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RE: *In re AMC Entertainment Holdings, Inc. Stockholder Litigation,*
Consol. Civil Action No. 2023-0215-MTZ

Dear Counsel,

I write in advance of the settlement hearing in this action with some questions for the parties' counsel. Given the pace of this matter, I wanted to give the parties an opportunity to respond in writing before the hearing instead of afterwards.

“[C]lass certification involves a ‘two-step analysis.’ The first step, a prerequisite for class action certification, is that the action satisfy each of the four

requisites of [Court of Chancery] Rule 23(a).”¹ For a class to be certified under Rule 23(a), “(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.”² Baked into this class certification analysis are questions of standing.³ Rule 23(a) also contains an “implicit prerequisite—the representative of the class must be a member of the class.”⁴ Settlement proponents bear the burden of establishing standing and each class certification element.⁵

¹ *Leon N. Weiner & Assocs., Inc. v. Krapf*, 584 A.2d 1220, 1224 (Del. 1991) (quoting *Nottingham P’rs v. Dana*, 564 A.2d 1089, 1094 (Del. 1989)).

² Ct. Ch. R. 23(a).

³ 7AA Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1785.1 (3d ed.) (“When those [Rule 23(a)] prerequisites are met, standing also generally will be found to exist. Nonetheless, the courts must consider standing and mootness as additional prerequisites when determining the propriety of class certification.” (footnotes omitted)); see also *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2208 (2021) (“Every class member must have Article III standing in order to recover individual damages. ‘Article III does not give federal courts the power to order relief to any uninjured plaintiff, class action or not.’” (quoting *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 466 (2016) (Roberts, C. J., concurring))); *Buttonwood Tree Value P’rs, L.P. v. R. L. Polk & Co.*, 2022 WL 2255258, at *3 (Del. Ch. June 23, 2022) (“Judicial interpretation of the Federal Rules respecting class actions . . . [is] persuasive authority for the interpretation of Court of Chancery Rule 23.” (alterations in original) (internal quotation marks omitted) (quoting *In re Countrywide Corp. S’holders Litig.*, 2009 WL 846019, at *12 n.84 (Del. Ch. Mar. 31, 2009))).

⁴ *Glosser v. Cellcor Inc.*, 1995 WL 106527, at *1 (Del. Ch. Mar. 10, 1995); accord *Baker v. Providence & Worcester Co.*, 364 A.2d 838, 843 (Del. Ch. 1976) (stating “the prerequisites of [Rule 23] subdivision (a)” include “the existence of a class and that the named representative is a member thereof” (quoting 3B James Wm. Moore et al., *Moore’s Federal Practice* § 23.02[2] at 23-153 (2d ed.))), *rev’d on other grounds*, 378 A.2d 121 (Del. 1977).

⁵ *Dieter v. Prime Comput., Inc.*, 681 A.2d 1068, 1071 (Del. Ch. 1996) (“A plaintiff has the burden of satisfying the Court it has met the requirements of Rule 23.” (citing *Rosen v. Juniper Petroleum Corp.*, 1986 WL 4279, at *1 (Del. Ch. Apr. 11, 1986))); *Dover Hist.*

Earlier today, I granted Mr. Munoz’s counsel’s motion to withdraw and his coplaintiffs’ motion to dismiss him from this action.⁶ A few questions concerning each remaining plaintiff follow.

1. Anthony Franchi

On February 20, 2023, the Allegheny County Employees Retirement System (“Allegheny”) filed a complaint in this action alleging two counts, one for breach of fiduciary duty and another for breach of 8 *Del. C. § 242* (“Section 242”).⁷ The Section 242 claim alleges the defendants violated that statute by “fail[ing] to seek approval from the common stockholders as a class for the creation and issuance of the Preferred Stock.”⁸ Also on February 20, Messrs. Munoz and Franchi filed a complaint in an action styled *Usbaldo Munoz, et al. v. Adam M. Aron, et al.*, C.A. No. 2023-0216-MTZ, alleging one breach of fiduciary duty claim.⁹

On March 2, I entered an order consolidating the two matters into the instant action and designated “[t]he *Munoz* Complaint” operative.¹⁰ I also asked counsel to confirm “whether the statutory claim asserted in the *Allegheny* Action” would be included in the consolidated action.¹¹ On March 13, the plaintiffs’ counsel filed a letter representing to the Court that the statutory claim “will be included as a basis for Plaintiffs’ motion for a preliminary injunction in this consolidated action.”¹² The plaintiffs never filed a consolidated complaint.

Soc. v. City of Dover Plan. Comm’n, 838 A.2d 1103, 1109 (Del. 2003) (“The party invoking the jurisdiction of a court bears the burden of establishing the elements of standing.” (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992))).

⁶ Docket Item (“D.I.”) 507.

