



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

Michael Simons, on behalf of himself and all other)	
similarly-situated holders of Series A Convertible)	
Participating Preferred Stock and AMC Preferred)	
Equity Units of AMC Entertainment Holdings, Inc.)	C.A. No. _____
)	
Plaintiff,)	
)	
v.)	
)	
AMC Entertainment Holdings, Inc.)	
)	
Defendant.)	

VERIFIED COMPLAINT

Plaintiff Michael Simons, on behalf of himself and all other similarly situated holders of Series A Convertible Participating Preferred Stock (“Preferred Stock”) and AMC Preferred Equity Units (“APEs”) of E (“AMC” or the “Company” or “Defendant”) brings this Complaint for Declaratory and Injunctive Relief (the “Complaint”) against AMC. The allegations of the Complaint are based on the knowledge of Plaintiff as to himself and on information and belief, including based on the investigation of counsel and review of publicly available information, as to all other matters.

NATURE OF THE ACTION

1. This Action seeks: (a) a declaratory judgment that the Settlement (as defined below) breaches the Series A Convertible Participating Preferred Stock Certificate of Designations (COD); and (b) an injunction requiring AMC to (1) give effect to the anti-dilution provision in Section VI of the COD, which requires AMC to adjust the number of shares of

AMC Class A Common Stock (“Common Stock” or “Common Shares”) to be received by the holders of the Preferred Stock (“Preferred Stockholders”) upon the conversion of the Preferred Stock according to the formula set forth therein, and (2) give effect to Section III of the COD and distribute the Special Distribution (as defined herein) of the Settlement to the holders of Preferred Stock at the same time and on the same terms as it will be distributed to the holders of Common Stock the “Common Stockholders”).

2. As set forth in greater detail in the Substantive Allegations section herein, AMC sought to raise additional capital by securing shareholder approval to amend the Company’s Certificate of Incorporation to authorize the issuance of additional shares of Common Stock and to issue those shares.

3. AMC sought to increase the number of authorized Common Shares by first creating 10 million new shares of Preferred Stock, to be traded on the New York Stock Exchange (“NYSE”) as AMC Preferred Equity Units under the symbol “APE.” Each APE is a depositary share and represents an interest in one one-hundredth (1/100th) of a share of the Preferred Stock.

4. The Certificate of Designations of the Preferred Stock (attached hereto as Exhibit A) calls for the number of shares of Common Stock to be received upon the conversion of the Preferred Stock to be adjusted for any dilution of the Common Stock. It also provides that any distribution made in respect of the shares of Common Stock shall also be made to the Preferred Stock in the same amount and at the same time.

5. In January 2023, AMC set a special meeting for March 14, 2023 to vote on proposals to (i) increase the number of authorized shares of AMC Common Stock, (ii) convert all existing Preferred Stock into Common Stock on a 1-for-1 basis, and (iii) subsequently effect a 1-to-10 reverse stock split of the Common Stock.

6. Two class actions were filed on behalf of holders of Common Stock seeking, among other things, (i) a ruling that the creation of the Preferred Stock was not properly authorized, and (ii) a separate class vote for Class A Common Stockholders on the proposals at the March 14, 2023 shareholder meeting. At the March 14, 2023 special meeting, the 1-for-1 conversion was approved, but the Certificate of Incorporation was not formally amended to authorize the issuance of additional shares of Common Stock to support the conversion because the Delaware Court of Chancery had previously issued an Order allowing the special meeting to occur but preventing AMC from formally amending its Certificate of Incorporation as a result of any vote of shares at that special meeting.

7. The parties to the class action lawsuits, which were consolidated into a single action, reached a settlement which entailed distributing to the holders of Common Stock one share of Common Stock for every 7.5 shares held (the “Special Distribution”) prior to the conversion of the Preferred Shares into one share of Common Stock. This has the effect of diluting the Preferred Shareholders’ ownership interest in AMC and violates the anti-dilution provision of the COD, as well as the COD’s requirement that Preferred Stockholders receive the same distributions as Common Stockholders.

