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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' REPLY BRIEF IN FURTHER SUPPORT OF PROPOSED SETTLEMENT

OF COUNSEL:

John A. Neuwirth
Joshua S. Amsel
Matthew S. Connors (#5598)
Tanner S. Stanley
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
(212) 310-8000

Dated: June 7, 2023

RICHARDS, LAYTON & FINGER, P.A.

Raymond J. DiCamillo (#3188)
Kevin M. Gallagher (#5337)
Matthew W. Murphy (#5938)
One Rodney Square
920 N. King Street
Wilmington, Delaware 19801
(302) 651-7700

Attorneys for AMC Entertainment Holdings, Inc., 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

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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 reply brief in further support of the parties' proposed settlement (the "Settlement").

PRELIMINARY STATEMENT

As established in Defendants' Opening Brief, the Settlement is fair, reasonable, and adequate, and should be approved.[1] Through the Settlement, class members stand to receive additional shares of AMC Common Stock 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, in which case AMC's stockholders would have received *nothing*.

In exchange, AMC will be able to effectuate the Charter Proposals that were overwhelmingly approved in a March 14, 2023 stockholder vote. AMC continues to need to raise significant equity capital for its business to survive, and effectuating the Charter Proposals will provide AMC with a non-discounted security that it can

[1] Capitalized terms not defined herein have the meanings ascribed to them in Defendants' Opening Brief ("Op. Br."). Dkt. 200. Citations to "Ex.__" refer to the exhibits attached to the Transmittal Affidavit of Kevin M. Gallagher in Connection with Defendants' Brief in Support of Proposed Settlement, Dkt. 201, and the exhibits attached to the Transmittal Affidavit of Kevin M. Gallagher, filed with this reply brief.

use to raise equity capital. If the Settlement is not approved, at best, AMC 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.

A very vocal group of purported holders of Common Stock (collectively, the "Objectors") have inundated the Court, the Special Master, and the parties with purported objections to the Settlement (collectively, the "Objections"). Yet, the Objectors, in the aggregate, represent a very small portion of the putative class and, thus, stand in stark contrast to, and are far outnumbered by, the members of the putative class holding the over one hundred and twenty-eight million shares of Common Stock that were voted in favor of the Charter Proposals. In any event, regardless of the number of Objections, the issue before the Court is the same as it is when deciding whether to approve any other proposed class action settlement --

namely, whether the proposed Settlement is fair, reasonable, and adequate.[2] The Settlement plainly meets that standard and should be approved.

The Objections should be overruled. *First*, the Court need not even consider Objections that were improperly submitted, are moot, or raise issues entirely irrelevant to this litigation. *See* Point I.A, *infra*. *Second*, Objections arguing that the Settlement should not be approved because of the purported strength of Plaintiffs' claims should be overruled because the claims were likely to fail on the merits. *See* Point I.B, *infra*. *Third*, the Court should overrule all Objections contending that the Settlement should not be approved because the parties have overstated the financial risk to AMC if the Court fails to approve the Settlement. AMC is still facing significant financial challenges, and continues to need to raise significant equity capital for its business to survive. *See* Point I.C, *infra*.

Fourth, Objections based on beneficial holders of Common Stock allegedly failing to receive a post card notice are meritless. Strategic Claims Services (the "Notice Administrator") went above-and-beyond the requirements in the Scheduling Order in an effort to provide post card notice to beneficial holders of Common Stock. In any event, under well-settled Delaware law, beneficial holders assume the risk

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[2] *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).

that they may not receive notice from their nominee or custodian. *See* Point I.D, *infra*. *Fifth*, attacks on the release provided to Defendants under the Settlement lack merit. The release is consistent with those regularly approved by the Delaware courts. *See* Point I.E, *infra*. *Sixth*, Objections that ask to "opt-out" of the Settlement, or suggest that a non-opt-out settlement is inappropriate, run contrary to well-established Delaware law. *See* Point I.F, *infra*. *Finally*, various Objectors' proposed "alternatives" to the Settlement do not provide a basis not to approve the Settlement to which the parties have agreed and presented to the Court. *See* Point I.G, *infra*.

ARGUMENT

I. THE OBJECTIONS SHOULD BE OVERRULED AND THE COURT SHOULD APPROVE THE PROPOSED SETTLEMENT

A. The Court Should Disregard Improperly Submitted, Moot, Or Irrelevant Objections

The Court need not consider improper, resolved, or irrelevant Objections. *First*, the Court should disregard all Objections that did not comply with the requirements of Paragraph 19 of the Court-approved Scheduling Order and those set out in the Court's Corrected Settlement Procedure Letter.[3] Every purported Objector who submitted an Objection without proof of ownership of AMC Common Stock, or who failed to include a "specific, written statement" of the reason(s) for

[3] May 1, 2023 Scheduling Order With Respect To Notice And Settlement Hearing, Dkt. 185 ¶ 20; May 3, 2023 Corrected Settlement Procedure Letter, Dkt. 190-1 at 1-2.