⁷ D.I. 1.

⁸ *Id.* ¶ 102.

⁹ *Usbaldo Munoz, et al. v. Adam M. Aron, et al.*, C.A. No. 2023-0216-MTZ, D.I. 1 (Del. Ch. Feb. 20, 2023) [hereinafter “Op. Compl.”].

¹⁰ D.I. 20 ¶ 7.

¹¹ *Id.* ¶ 8.

¹² D.I. 34 at 1–2 (emphasis in original).

The defendants created and issued the APEs in August 2022.¹³ Anthony Franchi has sworn he is “the beneficial owner of shares of AMC Entertainment Holdings, Inc. common stock and ha[s] held such shares continuously since November 8, 2022.”¹⁴

In her objection, Ms. Izzo asserts Mr. Franchi did not own AMC stock “‘at the time of the wrongs complained of’—including, for instance, the issuance of APEs—in his complaint.”¹⁵ In response, the plaintiffs argue Mr. “Franchi did not allege that the issuance of the APEs was ‘a wrong,’ nor did he assert a [Section] 242(b) claim.”¹⁶

Mr. Franchi’s own complaint fairly alleged the defendants breached their fiduciary duties in August 2022, months before Mr. Franchi purchased his AMC common stock.¹⁷ At the time of filing, Mr. Franchi swore he was a “continuous

¹³ D.I. 201, Transmittal Affidavit of Kevin Gallagher, Esq. in Connection with Defendants’ Brief in Support of [the] Proposed Settlement, at Exs. M and P (attaching AMC’s Forms 8-K dated August 4, 2022 and December 19, 2022, respectively).

¹⁴ D.I. 206, at Affidavit of Anthony Franchi in Support of Proposed Settlement, Application for Attorneys’ Fees and Expenses, and Incentive Award for Plaintiffs [hereinafter “Second Franchi Aff.”], ¶ 2. *But see Usbaldo Munoz, et al. v. Adam M. Aron, et al.*, C.A. No. 2023-0216-MTZ, D.I. 1 (Del. Ch. Feb. 20, 2023), at Affidavit and Verification of Anthony Franchi in Support of Verified Stockholder Class Action Complaint [hereinafter “First Franchi Aff.”], ¶ 1 (“I am a plaintiff in the above-captioned action and a continuous holder of AMC Entertainment Holdings, Inc. (‘AMC’) common stock at the time of the wrongs complained of in the Verified Stockholder Class Action Complaint (the ‘Complaint’).”).

¹⁵ D.I. 450, at Exhibit 2 to the Corrected Transmittal Affidavit of Thomas Curry in Support of Plaintiffs’ Reply in Further Support of Settlement, Award of Attorneys’ Fees and Expenses, and Incentive Awards [hereinafter “Izzo Obj.”], at 43 (quoting First Franchi Aff. ¶ 1).

¹⁶ D.I. 450, at Plaintiffs’ Reply in Further Support of Settlement, Award of Attorneys’ Fees and Expenses, and Incentive Awards [hereinafter “PRB”], at 43.

¹⁷ *E.g.*, Op. Compl. ¶ 16 (“What the Board failed to sufficiently disclose when creating the Preferred Stock and transferring it to Computershare is that the Board gave a voting instruction to Computershare that would allow the Board to dictate the outcome of any proposal, as long as they could entice holders of APEs to support amending the Certificate.”); *id.* ¶ 22 (“Like Agamemnon leaving a horse outside Troy’s walls, the

holder of AMC Entertainment Holdings, Inc. (‘AMC’) common stock at the time of the wrongs complained of” in that complaint.¹⁸ And while Mr. Franchi may not have personally asserted a Section 242 claim, his counsel and the Notice of Pendency of Stockholder Class Action and Proposed Settlement Hearing, and Right to Appear (the “Notice”) represented that was one of the two claims the “Lead Plaintiffs” pursued.¹⁹

Board had set in motion its end-run around AMC’s stockholders’ votes.”); *id.* ¶ 164 (“As alleged above, Defendants breached their fiduciary duties by creating and issuing Preferred Stock and APEs, entering into the Deposit Agreement with Computershare, and entering into the various agreements described herein with Antara, all of which are coercive, will sway the outcome of the Certificate Proposals, and are designed to circumvent the franchise rights of the Class. The Board’s actions are plainly intended to push through the Certificate Proposals notwithstanding the previous, repeated opposition of the Class.”); *id.* ¶ 165 (“Moreover, as alleged above, by creating and issuing Preferred Stock and APEs, Defendants have caused and will continue to cause significant dilution and economic harm to the Class. Moreover, if the Certificate Proposals carry and the APEs convert into shares of Common Stock, the Class will suffer further economic harm and dilution.”).

