



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

USBALDO MUNOZ and ANTHONY
FRANCHI, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

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, and LEE
WITTLINGER,

Defendants.

C.A. No. 2023-0216-MTZ

**PUBLIC [REDACTED]
VERSION AS FILED ON
FEBRUARY 23, 2023**

VERIFIED STOCKHOLDER CLASS ACTION COMPLAINT

Plaintiffs Usbaldo Munoz and Anthony Franchi (“Plaintiffs”), on behalf of themselves and all other similarly situated public stockholders of AMC Entertainment Holdings, Inc. (“AMC” or the “Company”), bring this Verified Stockholder Class Action Complaint (“Complaint”) against current and former members of AMC’s board of directors (the “Board”), namely: Adam M. Aron (“Aron”), Denise Clark, Howard W. Koch, Jr., Philip Lader, Gary F. Locke, Kathleen M. Pawlus (“Pawlus”), Keri Putnam, Anthony J. Saich, Adam J. Sussman, and Lee Wittlinger (collectively, “Defendants”). Plaintiffs’ allegations are based upon their knowledge as to themselves and as to all other matters upon information and belief, including the investigation conducted by their undersigned attorneys, a

review of public information, news reports, and documents filed with the U.S. Securities and Exchange Commission (“SEC”), and a review of certain books and records produced in response to a demand made under 8 *Del. C.* § 220.¹

INTRODUCTION

1. It is a bedrock rule of Delaware corporate law that the stockholder franchise is sacrosanct and may not lightly be undermined by corporate fiduciaries. This case arises because AMC’s Board is using its fiduciary powers to circumvent the current stockholders’ voting rights by giving a new group of investors effective control of any vote, to force through charter amendments to radically increase the number of shares of AMC Class A common stock (“Common Stock”) available for issuance.

2. The current common stockholder base, which has already ***twice voted down share increase proposals***, has suffered the common stock price plummeting by roughly half in the past few weeks, as investors belatedly learned of the Board’s weaponization of their power to issue “blank check” preferred stock to predetermine the outcome of the vote on these charter amendments.

3. This type of direct undermining of the stockholder franchise—in a manner that thwarts the current common stockholders’ stated desires and will give

¹ Unless otherwise noted, all emphases added.

the holders of a newly issued derivative security effective control over the upcoming vote, as well as a collective majority over future votes and economic returns—cannot be justified under *Blasius* and its progeny.

4. Plaintiffs thus bring this class action to block the Board’s inequitable plan before it is effected in a March 14, 2023 stockholder vote, the result of which, through novel yet pernicious financial engineering, is a *fait accompli*.

* * *

5. As a company that primarily operates movie theaters, the COVID-19 pandemic and resulting lockdowns hit AMC hard, turning a well-functioning business into one facing bankruptcy, burning \$125 million cash each month. With AMC in dire straits, institutional investors fled and short sellers piled on.

6. AMC was saved from bankruptcy by an unlikely hero: retail investors banding together and buying massive amounts of AMC stock, beginning in January 2021. In less than 72 hours, AMC’s stock price soared 467% and, over the next few months, rose further, from a price of \$2.12 per share on December 31, 2020, to \$10.21 per share on March 31, 2021. By April 2021, approximately 85% of AMC’s stockholder base were retail investors, many of whom coordinated their investing strategies on Reddit boards, dubbing themselves the “Reddit Apes.”

7. With bankruptcy concerns in the rearview mirror, AMC took advantage of the increase in its stock price and conducted a series of at-the-market equity raises,

ultimately selling 104.55 million shares of Common Stock in such offerings in 2021 to raise funds for general corporate purposes. Its board and management team, led by CEO Aron, deployed some of that money to pay down debt, but also used money to grow the business through capital expenditures.

8. Through these and other equity issuances, however, AMC depleted its reserve of shares authorized for issuance (or for grants under future executive compensation plans) under its Third Amended and Restated Certificate of Incorporation (the “Certificate”). The Company had, as of March 11, 2021, issued 450,156,186 million shares out of a total of 524,173,073 million authorized in the Certificate.

9. In April 2021, the Company sought stockholder approval of a proposal to approve an amendment to the Certificate to increase the total number of authorized shares of Common Stock by 500 million. This proposal was not well received by the stockholders, however, since they believed in the Company’s value and prospects, did not want to be diluted through new equity issuances, and may have had (well-founded) misgivings about the advisability of giving management so much “dry powder” to use equity to fund questionable investments. Before having to announce voting results, the Board withdrew their proposed amendment.

10. Not long thereafter, the Board tried a smaller increase. In June 2021, it sought stockholder approval of a proposal to approve an amendment to the

Certificate to increase the total number of authorized shares of Common Stock available for issuance by 25 million. Again, the retail investors who had saved AMC during the COVID-19 pandemic opposed the proposal. In the face of stockholder opposition, the Board withdrew this second proposal in July 2021.

11. Nevertheless, the Company remained financially healthy. Indeed, AMC had sufficient excess capital that it went out and bought a gold mine. Specifically, AMC paid \$27.9 million for 23.4 million shares and an equal number of warrants of Hycroft Mining Holding (“Hycroft”), a struggling public gold and silver mining company, in March 2022. Investors who previously used their voting powers to express reticence about giving Aron too much leeway to use equity wastefully were surely flummoxed by this new investment. As a result of the purchase, AMC became the owner of approximately 22% of Hycroft. That investment has plummeted in value, further supporting common stockholders’ suspicions about giving Aron further common stock to squander.

12. Having failed twice to secure approval to increase the Company’s authorized shares, the Board ensured that it would not strike out, regardless of what its stockholders wanted. The key to the Board’s thwarting of the AMC stockholder franchise was the Certificate’s provision for up to 50 million shares of “blank check” preferred stock. Of course, while the existence of “blank check” preferred may have given the Board the technical power to get creative with its capital raising

techniques, their fiduciary duties never contemplated the Board weaponizing this “blank check” to undermine common stockholders’ voting powers and economic interests.

13. On July 28, 2022, the Board created a new form of preferred stock styled Series A Convertible Participating Preferred Stock (“Preferred Stock”). Each share of Preferred Stock carries voting rights equal to 100 shares of Common Stock and automatically converts into 100 shares of Common Stock upon, *inter alia*, stockholder approval of an amendment to the Certificate to increase the total number of Common Stock shares authorized for issuance.

