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Case No. 2023-0215-MTZ

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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

DEFENDANTS' BRIEF IN SUPPORT OF PROPOSED SETTLEMENT

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Defendants AMC Entertainment Holdings, Inc. ("AMC" or the "Company"), Adam M. Aron, Denise Clark, Howard W. Koch, Kathleen M. Pawlus, Keri Putnam, Anthony J. Saich, Philip Lader, Gary F. Locke, Lee Wittlinger, and Adam J. Sussman (collectively, "Defendants") respectfully submit this brief in support of the parties' proposed settlement (the "Settlement").

PRELIMINARY STATEMENT

It was not long ago, in the second quarter of 2020, that AMC faced the "most challenging quarter" in its "100-year history."[1] While AMC has been recovering from that financial low point, theater attendance is still far from pre-COVID-19 levels. It is therefore essential that AMC continue to be able to raise equity capital to service (and, if possible, pay down) its significant debt load and obtain cash for its day-to-day business operations. The only security currently available to AMC to raise equity capital are AMC Preferred Equity Units ("APEs"). Although APEs were created to be a "mirror-image" of AMC's Class A Common Stock ("Common Stock") -- with the same economic and voting rights -- APEs are trading at a significant discount to Common Stock (currently approximately $5.74 vs. $1.52). Consequently, AMC has been forced to raise equity capital using a significantly discounted security, which is undesirable for AMC and all of its stockholders. By

[1] Exhibit 99.1 to August 6, 2020 AMC Form 8-K (Ex. A) at 1. Citations to "Ex. __" refer to the exhibits attached to the Transmittal Affidavit of Kevin M. Gallagher, filed with this brief.

using APEs to pay down debt and raise cash, AMC only obtains approximately $1.52 per unit of benefit, as opposed to the approximately $5.74 per share of benefit it could obtain if it had authorized, but unissued Common Stock. In other words, AMC has to issue approximately 3.78 APEs ($5.74/$1.52) to obtain the benefit of one share of Common Stock, making APEs 3.78 times more dilutive to AMC's collective Common Stock and APE holders. It is for this reason that AMC proposed -- and the holders of Common Stock and APEs overwhelmingly approved in a March 14, 2023 stockholder vote -- the creation of more Common Stock to allow the conversion of APEs into Common Stock and provide AMC with a significant amount of authorized and unissued Common Stock that it can use to raise equity capital.

The Court's approval of the Settlement will lift the Status Quo Order, which is currently preventing AMC from effectuating the results of its March 14, 2023 stockholder vote.[2] Effectuating the results of that vote -- which will provide AMC with a non-discounted security to raise needed equity capital -- is in the best interests of AMC and all of its stockholders. If the Settlement is not approved, AMC will be forced to continue using the significantly discounted and, thus, significantly dilutive APEs to raise equity capital. Worse still, if AMC were left without *any* security to raise equity capital (such as in the event that the creation and issuance of the APEs

[2] Dkt. 10. Citations to "Dkt. __" refer to docket items in this action.

were invalidated), the Company would be put at significant risk of failing to meet its financial obligations beyond 2023, which would likely result in a bankruptcy or financial restructuring and, in turn, the *total loss* of the investments of holders of both Common Stock and APEs. Because of the importance of these issues to AMC and all holders of APEs and Common Stock, AMC and the other Defendants are submitting this brief.

The Settlement is fair, reasonable, and adequate, and should be approved. Class members stand to receive additional AMC shares that Plaintiffs value, based on recent market prices, at over $100,000,000. This consideration is especially significant given that Plaintiffs' claims were likely to fail, and AMC's stockholders stood to receive *nothing* if they did.

Plaintiffs' purported claim under *Blasius Industries, Inc. v. Atlas Corp.*[3] amounts to second-guessing the legitimate business judgment of a non-conflicted, independent board. Plaintiffs stood little chance of showing that the AMC board of directors' (the "Board") decisions concerning the creation and issuance of the APEs and related acts constituted a breach of fiduciary duty and were made with the intent to "thwart the will" of the holders of Common Stock. The Board acted in the best

[3] 564 A.2d 651, 661 (Del. Ch. 1988).

interests of the holders of Common Stock and sought to manage the Company's balance sheet effectively. *See* Point I.A, *infra*.

Plaintiffs' claim that Defendants violated 8 *Del. C.* § 242(b)(2) rests on a fundamental misunderstanding of the statute and is inconsistent with decades of clear, established Delaware precedent. AMC made *no* changes to its Common Stock -- the powers, preferences, and rights of Common Stock are the same today as they were prior to the creation of the APEs in August 2022 -- and Delaware courts have been clear that where a company, as here, does no more than increase the number of shares of a preferred security, the rights of common shares have not been altered. *See* Point I.B, *infra*.

In addition to these merits issues, Plaintiffs also were unlikely to be able to show that the equities balanced in their favor, which they would need to do to obtain the relief they sought -- a preliminary, and then a permanent, injunction preventing AMC from effectuating the reverse stock split and conversion of APEs into Common Stock approved in the March 14, 2023 vote of the holders of Common Stock and APEs. *See* Point I.C, *infra*.

Despite these strong arguments, Defendants agreed to the Settlement given how important it is to AMC and its overall business that the results of the March 14, 2023 vote be allowed to be given effect as soon as possible.

Finally, the Settlement should be approved as a non-opt-out settlement under well-established Delaware law. *See* Point II, *infra*.

STATEMENT OF FACTS

I. AMC WAS GRAVELY IMPACTED BY THE COVID-19 PANDEMIC AND CONTINUES TO NEED TO RAISE EQUITY CAPITAL

"With the onset of the COVID-19 pandemic and concomitant drop in movie theater attendance, . . . AMC faced an existential crisis."[4] Indeed, the second quarter of 2020, with "almost no revenues coming in the door," was "the most challenging quarter in the 100-year history of AMC."[5] "A once in a century event . . . transformed 2020 into a brutal year, and movie theater businesses [were] hit particularly hard."[6]

Sensing the theater industry's weakness, "[b]y late 2020, numerous hedge funds took widely reported short positions in AMC's stock."[7] AMC was at risk of filing for bankruptcy.[8] Retail investors, however, began purchasing AMC stock,

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[4] 2023-0216, D.I. 1 at ¶ 53 (Del. Ch. Feb. 20, 2023) ("Munoz Complaint" or "Compl."). Citations to "2023-0216, D.I. __" refer to docket items in *Usbaldo Munoz, et al. v. Adam M. Aron, et al.*, C.A. No. 2023-0216-MTZ (Del. Ch.). Plaintiffs designated, and the Court ordered, the Munoz Complaint operative in this action. Dkt. 20 at ¶ 7.