I note Plaintiffs’ Opening Brief in Support of Settlement, Award of Attorneys’ Fees and Expenses, and Incentive Awards is fairly read to cabin the breach of fiduciary duty claim to December 2022 and onward. *E.g.*, D.I. 206, at Plaintiffs’ Opening Brief in Support of Settlement, Award of Attorneys’ Fees and Expenses, and Incentive Awards [hereinafter “POB”], at 6 (arguing “[p]laintiffs’ core claim” under *Blasius* is based on the December 2022 “Antara Transaction” which is “improper vote-buying”); *id.* at 33–34 (same); *id.* at 7 (“In assessing Plaintiffs’ injunction application, the Court would examine the December 2022 timeframe to assess the merits of Plaintiffs’ claims.”); *id.* at 35 (focusing their argument “at the time of [the defendants’ alleged] breaches in December 2022”); *id.* at 39 (“[A]ny claim concerning APEs did not arise until Defendants weaponized them alongside the Antara Transaction.”). I also read that brief to state the request for injunctive relief was “principally” based on the Section 242 claim, and that the benefits of the proposed settlement should be evaluated in view of the benefits that could have been negotiated upon obtaining a preliminary injunction based on that Section 242 claim. *Id.* at 6–8, 38, 40.

¹⁸ First Franchi Aff. ¶ 1.

¹⁹ D.I. 34; D.I. 185, Ex. 1 [hereinafter “Notice”] ¶ 25.

The parties and their agents have used inconsistent definitions of “Settlement Class.” Some definitions define the class as including stockholders “*from* August 3, 2022 though and including the Settlement Class Time,”²⁰ whereas others define the class as comprising stockholders “*between* August 3, 2022, through and including the Settlement Class Time.”²¹ Still others are different.²²

²⁰ D.I. 165, Stipulation and Agreement of Compromise, Settlement, and Release [hereinafter “Stip.”] ¶ 1(d) (“‘Class Period’ means the period from August 3, 2022 through and including the Settlement Class Time.”); *id.* ¶ 1(w) (“‘Settlement Class’ means 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), consisting of all holders of Common Stock during the Class Period”); PRB at 8 (“Per the Notice, stockholder were required to provide their full name and information sufficient to prove ownership of [AMC] Common Stock from August 3, 2022, through and including the date of submission.”); D.I. 443, at Exhibits A–E to Affidavit of Paul Mulholland concerning Mailing of Post Card Notice, at Ex. A (“You received this notice because you may have held AMC common stock during the period from August 3, 2022 through and including the record time”); *id.* at Ex. B (“We request that you assist us in identifying any individuals who fit the following description: All holders of AMC Entertainment Holdings, Inc. (‘AMC’) Class A Common Stock during the period from August 3, 2022 though and including the Record Time” (capitalization altered)).

²¹ Notice ¶ 29 (“The ‘Settlement Class’ means all holders of AMC Common Stock between August 3, 2022, through and including the Settlement Class Time, 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 Class Time’ means the record time, expected to be set as of the close of business in accordance with any New York Stock Exchange and/or Depository Trust Company requirements or policies, on the business day prior to Conversion on which the Reverse Stock Split is effective. Put slightly differently, if you owned AMC Common Stock between August 3, 2022, through and including the time after the Reverse Stock Split is effected, but before the Conversion, you are a member of the Settlement Class.”); *id.* ¶ 64(v) (requiring stockholders to “include documentation sufficient to prove that the Objector or Supporter is a member of the Settlement Class (*i.e.*, held shares of AMC Common Stock between August 3, 2022, though and including the date the objection or statement of support is made).”). *But see* Stip. ¶ 47 (“The Exhibits [including the Notice] are incorporated by reference as if set forth herein verbatim, and the terms of all Exhibits are expressly made part of this Stipulation; provided, however, that if there exists a conflict or inconsistency between the terms of this Stipulation and the terms of any Exhibit, the terms of the Stipulation shall prevail.”).

Settlement consideration is proposed to be distributed to “all common stockholders immediately before the Conversion takes place,” at the “Settlement Class Time.”²³

My questions:

- i. Has Mr. Franchi owned AMC common stock continuously from the wrongs alleged by the plaintiffs through the present?²⁴ Or did his ownership begin on November 8, 2022?²⁵
- ii. If the latter, does Mr. Franchi have standing to bring claims based on wrongs that predated his stock ownership?
- iii. If the answer to (ii) is “no,” how does that lack of standing to press at least one of the claims before the Court inform Mr. Franchi’s ability to serve as class representative, his personal interest in pursuing claims he has no standing to bring, and the typicality of his claims vis a vis the class?
- iv. Is the Settlement Class limited to AMC common stockholders that continuously held AMC common stock the entire time from August 3, 2022, through and including the Settlement Class Time? Or does it also include AMC common stockholders that held AMC common stock at any

²² Notice ¶ 49 (“All holders of [AMC] Common Stock as of the Settlement Class Time, except Defendants, are members of the Settlement Class.”); D.I. 442, Affidavit of Paul Mulholland Concerning Mailing of Post Card Notice, ¶ 5 (“The [May 3, 2023] letter notified [the nominees of beneficial purchasers] of the Settlement and requested that, within five business days from the date of the letter, they either send or email the post card notice to their customers, beneficial owners who may have purchased or owned AMC Common Stock during the Class Period . . .”).

