



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. |) | |

**VERIFIED CLASS ACTION COMPLAINT SEEKING
DECLARATORY, INJUNCTIVE, AND EQUITABLE RELIEF**

Plaintiff Allegheny County Employees’ Retirement System (“Plaintiff”), on behalf of itself and all other similarly situated holders of Class A common stock of AMC Entertainment Holdings, Inc. (“AMC” or the “Company”) brings this Verified Class Action Complaint Seeking Injunctive and Equitable Relief (the “Complaint”) against AMC and members of AMC’s board of directors (the “Board”)—Adam M. Aron, Howard W. “Hawk” Koch, Kathleen M. Pawlus, Anthony J. Saich, Philip Lader, Gary F. Locke, and Adam J. Sussman—for violations of the Delaware General Corporation Law (“DGCL”) and breaches of fiduciary duty (the “Action”). The allegations of the Complaint are based on the knowledge of Plaintiff as to itself

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 challenges a course of complex and disloyal corporate engineering by the Defendants—described by AMC’s Chief Executive Officer and Chairman, Defendant Adam M. Aron (“Aron”) 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 repeatedly had rebuffed and were not willing to support at the corporate ballot box.

2. In 2020, the COVID-19 pandemic prevented the American public from gathering in public spaces, with significant deleterious impact on 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. Aron embraced this movement and promoted himself as the hero of the retail investor. By June 2021, more than 80% of AMC’s shares were held by approximately 4.1 million retail investors.

3. As retail investors took control of AMC’s stock, however, Aron and his fellow directors became frustrated with the retail investors’ ability to exercise their

rights under the DGCL. Seizing on increases in AMC’s stock price driven by retail investors, AMC sold nearly all of the Company’s remaining authorized shares of Class A common stock to raise capital. Thereafter, AMC proposed on multiple occasions to amend the Company’s certificate of incorporation to authorize the issuance of additional shares of Class A common stock—but those proposals were rebuffed repeatedly by the Company’s existing Class A common stockholders, who twice forced the withdrawal of such proposals.

4. In response, AMC embarked on a course of complex corporate engineering for the plain and obvious purpose of circumventing the will of the Company’s existing stockholders and securing a dilutive increase in the number of authorized Class A shares over their unambiguous opposition.

5. Aron’s game of “3-D chess” commenced in earnest on August 4, 2022, when AMC—in what Aron described as a “pounce”—announced the Board’s creation of 10 million new shares of Series A Convertible Participating Preferred Stock (the “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 existing Class A common stock—and a corresponding economic interest in the Company. The shares of Preferred Stock were deposited with a depository institution, ComputerShare Inc. (“ComputerShare”), pursuant to a Deposit Agreement dated August 4, 2022.

6. 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.” Each APE is a depositary 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 Class A common stock, both in economic and voting rights, and to be convertible into one share of Class A common stock—if the number of authorized Class A shares were ever increased.

7. Thereafter, it became apparent that the Preferred Stock and APEs were devised and issued by AMC and the Board for the clear purpose of neutralizing and circumventing the voting rights of AMC’s existing Class A stockholders and forcing through the authorization for an increase in the number of Class A shares those stockholders repeatedly had rebuffed. An initial tranche of some 516 million APEs was distributed by dividend to AMC’s existing stockholders on a 1-for-1 basis. In September 2022, however, AMC proceeded to enter into an equity distribution agreement with Citigroup Global Markets, Inc. (“Citigroup”) to sell the remaining approximately 425 million APEs and quickly sold more than 125.9 million APEs to new investors.

8. Then, on December 22, 2022, AMC’s endgame was revealed publicly. That day, 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 Class A common stock, a conversion of all existing APEs into Class A shares on a 1-for-1 basis, and a subsequent 10-for-1 reverse stock split of the Class A shares (the “Proposals”). Antara also signed a voting agreement to support the Proposals.

9. Prior to the announcement of the Antara deal, shares of Class A stock traded at a significant premium to APEs. The day before the announcement, shares of Class A stock closed at \$5.30, whereas APE units closed at \$0.685. Following the Antara deal’s announcement, the trading price of APEs skyrocketed and the trading price of Class A stock precipitously declined. The market realized the inevitable: that the Proposals would be approved, resulting in a massive transfer of value from the Company’s Class A stockholders to its new APE investors. AMC had stacked the deck to ensure that result. Following the September 2022 APE sales and the Antara deal, there were more than 929 million of the Company’s new APEs outstanding as compared to just 517 million shares of Class A common stock. And, as APEs consistently have traded at a significant discount to Class A shares, the holders of APEs were strongly incentivized to approve the Proposal to ensure a

massive value transfer from AMC’s existing Class A stockholders to its new APE holders.

10. Moreover, though APEs and Class A shares are each ostensibly entitled to one vote per share, AMC has taken steps to supercharge the voting power of the APEs as a class compared to the Class A common stock. Specifically, in its Deposit Agreement with ComputerShare, AMC included a provision requiring ComputerShare, as depository 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 “Depository Voting Requirement”). There is, of course, no similar arrangement for the Class A common stock. Uninstructed shares of Class A stock, unlike uninstructed APEs, will not be voted on the Proposals.

