Second, putting aside the equitable nature of the underlying claims, the form of relief—issuance of new shares to all pre-Conversion AMC common stockholders—does not lend itself to an opt-out process. While AMC can speak directly to the pressure it faces, Plaintiffs believe that delaying the Conversion for another 30-60 days beyond the currently scheduled final approval hearing to permit an opt-out process to unfold may itself cause serious prejudice.

In this case, anyone opting out would have to forego receiving the Settlement Consideration, which the Company is set to distribute to all common stockholders as of a certain point in time. As a practical matter, that means anyone opting out likely has to provide the Company with what is known as a "DTC Suppression Letter" in advance of the issuance of the Settlement Consideration, and the Company has to work with its transfer agent, and various brokers to ensure that the Common Stock to be issued is not send to the accounts of those opting out. This is not a simple process and many people who might otherwise say they want to opt-out may well struggle to complete the process of obtaining and providing the DTC Suppression

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advises each class member that "[t]he Court will exclude a member from the class if the member so requests by a specified date").

Letter in time. Indeed, the Court will likely have to sort out which opt-outs are valid and which are not.

Ultimately, while Plaintiffs fully support investor optionality, they signed the Settlement Stipulation contemplating a non-opt-out Class in reliance on longstanding Delaware practice and a perception that this case, in particular, fits the reasoning behind the practice. In all events, any consideration of providing opt-out rights should take into account the potential harm from prolonged delay.

**C. The Remaining Requirements of Rule 23 Are Satisfied.**

Rule 23(e) provides that "a class action shall not be dismissed or compromised without the approval of the Court, and notice by mail, publication or otherwise of the proposed dismissal or compromise shall be given to all members of the class in such manner as the Court directs".[120] Notice was (or will be) provided to all absent Class members, pursuant to the process set forth in the Scheduling Order.[121]

Pursuant to Rule 23(aa), Plaintiffs have sworn that they have not received, been promised, or offered and will not accept any form of compensation, directly or indirectly, for prosecuting or serving as a representative party in this Action except

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[120] DEL. CT. CH. R. 23(e).

[121] Because Plaintiffs opening brief is due before notice must be completed, Plaintiffs will confirm in their reply brief that notice was executed as ordered by the Court.

for: (1) such damages or other relief as the Court may award them as a member of the Class; (2) such fees, costs, or other payments as the Court expressly approves; or (3) reimbursement, paid by such the Plaintiffs' attorneys, of actual and reasonable out-of-pocket expenditures incurred directly in connection with the prosecution of the Action.[122]

* * *

For the foregoing reasons, Plaintiffs respectfully submit that the Court should certify the Class.

## III. THE REQUESTED FEE AND EXPENSE AWARD IS MERITED.

Plaintiffs request attorneys' fees of $20 million, inclusive of $121,641.74 in expenses.

### a. Legal Standard

This Court may award attorneys' fees to counsel whose efforts conferred a common benefit.[123] This principle applies to both financial and non-monetary benefits.[124]

The determination of any attorney fee and expense award is within the Court's

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[122] See Affidavits of Munoz, Franchi, and Allegheny.

[123] *See, e.g.*, *Americas Mining Corp. v. Theriault*, 51 A.3d 1213, 1255 (Del. 2012); *Tandycrafts, Inc. v. Initio Pr's*, 562 A.2d 1162, 1164 (Del. 1989).

[124] *EMAK Worldwide, Inc. v. Kurz*, 50 A.3d 429, 434 (Del. 2012).

discretion.[125] The Court considers the *Sugarland* factors, including: (1) the benefit achieved; (2) the contingent nature of counsel's fee and the efforts of counsel and time invested; (3) the complexity of the litigation; and (4) the standing and ability of counsel involved. Delaware courts have assigned the greatest weight to the benefit achieved in litigation.[126]

The *Sugarland* factors fully support the requested Fee and Expense Award, particularly given the exceptional recovery Plaintiffs achieved for the Class in the face of a novel legal challenge that may well have resulted in no benefit at all.

**b. The Benefits of the Settlement**

As set forth in Section 3 herein, the proposed Settlement confers substantial and quantifiable financial and non-economic benefits on the Class, achieved on an extremely tight timeline. Should the Court approve the proposed Settlement of this Action, the benefit achieved—a distribution of approximately 6.9 million shares of Common Stock to Class members—would reflect a financial benefit currently worth approximately $129 million, as detailed in Section 3 above and the Ripley Affidavit.

