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May 31, 2023

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

Dear Counsel:

I write to address the Combined Motion by Counsel to Withdraw its Appearance on behalf of Plaintiff Usbaldo Munoz and Motion by Lead Plaintiffs Allegheny County Employees' Retirement System and Anthony Franchi to Dismiss Lead Plaintiff Usbaldo Munoz (the "Combined Motion")<sup>1</sup> and Rose Izzo's (i) Response to Combined Motion by Counsel to Withdraw its Appearance on Behalf of Plaintiff Usbaldo Munoz and Motion by Lead Plaintiffs Allegheny County Employees' Retirement System and Anthony Franchi to Dismiss Lead Plaintiff Usbaldo Munoz and (ii) Cross-Motion for Extension of Time and

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<sup>1</sup> Docket Item ("D.I.") 344.

Permission to Notice Deposition (the “Cross-Motion”).<sup>2</sup> For the following reasons, the Combined Motion is held in abeyance and the Cross-Motion is denied.

Izzo’s counsel entered their appearances on May 19 and 22.<sup>3</sup> In that span, the Court adopted the Special Master’s report and recommendation granting certain objectors’ motions for the discovery record and approved the method of dissemination; and Izzo obtained access to the discovery database.<sup>4</sup> On May 20, Izzo’s counsel inquired after Munoz’s affidavit referenced in the plaintiffs’ May 4 opening brief in support of the settlement in this matter.<sup>5</sup> The plaintiffs’ brief cited and invoked affidavits under Court of Chancery Rule 23 from the three lead plaintiffs; the brief appended affidavits from the other two lead plaintiffs, but not from Munoz.<sup>6</sup> The plaintiffs’ counsel did not respond to Izzo’s counsel.<sup>7</sup>

On Friday, May 26, the plaintiffs’ counsel filed the Combined Motion.<sup>8</sup> They did not serve Izzo’s counsel.<sup>9</sup> On Sunday, May 28, Izzo filed a letter indicating her opposition to the Combined Motion.<sup>10</sup> The next day, Memorial Day, Izzo filed her opposition to the Combined Motion and her own Cross-Motion seeking a three-day extension to submit her objection to the settlement, and an

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<sup>2</sup> D.I. 357.

<sup>3</sup> D.I. 310; D.I. 315.

<sup>4</sup> D.I. 312; D.I. 314; D.I. 333 ¶ 4 (indicating Izzo “through counsel, had submitted the required documentation” and got access to the discovery database the night before the May 22 deadline).

<sup>5</sup> D.I. 357 ¶ 8.

<sup>6</sup> D.I. 206 at 51 n.122 (“See Affidavits of Munoz, Franchi, and Allegheny.”).

<sup>7</sup> D.I. 357 ¶ 9.

<sup>8</sup> D.I. 344.

<sup>9</sup> *Id.* at 5; D.I. 357 ¶ 9.

<sup>10</sup> D.I. 354.

opportunity to depose Munoz.<sup>11</sup> The parties promptly filed their responses, and Izzo filed a reply.<sup>12</sup>

### **A. Cross-Motion**

I first address Izzo's request to depose Munoz. In the context of a class action settlement, objectors and class members have limited discovery rights into the good faith of the parties to the settlement negotiation process, and only where they make a showing of good cause.<sup>13</sup> Discovery into a settlement is "limited to the immediate issues being addressed":

Objectors to a proposed settlement generally may take discovery into only (1) the good faith of the class representative (how negotiations were initiated, how they proceeded, when various aspects of the settlement were reached) and (2) the competence of the settlement (the timing of the settlement in the context of the litigation, the soundness of judgment to settle the case). With respect to the latter, objectors should be able to ascertain the settlement from the vantage point of the class representative: "[t]hus, what they knew when; how settlement negotiations commenced, proceeded and concluded; and what motivated or animated their choices would be core areas of legitimate inquiry."<sup>14</sup>

Izzo seeks to depose Munoz to determine why he "has decided not to continue to litigate" and investigate whether Munoz "has changed his position on the proposed Settlement."<sup>15</sup> Izzo estimates that if the proposed settlement is

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<sup>11</sup> D.I. 357 at 6; D.I. 357 ¶¶ 1–2, 19–20.

<sup>12</sup> D.I. 363; D.I. 365; D.I. 366. Public versions of these filings shall be made available promptly.

<sup>13</sup> *In re Countrywide Corp. S'holders Litig.*, 2008 WL 4173839, at \*2 (Del. Ch. Sept. 10, 2008); *Lewis v. Hirsch*, 1995 WL 54419, at \*1 (Del. Ch. Jan. 31, 1995); *In re Amsted Indus., Inc. Litig.*, 521 A.2d 1104, 1107–09 (Del. Ch. 1986).