11. In January 2023, AMC set a vote on the Proposals for March 14, 2023. Then, on February 14, 2023, AMC published its Definitive Proxy Statement in support of the Proposals. The Proxy confirms that AMC intends to conduct a vote on the proposals in which *all* shares—common and preferred—are to vote as a single

class on the Proposals, with uninstructed APEs to be voted pursuant to the Depositary Voting Requirement. With outstanding APEs outnumbering the Class A common shares by nearly 2 to 1 and the Depositary Voting Requirement supercharging the APEs' voting power as a class vis-à-vis AMC's Class A stockholders, AMC is poised to finally force through the Class A share count increase that was opposed repeatedly by Class A stockholders before AMC and the Board took steps to reconstitute their electorate.

12. AMC and the Board presumably believe their game of "3-D chess" against the Class A stockholders is approaching checkmate. But, as detailed herein, the vote cannot be allowed to proceed as planned. In their zeal to circumvent the will of the Class A stockholders, Defendants have breached their fiduciary duties and violated the DGCL.

13. *First*, the vote on the Proposals cannot be permitted to go forward because it results from, and represents the culmination of, a course of disloyal conduct by Defendants in breach of their fiduciary duties. The Director Defendants approved the creation and sale of the Preferred Stock, imposed the Depositary Voting Requirement, and arranged for the impending vote on the Proposals all for the *purpose* of circumventing the will of the Company's existing stockholders, who previously had rejected proposals by the Board to increase the total number of authorized shares of Class A common stock—essentially creating a new electorate

and new voting rules, simply because they did not have the votes to get what they wanted. All of these steps were taken for the very purpose of reversing the likely outcome of Defendants' desired vote to increase the authorized number of Class A shares. This course of conduct constituted a breach of fiduciary duty, the appropriate equitable remedy for which should include, at minimum, providing the Company's Class A stockholders with a separate class vote on the pending Proposals—the very vote that Defendants' disloyal conduct has been engineered to circumvent.

14. *Second*, Defendants' disloyal conduct included a violation of the DGCL. Specifically, the issuance of the Preferred Stock was not properly authorized under DGCL Section 242(b). Under Section 242(b)(2), AMC's Class A stockholders were entitled to vote as a class on any amendment to the Company's certificate of incorporation that would "alter or change the powers, preferences, or special rights" of their shares "so as to affect them adversely." Prior to Defendants' course of disloyal conduct, Class A stockholders had the power and the right to reject the Class A share count increase desired and unsuccessfully proposed by the Defendants on multiple occasions. The creation of 10 million shares of Preferred Stock with 100 votes per share—which required an amendment to AMC's certificate of incorporation—was effectuated for the very obvious *purpose* of eviscerating this specific power and right, thereby "affecting [the Class A stockholders] adversely." Specifically, the unambiguous purpose of Defendants' creation of the Preferred

Stock was to neutralize and circumvent the expressed will of the Class A stockholders to exercise their right to reject the Board's desired approval of new Class A shares by driving down the voting power of Class A stockholders from a collective 100% to near 35%. Yet, despite plainly being adversely affected by the creation of the Preferred Stock—which was engineered for the purpose of depriving Class A stockholders of this existing power and right—Class A stockholders were not provided a vote on the creation of the Preferred Stock. Plaintiff and the Proposed Class are, therefore, entitled to a declaration that the Preferred Stock was not properly authorized, and the Company should be compelled to seek ratification of this improper corporate act in accordance with Section 204 of the DGCL, through a vote of the Company's Class A stockholders or by Order of this Court.

15. Through this Action, Plaintiff seeks: (i) a judgment that the Director Defendants have 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 pending Proposals and such other relief as may be deemed appropriate by the Court following a trial on the merits.

PARTIES

16. Plaintiff Allegheny County Employees' Retirement System is a stockholder of AMC and has owned AMC common stock at all material times alleged in the Complaint.

17. Defendant AMC Entertainment Holdings, Inc. ("AMC") 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.

18. Defendant Adam M. Aron is Chief Executive Officer ("CEO") and Chairman of the Board of AMC. He has served as CEO, President, and a director of the Company since January 2016.

19. Defendant Howard W. "Hawk" Koch, Jr. has served as a director of the Company since October 2014.

20. Defendant Kathleen M. Pawlus has served as a director of the Company since December 2014.

21. Defendant Anthony J. Saich has served as a director of the Company since August 2012.

22. Defendant Philip Lader has served as a Director of AMC since June 8, 2019.

23. Defendant Gary F. Locke has served as a director of the Company since February 2016.

24. Defendant Adam J. Sussman has served as a director of the Company since May 2019.

25. Defendants Aron, Koch, Pawlus, Saich, Lader, Locke and Sussman are collectively referred to as the “Director Defendants.”

SUBSTANTIVE ALLEGATIONS

A. AMC’s Capital Structure and Voting Power

26. AMC adopted its Third Amended and Restated Certificate of Incorporation (the “Charter”) in connection with the Company’s initial public offering in 2013. The Charter provided the Company with authority to issue up to 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 stock¹—which were convertible to Class A common stock under various circumstances—and (iii) 50,000,000 shares of Preferred Stock. Pursuant to the Charter, each share of

¹ The Class B common stock was equivalent to Class A common stock in all respects except for voting rights. All of the shares of Class B common stock authorized by the Charter were issued to its pre-IPO owner, Wanda Group, which provided it with majority voting power until December 2020.

Class A common stock was entitled to 1 vote per share. Class B common stock was entitled to 3 votes per share. And the terms and preferences of the Preferred Stock, including voting rights, if any, were to be established by the Company's Board of Directors.

