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Case No. 2023-0215-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ALLEGHENY COUNTY EMPLOYEES RETIREMENT SYSTEM, on behalf of itself and all other similarly-situated Class A stockholders of AMC ENTERTAINMENT HOLDINGS, INC.,	)	C.A. No. 2023-_____
Plaintiff,	)	
v.	)	
AMC ENTERTAINMENT HOLDINGS, INC., ADAM M. ARON, HOWARD W. KOCH, KATHLEEN M. PAWLUS, ANTHONY J. SAICH, PHILIP LADER, GARY F. LOCKE, and ADAM J. SUSSMAN,	)	
Defendants.	)	

BRIEF IN SUPPORT OF PLAINTIFF ALLEGHENY COUNTY EMPLOYEES RETIREMENT SYSTEM'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND EXPEDITED PROCEEDINGS

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PRELIMINARY STATEMENT

This Action challenges a course of complex corporate engineering by the Defendants—described by Defendant Aron, AMC's CEO and Chairman, as an exercise in "3-D chess"—devised to achieve a simple aim: eviscerating the voting power of AMC's Class A stockholders in order to force through approval of a proposed dilutive share count increase that those stockholders had repeatedly rebuffed and were not willing to support at the corporate ballot box.

Specifically, on two separate occasions in 2021, AMC's Board proposed to amend AMC's certificate of incorporation to increase the total number of authorized shares of Class A common stock. In both cases, the Board was forced to withdraw its proposed increase following intense stockholder opposition. It was clear that the Company's existing stockholders would not support the proposed increase. The Board did not have the votes. Rather than respect the will of its stockholder constitutents, however, the Board responded by launching a scheme to circumvent stockholder opposition by reconstituting their electorate and eviscerating the voting power of the Company's Class A stockholders before resubmitting its desired share count increase to stockholders.

That scheme—Aron's game of "3-D chess"—is now approaching its endgame. As detailed in Plaintiff's Complaint and below, AMC has, in response to Class A stockholders' refusal to support a dilutive share count increase: (i) issued

new investors millions of new voting securities—"APE" depositary shares corresponding to newly issued shares of Preferred Stock; (ii) incentivized those new investors to support an increase in the number of outstanding Class A common shares; and (iii) scheduled a collective vote of all stockholders, to be held on March 14, 2023, on a series of Proposals, including to increase the number of authorized Class A shares and to convert the Company's newly-issued APE units into shares of Class A common stock on a 1-for-1 basis.

As the APE units trade at a significant discount to Class A shares, the Company's Class A stockholders will incur significant dilution and economic harm if the Proposals pass. And, if the vote goes forward as planned on March 14, 2023, the Proposals will almost certainly pass because Defendants have stacked the deck to ensure that result: there are now significantly more APEs than shares of common stock, the APE holders are strongly incentivized to support a dilution of the Class A stockholders, the largest single APE holder has signed a voting agreement to support the Proposals, and—perhaps most striking of all—AMC has entered a highly unusual agreement with the Company's depositary holding the Preferred Stock which requires the depositary to vote shares corresponding to *all* uninstructed APEs in proportion with the votes of APEs that are cast (referred to in Plaintiff's Complaint as the "Depositary Voting Requirement").

It is plain that Defendants' entire course of conduct following the Class A stockholders' rejection of the Board's proposed share count increase—including the issuance of the Preferred Stock, the sale of APEs to new investors, the adoption of the Depositary Voting Requirement, and now the submission of the Proposals to an imminent vote—has been engineered to achieve a single result: eviscerating the ability of the Company's Class A stockholders to continue their effective opposition to the Board's desired share count increase. This course of conduct constitutes a breach of fiduciary duty under the *Blasius* standard, which is implicated where a Board, without compelling justification, "*takes steps to reverse the likely result [of a stockholder vote] (e.g., by reducing the voting power of a particular stockholder).*" *Nevins v. Bryan*, 885 A.2d 233, 252 (Del. Ch. 2005) (emphasis added), *aff'd*, 884 A.2d 512 (Del. 2005). Moreover, because the issuance of the Preferred Stock adversely affected the voting rights of the Class A common stockholders, Section 242(b)(2) of the DGCL mandated a vote of Class A common stockholders thereon—but none was held.