the purported Objection, is deemed to have "waived the right to object," and is "barred from raising any objection" to the Settlement.[4]

Second, Objections that have now been resolved are moot and should be disregarded. For example, several Objectors challenge the Settlement on the basis that stockholders were "exclu[ded] from [d]iscovery," and requested access to the discovery record in order to inform their decision whether to object.[5] But, pursuant to the Court's May 21, 2023 Letter Opinion, potential Objectors have been able to access the entire discovery record since May 21, 2023.[6] Any class member who (i) provided the required proof of ownership of Common Stock, and (ii) signed the required Revised Stipulation and Order for the Production and Exchange of Confidential and Highly Confidential Information (the "Revised Confidentiality Order") and related objector agreement, has been granted electronic access to the discovery record.[7]

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[4] Scheduling Order ¶ 20; *see also*, Dkt. 190-1 at 1-2.

[5] *See, e.g.*, Objection of Amie Toerge at 5-6; Objection of Ariel Edu at 5-7.

[6] May 20, 2023 Letter Opinion Adopting Special Master's Report Regarding Class Member Access to the Discovery Record, Dkt. 312.

[7] *Id.*; *see also* May 24, 2023 Letter Opinion Regarding Jordan Affholter's Objection to the Discovery Process, Dkt. 330 at 5-6.

On May 21, 2023, Objector Rose Izzo, represented by counsel Theodore Kittila and Anthony Rickey, provided proof of ownership and counsel signed the Revised Confidentiality Order. Later that evening, counsel for Ms. Izzo were granted access to the discovery record. As of the date of this filing, no other Objector has signed the Revised Confidentiality Order and provided proof of ownership in

Finally, the Court should disregard Objections that relate only to issues entirely outside the scope of this litigation and Settlement. Objections regarding purported "naked shorting" of AMC stock,[8] corruption on Wall Street,[9] or dark pool trading[10] have nothing to do with the issues in this litigation and are outside the scope of the Settlement. These Objections should be overruled.[11]

B. Plaintiffs' Claims Were Likely To Fail On The Merits

Several Objections contend that the Court should refuse to approve the Settlement based on the purported merit of Plaintiffs' claims for breach of fiduciary duty and violation of 8 *Del. C.* § 242(b)(2).[12] These Objections should be overruled.

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connection with accessing discovery, and therefore, no other Objector has been given access to the discovery record.

[8] *See, e.g.*, Objection of Amie Toerge at 10; Objection Email of Douglas Bryan & Sandra Lee Miller at 7-8; Objection Email of Patrick Van Deusen; Objection Email of Eric Jones.

[9] *See, e.g.*, Objection Email of Douglas Bryan & Sandra Lee Miller at 3-4; Objection Email of Jim Connolly; Objection Email of Patrick Van Deusen; Objection Email of Eric Jones.

[10] *See, e.g.*, Objection Email of Douglas Bryan & Sandra Lee Miller at 6-7; Objection Email of Jim Connolly; Objection Email of Eric Jones.

[11] *See, e.g.*, *Goldman v. Aegis Corp.*, 1982 WL 525016 at *1-2 (Del. Ch. May 3, 1982) (objections based on issues "not before [the] [c]ourt" are "without merit").

[12] *See, e.g.*, Objection of Skyler Marshall at 2, 5 (AMC "dilute[ed] shareholders in breach of multiple laws and their fiduciary duty"); Objection Email of Brian Healy ("I am of the opinion that CEO Adam Aron and the AMC Board of Directors breached their fiduciary duty to AMC shareholders with the creation, issuance and subsequent sale of AMC Preferred Equity Units (APE)."); Objection Email of Cory Morgan ("I believe the defendants violated DGCL 242 when the comingled preferred stock votes with AMC common stock."); Objection Email of Rylen Perez

Plaintiffs' claim for breach of fiduciary duty likely would have failed on the merits because the creation of the APEs, the Antara Transaction, and the Charter Proposals were decisions by a non-conflicted, independent board that are protected by the business judgment rule.[13] Ms. Rose Izzo, the only Objector to meaningfully engage with the strength of the defenses against Plaintiffs' fiduciary duty claim, fails to offer any argument to suggest that the AMC Board was acting in bad faith, was operating a disloyal scheme, or was otherwise not acting in the best interests of AMC and its stockholders.

Instead, Ms. Izzo incorrectly asserts that the *Blasius Industries, Inc. v. Atlas Corporation*[14] standard of review "applies in any case in which a board of directors attempts to interfere with the stockholder franchise," and that it therefore is the appropriate framework to scrutinize the Board's actions.[15] But, despite her strained assertions to the contrary, "the 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."[16] Ms. Izzo's cited authorities do not suggest otherwise. In *MM*

("I Rylen Perez object to AMC lawsuit settlement due to AMC violation of DGCL 242, when AMC comingled preferred stock votes with Amc common stock.").

[13] Op. Br. at 18-23.