27. Prior to 2021, AMC had only issued shares of Class A and Class B common stock. The Company had not established or issued any series of preferred stock. In February 2021, all outstanding shares of Class B were forfeited or converted to shares of Class A common stock and the Company retired the Class B common stock by filing a Certificate of Retirement with the Secretary of State of the State of Delaware. As a result, the Charter no longer permitted the issuance of Class B common Stock, and the only outstanding voting securities of the Company were its shares of Class A Common Stock.

28. As of March 3, 2021, there were 450,156,186 shares of Class A common stock outstanding, with approximately 74 million shares² remaining authorized for issuance under the Company's Charter.

B. Taking Advantage of a Significant Rise in the Company's Stock Price Fueled by Retail Investors, AMC's Board Sells Virtually All of the Remaining Authorized Shares of Common Stock

² This does not account for any shares of Class A common stock reserved for issuance under the Company's Equity Incentive Plan ("EIP").

29. In January 2021, speculation in AMC’s stock caused the Company’s stock price to increase dramatically, rising from \$1.98 per share on January 5, 2021 to \$19.90 per share on January 27, 2021. By June 2, 2021, the Company’s Class A common stock closed at \$62.55 per share.

30. The rise in stock price was due in large part to an influx of investments by retail investors—referred to as “Apes” on certain internet forums—who rallied to save AMC from short sellers who they viewed as a threat to the Company’s survival. AMC’s CEO, Adam Aron embraced and even pandered to the retail investors. As a result, Aron has become known as the “Silverback of AMC.”

31. The Company’s Board sought to take advantage of this increase in the stock price by selling nearly all of the Company’s remaining authorized shares of Class A common stock. From the over 308 million shares of remaining Class A common stock authorized for issuance as of December 28, 2020³, the Company had only 46,124 authorized shares of Class A common stock available for issuance by June 3, 2021.

³ As of December 28, 2020, there were 164,298,527 shares of Class A common stock outstanding, 51,796,784 shares of Class B common stock outstanding and no shares of preferred stock outstanding. The Charter required the Company to reserve and keep available a number of authorized but unissued shares of Class A common stock sufficient for conversion of all outstanding shares of Class B common stock into shares of Class A common stock.

32. The Board’s decision to sell the authorized Class A common shares was enormously profitable—raising over \$1.8 billion in 2021. With this enormous influx of cash, the Company’s Board paid down some of its debts, obtained an increase in the Company’s credit rating, and embarked on an investment spree, greatly diversifying the Company’s investments. By way of example, in March 2022, the Company invested \$27.9 million in cash in Nevada gold miner, Hycroft Mining Holding Corporation, which was on the verge of bankruptcy prior to AMC’s cash infusion. On June 24, 2022, the Company was promoted to the Russell 1000 Index, which represents the 1000 top companies by market capitalization in the United States. The achievement was touted by AMC’s chairman and CEO, Aron, via Twitter:



33. But the Board’s decision to sell the authorized but unissued shares had a cost. By June 3, 2021, the Company only had 46,124 remaining shares of Class A Common stock available for issuance.

C. Anticipating Depletion of the Company’s Authorized Class A Shares, the Board Seeks to Increase the Number of Authorized Shares—But is Rebuffed by the Company’s Class A Stockholders

34. As the Board prepared to embark on its plan to sell the Company’s remaining authorized Class A shares, it also sought to almost double the number of Class A shares authorized for issuance, which would have the corresponding effect of diluting the Company’s existing public stockholders if such new shares were ever sold on the market.

35. Specifically, on January 27, 2021, the Board adopted a resolution proposing to amend AMC’s Charter to increase the total number of authorized shares of Class A common stock by 500,000,000 shares to a total of 1,024,173,073 shares of Class A common stock (the “First Charter Amendment Proposal”), and resolved to submit that proposed amendment to a vote of the Class A common stockholders at the Company’s annual meeting on May 4, 2021 (the “2021 Annual Meeting”).

36. Because the First Charter Amendment Proposal would potentially dilute the Class A common stockholders’ respective economic interests and voting power by almost half, it was met with immediate backlash from the Company’s public stockholders. Thus, in the months leading up to the 2021 Annual Meeting,

the Board made extensive efforts to convince the Company's stockholders to vote in favor of the First Charter Amendment Proposal.

37. On April 1, 2021, Aron gave an interview to Jim Cramer and Carl Quintanilla which originally aired on CNBC where he publicly discussed the proposal and attempted to quell stockholder concern about dilution caused by the authorization and/or issuance of additional common stock.

Dilution is something we care about but I would also tell you we are formally asking for approval from our shareholders to authorize another 500 million shares that the company could issue if it wishes. There are a lot of benefits to our shareholders of having board-authorized shares out in the market. We will be sensitive to dilution issues. At the same time, though, there's an opportunity to bolster our cash reserves. There's an opportunity to buy back debt at a discount. There might be an opportunity to defray some of our deferred theater rents; settling with stock instead of cash; maybe there's some merger and acquisition opportunity where we could buy other companies inexpensively using our stock as currency, there are a lot of good reasons for shareholders to give us the authority to have more shares ... That doesn't mean we'll use all of those shares right away, but it does give the company optionality and flexibility; and optionality and flexibility when you're navigating these uncharted waters of pandemic are very good things.