These breaches of fiduciary duty and violations of law demand equitable relief, including an Order providing the Class A common stockholders a separate class vote on the pending Proposals—the very vote that Defendants' misconduct has been engineered to circumvent. Plaintiff seeks this relief though the present Action and intends to seek a preliminary injunction in advance of any vote on the pending

Proposals. There is not, however, sufficient time for Plaintiff to build the necessary discovery record between now and the vote scheduled for March 14, 2023. Accordingly, Plaintiff seeks an Order temporarily restraining Defendants from proceeding with the planned vote on the Proposals until Plaintiff has had the opportunity to take expedited discovery in support of its claims and to present a motion for a preliminary injunction for this Court's consideration. Plaintiff proposes that the planned vote be postponed for sixty (60) days from expedition to allow for expedited discovery and a hearing on Plaintiffs' motion for a preliminary in junction. As detailed below, Plaintiff meets the standards for a temporary restraining order and for expedition.

FACTUAL BACKGROUND

I. AMC'S CLASS A STOCKHOLDERS REPEATEDLY OPPOSE DEFENDANTS' PROPOSALS TO ISSUE NEW CLASS A SHARES

AMC's operative certificate of incorporation prior to the events giving rise to this action authorized the issuance of 650,000,000 shares, consisting of: (i) 524,173,073 shares of Class A common stock, (ii) 75,826,927 shares of high-voting Class B common stock[1] and (iii) 50,000,000 shares of Preferred Stock.

[1] The Class B Common Stock were subsequently retired.

Holders of each share of Class A Common Stock are entitled to 1 vote per share. ¶26.[2]

As of June 3, 2021, the Company had 513,330,240 shares of Class A Common Stock issued and outstanding and 10,796,709 shares of Common Stock reserved for issuance under the Company's Equity Incentive Plan. Accordingly, the Company only had 46,124 shares of Class A Common stock available for issuance. ¶33.

On January 27, 2021, the Board approved a proposal to amend the Charter to increase the total number of authorized shares of Class A Common Stock the Company could issue by 500,000,000 shares to a total of 1,024,173,073 shares. The Board scheduled the Company's 2021 annual meeting of stockholders for May 4, 2021 at which time stockholders—consisting only of common shares—would vote on that proposal. Following backlash from the common stockholders, however, the Board determined on April 27, 2021 to withdraw the proposal from the agenda for the 2021 Annual Meeting. ¶¶35-39.

Subsequently, on May 4, 2021, AMC announced the Board had postponed the Annual Meeting and rescheduled it for July 29, 2021. According to a preliminary proxy issued by the Company on July 3, 2021, the Board approved a new proposal to amend the Charter to increase the total number of authorized shares of Class A Common Stock the Company could issue by 25,000,000 shares (5% of the increase

[2] Citations to "¶__" are to the Verified Class Action Complaint.

requested in the first proposal) to a total of 549,173,073 shares of Class A Common Stock effective January 1, 2022, which was to be voted on by stockholders—consisting only of common shares—at the rescheduled 2021 Annual Meeting. ¶¶40-41.

Once again, the proposal was met with significant backlash and, on July 6, 2021, the Company announced that it would no longer seek stockholder approval of a share count increase and withdrew it from the agenda for the 2021 annual meeting. ¶45.

II. DEFENDANTS ISSUE NEW PREFERRED STOCK AND CORRESPONDING APES

On August 4, 2022, AMC announced that it was creating a new class of securities known as AMC Preferred Equity units ("APE(s)") to be issued initially to existing holders of the Company's common stock as a special dividend. ¶50.

On August 4, 2022, AMC filed a Certificate of Designations (the "Certificate of Designations") which designated 10,000,000 shares of the Company's authorized preferred stock as Series A Convertible Participating Preferred Stock (the "Preferred Stock"). Each AMC Preferred Equity Unit ("APE") is a depositary share and represents an interest in one one-hundredth (1/100th) of a share of Preferred Stock. Each Preferred Share was designed to be equivalent (in economic and voting rights) to 100 Common Shares. ¶51.