8. On July 21, 2023, the Delaware Court of Chancery rejected the Settlement of the class action lawsuit because it contained a release that was excessively broad in that it included potential claims belonging to Preferred Shareholders.

9. The parties to the class action lawsuit revised the release contained in the Settlement to exclude Preferred Shareholders and submitted the revision to the Court on July 22, 2023.

10. The Settlement was granted final approval by the Court on August 11, 2023. As of the date of the filing of this Complaint, the March 14, 2023 shareholder approval of an increase in the number of authorized shares of Common Stock and subsequent filing of the amended Certificate of Incorporation that formalizes such increase, conversion of all existing Preferred Stock into Common Stock on a 1-for-1 basis, and a subsequent 1-to-10 reverse stock split of the Common Stock, has not yet been given effect, as it is currently subject to a Status Quo Order.

11. When the Court lifts the Status Quo Order, AMC will file the amended Certificate of Incorporation that increases the number of authorized shares of Common Stock, and then converts all existing Preferred Stock into Common Stock on a 1-for-1 basis. AMC must, prior to the conversion, (i) give effect to the anti-dilution provision in Section VI of the COD, which requires AMC to adjust the number of shares of Common Stock to be received by the Preferred Stock upon conversion according to the formula set forth therein, and (ii) give effect to Section III of the COD and distribute the Special Distribution (as defined herein) of the Settlement to the holders of Preferred Stock at the same time and on the same terms as it will be distributed to the holders of Common Stock

PARTIES

12. Plaintiff Michael Simons (“Plaintiff”) has held AMC Preferred Equity (APE) units during all relevant times..

13. Defendant AMC Entertainment Holdings, Inc. (previously defined as “AMC” or the “Company” or “Defendant”) is a Delaware corporation with its principal executive offices located at One AMC Way, 11500 Ash Street, Leawood, KS. AMC’s Common Stock trades on the New York Stock Exchange under the ticker symbol “AMC.” AMC is principally involved in

the theatrical exhibition business and owns, operates or has interests in theatres primarily located in the United States and Europe.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction over this matter pursuant to 8 *Del. C.* § 111, which provides jurisdiction over “[a]ny civil action to interpret, apply, enforce or determine the validity of the provisions of . . . Any written restrictions on the transfer, registration or transfer or ownership of securities,” and pursuant to 10 *Del. C.* § 6501, et seq., the Declaratory Judgment Act, which permits the Court to “declare rights, status and other legal relations whether or not further relief is or could be claimed.” This Court also has subject matter jurisdiction under 10 *Del. C.* §341 because Plaintiff seeks declaratory and injunctive relief.

15. The Court has jurisdiction over Defendant AMC, which is a Delaware corporation. 8 *Del. C.* §321(a).

SUBSTANTIVE ALLEGATIONS

16. In 2020, the COVID-19 pandemic prevented the American public from gathering in public spaces, including in movie theaters, which negatively impacted the revenues and operations of AMC. By late 2020, numerous hedge funds took widely reported short positions in AMC’s stock. In response, retail investors rallied around the Company and took positions in its stock in an effort to defeat the short sellers. By June 2021, more than 80% of AMC’s shares were held by approximately 4.1 million retail investors.

17. To capitalize on the higher stock price driven by retail investment, AMC sold nearly all of the Company’s remaining authorized shares of Common Stock to raise new funding. Thereafter, AMC proposed on multiple occasions to amend the Company’s Certificate of Incorporation to authorize the issuance of additional shares of Common Stock, but AMC twice

abandoned seeking shareholder approval for this increase – first by postponing the May 24, 2021 Annual Meeting and then on July 6, 2021 by withdrawing the proposal from consideration at the rescheduled Annual Meeting.

18. On August 4, 2022, AMC announced the Board’s creation of 10 million new shares of Preferred Stock, which carried super voting rights—100 votes per share, as compared to the 1 vote per share enjoyed by the holders of AMC’s Common Stock—and a corresponding economic interest in the Company.

