



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

IN RE AMC ENTERTAINMENT )  
HOLDINGS, INC. STOCKHOLDER ) Consol. C.A. No. 2023-0215-MTZ  
LITIGATION )

**REPORT AND RECOMMENDATION OF SPECIAL MASTER  
REGARDING JORDAN AFFHOLTER'S MOTION TO INTERVENE**

PRICKETT, JONES & ELLIOTT, P.A.  
Corinne Elise Amato (#4982)  
1310 N. King Street  
Wilmington, Delaware 19801  
(302) 888-6500

*Special Master*

Dated: May 17, 2023

## PRELIMINARY STATEMENT

The Court has issued two opinions in this matter, and I have issued various reports and recommendations, one of which contains a brief factual recitation.<sup>1</sup> I incorporate the factual recitation from my prior report herein and presume familiarity with the general nature of this dispute.

## BACKGROUND

On April 24, 2023, Jordan Affholter (“Affholter”) filed correspondence with the Court, requesting, among other things, to intervene in this action.<sup>2</sup> The Motion to Intervene refers to an earlier letter that Affholter says “supports [the] motion to intervene.”<sup>3</sup> I understand that Affholter is referring to April 8, 2023 correspondence, which was docketed on April 17, 2023 (Trans. ID 69835190) (the “April 8 Letter”).

In the Motion to Intervene, Affholter claims an interest in the litigation, and seeks a “hold” on the settlement until (i) the legality of the issuance of the AMC Entertainment Holdings, Inc. (“AMC”) Preferred Equity Units (“APEs”) is investigated, including pursuant to 8 *Del. C.* § 242 (“Section 242”), (ii) a transparent share count is conducted, and (iii) stockholders are given access to the raw data

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<sup>1</sup> Trans. ID 69924744.

<sup>2</sup> Trans. ID 69875639. While this correspondence is not styled as a motion and does not reference Court of Chancery Rule 24, I consider it a motion to intervene and refer to it as the “Motion to Intervene.”

<sup>3</sup> *See* May 1, 2023 correspondence from Affholter to Special Master (Trans. ID 69932264).

associated with a March 14, 2023 AMC stockholder vote.<sup>4</sup> Affholter’s April 8 Letter includes the bases for these requests, including (i) supposed irregularities in AMC stock trading data, (ii) purported evidence that AMC stock has been over-sold or over-shortened, (iii) prior requests to AMC for an independent share count, (iv) an analysis of Rule 312.03 of the New York Stock Exchange Listing Manual (“Rule 312”), (v) an analysis of Section 242, and (vi) the possibility that supposed synthetic AMC shares are being voted.<sup>5</sup>

On April 27, 2023, the parties filed a Stipulation and Agreement of Compromise, Settlement, and Release (“Stipulation”).<sup>6</sup> The following day, the Court asked the parties to advise as to their position on how entering into the Stipulation and entry of the agreed-upon stay of further litigation applied to pending motions to intervene.<sup>7</sup> The parties responded, on May 3, 2023, proposing that any motions to intervene pending prior to entry of the Scheduling Order With Respect to Notice and Settlement Hearing (the “Scheduling Order”)<sup>8</sup> be resolved notwithstanding the stay.<sup>9</sup>

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<sup>4</sup> Motion to Intervene at 1.

<sup>5</sup> April 8 Letter at 1-5.

<sup>6</sup> Trans. ID 69906464.

<sup>7</sup> Trans. ID 69917463.

<sup>8</sup> Trans. ID 69929995.

<sup>9</sup> Trans. ID 69948706. The Scheduling Order staying the litigation was entered on May 1, 2023. *See* Scheduling Order ¶ 24.

On May 3, 2023, plaintiffs filed an Opposition to Proposed Intervenor Jordan Affholter’s Motion to Intervene (the “Opposition”).<sup>10</sup> On May 10, 2023, Affholter filed a Reply to Plaintiffs’ Opposition to Intervene (the “Reply”).<sup>11</sup> In the Reply, Affholter (i) criticizes plaintiffs’ valuation of the settlement, (ii) requests voting data, (iii) argues that certain claims may not have been adequately investigated, and (iv) claims that class members should be entitled to participate in discovery.<sup>12</sup>

A settlement hearing is scheduled to occur on June 29-30, 2023 (the “Settlement Hearing”).<sup>13</sup> At or after the Settlement Hearing, the Court will, among other things:

determine whether to finally certify the Settlement Class for settlement purposes only, pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2);

determine whether Plaintiffs and Class Counsel have adequately represented the Settlement Class, and whether Plaintiffs should be finally appointed as representatives for the Settlement Class and Class Counsel should be finally appointed as counsel for the Settlement Class;

determine whether the proposed Settlement should be approved as fair, reasonable, and adequate to the Settlement Class and in the best interests of the Settlement Class;

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<sup>10</sup> Trans. ID 69948587.

