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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

PLAINTIFFS' REPLY IN FURTHER SUPPORT OF SETTLEMENT, AWARD OF ATTORNEYS' FEES AND EXPENSES, AND INCENTIVE AWARDS

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
Mark Lebovitch
Edward Timlin
1251 Avenue of the Americas
New York, NY 10020
(212) 554-1400

FIELDS KUPKA & SHUKUROV LLP
William J. Fields
Christopher J. Kupka
Samir Shukurov
1441 Broadway, 6th Floor #6161
New York, NY 10018
(212) 231-1500

SAXENA WHITE P.A.
David Wales
10 Bank Street, 8th Floor
White Plains, NY 10606
(914) 437-8551

– and –

Adam Warden
7777 Glades Rd., Suite 300
Boca Raton, FL 33434
(561) 394-3399

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
Gregory V. Varallo (#2242)
Daniel E. Meyer (#6876)
500 Delaware Avenue, Suite 901
Wilmington, DE 19801
(302) 364-3601

GRANT & EISENHOFER P.A.
Michael J. Barry (#4368)
Kelly L. Tucker (#6382)
Jason M. Avellino (#5821)
123 Justison Street, 7th Floor
Wilmington, DE 19801
(302) 622-7000

SAXENA WHITE P.A.
Thomas Curry (#5877)
824 N. Market Street, Suite 1003
Wilmington, DE 19801
(302) 485-0483

Attorneys for Lead Plaintiffs

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INTRODUCTION[1]

In December 2022, Defendants engaged in a heavy-handed power play to force the dilutive Conversion of AMC's APEs into Common Stock (without any consideration to the Class), with a Reverse Split that would leave Defendants enough "dry powder" to obviate any need to ask for permission to issue equity again. Plaintiffs sued only after carefully assessing public and DGCL §220 materials regarding AMC's financial position, the Antara Transaction, and the Certificate Amendments.

Through the ensuing expedited litigation, a few things became clear. *First*, Plaintiffs' *Blasius* claim is *prima facie* viable, as Defendants' "primary purpose" for the Antara Transaction was to override Common Stock opposition to increasing the number of authorized AMC shares.

Second, the Company's cash flow position was deteriorating and AMC needs prompt debt paydown and operational improvements. While Plaintiffs believe the Court should reject Defendants' weaponization of the APEs and prevent fiduciaries from using such aggressively anti-stockholder tactics, AMC will struggle to survive absent additional equity capital raises. Plaintiffs were prepared to argue that the Conversion lacked a "compelling justification" under *Blasius*, but recognized that

[1] Capitalized terms have the meaning ascribed in Plaintiff's opening brief (Trans. ID 69958454, "Brief" or "Br."). Unless noted, emphasis is added, and citations and quotations are omitted.

the Court could rule under the "balance of the equities" that enjoining AMC's most efficient way to offset negative cash flow (*i.e.*, *pro forma* stock sales) would do more harm than good. Indeed, doing so may not even be in the Class's best interest, as a permanent injunction threatens the Class's equity investment, and Plaintiffs were prepared to leverage even a granted injunction into a solution that made more long-term sense.

Plaintiffs walked a tightrope to resolve this Action, leveraging the injunction threat to extract maximum value for the Class while avoiding a scenario where any victory proved Pyrrhic. The Settlement is not just reasonable, but excellent under the circumstances, and benefits the Class in three primary ways:

- It is "re-lutive," offsetting $129,067,486.45 of the dilution flowing from the Conversion based on May 3, 2023 prices, and $114,091,860.88 based on June 6, 2023 prices.[2] But for Plaintiffs' efforts, this would have happened *months* ago.

- It provides further upside to the Class if the market rewards AMC for the more streamlined *pro forma* capital structure and expected debt repayments.

- It allows AMC to address its equity financing needs at the *pro forma* stock price, as opposed to the *status quo*, where selling low-priced APEs—AMC's only presently available currency—causes *more* dilution.

The Court has received a flood of communications regarding this Action,

[2] This compares favorably to the $692,313,794.13 and $503,650,082.46 in dilutive harm flowing from the Conversion of APE shares sold by AMC, as of May 3 and June 6 respectively. *See* §§I.A.1.c and I.A.2.a, *infra*; Ex. 1 (Affidavit of Patrick Ripley of Loop Capital).

many of which are or purport to be Class member objections.[3] The arguments fall under two general umbrellas.

First, many objectors express anger towards AMC and its fiduciaries on matters beyond this Court's purview. These objections stem from the belief that AMC's securities are manipulated to protect hedge funds covering short positions and, by extension, prevent the "mother of all short squeezes" that many AMC investors seek.

Plaintiffs recognize that many stockholders, including those who bought during the 2021 "squeeze," have suffered significant, sometimes life-altering losses. Many feel passionately that regulators and market actors are colluding against them. Plaintiffs are not part of any such conspiracy. Nor is the Court. And these issues lie far beyond what is before the Court: whether the proposed Settlement is a reasonable resolution of the comparatively narrow issue of the dilutive recapitalization. Plaintiffs urge the Court to distinguish between objector vexation regarding personal trading losses and AMC's cynical treatment of the very retail investors who saved the Company, and well-grounded criticism of the Settlement's terms.

Second, there are objectors who address the *Blasius* and §242(b) claims

[3] Plaintiffs cannot address every objection individually. Instead, they focus this Reply on two, which cover the field of germane subjects: (i) the "Izzo Objection" (Ex. 2) and (ii) the "Form Objection" (Ex. 3). Additional specific objections or categories of objections are addressed and cited as appropriate.

actually at issue. None provide supported basis to reject the Settlement.

Regarding Allegheny's §242(b) claim, objectors overestimate the vanishing likelihood that this Court would invalidate the APEs issuance on statutory grounds. AMC's Certificate included a statutorily permitted §242(b) waiver, allowing AMC to increase its authorized Common Stock without a class vote. No objector can credibly demand that Plaintiffs prosecute a precluded claim.

Izzo and the Form Objectors argue half-heartedly that APEs are nonetheless invalid because their issuance affected a "power, preference, or special right" of the Common Stock.[4] They ignore controlling 80-year-old precedent holding that issuing securities of a different class (such as the blank-check preferred authorized in AMC's Certificate) that diminish common stock's "relative" position in the capital structure does not trigger §242(b). This Court's recent ruling in *Electrical Workers Pension Fund, Local 103, IBEW v. Fox Corporation* eliminates any doubt that the core holding of these decades'-old precedents remain intact today.[5]

Regarding Plaintiffs' *Blasius* claim, the "primary purpose" prong is effectively uncontested. But Izzo and the Form Objectors largely ignore *Blasius*'s second prong—*i.e.*, whether Defendants had a "compelling justification." Plaintiffs would argue that AMC's financial position in December 2022 did not compellingly

[4] Izzo Obj. at 28 n.91; Form Obj. at 21-23.

[5] C.A. No. 2022-1007-JTL (Del. Ch. Mar 29, 2023) (TRANSCRIPT) ("*SNAP/Fox*").

justify selling approximately 27% of outstanding APEs to Antara at windfall prices to lock up votes for the Certificate Amendments. However, the Court may have found AMC's justification compelling, given contemporaneous documents suggesting that the Antara deal, ATM APE sales, and recapitalization were genuinely motivated by Defendants' concerns about AMC's liquidity.

Setting aside whether Plaintiffs could establish their *Blasius* claim on the merits, when balancing the equities of an injunction, the Court would have assessed the Company's financial position in *April 2023*. Success for Plaintiffs was challenging and perhaps even not in the Class's best interest.

Izzo dismisses the assertion that AMC needs equity financing *this year* as a "jump scare,"[6] but in doing so misrepresents the Company's financial position. Izzo points to higher attendance, revenue, and adjusted E*BI*TDA at AMC in Q1 2023, year-over-year. She ignores the "BI" ("*B*efore *I*nterest") in EBITDA, and the Company's punishing debt service obligations. While improving from the COVID-era, the Company's return to positive cash flow is taking considerable time. Plaintiffs' Counsel were well-informed and had the Class's interests at heart when deciding not to gamble with the Class's investments.[7]

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[6] Izzo Obj. at 13.

[7] By contrast, neither Izzo, nor the Form Objectors, are qualified to speak for the Class. Izzo—the only objector represented by counsel—disclosed that she owns more APE than Common Stock. Izzo Obj. at 18-19. She inexplicably argues that

Tellingly, no objector addresses that statutory invalidation would likely require recission to third-party purchasers, creating an unfunded liability for the $480 million in cash raised by selling APE. As the Form Objectors concede, without that cash, AMC would currently have just $16 million (plus a $208 million revolver) available to service debt. Given AMC's 2022 cash burn of over $1 billion, rescissory repayments would leave AMC in financial crisis.[8]

Regarding settlement class certification, Plaintiffs and their counsel are informed, unconflicted, and adequate. The Class—agreed-to and presented under Rule 23(b)(1) and/or (b)(2)—should be approved thereunder, without opt outs. The fee, expense, and incentive award should also be granted, as it is well within precedent and no objector offers anything but conclusory challenges.

* * *

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she should lead the Action going forward, despite her counsel's admission that her APE alignment is a facial conflict of interest. *See* §II.B, *infra*; Izzo Obj. at 40. The Form Objection was drafted by unrepresented active social media users, several of whom have filed motions to intervene with the Court. But none of the primary drafters have submitted both (i) an objection and (ii) proof of ownership, despite publicizing their opposition to the settlement broadly to their online followers, leaving their actual motives and economic interests unclear.

[8] Recognizing the Court's likely inability to "unscramble the eggs" by invalidating APEs, Izzo offers several lesser, equally implausible forms of injunctive "relief" that Plaintiffs supposedly left on the table. *See* §I.A.2.c., *infra*. This argument fails, including because mandatory injunctions are even less likely. *See C&J Energy Servs. v. City of Miami Gen. Emps.' & Sanitation Emps.' Ret. Tr.*, 107 A.3d 1049, 1071 n.107 (Del. 2014).

Second-guessing may well be the nature of the objection process. But the objections to this Settlement are unsupported and unpersuasive. Plaintiffs appreciate the frustrations of many AMC investors: although many overpaid for AMC stock, the retail community did save AMC from short sellers betting that COVID would kill the Company. The same social-media engagement that once saved AMC is now a frenzy seeking to block the only avenue for Common Stockholders to receive consideration for the Conversion.

Plaintiffs and their counsel are completely aligned with the Class, and believe that the "get" of 6.9 million additional shares to the Class was not just reasonable under the circumstances, but a great result given the unusual pitfalls along the way. Despite loud objections by a tiny minority, the Settlement of this challenging case merits approval.

METHODOLOGY

Plaintiffs' counsel has engaged with Special Master Amato to address the procedural and logistical challenges of handling the large number of submissions by AMC's engaged retail investor base. Individuals have filed, emailed, and mailed objections, commentary, and statements in support of the Settlement. Plaintiffs' counsel facilitated theses submissions through engagement with thousands of individuals through phone calls, email correspondence, and automated responses.