19. The shares of Preferred Stock were deposited with a depository institution, ComputerShare Inc. (“ComputerShare”), pursuant to a Deposit Agreement dated August 4, 2022. At AMC’s direction, ComputerShare then issued AMC Preferred Equity Units—widely referred to as “APEs”—which were listed for trade on the New York Stock Exchange (“NYSE”) under the symbol “APE.”

20. Each APE is a depository share and represents an interest in one one-hundredth (1/100th) of a share of the Preferred Stock. AMC touted that each APE was designed to be equivalent to one share of the Company’s Common Stock, both in economic and voting rights, and to be convertible into one share of Common Stock upon the occurrence of certain events, including upon the occurrence of a shareholder vote.

21. Section II of the Certificate of Designations of the Series A Convertible Participating Preferred Stock (previously defined as “COD”) provides, *inter alia*, that:

on the Conversion Date, each share of Preferred Stock will automatically convert into an amount of fully-paid and non-assessable shares of Common Stock, without any action on the part of Holders or the Corporation, determined in accordance with the Applicable Conversion Rate. The shares of Preferred Stock so converted will be cancelled as described in paragraph (b) below. The Corporation may seek Stockholder Approval at such time or times as the Board in its sole discretion shall determine.

22. The Certificate of Designations defines Applicable Conversion Rate as “the Initial Conversion Rate, subject to adjustment” and defines Initial Conversion Rate as “one-hundred (100) shares of Common Stock for each share of Preferred Stock.” Because one APE represents one one-hundredth (1/100) of a Preferred share, the Initial Conversion Rate effectively calls for the conversion of one APE unit into one share of Common Stock.

23. The Certificate of Designations defines Conversion Date as “the first business day following the receipt of Stockholder Approval and the filing, acceptance and effectiveness of the Amendment with the Office of the Secretary of State of the State of Delaware.”

24. The Certificate of Designations defines the Amendment as:

the Amendment to the Certificate of Incorporation increasing the number of shares of Common Stock that the Corporation is authorized to issue from 524,173,073 to such higher number of authorized shares of Common Stock as the Board may at any time determine in its sole discretion, which amount shall be not less than an amount sufficient to effect the conversion of the then-outstanding shares of Preferred Stock into Common stock.

25. Thus, the Certificate of Designations calls for the conversion of one APE (which represents an interest in one one-hundredth (1/100th) of a share of the Preferred Stock) to one share of Common Stock upon the approval of the Amendment by the requisite stockholders of the Corporation.

26. The Certificate of Designations (Section VI. Anti-Dilution Adjustments) calls for the number of shares of Common Stock to be received upon the conversion of the Preferred Stock to be adjusted for any dilution of the Common Stock that occurs “[i]n the event the Corporation shall at any time prior to the Conversion Date issue Additional Shares of Common Stock.”

27. Section III of the Certificate of Designations provides that any distribution made to holders of Common Stock will also be made to Preferred Stockholders:

the Holders of AMC Preferred Equity Units shall be entitled to receive, when, as and if declared by the Board or any duly authorized committee of the Board, but only out of assets legally available therefor, all cash dividends or distributions (including, but not limited to, regular quarterly dividends) declared and paid or made in respect of the shares of Common Stock, at the same time and on the same terms as holders of Common Stock, in an amount per share of Preferred Stock equal to the product of (x) the Applicable Conversion Rate then in effect and (y) any per share dividend or distribution, as applicable, declared and paid or made in respect of each share of Common Stock.

28. On August 22, 2022, APE units were issued to the then-current holders of Common Stock as a special dividend. Each AMC Shareholder was issued one APE unit for each AMC Common Share held at the time, in effect resulting in a two-for-one stock split. A total of approximately 516 million APE units were issued on August 22, 2022. APE units began trading on the New York Stock Exchange on that same day.

29. On September 26, 2022, the Company announced that it would issue additional APE units through an “at the market” issuance program to be led by Citigroup Global Markets.