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[125] *Theriault*, 51 A.3d at 1254-55 (upholding fee award of over $304 million); *Sugarland Indus., Inc. v. Thomas*, 420 A.2d 142, 149-50 (Del. 1980).

[126] *Id.*; *see also Julian v. E. States Const. Serv., Inc.*, 2009 WL 154432, at *2 (Del. Ch. Jan. 14, 2009) ("In determining the size of an award, the courts assign the greatest weight to the benefit achieved in the litigation." (citing *Franklin Balance Inv. Fund v. Crowley*, 2007 WL 2495018, at *8 (Del. Ch. Aug. 30, 2007)).

Additionally, the distribution will result in a commensurate increase in voting power for Class members. Finally, the settlement will allow AMC to clean up its capital structure and raise capital going forward so that AMC can pay down or restructure its debts and funds its operations, which ultimately should increase the value of the Settlement beyond its immediate financial benefits. As such, the benefits that the settlement provides are substantial and support the requested Fee and Expense Award.

**c. The Contingent Nature of Counsel's Representation and the Efforts and Time Expended Support the Fee and Expense Award.**

The "second most important factor" in the Court's *Sugarland* analysis is the contingent nature of counsel's representation.[127] It is the "public policy of Delaware to reward this risk-taking in the interests of shareholders."[128] Contingent representation entitles plaintiffs' counsel to both a "risk" premium and an

[127] *Dow Jones & Co. v. Shields*, 1992 WL 44907, at *2 (Del. Ch. Jan. 10, 1992).

[128] *In re Plains Res. Inc. S'holders Litig.,* 2005 WL 332811, at *6 (Del. Ch. Feb. 4, 2005); *see also In re First Interstate Bancorp. Consol. S'holder Litig.,* 756 A.2d 353, 365 (Del. Ch. 1999), *aff'd sub nom. First Interstate Bancorp v. Williamson,* 755 A.2d 388 (Del. 2000) (noting that it is "consistent with the public policy" of Delaware to "reward this sort of risk taking in determining the amount of a fee award.")

"incentive" premium on top of the value of their standard hourly rates.[129]

Here, as set forth in the Attorney Affidavits, Plaintiffs' counsel pursued this case on a fully contingent basis. Accordingly, in undertaking this representation, they incurred all of the classic contingent fee risks, including the ultimate risk—no recovery whatsoever and a loss of all expenses incurred. The Court should not only consider Counsel's taking this case on a contingency, but consider the nuanced judgments they made to create these benefits for the class.

Absent this litigation, the Conversion would take place without any distinct consideration to the Class. While many AMC investors hoped the litigation would "turn back the clock" to a pre-APEs capital structure, as set forth in Section I above, Plaintiffs were skeptical that outcome was viable. What's more, although Plaintiffs believed they would show the inequitable nature of the Antara deal and its override of stockholder voting rights, if the Court credited Defendants' anticipated arguments about AMC's severe financial needs, the injunction may well be denied and the Class would receive nothing. Counsel achieved this outcome only by standing firm despite

[129] *Seinfeld v. Coker,* 847 A.2d 330, 337 (Del. Ch. 2000); *see also Franklin Balance Sheet Inv. Fund v. Crowley*, 2007 WL 2495018, at *12 (Del. Ch. Aug. 30, 2007) ("Fee awards should encourage future meritorious lawsuits by compensating the plaintiffs' attorneys for their lost opportunity cost (typically their hourly rate), the risks associated with the litigation, and a premium.") (citations omitted).

these risks, and making clear that they would litigate the claim and risk a total loss absent a distribution of newly issued shares currently worth about $129 million to the common stockholders as of immediately before the Conversion.

The substantial efforts (and time) expended by counsel in litigating this Action further support the Fee and Expense Award. Ultimately, effort is more important than time.[130] Fee awards should neither penalize counsel for early victory nor incentivize dragging out litigation or expending unnecessary hours.[131] Accordingly, the time spent by counsel in this litigation should only serve as a cross-check on the reasonableness of the fee award. [132] Counsel spent 3,330.75 hours litigating this action on an expedited basis, which included review of over 56,000 pages of documents produced by Defendants and over 2,500 pages of documents produced by third-parties. The substantial time spent and the contingent nature of the representation further demonstrate the reasonableness of the requested Fee and Expense Award.