[14] 564 A.2d 651, 661 (Del. Ch. 1988).

[15] Izzo Objection at 25.

[16] *Mercier v. Inter-Tel (Del.), Inc.*, 929 A.2d 786, 808 (Del. Ch. 2007).

Companies, Inc. v. Liquid Audio, Inc.,[17] the Delaware Supreme Court explained the rationale for the *Blasius* standard of review as follows: "Maintaining a proper balance in the allocation of power between the stockholders' right to elect directors and the board of directors' right to manage the corporation is dependent upon the stockholders' unimpeded right to vote effectively in an election of directors."[18]

Ms. Izzo also omits that in *Liquid Audio*, the Delaware Supreme Court "was presented with . . . a defensive action taken by an incumbent board of directors for the primary purpose of interfering with and impeding the effectiveness of the shareholder franchise *in electing successor directors*," which justified the Court's application of the *Blasius* standard within the context of the *Unocal Corporation v. Mesa Petroleum Co.*[19] framework.[20] Similarly, *Coster v. UIP Companies, Inc.* involved "an interested board['s] approv[al] of [a] Stock Sale to interfere with [a stockholder's] voting rights . . . *and to entrench themselves in office*."[21]

In a last-ditch effort to shoehorn Plaintiffs' claims into the *Blasius* framework, Ms. Izzo offers a novel application of *Blasius* and its progeny, claiming that "this case does involve corporate control [because Mr.] Aron is grasping for control by

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[17] 813 A.2d 1118 (De1. 2003).

[18] *Id.* at 1127.

[19] 493 A.2d 946 (Del. 1985).

[20] *Liquid Audio*, 813 A.2d at 1131 (emphasis added).

[21] 255 A.3d 952, 963 (Del. 2021) (emphasis added).

using AMC assets to purchase himself a new, more compliant electorate."[22] But Ms. Izzo fails to explain how Mr. Aron is "using AMC assets" -- and which assets he is allegedly using -- to impact who sits on AMC's Board or any other issue of corporate control.[23]

In any event, for the reasons explained in Defendants' Opening Brief, even if the heightened *Blasius* standard were to apply, 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."[24] The Board's actions were designed to assist the Company in raising capital and managing its balance sheet -- two objectives upon which it was eminently reasonable for the Board to focus given AMC's recent financial performance and the debilitating impacts of the COVID-19 pandemic on the movie theatre industry.[25] These were "proper corporate objectives" "served by [the Board's] actions" that are easily justifiable "in relation to those objectives."[26]

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[22] Izzo Objection at 28.

[23] *Id.*

[24] *Blasius*, 564 A.2d at 661; Op. Br. at 21-23.

[25] Op. Br. at 5-14, 22.

[26] *Strategic Inv. Opportunities LLC v. Lee Enters., Inc.*, 2022 WL 453607, at *16 (Del. Ch. Feb. 14, 2022).

Plaintiffs' claim that the creation of the APEs violated Section 242(b)(2) also was likely to fail on the merits. The creation of the APEs did nothing to "alter or change the powers, preferences, or special rights of the shares of [Common Stock] so as to affect them adversely."[27] The powers, preferences, and rights of the Common Stock are the same today as they were prior to the creation of the APEs. As explained in Defendants' Opening Brief, the argument that Defendants violated Section 242(b)(2) rests on the misguided belief that the sheer existence of another class of stock with voting rights adversely affects the legal rights of the holders of Common Stock -- a theory that has been continually rejected by the Delaware courts throughout the past 80 years.[28]

Plaintiffs themselves acknowledged that recent Delaware law has "slammed the door" on such a claim.[29] And Ms. Izzo concedes that her interpretation of Section 242(b)(2) has been resoundingly rejected by the Delaware courts, relegating her plea for this Court to depart from that precedent to a single footnote.[30] Ms. Izzo's

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[27] 8 *Del. C.* § 242(b)(2); Op. Br. at 23-28.

[28] *See* Op. Br. at 23-28; *Hartford Accident & Indem. Co. v. W. S. Dickey Clay Mfg. Co.*, 24 A.2d 315, 318-19 (Del. 1942); *Orban v. Field*, 1993 WL 547187, at *1 (Del. Ch. Dec. 30, 1993); *In re Snap Inc. Section 242 Litig.*, C.A. No. 2022-1032-JTL at 29 (Del. Ch. Mar. 29, 2023) (TRANSCRIPT) (Ex. AC), *appeal filed*, No. 120, 2023 (Del. Apr. 21, 2023).

[29] Plaintiffs' Opening Brief in Support of Settlement, Dkt. 206, at 36.

[30] Izzo Objection at 28-29, n.91.

claim that this Court's decision in *In re Snap*, which upheld long-standing precedent interpreting Section 242(b)(2), "virtually invited an appeal" and offered policy reasons to depart from such long-standing precedent, is of no avail.[31] *Dickey Clay* and *Orban* remain good law, as *In re Snap* recognized.[32]

For these reasons, the Court should overrule all Objections based on the alleged strength of Plaintiffs' claims.