Submissions were reviewed daily by Plaintiffs' counsel and coded based on

content and whether they comported with the requirements in the Notice of Pendency of Stockholder Class Action and Proposed Settlement, Settlement Hearing, and Right to Appear (Trans. ID 69929995, the "Notice")—*i.e.*, whether the submissions (i) were timely submitted between May 1 and 31, 2023 and (ii) included proof of beneficial ownership.

In total, approximately 3,500 timely submissions were received. Approximately 2,850 individuals, representing about 0.00075% of AMC's estimated 3.8 million stockholders, submitted purported objections. Out of approximately 600 timely "nonobjections," about 375 were letters of support for the Settlement and 235 advised only that the sender had not received postcard notice.

Per the Notice, stockholders were required to provide their full name and information sufficient to prove ownership of Common Stock from August 3, 2022, through and including the date of submission. Of the approximately 2,850 purported objectors, almost half—about 1,235—did not include *any* information regarding their holdings. Of objectors including *some* evidence of beneficial ownership (*e.g.*, a brokerage account statement, a screen shot, or an authorized statement from a broker), the vast majority did not comply with applicable requirements.[9] Nevertheless, Plaintiffs treated any apparent good-faith attempt include proof of

[9] For example, brokerage account screenshots frequently did not include the stockholder's name and/or date(s) of holdings.

ownership as sufficient to constitute an "objection," and in any event believe that this Reply addresses the substantive issues raised in *all* submissions, regardless of compliance.

Several discrete exhibits cover the field of substantive submissions:

- Rose Izzo is, to Plaintiffs' knowledge, the only objector represented by counsel and made a compliant, 56-page submission.

- Approximately 280 objectors submitted a version of the "Form Objection"—a 23,888-word, 87-page submission authored and publicized primarily by several would-be intervenors: Jordan Affholter, Etan Leibovitz, A. Mathew, and Brian Tuttle.[10]

- Approximately 150 objectors submitted variations of documents drafted and shared on social media by Bubbie Gunter (the "Gunter Objection"), who provided instructions on his YouTube channel for individualizing submissions using ChatGPT.[11] The issues raised in the Gunter Objections, to the extent germane to the reasonableness of the Settlement, are subsumed within the Izzo and Form Objections and are generally not briefed separately.

Objections were also categorized based on subject matter and whether the objector requested to opt out. After reviewing all the objections, Plaintiffs have identified the following general categories, in ranked order, each of which are addressed in this Reply.

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[10] The Form Objection is attached as Ex. 3. Despite collectively making dozens of filings with the Court, Messrs. Affholter and Leibovitz never submitted an objection, while Messrs. Mathew and Tuttle never provided proof of ownership.

[11] A copy of the Gunter Objection and instructions is attached as Ex. 4. Due to the use of A.I. software, the stated number of Gunter-derived objections may not be precise.

Rank	Category
1.	APE creation was illegal
2.	Inadequacy of consideration; opposition reverse stock split and conversion
3.	Invalidity of March 2023 stockholder vote
4.	AMC's collusion with Antara
5.	Concerns regarding naked short selling, dark pool trading, synthetic shares, and need for share count
6.	Objection to the fee, expense, and/or incentive awards
7.	General fraud
8.	Need for additional discovery; inadequate representation
9.	AMC's collusion with Citigroup (its financial advisor)
10.	Lack of due process
11.	AMC's need to raise capital

ARGUMENT

I. NO OBJECTOR SHOWS THAT THE SETTLEMENT IS UNREASONABLE OR INADEQUATE

The Court's primary consideration here is the balance between the "reasonableness of the 'give' and the 'get[.]'"[12] In their Brief, Plaintiffs established that the approximately 6.9 million Settlement shares have significant value commensurate with the strength of the Class's released claims.[13]

[12] *In re Activision Blizzard, Inc. S'holder Litig.*, 124 A.3d 1025, 1043 (Del. Ch. 2015); *see also* Form Obj. at 6. The only other contested *Polk* factor is the "views of the parties involved" addressed at § I.C, *infra*.

[13] Br. at 30; *see Kahn v. Sullivan*, 594 A.2d 48, 59 (Del. 1991).

The objections are mostly predicated on misapprehensions regarding what the case was about, the type of relief available, and the jurisdictional scope of the Court. No objector successfully challenges the reasonableness of the give compared to the get or otherwise provides a valid reason to reject the Settlement.

A. The Settlement "Give" and "Get" Fall Within the Range of Reasonableness

1. *The "Give"*

a. Objectors ignore substantial risks of continued prosecution of the *Blasius* claim

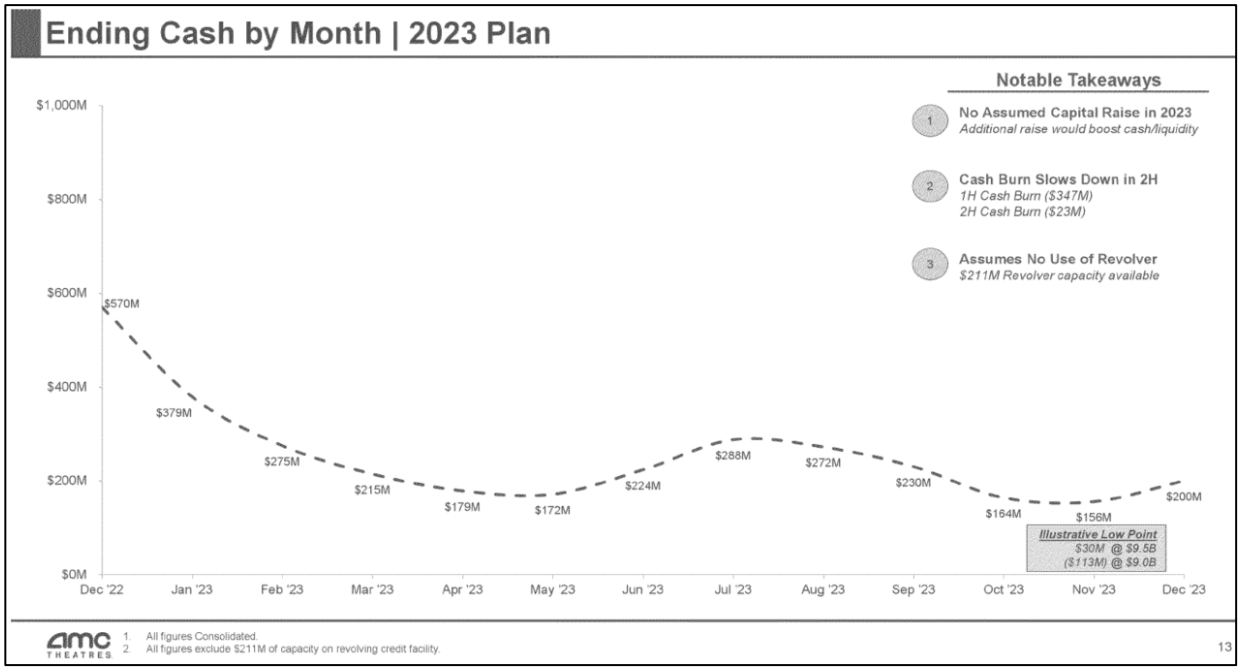
Plaintiffs would have likely prevailed on the first *Blasius* prong—*i.e.*, that when seeking to convert APEs into Common Stock, Defendants' "primary purpose" was circumventing stockholders resistance to authorized share increase proposals.[14] However, AMC's liquidity crunch created significant risk that the Court would accept Defendants' proffered "compelling justification" for the Board's actions or rule that the balance of the equities weighed against an injunction. To the extent objectors even address these risks, they fundamentally misunderstand the Company's financial position.[15]

According to AMC's end-of-2022 projections, it would burn a whopping

[14] *See* Br. at 33-34.

[15] Izzo does not cite a single nonpublic company document regarding AMC's financial position. No other objector accessed the discovery record, despite the Form Objection's authors securing a mechanism to do so.

$1.023 billion of the $1.593 billion with which it started the year.[16] Looking into 2023, AMC's "2023 Plan"—prepared in mid-December 2022 around the time of the Conversion announcement—projected that, with "No Assumed Capital Raise in 2023," AMC would have just $179 million by April 2023:[17]



The 2023 Plan assumed that at a domestic box office ("DBO") of $9 billion ("DBO"), AMC would burn $639 million in 2023.[18] If DBO—a metric that AMC had overestimated by more than $1.6 billion in 2022[19]—were *lower*, and/or expenses

[16] Ex. 5 (AMC_00009261); Ex. 6 (Q4 2021 earnings release).

[17] Ex. 5 (AMC_00009268).

[18] Ex. 5 (AMC_00009267).

[19] Ex. 7 (AMC_00043686).

higher, AMC's cash burn margin would be greater.[20] The latest documentation of AMC's financial condition from the production—AMC's February 27, 2023 cash report for weeks 7 and 8 of 2023—contained a "current projection of quarter-end balance and liquidity [of] $428.6M and $636.7M, respectively."[21]

Taken together, the discovery record indicated that, without APE sales, AMC would have been out of cash in the second quarter and, even with $480 million in APE proceeds, likely only had another couple quarters of cash runway. Plaintiffs could not ignore the risk that the Court would deem this a compelling justification for the recapitalization, consistent with an internal Adam Aron email from January 2023: "[O]ur creation of APEs back in August will turn out to be *what prevents a bankruptcy filing in 2023 by AMC*. It was *absolutely crucial* action taken by management and Board."[22]

Even were the Court to find no compelling justification, the "balance of the equities" still likely weighed against an injunction. Regardless of whether AMC had realistic alternatives when the Conversion was announced, by the time of an

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[20] AMC's liquidity quandary is not binary, where—on some identifiable future date—the Company will be unable to continue as a going concern, and any resolution before that is equally (un)favorable to the Class. Rather, the liquidity runway is a projection, affected by how movies *actually* end up doing or what *actually* happens with AMC's cost structure. The longer the Company remains cash flow negative without the ability to sell stock, the smaller the margin for error.

[21] Ex. 8 (AMC_00052325).

[22] Ex. 9 (AMC_00006226).

injunction hearing its options were limited. Plaintiffs rightly concluded that negotiating the best settlement available was preferable to pursuing injunctive relief that might threaten AMC stockholders' investments.

Izzo offers just two arguments in response. *First*, she claims that Plaintiffs' concerns "crumble after the first-quarter earnings results"[23] announced on May 5, 2023, because AMC's revenue, attendance, and adjusted EBITDA grew year-over-year.[24] What Izzo omits when touting adjusted *EBITDA*—which disregards interest on AMC's approximately $5 billion debt—is that even with these results, AMC remained roughly $237.3 million "cash flow negative" for the quarter, with only $496 million in cash plus $208 million undrawn in its revolver,[25] even *after* substantial APE sales. After another few quarters burning >$200 million, AMC will have exhausted all liquidity, with only low price/high dilution APEs as capital raise currency to counterbalance the cash bleed.

Second, Izzo points to a single intra-Antara email containing speculation that AMC could borrow more.[26] Izzo adduces no evidence that Antara's conjecture was feasible. Indeed, Antara relies on a supposition that the Company could simply

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[23] Izzo Obj. at 29 & n.92.

[24] *Id.* at 11.

[25] Kittila Aff., Ex. A at 1, 3.