[5] Exhibit 99.1 to August 6, 2020 AMC Form 8-K (Ex. A) at 1.

[6] *Id.* at 2.

[7] *Allegheny Cnty. Emps.' Ret. Sys. v. AMC Entertainment Holdings, Inc., et al.*, C.A. No. 2023-0215-MTZ (Del. Ch.), Dkt. 1 at ¶ 2 ("Allegheny Complaint").

[8] October 20, 2020, AMC Prospectus Supplement, filed on Form S-3 (Ex. B) at S-13. ("[W]e may be unable to comply with financial and other restrictive covenants

causing AMC's stock price to increase dramatically.[9] AMC raised cash by selling "nearly all of the shares [of common stock] authorized under the Certificate to survive the pandemic."[10]

Although AMC's capital raising efforts and the sale of its remaining authorized shares of Common Stock were enough to save the Company from an immediate financial crisis, the movie theater business continues to suffer from "the ongoing impact of COVID-19."[11] AMC's "theatrical exhibition revenues are generated primarily from box office admissions,"[12] and "AMC's admissions revenues and attendance levels remain significantly behind pre-pandemic levels."[13] For 2022, AMC's net loss remained just shy of $1 billion.[14]

AMC is also highly-levered with approximately $5.1 billion of debt.[15] Throughout 2022, AMC was forced into negotiations with its lenders to "extend the

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contained in the agreements governing our indebtedness . . . which could result in an event of default that, if not cured or waived, . . . could force us into bankruptcy or liquidation.").

[9] Compl. ¶¶ 54-56.

[10] *Id.* ¶¶ 58-61.

[11] February 28, 2023 AMC Form 10-K (Ex. C) at 2.

[12] *Id.* at 9.

[13] *Id.* at 14.

[14] *Id.* at 85.

[15] *Id.* at 23.

suspension period" for various financial covenants.[16] Further, a significant portion of AMC's operating cash outflows have been dedicated to debt payments,[17] and "repay[ing] rent amounts that were deferred during the COVID-19 pandemic" with approximately "$218.9 million" in rent remaining to be paid as of June 30, 2022.[18] The Company has warned investors that its debt load makes AMC vulnerable to economic downturn and other potentially adverse events.[19]

Given AMC's financial condition, AMC's "current cash burn rates are not sustainable," and there are no guarantees that AMC will be successful in generating the liquidity necessary to meet its financial obligations beyond 2023.[20] As AMC reported earlier this year, while the Company had approximately $631.5 million of cash on hand as of December 31, 2022,[21] its cash position deteriorated by approximately $961 million in 2022,[22] despite raising approximately $220.4 million from the sale of APEs in 2022.[23] Unless revenue and attendance levels rise, the failure to obtain additional liquidity through equity capital would likely result in

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[16] August 4, 2022 AMC Form 10-Q (Ex. D) at 10-11.

[17] *See* February 28, 2023 AMC Form 10-K (Ex. C) at 89, 92-93.

[18] *Id.* at 93; August 4, 2022 AMC Form 10-Q (Ex. D) at 10, 62-63.

[19] February 28, 2023 AMC Form 10-K (Ex. C) at 24.

[20] *Id.* at 6, 23.

[21] *Id.* at 70.

[22] *Id.* at 87.

[23] *Id.* at 74.

bankruptcy, in which case holders of Common Stock and APEs would likely suffer a total loss of their investment.[24]

II. IN THE SUMMER OF 2021, AMC WAS RUNNING OUT OF COMMON STOCK TO USE TO RAISE EQUITY CAPITAL AND ATTEMPTED TO AUTHORIZE ADDITIONAL COMMON STOCK

Given the importance of equity raises to AMC's future financial prospects, and with only 63,096,124 shares of authorized but unissued shares of Common Stock available by March 3, 2021,[25] AMC asked its stockholders in a May 4, 2021 vote to approve an amendment to its Certificate of Incorporation ("Charter") that would allow AMC to issue 500 million additional shares of Common Stock.[26] On April 27, 2021, the Board determined no longer to seek approval of that Charter amendment given that "many of [AMC's] stockholders are telling [AMC] to wait" and to postpone pursuing that proposal.[27] By June 3, 2021, AMC had almost run out of authorized, but unissued Common Stock.[28] The Board then sought approval, at a July 29, 2021 meeting of stockholders, of a Charter amendment that would allow

[24] *Id.* at 2.

[25] March 19, 2021 AMC Proxy Statement (Ex. E) at 8.

[26] *Id.* at 2, 8.

[27] AMC's April 27, 2021 Press Release, AMC Entertainment Announces At-The-Market Offering Program and Withdraws Proposal to Increase Authorized Shares (Ex. F) at 1.

[28] June 16, 2021 AMC Proxy Statement (Ex. G) at 11.

AMC to issue 25 million additional shares of Common Stock.[29] On July 6, 2021, however, with AMC expecting "[m]any yes, [and] many no" votes to approve 25 million additional shares of Common Stock, AMC determined to no longer seek approval of that amendment.[30] At the time of tabulation before the two proposals were withdrawn, the majority of shares that voted had voted in favor of each of the proposals to authorize more Common Stock.[31]

III. IN AUGUST 2022, HAVING RUN OUT OF COMMON STOCK AND UNABLE TO AUTHORIZE MORE, AMC CREATED THE APES

Left without any other way to raise equity capital, on August 4, 2022, AMC announced that it had created the APEs and was declaring a special dividend of one APE for each share of Common Stock.[32] AMC CEO Adam Aron explained that the APEs "provide[] another avenue for our investors to participate in the ongoing recovery and growth of AMC," and that the creation of the APEs gives AMC "a currency that can be used in the future to strengthen [AMC's] balance sheet," which "dramatically lessens any near-term survival risk for AMC."[33]

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[29] *Id.* at 1, 11.

[30] July 6, 2021 AMC Proxy Statement (Ex. H) at 2.

[31] AMC_00026252, April 27, 2021 Common Stock Proposal Voting Summary (Ex. I); AMC_00021634, June 28, 2021 Common Stock Proposal Voting Summary (Ex. J).

[32] Exhibit 99.1 to August 4, 2022 AMC Form 8-K (Ex. K) at 1.