C. AMC Continues To Need To Raise Significant Equity Capital For Its Business To Survive

Objectors, including Ms. Izzo, allege that AMC's financial condition has improved significantly and that the parties have overstated the financial risk to AMC if the Court does not approve the Settlement.[33] To support this argument, Ms. Izzo, for example, points to AMC's 2023 first quarter earnings, which reported that "[t]otal revenue grew 21.5% year-on-year" and "[a]ttendance rose 21.9%."[34] Ms. Izzo also cites to Mr. Aron's statements that AMC "could not be more optimistic about the prospect for the 2023 box office."[35]

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[31] *Id.*

[32] *In re Snap*, C.A. No. 2022-1032-JTL at 29; Op. Br. at 23-28.

[33] *See, e.g.*, Izzo Objection at 10-13.

[34] Izzo Objection at 11; *see* Ex. 99.1 to May 5, 2023 AMC Form 8-K at 1, 3 (Ex. AD).

[35] Izzo Objection at 11-12; *see* Ex. 99.1 to May 5, 2023 AMC Form 8-K at 2 (Ex. AD).

However, as disclosed in the same quarterly earnings release cited by Ms. Izzo and other Objectors, AMC is still facing significant financial challenges and continues to need to raise significant equity capital for its business to survive.[36] AMC's costs and expenses in the first quarter of 2023 still exceeded its revenues, resulting in a net loss of over $235 million.[37] AMC's current assets, including $495.6 million in cash, were dwarfed by the Company's $11.4 billion in total liabilities.[38] Additionally, AMC had negative net cash flows from operating activities of $189.9 million, but had positive cash flows from financing activities primarily due to the $146.6 million in net proceeds from the sale of APEs.[39] Indeed, one form Objection submitted by several Objectors suggests that if AMC had failed to raise cash by selling APEs, it would only have had "$16 million in cash" at the end of the first quarter of this year[40] -- a scenario that would suggest imminent financial collapse given AMC's operating cash burn of $255.2 million in 2021, $293.6 million in 2022, and $139.4 million in the first quarter of 2023 alone.[41]

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[36] May 5, 2023 AMC Form 10-Q (Ex. AE).

[37] *Id*. at 3-4.

[38] *Id.* at 5.

[39] *Id.* at 6.

[40] *See, e.g.*, Mathew Form Objection at 10.

[41] Ex. 99.1 to February 28, 2023 Form 8-K at 11 (Ex. Q); Ex. 99.1 to May 5, 2023 AMC Form 8-K (Ex. AD) at 1.

While AMC's operating revenues in the first quarter of 2023 have improved relative to the first quarter of 2022, AMC's revenues still have not "increase[d] significantly to levels in line with pre-COVID operating revenues."[42] Objectors have failed to appreciate that the Company's "current cash burn rates are not sustainable long-term," and that "there can be no assurances that the Company will be successful in generating the additional liquidity necessary to meet the Company's obligations beyond twelve months."[43] Objectors also have ignored the Company's full financial picture, and overlooked the simple fact that companies can have cash and, at the same time, desire to preserve and quickly raise more cash.

The existence of AMC's revolving credit facility (the "Senior Secured Revolving Credit Facility") also does not change the nature of AMC's financial condition. AMC believes its "existing cash and cash equivalents will be sufficient to comply with minimum liquidity and financial covenant requirements under [AMC's] debt covenants related to borrowings pursuant to the Senior Secured Revolving Credit Facility, currently and through *the next twelve months*."[44] But there is no guarantee that AMC can comply with such covenants beyond that time period. Furthermore, AMC's Senior Secured Revolving Credit Facility matures on

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[42] May 5, 2023 AMC Form 10-Q at 8 (Ex. AE).

[43] *Id.*

[44] February 28, 2023 AMC Form 10-K (Ex. C) at 6 (emphasis added).

April 22, 2024, and the Company faces risk concerning its "ability to refinance [its] indebtedness on terms favorable to [AMC] or at all."[45]

As set out in Defendants' Opening Brief, AMC's financial challenges since the onset of COVID-19 continue to pose a risk to the Company -- nothing in AMC's latest quarterly results changes that fact.[46] AMC continues to need to raise significant equity capital in order for its business to survive. If the Settlement is not approved, at best, AMC 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.[47]

[45] *Id.* at 3, 6.

[46] Op. Br. at 5-16.

[47] May 5, 2023 AMC Form 10-Q at 33 (Ex. AE).

D. Notice To Stockholders Was Implemented In Accordance With The Scheduling Order, And Constituted Due, Adequate, And Sufficient Notice

Certain Objectors contend that "the due process for [c]lass member objections is repeatedly being not upheld" because they, as beneficial owners, "have not received the Ordered Post Card."[48] These objections should be overruled.