30. On December 22, 2022, AMC announced it had entered into a multi-step agreement allowing a single investor, Antara Capital L.P. (“Antara”), to obtain over 257 million APEs—representing almost 28% of all outstanding APEs—at an average cost of \$0.66 per unit. The agreement with Antara also required AMC to propose an increase in the number of authorized shares of Common Stock and a conversion of all existing APEs into Common Stock on a 1-for-1 basis, and AMC itself sought a subsequent 1-to-10 reverse stock split of the Common Stock (the “Proposals”). Antara also signed a voting agreement to support the Proposals.¹

¹ Following the September 2022 APE sales and the Antara deal, there were more than 929 million units of the Company’s APEs outstanding, as compared to just 517 million shares of Class A common stock.

31. In January 2023, AMC set a shareholder vote on the Proposals for March 14, 2023.

32. On February 20, 2023, Allegheny County Employees' Retirement System commenced an action in the Delaware Court of Chancery bearing the caption *Allegheny County Employees' Retirement System v. AMC Entertainment Holdings, Inc., et al.*, C.A. No. 2023-0215-MTZ (the "Allegheny Action"), on behalf of itself and all other similarly situated holders of Common Stock, against AMC and members of AMC's board of directors (the "Board"), asserting claims for breach of fiduciary duty and violation of 8 *Del. C.* § 242(b)(2) in connection with the issuance of the APEs and the Proposals, and seeking injunctive relief and money damages. The Allegheny Action sought (i) a judgment that the AMC Board members breached their fiduciary duties to the Company's Class A stockholders and that the creation of the Preferred Stock was not properly authorized pursuant to the DGCL; and (ii) relief including a separate class vote for Class A stockholders on the Proposals at the March 14, 2023 shareholder meeting.

33. On February 20, 2023, Usbaldo Munoz and Anthony Franchi commenced an action in the Delaware Court of Chancery bearing the caption *Munoz, et al. v. Aron, et al.*, C.A. No. 2023-0216-MTZ (the "*Munoz* Action"), on behalf of themselves and all other similarly situated holders of Common Stock, against AMC and Board members, asserting a claim for breach of fiduciary duty in connection with the Proposals, and seeking injunctive relief.

34. On February 20, 2023, plaintiffs in the *Munoz* action filed their Motion for Expedited Proceedings and Entry of a *Status Quo* Order or, in the Alternative, a Temporary Restraining Order.

35. On February 27, 2023, pursuant to a joint motion of the parties to the Action, the Delaware Court of Chancery entered an Order allowing AMC to hold its March 14, 2023 special meeting and to solicit and tabulate any votes in connection therewith, but *not amend its certificate of incorporation* as a result of any vote of shares at that special meeting.

36. On March 2, 2023, the Delaware Court of Chancery entered an Order consolidating the *Allegheny* Action and the *Munoz* Action for all purposes (the “Action”).

37. On March 14, 2023, AMC convened the Special Meeting and held a shareholder vote where the Proposals, including the one-for-one Conversion, were approved by a majority of Common Stock and Preferred Stock.²

38. A total of 182,342,728 out of 517,580,416 eligible shares of the Common Stock were present in person or represented by proxy at the Special Meeting, and a total of 182,342,728 shares of Common Stock were voted after excluding broker non-votes. Of those 182,342,728 shares of Common Stock voted, 132,182,944, or 72.5%, voted in favor of the Proposals. *See* AMC’s Form 8-K dated March 14, 2023.

39. On April 3, AMC filed a Form 8-K announcing that the parties to the consolidated Action reached a proposed settlement. That same day, the plaintiffs in the Action filed an Unopposed Motion to Lift the Status Quo Order Due to the Parties’ proposed settlement. As

² Though APEs and Class A shares are each entitled to one vote per share, the Deposit Agreement with ComputerShare included a “mirror voting” provision requiring ComputerShare, as depositary for the Preferred Stock, to “[i]n the absence of specific instructions from Holders of [APEs], . . . vote the Preferred Stock represented by the [APEs] . . . of such Holders proportionately with votes cast pursuant to the instructions received from other Holders.” Thus, for example, if the holders of just three APEs cast votes on a corporate proposal—say, two in favor and one against—ComputerShare will cast votes for *all* of the nearly 1 billion outstanding APEs 2/3 in favor and 1/3 against, regardless of the number of votes actually cast (the “Depositary Voting Requirement”). There is no similar arrangement for the Class A common stock. Thus, uninstructed shares of Class A stock, unlike uninstructed APEs, were not voted on the Proposals.