[33] *Id.*

The near-term survival risk AMC feared was not imaginary. Cineworld Group plc, the parent company of Regal Entertainment Group, one of AMC's primary competitors in the theater exhibition industry, succumbed to the immense economic pressures of the COVID-19 pandemic and filed for bankruptcy just one month after AMC announced the creation of APEs to help it avoid a similar fate.[34]

AMC provided extensive disclosure on the key features of APEs on the day their creation was announced, including that:

- "[e]ach AMC [APE] is a depositary share and represents an interest in one one-hundredth (1/100th) of a share of Preferred Stock";
- "[e]ach AMC [APE] is designed to have the same economic and voting rights as a share of Common Stock";
- each APE "is automatically convertible into one (1) share of Common Stock";
- each APE "votes together with the Common Stock";
- in order to convert APEs to Common Stock "the Company may seek to obtain the requisite stockholder approval . . . of an amendment to its certificate of incorporation to increase the number of authorized shares of Common Stock," and that APE holders "will be entitled to vote" on such amendment;
- the underlying shares of the Preferred Stock used to form APEs will be deposited with Computershare Inc. ("Computershare"), which will be

[34] Cineworld Group plc, Announcement (Sept. 7, 2022) (Ex. L) at 2 ("Mooky Greidinger, Chief Executive Officer of Cineworld, said: . . . 'The pandemic was an incredibly difficult time for our business, with the enforced closure of cinemas and huge disruption to film schedules that has led us to this point.'").

governed by a deposit agreement, dated August 4, 2022 ("the Depositary Agreement"); and

- as per the Depositary Agreement, "[i]n the absence of specific instructions from Holders of [APEs]," Computershare "will vote the Preferred Stock represented by the AMC [APEs] . . . of such Holders proportionately with [the] votes cast pursuant to instructions received from the other" Holders of Preferred Stock.[35]

Given that AMC was not able to secure the issuance of additional Common Stock, APEs were the only tool available to the Company to raise equity capital. AMC subsequently deployed the APEs to raise equity and "strengthen[] its liquidity position."[36] As of December 31, 2022, AMC had raised approximately $228.8 million of gross proceeds through the sale of 207.8 million APEs via the Company's at-the-market equity distribution program,[37] and, as of February 28, 2023, AMC had "[r]aised $75.1 million through the private sale" of APEs in 2023.[38] Further, during the fourth quarter of 2022, the Company used a portion of the proceeds from its at-the-market program, which included the sale of APEs, "to repurchase approximately

[35] August 4, 2022 AMC Form 8-K (Ex. M) at 2; Deposit Agreement § 4.5, Exhibit 4.1 to AMC Form 8-K (Ex. N) at 15; August 4, 2022 AMC Form 8-A (Ex. O) at 1-4. The Depositary Agreement only applied to APEs, *not* Common Stock.

[36] December 19, 2022 AMC Form 8-K (Ex. P) at 2.

[37] Ex. 99.1 to February 28, 2023 AMC Form 8-K (Ex. Q) at 4.

[38] *Id.*

$30.7 million principal amount of its 10% Second Lien Debt . . . and approximately $5.25 million principal amount of its 6.125% Senior Subordinated Notes."[39]

On December 22, 2022, AMC entered into a purchase agreement with Antara Capital L.P. ("Antara").[40] AMC agreed to sell Antara 166,595,106 APEs for $110 million at a weighted average price of $0.660 per APE, and simultaneously repurchase from Antara $100 million of its second lien notes in exchange for an additional 91,026,191 APEs (the "Antara Transaction").[41] Using the only means available to the Company to raise equity, the sale of the APEs via the Antara Transaction would "improve[e] [AMC's] balance sheet by reducing the principal balance of [AMC's] debt by yet another $100 million through a debt for APE unit exchange."[42]

IV. DESPITE BEING A "MIRROR-IMAGE" OF COMMON STOCK, APES HAVE TRADED AT A SIGNIFICANT DISCOUNT TO COMMON STOCK

Each APE and each share of Common Stock have equivalent economic interests in AMC, as well as equivalent voting rights. AMC therefore anticipated that they would trade at or around the same price. At the time AMC distributed the APEs to its holders of Common Stock in August 2022, AMC stated in a FAQs

[39] December 19, 2022 AMC Form 8-K (Ex. P) at 2.

[40] December 22, 2022 AMC Form 8-K (Ex. R) at 2.

[41] *Id.*

[42] Exhibit 99.1 to December 22, 2022 AMC Form 8-K (Ex. S) at 2.

document that "[b]ecause the AMC Preferred Equity unit is designed to have the same economic value and voting rights as a share of [C]ommon [S]tock, in theory, the [C]ommon [S]tock and AMC Preferred Equity unit should have similar market values and the impact of the AMC Preferred Equity unit dividend should be similar to a 2/1 stock split."[43] But instead of trading at the same prices as Common Stock, as AMC expected, the APEs traded at a significant discount. The APEs were listed on the NYSE on August 22, 2022, and they closed at $6.00 per unit that day.[44] For the next few days, the APEs traded between $6.00 and $7.13.[45] At the same time, Common Stock was trading between $9.17 and $10.46.[46]

The trade differential between the two securities continued to expand. On the first trading day after Plaintiffs brought this case, February 21, 2023, Common Stock closed at $6.10 and the APEs closed at $2.21, a 64% discount.[47] By April 14, 2023, weeks after the stockholders had voted in favor of converting APEs into Common Stock to close the trading differential, Common Stock closed at $5.12 and the APEs closed at $1.66, a 68% discount.[48] And, as of the close of trading yesterday, May 3,

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[43] Exhibit 99.1 to August 18, 2022 AMC Form 8-K (Ex. T) at Item 11.

[44] Bloomberg Terminal Data (Ex. U).

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] *Id.*

2023, Common Stock closed at $5.74 and the APEs closed at $1.52, a 74% discount.[49]

The trading discount creates significant dilution for holders of Common Stock.[50] With respect to raising additional capital, the lower the price of the APEs, the higher the quantity that is required to raise the same amount of additional capital. Raising additional capital when the price of APEs is depressed relative to Common Stock results in a loss in equity value per share and dilutes the Common Stock holders' percentage ownership of AMC.[51]

V. AMC'S PROPOSALS TO AUTHORIZE ADDITIONAL SHARES OF COMMMON STOCK AND CONVERT THE APES INTO COMMON STOCK WERE OVERWHELMINGLY SUPPORTED BY HOLDERS OF BOTH APES AND COMMON STOCK

Despite the fact that the APEs helped AMC stay afloat and, thus, "achiev[ed] . . . their intended purposes," a "trading discount . . . in the price of APE[s] . . . compared to AMC common shares" caused the Board to conclude that "it is in the best interests of [AMC's] shareholders for [AMC] to simplify [its] capital structure" and eliminate the severely discounted APEs.[52] Therefore, AMC asked holders of APEs and Common Stock to: (a) "amend [the Company's] Certificate of

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[49] *Id.*

[50] Matt Levine, *FTX Friends Flip on SBF, Also AMC's APE-collapsing plans*, Bloomberg, Dec. 22, 2022 (Ex. V) at 7.