14. The Board also approved a Preferred Stock dividend to be issued on each outstanding share of Common Stock in the form of a depositary share, called AMC Preferred Equity Units (“APEs”), with each APE representing a 1/100 interest in a share of Preferred Stock. As such, each APE has voting rights equal to 1 share of Common Stock and is convertible into one share of Common Stock. Theoretically, each APE would serve as the functional equivalent of one share of Common Stock, and they should trade at approximately the same prices.

15. On August 4, 2022, the Company entered into a deposit agreement (the “Deposit Agreement”) with Computershare Inc. and its affiliate (together, “Computershare”), whereby Computershare would act as the depositary of the

APEs. AMC issued 10,000,000 shares of Preferred Stock to Computershare, which securities supported what could have been one billion APEs.

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.

17. Specifically, in connection with any stockholder vote at which APEs are entitled to vote, Computershare would vote APEs as instructed by their holders. However, with respect to APEs held beneficially by investors who did not provide voting instructions, which would ordinarily be treated as broker non-votes on non-routine matters, Computershare would vote those shares on a mirrored basis in the same proportion as APE shares for which Computershare did receive voting instructions. As such, the Deposit Agreement effectively allows the Company to sidestep the New York Stock Exchange (“NYSE”) prohibition on brokers voting uninstructed shares on non-routine proposals.

18. In other words, for APE units without voting instructions, Computershare will cast those votes *pari passu* with the APE votes actually cast. This provision is especially meaningful at a company like AMC that has a large retail

investor base, since retail investors traditionally have a poor record of attending and voting at meetings.

19. The Deposit Agreement also allows Computershare to vote APEs that are not even present at a meeting on a mirrored basis. In essence, as long as a sufficient majority of voting APEs supports any Board proposal that would harm the common stock, it becomes almost impossible for the common to defend itself at the ballot box, because the common is both outnumbered in absolute totals and only the common suffers the consequence of retail apathy.

20. The Company did **not** specifically disclose this mirrored voting procedure to stockholders. By arranging for Computershare to vote absent and uninstructed APEs in this manner, the Board placed its proverbial thumb on the scale to facilitate approval of measures that are not supported by the Company's common stockholders.

21. In connection with the issuance of Preferred Stock to Computershare, AMC declared a special dividend of one APE to be paid on each share of Common Stock outstanding at the close of business on August 15, 2022. In total, the Board issued 516,820,595 APEs through this dividend, leaving 483,179,405 APEs unissued. Importantly, the Board specifically disclosed that it had no current plans to issue the APEs in a manner dilutive to the common stockholders.

22. On August 22, 2022, APEs began trading on the NYSE under the symbol “APE.” Holders of Common Stock could sell their APEs, or buy other APEs, as desired. All stockholders had been treated equally and the transaction had the appearance of a simple dividend payment of a common stock equivalent. Like Agamemnon leaving a horse outside Troy’s walls, the Board had set in motion its end-run around AMC’s stockholders’ votes.

23. It did not take long for the APE issuance to impair the trading price of the Common Stock. When the APEs started trading, Common Stock traded around \$9 or \$10 per share. By December 21, 2022, however, the trading price of Common Stock had fallen to \$5.30 per share.

24. Moreover, because index funds and many other institutional investors are restricted from holding derivative securities or tickers not included in the pertinent index, the APEs themselves saw massive selling from the outset, driving their trading price down. As APEs traded down, more common stockholders surely gave up on and sold this “dividend,” not knowing how separating the APEs from the common would ultimately prove devastating for the latter.

25. As the price of the Common Stock fell, AMC sold additional APEs through an at-the-market program. As of December 19, 2022, the Company had sold 125.9 million APEs for approximately \$162.4 million of gross cash proceeds before fees and commissions. And, with another 40 million authorized but unissued shares

of the “blank check” preferred, the Board had considerable leeway to repeat the APE episode.

26. As noted, despite the two being functionally equivalent, the APEs traded at a deep discount to AMC’s Common Stock. On December 21, 2022—when the Common Stock closed at \$5.30 per share—the APEs closed at \$0.685 per unit.

27. In response, the Board set out to boost the price of the APEs while also increasing the Company’s authorized shares. It did so to the detriment, and against the wishes, of holders of Common Stock.

28. On December 22, 2022, the Company disclosed a massive sale of APEs to hedge fund Antara Capital LP (“Antara”). Specifically, AMC announced that it had entered into a forward purchase agreement (the “Forward Purchase Agreement”) with Antara, whereby it would (i) sell 106,595,106 APEs to Antara and (ii) exchange 91,026,191 APEs for \$100 million of certain company notes Antara had purchased at roughly 50% of their face value. Immediately prior to entry into the Forward Purchase Agreement, Antara also purchased 60 million APEs.

29. Crucially, when announcing the agreement, the Company also disclosed that it would hold a special meeting of stockholders to solicit their approval of amendments to the Certificate to: (i) 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 (the “Authorized Share Amendment”); and (ii) effect a 10-to-1

reverse-stock split of the Common Stock (the “Reverse Split Amendment” and, together with the Authorized Share Amendment, the “Amendments”).

30. Upon approval, these proposals will cause all outstanding APEs to convert automatically into Common Stock, effectively displacing the current common stockholder base in controlling the outcome of stockholder proposals. Thus, while the post-conversion equity ownership will remain dispersed in the markets, the current existing common stockholder base would not be expected to support such massive dilution.

31. The Company also disclosed that Antara had contractually agreed to vote its holdings—258,439,472 APEs, amounting to 17.8% of AMC’s total voting power and almost 30% of the issued APEs—in favor of the Amendments. Antara had every economic reason to do so anyway, since its APEs should immediately increase in value based on the market’s expectation of the collapse of APEs into Common Stock. Though parity between the two securities has not yet been reached—perhaps based on retail stockholders’ hope that this collapse of the Company’s equity structure can be prevented—Antara stands to reap an even greater windfall if the two classes of equity are combined.

32. Thanks to Antara’s commitment to vote all its APEs in favor of the Amendments to ensure itself a windfall, the clear economic windfall available to holders of APEs, the mirror-image instruction to Computershare, and APEs far

outnumbering shares of Common Stock, the outcome of the vote is a *fait accompli* absent judicial intervention.