described in the Motion, the parties agreed that if the Court approved lifting the status quo order, AMC would (1) “increase the authorized number of shares of Common Stock,” (2) “convert the Company’s outstanding AMC Preferred Equity Units (‘APES’) into shares of Common Stock,” (3) and “effect a 1-to-10 reverse split of AMC equity.”

40. On April 5, 2023, the Delaware Court of Chancery denied the Unopposed Motion to Lift the Status Quo Order and found “the parties offer no good cause to lift the status quo order.”

41. The parties to the Action entered into a Stipulation and Agreement Of Compromise, Settlement, And Release Parties dated April 27, 2023 (“Settlement”), whereby the holders of Common Stock are to receive one share of Common Stock for every 7.5 shares held (“Special Distribution”), followed by a planned 1-for-10 reverse common stock split.

42. As the Delaware Chancery Court stated in the Action:

The Proposed Settlement has the practical effect of reallocating the ownership of AMC's equity between its common stockholders and the APE unitholders. If the settlement is approved, the existing common stockholders would own a slightly bigger slice of the AMC pie at the expense of the APE unitholders. . . Without the Proposed Settlement, the existing common stockholders would own 34.28% of AMC's equity after the Conversion and the former APEs unitholders would own 65.72%. With the Proposed Settlement, the existing common stockholders would own 37.15% of AMC's equity after the Conversion and the former APEs unitholders would own 62.85%.

In re AMC Ent. Holdings, Inc. S'holder Litig., No. 2023-0215-MTZ, 2023 WL 4677722, at *12 (Del. Ch. July 21, 2023)

43. On July 21, 2023, the Delaware Court of Chancery rejected the Settlement after determining the release contained in the Stipulation of Settlement was too broad because holders of Common Stock are not able to release AMC from potential claims that belong solely to holders of AMC Preferred Stock. As the Court held:

Because Plaintiffs are empowered to speak in this putative class action only as and for common stockholders, they cannot represent or release APE direct claims adhered to APE units in this action. Direct APE claims require APE unitholders to be part of the class. APE units are not represented in the complaints or in the common stockholder class.

In re AMC Ent. Holdings, Inc. S'holder Litig., No. 2023-0215-MTZ, 2023 WL 4677722, at *21 (Del. Ch. July 21, 2023)

44. The parties to the Action revised the release contained in the Stipulation of Settlement to exclude holders of AMC preferred shares and submitted the revision to the Court on July 22, 2023. *See* Exhibit B (Revised Settlement).

45. The Revised Settlement was approved by the Court on August 11, 2023. *In re AMC Ent. Holdings, Inc. S'holder Litig.*, No. 2023-0215-MTZ, D. E. 92340791 (August 11, 2023) (attached hereto as Exhibit C.) Once the Status Quo Order is lifted, the Company will increase the number of Common Shares outstanding, distribute the Special Distribution to the Common Stockholders and convert the Preferred Stock. The Special Distribution gives one share of Common Stock for every 7.5 shares held. In the conversion, outstanding Preferred Stock will be converted into shares of Common Stock on a basis of one-hundred (100) shares of Common Stock for each share of Preferred Stock, and thus converts the APEs - which are each one one-hundredth (1/100) of a Preferred Share - into common stock on a 1:1 basis.

46. The Revised Settlement violates the Certificate of Designations (Section VI. Anti-Dilution Adjustments), which calls for the number of shares of Common Stock to be received upon the conversion of the Preferred Stock to be adjusted for any dilution of the Common Stock that occurs “[i]n the event the Corporation shall at any time prior to the Conversion Date issue Additional Shares of Common Stock.”