[51] *Id.*

[52] Exhibit 99.1 to December 22, 2022 AMC Form 8-K (Ex. S) at 2.

Incorporation . . . to increase the number of authorized shares of [the Company's] Common Stock . . . to a number at least sufficient to permit the full conversion of the then-outstanding shares of Series A Convertible Participating Preferred Stock into Common Stock"; and (b) "amend [the Company's] Certificate of Incorporation . . . to effectuate a one for ten reverse stock split of the Common Stock" (together, the "Charter Proposals").[53]

On February 14, 2023, AMC filed a definitive proxy statement on Schedule 14A (the "Proxy Statement") inviting stockholders to a meeting on March 14, 2023 to vote on the Charter Proposals (the "Special Meeting") and explaining the mechanics by which APEs would be voted.[54] On March 14, 2023, holders of Common Stock and APEs voted resoundingly in favor of the Charter Proposals.[55] The proposal to increase authorized shares received support from 88% of the voted shares and units (including 72% of the voted Common Stock and 91% of the voted APEs), and the proposal to effect a reverse stock split received support from 86% of

[53] February 14, 2023 AMC Proxy Statement (Ex. W) at 11, 15.

[54] *See id.* at 5, 8 (explaining that if Computershare "does not receive timely voting instructions with respect to any Series A Preferred Stock represented by APEs . . . [Computershare] will vote the Series A Preferred Stock represented by such non-voting APEs proportionately with votes cast 'FOR,' 'AGAINST,' or 'ABSTAIN' pursuant to instructions received from the other APE holders").

[55] March 14, 2023 AMC Form 8-K (Ex. X) at 2-3.

the voted shares and units (including 70% of the voted Common Stock and 91% of the voted APEs).[56]

ARGUMENT

I. THE PROPOSED SETTLEMENT PROVIDES A SIGNIFICANT BENEFIT TO CLASS MEMBERS, ESPECIALLY CONSIDERING THE RISKS OF CONTINUED LITIGATION, AND SHOULD BE APPROVED

Delaware law favors voluntary settlement.[57] Settlement of a class action requires court approval, and when deciding whether to approve a proposed settlement, the Court looks to the facts and circumstances underlying the claims so as to exercise its informed judgment as to whether the proposed settlement is fair, reasonable, and adequate.[58]

Under the Settlement, AMC will issue new shares of Common Stock that Plaintiffs value in the aggregate, based on recent market prices, at over $100

[56] *See id.*

[57] *See, e.g.*, *Kahn v. Sullivan*, 594 A.2d 48, 58-59 (Del. 1991); *In re Resorts Int'l S'holders Litig. Appeals*, 570 A.2d 259, 265-66 (Del. 1990).

[58] *In re Activision Blizzard, Inc. S'holder Litig.*, 124 A.3d 1025, 1042-43 (Del. Ch. 2015), *as revised* (May 21, 2015); *Barkan v. Amsted Indus., Inc.*, 567 A.2d 1279, 1283-84 (Del. 1989).

million.[59] Each record holder of Common Stock as of the Settlement Class Time,[60] which is expected to be the close of business on the business day prior to the conversion on which the reverse stock split is effective, will receive one additional share of Common Stock for every 7.5 shares of Common Stock they hold after giving effect to the reverse stock split. And, if the share issuance would result in such record holders receiving a fraction of a share of Common Stock, AMC will arrange for a cash payment in lieu of a fractional share.

This benefit needs to be valued against what Plaintiffs and the proposed settlement class are giving up in the Settlement, namely, the continued litigation of Plaintiffs' claims.[61] Given the strength of Defendants' defenses, as demonstrated below, the proposed settlement consideration is certainly fair, reasonable, and adequate.

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[59] Unopposed Motion to Lift the Status Quo Order due to the Parties' Proposed Settlement, Dkt. 59.

[60] Capitalized terms that are used, but not defined herein, have the meanings ascribed to them in the Stipulation and Agreement of Compromise, Settlement, and Release, Dkt. 165 ("Stip.").

[61] *See In re Caremark Int'l Inc. Deriv. Litig.*, 698 A.2d 959, 961 (Del. Ch. 1996) ("A motion of this type requires the court to assess the strengths and weaknesses of the claims asserted in light of the discovery record and to evaluate the fairness and adequacy of the consideration offered to the corporation in exchange for the release of all claims made or arising from the facts alleged."); *Activision Blizzard*, 124 A.3d at 1043 ("assessing the reasonableness of the 'give' and the 'get,' as well as the allocation of the 'get' among various claimants" in reviewing settlements).

Plaintiffs sought to obtain a preliminary, and then a permanent, injunction, preventing AMC from effectuating the Charter Proposals that were overwhelmingly approved by holders of Common Stock and APEs in the March 14, 2023 vote.[62] To obtain a preliminary injunction, Plaintiffs would be required to show "(1) a reasonable probability of success on the merits, (2) irreparable harm if the injunction is not granted, and (3) a balance of equities in favor of granting the relief."[63] To obtain a permanent injunction, Plaintiffs would be required to show "(i) actual success on the merits, (ii) the inadequacy of remedies at law, and (iii) a balancing of the equities that favors an injunction."[64] Plaintiffs were unlikely to be able to show a likelihood of -- much less actual -- success on either of their claims *or* that the equities balanced in favor of an injunction.

A. Plaintiffs' Claim For Breach Of Fiduciary Duty Was Likely To Fail On The Merits

Plaintiffs' first claim, for alleged breach of fiduciary duty, likely would have failed on the merits because this case is governed by the business judgment rule, not "*Blasius* and its progeny" as Plaintiffs contend.[65] The standard of review set out in *Blasius only* applies in "corporate director elections or other stockholder votes

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[62] Compl., Prayer for Relief, ¶ C.

[63] *Kohls v. Duthie,* 765 A.2d 1274, 1283 (Del. Ch. 2000).

[64] *In re COVID-Related Restrictions on Religious Servs.*, 285 A.3d 1205, 1232-33 (Del. Ch. 2022).