33. On February 14, 2023, the Company filed a Definitive Schedule 14A Proxy Statement (the “Proxy”) in connection with a special meeting of stockholders scheduled for March 14, 2023 (the “Special Meeting”). Through the Proxy, the Board is soliciting stockholder approval of the proposed Amendments. If approved, the proposals will permit the conversion of all APEs into an equal number of shares of Common Stock.

34. As disclosed in the Proxy and confirmed by the NYSE website, all the proposals at the Special Meeting are non-routine, so that brokers cannot cast discretionary votes on them. Thus, regulators have confirmed that only actual votes by actual common stockholders should count for matters of this importance. Yet, through the Deposit Agreement’s mirrored voting provision, the Company has side-stepped this limitation as to APEs, making it that much more likely that the proposed Amendments will be approved and implemented.

35. At bottom, the Board is exploiting its blank check preferred and devious financial engineering to force through a twice-rejected proposal to dramatically increase the authorized Common Stock. Through the Deposit Agreement, Forward Purchase Agreement, Antara’s ownership of APEs and corresponding voting power, and the discount at which the APEs are trading, the Board has all but guaranteed that

APEs will convert into Common Stock against the will, and to the detriment, of the holders of Common Stock.

36. The APEs also have transferred, and will continue to transfer, economic value from the holders of Common Stock who saved the Company to Antara and other APE arbitrageurs, as borne out by the trading price of APEs since the dividend. Common Stock has fallen from \$24.21 on August 15, 2022 to \$10.46 on August 22, 2022 (the ex-dividend date) to \$5.24 per share on February 17, 2023. Meanwhile, the price of APEs has jumped from \$0.685 per share on December 21, 2022, the day before AMC's entry into the Forward Purchase Agreement, to \$2.30 per share on February 10, 2023.

37. The Board has abused its powers to purposely thwart the stockholder franchise. Their conduct is a breach of fiduciary duty and should be rectified.

PARTIES AND RELEVANT NON-PARTY

A. Plaintiffs

38. **Usbaldo Munoz** is a holder of shares of AMC Common Stock and has held such stock at all relevant times.

39. **Anthony Franchi** is a holder of shares of AMC Common Stock and has held such stock at all relevant times.

B. Defendants

40. **Adam M. Aron** has served as Chief Executive Officer, President, and a director of the Company since January 2016. Aron owns 1,097,199 shares of Common Stock and 1,348,138 APEs, meaning that he is economically incentivized to convert the APEs into Common Stock.

41. **Denise Clark** has served as a director of the Company since January 1, 2023.

42. **Howard W. Koch, Jr.** has served as a director of the Company since October 2014.

43. **Philip Lader** has served as a director of the Company since June 8, 2019. Lader was appointed as Lead Director in July 2021.

44. **Gary F. Locke** has served as a director of the Company since February 2016.

45. **Kathleen M. Pawlus** has served as a director of the Company since December 2014.

46. **Keri Putnam** has served as a director of the Company since January 1, 2023.

47. **Anthony J. Saich** has served as a director of the Company since August 2012.

48. **Adam J. Sussman** has served as a director of the Company since May 2019.

49. **Lee Wittlinger** served as a director of the Company from September 2018 to December 31, 2022.

C. Relevant Non-Party

50. **AMC Entertainment Holdings, Inc.** was incorporated under the laws of the state of Delaware on June 6, 2007. The Company maintains its principal executive offices in Leawood, Kansas. AMC, which can trace its roots to Kansas City, Missouri in 1920, is principally involved in the theatrical exhibition business and owns, operates, or has interests in theaters primarily located in the United States and Europe.

SUBSTANTIVE ALLEGATIONS

I. ROCKED BY THE PANDEMIC, AMC IS RESCUED BY RETAIL INVESTORS.

51. Prior to the worldwide spread of the novel coronavirus SARS-CoV-2, which caused the COVID-19 pandemic, AMC was a healthy, solvent company. The Company did have considerable debt—in the annual report that AMC filed with the SEC on February 28, 2020, AMC disclosed that it had “a significant amount of debt,”

equal to “approximately \$4,853.3 million of indebtedness (\$5,010.7 million face amount)” as of December 31, 2019.

52. Still, the Company had recently become the largest movie theater chain in the world and reported approximately \$5.471 billion in revenue for the year ended December 31, 2019.

53. With the onset of the COVID-19 pandemic and concomitant drop in movie theater attendance, however, AMC faced an existential crisis. The pandemic forced AMC to close approximately 1,000 theaters, furlough most of its 30,000 employees, and burn millions of dollars to stave off bankruptcy. As Aron, the CEO of AMC, would later recount to *Chief Executive*, AMC “went from having \$450 million a month of revenue to \$450,000 a month of revenue in one week. In a week. We had \$600 million of cash on hand. But all of a sudden, when you’re burning \$125 million in cash a month, \$600 million doesn’t last you very long.”

54. The Company would find salvation with a group of retail investors calling themselves “Apes,” a play on the famous movie line “Together Apes strong” from the film *Planet of The Apes*. In January 2021, retail investors, banding together on a web forum on Reddit.com called “WallStreetBets,” started to buy AMC stock in droves to save AMC.

55. The rescue of AMC by retail investors was a major goal of the so-called “meme stock” movement, consisting of retail investors who would coordinate to

drive up the trading price of shares of select companies to counter the influence of short sellers. As a general rule, retail stockholders in the “meme stock” movement seek to buy and hold stock for the long term.

56. It is no exaggeration to say that retail investors saved the Company. In less than 72 hours, AMC went from impending bankruptcy to seeing its stock price rise 467%, with the hashtag #SaveAMC going viral. The trading price of shares of Common Stock further rose from \$2.12 per share on December 31, 2020, to \$10.21 per share by March 31, 2021.

57. Many retail investors are still invested today. In addition to operating on the WallStreetBets forum, these “Apes” started a new forum on Reddit.com called “amcstock.” As of February 14, 2023, the latter forum had over 500,000 members.

58. AMC leaned into its status as a meme stock, with Aron “publicly thank[ing] the retail shareholders for helping save the company as it delivered \$2.2 billion in equity.” Aron also adopted various ideas promoted by retail investors, such as accepting cryptocurrencies for movie tickets and screening matches from the Ultimate Fighting Championship.