The Defendants needed a way to ensure that they could over-ride the will and expected vote of the common shareholders who vocally opposed further dilution of their shares. As such, the Certificate of Designation provided:

> Prior to the Conversion Date, Holders [of the APEs] are entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Preferred Stock held by such holder are then convertible based on the Applicable Conversion Rate as of the record date for determining stockholders entitled to vote . . .

¶¶51-52; see Certificate of Designations attached as "Exhibit A" at 5.

In an August 4, 2022, Open Letter to the common stockholders, AMC's CEO stated in relevant part, that ". . . each APE is designed to have the same rights as a common share . . ." ¶56. See Open Letter attached as "Exhibit B" at 2.

Despite this representation, the "Deposit Agreement" among the Company, Computershare Inc. and Computershare Trust Company, N.A., contained a unique voting provision—not reflected in the Certificate of Designations, the Charter or the Bylaws—requiring the Depositary to vote all of the Preferred Stock regardless of whether all of the APE holders actually cast a vote:

> In the absence of specific instructions from Holders of Receipts, the Depositary will vote the Preferred Stock represented by the AMC Preferred Equity Units evidenced by the Receipts of such Holders proportionately with votes cast pursuant to instructions received from the other Holders.

¶54; see Deposit Agreement attachd as "Exhibit C" at 15.

The Defendants included this provision because they knew that retail investors, who held a significant majority of AMC's common stock, typically do not participate in shareholder votes at high rates, as reflected in their past annual votes. The impact of this provision would be to artificially inflate the voting power of the APEs at the expense of the common shareholders' voting rights. ¶¶55, 80.

There was no similar provision for the voting of the common shares. ¶10.

On August 19, 2022, AMC issued an initial 516,820,595 APEs to its 516,820,595 common stockholders as a special dividend. The APEs started to trade on the NYSE on August 22, 2022. The APEs traded at a substantial discount to the price of AMC common stock. ¶¶57-58.

The Defendants did not seek the vote of the common shareholders on the issuance of the preferred shares, despite adversely affecting the common shares. ¶14.

III. DEFENDANTS SELL APES TO NEW INVESTORS AND ENTER THE ANTARA DEAL

On September 26, 2022, AMC announced that it had entered into an equity distribution agreement with Citigroup Global Markets, Inc. to offer and sell 425,000,000 APEs from time to time in an At-The-Market Program ("ATM") offering. The size of the offering represented the total number of APEs authorized less a portion held back for equity awards under the EIP. ¶60.

On December 19, 2022, the Company announced that under the ATM program it had raised more than $162.4 million through the sale of more than 125.9 million APEs. ¶61.

On December 22, 2022, AMC announced that it had, through a series of transactions, sold or agreed to sell 257,621,297 APEs to Antara Capital LP ("Antara") at a weighted average price of $0.660 per APE. ¶62.

Part of the Defendants' scheme, including with this sale to Antara, was to undermine the voting rights of the common stockholders who had vocally opposed further dilution of their shares. The scheme included converting all APEs to common shares on a one to one basis, even though the APEs traded at a fraction of the price of the common stock, as the APEs would have a strong financial incentive to vote for the conversion. Specifically, the day before the announcement, December 21, 2022, the common stock closed at $5.30 and the APEs closed at $0.685. After the announcement of this plan, the price of the common stock declined while the price of the APE's jumped from $0.685 to $1.73 in two days. ¶66.

Pursuant to the terms of the agreements with Antara, AMC agreed to hold a special meeting of the Company's stockholders (the "Special Meeting") within 90 days for a vote to (A) amend the Company's Charter to increase the number of authorized shares of the Company's Class A common stock to a number at least sufficient to permit the full conversion of the then-outstanding shares of Preferred

Stock into Common Stock, or to such higher number of authorized shares of Common Stock as the Company's Board may determine in its sole discretion and (B) amend the Company's Charter to effect a 10 to 1 reverse-stock split of the Common Stock. Antara agreed to vote all APES in favor of the aforementioned proposals. ¶65.