[65] Compl. ¶ 3.

having consequences for corporate control."[66] Yet Plaintiffs do not (and cannot) contend that the APEs, the Antara Transaction, or the Charter Proposals had any implication on who would comprise AMC's Board or any other issue of corporate control.

Indeed, Plaintiffs do not dispute that the AMC Board was disinterested and independent with respect to each of those issues, and they do not -- because they cannot -- contend that the Board acted in bad faith with respect to any of them. The creation of the APEs, the Antara Transaction, and the Charter Proposals all served legitimate business purposes that the Company appropriately disclosed and communicated to its investors. There can be no disloyal scheme when the Board is making well-reasoned business decisions to secure the financial future of the Company. AMC publicly stated that the issuance and sale of APEs, to both new investors and to Antara, were designed to help the Company "strengthen [its]

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[66] *Strategic Inv. Opportunities LLC v. Lee Enters., Inc.*, 2022 WL 453607, at *15 (Del. Ch. Feb. 14, 2022); *see also Mercier v. Inter-Tel (Del.), Inc.*, 929 A.2d 786, 808-09 (Del. Ch. 2007) ("[T]he reasoning of *Blasius* is far less powerful when the matter up for consideration has little or no bearing on whether the directors will continue in office. Here's a news flash: directors are not supposed to be neutral with regard to matters they propose for stockholder action."); *In re MONY Gp., Inc. S'holder Litig.*, 853 A.2d 661, 674 (Del. Ch. 2004), *as revised* (Apr. 14, 2004) ("*Blasius* involved a contest to elect a new board majority and draws its strong doctrinal justification from that context.").

balance sheet" and raise capital.[67] In the Board's business judgment, doing so was in the best interests of the Company, especially given that AMC continues to be "impacted by a particularly soft industry-wide box office,"[68] has continuously operated at a net loss since 2020,[69] and must dedicate a significant portion of its operating cash outflows to repaying its debts.[70]

Holders of Common Stock, who received a dividend of APEs corresponding to the number of shares of Common Stock that they held when the APEs were first created, were provided with a clear explanation of the voting rights associated with their new APEs, including that, pursuant to AMC's Charter, APEs would vote with Common Stock on whether to increase the authorized shares of Common Stock, and that uninstructed APEs would be voted proportionally under the Depositary Agreement.[71]

Moreover, when announcing the Charter Proposals, the Company explained its legitimate business rationale for seeking to eliminate the APEs. APEs were

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[67] Exhibit 99.1 to August 4, 2022 AMC Form 8-K (Ex. K) at 1; December 19, 2022 AMC Form 8-K (Ex. P) at 2; Exhibit 99.1 to December 22, 2022 AMC Form 8-K (Ex. S) at 2.

[68] *See supra* p. 6; Exhibit 99.1 to November 8, 2022 AMC Form 8-K (Ex. Y) at 1 (internal quotation marks omitted).

[69] February 28, 2023 AMC Form 10-K (Ex. C) at 85.

[70] *See supra* p. 7.

[71] *See* August 4, 2022 AMC Form 8-K (Ex. M) at 2; *see also* AMC's Charter (Ex. Z) Art. IV Cl. D.

successful in helping the Company raise much needed equity: over $300 million as of February 28, 2023.[72] However, APEs have consistently traded at a significant discount to Common Stock.[73] The Board acted to correct the disparate trading prices between APEs and Common Stock, and determined that it was "in the best interests of [AMC's] shareholders for [AMC] to simplify [its] capital structure" and eliminate the APEs.[74] If effected, the Charter Proposals should allow AMC to continue to raise capital at much higher prices and with less dilution to Common Stock.[75] In sum, the Board's decisions concerning APEs, the Antara Transaction, and the Charter Proposals were all logical, reasonable, good faith decisions protected by the business judgment rule.

It is of course true that "inequitable action does not become permissible simply because it is legally possible."[76] But in the context of "stockholder-franchise challenges," determining that an action is "inequitable" requires that "directors have *no good faith* basis for approving the [allegedly] disenfranchising action."[77] Further, the *Blasius* standard evaluates stockholder-franchise challenges by asking whether

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[72] Ex. 99.1 to February 28, 2023 AMC Form 8-K (Ex. Q) at 3-4.

[73] *See supra* pp. 12-14.

[74] Exhibit 99.1 to December 22, 2022 AMC Form 8-K (Ex. S) at 2.

[75] *See supra* p. 14.

[76] *Schnell v. Chris-Craft Indus., Inc.*, 285 A.2d 437, 439 (Del. 1971).

[77] *Coster v. UIP Cos.*, 2022 WL 1299127, at *9 (Del. Ch. May 2, 2022) (emphasis added).

the Board actions were taken "for the primary purpose of thwarting" stockholders, and, if so, whether "the [Board] had a compelling justification for doing so."[78]

Even assuming that these standards would have applied here -- and, as discussed, they would *not* have -- the Board's actions concerning APEs, the Antara Transaction, and the Charter Proposals were not taken for the "primary purpose of impeding the exercise of stockholder voting power."[79] Rather, there were "proper corporate objectives served by [the Board's] actions," which are easily justifiable "in relation to those objectives."[80] As previously explained, the creation of the APEs and the Antara Transaction were designed to help the Company raise capital and manage its balance sheet.[81] Such actions were especially justified against the backdrop of AMC's recent financial performance and the impacts of COVID-19 on the theater industry.[82] The Charter Proposals and the elimination of APEs were designed to simplify the Company's capital structure, especially in light of the trading discount between the two securities.[83] The Board did not breach its fiduciary

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[78] *Id.* at *10-11.

[79] *Blasius*, 564 A.2d at 661.

[80] *Strategic Inv.*, 2022 WL 453607, at *16 (citation omitted).

[81] *See supra* Statement of Facts II-IV.

[82] *See supra* Statement of Facts I.

[83] *See supra* Statement of Facts IV.

duties, and Plaintiffs would have faced great difficulty trying to demonstrate otherwise.

B. Plaintiffs' Claim For Violation Of 8 *Del. C.* § 242(b)(2) Was Likely To Fail On The Merits[84]

Plaintiffs' second claim was that because the "creation of the [APEs] . . . adversely affected the 'powers, preferences and special rights' of the Company's existing Class A [C]ommon [S]tockholders," and because AMC "failed to seek approval from [C]ommon [S]tockholders" to issue the APEs, AMC violated 8 *Del. C.* § 242(b)(2).[85] This claim is premised on a fundamental misunderstanding of Section 242(b)(2) that has been repeatedly rejected by the Delaware courts throughout the past 80 years.