59. AMC capitalized on the opportunity presented by the increase in its stock price to conduct a series of at-the-market offerings of treasury shares. As

disclosed in the Company's most recent annual report, AMC raised nearly \$1.9 billion in gross proceeds through pandemic-era offerings:

"At-the-market" Equity Distribution Agreement Dates	Number of Class A common stock shares sold (in millions USD)	Gross Proceeds (in millions USD)
9/24/2020	15	56.1
10/20/2020	15	41.6
11/10/2020	20	61.4
12/11/2020	40.93	113.7
Total year ended 12/31/2020	90.93	272.8
12/11/2020	137.07	352.6
1/25/2021	50	244.3
4/27/2021	43	427.5
6/3/2021	11.55	587.4
Total year ended 12/31/2021	241.62	1,611.80

60. The Company also issued equity to retire a portion of its debt. Ultimately, the Company issued nearly all of the shares authorized under the Certificate to survive the pandemic.

61. As of August 3, 2020, there had been 109,319,377 shares of common stock issued and outstanding. By June 2, 2021, this number had ballooned to 501,780,240 shares. The total authorized under the Certificate was 524,173,073.

II. AMC'S STOCKHOLDERS TWICE REJECT THE BOARD'S ATTEMPT TO INCREASE THE COMMON STOCK SHARE COUNT.

62. With its treasury shares dwindling, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

63. [REDACTED] on March 19, 2021, the Company filed a proxy statement with the SEC, through which the Board solicited stockholder support of a proposal to approve an amendment to the Certificate to increase the total number of Common Stock shares authorized under the Certificate (the “Rejected Proposal”).

64. The original iteration of the Rejected Proposal, which contemplated an increase of 500,000,000 shares to a total of 1,024,173,073 shares, was met with disapproval from many of the retail investors who had driven up AMC’s stock price, prompting Aron, on April 14, 2021, to promise investors “that if the shareholders approve this authorization for 500 million new shares to be issued we will not use one of those 500 million shares in calendar year 2021. Not one. Not one.”

65. Opposition to the Rejected Proposal persisted, however, and the Company took responsive action.

66. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

67. [REDACTED] the Board agreed to withdraw the Rejected Proposal and not seek its approval by the stockholders. AMC announced the same later that day.

68. The Board continued to explore ways to increase the number of shares of Common Stock authorized by the Certificate, however. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

69. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

70. Later that day, AMC announced that the Board had postponed the annual meeting of stockholders to July 29, 2021, to “provide additional time for its millions of current individual shareholders to have their voices heard and more time to cast ballots on important shareholder matters.”

71. On May 4, 2021, the Board also amended its bylaws to lower the quorum requirement. AMC went from requiring that a majority of the stock issued and outstanding and entitled to vote at any meeting of the stockholders be present at a meeting to requiring that just one third of the stock issued and outstanding and entitled to vote at any meeting of the stockholders be present.

72. Next, on June 3, 2021, the Company filed a preliminary proxy statement with the SEC, wherein the Board disclosed that it would be seeking approval of a modified version of the Rejected Proposal, this time contemplating an increase in the number of Common Stock shares authorized by the Certificate by

25,000,000 shares to a total of 549,173,073 shares, effective January 1, 2022. The Board told stockholders that AMC was running out of Common Stock shares:

As of the close of business on June 2, 2021, the latest practicable date before the filing of this proxy statement, there were 501,780,240 shares of [AMC] Common Stock issued and outstanding and 10,796,709 shares of Common Stock reserved for issuance under the EIP. In addition, on June 3, 2021, the Company issued 11,550,000 shares of [AMC] Common Stock. Accordingly, 46,124 shares of the total number of shares of Common Stock currently authorized remain available for issuance or may be reserved for issuance prior to any amendment to increase the authorized shares of Common Stock.

73. Yet again, however, the retail investors who had saved AMC during the COVID-19 pandemic largely opposed the share increase.

74. On July 6, 2021, in the face of stockholder opposition, AMC announced that it had determined not to seek stockholder approval of the revised Rejected Proposal.

75. Putting aside the Board's preference to use new equity issuances to affect the Company's balance sheet, Aron and other senior executives had another reason to increase the authorized share count: executive compensation plans.

76. Despite the Company's struggles during the pandemic, Aron was a richly compensated CEO, receiving \$9,671,799 in pay for 2019, \$20,926,785 for 2020, and \$18,909,546 for 2021. Notably, about 66% of Aron's compensation package until then came in the form of equity grants consisting of or backed by

Common Stock. And, under the Company’s incentive plan, APEs can be—and have been—issued as compensation.

III. STOCKHOLDERS REJECT ARON’S COMPENSATION FOLLOWING AMC’S PURCHASE OF A GOLD MINE.

77. That the executives were being richly rewarded while the Company was struggling due to COVID was not lost on the stockholders, and they were not pleased.

78. As noted above, at the June 16, 2022 annual meeting of stockholders, AMC stockholders resoundingly rejected, in a non-binding vote, Aron’s compensation package:

Proposal 3: Non-Binding Advisory Vote on Executive Compensation			
Stockholders failed to approve, on a non-binding advisory basis, the compensation paid to our named executive officers.			
For	Against	Abstain	Broker Non-Votes
52,148,743	86,896,550	5,917,972	123,812,644

79. When the stockholders went to vote on Aron’s compensation package, they no doubt had in mind that, while they had saved AMC during the pandemic, Aron went out and gambled with AMC’s second chance.

80. Just months before the stockholder vote on compensation, AMC bought a gold mine. Specifically, in March 2022, AMC paid \$27.9 million for 23.4 million

shares and an equal number of warrants of Hycroft, a struggling public gold and silver mining company. As a result of the purchase, AMC became the owner of approximately 22% of Hycroft.

81. Unsurprisingly, since AMC is a movie theater company and not a mining company, the purchase has turned out poorly. AMC has recorded unrealized losses in investment income of \$19.5 million and \$3.4 million for the three and nine months ended September 30, 2022, respectively.

82. Addressing the Board's decision to invest in Hycroft, Aron said, "[t]o state the obvious, one would not normally think that a movie theater company's core competency includes gold or silver mining. In recent years, however, AMC Entertainment has had enormous success and demonstrated expertise in guiding a company with otherwise valuable assets through a time of severe liquidity challenge, the raising of capital, and strengthening of balance sheets, as well as communicating with individual retail investors."

83. AMC's investment in Hycroft may not prove to be its only far-afield investment. Per *Bloomberg*, at the Company's annual meeting of stockholders in June 2022, Aron told stockholders that "AMC would be creating a \$100 million fund to invest in other businesses." As Aron expounded, "[t]here are a number of things that we looked at that we rejected, either because it wasn't interesting enough, or there was too much risk, or the financial returns weren't attractive enough, . . . [b]ut

I’m sure we’ll find other opportunities as we turn over every rock.” Later, at the August 4, 2022 earnings call, Aron confirmed that such a fund had been approved.