38. Likewise, on April 14, 2021, Aron gave an interview with Tremayne Collins (a YouTube personality with a significant following among retail investors) which aired on the YouTube Channel "Trey's Trades." During that interview, Aron proclaimed:

We are going to pledge right now today publicly and we will file this publicly so it will be binding on us, because you can't announce intentions and then not carry through it, we hereby pledge at AMC that

if the shareholders approve this authorization for 500 million new shares to be issued we will not use one of those 500 million shares in calendar year 2021. Not one.

39. Having become apparent that the First Charter Amendment Proposal would be rejected in a vote of Class A stockholders, on April 27, 2021, the Board determined not to seek stockholder approval of the First Charter Amendment Proposal and withdrew it from the agenda for the 2021 Annual Meeting. The same day, Aron tweeted:



40. On May 4, 2021, the Company announced that its Board had postponed the Annual Meeting and rescheduled it for July 29, 2021.

41. The Board did not, however, abandon its efforts to increase the number of authorized Class A common shares. On July 3, 2021, the Company issued a preliminary proxy for the then-delayed annual meeting to be held later that month. For the first time, this preliminary proxy disclosed that 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 25,000,000 shares (5% of the increase requested in the First Charter Amendment Proposal) to a total of 549,173,073 shares of Class A common stock effective January 1, 2022 (the “Second Charter Amendment Proposal”), which was to be voted on by stockholders at the rescheduled 2021 Annual Meeting.

42. On June 3, 2021, Aron gave another interview with Collins where he continued his efforts to convince retail investors to approve a Charter amendment that would increase the authorized number of shares of common stock the Company could issue.

I want to make sure everybody knows that we can't do any more shares unless the shareholders approve. And that's just it, those are straight facts. And I'm going to make the case, probably later in this call in response to one of your questions, that the shareholders should authorize more shares, because this could be a very valuable tool to build this company going forward and grow this company going forward.

43. During that same interview, Aron also addressed stockholder concerns about a potential stock split:

I can tell you that I've never given any serious thought to splitting our stock or a reverse split of our stock. That's point number one. Point number two, we have absolutely no plans to split our stock or do a reverse split of our stock. You want to hear your point number three? We can't split our stock or do a reverse split of our stock without shareholder approval. So if we wanted to do that, and we don't, but if we wanted to do that, we would have to go out to the shareholders for a vote.

44. On June 23, 2021, Aron continued his quest to convince shareholders to approve the Second Charter Amendment Proposal on Twitter:



45. Aron's efforts to get retail investors to support his proposals failed. Thus, having failed to secure the necessary stockholder support, on July 6, 2021, AMC announced that it would no longer seek stockholder approval of the Second Charter Amendment Proposal and withdrew it from the agenda for the 2021 Annual Meeting. Aron thereafter issued a series of tweets on the withdrawal:



Adam Aron @CEOAdam · Jul 6, 2021



It's no secret I think shareholders should authorize 25 million more AMC shares. But what YOU think is important to us. Many yes, many no. AMC does not want to proceed with such a split. So, we're cancelling the July vote on more shares. And no more such requests in 2021. 1 of 2



1,370

3,263

13.9K



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Adam Aron @CEOAdam · Jul 6, 2021



Of course, voting on the other 4 issues requiring approval at the July 29 annual AMC shareholder meeting will continue on schedule. But proposal 1 is hereby officially tabled. There will be no voting before 2022 on more shares. 2 of 2



352

952

7,154



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46. Following the 2021 Annual Meeting on July 30, 2021, Aron once again acknowledged that AMC’s stockholders did not want to increase the number of authorized shares of common stock the Company could issue:



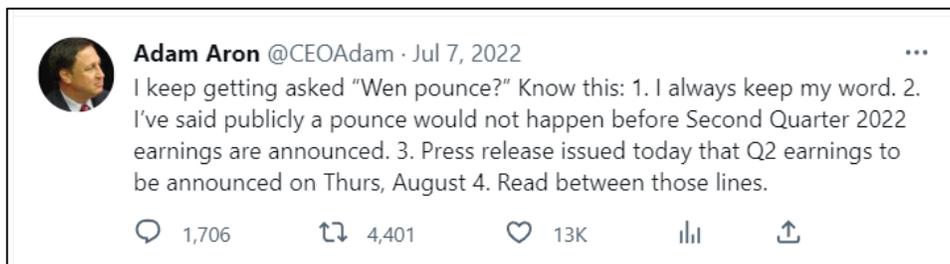
D. Displeased with Stockholders’ Rejection of their Prior Proposals, the Board Determines to Circumvent the Company’s Stockholders By Playing “3-D chess”

47. Aron was reelected to AMC’s Board at the Company’s annual meeting of stockholders held on June 16, 2022 (the “2022 Annual Meeting”), receiving barely more votes for his re-election than broker non-votes. Notably, the stockholders were not presented at the 2022 Annual Meeting with another proposal to increase the total number of authorized shares of Class A common stock.