<sup>14</sup> *Ginsburg v. Phila. Stock Exch., Inc.*, 2007 WL 2982238, at \*3 (Del. Ch. Oct. 9, 2007) (footnotes omitted) (quoting *In re Mobile Commc'ns Corp. Consol. Litig.*, 1989 WL 122038, at \*1 (Del. Ch. Oct. 16, 1989)).

<sup>15</sup> D.I. 357 ¶¶ 20–21.

approved, Munoz is the only lead plaintiff who will suffer a financial loss that will not be offset by the requested incentive fee, speculates he may no longer support the settlement, and concludes that the class has a right to know if that is so.

For their part, the remaining plaintiffs submitted an affidavit from counsel explaining their counsel have not received any communication from Munoz since May 20, 2023, and that Munoz has not responded to multiple text messages, phone calls, and emails regarding his continued participation in this litigation.<sup>16</sup> Counsel assert they do not know why Munoz is not responding, but believe he has essentially withdrawn due to being the subject of online attack, evinced by a series of online posts attached to their reply. They represent that Munoz supported the settlement when it was agreed upon, and has never expressed any opposition to it to them.<sup>17</sup>

Certainly, a lead plaintiff refusing to engage with putative class counsel after months of litigation, with only weeks to go before a settlement hearing, is unusual. Both explanations for Munoz's silence are plausible, although the plaintiffs' is more supported; and neither explanation comes from Munoz himself. But the reason for Munoz's silence after May 20 does not inform any of the limited topics objectors may explore upon a good cause showing: the good faith of the settlement negotiation process and the competency of the settlement.<sup>18</sup> Even if Munoz has changed his mind about the settlement, that does not mean he did not believe it was a good settlement at the time he agreed to it. Izzo may want to know whether and why Munoz may have changed his mind, and Izzo may be frustrated by plaintiffs' counsel's communication about Munoz's affidavit, but at the end of the day, none of those topics are relevant to the good faith negotiation of the settlement terms or the competency of the settlement. Even if Munoz now believes the settlement to be a bad deal, he would be free to object, and lead counsel could

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<sup>16</sup> D.I. 344 at Aff. of Christopher James Kupka in Support of Combined Motion for Withdrawal and Dismissal ¶ 5.

<sup>17</sup> D.I. 366 ¶¶ 4, 6.

<sup>18</sup> *Ginsburg*, 2007 WL 2982238, at \*2; *Countrywide*, 2008 WL 4173839, at \*2; *Lewis*, 1995 WL 54419, at \*1; *Amsted*, 521 A.2d at 1107–09.

still present the settlement on behalf of the other lead plaintiffs.<sup>19</sup> Izzo is not entitled to explore Munoz’s absence after he agreed to the settlement.

Izzo’s request that all objectors be given an extra three days to file objections is denied. Izzo seeks request is that her “counsel spent hours reviewing Mr. Munoz’s documents, including information concerning his stock ownership,” and that these efforts have been “wasted” given Munoz will likely be removed from the case.<sup>20</sup> An extension would push back the briefing schedule and ultimately reduce the time the Special Master and Court have to consider objections, and would muddy the guidance this Court has provided to the class. Izzo’s regret that her work led to a dead end does not support those consequences.

## **B. Combined Motion**

The other lead plaintiffs seek to (i) withdraw Munoz as a lead plaintiff in this action, (ii) withdraw their request for an incentive award for Munoz, and (iii) dismiss Munoz from this action.<sup>21</sup> Additionally, the plaintiffs’ counsel seeks to withdraw their appearance on behalf of Munoz.<sup>22</sup> But Munoz went silent only eleven days ago, and the plaintiffs’ counsel has not explained why it must terminate representation at this moment. The Combined Motion will be held in abeyance pending notice to Munoz and an opportunity for him to be heard. The plaintiffs’ counsel should file an updated certificate of service reflecting service on Munoz.

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<sup>19</sup> *In re M & F Worldwide Corp. S’holders Litig.*, 799 A.2d 1164, 1176 (Del. Ch. 2002) (“[P]recedent makes clear that counsel in a derivative and/or class action may present a proposed settlement over the objections of the named plaintiffs.”); *cf. Lazy Oil Co. v. Witco Corp.*, 166 F.3d 581, 590 (3d Cir. 1999) (“We therefore hold that, in the class action context, once some class representatives object to a settlement negotiated on their behalf, class counsel may continue to represent the remaining class representatives and the class, as long as the interest of the class in continued representation by experienced counsel is not outweighed by the actual prejudice to the objectors of being opposed by their former counsel.”).

<sup>20</sup> D.I. 357 ¶¶ 17–18.

<sup>21</sup> D.I. 344 ¶ 4.

<sup>22</sup> *Id.*

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Sincerely,

*/s/ Morgan T. Zurn*

Vice Chancellor

MTZ/ms

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