84. The results of the vote on his compensation package demonstrate that stockholders did not share his enthusiasm for investing AMC’s money outside its core operations.

IV. THE BOARD CREATES APES AND ATTEMPTS TO ASSUAGE STOCKHOLDER CONCERNS.

85. Undeterred by stockholder opposition to increasing the number of shares of Common Stock authorized for issuance, the Board set to work on a novel, but ultimately nefarious, plan to circumvent the wishes of the very investors to whom they owed a duty of loyalty.

86. AMC’s Certificate provides for approximately 50 million shares of “blank check” preferred stock that the Board can issue on terms set by the Board without stockholder approval. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

87.

[REDACTED]

[REDACTED]

[REDACTED]

88. At a Board meeting held on February 17, 2022,

[REDACTED]

[REDACTED]

[REDACTED]

Per the minutes of that meeting,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

89.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

90. On May 4, 2022, the Board met, and

[REDACTED]

[REDACTED]

[REDACTED]

91. On July 20, 2022, [REDACTED]

[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

92. On July 25, 2022, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

93. On July 28, 2022, [REDACTED]

[REDACTED] At a Board
meeting that day, [REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

94. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

95. The Board also discussed [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

96. The Board discussed [REDACTED]

[REDACTED]

[REDACTED]

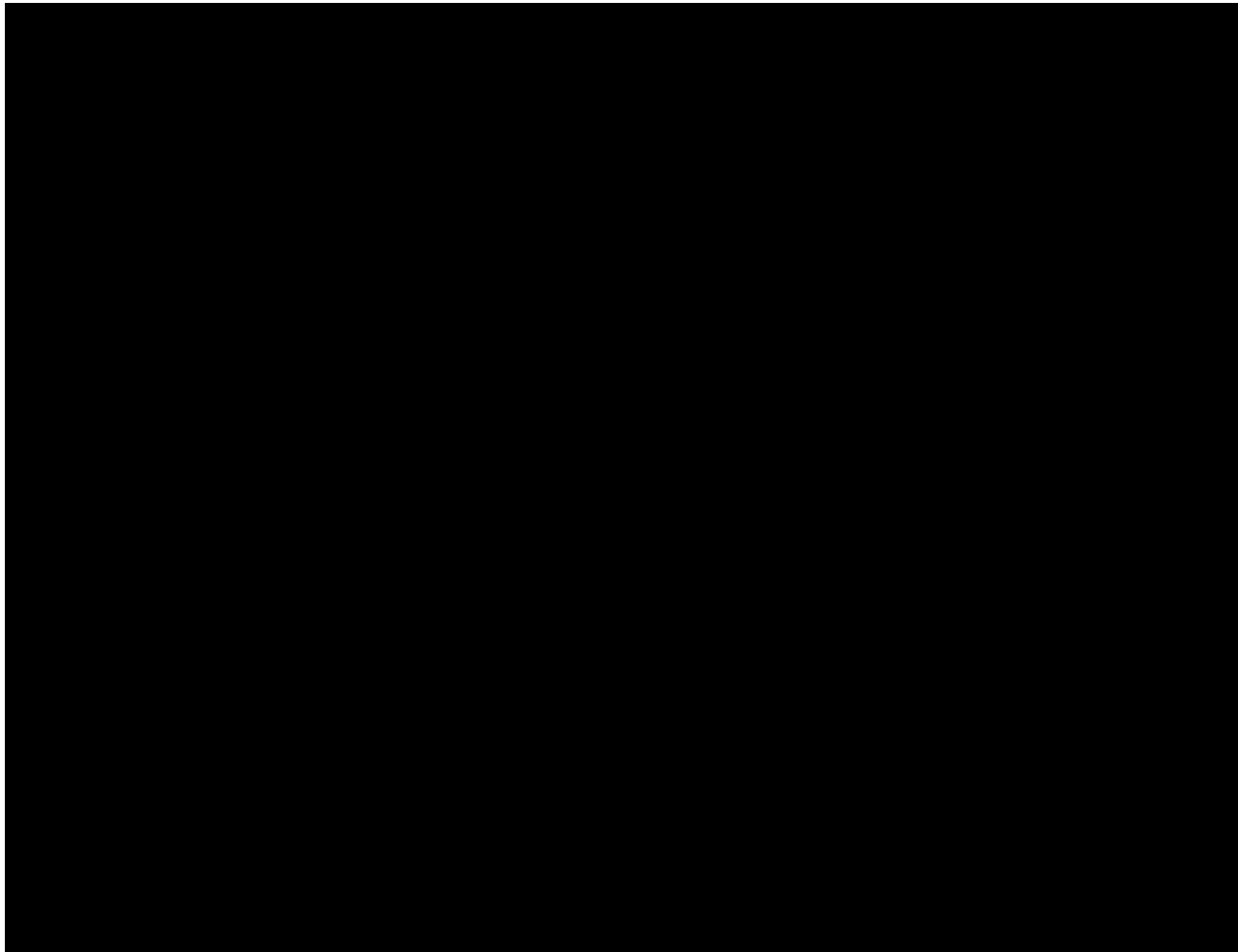
[REDACTED]

[REDACTED]

97. At the meeting, the Board also [REDACTED]

[REDACTED]

[REDACTED]



98. [REDACTED]



99. The Board created the new form of Preferred Stock and authorized 10,000,000 such shares. Each share of Preferred Stock carries voting rights equal to 100 shares of Common Stock, and automatically converts into 100 shares of Common Stock upon stockholder approval of an amendment to the Certificate to increase the total number of Common Stock shares authorized sufficient to permit

the conversion and the filing of such an amendment with the Office of the Secretary of State of the State of Delaware.

100. The Board also approved a Preferred Stock dividend to be issued on each outstanding share of Common Stock in the form of APEs, which were depositary shares, each representing a 1/100 interest in a share of Preferred Stock. Each APE has voting rights equal to one share of Common Stock and is convertible into one share of Common Stock if stockholders approve an increase to the total number of shares of Common Stock authorized under the Certificate.