<sup>11</sup> Trans. ID 69990687.

<sup>12</sup> Reply ¶¶ 13-36.

<sup>13</sup> See Scheduling Order ¶ 6.

determine whether the Action should be dismissed with prejudice and the Releases provided under the Stipulation should be granted[.]<sup>14</sup>

The Court appointed me as a Special Master in this action, which charge includes making recommendations on motions to intervene.<sup>15</sup> I have reviewed the Motion to Intervene, the April 8 Letter, the Opposition, the Reply, and the parties' May 3, 2023 correspondence.<sup>16</sup> I recommend that the Court deny the Motion to Intervene, in part, as stated herein.

### **ANALYSIS AND RECOMMENDATION**

Affholter seeks to intervene pursuant to Court of Chancery Rule 24(b),<sup>17</sup> which provides:

*Permissive intervention.* Upon timely application anyone may be permitted to intervene in an action: (1) When a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

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<sup>14</sup> *Id.*

<sup>15</sup> *See* Order Appointing Special Master ¶ 1 (Trans. ID 69885808).

<sup>16</sup> Trans. ID 69948706.

<sup>17</sup> Reply ¶ 24.

Rule 24(c) provides further that motions to intervene must be accompanied by a “pleading setting forth the claim or defense for which intervention is sought.”<sup>18</sup>

**A. The Motion to Intervene Does Not Comply with Rule 24(c)**

Affholter did not serve the requisite pleading under Rule 24(c). This “requirement is not merely a procedural formality. Rather, it provides a basis on which the Court may assess the request to intervene.”<sup>19</sup> This deficiency alone provides a basis to deny the Motion to Intervene, particularly here, where Affholter’s stated concerns address the fairness of the settlement, rather than the prosecution of claims, and he did not verify his ownership of AMC stock.<sup>20</sup>

**B. The Motion to Intervene Does Not Satisfy Rule 24(b)**

The Motion to Intervene does not satisfy Rule 24(b).<sup>21</sup> Affholter has not proffered an interest in the litigation warranting intervention, and the settlement hearing is a more appropriate forum for Affholter to raise the stated concerns.

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<sup>18</sup> Ch. Ct. R. 24(c) (“A person desiring to intervene shall serve a motion to intervene . . . [which] *shall* be accompanied by a pleading setting forth the claim or defense for which intervention is sought.”) (emphasis added).

<sup>19</sup> *Southpaw Credit Opportunity Master Fund LP v. Advanced Battery Techs., Inc.*, 2015 WL 915486, at \*12 (Del. Ch. Feb. 26, 2015) (Master’s Report).

<sup>20</sup> In his Reply, Affholter recognized this issue, but did not provide proof of ownership. See Reply ¶ 27 (“I can confirm that I am a member of the settlement class. I currently own AMC and APE shares and will provide AMC and APE share proof of ownership at the proper time (at the time of objection or if earlier if the Court requests).”).

<sup>21</sup> Affholter did not assert a statutory right to intervene.

Affholter raises concerns about the APEs, including the belief that they may have been invalidly created and improperly voted at the March 14, 2023 AMC stockholder meeting.<sup>22</sup> Affholter also requests that a transparent share count be conducted because Affholter believes that “synthetic shares of AMC” exist and may have been voted at the March 14 meeting.<sup>23</sup> Affholter disputes the accuracy of the vote by citing purported discrepancies in estimated average retail shareholdings and inaccuracies from online sources on several, unspecified days regarding AMC’s market capitalization.<sup>24</sup>

These issues do not merit intervention prior to the Settlement Hearing. Affholter did not file a proposed complaint verifying these allegations. In addition, defendants have disclosed the results of the March 14, 2023 stockholder vote in a Form 8-K, and Affholter’s papers do not provide a basis to assume defendants have filed false information with the United States Securities and Exchange Commission.

Affholter acknowledges that permitting intervention would require postponing the Settlement Hearing to obtain a determination of whether the APE

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<sup>22</sup> Motion to Intervene at 1, April 8 Letter at 3-4, and Reply ¶¶ 30, 33 (raising concerns related to Section 242 and Rule 312).

<sup>23</sup> Motion to Intervene at 1 and April 8 Letter at 2-3, 5-6. Affholter also suggests that AMC should employ purported “block-chain” voting procedures (April 8 Letter at 5), but Affholter offers no theory as to how that is relief that could be obtained by a stockholder in this or any other action, much less ordered by this Court.