[26] Izzo Obj. at 12-13.

renegotiate with debtholders, without explaining how.[27] And taking on *more* debt—currently at least $5 billion—where the Company's market capitalization is approximately $4 billion is not a viable liquidity management plan.[28]

The Form Objectors' limited attempt to address the liquidity problem underscores why the Settlement is adequate. They acknowledge that AMC "ended the quarter with … $496 million of cash and cash equivalents and $208 million of undrawn credit facilities" and "AMC [had] raised $480 million in cash as a result of APE." They calculate that, but for APE, AMC would have $16 million in cash plus the $208 million revolver. They then conclude that APE sales were unnecessary, and the Settlement should be rejected.[29] This is not a credible or responsible position.

The only reason that the Company is not staring down insolvency this quarter is its highly dilutive APE offerings to date. Objector suggestions that the Company is likely to make it without recapitalizing lack credibility. Even the *status quo* is not in the Class's best interests, as cheap APE sales are insufficient to stem the bleeding until conditions improve without massive additional dilution to Common Stock.

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[27] Izzo Obj. at 12-13.

[28] AMC management recognized as much. On February 12, 2023, CFO Sean Goodman emailed Citigroup bankers when discussing an Antara debt proposal: "We don't need debt financing…we need equity financing." Ex. 10 (AMC_00000713).

[29] Form Obj. at 10.

b. Objectors ignore substantial risks associated with prosecution of the §242(b) claim

Many objectors believe that Plaintiffs could have "turned back the clock" to categorically invalidate APEs.[30] This was not a realistic outcome and, to the extent the §242(b) claim had value, it was subsumed by the equitable claim.

Messrs. Munoz and Franchi did not plead a statutory claim. While Allegheny did plead a §242(b) violation, the Court was unlikely to rule that APEs were statutorily invalid and was even less likely to declare millions of publicly traded APEs illegal. Objectors suggesting otherwise misapprehend Delaware law.

First, some objectors challenge the Authorized Share Amendment on the grounds that a separate class vote of AMC Common Stock was required.[31] No Plaintiff pursued that claim because, while §242(b) requires class votes on share increase charter amendments by default,[32] the statute permits a carveout:

> The number of authorized shares of any such class or classes of stock may be increased or decreased … *by the affirmative vote of the holders of a majority of the stock of the corporation entitled to vote irrespective of this subsection, if so provided in the original certificate of incorporation, in any amendment thereto which created such class or classes of stock*…."

Since AMC's IPO, its Certificate has permitted authorized share increases

[30] *See, e.g.*, Tuttle Obj. (Ex. 11) at 4-5; Form Obj. at 21-23.

[31] Form Obj. at 23.

[32] *See Garfield v. Boxed, Inc.*, 2022 WL 17959766, at *1 (Del. Ch. Dec. 27, 2022).

without a class vote.[33] Thus, the Certificate Amendments were approved by Common Stock and APE voting together,[34] consistent with the statutory carveout.

Second, objectors argue that the APE issuance infringed on the "powers, preferences or special rights" of the Common Stock by impairing voting power (thus adversely affected a "power" or "special right" of the Common Stock), requiring a separate class vote notwithstanding the carveout.[35] 80 years of unchallenged Delaware law, however, hold that a stock issuance merely harming the "relative" voting power of existing shares within the overall capital structure does *not* require a separate class vote.

In *Dickey Clay*, the company sought to increase the number of authorized shares of a class superior to common stock without a separate class vote. A common stockholder sued, arguing that the amendment adversely affected common stock's "relative position in the capital structure, their right to dividends, and to a share of the corporate assets upon dissolution or in a liquidation, and the right to vote."[36] Like certain objectors here, the plaintiff complained that common stock's economic

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[33] Ex. 12 (Third Amended and Restated Certificate of Incorporation of AMC Entertainment Holdings, Inc., §IV.D).

[34] Ex. 13 (AMC Entertainment Holdings, Inc. Current Report (From 8-K) (Mar. 15, 2023)).

[35] *See, e.g.*, Form Obj. at 21-23; Tuttle Obj. ¶9.

[36] 24 A.2d at 318.

and voting power would be diluted by the new stock issuance, and that §242(b)'s predecessor statute required a class vote.

The Delaware Supreme Court rejected this "relative position" argument:

> Stripping from the appellant's argument its garnishments, *it is found to be based on the misconception that a position of a class of shares, as related to other shares in the capital structure, is a relative and, therefore, a special right of the shares*…. But it is entirely clear that the statute in its mention of relative rights of shares did not refer to the position of shares in the plan of capitalization, *but to the quality possessed by the shares*; and it is only by a refinement of interpretation that it can be said that a relative position is a relative right.[37]

In 1993, this Court confirmed the *Dickey Clay* holding. In *Orban*, a stockholder challenged a recapitalization and subsequent merger, asserting that common stockholders were entitled to a separate vote to approve the issuance of a new class of convertible preferred stock that diluted common stockholders' voting power to under 10%,[38] thus denying their ability to block the deal.[39]

Relying on §242(b) and *Dickey Clay*, then-Chancellor Allen rejected the statutory challenge, observing:

> The language of the statute makes clear that it affords a right to a class vote when the proposed amendment *adversely affects the peculiar legal characteristics of that class of stock. The right to vote is not a peculiar or special characteristic of common stock in the capital structure of*

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[37] *Id*. at 320.

[38] *Orban v. Field*, 1993 WL 547187, at *7 (Del. Ch. Dec. 30, 1993).

[39] *Id*. at *8.

Office Mart.[40]

Put differently, dilution of common stock's voting power through the creation of another class of stock does not adversely affect an inherent "power" of the common stock. §242(b)'s class voting requirement was not triggered.

Arguably, both *Dickey Clay* and *Orban* could be distinguished because the *only* class of shares entitled to vote when the AMC Board created APEs were Common Stock. There were two major problems, however, as (i) AMC's Certificate specifically allows for the issuance of voting preferred shares and (ii) shares with superior voting rights to Common Stock were issued in the past. Thus, while the APE issuance might have harmed the "relative position" of Common Stock in AMC's capital structure, it is unlikely that the Court would view their creation as adversely affecting the "powers, preferences or special rights" of Common Stock.

The Court's recent interpretation of the statute, *Dickey Clay*, and *Orban*—in a decision issued *after* the filing of this Action—cast even more doubt on any statutory challenge to the APEs. In the *SNAP/Fox* coordinated actions, Vice Chancellor Laster characterized the holding in *Dickey Clay* as follows:

> [R]elative position in the capital structure is not a right of the shares *or*, in the language of the decision, a quality of the shares such that authorizing more of a senior class or series or adding a senior class or series does not make an adverse change to the rights *of the junior class*

[40] *Id*.

or series.[41]

With respect to the holding in *Orban*, this Court observed:

> As in *Dickey Clay*, that was an easy argument to reject because the creation of a senior security does not effect any change or amendment to the rights or powers of the common stock. Nothing about the legal rights or powers associated with the common stock changed.... The same was true for the issuance of additional shares of common stock.[42]

Tellingly, Izzo's objection—the only one filed by counsel—barely contests the weakness of the statutory claim, relegating any defense on the merits to a single footnote.[43] Her acknowledgment that "[t]he *Fox* opinion virtually invited an appeal" concedes that a §242(b) claim here lacked merit under the current state of the law. Izzo suggests, however, that "[a] more vigorous stockholder might use this case as grist for an *amicus* brief in the *Fox* appeal, arguing that a more thorough rethinking of *Dickey Clay* is necessary…." Put differently, Izzo believes Plaintiffs should have intentionally lost a preliminary injunction proceeding to join an effort to overturn 80-year-old precedent. Given the Company's liquidity issues, and the pending change to 8 *Del. C.* §242(d) ("§242(d)"),[44] Izzo's "strategy" is particularly unappealing. The proposed Settlement is a far superior option to such a tenuous path to success.

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[41] *SNAP/Fox* at 33-34.

[42] *Id.* at 36.

[43] Izzo Obj. at 28 n.91.

[44] *See* §I.A.2.b, *infra*.

Moreover, Izzo ignores all nuance of the facts and arguments in the *SNAP/Fox* appeal. The Court's ruling expressly assumed (and thus is unlikely to disturb on appeal) that relative harm to voting power does not require class votes. Rather, *SNAP/Fox* turns on whether *Dickey Clay* precludes a class vote when the *inherent power to sue* is impaired.[45] Appellees in the *SNAP/Fox* actions can prevail *without* a reversal of *Dickey Clay*, and it is unlikely that the Supreme Court would reverse *sua sponte*.

Third, setting aside the merits, invalidation of the APEs was vanishingly unlikely.[46] There were over 995.4 million units trading as of May 4, 2023, with an average daily volume since August 2022 of almost 23 million. Given that billions of APE units have been bought and sold in public markets, the calamitous impact of voiding APEs rendered invalidation implausible. Rather, the more likely remedy following a long-shot victory on a statutory challenge was a requirement that the Company seek ratification under DGCL §§204 or 205. While such ratification might be conditioned on, for example, an adjusted "revote" on Conversion, the potential harm to the Class would become identical to that of the equitable claim—*i.e.*, the value of the dilution. As discussed in the next Section, the proposed Settlement

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[45] *See, e.g.*, *SNAP/Fox* at 33-34, 36, 38.

[46] Izzo's proffered permanent injunction remedies are also not realistic. *See* §I.A.2.c, *infra*.

offsets a meaningful portion of that dilution.

c. Objectors misconstrue and overvalue the "give"

The Settlement would provide the Class with approximately 6.9 million shares to offset a portion of the dilution flowing from the recapitalization (*i.e.*, the actual harm suffered). This recovery as worth approximately $129,067,486.45 as of May 3 and $114,091,860.88 as of June 6.

Certain objectors mistakenly believe that the "give" includes claims to recompense *all* market capitalization diminution since the APE "dividend."[47] Market wins and losses are, however, legally and causally unrelated to Plaintiffs' claims. As discussed above, claims concerning the APE issuance itself are flawed. And counsel is unaware of any Delaware or federal precedent that would support direct claims for the market capitalization losses identified by certain objectors. Certainly no such outcome has ever come from a *Blasius* or §242(b) claim.

Rather, the harm at issue is dilution to the Class from Conversion of APEs into Common Stock. Absent the Settlement, the Conversion would have transferred $1,439,937,341.58 in value from Common Stock to APE, based on May 3, 2023

[47] *See* Form Obj. at 4 ("the proposed settlement does not help recover the $5 billion plus stockholders lost in market cap through the creation of APE").

prices.[48] Izzo adopts this figure—apparently without conducting any of her own financial or expert analysis—and mistakenly concludes that this amount represents recoverable, dilutive *harm*.[49] Izzo ignores that most existing APEs (516,820,595 of 995,406,413) were distributed to holders of Common Stock in August 2022. These APEs are either still held by their initial recipients or were sold. Thus, Class members were not and will not be diluted by these units, as they were either monetized for prices as high as $10.50 or will enjoy a *pro rata* portion of the overall increase in APE value resulting from the Conversion.