As an initial matter, many Objections about the post card are a thinly-veiled attempt to obtain a "count" of shares of AMC Common Stock and access a purported "list" of all beneficial holders of AMC Common Stock,[49] which Defendants do not have. As this Court has explained:

> The vast majority of publicly traded shares in the United States are registered on the companies' books not in the name of beneficial owners -- *i.e.*, those investors who paid for, and have the right to vote and dispose of, the shares -- but rather in the name of "Cede & Co.," the name used by The Depository Trust Company ("DTC").
>
> Shares registered in this manner are commonly referred to as being held in "street name." . . . DTC holds the shares on behalf of banks and brokers, which in turn hold on behalf of their clients (who are the underlying beneficial owners or other intermediaries).[50]

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[48] *See, e.g.*, May 26, 2023 Letter from Sally Kurait; *see also* Etan Leibovitz's Motion Regarding Postcard Process & Requesting Oral Argument, Dkt. 343, at 2-3.

[49] *See, e.g.*, Mathew AMC Memorandum, Dkt. 368, at 186-89 ("[T]he need for a comprehensive share count for AMC, including the identification of synthetic and phantom shares, is vital to addressing concerns of potential fraud and market manipulation by market makers.").

[50] *In re Appraisal of Dell Inc.*, 2015 WL 4313206, at *4 (Del. Ch. July 13, 2015), *as revised* (July 30, 2015).

Thus, AMC, like most public companies in the U.S., has a list of just *record* holders of its stock, not *beneficial* holders. Indeed, "a series of Delaware Supreme Court decisions have made clear that a Delaware corporation only is required to recognize its record holders and need not attempt to determine its beneficial holders."[51] "This principle extends to settlements."[52]

Moreover, as the Special Master already recognized, any Objector contesting the Settlement on the basis that, he, she, or it has not received a post card is "aware of the proposed [S]ettlement and the action generally."[53] Such Objectors cannot legitimately claim that they lack notice of the Settlement and that their due process rights have been infringed.

In any event, Defendants complied with all of the post card notice obligations mandated by the Scheduling Order.[54] Because AMC is not aware of all of its beneficial holders, the Scheduling Order provides, with respect to the post card notice, that the Notice Administrator "shall mail a post card notice to all record holders," and "request that . . . any record holders of AMC Common Stock who are

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[51] *In re Dole Food Co.*, 2017 WL 624843, at *5 (Del. Ch. Feb. 15, 2017).

[52] *Id.*

[53] May 30, 2023 Report and Recommendation of Special Master Regarding Certain Motions Filed by Jordan Affholter and Etan Leibovitz's Notice of Motion Oral Argument Requested, Dkt. 365, at 7-8.

[54] *See* Affidavit of Paul Mulholland Concerning Mailing of Postcard Notice (the "Mulholland Aff."), submitted with this reply brief.

nominees or custodians for beneficial holders provide either physical addresses or email addresses for all such beneficial owners to which the post card notice can be sent or request copies of the post card notice from the Notice Administrator to mail to such beneficial owners."[55] As required by the Scheduling Order, by May 8, 2023 -- over three weeks before the deadline for Objections -- the Notice Administrator "mail[ed] a post card notice to all record holders of AMC Common Stock," and requested that record holders who were nominees and custodians for beneficial holders -- third-parties outside of AMC's control -- provide information necessary for the Notice Administrator to mail those beneficial holders post cards or request post cards for the nominees and custodians to mail themselves.[56] Through these efforts, approximately 2.8 million post cards were mailed or emailed to beneficial holders of AMC Common Stock prior to the May 31, 2023 deadline for Objections.[57]

To the extent that any beneficial holder did not timely receive a post card, any inadvertent delay was caused by brokers and custodians for beneficial holders, not Defendants or the Notice Administrator. The Notice Administrator followed up repeatedly with brokers and custodians for beneficial holders with frequent calls and

[55] Dkt. 185 ¶ 14.

[56] *Id.*; Mulholland Aff. ¶¶ 4-7.

[57] Mulholland Aff. ¶ 7.

emails.[58] Despite these diligent follow up efforts from the Notice Administrator, several nominees and custodians of beneficial holders either responded to the Notice Administrator well after they were required to do so under the Scheduling Order or did not respond at all.[59]

Finally, as Ms. Izzo concedes, the fact that a non-record holder did not timely receive notice of the Settlement as a result of the actions of their nominee or custodian is not a legitimate basis upon which to object to the Settlement.[60] Under well-settled Delaware law, non-record holders assume the risk that they may not receive notice from their nominee or custodian.[61]

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[58] *Id.* ¶ 8.

[59] *Id.* ¶¶ 7-8.