47. As the Court stated in the Action, “[u]nder its terms, AMC agreed to distribute 6,922,565 shares of common stock to existing common stockholders, at a ratio of one share of common for every seven and a half shares of common stock held, after the Reverse Split **but before the Conversion.**” *In re AMC Ent. Holdings, Inc. S’holder Litig.*, No. 2023-0215-MTZ, 2023 WL 4677722, at *12 (Del. Ch. July 21, 2023) (emphasis added).³

48. Thus, the Special Distribution will be issued before the Conversion Date and will dilute the ownership stake of the Preferred Shareholders – unless the Anti-Dilution provision in Section VI of the Certificate of Designations is given effect prior to the Conversion.

49. Even if the Conversion technically were to occur in time before the Special Distribution, these actions are part of the same AMC plan to raise capital by increasing the number of Common Shares outstanding and issuing those shares through the conversion of Preferred Stock. Thus, the Anti-Dilution provision in the Certificate of Designations must be implemented ex post facto, lest the Company be permitted an end-run around Section VI of the Certificate of Designations.

50. The Settlement also breaches the contractual right of the Preferred Shareholders (and thus APE unitholders) under Section III of the COD to receive distributions (*i.e.*, the Special

³ See *In re AMC Ent. Holdings, Inc. S’holder Litig.*, No. 2023-0215-MTZ, 2023 WL 4677722, at *12, FN 83. (Del. Ch. July 21, 2023) (“POB at 31; Stip. ¶ A.1(aa) (“ ‘Settlement Payment’ means one share of Common Stock for every 7.5 shares of Common Stock owned by record holders of Common Stock as of the Settlement Class Time (after giving effect to the Reverse Stock Split.)”); Notice ¶ 44 (“If the proposed Settlement is approved, AMC will promptly effect the Conversion and issue to the record holders of Common Stock as of the Settlement Class Time one share of Common Stock for every 7.5 shares of Common Stock owned by such holders (after giving effect to the Reverse Stock Split and taking into account cash payments in lieu of fractional shares.)”); *id.* ¶ 30 (“Only record holders of Common Stock as of the ‘Settlement Class Time’ will be entitled to a Settlement Payment.”); *id.* ¶ 47 (“As noted above, the Settlement Payment will be issued to record holders of Common Stock as of the Settlement Class Time; that is, the time after the Reverse Stock Split has effected but immediately before the APEs are converted into Common Stock.”)).

Distribution) declared and paid or made in respect of the shares of Common Stock, at the same time and on the same terms as holders of Common Stock.

51. According to the Court in the Action:

The Proposed Settlement compensates common stockholders to the exclusion—and dilution—of APE unitholders. The settlement consideration offers common stockholders more AMC equity, which necessarily comes at the expense of the APE position. The parties propose to pay that consideration after the Reverse Split, but before the Conversion. In that scenario, when the APEs convert to shares of common stock, former APE unitholders will represent a smaller percentage of the total common than they would have if not for the Proposed Settlement consideration received by the class.

In re AMC Ent. Holdings, Inc. S'holder Litig., No. 2023-0215-MTZ, 2023 WL 4677722, at *24 (Del. Ch. July 21, 2023) The Anti-Dilution provision in the Certificate of Designations exists to protect the Preferred shareholders (and thus APE unitholders) from exactly this scenario.

52. The contractual rights of the APE unitholders are clearly breached by the Settlement. As the Court stated:

I will not speculate or hazard to guess what APE claims a class member who also owns APE, in their capacity as an APE unitholder, might bring, or what risk such claims might present to the Company. The parties bear the burden of demonstrating that the Proposed Settlement is fair, reasonable, and in accordance with due process. It is up to the parties to decide if the risk of unreleased APE claims is worth rejection of a settlement that might pave the way for the Conversion, which the parties have intimated is necessary to save the Company from financial ruin.

In re AMC Ent. Holdings, Inc. S'holder Litig., No. 2023-0215-MTZ, 2023 WL 4677722, at *26 (Del. Ch. July 21, 2023).