Instead, the actionable harm suffered by the Class is the value transferred to those APEs introduced into the market through the Antara Transaction and AMC's ATM programs. Based on AMC's capitalization as of April 26, 2023, 48.08% of extant APE were sold to Antara or at-the-market buyers.

Accordingly, the value transfer to post-"dividend" APE through the Conversion is, based on May 3 prices, $692,313,794.13 compared to a $129,067,486 "get."[50] Based on June 6, 2023 prices, that value transfer comes way down to

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[48] This figure is the difference between the percentage of AMC's $4,493,182,066.36 market capitalization represented by Common Stock before the Conversion ($2,980,164,318.60) and after ($1,540,226,977.02).

[49] *See* Izzo Obj. at 7.

[50] *See* June 7, 2023 Affidavit of Patrick Ripley ("Ripley Aff.") ¶3(d).

$503,650,082, compared to a $114,091,861 "get."[51] Izzo's contention that the Settlement recovers just 8.96% of potential damages is, therefore, simply wrong. The Settlement value, when assessed against the Class's maximum theoretical damages, compares favorably to settlements approved in this Court.[52]

That the recovery was the product of arm's-length mediation with a former Vice Chancellor further suggests that the Settlement is the maximum of what could be negotiated.[53] It was reasonable for Plaintiffs to settle on these terms.

2. *"The Get"*

a. Objectors undervalue the "get" of the Settlement

If approve, the Settlement will provide 6,922,565 shares to Class members, adjusted for stub cash payouts of "fractional shares." In their Brief, Plaintiffs explained how the Settlement shares were worth $129,067,486 based on the closing

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[51] *Id.* at ¶4(d).

[52] *See, e.g.*, *Macomb Cty. Empl's. Ret. Sys. v. McBride*, C.A. No. 2019-0658-LLW (Del. Ch. Oct. 11, 2021) (TRANSCRIPT) at 40-41 (approving settlement where recovery was 12% of total maximum damages); *In re Pivotal Software, Inc. S'holders Litig.*, C.A. No. 2020-0440-KSJM (Del. Ch. Oct. 4, 2022) (TRANSCRIPT) (approving settlement consideration equal to 9% of maximum theoretical damages); *In Jefferies Grp. Inc. S'holders Litig.*, 2015 WL 3540662 at *3 (Del. Ch. June 5, 2015) (approving settlement consideration equal to 11% of maximum theoretical damages).

[53] *See Activision*, 124 A.3d at 1067 ("The manner in which the Settlement was reached provides further evidence of its reasonableness. It resulted from a protracted mediation conducted by a highly respected former United States District Court Judge….").

prices of Common Stock and APE on May 3, 2023 (or $114,091,861 based on June 6, 2023 prices). No objector offered a plausible alternative valuation, and quibbles raised by objectors—unaided by professional analysis—uniformly fail.

First, Izzo (whose counsel presumably knows how to develop the type of financial analysis on which court frequently rely) speculates that the Settlement *might* cause retail investors to "flee, leaving only former preferred purchasers like Antara, who purchased at less than $1 per share, to sustain the share price."[54]

Izzo's "support" for this wild supposition is that AMC previously stated that it expected Common Stock and APEs to trade around the same price and they did not.[55] She ignores, however, that there are reasons (identifiable in hindsight) for the Common Stock and APE divergence, including divestment from funds that cannot hold un-indexed securities. There is no reason to think that the Settlement would cause an aggregate market capitalization decline; in fact, the prospect that the market values overhang removal and capitalization certainty is more credible. Izzo's speculation, which could unscientifically devalue any noncash settlement, provides no cognizable basis to discount Plaintiffs' professional valuation.

Second, Izzo contends that by securing cash for fractional shares, Plaintiffs

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[54] Izzo Obj. at 35.

[55] *Id*.

somehow reduced the Class's recovery.[56] It does not. Record holders will receive cash, in lieu of fractional shares, from AMC's transfer agent, who will aggregate and sell fractional shares at prevailing market rates and distribute proceeds *pro rata*. While AMC cannot control how brokers settle fractional shares received through the Settlement, beneficial holders will receive fractional shares or cash pursuant to their respective brokers' processes.[57] Izzo's speculation that "[s]mall stockholders ... may get nothing" assumes brokers will pocket their clients' property.[58]

Requiring value for fractional shares was an important Settlement term. Plaintiffs wanted to ensure complete compensation on a 1-for-7.5 basis, in stock or cash, given the large number of small holders in the Class. Cash-outs for fractional holdings preserve—rather than diminish—the value of the Settlement.

The Form Objectors go further, claiming in a difficult-to-follow six-page excursus that fractional share payments can somehow exceed $700 million, supposedly driving AMC to bankruptcy.[59] Plaintiffs are confident that this analysis has no merit. In any event, *AMC* is not paying *any* cash for fractional shares. Rather, Computershare will settle fractional interests at the record holder-level with

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[56] Izzo Obj. at 8.

[57] Trans. ID 69906464 at 19; Trans. ID 69929995 ¶26.

[58] Izzo Obj. at 8.

[59] Form Obj. at 36; *see also id.* at 31-36. This "analysis" is lifted from an early filing by Mr. Affholter. *See* Trans. ID 69990687.

proceeds from selling aggregated fractional shares. At the beneficial holder-level, individuals will receive fractional shares or cash paid by brokers pursuant to their policies.[60] In sum, Class members will receive approximately 6.9 million shares, with some holders receiving cash for fractional interests.

b. Proposed amendments to 8 *Del. C.* § 242(d) further enhance the value of the "get"

On May 16, 2023, the Delaware Senate approved a proposed amendment to §242(d). If passed, the revised statute will provide that "[a]n amendment to increase … the authorized number of shares of a class of capital stock … may be made and effected" by "a vote of the stockholders entitled to vote thereon, voting as a single class, [] taken for and against the proposed amendment, and *the votes cast for the amendment exceed the votes cast against the amendment*," subject to other conditions not relevant here.

In other words, the Delaware Legislature may amend the DGCL to change the voting standard for precisely the kind of recapitalization at issue in this case to a "votes cast" standard, allowing corporations to end run voter apathy in precisely this circumstance. It is no coincidence that this amendment is being described in "thought leadership" pieces as addressing the "rational apathy" of nonvoting retail

[60] *See* Trans. ID 69929995 ¶26.

investors.[61]

This development undermines Plaintiffs on the "compelling justification" prong of *Blasius*, as the Legislature may effectively endorse Defendants' position that their predicament in being unable to secure authorized share increases was a crisis sufficient to justify changing the DGCL before this case may even be resolved.

The short-selling Ursa Fund Partners ("Ursa") disingenuously argues against the Settlement, asking the Court to make AMC "go about this the right way" and hold a revote under "the proposed amendments to Section 242."[62] Given Ursa's true economic interests, it likely expects that the delay associated with a revote will either increase the likelihood of financial catastrophe or allow some portion of its put options to monetize. Indeed, Common Stock would likely trade downward without the expectation of receiving Settlement shares, further benefitting Ursa.

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[61] Ex. 14 (Richards Layton & Finger, P.A., "2023 Proposed Amendments to the General Corporation Law of the State of Delaware," (May 1, 2023)).

[62] Trans. ID 70061737. Ursa submitted an objection on May 10, 2023, which it filed publicly on May 22, 2023. Trans. ID 70061737. Ursa included proof of ownership of 900 Common Stock shares and held itself out as a Class member, aligned with other Class members. A simple 13F search revealed, however, that Ursa owns approximately 11.3 million Common Stock put options, valued at over $57 million, meaning that Ursa stands to profit handsomely if Common Stock declines. Ex. 15. Unfortunately, Plaintiffs cannot know which objectors, or internet influencers driving objections, are actually aligned with the Class.

c. Objectors' "Suggestions for a revised Settlement Proposal" are outside the Court's purview and underscore the utility of representative litigation

The Settlement was negotiated at arm's-length over several intense days, with critical assistance from mediator Joseph Slights. The Class received the benefit of professional negotiators who achieved what Plaintiffs respectfully submit was the best deal available.

Objectors nonetheless offer up a variety of alternative settlement terms. While it is not the role of the Court to "blue-pencil" the proposed Settlement,[63] the implausibility and/or inferiority of these competing proposals militate in favor of Settlement approval. No alternative settlement proposals were realistically obtainable or actually address the harm challenged in this Action. Moreover, a few putative Class members' preference for *hypothetical* terms of varying plausibility does not warrant denial of the actual Settlement, which "falls within a range of [reasonable] results."[64]

The Form Objectors, for example, offer a slew of proposals that bear little relation to this Action and *would provide no Class recovery*, including:[65]

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[63] *See generally C&J Energy Servs. v. City of Miami Gen. Emps.' & Sanitation Emps.' Ret. Tr.*, 107 A.3d 1049, 1071 n.107 (Del. 2014) (discussing the impropriety of rewriting terms in the preliminary injunction context).

[64] *Activision*, 124 A.3d at 1064 (quoting *Forsythe v. ESC Fund Mgmt. Co. (U.S.)*, 2013 WL 458373, at *2 (Del. Ch. Feb. 6, 2013)).

[65] *See* Form Obj. at 10-18.

- *AMC implementing side businesses, including branded popcorn and a credit card*. AMC has already implemented such suggestions,[66] which have nothing to do with the dilutive recapitalization.

- *Hiring stockholders for technical work and using stockholders for advertisements, instead of Nicole Kidman*.[67] Supplanting AMC's judgment as to how to structure its IT functions and marketing campaigns would not compensate the Class for the harm it suffered.

- *Crowdsourced stockholder donations to AMC to reduce debt*.[68] Calling for investors to "contribute an average of $263 to the fund, which would eliminate $1 billion in debt without any dilution" *for free* would provide no recompense for the harm the Class suffered.

- *Selling NFTs*.[69] This would create yet another class of quasi-equity, inviting a host of regulatory issues, and would not offset any recapitalization dilution.

- *New director appointments, including retail representatives*.[70] This Action has little to do with Board representation or stockholder voting on director elections. If stockholders wish to replace directors, they may nominate their own slate or vote against incumbents.

- *Reevaluating AMC's public auditor*.[71] This suggestion is beyond this Action's scope and would not compensate the Class.

- *Adopting enhanced corporate governance*.[72] The objectors provide no

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[66] *Id.* at 11; *see also* AMC_00009254 (each of AMC On Demand, Retail Popcorn, and AMC Co-Branded Credit Card were assumed to lose money in 2023, and the figures are marginal regardless).

[67] Form Obj. at 15.

[68] *Id.* at 12-14.

[69] *Id.* at 16.

[70] *Id.* at 16.

[71] *Id.* at 16.

[72] *Id.* at 16-17.

> specific corporate governance reforms designed to address the issues raised in this Action. Regardless, Plaintiffs focused on a monetary recovery for the Class rather than negotiating for governance reforms.