Section 242(b)(2) states in relevant part: "The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the certificate of incorporation, if the amendment would . . . alter or change the powers, preferences, or special rights of the shares of such class so as to affect them adversely." Plaintiffs have failed to explain how the "creation of the [APEs], together with the [Depositary

[84] Because Plaintiffs adopted the Section 242(b)(2) claim raised in the Allegheny Complaint and Plaintiff Allegheny's Brief in Support of its Motion for a Temporary Restraining Order and Expedited Proceedings, Dkt. 3 ("Pl. Mot."), Defendants cite to those documents in this section.

[85] Allegheny Complaint ¶¶ 101-02.

Agreement],"[86] amended AMC's Charter to "alter or change the powers, preferences, or special rights of the shares of [Common Stock] so as to affect them adversely."[87] In connection with the creation of the APEs and the entry into the Depositary Agreement, the designation of the shares of Series A Convertible Participating Preferred Stock (the "Series A Preferred Stock") comprising the APEs pursuant to the Certificate of Designations of the Series A Preferred Stock was the only amendment made to AMC's Charter. By definition, the Certificate of Designations of the Series A Preferred Stock only set forth the rights, powers, and preferences of the Series A Preferred Stock and did not alter or change those of the Common Stock.[88] The powers, preferences, and rights of the Common Stock are therefore the same today as they were prior to the creation of the APEs.

Unable to point to *actual amendments* to the legal rights, powers, or preference of the Common Stock, Plaintiffs are forced to argue that the voting rights of holders of Common Stock somehow have been "eviscerat[ed]" simply by the

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[86] Pl. Mot. at 16.

[87] 8 *Del. C.* § 242(b)(2).

[88] *See id.* §§ 151(a), (g) (providing that a board of directors may, "pursuant to authority expressly vested in it by the provisions of [the] certificate of incorporation," designate a series of stock and fix the "voting powers . . . and such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof," *of such series* by adopting resolutions and filing a "certificate of designations setting forth a copy of such . . . resolutions" with the Delaware Secretary of State).

creation of the APEs.[89] But this argument that creating shares of preferred stock with voting rights -- like the APEs -- somehow changes the "powers, preferences, or special rights of" shares of common stock overlooks the well-settled principle that Section 242(b)(2) looks not to the *indirect relative effect* that an amendment may have on *the holders* of a particular class of stock, but rather to the *direct effect* that an amendment has on *the specific legal rights, powers, and preferences of the shares* of a particular class of stock. Indeed, Plaintiffs' argument is the same one that has been continually rejected by the Delaware courts throughout the past 80 years.

In *Hartford Accident & Indemnity Co. v. W. S. Dickey Clay Manufacturing Co.*,[90] a common stockholder argued that a separate vote of the common stockholders was required on a charter amendment that would increase the number of shares of a superior class of stock that had voting rights and a special dividend right. The stockholder contended that increasing the shares of the superior class of stock "would affect adversely" the "special rights" of the "common shares . . . to wit [sic], their relative position in the capital structure, their right to dividends, and to a share of the corporate assets upon dissolution or in liquidation, and the right to vote."[91] The Delaware Supreme Court rejected this argument, holding that "[w]here

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[89] Pl. Mot. at 16.

[90] 24 A.2d 315 (Del. 1942).

[91] *Id.* at 318.

the corporate amendment does no more than to increase the number of the shares of a preferred or superior class, the relative position of subordinated shares is [only] changed in the sense that they are subjected to a greater burden," but "[t]he peculiar, or special, quality with which they are endowed, and which serves to distinguish them from shares of another class, remains the same."[92]

Similarly, in *Orban v. Field*, 1993 WL 547187, at *1 (Del. Ch. Dec. 30, 1993), this Court, following *Dickey Clay*, held that, under Section 242(b)(2), the creation of a new class of preferred stock with voting rights did not "change the powers, preferences, or special rights" of common stock. As the Court explained, "[t]he language of the statute makes clear that it affords a right to a class vote when the proposed amendment *adversely affects the peculiar legal characteristics of that class of stock*."[93] "The right to vote is not a peculiar or special characteristic of Common Stock in the capital structure."[94] Accordingly, the mere "pro-rata

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[92] *Id.* at 318-19; *see also In re Snap Inc. Section 242 Litig.*, Consol. C.A. No. 2022-1032-JTL, at 33-34 (Del. Ch. Mar. 29, 2023) (TRANSCRIPT) ("The holding of *Dickey Clay* is thus that relative position in the capital structure is not a right of the shares, or, in the language of the decision, a quality of the shares such that authorizing more of a senior class or series or adding a senior class or series does not make an adverse change to the rights of the junior class or series."), *appeal filed* No. 120, 2023 (Del. Apr. 12, 2023).

[93] 1993 WL 547187, at *7-8 (emphasis in original).

[94] *Id.* at *8.

dilut[ion]" to the voting power of common stock caused by issuing preferred shares with voting rights did not implicate Section 242(b)(2).[95]

Most recently, Vice Chancellor Laster reiterated in *In re Snap* that the interpretation of Section 242(b)(2) upheld in *Dickey Clay* was "a relatively easy conclusion to reach" because it is undisputed that "relative position in the capital structure is not a right of shares," and, as such, "the amendment did not make any change to the rights of the common at all."[96] So too here -- the rights, powers, and preferences of Common Stock are entirely unaltered -- the shares of Common Stock had, and will continue to have, one vote per share such that the rights, powers, and preferences of the shares of Common Stock have not been adversely affected.

At the Special Meeting, the holders of Common Stock and APEs voted together on the Charter Proposals, as the Charter and Section 242(b)(2) expressly permit and as is consistent with the voting standard applicable to the Charter Proposals under the DGCL. Indeed, AMC has repeatedly disclosed that the holders of the APEs vote together with the holders of the Common Stock, and that the holders of the APEs were permitted to vote together with the holders of the Common Stock at the Special Meeting, stating that "[e]ach AMC Preferred Equity Unit, by

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[95] *Id.*

[96] *In re Snap*, C.A. No. 2022-1032-JTL, at 29.

virtue of its interest in the underlying Preferred Stock[,] votes together with the Common Stock on certain matters, including the Common Stock Amendment."[97]

Plaintiffs' argument that the APEs were "invalid" under Section 242(b)(2) "and may not be voted in connection with the [Charter] Proposals"[98] is the same argument that longstanding Delaware precedent has repeatedly dismissed and directly contrary to *Dickey Clay*, *Orban*, and *In re Snap*. As such, Plaintiffs would not have been able to demonstrate a reasonable probability of success (at the preliminary injunction stage) or actual success (at the permanent injunction stage) on the merits of their Section 242(b)(2) claim.