53. By not giving effect to the Preferred Stock's anti-dilution protection provision, the Company will be performing an end run around the terms of the Preferred Stock Certificate of Designations and, indeed, breaching those Designations, including Sections III and VI, which are

a contract between the Company on the one hand, and the Preferred Stockholders (and thus also the APE unitholders) on the other.

CLASS ACTION ALLEGATIONS

54. Plaintiff brings this Action pursuant to Chancery Court Rule 23, on behalf of all other holders of Preferred Stock and holders of AMC Preferred Equity Units (APEs) of AMC Entertainment Holdings, Inc. (except Defendants herein and any person, firm, trust, corporation or other entity related to or affiliated with them and their successors-in-interest) who are or will be threatened with injury arising from Defendant's wrongful actions, as more fully described herein (the "Class").

55. This Action is properly maintainable as a class action.

56. The Class is so numerous that joinder of all members is impracticable. The number of shares of AMC Preferred Stock as of August 1, 2023 is 9,954,064 and the number of AMC Preferred Equity Units as of August 1, 2023 is 995,406,413. Plaintiff believes there are millions of beneficial holders of AMC Preferred Equity Units dispersed across the country and internationally.

57. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. The common questions include, inter alia, the following:

Whether the Defendant's actions and intended actions have breached or will breach the Certificate Of Designations Of Series A Convertible Participating Preferred Stock Of AMC Entertainment Holdings, Inc.;

Whether Plaintiff and the other members of the Class would be irreparably damaged by the conduct of the Defendant.

58. Plaintiff anticipates that there will be no difficulty in the management of this litigation as a class action.

59. Defendant has acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole. To the extent the Defendant's continue their unlawful conduct complained of herein, preliminary and final declaratory, injunctive and equitable relief on behalf of the Class as a whole will be entirely appropriate.

60. Plaintiff is committed to prosecuting this Action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff has the same interests as the other members of the Class. Accordingly, Plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

61. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendant, or adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

COUNT I Declaratory Judgment

62. Plaintiff incorporates by reference the foregoing allegations, as though fully set forth herein.

63. Plaintiff brings this claim for declaratory judgment pursuant to 8 Del. C. § 111, which provides jurisdiction over “[a]ny civil action to interpret, apply, enforce or determine the validity of the provisions of . . . Any written restrictions on the transfer, registration of transfer or ownership of securities,” and pursuant to 10 Del. C. § 6501, the Declaratory Judgment Act,

which permits the Court to “declare rights, status and other legal relations whether or not further relief is or could be claimed.”

64. A justiciable controversy ripe for adjudication exists between Plaintiff and Defendant as to their rights and other legal relations, including remedies, pertaining to the Certificate of Designations of the Series A Convertible Participating Preferred Stock.

65. Prompt resolution of the issues set forth herein will provide clarity to the parties and will aid in resolution of the dispute between them.

66. Pursuant to applicable law, including the Delaware Declaratory Judgment Act, 10 Del. C. § 6501, et seq, this Court has authority to declare the rights, status, or other legal relations of the parties before it.

67. Based on the facts and circumstances alleged herein, Plaintiff is entitled to a judicial declaration that implementation of the Settlement violates the Certificate of Designations (Section VI. Anti-Dilution Adjustments), which calls for the number of shares of Common Stock to be received upon the conversion of the Preferred Stock to be adjusted for any dilution of the Common Stock that occurs “[i]n the event the Corporation shall at any time prior to the Conversion Date issue Additional Shares of Common Stock.”

68. Based on the facts and circumstances alleged herein, Plaintiff is entitled to a judicial declaration that the Settlement breaches the contractual right of the Preferred Shareholders (and thus APE unitholders) under Section III of the COD to receive distributions (which the Special Distribution is) declared and paid or made in respect of the shares of Common Stock, at the same time and on the same terms as holders of Common Stock.