48. Aron and the Board were, however, undeterred and unwilling to accept the common stockholders’ repeated rejection of their requests to increase the authorized number of Class A common shares they could issue. Instead of valuing and listening to the concerns and wishes of the common stockholders, the Board began implementing a plan to dramatically reduce the voting influence of the

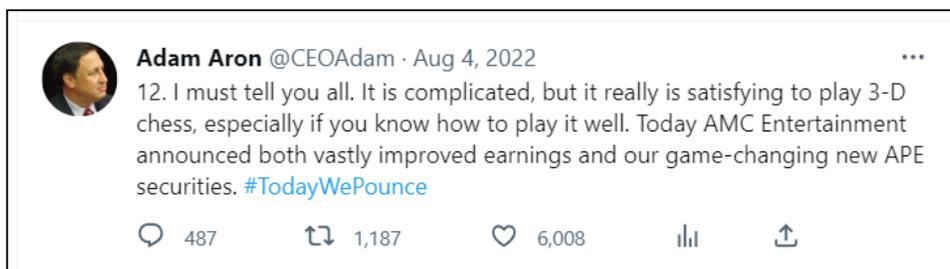
company's existing stockholders so that it could force through the sought-after increase in the authorized share count.

49. In a July 7, 2022 tweet, Aron foreshadowed a surprise announcement to be made on or around August 4, 2022:



50. In violation of both their fiduciary duties and the DGCL, Aron and the Board determined to "pounce" on the Company's owners. On August 4, 2022, AMC announced that it was creating a new class of securities known as AMC Preferred Equity units (called "APE(s)" as an homage to its retail investor base) to be issued initially to existing holders of the Company's common stock as a special dividend. In a tweet issued by Aron the same day, he described the move as playing "3-D chess" in a series of tweets:





51. On August 4, 2022, AMC filed a Certificate of Designations (the “Certificate of Designations”) with the Secretary of State of the State of Delaware, which designated 10,000,000 shares of the Company’s authorized preferred stock as Series A Convertible Participating Preferred Stock (previously defined as the “Preferred Stock”). The Certificate of Designations had the effect of amending the Company’s charter under Delaware law.

52. The Certificate of Designations provided that the Board, by resolution adopted on July 28, 2022, authorized the Preferred Stock and established a Pricing Committee to determine the final terms of the Certificate of Designations. On August 4, 2022, the Pricing Committee approved the final terms of the Certificate of Designations. Each Preferred Share was designed to be equivalent (in economic and voting rights) to 100 Common Shares. 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. Thus, each APE was designed to have the same economic and voting rights as 1 share of Class A common stock. Each APE was entitled to 1 vote on all matters AMC's stockholders could vote on as a single class. Subject to approval of all stockholders, the APEs were convertible to Class A common stock provided there was sufficient authorized but unissued shares of Class A common stock to support such a conversion (which there was not at the time the Preferred Stock was created).

53. The APEs are evidenced by a depositary receipt pursuant to a Deposit Agreement (the "Deposit Agreement") among the Company, Computershare Inc. and Computershare Trust Company, N.A., collectively acting as depositary and conversion agent (together, the "Depositary").

54. AMC deposited the underlying shares of the Preferred Stock with the Depositary pursuant to the Deposit Agreement. The Deposit Agreement contained a unique voting provision—not reflected in the Certificate of Designations—that requires the Depositary to vote all of the Preferred Stock represented by the APEs regardless of whether all of the APE holders actually cast a vote (previously defined as the "Depositary Voting Requirement"). Specifically, the Deposit Agreement provided in relevant part as follows:

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.

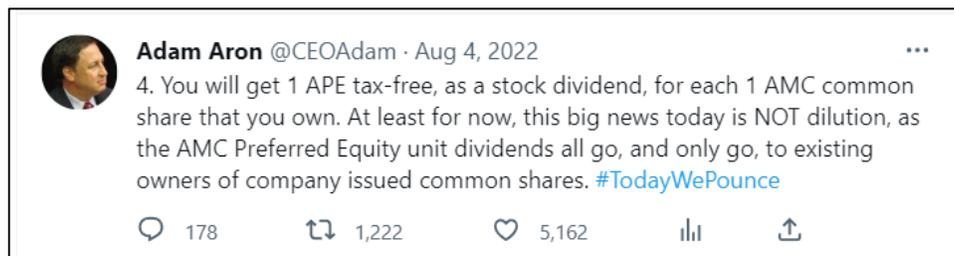
55. AMC included this provision in the Deposit Agreement because it knew the impact of the provision would be to artificially inflate the voting power of the APEs, and remove voting control entirely from the Class A common stockholders.

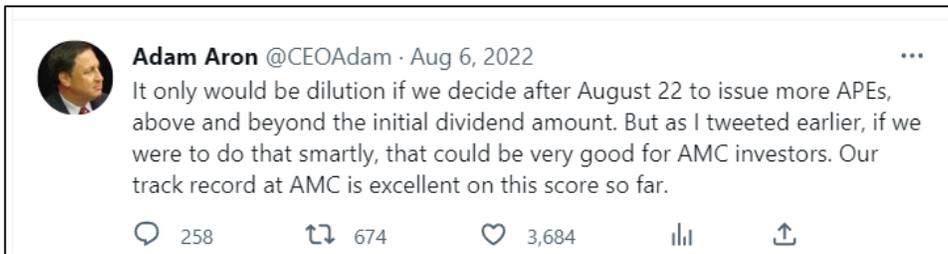
56. In an August 4, 2022 Open Letter to the common stockholders, Aron foreshadowed his real reason for issuing the APEs:

While each APE is designed to have the same rights as a common share, and can convert into a share of common stock, that conversion decision is solely up to you. *Conversion can only take place if the company proposes and shareholders (including APE holders) vote to approve the authorization of additional common shares at a future AMC Entertainment stockholders' meeting. That is still your call to make.*

(emphasis added).