Izzo also proposes alternative settlement proposals or litigation outcomes similar to those in the Form Objection—*i.e.*, unrealistic, of uncertain value, legally unsupported, and in no way suggesting that Plaintiffs left value "on the table" in the negotiations. For example, Izzo claims that the Court could order disgorgement of Defendants' AMC equity, blue-pencil the Deposit Agreement, enjoin Antara from voting, or compel AMC to issue additional shares to unwind the entire APE issuance.[73] Plaintiffs are aware of no precedent—and Izzo tellingly cites none—for disgorgement of stock not at issue in this Action, invalidating a third-party agreement, enjoining third-party voting rights, or forcing a corporation (outside the context of a specific contract) to almost double its outstanding share count.[74]

Such relief is not even possible at this juncture. The Supreme Court has made clear that "a mandatory injunction, or one which commands the defendant to do some positive act, will not be ordered … on a preliminary or interlocutory motion."[75]

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[73] Izzo Obj. at 22-23. Based on calculations predicated on May 3 closing prices and the number of outstanding shares as of April 26, this would require issuing 144,144,203 shares post-split, or an additional 95.169891% of outstanding equity. Ripley Aff. ¶6.

[74] Izzo's contention that the Court could simply permanently enjoin the Conversion ignores AMC's compelling need for an equity capital raise. *See* §I.A.1.a, *supra*.

[75] *C&J*, 107 A.3d at 1071 n.107 (quoting *Tebo v. Hazel*, 74 A. 841 (1909)).

The *C&J* court vacated the trial court's injunction requiring a go shop, finding the trial court erred by "blue-pencil[ing] a contract … in a preliminary injunction order."[76] Izzo provides no basis for, much less establishes entitlement to, the mandatory injunctions she proposes.[77] To the extent these extreme remedies *could* be available after trial, Izzo does not establish that the Company would survive that long, or pushing towards that inflection point would be good for the Class.

B. No Objector Has Identified Any Additional Claim(s) That Could Have Created More Value for the Class

Several objectors contend that Plaintiffs should have asserted different or additional claims. None have merit.

1. *Common Law Fraud*

Many objectors, including the Form Objectors, criticize "Lead Counsel [for] omit[ting] any reference to the consideration of petitioning the Court for leave to amend the complaint to include a cause of action against AMC Defendants grounded in fraud."[78] The Form Objectors do not identify any misrepresentations or omissions, explain how classwide reliance could be proven without the benefit of a

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[76] *Id*. at 1054.

[77] *DeMarco v. Christiana Care Health Servs.*, 263 A.3d 423, 434 (Del. Ch. 2021) ("When a party seeks mandatory injunctive relief, the applicant must clearly establish the legal right she seeks to protect or the duty she seeks to enforce.").

[78] *See, e.g.*, Form Obj. at 9.

presumption like under federal securities laws,[79] or point to additional damages sounding in fraud—presumably because there are none.

2. *Reverse Stock Split Claims*

Many objections took categorical issue with reverse stock splits, on the basis that certain companies have performed poorly following a reverse stock split, or a simple misconception that stockholders are losing 90% of the value of their investments.[80] But, absent some other factor, reverse stock splits are neutral to stockholder value. Indeed, objectors identify nothing inherently wrong with reverse splits, and disregard companies that have performed well following reverse stock splits.[81] More importantly, no objector identifies any legal or equitable challenge to the Reverse Split here, or explains how a challenge to the Reverse Split could provide additional recovery, independent of Plaintiffs' claims.

3. *Challenges to the March 14 Vote*

The Form Objectors suggest that "[t]he difference between the voter turnouts for each class share (35% for AMC common vs 63% for APE) [at the Annual Meeting] is highly stat[ist]ically unlikely" is without merit.[82] They provide no

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[79] *See generally Basic, Inc. v. Levinson*, 485 U.S. 224 (1988).

[80] *See, e.g.*, Form Obj. at 30.

[81] *E.g.*, General Electric Company (up over 20% since its reverse split in August 2021); Alcoa Corporation (up approximately 33% since October 2016).

[82] *See* Form Objection at 63.

analysis to support their assertion that it is "highly stat[ist]ically unlikely." Moreover, the difference in voting turnout is entirely consistent with APE concentration in institutional arbitrageurs highly motivated to support the Certificate Amendments, while AMC is more broadly held by retail.

4. *Theories about Manipulation in the Stock Market*

Many objectors focus on market manipulation theories propagated by pockets of the AMC investor community. Specifically, objectors are concerned that "synthetic" AMC shares have been sold to bail out "naked short" positions. As the theory goes, these synthetic shares allow short sellers to cover without having to buy real shares and prevent the "mother of all short squeezes," a central tenet in certain stockholders' investment thesis. Many believe that this conspiracy includes participants throughout Wall Street and government. Regardless of their truth, these theories are firmly outside the scope of the Court's assessment of the proposed Settlement, and the Court should decline invitations to launch its own investigation into these far-ranging issues.

Demands for a share count/stockholder list: Many objectors want the Court to order a "share count" of AMC equity.[83] It should not do so. While certain objectors claim that the actual share count is unknown or unknowable, the actual number of

[83] *See, e.g.*, Form Obj. at 17.

shares outstanding is known precisely: 519,192,390, as of April 26, 2023.[84]

Relatedly, many objectors want a complete stockholder list.[85] Any investor who states a proper purpose can inspect a list of stockholders of record.[86] Creating a definitive list of AMC stockholders (including beneficial holders) at any given moment is practically impossible, even if the Court were inclined to order one, since the shares are constantly traded, as reflected by intra-second changes in the price of Common Stock.

Regardless, this issue is not germane to the reasonableness of the proposed Settlement, as the holders of the 519,192,390 shares of Common Stock at the time of the Reverse Split *will* receive their *pro rata* share of the Settlement consideration if the Settlement is approved.

Investigations of "Synthetic Shares": The existence of "synthetic shares" was disproven when 516,820,595 APEs were distributed to holders of 516,820,595 shares of Common Stock. While certain objectors claim that certain stockholders never received APE, or that holders of synthetic shares received synthetic APEs, they provided no evidence or coherent explanation to support their claims.

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84 https://www.sec.gov/ix?doc=/Archives/edgar/data/1411579/000141157923000049/amc-20230331x10q.htm (last accessed June 7, 2023).

85 *See, e.g.*, Form Obj. at 46.

86 8 *Del. C.* §220.

Regardless, Plaintiffs do not believe there is any litigable Delaware claim that would empower the Court to investigate "synthetic shares," at least in this Action.

Inquiry into an "AMC Crypto Token": Some objectors complain that FTX Trading Ltd., the disgraced cryptocurrency exchange, created AMC Tokens, which they believe aided short sellers of AMC stock.[87] After reviewing thousands of objector submissions and tens of thousands of AMC documents, Plaintiffs have not seen anything to suggest that these assertions are supported. Regardless, any claim about FTX or AMC cryptocurrency should be brought in a separate lawsuit, if at all.

C. The "Views of The Parties Involved, *Pro* and *Con*" Do Not Support Denial of the Settlement

Izzo contends that the "elephant in the room" is the "stockholder hostility[,] likely unprecedented" to the Settlement.[88] This specious claim ignores all context surrounding this Action.

First, this *entire case* is unprecedented. As far as Plaintiffs are aware, it is the first class settlement considered by this Court that features the social media dynamics surrounding a "meme" stock so centrally. There are no criteria for determining what is a "normal" number of objections. The ambiguity and novelty

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[87] *See, e.g.*, Form Obj. at 61-62.

[88] Izzo Obj. at 37; *see generally Polk v. Good*, 507 A.2d 531, 536 (Del. 1986) (the Court considers the views of the parties involved in evaluating a proposed settlement).

are exacerbated by the fact that at least one putative objector (Ursa) has a massive short position and even Izzo is "long" APEs. Also, as demonstrated by the number of "Form" and "Gunter" Objections, volume has been driven by YouTube and Twitter influencers publicizing "plug-and-play" objections to followings in the four- and five-figures.[89] Some, like "Al from Boston" (aka, "A.P. Mathew," who never submitted any proof of ownership), receive ad revenue and generate thousands of views per video.[90]

Second, even though Plaintiffs' counsel received approximately 3,500 timely submissions from putative stockholders, this number is dwarfed by the number of AMC stockholders: *3.8 million*. Only about 0.0007% of AMC's stockholders made timely submissions. The Court should not deny the valuable Settlement due to the views a miniscule, but vocal, minority.

Third, many submissions were not objections. Plaintiffs received approximately 380 submissions in favor of the Settlement (or at least in favor of the near-term resolution of the case).[91] This number is lower than it might otherwise

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[89] Ex. 4-B (Gunter Instructions).

[90] https://www.youtube.com/channel/UChlborVxhzaYtx_ITOd-F_w (last accessed June 7, 2023).

[91] *See, e.g.*, Ex. 16 (Barnes Submission) at 1 (expressing approval of the settlement, despite the objections of "a handful of noisy conspiracists" including because "[w]ith this limited liquidity runway and significant cash burn rate, if the AMC Board … does not have the business judg[]ment flexibility to manage its balance

have been, as the Court told stockholders that they did not need to submit letters in support.[92] Moreover, a large percentage of objectors are not really objecting to the fairness of the proposed Settlement, but rather to various other issues that are irrelevant to this Action or otherwise unactionable, as discussed above.[93]

D. The Scope of the Release Is Appropriate Given the Value of the Settlement

The Settlement would only release claims of Class members that are (i) asserted in the operative Complaints, or that (ii) relate to the allegations and facts at issue in the operative Complaints *and* Class members' ownership of Common Stock and/or APE. Objectors' issues with the scope of the release lack merit, as the release is consistent with precedent for fiduciary duty cases involving corporate actions (and appropriate given the "get" described above).[94]

Izzo takes specific aim at the language "concern, relate to, arise out of, or are in any way connected to or based upon the" facts and allegations in the Complaint.[95]

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sheet … the continued employment of AMC's 33,694 dedicated employees will be in question during a potential Chapter 11 bankruptcy restructuring.").

[92] Trans. ID 69944998 at 3.

[93] *See supra* §I.B.4.

[94] *See, e.g.*, Ex. 17 (*Multiplan* stipulation) (releasing claims (i) asserted in the Complaint or (ii) that relate to the facts and allegations at issue in the Complaint and relate to ownership of the subject securities); Ex. 18 (*Straight Path* stipulation) (same); Ex. 19 (*Pivotal* stipulation) (same); Ex. 20 (*Hawkes* stipulation) (same).

[95] Izzo Obj. at 31.

Izzo ignores, however, that functionally identical language appears in frequently in class settlement stipulations before or approved by this Court.[96] Izzo cites *UniSuper* for the general (and correct) proposition that to release unasserted claims, they must relate to "tangential facts, as opposed to operative or core facts."[97] The *UniSuper* release is, however, indistinguishable from the proposed release in this regard.[98]

Izzo also asserts that the proposed release would impermissibly release "future claims"—*i.e.*, claims with an operative nucleus of fact postdating the Complaint.[99] This is a blatant misreading of the release, which only reaches claims that were or could have been asserted in the Complaint. While the release does reach claims based on the factual predicate of the Complaint that a Class member "*hereafter can, shall, or may have*," such language covering later-discovered or ripening claims related to the past nucleus of fact is routinely accepted by the

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[96] *See, e.g.*, Ex. 17 (*Multiplan* stipulation) ("concern, relate to, arise out of, or are in anyway connected to…."); Ex. 26 (*Capital Bank* stipulation) ("concern, arise out of, refer to, are based upon, or are related to"); Ex. 21 (*CBS* stipulation) ("arise out of, are based upon, or relate in any way, directly or indirectly, in whole or in part…."); Ex. 22 (*Viacom* stipulation) ("are based upon, arise out of, relate to, or involve, directly or indirectly….").