COUNT II
Injunctive Relief

69. Plaintiff incorporates by reference the foregoing allegations, as though fully set forth herein.

70. Based on the facts and circumstances alleged herein, Plaintiff is entitled to an injunction compelling Defendant to comply with its contractual obligation under Section VI. Anti-Dilution Adjustments of the Certificate of Designations to adjust the number of shares of Common Stock to be received upon the conversion of the Preferred Stock and the APE units for the dilution caused by the issuance of the Special Distribution according to the formula set forth therein, by issuing 1.13 shares of Common Stock for each APE unit and by issuing 113 shares of Common Stock for each share of Preferred Stock.

71. Based on the facts and circumstances alleged herein, Plaintiff is entitled to an injunction compelling Defendant to comply with its contractual obligation under Section III of the Certificate of Designations to pay the Special Distribution to the Preferred Shareholders (and thus APE unitholders) at the same time and on the same terms as it will be paid to the holders of Common Stock.

COUNT III
Breach of Contract – Breach of the Series A Convertible Participating Preferred Stock Certificate of Designations

72. Plaintiff incorporates by reference the foregoing allegations, as though fully set forth herein.

73. The Series A Convertible Participating Preferred Stock Certificate of Designations is a valid and enforceable contract between AMC and the Preferred Stockholders.

74. The Certificate of Designations is governed by and construed in accordance with the laws of the State of Delaware.

75. Plaintiff has complied in all respects with his obligations under the Certificate of Designations.

76. In the alternative to the injunctive relief Plaintiff requests herein, Plaintiff seeks, and is entitled to, a judgment compelling AMC to comply with its obligations under the Certificate of Designations and to immediately pay to Plaintiff and the members of the Class (i) the monetary value of the number of shares of Common Stock to be received upon the conversion of the Preferred Stock (and the APE units) for the dilution caused by the issuance of the Special Distribution in accordance with the formula set forth in Section VI. Anti-Dilution Adjustments of the COD, or (ii) in accordance with Section III of the COD, the monetary value of the Special Distribution the Common Shareholders receive in the Revised Settlement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Michael Simons, as Representative, on behalf of himself and holders of Series A Convertible Participating Preferred Stock and AMC Preferred Equity Units, respectfully requests that the Court enter judgment in his favor against Defendant AMC Entertainment Holdings, as follows:

- A. Granting declaratory relief as specified herein, including a declaration that the Settlement as currently structured breaches Sections II, III and VI of the COD.
- B. Issuing a permanent injunction as specified herein, specifying that AMC shall adjust the number of shares of Common Stock to be received upon the conversion of the Preferred Stock after the Special Distribution in accordance with Section VI. Anti-Dilution Adjustments of the Certificate of Designations.
- C. Issuing a permanent injunction as specified herein, specifying that AMC shall

comply with Section III of the Certificate of Designations to pay the Special Distribution to the Preferred Shareholders at the same time and on the same terms as it will be paid to the holders of Common Stock.

- D. Awarding Plaintiff and the members of the Class, as an alternative to the injunctive relief requested herein: (i) the monetary value of the number of shares of Common Stock to be received upon the conversion of the Preferred Stock (and the APE units) for the dilution caused by the issuance of the Special Distribution in accordance with the formula set forth in Section VI. Anti-Dilution Adjustments of the COD; or (ii) in accordance with Section III of the COD, the monetary value of the Special Distribution the Common Shareholders receive in the Revised Settlement.
- E. For an order awarding Plaintiff its attorneys' fees and costs incurred and to be incurred in the pursuit of this action;
- F. Tax the costs of this lawsuit and proceedings against Defendant, and
- G. For an order granting such other and further relief as Plaintiff may show himself entitled at law or in equity, or as the Court may deem just and proper.

Dated: August 14, 2023	BERGER MONTAGUE PC <u>/s/Russell D. Paul</u> Russell D. Paul (#4647) 800 N. West Street, 2 nd Floor Wilmington, DE 19801 Michael Dell'Angelo
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	<p>Andrew Abramowitz BERGER MONTAGUE PC 1818 Market Street, Suite 3600 Philadelphia, PA 19103</p> <p><i>Attorneys for Plaintiff Michael Simons</i></p>
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