[60] Izzo Objection at 45, n.138. Ms. Izzo notes that "record holders frequently fail to forward notice to stockholders" and that the cause of action that would remedy such a failure would be a suit by Plaintiffs against "brokers for that breach of duty." *Id.*

[61] *See Dole*, 2017 WL 624843, at *5 ("[F]or a notice of settlement [to] be legally sufficient, a corporation only need mail it to its record holders."); *Am. Hardware Corp. v. Savage Arms Corp.*, 136 A.2d 690, 692 (Del. 1957) ("If an owner of stock chooses to register his shares in the name of a nominee, he takes the risks attendant upon such an arrangement, including the risk that he may not receive notice of corporate proceedings."); *Enstar Corp. v. Senouf*, 535 A.2d 1351, 1354-55 (Del. 1987) (same); *Crown EMAK P'rs, LLC v. Kurz*, 992 A.2d 377, 394 (Del. 2010) (same); *In re Madison Square Garden Ent. Corp. S'holders Litig.*, 2023 WL 3696664, at *1 (Del. Ch. May 26, 2023) (same); *Activision Blizzard*, 124 A.3d at 1061 (same); *In re Protection One, Inc. S'holder Litig.*, C.A. No. 5468-VCS, at 63 (Del. Ch. Oct. 6, 2010) (TRANSCRIPT) (Ex. AF) ("You are allowed to base a settlement on record holders. That is what we look at . . . If you want to get notice of a settlement, you become a record holder.").

E. The Settlement Provides Defendants With A Typical Release

Under the proposed Settlement, Plaintiffs and the class have provided Defendants with a standard release of claims arising out of the subject matter of this litigation within a specific time period (the "Release").[62] The Court should overrule Objections that challenge the Release.

First, certain Objectors take issue with Defendants receiving *any* release as part of the Settlement.[63] Such Objections are meritless. As the Delaware Supreme Court has recognized, "[i]n any settlement of litigation, including class actions, a release of claims is an essential, bargained-for element."[64] Indeed, it is "unreasonable to think that Defendants should be willing to pay substantial consideration in settlement without receiving in exchange a release that is at least as broad as the claims" asserted in the action.[65]

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[62] *See* "Released Plaintiffs' Claims," Stipulation and Agreement of Compromise, Settlement, and Release (the "Stipulation"), Dkt. 165 at 13-15.

[63] *See, e.g.*, Objection of Amie Toerge at 6-7 ("I object to the immunity clause. If the Defendants are in fact guilty of the allegations Class Counsel brought forth, then the Special Master should make a recommendation in this matter to the judge."); Objection of Michael Lamptey at 3 ("I object to any assertion of immunity by the defendants in this case. The principle of immunity should not be extended to shield wrongdoers from liability when they have engaged in fraudulent or deceptive conduct.").

[64] *In re Phila. Stock Exch., Inc.*, 945 A.2d 1123, 1145 (Del. 2008).

[65] *In re Triarc Cos.*, 791 A.2d 872, 876 (Del. Ch. 2001).

Second, Ms. Izzo asserts that the Release is impermissibly broad,[66] but the Release is typical of those granted by this Court in stockholder class actions. The Release applies to:

> any and all actions . . . whether or not currently asserted, whether known claims or Unknown Claims, suspected, existing, or discoverable . . . that Plaintiffs or any other Settlement Class Member: (i) asserted in the *Allegheny* Complaint or the *Munoz* Complaint; or (ii) ever had, now have, or hereafter can, shall, or may have … that in full or part, concern, relate to, arise out of, or are in any way connected to or based upon the allegations, transactions, facts, matters, occurrences, representations, or omissions involved, set forth, or referred to in the Complaints and that relate to the ownership of Common Stock and/or AMC Preferred Equity Units during the Class Period, except claims with regard to enforcement of the Settlement and [the] Stipulation.[67]

This is common language approved by the Delaware courts.[68] "[A] party funding a settlement reasonably can expect to put all claims relating to the subject matter of

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[66] Izzo Objection at 30-34.

[67] Stipulation at 13-14.

[68] Compare the scope of the Release to, *e.g., Phila. Stock Exch.*, 945 A.2d at 1145-46 ("all claims . . . which have arisen, could have arisen, arise now, or may hereafter arise out of, or relate in any manner to the claims . . . involved, or set forth in, or referred to or otherwise related, directly or indirectly, in any way to, this Action or the subject matter of this Action[.]"); *CME Gp., Inc. v. Chi. Bd. Options Exch., Inc*., 2009 WL 1547510, at *8, *11 (Del. Ch. June 3, 2009), Stipulation of Settlement, 2008 WL 7949542, at ¶ 30Z ("all claims … which have arisen, could have arisen, arise now, or may hereafter arise out of, or related in any manner to the claims, demands, assertions, allegations, facts, events, transactions, matters, acts, occurrences, statements, representations, misrepresentations, omissions … involved, or set forth in, or referred to or otherwise related, directly or indirectly, in any way to, this Action, or the subject matter of this Action."); *In re Columbia Pipeline Gp., Inc. Merger Litig.*, C.A. No. 2018-0484-JTL (Del. Ch. June 1, 2022) (TRANSCRIPT) (Ex. AG), Stipulation and Agreement of Compromise and

the litigation -- real claims and theoretical claims -- behind it."[69] A release may encompass claims that were "not specifically asserted in the settled action," so long as those claims are based on the "'same set of operative facts' as the underlying action."[70]