[97] Izzo Obj. at 31 (citing *UniSuper Ltd. v. News Corp.*, 898 A.2d 344, 347 (Del. Ch. 2006).

[98] *See* Ex. 23 (*UniSuper* Final Judgment) ("which arise out of or relate in any manner….").

[99] Izzo Obj. at 33.

Court.[100] Each of the cases cited by Izzo expressly involved attempted releases for future nuclei of fact, and are thus inapposite.[101]

Finally, some objectors take issue with the multiday release for the Class Period because Settlement shares will be distributed only to holders as of the "Settlement Class Time"—*i.e.*, immediately before the Conversion.[102] These objectors do not appreciate that, as a matter of Delaware law, the claims asserted by Plaintiffs in this case run with the shares.[103] "When a share of stock is sold, the property rights associated with the shares, including any claim for breach of those rights and the ability to benefit from any recovery or other remedy, travel with the shares."[104] Thus, Class members who do not hold at the Settlement Class Time do

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[100] *See, e.g.*, Ex. 17 (*Multiplan* stipulation) ("hereafter can, shall, or may have…."); Ex. 18 (*Straight Path* stipulation) ("in the future could, can, or might be asserted"); Ex. 26 (*Capital Bank* stipulation) ("may hereafter exist"); *see also New Enterprise Assoc. 14, L.P. v. Rich*, 2023 WL 3195927, at *7 n.8 (Del. Ch. May 2, 2023) ("A release can extinguish claims based on past conduct that a party might learn of or assert in the future, but it cannot cover claims based on future conduct") (citing *Christiana Care Health Servs. v. Davis*, 127 A.3d 391, 395 (Del. 2015)).

[101] *See UniSuper*, at 898 A.2d at 348 (rejecting attempted release of claims related to a *future* vote on an *upcoming* rights plan); *Griffith v. Stein*, 283 A.3d 1124, 1135 (Del. 2022) (rejecting attempted release of claims related to a director compensation plan to be approved eight months after the settlement); *Schumacher v. Dukes*, C.A. No. 2020-1049-PAF (Del. Ch. Nov. 17, 2022) (TRANSCRIPT) (rejecting settlement including because of attempted release of claims related to director compensation post-dating the operative complaint).

[102] *See, e.g.*, Tuttle Obj. ¶¶11-13.

[103] *See Urdan v. WR Capital Partners, LLC*, 244 A.3d 668, 677-78 (Del. 2020).

[104] *Activision Blizzard*, 124 A.3d at 1050.

not have valuable shares to release.[105] Nor have objectors identified any colorable claims that might create additional value for the Class, but would be released pursuant to the Settlement.

The foregoing is also consistent with the practice of this Court. Functionally identical class action releases, with multi-day class periods running from announcement to closing of a corporate merger or acquisition, are routinely approved.[106] In these scenarios, the settlement consideration uniformly goes to the stockholders as of closing, and not to anyone who sold during the class period, because the sellers' claims traveled with the shares.

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[105] Tuttle's assertion that he has valuable personal claims for shares he sold during the Class Period (*see* Tuttle Obj. ¶13) is rebutted by *Activision*. There, the objector argued that he had valuable personal claims as a seller (and so did other members of a "seller class"), and challenged the settlement because consideration for the Delaware corporate law claims at issue only went to holders. *Activision*, 124 A.3d at 1044-45. While the Court acknowledged "theoretical causes of action under the expansive rubric of American law," it held that "no one (including [the objector]) has meaningfully articulated any personal claims or shown them to have any value whatsoever. Under controlling Delaware Supreme Court precedent, a settlement can release claims of negligible value to achieve a settlement that provides reasonable consideration for meaningful claims." *Id.*

[106] *See, e.g.*, Ex. 17 (*Multiplan* stipulation) ("the period between February 19, 2020 and October 8, 2020, inclusive"); Ex. 20 (*Hawkes* stipulation ("from and including … the date of the Merger Agreement, through and including … the date the Merger closed"); *see also* Ex. 21 (*CBS* stipulation) ("between and including August 13, 2019 and December 4, 2019").

II. NO OBJECTOR ADVANCES A VALID ARGUMENT AGAINST CLASS CERTIFICATION ON A NON-OPT-OUT, RULE 23(B)(1) OR (B)(2) BASIS

No objector challenged numerosity, typicality, or commonality, which are also beyond dispute. Adequacy is found where the movant "persuade[s] the court that the named representative will protect the interests of the class."[107] Once *prima facie* adequacy is established, the burden shifts to the nonmovant to disqualify the plaintiff.[108] This Court identifies three primary factors—*i.e.*, a representative plaintiff must: (i) "not hold interests antagonistic to the class"; (ii) "retain competent and experienced counsel to act on behalf of the class"; and (iii) "possess a basic familiarity with the facts and issues involved in the lawsuit."[109]

A. Franchi and Allegheny Are Adequate

While Izzo and other objectors challenge adequacy on various grounds,[110] none offer *any* supported argument that Franchi or Allegheny hold interests antagonistic to the Class. Even Izzo admits that "[t]he standing of Plaintiffs' counsel is beyond question."[111] And Plaintiffs' affidavits demonstrate their familiarity with

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[107] *In re TD Banknorth S'holders Litig.*, 2008 WL 2897102, at *3 (Del. Ch. Jul. 17, 2008).

[108] *See Van De Walle v. Unimation, Inc.*, 1983 WL 8949, at *5 (Del. Ch. Dec. 6, 1983).

[109] *Id.* at 2.

[110] *See* Izzo Obj. at 44.

[111] Izzo Objection at 50.

the issues of the case through their review of pleadings and relevant documents and their communications with Plaintiffs' Counsel.[112] This should end the inquiry.

Izzo's primary contention is that she is better suited to lead the Class because she owns more AMC shares than Plaintiffs.[113] This argument is meritless, as the size of a proposed class representatives' stake does not undermine adequacy and cannot be viewed as an "antagonistic" interest.[114] Moreover, Izzo cites no authority for the proposition that an objector's holdings compared to those of proposed class representatives is relevant to adequacy.

Regarding Franchi, Izzo also argues that he did not hold his shares at the time of the "wrongs complained of" (*i.e.*, the issuance of the APEs).[115] But Franchi did not allege that the issuance of the APEs was "a wrong," nor did he assert a §242(b) claim. Franchi has held AMC Common Stock since November 8, 2022,[116] well

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[112] Franchi Affidavit, ¶¶3-5; Allegheny Affidavit, ¶¶3-6.

[113] Izzo's submission shows that she owns 3,106 common shares, out of a total of over 519 million common shares, amounting to 0.000006% of the common stock base. Ironically, Izzo holds more APEs (4,244 units) than Common Stock (Izzo Obj. at 18-19), and thus would benefit financially if the Settlement were rejected and the Conversion happened someday on worse terms to the Class. As Izzo's own counsel argues in her objection, this is a facial conflict of interest. *See* §II.B, *infra*.

[114] *See In re Straight Path Commc'ns Inc. Consol. S'holders Litig.*, C.A. No. 2017-0486-SG at 9 (Del. Ch. May 16, 2022) (TRANSCRIPT) (finding that a class representative with three shares was adequate, over defendants' objection).

[115] Izzo Obj. at 43.

[116] Franchi Affidavit, ¶2.

before the announcement of the Conversion.

Izzo also disparages Franchi's purported history of "sue-and-settle" litigation.[117] But Franchi's involvement in past litigation does not render him inadequate. In fact, this Court recently ruled that Franchi had adequately represented a class of stockholders in *In re Multiplan Corp. S'holders Litig.*,[118] resulting in a $33.75 million recovery. Franchi is also serving as a lead plaintiff in *In re Carvana Co. S'holders Litig.*, a class and derivative action that overcame a motion to dismiss before Chancellor McCormick.[119] Note that this Court has held, in the context of a contested lead plaintiff motion, that an individual stockholder's participation in multiple prior actions that were voluntarily dismissed was not disqualifying, especially where the plaintiff's chosen counsel had a strong reputation.[120]

Regarding Allegheny, Izzo's attacks on its history in representative litigation are specious. Allegheny is the lead plaintiff in a federal securities class action that is currently in discovery.[121] Allegheny also served as a lead plaintiff in the successful prosecution of *Cyan v. Beaver County Employees Retirement Board*,

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[117] Izzo Obj. at 43.

[118] No. 2021-0300-LWW (Del. Ch. Mar. 1, 2023) (final order at ¶¶4-5).

[119] 2022 WL 2352457 (Del. Ch. June 30, 2022).

[120] *See In re Tangoe, Inc. S'holders Litig.*, C.A. No. 2017-0650-JRS, at 40-41 (Del. Ch. Nov. 9, 2017) (TRANSCRIPT).

[121] *Allegheny Cty. Emps.' Ret. Sys. v. Energy Transfer, L.P.*, No. 20-200 (E.D. Pa).

resulting in an historic victory for stockholders' rights under the federal securities laws.[122]

Izzo also asserts that "Allegheny is a pension fund, not an Ape."[123] This is correct, yet is irrelevant. All AMC stockholders have the same rights. Allegheny is a class member, its interests are fully aligned with the interests of the class, it retained experienced counsel, and acted to protect the Class. And while Izzo may hold herself out as an Ape, she is economically aligned with APEs, unlike Allegheny.[124]

Franchi's and Allegheny's interests are completely aligned with the Class, and Izzo's criticisms of Lead Plaintiffs should be rejected.

B. Izzo Is Cannot Lead the Class

According to her objection, Izzo "intends to intervene and seek leadership of the Class following resolution of the present motion."[125] Of course, resolution of the present motion should resolve the case. But in any event, Izzo owns more APE than Common Stock (unlike Franchi or Allegheny) and is therefore inadequate due to her antagonistic interest with the Class. Specifically, Izzo's counsel admits that:

[T]he conflict involves antagonistic interests between AMC Common

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[122] 138 S.Ct. 1061 (2018)

[123] Izzo Obj. at 17.

[124] Izzo does not explain how a political contribution by a union fund with no connection to this case compromises Plaintiffs' counsel's independence here. *See* Izzo Obj. at 16-17, 43-44.

[125] *Id.* at 19.

> stockholders and Preferred unitholders as much as between the Class and directors. Apart from Defendants, all AMC Common stockholders during the class period are members—even if they own more APEs than Common, would profit from the Transaction, and would lose their windfall if it were enjoined.[126]

Izzo is inadequate to serve as a representative party, as she would personally benefit if the Settlement were denied, and the Conversion proceeded on terms less favorable than the Settlement (for example following implementation of the amendments to §242(d)).

Izzo's objection to the Settlement brings to the fore an unfortunate reality facing Plaintiffs and the Court alike. Some objectors hold themselves out as aligned with the Class but hold opaque competing interests.[127] Others among the "objectors" may present as genuinely having concerns about the Settlement, while profiting from delay, denial of the Settlement, or even bankruptcy of the Company.