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[130] *Theriault*, 51 A.3d at 1258.

[131] *Sciabacucchi v. Salzberg*, 2019 WL 2913272, at *6 (Del. Ch. July 8, 2019).

[132] *Id.* (citing *In re Sauer-Danfoss Inc. S'holders Litig.,* 65 A.3d at 116, 1138 (Del. Ch. 2011); *In re Cox Radio S'holders Litig.,* 2010 WL 1806616, at *23 n.172 (Del. Ch. May 6, 2010) (time is secondary factor that may be used "as a 'backstop check' when assessing the reasonableness of a fee award").

**d. The Complexity of the Litigation**

"Litigation that is challenging and complex supports a higher fee award."[133] This case was more complex than the typical breach of fiduciary duty or *Blasius* case, as the actions undertaken by Defendants were unprecedented, involving bespoke securities and unique methods to effect Certificate Amendments despite the posture and composition of AMC's common stockholders. Prosecuting this case required a deep understanding of the contours of Delaware law, as well as nuanced areas of trading strategies and corporate finance. It also required innovative development of a settlement structure, the terms of which provide Class members with substantial compensation for the Conversion and Reverse Split, where previously they had none. This factor supports the Fee and Expense Award.

**e. The Standing and Ability of Counsel**

The standing and ability of counsel is another factor Delaware courts consider when determining the reasonableness of a fee and expense award.[134]

Here, counsel are experienced in stockholder class and corporate governance litigation and their reputations have been the subject of favorable comments by the courts of this state and other state and federal courts.

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[133] *Activision*, 124 A.3d at 1072.

[134] *See Sugarland,* 420 A.2d at 149.

The standing of opposing counsel also may be considered in determining an allowance of counsel fees. Defendants are represented by experienced, skillful, and well-respected law firms who vigorously defended their clients' interests. The ability of opposing counsel enhances the significance of the benefit achieved for the Class.

This factor thus supports the requested Fee and Expense Award.

**f. The Reasonableness of the Requested Fee and Expense Award**

In total, Plaintiffs' requested Fee and Expense Award comprises 15.5% of the financial benefit achieved, without taking into account the other noneconomic benefits of the settlement. Importantly, unlike the usual cash settlement fund, where the fee award reduces the amount paid to the Class, Defendants or their insurers will fully fund anything awarded here. Thus, one way to assess the fee award is to consider the $129 million current value of the recovery as if it were a net recovery (post-fee award). In this sense, if the Court assumes a cash recovery of $150 million and a fee award of just 12.5%, it would be awarding $20 million and leaving $130 million for the Class. At higher percentage awards – clearly supported in this case and on this record – one would have to assume proportionately higher recoveries.

Whether viewed as a fee award off of the actual gross recover or as set forth above, these percentages are well within the range of reasonableness given precedential fee awards. The requested fees, after taking into account expense,

translates to an hourly rate of $5,968.13. Delaware Courts have regularly found that hourly rates at, and above, this level are reasonable.[135]

In awarding fees, the Court "must make an independent determination of reasonableness."[136] Delaware case law supports a wide range of reasonable percentages for attorneys' fees.[137] Selecting an appropriate percentage requires an exercise of judicial discretion.[138] "While there are outliers, a typical fee award for a case settling [pre-trial] . . . ranges from 22.5% to 25% of the benefit conferred."[139] The Court has found that "[t]he incentive effect of using percentages that increase depending on the stage of the litigation counteracts a natural human tendency towards risk aversion."[140] Cases settling shortly before trial support a range

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[135] *In re Versum Materials, Inc. S'holder Litig.*, C.A. 2019-0206-JTL, at 81 (Del. Ch. July 16, 2020) (TRANSCRIPT) (approving fees equivalent to an hourly rate of over $10,000); *Sciabacucchi*, 2019 WL 2913272, at *6 (fees equivalent to $11,262.26 reasonable); *In re Medley Cap. Corp. S'holders Litig.*, Consol. C.A. No. 2019-0100-KSJM, at 67-68 (Del. Ch. Nov. 19, 2019) (TRANSCRIPT) (a $5,989 hourly rate would not be "beyond the bounds of reasonableness").