After the announcement of this plan, the price of the common stock declined substantially while the price of the APE's jumped from $0.685 to $1.73 in two days. ¶66.

IV. DEFENDANTS SET A VOTE ON PROPOSALS TO ISSUE NEW CLASS A SHARES AND EFFECT A REVERSE STOCK SPLIT

On February 14, 2023, AMC issued its Definitive Proxy for a Special Meeting of stockholders scheduled for March 14, 2023 to vote on the following proposals:

> Proposal No. 1: To approve an amendment to the Charter to increase the total number of authorized shares of Common Stock from 524,173,073 shares of Common Stock to 550,000,000 shares of Common Stock;
>
> Proposal No. 2: To approve an amendment to the Charter to effectuate a reverse stock split at a ratio of one share of Common Stock for every ten shares of Common Stock, which together with the Share Increase Proposal, shall permit the full conversion of all outstanding shares of Series A Preferred Stock into shares of Common Stock.

¶67.

The Definitive Proxy provides that the common shares and the preferred shares will vote as a single class on these issues. As of February 14, 2023, the

Company had 517,580,416 shares of common stock and 929,849,612 APEs issued and outstanding. The APE's held by Antara represent 27.7% of the APE votes and 17.8% of the total votes allowed to vote at the Special Meeting. ¶68.

AMC's creation and issuance of preferred shares, its selling of such large numbers of APEs and the agreement with Antara that they will vote their APEs in favor of the conversion, has and will continue to usurp the common stockholders' voting power. This is especially so given the number of preferred shares issued and the provision in the depository agreement that all of the preferred shares will be counted as having voted, even if they did not vote. ¶68.

On February 14, 2023, AMC's common shares closed at $4.50 per share, while the APEs closed at just $2.34 per unit. ¶69. As a result, it is in an APE holder's self-interest to vote in favor of the aforementioned proposals. The Defendants have ensured that AMC will receive an increase in the total number of authorized shares of common stock it can issue despite the fact that the common shareholders have repeatedly made clear their opposition to being further diluted.

The common stockholders voting rights have been and will be adversely affected by these actions, they have not been provided with a vote as a class, and their voting rights have been overwhelmed by the Defendants' wrongful actions.

ARGUMENT

The standards governing motions for a temporary restraining order and expedited proceedings overlap. To obtain expedited proceedings, a plaintiff need only "articulate a sufficiently colorable claim and show a sufficient possibility of a threatened irreparable injury." *Gomi Inv'rs, LLC v. Schimmell Hldgs., Inc.*, 2006 WL 2304035, at *1 (Del. Ch. July 27, 2006). A temporary restraining order requires that the movant satisfy the same elements needed for expedition along with showing that the balance of the hardships weighs in its favor. *See CBS Corp. v. Nat'l Amusements, Inc.*, 2018 WL 2263385, at *6 (Del. Ch. May 17, 2018). Notably, Plaintiff's required showing on the merits is "less exacting" at the TRO stage than at the preliminary injunction stage because of the absence of expedited discovery and the limited time the Court has to address the issues. *Arkema Inc. v. Dow Chem. Co.*, 2010 WL 2334386, at *3 (Del. Ch. May 14, 2010). Rather, the "chief focus" when reviewing a TRO motion is "'the nature and imminence of the allegedly impending injury.'" *Id.*

Here, as detailed below, Plaintiff has met the relevant standards. Plaintiff has alleged more than colorable claims for breach of fiduciary duty and violation of the DGCL. Plaintiff has also shown a serious threat of corresponding irreparable harm that easily outweighs any inconvenience that might befall Defendants or other interested parties if the AMC stockholder vote on the pending Proposals is delayed.

Accordingly, Plaintiff's Motion should be granted and the Court should enter an Order granting expedition and restraining Defendants from proceeding with the planned March 14, 2023, vote on the Proposals until after there has been sufficient time for Plaintiff to take discovery and present a motion for a preliminary injunction.