Ms. Izzo wrongly interprets the Release to encompass claims "that could arise based on a future event,"[71] citing the language in the Release that it applies to any claim settlement class members "ever had, now have, or hereafter can, shall, or may have."[72] But that language is subject to two limitations: (i) the claim must be "connected to or based upon the allegations, transactions, facts, matters, occurrences, representations, or omissions involved, set forth, or referred to in the Complaints;" ***and*** (ii) the claim must "relate to the ownership of Common Stock and/or AMC Preferred Equity Units during the Class Period."[73] These two

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Settlement at 14, Dkt. 323 (Ex. AH) (claims that "aris[e] out of or relat[e] to the allegations, transactions, facts, matters, representations, or omissions involved, set forth, or referred to in the Complaint.").

[69] *CME Gp.*, 2009 WL 1547510, at *8.

[70] *Phila. Stock Exch.*, 945 A.2d at 1145 (quoting *UniSuper, Ltd. v. News Corp.*, 898 A.2d 344, 347 (Del. Ch. 2006)).

[71] Izzo Objection at 33.

[72] *Id.* at 31.

[73] Stipulation at 13-14.

limitations make clear that the Release does not apply to future events, as Ms. Izzo contends.[74]

The cases relied upon by Ms. Izzo, in which courts determined that a release applied to claims arising from future conduct, are not remotely comparable to the Release here.[75] In *UniSuper*, the proposed settlement purported to release "claims relating to the adoption of the October 2006 Rights Plan [which] *will be adopted*, pursuant to a shareholder vote, at the October 2006 shareholders meeting," nearly five months after the settlement hearing.[76] And, in *Griffith v. Stein*, the proposed settlement contemplated releasing claims related to "the amount of [Goldman Sach's] nonemployee director compensation to be paid or awarded pursuant to the 2021 SIP," where "payments under the 2021 SIP cover non-employee director compensation to be paid into 2024" and the "2021 SIP was not scheduled to be approved . . . until eight months after the settlement."[77] Such releases apply to future events; the Release in the proposed Settlement does not.

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[74] *Phila. Stock Exch.*, 945 A.2d at 1146 (approving a settlement that released all claims "based on any conduct that occurred prior to the date of this Stipulation against any Defendant . . . which have arisen, could have arisen, arise now, ***or may hereafter arise out of***, or relate in any manner to the claims . . . involved, or set forth in, or referred to or otherwise related, directly or indirectly, in any way to, this Action or the subject matter of this Action.") (emphasis added).

[75] Izzo Objection at 33-34.

[76] 898 A.2d at 347-48 (emphasis added).

[77] 283 A.3d 1124, 1135 (Del. 2022).

Finally, certain Objectors take issue with the Release because it would apply to potential claims belonging to former AMC stockholders,[78] who would not receive any settlement consideration.[79] But settlement releases may bind former stockholders who sold their shares during the class period, and consequently receive no settlement consideration.[80] Former AMC stockholders who sold their shares of Common Stock during the class period have consciously chosen to "[sell] their

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[78] The Settlement provides that the Settlement Consideration will be paid to those who hold Common Stock as of the "Settlement Class Time," set at "close of business on the business day prior to Conversion on which the Reverse Stock Split is effective." Stipulation, Dkt. 165 at 16. The Release of claims applies to all "Settlement Class Member[s]," which encompasses "all holders of [AMC] Common Stock during the Class Period" of August 3, 2022 through and including the Settlement Class Time. *Id.* at 15-16.

[79] *See, e.g.*, Mathew Form Objection at 14-15 ("Amongst other inequities, the settlement . . . requires the bulk of the purported 3.8 million shareholders to release nearly a years' worth of claims yet receive no settlement distribution. Since the distribution of the settlement is confined to holders of a 'Settlement Class Time' . . . the vast majority of the class will receive no distribution in exchange for a broad release of their claims.").

[80] *See, e.g., Phila. Stock Exch.*, 945 A.2d at 1139-40 ("[F]ormer stockholders could properly be bound to the settlement yet receive nothing. . . ."), citing *Triarc*, 791 A.2d at 872-79 (approving settlement that released claims of former stockholders despite a lack of benefits to former stockholders); *Activision Blizzard*, 124 A.3d at 1058 (same); *In re Prodigy Commc'ns Corp. S'holders Litig*., 2002 WL 1767543, at *4 (Del. Ch. July 26, 2002) (former stockholders bound by settlement release despite not receiving settlement consideration); *CME Gp.*, 2009 WL 1547510, at *8 (that a class member "will be bound by the release but receive no consideration" is "not necessarily a sound basis for objecting to a settlement, because a party funding a settlement reasonably can expect to put all claims relating to the subject matter of the litigation -- real claims and theoretical claims -- behind it."); *Columbia Pipeline*, No. 2018-0484-JTL at 18 (settlement releases typically encompass the "broad temporal period" of the beginning to the end of the challenged transaction).