101. Finally, the Board authorized the Company to enter into the Deposit Agreement with Computershare, whereby Computershare would act as the depositary of the APEs. Under the terms of the Deposit Agreement, in connection with any stockholder vote at which holders of Preferred Stock are entitled to vote, Computershare would vote shares of Preferred Stock as instructed by their holders. However, with respect to APEs (and, by extension, Preferred Stock) that are not present or for which voting instructions are not given, which otherwise would be treated as broker non-votes, Computershare will vote those units proportionally in the same manner as APE units for which holders do give specific voting instructions.

102. In other words, while absentee and uninstructed common shares are effectively negative votes in the context of any amendment of the Certificate requiring a majority of all outstanding shares to pass, the “mirror-voting” feature in

the Deposit Agreement will turn absentee and uninstructed APEs into votes proportional to the actual votes cast—regardless of whether shares of Common Stock could be voted on the same proposal absent the receipt of instructions from beneficial holders. Thus, as long as more APEs vote for a charter amendment than against it, the proposal will be far more likely (and perhaps assured) to pass. That agreement was executed on August 4, 2022.

103. The mirrored voting procedures for shares of Preferred Stock corresponding to absentee and uninstructed APEs were not specifically disclosed to AMC stockholders, who would have had to painstakingly search through the Deposit Agreement to find them. Nor did the Company’s disclosures instruct common stockholders to hold onto their APE units to protect themselves from the dilution that would come from aggressive APE issuances followed by an effort to massively alter the Company’s authorized share count.

104. [REDACTED]

[REDACTED] Thereafter, AMC declared a special dividend of one APE for each share of Common Stock outstanding at the close of business on August 15, 2022, the record date. The ex-dividend date for the APEs was August 22, 2022.

105. Because the Board had authorized 1 billion APEs and the dividend would only cover 516,820,595 APEs—*i.e.*, a number equal to the number of shares

of Common Stock issued and outstanding on August 15, 2022—approximately 483.2 million APEs would be categorized as authorized but unissued units on AMC’s balance sheet.

106. AMC announced that APEs would be traded on the NYSE under the symbol “APE” starting August 22, 2022.

107. The Company also issued APE FAQs in which it claimed that APEs were “designed to have the same economic value . . . [and] voting rights as a share of” Common Stock.

108. The Company further claimed:

Are the AMC Preferred Equity units convertible into common stock? If so, when?

- Technically yes, the AMC Preferred Equity units can convert into common stock, but only if the AMC Board proposes and then investors vote to approve an increase in the number of authorized shares of common stock, in an amount at least sufficient to permit the conversion of the AMC Preferred Equity units into common stock.
- However, we do not currently expect the AMC Board to make such a proposal any time soon.
- It is more likely than not that the two securities, the common stock and AMC Preferred Equity units will trade as two separate securities for quite some time to come.

109. The Board also told stockholders that they should not worry about dilution of the Common Stock:

Is there any common stock dilution due to the AMC Preferred Equity unit dividend?

- The number of shares of common stock outstanding (516,820,595) remains unchanged as a result of the distribution of the AMC Preferred Equity units.
- In addition to the 516,820,595 shares of common stock outstanding on August 19, 2022, an additional 516,820,595 AMC Preferred Equity units will become outstanding on the ex-dividend date of August 22, 2022.
- Therefore, because these APEs are all going, and only going, to existing shareholders, there is no dilution from this initial APE dividend.
- Dilution occurs only when the AMC Board decides that the Company should issue additional AMC Preferred Equity units in the future. AMC expects that it will decide to issue more APEs with the express purpose of debt reduction or repayment, along with other potential uses for additional APEs as has previously been communicated publicly.

110. [REDACTED]

[REDACTED] Rather than disclose that information, however, the Board affirmatively misrepresented its intentions to stockholders and downplayed any imminent dilution risk.

111. In the APE FAQs, the Board did not inform stockholders that uninstructed APEs would be voted on a proportional basis by Computershare or that holders of APEs who do not even attend a meeting would still see their APEs voted by Computershare.

112. Finally, the Company predicted that:

Because the AMC Preferred Equity unit is designed to have the same economic value and voting rights as a share of common stock, ***in theory, the common stock 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.

113. This prediction did not come to fruition. As summarized by Matt Levine, writing for *Bloomberg* on December 22, 2022:

When APEs started trading in August, they were worth about \$6 or \$7 per share, while the common stock was around \$9 or \$10. Yesterday the common stock closed at \$5.30; the APEs closed at \$0.685, an 87% discount. ***That's bad. If your common stock is worth \$5.30, selling basically-common-stock for \$0.685 is a bad corporate finance move.***

114. While the trading price of APEs was in freefall, the Company took measures to raise funds by selling unissued APEs, thereby further diluting existing AMC stockholders. [REDACTED]

[REDACTED]

[REDACTED]

115. On September 26, 2022, the Company supplemented its August 4, 2022 prospectus to offer up to 425 million APEs for sale.

116. During a Company earnings call in November 2022, Aron spoke to the creation of APEs and underlying investor concerns, stating:

In launching them, we said that the creation of APEs was nothing less than an all defining moment in AMC’s future, as it gave us a new currency to help AMC to grow, to deliver and the [sic] raise capital. *We also said at the time, to those who feared mindless dilutions, that we would treat our new APE preferred stock that we would treat it as precious, and we will continue to do so.* So far, we have raised only \$37 million of equity proceeds from the sale of APEs into the market, we have indeed been careful.

117. While Aron may have referred to AMC’s treatment of APEs as “precious,” AMC in fact flooded the market with over 800 million APEs—at bargain basement prices—in less than 6 months.

118. At first, APEs were sold through an at-the-market program, through which the Company, as of December 19, 2022, had sold 125.9 million APEs for approximately \$162.4 million of gross cash proceeds before fees and commissions.

V. THE BOARD WEAPONIZES APEs BY GIVING ANTARA A MASSIVE WINDFALL TO BUY APEs AND VOTE FOR THE TWICE REJECTED CHARTER AMENDMENTS.