<sup>24</sup> Reply ¶ 31.

issuance, and the voting of the APEs, violated Section 242 and Rule 312 and to permit an audit of the stockholder vote. Thus, permitting Affholter to intervene would delay adjudication of the settlement, unduly prejudicing the parties' interests in resolving the litigation.

Affholter, however, will not be unduly prejudiced if the Motion to Intervene is denied. At the Settlement Hearing, the Court will, among other things, assess the reasonableness of the “give” and the “get,”<sup>25</sup> and in doing so, will look to the “legal and factual circumstances of the case, the nature of the claims, and any possible defenses.”<sup>26</sup> Thus, at the Settlement Hearing, the Court will analyze the strengths and weaknesses of the claims Affholter seeks to litigate, including the Section 242 claim, and claims will only be released if the settlement is approved.<sup>27</sup> Affholter may serve a formal, written objection to the terms of the settlement in advance of the Settlement Hearing.<sup>28</sup> In doing so, Affholter is permitted to assert the basis for

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<sup>25</sup> See *In re Activision Blizzard, Inc. Stockholder Litig.*, 124 A.3d 1025, 1043 (Del. Ch. 2015).

<sup>26</sup> See *Ryan v. Gifford*, 2009 WL 18143, at \*5 (Del. Ch. Jan. 2, 2009).

<sup>27</sup> The same is true as to the potential Rule 312 claims, if presented by an objector.

<sup>28</sup> Scheduling Order ¶ 18. Although Affholter has indicated various objections to the proposed settlement, to date, Affholter has not served a formal objection to the settlement.



the belief that these claims have merit and may be more valuable than the proposed settlement.<sup>29</sup>

At this stage, the more efficient approach is for the Motion to Intervene to be denied and for Affholter to serve an objection to the settlement, if Affholter so chooses.<sup>30</sup>

### **C. Affholter’s Request for Class Access to Discovery**

I do not yet make a recommendation on Affholter’s request for access to the discovery record.<sup>31</sup> I will issue a separate report and recommendation on this issue.

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<sup>29</sup> Affholter’s Reply argues that the value of the settlement is less than advertised by plaintiffs. Reply ¶¶ 14-22. This, too, concerns the “give” and “get” in the settlement and is therefore a more appropriate argument for an objection, rather than a basis to intervene.

<sup>30</sup> See *In re TD Banknorth S’holders Litig.*, 938 A.2d 654, 662 (Del. Ch. 2007) (noting the “orderly procedure of requiring an intervenor to voice its concerns at the settlement hearing”); see also *In re Home Shopping Network, Inc. S’holder Litig.*, 1994 WL 560801, at \*1 (Del. Ch. Oct. 4, 1994) (denying a motion to intervene until the settlement hearing).

<sup>31</sup> Reply ¶ 36.

## CONCLUSION

For the reasons set forth herein, I recommend that the Court DENY, in part, the Motion to Intervene.

Dated: May 17, 2023

PRICKETT, JONES & ELLIOTT, P.A.

*/s/ Corinne Elise Amato*  
Corinne Elise Amato (Bar No. 4982)  
1310 N. King Street  
Wilmington, Delaware 19801  
(302) 888-6500

*Special Master*

**CERTIFICATE OF SERVICE**

I, Corinne Elise Amato, certify on this 17th day of May, 2023, that I caused a copy of the foregoing *Report and Recommendation of Special Master Regarding Jordan Affholter's Motion to Intervene* to be served via File & ServeXpress on the following counsel of record:

Michael J. Barry, Esq.  
Kelly L. Tucker, Esq.  
Jason M. Avellino, Esq.  
GRANT & EISENHOFER P.A.  
123 Justison Street, 7th Floor  
Wilmington, DE 19801

Thomas Curry, Esq.  
SAXENA WHITE P.A.  
824 N. Market St., Suite 1003  
Wilmington, DE 19801

Raymond J. DiCamillo, Esq.  
Kevin M. Gallagher, Esq.  
Matthew W. Murphy, Esq.  
Edmond S. Kim, Esq.  
Adriane M. Kappauf, Esq.  
RICHARDS, LAYTON &  
FINGER, P.A.  
920 North King Street  
Wilmington, DE 19801

Gregory V. Varallo, Esq.  
Daniel E. Meyer, Esq.  
BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP  
500 Delaware Avenue, Suite 901  
Wilmington, DE 19801

I further certify that, on May 17, 2023, I caused a true and correct copy of the *Report and Recommendation of Special Master Regarding Jordan Affholter's Motion to Intervene* to be served via email upon the following Pro Se party:

***Via Email by File and ServeExpress:***

Jordan Affholter  
1501 Hatcher Crescent  
Ann Arbor, MI 48103  
jordanaffholter@gmail.com

*/s/ Corinne Elise Amato*  
Corinne Elise Amato (#4982)