[136] *Goodrich v. E.F. Hutton*, 681 A.2d 1039, 1046 (Del. 1996).

[137] *Activision*, 124 A.3d at 1070 (citing *Theriault*, 51 A.3d at 1259-60).

[138] *Theriault*, 51 A.3d at 1254.

[139] *Activision*, 124 A.3d at 1071 (citing *In re Orchard Enters., Inc. S'holders Litig.*, 2014 WL 4181912, at *8 (Del.Ch. Aug 22, 2014)).

[140] *Id.* at 107.

of up to 27.5% of the benefit conferred.[141] This case settled on the eve of a preliminary injunction hearing. The Court of Chancery regularly has awarded attorneys' fees between 20% and 25% of the value of settlements that conferred a common benefit exceeding $65 million.[142]

As set forth in section 3.E herein, this case generated considerable adversarial activity. The Settlement was also the product of a well fought mediation session with former-Vice Chancellor Slights, with extensive follow-up negotiations.

Plaintiffs here achieved substantial financial benefits in reaching a Settlement awarding a distribution of AMC common stock to the class valued at $129 million and the substantial non-monetary benefits resulting from the restoration and protection of stockholder voting rights in the form of a valuable stock distribution to

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[141] *In re Rural Metro Corp. S'holders Litig.*, C.A. No. 6350-VCL at 36-37 (Del. Ch. Nov. 19, 2013) (TRANSCRIPT) (27.5% of a settlement fund for settlement before trial); *In re CNX Gas Corp. S'holders Litig.,* C.A. No. 5377-VCL at 6, 31-32 (Del. Ch. Aug. 23, 2013) (TRANSCRIPT) (27.5% of settlement for settlement 10 days before trial).

[142] *See In re Jefferies Grp., Inc. S'holders Litig*., 2015 WL 3540662, at *2 (Del. Ch. June 5, 2015); *see also In re ACS S'holder Litig.*, C.A. No. 4940-VCP, at 20-21 (Del. Ch. Aug. 24, 2010) (TRANSCRIPT) (awarding 25% of the common benefit as attorneys' fees, plus expenses); *In re El Paso Corp. S'holder Litig.*, Consol. C.A. No. 6949-CS, at 39-40 (Del. Ch. Dec. 3, 2012) (TRANSCRIPT) (awarding the equivalent of 25% of the benefit achieved, including expenses*); In re News Corp. S'holder Litig.*, C.A. 6285-VCN, at 75-77 (Del. Ch. June 26, 2013) (TRANSCRIPT) (awarding fees of 20%, inclusive of expenses)

Class members—AMC common stockholders—and a clean-up of the Company's capital structure that will allow it to repay its debt and continue to create value for stockholders in the years to come. All other *Sugarland* factors support the requested fee award. Accordingly, the Court should hold that the requested Fee and Expense award is warranted.

## IV. PLAINTIFFS SHOULD RECEIVE MODEST INCENTIVE AWARDS.

Plaintiffs seek approval of a $5,000 incentive award to each of the three Lead Plaintiffs, to be paid ***exclusively*** out of any fees awarded to Class Counsel as compensation for the time and effort that they each devoted to this expedited matter.

The Supreme Court has recently re-affirmed that lead plaintiffs may be paid modest incentive awards, where justified by the factors identified in *Raider v. Sunderland*: (i) the time, effort, and expertise expended by the class representative, and (ii) the benefit to the class.[143] Public policy also favors such an award. "Compensating the lead plaintiff for efforts expended is not only a rescissory measure returning certain lead plaintiffs to their position before the case was initiated, but an incentive to proceed with costly litigation (especially costly for an

[143] 2006 WL 75310, at *1 (Del. Ch. Jan. 4, 2006), *cited in Isaacson v. Niedermayer*, 200 A.3d 1205, 1205 n.1 (Del. 2018).

actively participating plaintiff) with uncertain outcomes."[144] And in "the current environment" a stockholder who files plenary litigation faces "the very real possibility of having their computer and other electronic devices imaged and searched, sitting for a deposition—perhaps more than one if they also institute 220 litigation—and then perhaps testify at trial."[145]

Here, two of the three Lead Plaintiffs—Messrs. Munoz and Franchi—served 220 Demands. Each of the three Lead Plaintiffs produced documents in this litigation. Allegheny, in producing documents, conducted electronic searches of emails and texts, and also searched and produced hard copy documents. Both Messrs. Munoz and Franchi searched for and produced documents and trading records.[146]

Given the expedited schedule in the Action, both Mr. Munoz and the

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[144] *Raider*, 2006 WL 75310, at *1.