I. PLAINTIFF'S CLAIMS ARE COLORABLE

In determining whether a Plaintiff has pled a colorable claim, "the Court will not pass on the ultimate likelihood of success." *County of York Emps. Ret. Plan v. Merrill Lynch & Co., Inc.*, 2008 WL 4824053, at *8 (Del. Ch. Oct. 28, 2008). Rather, the Court must accept the allegations within the Complaint as true and "ascertain whether, based on the allegations, a colorable claim or claims exist." *TCW Tech. Ltd. P'ship v. Intermediate Commc'ns, Inc.*, 2000 WL 1478537, at *2 (Del. Ch. Oct. 2, 2000). The standard of pleading a colorable claim is "if . . . not the lowest in our law, it is near the lowest." *In re USG Corp. S'holder Litig.*, Consol. C.A. No. 2018-0602-SG, at 25 (Del. Ch. Aug. 29, 2018) (TRANSCRIPT) (Trans. ID 62455205). A colorable claim "is essentially a non-frivolous cause of action." *Reserves Dev. Corp. v. Wilm. Trust Co.*, 2008 WL 4951057, at *2 (Del. Ch. Nov. 7, 2008). *See also Ehlen v. Conceptus, Inc.*, 2013 WL 2285577, at *2 (Del. Ch. May 24, 2013) (describing the colorable claim standard as "an almost superficial factual assessment in order to determine whether imposing the burdens resulting from expedition is warranted"); *Tera v. HC2*, C.A. No. 2020-0275-JRS, at *69 (Del. Ch.

Apr. 20, 2020) (TRANSCRIPT) (Trans. ID 65608468) (recognizing colorable claim standard "merely requires the plaintiff to present a nonfrivolous cause of action.").

Here, Plaintiff's claims are more than colorable. Delaware law is clear that "'where boards of directors deliberately employ[] various legal strategies either to frustrate or completely disenfranchise a shareholder vote . . . [t]here can be no dispute that such conduct violates Delaware law.'" *Coster v. UIP Companies, Inc*., 255 A.3d 952, 961 (Del. 2021) (quoting *Stroud v. Grace*, 606 A.2d 75, 91 (Del. 1992)); *see also Blasius Indus., Inc. v. Atlas Corp.*, 564 A.2d 651, 661 (Del. Ch. 1988) (where a Board action is "done for the primary purpose of impeding the exercise of stockholder voting power … ***the board bears the heavy burden*** of demonstrating a compelling justification for such action.") (emphasis added).

The *Blasius* standard of review applies where: "i) a stockholder vote or action by stockholder consent is imminent or threatened; and ii) the board purposely thwarts the opportunity for that vote or action to take place or takes steps to reverse the likely result (e.g., by reducing the voting power of a particular stockholder)." *Nevins v. Bryan*, 885 A.2d 233, 252 (Del. Ch.), *aff'd*, 884 A.2d 512 (Del. 2005). The *Blasius* standard is implicated in this case. The stockholder vote on the pending Proposals is imminent: the Definitive Proxy filed February 14, 2023, advised that the special meeting to vote on the proposals will be on March 14, 2023. And AMC has taken clear steps to reduce the voting power of the common stockholders in order

to reverse what would have been the likely result of the rejection of these proposals by the common stockholders. Indeed, in April and July of 2021, the Board was forced to withdraw two proposals to increase the number of Class A common shares because of the lack of support from shareholders. With the failure of these efforts to issue additional dilutive stock, AMC circumvented the will of the shareholders with its elaborate scheme that Aron likened to "3-D chess." When he announced the plan on August 4, 2022, Aron tweeted, "It is complicated, but it really is satisfying to play 3-D chess, especially if you know how to play it well."