interest in the claim with their shares," and there is "nothing unfair or unreasonable about a judgment that bars their later assertion" of a claim "alleged to arise out of the same act or transaction."[81]

F. The Proposed Settlement Should Be Approved As A Non-Opt-Out Settlement

Certain Objectors ask to "opt-out" of the Settlement.[82] The Court certifying "a non-opt-out settlement class," however, is a condition of the parties' proposed Settlement.[83] Moreover, "Delaware courts repeatedly have held that actions challenging the propriety of director conduct in carrying out corporate transactions are properly certifiable under both subdivisions [of Court of Chancery Rule 23](b)(1) and (b)(2)"[84] because of the "[h]omogeneity in the rights and interests of the class."[85]

Ms. Izzo contends that opt-outs should be permitted because the proposed Settlement presents "due process concern[s]" "of equal significance" to those

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[81] *Triarc*, 791 A.2d at 878-79.

[82] *See, e.g.*, May 22, 2023 Letter from Adam Hill; May 25, 2023 Letter from Alexandre Neto.

[83] Stipulation ¶ 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)").

[84] *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).

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

presented *In re Celera Corp. Shareholder Litigation*.[86] But certifying a non-opt-out class would have been proper in *Celera* but for a single, significant objecting stockholder's substantial monetary claim that was distinct from the claims of other class members.[87] By contrast, AMC's stockholder base is vastly comprised of retail investors,[88] none of whom are advancing claims distinct from other class members.

The Settlement, if approved, will allow the Charter Proposals to be effected, such that the Company will: (i) combine the APEs and Common Stock; (ii) execute a 1-for-10 reverse stock split; and (iii) have a substantial base of authorized, unissued shares of Common Stock to then use for corporate purposes (including to pay down its substantial debt load) going forward. If the Settlement is not approved, the Charter Proposals cannot be effected -- the issue is binary. An Objector cannot "opt-out" of having its Common Stock subject to the reverse stock split and/or combined with the APEs. The proposed Settlement is precisely the type of settlement that needs to be approved under Rule 23(b)(1) and/or (b)(2) as a non-opt-out settlement.

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[86] 59 A.3d 418 (Del. 2012); Izzo Objection at 38.

[87] *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% of the company's shares and tried to obtain control to block the merger at issue).

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

G. Objector "Alternatives" To The Proposed Settlement Do Not Call Into Question The Reasonableness Of The Settlement

Certain Objectors offer "alternative" and "revised" settlement proposals, which they contend should be implemented in lieu of the Settlement.[89] Regardless of the specific features of these alternatives -- which range from self-serving to punitive[90] -- the role of the Court is not to measure the Settlement against competing proposals offered by Objectors. The question before the Court is whether the Settlement is reasonable in light of "'the nature of the claim, the possible defenses thereto, [and] the legal and factual circumstances of the case.'"[91] In any event, none of these proposed alternatives solves the problem that AMC is currently facing -- AMC continues to need to raise significant equity capital for its business to survive, and it currently can use only the significantly discounted, and, thus, significantly dilutive APEs to raise equity capital. Only the Settlement, which will permit AMC to effectuate the Charter Proposals that were overwhelmingly approved in the March 14, 2023 stockholder vote, will solve that problem.

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[89] *See, e.g.*, Mathew Form Objection at 15-18; Objection of Bubbie Gunter at 19-21.

[90] *See, e.g.*, Mathew Form Objection at 15-16 (suggesting as "revised settlement proposals" that AMC should "engage its stockholder community for advertising efforts" rather than renew its "contract with Nicole Kidman," and that it should "prioritize the hiring of competent stockholders" for AMC's IT and technical needs); Objection of Bubbie Gunter at 20-21 (to "penalize the Defendants," they should "forgo any and all bonus, vestment or other forms of compensation").

[91] *Phila. Stock Exch.*, 945 A.2d at 1137 (quoting *Polk v. Good*, 507 A.2d 531, 535 (Del. 1986)).

CONCLUSION

For all of these reasons, and those set forth in Defendants' Opening Brief, Defendants respectfully request that the Court approve the Settlement.

OF COUNSEL:

John A. Neuwirth
Joshua S. Amsel
Matthew S. Connors (#5598)
Tanner S. Stanley
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
(212) 310-8000

RICHARDS, LAYTON & FINGER, P.A.

/s/ Kevin M. Gallagher
Raymond J. DiCamillo (#3188)
Kevin M. Gallagher (#5337)
Matthew W. Murphy (#5938)
One Rodney Square
920 N. King Street
Wilmington, Delaware 19801
(302) 651-7700

Attorneys for AMC Entertainment Holdings, Inc., Adam M. Aron, Denise Clark, Howard W. Koch, Jr., Kathleen M. Pawlus, Keri Putnam, Anthony J. Saich, Philip Lader, Gary F. Locke, Lee Wittlinger, and Adam J. Sussman

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