C. Moving to Lift the *Status Quo* Order Does Not Impugn Plaintiffs' Counsel's Adequacy

The Form Objectors challenge Plaintiffs' counsel's adequacy based on the filing of the motion to lift the *status quo* order.[128] Plaintiffs respectfully submit that there were informed, good-faith reasons to join with Defendants to seek leave for prompt partial performance of the Settlement, including to shield the Class from

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[126] *Id.* at 40.

[127] *See* n.62, *supra*.

[128] Form Obj. at 19.

market risk, to minimize the degree to which this case persisted as an arbitrage opportunity, and to more promptly ease the financial pressure on AMC.

Plaintiffs also believe that this Court has, under certain circumstances, allowed pre-final approval, partial performance in live corporate transaction situations when appropriate. For example, in *In re WM. Wrigley Jr. Company Shareholders Litigation*, the Court approved a previously performed settlement, explaining:

> In the settlement, the defendants agreed to modify the terms of the merger agreement by reducing the termination fee by 10% and shortening by three months the "tail" period for payment of a termination fee …, and also by modifying and supplementing the disclosures contained in the proxy materials…. *The parties advised the court that a settlement had been reached and sought the court's agreement that the formal settlement hearing might be held shortly after the effective date of the merger. Due to the exigencies of the situation and the impracticality of delaying consummation of the $23 billion merger to accommodate a hearing before the closing, the court agreed.* Later … the parties entered into a stipulation of settlement dated September 18, 2008.[129]

In such scenarios, the Court retains it critical role in overseeing the fairness of

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[129] 2009 WL 154380 (Del. Ch. Jan. 22, 2009); *see also*, *Louisiana Municipal Police Employees' Retirement System v. Tilman J. Fertitta, et al*., C.A. No. 4339-VCL, Trans ID 31260010(Del. Ch. May 23, 2010) (a negotiated "go-shop" period and other deal improvements to go forward prior to the settlement hearing); *Louisiana Municipal Police Employees' Retirement System v. Edwin Crawford, et al*., C.A. No. 2635-CC, at 8-9 (Del. Ch. June 1, 2007) Trans. ID 15088057 (allowing a negotiated special dividend to be paid prior to closing a merger "[a]fter receiving leave of Court," and "without first obtaining judicial approval of the Settlement.").

class action settlements, as no release will be given, or fee awarded, before final approval. Plaintiffs intended for the motion to lift the *status quo* order to be consistent with the teaching of *In re SS&C Technologies., Inc., Shareholders Litigation* regarding the importance of "advis[ing] the court when some exigent circumstance makes it difficult or impossible to give the necessary notice and seek formal approval before the performance of some part of the settlement."[130]

Plaintiffs fully appreciate that the Court did not agree that the parties established good cause pre-approval partial performance. Plaintiffs' counsel respectfully submit that this misstep in no way diminishes their adequacy in connection with the proposed Settlement.

D. The Class Is Properly Certified with No Opt-Out Right

This case presents a paradigmatic example of a non-opt-out class action,[131] and this Court routinely grants certification of such actions under Rules 23(b)(1) and/or (b)(2), exclusively. The Settlement was negotiated and is proposed to the Court under those two subparts of Rule 23(b).

Izzo nevertheless asks the Court to write opt-out rights into the Settlement Agreement,[132] and some objectors purport to opt-out. The Court should not do so.

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[130] 911 A.2d 816, 819 (Del. Ch. 2006).

[131] *See* Br. at 44-50.

[132] Izzo Obj. at 38.

While this Court has some leeway to grant opt-outs in Rule 23(b)(2) classes, doing so absent exceptional circumstances defeats the efficiency and purpose of the class action mechanism.[133] Where, as here, the claims involve "'one set of actions by defendants creating a uniform type of impact upon the stockholders,'" opt-out rights are inappropriate.[134] To provide an opt-out here would "create a risk of inconsistent judgments, and would ... require 'devotion of scarce judicial resources' to a relatively repetitive exercise."[135]

Izzo's reliance on *In re Celera Corp. S'holder Litig.*[136] is misplaced. The "unique circumstances" of that case included the company's single largest outside investor—eventually holding almost 25% of the company's common stock—buying shares while the case was pending for the purpose of pursuing money damage claims. Meanwhile the parties agreed to resolve the equitable claims of a merger litigation, but purported to release the money damage claims as well.[137]

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[133] *Nottingham Partners v. Dana,* 564 A.2d 1089, 1101 (Del. 1989) ("The ability to opt-out of the class always involves the potential for a multiplicity of lawsuits and variations in adjudication which class actions are intended to prevent.")

[134] *In re Straight Path Commc'ns Inc. Consol. S'holder Litig.*, 2022 WL 2236192, at *10 (Del. Ch. June 14, 2022) (in a merger class action, "it is virtually never the case that there is any legitimate basis that 'a defendant might be found liable to some plaintiffs and not to others.'").

[135] *Id.*

[136] 59 A.3d 418 (Del. 2012).

[137] *Id.* at 436.

The Delaware Supreme Court made a unique exception to the presumption that Rule 23(b)(2) classes are non-opt-out to accommodate the 24.5% holder, which had counsel and was "prepared independently to prosecute a clearly identified and supportable claim for substantial money damages, and the only claims realistically being settled at the time of the certification hearing nearly a year after the merger were for money damages."[138]

That unique scenario does not exist here for two reasons. *First*, equitable claims and relief plainly predominate the Rule 23 analysis as lifting the *status quo* order to allow the recapitalization to proceed is a central part of the Settlement. *Second*, Izzo has just 0.000006% of the common stock of AMC, and offers no basis for pursuing opt-out rights other than an ideological one. She certainly does not "clearly identif[y] an[y] supportable claim" that the Court might otherwise find is reasonably compromised under the Rule 23(b)(2) class mechanism. None of the other purported opt-outs have identified any such claims either, retained counsel, or exhibited any interest or ability to litigate separately for additional value.[139]

Izzo relies on that *Prezant v. De Angelis* for the premise that a class settlement violates due process if the lead plaintiffs are not seeking relief "thought to be what

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[138] *Id.* at 426, 436.

[139] Plaintiffs cannot locate a single Delaware case since *Celera* that permitted opt-outs from a (b)(1) or (b)(2) class, and Izzo does not cite any.

would be desired by the other members of the class."[140] Izzo ignores that *Prezant* is an extreme case, where a rogue forum-shopping plaintiff sought to push through a class settlement in Delaware on terms previously rejected by plaintiffs in an earlier-field federal case.[141] The federal plaintiffs objected, and the Delaware Supreme Court reversed the settlement's approval.[142] Conversely, Izzo offers no indication that Plaintiffs here seek relief not desired by the rest of the Class, beside the purported desire of a miniscule fraction of stockholders to opt out rather than receive millions of additional shares on a *pro rata* basis.

Indeed, while AMC's uniquely online investor base has submitted a large number of purported objections, only about 2,850 of AMC's approximately 3.8 million stockholders made timely submissions, representing only about 0.0007% of the total.[143] Thus well over 99.99% of AMC's stockholders have not objected despite the social media circus. Izzo asserting that a highly vocal fraction of a percent of the stockholder base is representative of a critical mass of AMC stockholders is unfounded.

The number seeking to opt-out is even lower. About 312 submissions can

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[140] Izzo Obj. at 39.

[141] 636 A.2d 915, 918-19 (Del. 1994).

[142] *Id.* at 920, 926.

[143] Other than short-selling Ursa, not a single one was an institution.

fairly be interpreted as an opt-out request. Many may not appreciate that opting out involves giving up the benefits of the Settlement to preserve claims they do not intend to pursue, as the thrust seems to be objection to the lawsuit itself. Given the substantial benefits of the settlement, the global settlement here far outweighs the concerns of less than 0.0001% of AMC stockholders who *may* wish to opt-out.

E. Notice Here Comports with Due Process

The parties have complied with the comprehensive notice process set forth in the Scheduling Order, which the Court approved as "the best notice practicable under the circumstances."[144] This included mailed "postcard" notice and repeated publication notice. Defendants and/or the Notice Administrator will file proof of compliance with the notice requirements, including of mailing postcards, no later than June 22, 2023.[145]

Many submissions to Plaintiffs complain about not receiving the postcard, or not receiving it in sufficient time to prepare an objection. Regardless of whether these submissions are interpreted as *objections*, they provide no basis to reject the Settlement.

First, those making submissions to Plaintiffs' counsel necessarily *know about the Settlement* and their right to object, negating any due process issues. The

[144] Trans. ID 69929995, ¶11.

[145] *Id.*, ¶16.

proposed Settlement has garnered a staggering level of attention on Reddit, Twitter, and elsewhere, and the voluminous communications to the parties and the Court demonstrate that the AMC stockholder base was generally aware of the Settlement and the right to object. Plaintiffs' counsel made reasonable best efforts to ensure that all putative Class members who emailed or called received a copy of the full Notice, along with instructions for filing objections and links to Lead Counsel's AMC case pages. Plaintiffs' counsel communicated with thousands of stockholders during the notice period—on the phone, through individual email exchanges, and through automated responses.

Second, no system for mailed notice to stockholders is perfect, most commonly because brokers—nonparties generally outside of the direct authority of the Court—do not always provide timely contact information (or at all) for all their beneficial holders. This Court has repeatedly recognized this issue, and when parties make reasonable best efforts to comply with ordered notice procedures will *not* block resolution of class actions due to broker inaction.[146] The multi-pronged notice

[146] *See, e.g.*, *Activision*, 124 A.3d at 1060-61 ("Notice need only be sent to record holders…. 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") (quoting *Am. Hardware Corp. v. Savage Arms Corp.*, 136 A.2d 690, 692 (Del. 1957)); *In re Protection One, Inc., S'holders Litig.*, C.A. No. 5468-VCS, at 44 (Del. Ch. Oct. 6, 2010) (TRANSCRIPT) (describing as "frivolous" an objector's claim that they never received mailed notice: "And then they claim they can file a late objection because

process here sought to address these issues, by providing multiple means of notice.[147]

III. OBJECTIONS TO THE FEE, EXPENSE, AND INCENTIVE AWARD ARE CONCLUSORY AND FAIL TO REBUT THE STRONG SUPPORT IN THE AWARD'S FAVOR

A. The Fee Request Is Reasonable

"[T]he first and most important of the *Sugarland* factors" is "the benefit achieved."[148] The Settlement here would provide the Class with approximately 6.9 million shares of AMC Common Stock, valued by Plaintiffs' expert at $129,067,486.45 as of May 3, and at $114,091,860.88 as of June 6. It is one of the largest recoveries in Delaware class action history. A $20 million fee represents just 15.5% and 17.5%, respectively, well within the range of precedent.[149]

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they didn't get mail notice, when they never were a record holder.... That is called frivolous.").