²³ POB at 29 (describing a “snapshot” that is untethered to a class period starting August 3, 2022).

²⁴ First Franchi Aff. ¶ 1.

²⁵ Second Franchi Aff. ¶ 2. Individual stockholders have been required to show proof of ownership. *E.g.*, Notice ¶¶ 64(v), 65. The sworn affidavit of a stockholder plaintiff submitted by Delaware counsel bound by the Delaware Lawyers’ Rules of Professional Conduct and Court of Chancery Rule 11 will be also accepted.

time between August 3, 2022, through and including the Settlement Class Time?

- v. Does the Settlement Class include Mr. Franchi?
- vi. If the Settlement Class includes Mr. Franchi and others who bought stock after August 3, 2022, please address the commonality requirement and the standing of class members to bring both claims pending before the Court.
- vii. If the Settlement Class does not include Mr. Franchi, how can he serve as a class representative?

2. Allegheny County Employees Retirement System

Walter Szymanski, Allegheny's Executive Director, has twice sworn "Allegheny is the beneficial owners of shares of AMC Entertainment Holdings, Inc. [(“AMC”)] common stock and has held such shares continuously since December 16, 2015.”²⁶ I do not independently doubt this averment, but I would appreciate confirmation.²⁷

²⁶ D.I. 206, at Affidavit of Walter Szymanski of Allegheny County Employees Retirement System in Support of Proposed Settlement, Application for Attorneys' Fees and Expenses, and Incentive Award for Plaintiffs, ¶ 2; D.I. 3, Verification of Walter Szymanski in Support of Verified Class Action Complaint, ¶ 2 (“[Allegheny] is the beneficial owner of shares of AMC Entertainment Holdings, Inc. common stock and has held such shares continuously since December 16, 2015, and AMC Preferred Equity Units (‘APEs’) and has held such units continuously since August 22, 2022.” (emphasis omitted)). Because Allegheny did not file a books and records action, it was not required to prove its status as a stockholder before this action. See POB at 25.

²⁷ Ms. Izzo has stated that “Allegheny owned 879 shares of Common stock on February 8, 2023, and received a similar number of APEs as a dividend in August 2022.” Izzo Obj. at 15 (citing ACR-AMC-00000332, and ACR-AMC-00000334, available at D.I. 496 Exs. O and P). The documents she cites in support of both facts in this statement appear to show ownership of a security associated with the CUSIP number associated with AMC Preferred Equity Units, or “APEs.” Compare, e.g., AMC Entertainment Holdings, Inc., Beneficial Ownership Report (Schedule 13D/A) (June 16, 2023) (showing Antara Capital LP filed a sixth amendment to a Schedule 13D regarding ownership of “AMC Preferred Equity Units” associated with the CUSIP number 00165C203), with, e.g., AMC

My question: Has Allegheny continuously owned AMC common stock continuously from the wrong it alleged through the present?

The plaintiffs' counsel should respond to the foregoing questions by Friday, June 23 at 5:00 p.m. ET. Should the defendants' counsel and Ms. Izzo's counsel wish to submit responses, they may. This letter should be posted on the websites for AMC and plaintiffs' counsel.

Sincerely,

/s/ *Morgan T. Zurn*

Vice Chancellor

MTZ/ms

cc: All Counsel of Record, via *File & ServeXpress*

Entertainment Holdings, Inc., Beneficial Ownership Report (Schedule 13D) (May 1, 2020) (showing Silver Lake Group, L.L.C. filed a Schedule 13D regarding ownership of "Class A Common Stock" associated with the CUSIP number 00156C104). *In re Rural Metro Corp. S'holders Litig.*, 2013 WL 6634009, at *7 (Del. Ch. Dec. 17, 2013) ("Applying [Delaware] Rule [of Evidence] 201, Delaware courts have taken judicial notice of publicly available documents that 'are required by law to be filed, and are actually filed, with federal or state officials.'" (quoting *In re Tyson Foods, Inc. Consol. S'holder Litig.*, 919 A.2d 563, 584 (Del. Ch. 2007))); *accord Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 860 A.2d 312, 320 n.28 (Del. 2004) (holding that the court may take judicial notice of public documents such as SEC filings that are required by law to be filed).