[145] *Verma v. Costolo*, C.A. No. 2018-0509-PAF (Del. Ch. July 27, 2021). (TRANSCRIPT) at 52-53.

[146] *Voight v. Metcalf*, C.A. No. 2018-0828-JTL (Del. Ch. Jan. 19, 2022) (TRANSCRIPT) at 44-45 ("I will tell you, if you told me that I was going to have to image all my devices, produce a bunch of documents, spend a day with you- all, and then have a full-day deposition where any one of the excellent defense lawyers on this team was going to go into all my potentially tangentially related decisions that might touch on something about my ability to act in a fiduciary capacity or be in this litigation, I wouldn't do it for $5,000.").

representative of Allegheny—Mr. Szymanski—met with their counsel and prepared for their respective depositions. The proposed Settlement was reached the evening before Mr. Munoz's deposition.

As this Court is aware, AMC has a large, extremely active and vocal stockholder base. Each of the Lead Plaintiffs were subject to an unusual level of on-line harassment—often in less than polite terms—from the time of filing the complaints through this settlement process.

For Mr. Munoz, that harassment included numerous on-line posts about him, often describing him or his actions in unfavorable terms, a motion publicly filed by the Defendants that included confidential financial information about him that was produced in this litigation, and online discussion about his private financial information that was improperly disclosed.

For Allegheny, they and their representative at the fund, Mr. Szymanski, were subject to many negative online posts. In addition, as a public fund, they received numerous calls and emails about the case, both for and against it, and took time fielding, responding, and, where appropriate, forwarding them to counsel.

The requested award is "reasonable and will be paid out of [Class] Counsel's fee, so [it will] not harm the class. [The requested award has] been fully disclosed [in the notice] and [is] not so large as to raise specters of conflicts of interest or

improper lawyer-client entanglements."[147] The Court has recently approved awards ranging from $5,000 to $100,000.[148] Here, $5,000 incentive awards are proper.[149]

[147] *Orchard*, 2014 WL 4181912, at *13.

[148] *See, e.g.*, *In re: Pivotal Software, Inc. Stockholders' Litigation*, 2022 WL 5185565 (Del. Ch. Oct. 4, 2022) ($10,000 award to Plaintiff); *In Re Straight Path Communications Inc. Consolidated Stockholder Litigation*, C.A. No. 2017-0486-SG, at 13 ($10,000 award to Plaintiff) (Dec. 27, 2022) (ORDER).

[149] *See In re Galena Biopharma, Inc.*, C.A. No. 2017-0423-JTL, at 83 (Del. Ch. June 14, 2018) (TRANSCRIPT) (awarding $5,000 incentive fee for named plaintiff who did not sit for a deposition and characterizing "[$]1,000 to [$]5,000 . . . nominal awards [as] understandable and appropriate"); *Spritzer v. Aklog*, C.A. No. 2020-0935-KSJM, at 44 (Del. Ch. Nov. 3, 2022) (TRANSCRIPT) (awarding $2,000 for Plaintiff who did not participate in discovery and observing that awards of that magnitude incentivize "plaintiffs who are willing to put their names on the papers . . . when they know that they have to monitor litigation and may be called to sit for depositions and other forms of discovery and relief").

## CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court approve the Settlement, Fee and Expense Award, and Incentive Awards.

Dated: May 4, 2023

Respectfully submitted,

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# CERTIFICATE OF SERVICE

I, Daniel E. Meyer, hereby certify that, on April 4, 2023, a copy of the foregoing *Plaintiff's Opening Brief in Support of [Proposed] Settlement, Application for Attorneys' Fees and Expenses, and Incentive Award for Plaintiffs* was filed and served electronically via File & Serve*Xpress* upon the following counsel of record:

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