By issuing the Preferred Shares, entitled to 100 votes per share, and entering into the Depositary Voting Requirement with the depositary and the multi-step agreement with Antara, the voting power of the Preferred Stock is effectively magnified against the voting power of the common shares. In short, AMC has attempted to rig the vote by creating an entirely new electorate, but Delaware has long recognized that "inequitable action does not become permissible simply because it is legally possible." *Schnell v. Chris-Craft Indus., Inc*., 285 A.2d 437, 439 (Del. 1971).

Plaintiff's claim based on the violation of DGCL Section 242 is equally colorable. Section 242(b)(2) states in relevant part, as follows:

> The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the certificate of incorporation, if the amendment would increase or decrease the aggregate number of authorized shares of such

> class, increase or decrease the par value of the shares of such class, or alter or change the powers, preferences, or special rights of the shares of such class so as to affect them adversely.

As set forth in the Complaint, the creation of Preferred Stock and the issuance of a Certificate of Designations constitutes an amendment to AMC's certificate of incorporation. The creation of the Preferred Shares, together with the Depositary Voting Requirement, adversely impacted the "powers, preferences or special rights" of the Company's outstanding shares of Class A common stock. Indeed, it was taken for the very *purpose* of adversely affecting the Company's Class A stockholders by eviscerating their voting rights and ensuring they would lose the ability to prevent the Board's desired share count increase. Under Section 242(b)(2), therefore, the common stockholders should thus have been entitled to a separate vote as a class on the proposals. By failing to seek approval from the common stockholders for the creation and issuance of the Preferred Shares, Defendants violated 242(b)(2).

II. PLAINTIFF AND THE PROPOSED CLASS FACE IRREPARABLE HARM ABSENT A TEMPORARY RESTRAINING ORDER AND EXPEDITION

On a motion for expedited proceedings or a temporary restraining order, a plaintiff must show only a "sufficient possibility of threatened irreparable injury." *Rohm & Haas Co. v. Dow Chem. Co.*, 2009 WL 445612, at *2 (Del. Ch. Feb. 6, 2009) (citation and quotation marks omitted) (addressing a motion to expedite); *CBS*, 2018 WL 2263385, at *6 (addressing a motion for a temporary restraining

order). Here, absent a temporary restraining order and expedition, Plaintiff and the other common stockholders of AMC will be damaged irreparably, with only highly speculative and hypothetical means of unwinding Defendants' proposed amendments to AMC's Charter and proposed conversion.

The pending vote sought to be temporarily enjoined is the culmination of Defendants' scheme to massively dilute the economic and voting interests of common stockholders through the impermissible issuance of APE units, in breach of the Board's fiduciary duty and violation of the DGCL, and in contravention of the clear will of common stockholders who have twice previously rejected Defendants' attempts to amend AMC's certificate of incorporation to issue additional Class A shares. If the vote goes forward as planned on March 14, 2023, then Defendants will have been successful at irreparably thwarting the will of the common stockholders through a transaction that will be impossible to unwind. *See, e.g.*, 14 Williston on Contracts § 43:15 (4th ed. 2020) (observing restrictions on an injured party's ability to unwind a transaction after closing); 2 Farnsworth on Contracts § 8.20, at 8-166 to 67 (4th ed. Supp. 2019) (same); *Gimbel v. Signal Companies, Inc.*, 316 A.2d 599, 603 (Del.Ch. 1974) ("While the remedy of rescission is available, it is not difficult to imagine the various obstacles to such a remedy including, tax consequences, accounting practices, business reorganizations, management decisions concerning capital investments, dividends, etc. and a host of other problems which as a practical

matter will make rescission very difficult indeed."). Indeed, if the March 14 stockholder vote goes forward and the Proposals are adopted, each existing APE unit will convert into shares of AMC common stock traded publicly on the NYSE—resulting in significant economic harm to the Company's existing Class A Stockholders.