C. Plaintiffs Were Unlikely To Be Able To Show That The Equities Balanced In Their Favor And In Favor Of An Injunction

In addition to failing on the merits, Plaintiffs were unlikely to be able to show that the equities balanced in their favor, which they would need to do to obtain a preliminary or permanent injunction.[99] In determining whether to grant injunctive relief, "the court must 'balance the plaintiff's need for protection against any harm

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[97] August 4, 2022 AMC Form 8-K (Ex. M) at 2; *see also* February 14, 2023 AMC Proxy Statement (Ex. W) at 11; September 26, 2022 AMC Prospectus Supplement, filed pursuant to Rule 424(b)(5) (Ex. AA) at S-22; Exhibit 3.1 to August 4, 2022 AMC Form 8-K (Ex. AB) at 5; August 4, 2022 AMC Form 10-Q (Ex. D) at 34; August 4, 2022 AMC Form 8-A (Ex. O) at 2-4; Exhibit 99.1 to August 18, 2022 AMC Form 8-K (Ex. T) at Item 6.

[98] Allegheny Complaint ¶ 105.

[99] *Cirrus Hldg. Co. v. Cirrus Indus., Inc.,* 794 A.2d 1191, 1201 (Del. Ch. 2001); *In re COVID-Related Restrictions on Religious Servs.*, 285 A.3d at 1233.

that can reasonably be expected to befall the defendants if the injunction is granted.'"[100]

> In making this determination, the court "must be cautious that its injunctive order does not threaten more harm than good. That is, a court in exercising its discretion to issue or deny such a . . . remedy must consider all of the foreseeable consequences of its order and balance them. It cannot, in equity, risk greater harm to defendants, the public or other identified interests, in granting the injunction, than it seeks to prevent."[101]

First, the potential harm to AMC and its stockholders from any injunction issuing would far outweigh any harm that Plaintiffs could claim that they and the putative class would suffer from an injunction not issuing. If AMC were enjoined, at best, it would be forced to continue selling the significantly discounted and, thus, significantly dilutive APEs to raise equity capital. At worst, AMC could be left without *any* security to raise equity capital, which would put it at significant risk of failing to meet its financial obligations beyond 2023, which would likely result in a bankruptcy or financial restructuring and the total loss of the investments of holders of both Common Stock and APEs.[102]

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[100] *CBS Corp. v. Nat'l Amusements, Inc.*, 2018 WL 2263385, at *5 (Del. Ch. May 17, 2018).

[101] *Id.*

[102] *See Kohls v. Duthie*, 765 A.2d 1274, 1289 (Del. Ch. 2000) (finding that equities did not favor plaintiff where "defendants and [company's] other stockholders are threatened with real injury if this transaction is enjoined"); *Benchmark Cap. P'rs IV, L.P. v. Vague*, 2002 WL 1732423, at *14-15 (Del. Ch. July 15, 2002) (denying a preliminary injunction where the Company's anticipated "dire financial

Second, granting Plaintiffs injunctive relief would have meant overriding the will of holders of Common Stock and APEs, who voted overwhelmingly in favor of the Charter Proposals. "Shareholder voting rights are sacrosanct,"[103] and enjoining a stockholder vote is not a decision to be taken lightly.[104] Indeed, APE holders, including Antara, made investment decisions based on the fact that the APEs and Common Stock would vote together on the Charter Proposals. And AMC was able significantly to improve its financial condition, and significantly lessen any "near-term survival risk," because of these investors.[105] Stripping such third-party *bona*

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consequences . . . when it will become less than well-capitalized if the Series D Transaction does not occur" outweighed the "undermin[ing] [of] core voting rights" "dilut[ion] [of] equity interests and economic rights"), *aff'd sub nom. Benchmark Cap. P'rs IV, L.P. v. Juniper Fin. Corp.*, 822 A.2d 396 (Del. 2003) (TABLE); *ACE Ltd. v. Cap. Re Corp*., 747 A.2d 95, 102-03 (Del. Ch. 1999) (denying a temporary restraining order on a standard of review that "more closely resembles that for a preliminary injunction," because such order "could pose a threat of real harm to [the company's] stockholders" due to potential restraints on capital and adverse financial results).

[103] *EMAK Worldwide, Inc. v. Kurz*, 50 A.3d 429, 433 (Del. 2012).

[104] *See In re Toys "R" Us, Inc. S'holder Litig.*, 877 A.2d 975, 1023 (Del. Ch. 2005) ("To issue an injunction preventing stockholders from choosing for themselves in the present circumstances poses more potential to do them harm . . . than good."); *In re El Paso Corp. S'holder Litig.*, 41 A.3d 432, 450-52 (Del. Ch. 2012) ("[T]he El Paso stockholders should not be deprived of the chance to decide for themselves . . . . It is the stockholders' money, not mine . . . .").

[105] Exhibit 99.1 to August 4, 2022 AMC Form 8-K (Ex. K) at 1.

fide purchasers of their rights would be highly inequitable and tips the scales in favor of denying Plaintiffs injunctive relief.[106]

II. THE PROPOSED SETTLEMENT SHOULD BE APPROVED AS A NON-OPT-OUT SETTLEMENT

"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."[107] Defendants respectfully submit that this settlement class should be certified as a non-opt-out class pursuant to Court of Chancery Rule 23(b)(1) or (b)(2). The Court certifying "a non-opt-out settlement class" is a condition of the parties' proposed Settlement.[108]

"Delaware courts repeatedly have held that actions challenging the propriety of director conduct in carrying out corporate transactions are properly certifiable

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[106] *C&J Energy Servs., Inc. v. City of Miami Gen. Emps.' & Sanitation Emps.' Ret. Tr.*, 107 A.3d 1049, 1072 (Del. 2014) ("[T]he traditional use of a preliminary injunction is . . . not to divest third parties of their contractual rights. . . . [E]specially . . . when the stockholders subject to irreparable harm are, as here, capable of addressing that harm themselves by the simple act of casting a 'no' vote."); *Cantor Fitzgerald, L.P. v. Cantor*, 724 A.2d 571, 587 (Del. Ch. 1998) ("It is also appropriate to consider the impact an injunction will have on the public and on innocent third parties.").

[107] April 28, 2023 Letter from Honorable Morgan T. Zurn to the parties, Dkt. 175 at 2.