119. At a special Board meeting on December 21, 2022, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

120. Next, Aron [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

121. Aron also told the Board that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

122. Following [REDACTED] the Board discussed the transaction.

During this discussion:

[REDACTED]

[REDACTED]

123. [REDACTED]

[REDACTED]

[REDACTED]

124. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

125. On December 22, 2022, AMC filed with the SEC a Form 8-K Current Report (the “December 8-K”), wherein the Company announced that it had entered into the Forward Purchase Agreement with Antara, pursuant to which AMC would (i) sell 106,595,106 APEs to Antara for an aggregate purchase price of \$75.1 million (the “Forward Purchase APEs”) 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 (the “Exchange Notes”) in exchange for 91,026,191 APEs (together with the Forward Purchase APEs, the “Private Placement APEs”). AMC disclosed that immediately prior to entry into the Forward Purchase Agreement, Antara purchased 60 million APEs at a price of \$34.9 million through the at-the-market program (the “Initial APEs”).

126. In the December 8-K, the Company further disclosed that, within 90 days, it would hold a special meeting of stockholders to solicit stockholder approval of amendments to the Certificate to: (i) 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; and (ii) effect a 10-to-1 reverse-stock split of the Common Stock. Per the Company, Antara agreed to vote all its holdings in favor of the Amendments.

127. On February 7, 2023, the share issuances contemplated by the Forward Purchase Agreement occurred.

128. On February 9, 2023, the Company waived the Forward Purchase Agreement's lock-up restrictions on Antara, permitting Antara to sell up to 26 million APEs ahead of the special meeting. Since the record date was February 8, Antara is likely still able to vote the APEs even while divesting its economic interest. No specific reason was provided to justify waiving this lock-up, other than to allow Antara to continue to maximize its windfall.

129. Antara knew that a conversion of APEs into Common Stock would both provide a windfall to the holders of APEs and result in devastating value destruction for holders of Common Stock. Indeed, not only did Antara acquire a significant amount of APEs, as discussed herein, but it also simultaneously ***shorted*** the Company's Common Stock. On February 16, 2023, Antara disclosed, via a Form 4,

that it had entered into a 2 million share, total return swap position for the synthetic short of AMC Common Stock. Thus, Antara is poised to profit not only from the appreciation in value for the APEs, but also the destruction of value for the Common Stock.

130. Like the APE issuance generally, the Initial APEs and Private Placement APEs will have the effect of transferring economic value from the public Common Stock stockholders who saved the Company to Antara. As explained by Matt Levine for *Bloomberg*:

AMC can still go back to shareholders anytime and ask them to vote to collapse this back into a normal single-share structure, by authorizing more common shares and converting the APE shares into common shares. If a majority of shareholders approve, then each APE will turn into a common share, closing the discount. Maybe the common shares will maintain their value and the APEs will go up to \$5.30, or maybe they'll both end up worth, say, \$3, ***but in any case they'll all be the same thing and trade at the same price.***

131. Levine's prediction is panning out. The trading price of Common Stock has fallen from a close of \$5.30 per share on December 21, 2022, to a close of \$4.68 per share on February 13, 2023. Meanwhile, the price of APEs has jumped from a close of \$0.685 per share on December 21, 2022, to a close of \$2.30 per share on February 10, 2023. In other words, Antara has seen its investment in APEs already

more than triple in value in less than two months, not to mention any profits that Antara will realize from shorting the Common Stock.

VI. AMC’S FINANCIAL SITUATION DID NOT JUSTIFY THE USE OF APEs.

132. At the time of the APE dividend, AMC did not face any crisis, existential or otherwise, that might justify radical action. The Board nonetheless created and issued APEs to bypass the will of the holders of the Common Stock.

133. Throughout the year, Aron kept trumpeting the strength of AMC.

134. In the March 1, 2022 press release issued in connection with the Company’s 2021 financial results, Aron stated that “[o]ur **record year-end liquidity** positions AMC well for continued recovery from the impact of COVID and provides AMC with the financial flexibility to opportunistically grow and innovate as we seek to transform our business.” He added that:

As we have repeatedly said, ***with the monetary war chest that was provided to us by our shareholders in 2021, AMC is no longer on its heels.*** As COVID case numbers are finally declining and vaccination numbers increasing, as our operating results are markedly improving, and as our healthy liquidity allows, AMC is playing on offense again.

135. Aron repeated this refrain in the May 9, 2022 press release issued in connection with the Company’s first quarter results, stating that “[o]ur results for the first quarter of 2022 represent AMC’s strongest first quarter in two full years. We continue on our pandemic recovery trajectory, more than quintupling revenues and

improving adjusted EBITDA by nearly eighty percent compared to a year ago.” Once again, he emphasized the Company’s strong liquidity position, noting that “[AMC’s] operating and capital allocation priorities remain unchanged: ***relish and guard our strong liquidity position.***”

136. Aron continued on this path during the August 4, 2022 earnings call, stating that “[AMC’s] results for the second quarter which were massively ahead of last year’s second quarter, and exceeded market expectations for revenues, adjusted EBITDA and net income.” He noted that “[t]he second quarter was quite the success and our best second quarter in three years,” and emphasized that AMC was recovering from the COVID-19 pandemic quite well, with “[AMC] generat[ing] positive operating cash too in the second quarter of 2022 of \$52 million,” seeing a 2.5x increase in movie goers from the second quarter in 2021 and “positive adjusted EBITDA of \$107 million in the second quarter of 2022, a \$258 million improvement over that figure in Q2 of 2021.”

137. [REDACTED]

[REDACTED]

AMC may have a considerable amount of debt, but Aron has recently touted the movie industry’s prospects, claiming that a 35% increase in the number of movies to be released in 2023 will provide a “path to eventual pandemic recovery.”

138. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

139. Indeed, AMC was in such a non-precarious financial position that it went out and bought a gold mine, as discussed above. That the Company had the financial ability to invest outside its core competency begs numerous questions concerning why management is so determined to increase AMC's share count.

VII. THE BOARD USES APES TO TRY TO FORCE THROUGH A SHARE INCREASE.

140. On February 14, 2023, the Company filed the Proxy in connection with the Special Meeting scheduled for March 14, 2023. Through the Proxy, the Board is soliciting stockholder approval of three proposals: (i) to approve the Authorized Share Amendment, which would increase the number of authorized shares of Common Stock from 524,173,073 to 550,000,000; (ii) to approve the Reverse Split Amendment, which would authorize the Board to effectuate a reverse stock split at a ratio of one share of Common Stock for every ten shares of Common Stock; and (iii) to adjourn the Special Meeting if the Company has not solicited sufficient stockholder votes for the Certificate Proposals to carry. Per the Proxy, the proposals

to approve the Authorized Share Amendment and Reverse Split Amendment (the “Certificate Proposals”), if approved, are sufficient to permit the full conversion of all APEs into Common Stock.