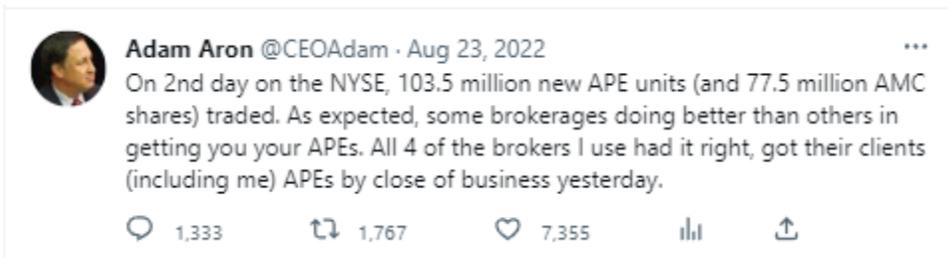
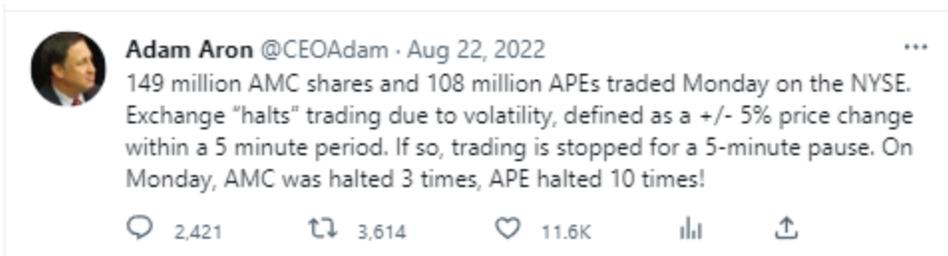
57. On August 19, 2022, AMC issued an initial 516,820,595 APEs to the holders of its 516,820,595 shares of Class A common stock, on a one-for-one basis, in the form of a special dividend. While proclaiming that the initial issuance of APEs would not dilute the common stockholders, Aron contemporaneously acknowledged that the issuance of additional authorized APEs would:





58. On August 22, 2022, the APEs commenced trading on the NYSE and thereafter consistently traded at a substantial discount to the price of AMC's Class A common stock.

59. There was substantial trading in the APEs, as Defendant Aron discussed in several tweets:



60. 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.

61. On December 19, 2022, AMC announced it had sold more than 125.9 million APEs pursuant to the ATM offering, for more than \$162.4 million.

E. The Board Makes a Deal with Antara to Eviscerate the Voting Control of the Company’s Class A Stockholders and to Ensure an Increase in the Total Authorized Shares of Class A Common Stock

62. 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 at a weighted average price of \$0.660 per APE.

63. In the first of the transactions, Antara purchased 60,000,000 APEs (“Initial APEs”) for \$34.9 million (\$0.582 per unit) under the Company’s ATM program.

64. Thereafter, Antara and AMC entered into a Forward Purchase Agreement pursuant to which AMC agreed to (i) sell 106,595,106 APEs (“Forward Purchase APEs”) for an aggregate purchase price of \$75.1 million (\$0.704 per unit), and (ii) simultaneously purchase from Antara, on a private basis, \$100 million aggregate principal amount of the Company’s Second Lien Notes due 2026 (the

“Exchange Notes”) in exchange for 91,026,191 APEs (together with the Forward Purchase APEs, the “Private Placement APEs”).

65. Pursuant to the terms of the Forward Purchase Agreement 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 and common stock it owned or controlled in favor of the aforementioned proposals.

66. Part of the Defendants’ scheme, including with this sale to Antara, was to eliminate the voting control of the common stockholders who had made very clear their opposition to 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.

67. On February 14, 2023, AMC issued its Definitive Proxy Statement advising of a Special Meeting of stockholders scheduled for March 14, 2023 where stockholders will vote on the following proposals:

Proposal No. 1: To approve an amendment to the Charter to increase the total number of authorized shares of Class A common stock from 524,173,073 shares to 550,000,000 shares;

Proposal No. 2: To approve an amendment to the Charter to effectuate a reverse stock split at a ratio of one share of Class A common stock for every ten shares of Class A common stock, which together with the increase in the number of authorized shares of Class A common stock, shall permit the full conversion of all outstanding shares of Preferred Stock into shares of Class A common stock.

68. As of February 14, 2023, the Company had 517,580,416 shares of Class A 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. AMC's creation and issuance of Preferred Stock with super-voting power (100 to 1), the Depositary Voting Requirement, and the steps taken as part of the scheme to issue such a large number of APEs with the financial incentive for them to vote for the conversion, effectively usurped the voting power of the Company's Class A stockholders.

69. While the APEs were designed to be identical to shares of the Company's Common Stock, they have been trading at just a fraction of the price.

On February 14, 2023, AMC’s Class A common stock closed at \$4.50 per share while the APEs closed at just \$2.34 per unit. As a result, it is in an APE holder’s self-interest to vote in favor of the aforementioned proposals. And the number of APE holders entitled to vote is nearly double the number of common stockholders. Combined with Antara’s agreement to vote all of its shares in favor of the proposals—and the Depositary Voting Requirement contained in the Deposit Agreement—AMC’s Board has ensured that it will receive an increase in the total number of authorized shares of common stock it can issue regardless of what the common stockholders want.

70. 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 usurped by the Defendants’ actions.