[108] Stip. ¶ 17(a); *see also id.* ¶ 1(w) (defining the "Settlement Class" as "a non-opt-out class for settlement purposes only, and pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2) . . . .").

under both subdivisions (b)(1) and (b)(2)"[109] because of the "[h]omogeneity in the rights and interests of the class."[110] Moreover, "when a portion of the relief which is sought is monetary, a member of a class certified under Rule 23(b)(2) has a Constitutional due process right to notification but not a right to opt out of the class."[111] Courts have routinely certified non-opt-out classes when approving settlements of putative class actions challenging corporate transactions.[112]

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[109] *In re Cox Radio, Inc. S'holders Litig.*, 2010 WL 1806616, at *8 (Del. Ch. May 6, 2010), *aff'd*, 9 A.3d 475 (Del. 2010) (TABLE).

[110] *Nottingham P'rs v. Dana*, 564 A.2d 1089, 1095 (Del. 1989).

[111] *Id.* at 1101.

[112] *See, e.g.*, *In re Phila. Stock Exch., Inc.*, 945 A.2d 1123, 1137 (Del. 2008) (affirming Court of Chancery decision not to grant an opt-out right under Rule 23(b)(2) where "the primary relief sought in the initial and amended complaints was equitable"); *Nottingham P'rs*, 564 A.2d at 1101 (affirming denial of an opt-out right to a Rule 23(b)(2) class in approving settlement of an action related to a stock recapitalization plan and certificate amendment); *Turberg v. ArcSight, Inc.*, 2011 WL 4445653, at *1 (Del. Ch. Sept. 20, 2011) (certifying non-opt-out class and approving class action settlement arising out of a merger dispute); *In re Lawson Software, Inc. S'holder Litig.*, 2011 WL 2185613, at *1 (Del. Ch. May 27, 2011) ("Under either [Rule 23(b)(1) or (b)(2)], certification of a mandatory (*i.e.*, non-opt-out) class is appropriate."); *In re Wm. Wrigley Jr. Co. S'holders Litig.*, 2009 WL 154380, at *1, *4 (Del. Ch. Jan. 22, 2009) (certifying non-opt-out class and approving settlement arising out of a merger dispute over objections for opt-out rights); *Turner v. Bernstein*, 768 A.2d 24, 34 n.29 (Del. Ch. 2000) ("as long as (1) the class fits within the rigorous requirements of Rule 23(b)(1); (2) there is adequate class notice; and (3) the other requirements of Rule 23 are satisfied, then sufficient guarantees of adequate representation and fairness exist so as to preclude the need for an opt-out mechanism"); *In re Straight Path Commc'ns Inc. Consol. S'holder Litig.*, 2022 WL 2236192, at *10 (Del. Ch. June 14, 2022) (finding that provision of an opt-out right in the context of class certification "would likely create a risk of inconsistent judgments"); *In re Ebix, Inc. S'holder Litig.*, 2018 WL 3570126, at *5

The action here challenges Defendants' conduct in their capacity as AMC directors concerning Common Stock and APE-related transactions.[113] Plaintiffs' claims are predominantly equitable.[114] Given that Plaintiffs' allegations center on the APEs and proposals to convert the APEs into Common Stock, any alleged harm, whether that be alleged stockholder disenfranchisement or dilution, is homogeneous among all class members. This presents a quintessential case for a non-opt-out class under Rule 23(b)(1) or (b)(2).

In addition, this Settlement is fundamentally different from the rare instances in which courts have granted discretionary opt-out rights to Rule 23(b)(2) class members because "the claims of an objector seeking to opt out are sufficiently distinct from the claims of the class."[115] In *Celera* and *Countrywide*, certifying a

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(Del. Ch. July 17, 2018) (certifying class without opt-out rights where plaintiffs sought rescission and cancellation of grants under several compensation plans).

[113] *See* Compl. ¶¶ 1-4.

[114] The operative Munoz Complaint only seeks equitable relief. *See* Munoz Complaint ¶¶ 50-51. Although the Allegheny Complaint also seeks "damages in an amount which may be proven at trial," this unspecified and unsupported monetary claim is one among other five requests for equitable relief. *See* Allegheny Complaint, Prayer for Relief, A-F.

[115] *In re Celera Corp. S'holder Litig.*, 59 A.3d 418, 435 (Del. 2012). In addition, *Celera* involved "unique circumstances [where] the parties agreed to a *de facto* settlement of [] equitable claims without formal court approval, leaving only monetary damage claims" for a later, formal, court-approved settlement, so "equitable claims were [no longer] viable and predominant" when class certification occurred. *Id.* at 436; *see also In re Countrywide Corp. S'holders Litig.*, 2009 WL 846019, at *15 (Del. Ch. Mar. 31, 2009) (declining to approve the parties' stipulated non-opt-out settlement class given the "uniquely individual" common law fraud

non-opt-out class would have been proper *but for* a significant objecting stockholder's substantial monetary claim that was distinct from the other class members.[116] By contrast, AMC's stockholder base is vastly comprised of retail investors,[117] none of whom are advancing claims distinct from other class members.

Finally, the principal point of the Settlement from Defendants' perspective is to allow AMC to effectuate the Charter Proposals, which involve increasing the authorized, but unissued shares of Common Stock, completing a 1-for-10 reverse stock split, and combining the APEs and Common Stock. It is not possible for class members to opt out of that. Either the Charter Proposals will be effected or they will not be effected -- the issue is binary.

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claims asserted by a significant shareholder owning "nearly 58 million shares at its peak"). That is not the case here, where the Status Quo Order is still preventing AMC from effectuating the approved Charter Proposals, and the equitable claims thus remain viable and predominant.

[116] *See Celera*, 59 A.3d at 435-37 (finding that certification of non-opt-out class was otherwise proper but for the lack of opt-out rights for a significant stockholder with a significant monetary claim, who once owned 12% shares and tried to obtain control to block the merger at issue); *Countrywide*, 2009 WL 846019, at *5, 12-15 (The Court found that "the settlement negotiated by the Delaware Plaintiffs would be approved" but for the "uniquely individual" common law fraud claims asserted by a significant shareholder. In declining to approve the settlement, the Court stated that "[t]he parties have a number of options at their disposal. They include: (1) amending the class structure to allow for opt-out rights; (2) amending the release contained in the Proposed Settlement to carve out the common law fraud claims centered on the Lewis Statements; or (3) abandoning their efforts to settle this litigation altogether.").

[117] *See* February 28, 2023 AMC Form 10-K (Ex. C) at 10, 34, 36-37.

CONCLUSION

For all of these reasons, Defendants respectfully request that the Court approve the Settlement.

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