If the Court were to later find that the conversion results from a breach of fiduciary duty or that the Preferred Stock was never properly authorized, it does not appear that there would be any practical means of unwinding that conversion—which, as noted above, would result in significant dilution of the economic and voting rights of AMC's common stockholders as a class. *See Police & Fire Ret. Sys. of City of Detroit v. Bernal*, 2009 WL 1873144, at *2 (Del.Ch., 2009) (granting TRO where "it would be impossible to unscramble the eggs by attempting to unwind the merger once it has been completed."); *see also In re Century Aluminum Co. Securities Litigation*, 729 F.3d 1104, 1107 (C.A.9 (Cal.), 2013) (discussing impossibility of tracing specific shares). Though it may be possible to theorize some type of *post hoc* monetary relief for AMC's current common stockholders, the shaping of such relief would likely be complex and involve significant speculation. *Hollinger International, Inc. v. Black*, 844 A.2d 1022, 1081 (Del. Ch. 2004), *aff'd*, 872 A.2d 559 (Del. 2005) ("Injury is irreparable when a later money damage award would involve speculation" or undue "difficulty of shaping monetary relief.").

Given the impending irreparable harm faced by common stockholders, the Court should grant Plaintiff's request for a temporary restraining order.

III. THE BALANCE OF EQUITIES FAVORS A TEMPORARY RESTRAINING ORDER AND EXPEDITION

Before granting a temporary restraining order, the court must "balance the plaintiff's need for protection against any harm that can reasonably be expected to befall the defendants if the injunction is granted." *CBS*, 2018 WL 2263385, at *5. To make this determination, "a court in exercising its discretion to issue or deny such a remedy must consider all of the foreseeable consequences of its order and balance them." *Id.* Here, there is no cognizable harm that would result to AMC or Defendants if the vote and/or consummation of the conversion is briefly enjoined to allow the Court sufficient time to rule on the merits of Plaintiff's claim. On the other hand, the harm to Plaintiff and similar Class Members will be irreparable.

Defendants have recommended shareholders vote in favor of the Charter amendment so as "to simplify [AMC's] capital structure" to allow "essential flexibility to use our Common Stock, without further stockholder approval . . . ." Definitive Proxy at 12. A brief delay in simplifying AMC's capital structure will result in little, if any, harm to AMC's business or operations. Indeed, Defendants have themselves admitted as recently as November 8, 2022, that AMC's current cash position will be sufficient to "fund its operations, satisfy its obligations, . . . planned capital expenditures, and comply with minimum liquidity and financial covenant

requirements under its debt covenants . . . ***for at least the next 12 months***.") (emphasis added). There is thus no cognizable harm that would result to AMC from the brief imposition of a temporary restraining order.

Instead, as Defendants' proxy concedes, it is the issuance of the APEs and potential future issuances of common stock authorized by the proposal that will "dilute the earnings per share of Common Stock and the equity and voting rights of those holding Common Stock at the time such additional shares are issued." Avoiding irreparable harm resulting from Defendants' scheme, which includes breaches of fiduciary duty and Defendants' unauthorized issuance of the Preferred Stock, is the very type of irreparable harm that a TRO is designed to prevent. In the absence of any foreseeable consequences to Defendants, the Court should grant Plaintiff's request for a temporary restraining order.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant Plaintiff's Motion for a Temporary Restraining Order and Expedited Proceedings. The Court should enter an Order restraining Defendants from submitting the Proposals to a vote of AMC Stockholders until Plaintiff has had the opportunity to take expedited discovery in support of its claims and to present a motion for a preliminary injunction for this Court's consideration. Plaintiff anticipates it will be able to conduct the necessary discovery in 30 days from the time the Court enters

the proposed temporary restraining order and orders expedited proceedings. Therefore, Plaintiff believes it would be appropriate for the Court to enter an Order setting a reasonably expedited schedule for briefing on Plaintiff's motion for a preliminary injunction as follows:

(1) Plaintiff shall file an Opening Brief in Support of the Motion for a Preliminary Injunction ("Opening Brief") 10 days after the close of discovery;

(2) Defendants shall file a Response Brief in Opposition to the Motion for a Preliminary Injunction ("Response Brief") 10 days after Plaintiff files its Opening Brief.

(3) Plaintiff shall file a Reply Brief 5 days after Defendants file their Response Brief.

February 20, 2023

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**Pro Hac Vice* applications to be filed

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