F. The Creation and Issuance of the Preferred Stock Adversely Effected the Rights and Powers of the Class A Stockholders, Yet was Not Submitted to a Vote of the Class A Stockholders in Accordance with DGCL Section 242(b)

71. Under Section 242(b)(1) of the DGCL, any proposed amendment to a company’s certificate of incorporation must be approved by a vote of stockholders entitled to vote thereon. In addition, the holders of outstanding shares of any class of shares is entitled to vote separately as a class on a proposal that would “alter or change the powers, preferences, or special rights of the shares of such class so as to affect them adversely.” 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*.

72. In the prospectus issued by AMC in connection with its IPO, and various subsequent prospectuses, the Company repeatedly acknowledged that:

Under the DGCL, amendments to our certificate of incorporation that would alter or change the *powers, preferences or special rights of the common stock* so as to *affect them adversely* also must be approved by a majority of the votes entitled to be cast by the holders of the shares affected by the amendment, voting as a separate class.

(emphasis added).

73. The creation of the Preferred Stock and the issuance of the Certificate of Designation constituted an amendment to AMC's certificate of incorporation.

74. The creation and issuance of the Preferred Stock, with the Depositary Voting Requirement, adversely impacted the "powers, preferences or special rights" of the Company's outstanding Class A common shares. At the time the Board created the Preferred Shares, AMC had only one class of authorized stock with voting rights, its Class A common stock. The right to vote on matters requiring stockholder approval was not shared with any other class. Thus, the right to vote was a special characteristic of the common stock in the capital structure of AMC.

75. Specifically, the sole or primary purpose of the Preferred Stock's creation and issuance was to eviscerate the voting power of the Company's Class A

stockholders and effectively fashion a new electorate that, unlike the pre-existing stockholder base, would not rebuff the Board's proposals to issue additional common stock. That is, before the creation of the Preferred Stock, AMC's Class A stockholders had the power and right to reject a specific proposal desired by the Board. This power and right conflicted with the desires of the Board, so the Board created and issued the Preferred Stock for the purpose of removing that power and right from the Company's Class A stockholders.

76. The ancillary impact of the issuance of additional classes of voting stock on the voting power of a company's existing stockholders may not, under some circumstances, be deemed to impact the "powers, preferences or special rights" of stockholders given the capital structure of a particular company. Here, however, the issuance of the Preferred Stock was specifically engineered to neutralize and circumvent the power and right of the Company's only existing class of stock in connection with a specific course of Action desired by the Board and to deny its holders their ability to exercise that right and power going forward. In such circumstances, the Company's Class A stockholders were entitled to a vote under Section 242(b)(2).

77. Accordingly, because the Preferred Stock was not properly authorized under Section 242(b)(2), the outstanding shares of Preferred Stock and corresponding APEs are presently void under Delaware law and cannot properly be

voted on the pending Proposals without further remedial action. At minimum, the proper remedy for this violation of the DGCL should include providing the Company's Class A stockholders with a separate class vote on the pending Proposals.

G. Defendants' Disloyal Adoption of the Depositary Voting Requirement Is Contrary to Principles of Fairness and Stockholder Democracy

78. As detailed above, Defendants acted to include the Depositary Voting Requirement in their Deposit Agreement with ComputerShare. This arrangement has the effect of supercharging the voting power of the APEs as a class vis-à-vis the Class A stockholders as a class, and was plainly designed to stack the deck to ensure approval of the Proposals.

79. Pursuant to the Depositary Voting Requirement, uninstructed APEs will be voted by the Company's depositary institution, ComputerShare, proportionally with votes actually cast by the beneficial holders of APEs. Thus, all of the nearly 1 billion APEs will be voted on the Proposals. Because APEs are economically incentivized to support the Proposals (which will result in a massive value transfer from Class A stockholders to APE holders) and because the single largest APE holder, Antara, has signed a voting agreement in favor of the Proposals, it can be expected that votes of APEs actually cast on the Proposals will be cast overwhelmingly in favor of the Proposals. Accordingly, the uninstructed APEs will also be cast overwhelmingly in favor of the Proposals.

80. Defendants plainly adopted this arrangement to ensure they captured the votes of even uninstructed APEs, allowing them to achieve the majority vote of all outstanding stock required by Section 242(b)(2). Given the significant number of retail holders of both Class A shares and APEs, and the low voter turn-out in the last annual meeting, there is a significant possibility that—even with the substantial numerical advantage of APEs over Class A shares—the Proposals would fail to achieve the Board’s desired majority if the Board did not take steps to ensure that their proposal would also receive the support of a majority of uninstructed APEs.

81. This type of corporate engineering, designed to procure the voting power of beneficial holders declining to actually cast an affirmative vote, is inconsistent with widely recognized principles of fairness and stockholder democracy. Notably, the NYSE has adopted a rule, Rule 452, barring its member brokers from voting uninstructed shares on “non-routine” matters—in recognition of the principle that votes on consequential corporate matters should be cast by the beneficial holders of shares or not at all. It appears AMC has acted to circumvent this rule by making its depository institution the record holder of the shares of Preferred Stock and then issuing in the market not shares of Preferred Stock, but corresponding APEs. This allowed AMC to impose the Depository Voting Requirement on ComputerShare, pursuant to which ComputerShare is required to vote uninstructed shares according to the wishes of the Company—*i.e.*, in proportion

with the votes actually cast by other APE holders, including Antara (from whom Defendants procured a voting agreement in support of the Proposals).