141. In the Proxy, the Company discloses that, for the Certificate Proposals to carry, each requires the affirmative vote of at least a majority of the outstanding Common Stock and Preferred Stock, voting together as one class.

142. The Company discloses that Antara will vote its stock in favor of the Certificate Proposals, as contractually required, thus giving a sizeable head start for the “FOR” votes, especially due to the mirrored voting procedures.

143. As of February 8, 2023, 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.

144. Antara owns 0 shares of Common Stock, making it highly economically incentivized to push through the conversion of APEs into Common Stock. As of the record date, AMC had 517,580,416 shares of Common Stock and 929,849,612 APEs (representing 9,298,497 shares of Preferred Stock) issued and outstanding. In other words, APEs, which rationally should want to approve the conversion, wield a majority of the Company’s voting power.

145. The Company also disclosed that, consistent with the Deposit Agreement, Computershare would “will vote the . . . 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.”

Additionally, the Proxy belatedly disclosed:

Under the terms of the deposit agreement, if the Depositary does not receive timely voting instructions with respect to any Series A Preferred Stock represented by APEs, including broker “non-votes,” the Depositary 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 other APE holders.

* * *

Broker non-votes of APEs will be treated by the Depositary as not having been voted, and under the terms of the deposit agreement, the Depositary will vote the Series A Preferred Stock represented by such non-voting APEs proportionately with votes cast pursuant to instructions received from the other APE holders.

146. The Proxy confirms that the Deposit Agreement allows Computershare to vote APEs that otherwise would be treated as broker non-votes, as well as APEs that are not even present at a meeting, on this mirrored basis. In effect, the Deposit Agreement allows the Company to the sidestep NYSE prohibition on brokers voting uninstructed shares on non-routine proposals, such as each of the Certificate Proposals to be voted on at the Special Meeting.

147. Additionally, because the Certificate Proposals require approval of at least a majority of AMC’s outstanding shares, each proposal needs at 723,715,015

affirmative votes to carry. Absent the provision in the Deposit Agreement allowing Computershare to “vote the Preferred Stock represented by the [APEs] proportionately with votes cast pursuant to instructions received from the other Holders,” any share that is not an affirmative vote would have the practical effect of an “against” vote because such vote would not count towards a majority of the Company’s shares. This would ordinarily include “against” votes, abstentions, uninstructed equity units, or equity units absent from the Special Meeting altogether.

148. Through the Deposit Agreement, however, the Board will cause Computershare to vote certain of these votes for the Certificate Proposals. Thus, by giving Computershare the ability to cast votes for APEs even if their holder does not provide voting instructions or show up to vote, the Board is making the APE portion of the vote effectively a majority of votes cast standard.

149. And, because of the Forward Purchase Agreement with Antara, the Board has already guaranteed that at least 27.8% of the APEs that will be present at the Special Meeting will be voted for the Certificate Proposals.

150. Between creating the economic incentives at play, arranging for Computershare to vote absentee and uninstructed APEs on a *pari passu* basis, and locking up Antara’s voting commitment, the Board has effectively rendered approval of the Certificate Proposals a *fait accompli*.

151. Once the Certificate Proposals are approved, the APEs will convert into Common Stock and the dilution event that the retail stockholders repeatedly voted down will occur.

152. The Board has known since 2021 that retail stockholders have opposed increasing the number of shares of Common Stock authorized under the Certificate. Despite the plain wishes of the stockholders to whom they owe an unfailing duty of loyalty, the members of the Board devised a plot to force through a share increase and circumvent the stockholder franchise. There is no compelling justification for the Board's actions, which are atypical, inequitable, and—ultimately—disloyal.

CLASS ACTION ALLEGATIONS

153. Plaintiffs, who are stockholders of the Company, bring this action as a class action pursuant to Rule 23 of the Rules of the Court of Chancery of the State of Delaware on behalf of all similarly situated holders of shares of AMC Common Stock (the “Class”). Excluded from the Class are the Defendants named herein and any person, firm, trust, corporation, or other entity related to or affiliated with any Defendant.

154. This action is properly maintainable as a class action.

155. The Class is so numerous that joinder of all members is impracticable. As of February 8, 2023, there were 517,580,416 shares of AMC Common Stock outstanding and entitled to vote.

156. There are questions of law and fact which are common to the Class, including, *inter alia*, whether:

- a. Defendants violated their fiduciary duties by coercing stockholders to vote with respect to the Certificate Proposals;
- b. Defendants violated their fiduciary duties by attempting to circumvent the franchise of the holders of the Common Stock;
- c. Defendants violated their fiduciary duties by transferring economic value from members of the Class to Antara and other holders of APEs; and
- d. Plaintiffs and the other members of the Class are being and will continue to be injured by the wrongful conduct alleged herein and, if so, what is the proper remedy.

157. Plaintiffs are committed to prosecuting this action, are adequate representatives of the Class, and have retained competent counsel experienced in litigation of this nature.

158. Plaintiffs' claims are typical of those of the other members of the Class.

159. Plaintiffs have no interests that are adverse to the Class.

160. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications for individual members of the Class, which may as a practical matter be dispositive of the interests of the

other members not parties to the adjudications or substantially impair or impede other members' ability to protect their interests. Litigation of separate actions would also create the risk of establishing incompatible standards of conduct for the party opposing the Class.

161. Plaintiffs anticipate that there will be no difficulty in the management of this litigation. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, and common questions of law and fact predominate over individual inquiries.

COUNT I
BREACH OF FIDUCIARY DUTY
(Against All Defendants)

162. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

163. As directors of AMC, Defendants owe Plaintiffs and the Class the fiduciary duties of care and loyalty.

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.

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.

166. As a result of Defendants' breaches of their fiduciary duties, Plaintiffs and the Class have been and will be harmed.

167. Plaintiffs and the Class have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court enter its Orders, Judgments and Decrees:

- A. Certifying this case as a class action, certifying the proposed Class, and designating Plaintiffs and the undersigned counsel as representatives of the Class;
- B. Declaring that Defendants breached their fiduciary duties to the Class;
- C. Enjoining the APEs from being voted at the Special Meeting and on any future stockholder vote unless modified so as not to be coercive;

D. Awarding Plaintiffs the costs and disbursements of this action, including attorneys', accountants', and experts' fees; and

E. Awarding such other and further relief as is just and equitable.

Dated: February 20, 2023

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