[147] Izzo invites the Court to "revisit *Activision*'s thesis," asking the Court to require Plaintiffs' counsel (who did not even have responsibility for settlement administration here) to provide notice "in fact," including by *suing brokers* for breach of duty. Izzo Obj. at 45 n.138. It should not. Perhaps an attempt to undermine the class action mechanism as much as anything else, as Izzo's counsel do not explain (i) how nonparty brokers would be made subject to the Court's Scheduling Order; (ii) what actionable "duty" brokers owe to class counsel; or (iii) why the Court should impose on parties (and itself) notice obligations well above the defined contours of due process required by Rule 23. *See generally*, *In re PLX Tech. Inc. S'holders Litig.*, 2022 WL 1133118, at *5 (Del. Ch. Apr. 18, 2022) (noting that DTC and its participants are "not parties … and the court can neither order them to respond, nor direct them to provide" information to the parties' counsel).

[148] *Ams. Mining Corp. v. Theriault*, 51 A.3d 1213, 1255 (Del. 2012); Br. at 51-53.

[149] Br. at 57-60.

The percentage fee is even lower when the value actually provided *to the Class* is compared to common fund cases. Unlike cases like *El Paso* and *GCI*, where the $110 million cash recoveries were gross of fees, the requested fee here does not diminish the recovery. The 6.9 million shares, valued in the nine figures, are going ***entirely*** to the Class. Any fee award is separate, and will likely be paid by AMC's insurers.[150] Thus, if the Class receives shares worth $129 million, a $20 million fee award implies the common fund equivalent of a $149 million total recovery. A $20 million fee on a $149 million recovery translates to an award percentage of just 13.4%. If the Class's shares are instead valued at $114 million, the award percentage is roughly 15%.

Plaintiffs achieved substantial financial benefits in negotiating approximately 6.9 million Settlement shares. Because the *Sugarland* factors support the requested award,[151] Plaintiffs respectfully request that the Court approve the requested $20 million award.

B. None of the Scattershot Objections to the Proposed Award Have Merit

First, objectors dispute the value of the Settlement shares but provide no cogent alternative valuation. Izzo demands the Settlement value be halved

[150] Trans. ID 69906464 at 20.

[151] *See* Br. at 52-60.

(apparently picking a fraction at random) because she divines that the stock price might decline.[152] If Izzo's counsel had any credible analysis to support this conclusion, surely they would have presented it.

Second, objectors question the value of fractional shares in the Settlement, suggesting that small stockholders may receive nothing.[153] This assertion reflects a misunderstanding. Every holder of Common Stock at the Settlement Class Time will receive the full value of the Settlement consideration for their shares, paid in shares and/or stub cash.

Third, citing the recent transcript in *In re Symantec Corporation Stockholder Derivative Litigation*, Izzo argues that the fee should be 10%.[154] There, a "tagalong" derivative action settled for $12 million on the heels of a $70 million securities class action settlement. In what Vice Chancellor Laster characterized as "a quite early settlement," the plaintiff settled when "there was no discovery.... So it's just not accurate to say that [it] was a meaningful litigation efforts case."[155]

Here, Plaintiffs filed thoughtful and robust complaints after carefully investigating their fiduciary duty claims arising from an exceptionally complex form

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[152] *See* Izzo Obj. at 47-48.

[153] *Id*. at 8.

[154] C.A. No. 2019-0224-JTL, at 42-43 (Del. Ch. May 4, 2023) (TRANSCRIPT).

[155] *Id*.

of financial engineering, without any prior-filed action as a guide. Plaintiffs then defeated Defendants' opposition to expedited treatment, worked out a detailed discovery protocol, served document requests and third-party subpoenas, reviewed over 56,000 pages of Defendants' documents and over 2,500 pages of third-party documents, and retained and working with multiple experts before conducting an intensive mediation with former Vice Chancellor Slights. These steps were all taken during the crush of expedited litigation.

The Form Objectors suggest some kind of conspiracy to settle before depositions, accusing Plaintiffs of "thwarting and impeding the ongoing litigation to preclude stockholders from uncovering the facts."[156] But Plaintiffs and their counsel—aligned with the Class in maximizing recovery—exercised their judgment as to when the threat of the injunction offered the best leverage. Moreover, depositions were not likely to change the central story told by the documents: the merits of the *Blasius* claim were very strong, but the financial reality made a pre-hearing settlement the Class's most attractive option.

Where, as here, litigation efforts prior to depositions are meaningful, this Court has awarded fees exceeding the percentages implied by Plaintiffs' request.[157]

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[156] Form Obj. at 1.

[157] *See, e.g.*, *City of Monroe Emps' Ret. Sys. v. Murdoch*, C.A. No. 2017-0833-AGB, at 30, 49 (Del. Ch. Feb. 9, 2018) (TRANSCRIPT): (25% of $90 million recovery following pre-complaint books and records investigation); *Baker v. Sadiq,* 2016 WL

Fourth, objectors downplay Plaintiffs' real contingency risk.[158] Victory in this complex and novel litigation was hardly assured. Plaintiffs invested millions of dollars of time and money, assumed 100% of the risk, and pursued claims they believed were important, knowing that AMC's dire financial situation might prevent any recovery even if they proved their *Blasius* claims. Tellingly, no objector credibly addressed Defendants' substantive defenses.[159] Denial of Plaintiffs' injunction motion would have resulted in the Class—and Plaintiffs' Counsel—receiving nothing. This substantial contingency risk justifies the requested award.[160]

Izzo repeatedly insinuates that Plaintiffs cut off the case early because an

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4375250, at *7 (Del. Ch. Aug. 16, 2016) (20% of recovery where plaintiff prevailed on a motion to dismiss but conducted just one confirmatory deposition); *In China Agritech, Inc. S'holders Deriv. Litig.,* C.A. No. 7163-VCL (Del. Ch. Feb. 13, 2015) (TRANSCRIPT) (20.7% of recovery after books and records inspection but before depositions); *In re China Integrated Energy, Inc. S'holders Litig.,* C.A. No. 6625-VCL (Del. Ch. Dec. 2, 2015) (TRANSCRIPT) (26% of after books and records inspection but before motion to dismiss, with no depositions); *In re ArthroCare S'holder Litig.,* C.A. No. 9313-VCL (Del. Ch. Nov. 6, 2014) (TRANSCRIPT) (17.5% of the recovery where parties settled during expedited discovery before depositions, with only an unopposed motion to expedite); *In re Josephson Int'l, Inc.*, 1988 WL 112909 (Del. Ch. Oct. 19, 1988) (18% when case settled after ten days of document discovery).

[158] *See, e.g.*, Izzo Obj. at 49; Form Obj. at 38.

[159] Def. Br. at 19-34.

[160] *Sciabacucchi v. Salzberg*, 2019 WL 2913272, at *8 (Del. Ch. July 8, 2019), *judgment entered*, (Del. Ch. 2019), *vacated*, 2020 WL 1985048 (Del. Ch. April 24, 2020) (holding that contingency risk and relative complexity of case supported the fee request).

injunction was "risky" for counsel.[161] While Izzo's counsel's lack of respect is perhaps unsurprising, this assertion lacks basis in reality. Plaintiffs' counsel have tried more than 10 cases to this Court in just the past five years and have no problem investing heavily against massive opposing litigation teams when in the best interest of stockholders. Plaintiffs' counsel also believe they are qualified to make reasonable determinations when to recommend a pre-injunction settlement.

Fifth, Izzo's criticism of the implied multiplier ignores those approved in comparable cases.[162] Additionally, though Plaintiffs' counsel do not seek fees for post-settlement hours, in the unique circumstances of this case it is appropriate to consider the unprecedented demands—on counsel and their staff—to respond to a blizzard of motions and social media-fueled objections to protect a Settlement that they believe is clearly in the best interests of the Class.

Sixth, the Form Objection's authors claim that Plaintiffs relied on "nearly unlimited free resources and due diligence performed by retail shareholders on the internet," who were "subject matter experts."[163] Respectfully, whether or not they are, Plaintiffs' counsel did not. Devising the case concept and prosecution strategy here tested every bit of Plaintiffs' counsel's extensive legal and financial experience.

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[161] *See* Izzo Obj. at 4, 21, 39 and 49.

[162] *See, e.g.*, *Ams. Mining*, 51 A.2d at 1255; *see also* Br. at 58 (collecting cases).

[163] Form Obj. at 38.

Plaintiffs also retained Loop and Okapi, at considerable expense, to consult on the Action and help Plaintiffs achieve the Settlement.

Seventh, Izzo wants the attorneys' fee to be paid in the form of AMC stock.[164] Putting aside that issuing shares to counsel would dilute the Class (truly diminishing the benefits achieved), they cite no Delaware authority for this notion.[165] The Class also benefits by a cash payment because it will likely be paid by insurers.

Finally, citing zero authority, Izzo asks the Court to bifurcate the Settlement and fee hearings.[166] As the requested award will not be deducted from the Settlement consideration, this suggestion offers no benefit to the Class and merely shows a desire to complicate the proceedings.

C. Lead Plaintiffs Deserve Incentive Awards.

The Form Objectors concede that it "is incontrovertible that the Lead Plaintiffs have met the first factor in *Raider v. Sunderland*," *i.e.*, the time, effort, and expertise expended by the class representative.[167] They take issue with the second factor—the benefit to the class—but this critique fails for the reason discussed

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[164] Izzo Obj. at 35 n.110.

[165] While Izzo references a Texas rule of civil procedure, Delaware has no similar rule. Izzo Obj. at 48 n.145 (citing Tex. R. Civ. P. 42(i)(1)).

[166] Izzo Obj. at 48.

[167] Form Obj. at 42.

above.[168] Plaintiffs' efforts in the case (and the negativity endured from some corners of the online community) justify modest service awards of $5,000, which will be paid exclusively from Class Counsel's fee and will not diminish the consideration paid to the Class.[169]

CONCLUSION

Plaintiffs respectfully request that the Court grant the Motion.

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Respectfully submitted,

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

By: /s/ *Gregory V. Varallo*
Gregory V. Varallo (#2242)
Daniel E. Meyer (#6876)
500 Delaware Avenue, Suite 901
Wilmington, DE 19801
(302) 364-3601

GRANT & EISENHOFER P.A.

By: /s/ *Michael J. Barry*
Michael J. Barry (#4368)
Kelly L. Tucker (#6382)
Jason M. Avellino (#5821)
123 Justison Street, 7th Floor
Wilmington, DE 19801
(302) 622-7000

SAXENA WHITE P.A.

By: /s/ *Thomas Curry*
Thomas Curry (#5877)
824 N. Market St., Suite 1003

Of Counsel:

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
Mark Lebovitch
Edward Timlin
1251 Avenue of the Americas
New York, NY 10020
(212) 554-1400

FIELDS KUPKA & SHUKUROV LLP
William J. Fields
Christopher J. Kupka
Samir Shukurov
1441 Broadway, 6th Floor #6161
New York, New York 10018
(212) 231-1500

SAXENA WHITE P.A.
David Wales
10 Bank St., 8th Floor
White Plains, NY 10606
(914) 437-8551

[168] *See* §I.A.2, *supra*.

[169] *See* Br. at 60-63 (collecting cases).

– and –

Adam Warden
7777 Glades Rd., Suite 300
Boca Raton, FL 33434
(561) 394-3399

Wilmington, DE 19801
(302) 485-0483

Attorneys for Plaintiffs

WORDS: 13,971