82. This highly unusual—and perhaps *sui generis*—arrangement, designed to ensure Defendants captured voting support from uninstructed shares regardless of the wishes or intentions of their beneficial holders, is contrary to the spirit of the NYSE rules and widely recognized principles of stockholder democracy. The Board’s adoption of this arrangement provides, at minimum, further evidence that its entire course of conduct leading to the Proposals has been engineered for the purpose of reversing the outcome of a stockholder vote that the Board knew it would otherwise lose.

CLASS ACTION ALLEGATIONS

83. The right to vote is a direct stockholder right, enforceable in a direct individual or class action.

84. Plaintiff brings this Action pursuant to Chancery Court Rule 23, on behalf of all other holders of Class A common stock (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 Defendants’ wrongful actions, as more fully described herein (the “Class”).

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

86. The Class is so numerous that joinder of all members is impracticable. The number of shares of AMC Class A common stock outstanding as of February 14, 2023 was 517,580,416. Plaintiff believes there are millions of beneficial holders of AMC common stock dispersed across the country and internationally.

87. 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:

- a. Whether the Defendants' actions and intended actions have violated or will violate the DGCL;
- b. Whether the Defendant members of AMC's Board have breached their fiduciary duties to Plaintiff and the Class; and
- c. Whether Plaintiff and the other members of the Class would be irreparably damaged by the conduct of the Defendants.

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

89. The Defendants have 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 Defendants' continue their unlawful conduct complained of herein, preliminary and

final injunctive and equitable relief on behalf of the Class as a whole will be entirely appropriate.

90. 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.

91. 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 Defendants, 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

Breach of Fiduciary Duty Against the Director Defendants

92. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

93. The Director Defendants, in their capacity as directors of AMC, engaged in a disloyal scheme to undermine the voting rights of AMC's Class A stockholders.

94. The Director Defendants knew AMC's Class A stockholders opposed and would not support further dilution of their shares.

95. To neutralize and circumvent the Class A stockholders' voting rights, the Director Defendants, *inter alia*: (i) issued the Preferred Stock with supervoting rights; (ii) entered into a contract including the Depositary Voting Requirement to supercharge the voting power of the Preferred Stock relative to the Class A common stock; (iii) sold hundreds of millions of APEs to new investors; (iv) bought votes for the Proposals through AMC's deal with Antara; and (v) structured the Proposals to include a conversion of APEs into Class A shares on a one-for-one basis, which will result in a significant transfer of value from the Class A stockholders to the APE holders, to financially incentivize APE holders to vote for the Proposals.

96. Plaintiff's and the Class's voting rights have been undermined by this scheme.

97. By entering into the Depositary Agreement with the Depositary Voting Requirement that purports to direct the Depositary to vote all Preferred Shares even in the absence of instructions of the beneficial owners of APE units on all matters, regardless of whether they are deemed routine or non-routine under applicable

NYSE rules, the Defendants have exposed AMC to the risk that its shares may be delisted from the NYSE, with a significant corresponding injury to AMC's common stockholders.

98. Each of the Director Defendants was a member of the Board at all times between the approval and issuance of the Preferred Stock through the issuance of AMC's Definitive Proxy Statement in support of the Proposals.

99. Plaintiff and the Class have no adequate remedy at law.

COUNT II

Violation of DGCL Section 242(b); Declaratory Judgment of Invalidity as to the Preferred Stock

100. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

101. AMC's creation of the Preferred Stock for the specific purpose of neutralizing and circumventing the Company's Class A common stockholders' right and power to reject the Board's proposed share count increase adversely affected the "powers, preferences and special rights" of the Company's existing Class A common stockholders, entitling them to a class vote on the creation and issuance of the Preferred Stock pursuant to Section 242(b)(2) of the DGCL.

102. AMC failed to seek approval from the common stockholders as a class for the creation and issuance of the Preferred Stock.

103. Because the creation and issuance of the Preferred Stock was never submitted to a vote of, nor approved by, the Company's Class A common stockholders, the Preferred Stock was never properly authorized and is invalid.

104. Because the Preferred Stock is invalid, the voting rights attached to each APE are likewise invalid.

105. Plaintiff and the Class are entitled to a declaratory judgment that the Preferred Stock is invalid and may not be voted in connection with the pending Proposals.

106. Plaintiff and the Class will be harmed if the Preferred Stock is not declared invalid and is permitted to be voted in connection with the pending Proposals.

107. Plaintiff and the Class have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment as follows:

- A. Declaring the Action properly maintainable as a class action;
- B. Declaring the Individual Defendants have breached their fiduciary duties to the Company's Class A stockholders;

- C. Declaring that the Board's issuance of the Preferred Stock was not properly authorized and that the Preferred Stock is invalid under the DGCL;
- D. Ordering that AMC's Class A stockholders be provided a separate class vote required to approve the Proposals as set forth in the Definitive Proxy Statement filed on February 14, 2023 or enjoining shares of Preferred Stock from voting on any of the Proposals to be submitted to a vote of AMC stockholders;
- E. Granting such equitable relief as appropriate to protect the voting rights of the Class A stockholders;
- F. Awarding Plaintiff and other members of the Class damages in an amount which may be proven at trial;
- G. Awarding Plaintiff the costs and disbursements of this Action including a reasonable allowance for Plaintiff's attorneys' fees and experts' fees and pre- and post-judgment interest; and
- H. Granting such other and further relief as this Court may deem to be just and equitable.

Dated: February 20, 2023

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**Pro Hac Vice* applications to be filed

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