

**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 CERTAIN MOTIONS FILED  
BY JORDAN AFFHOLTER AND ETAN LEIBOVITZ'S  
NOTICE OF MOTION ORAL ARGUMENT REQUESTED**

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*Special Master*

Dated: May 30, 2023

## PRELIMINARY STATEMENT

This report and recommendation addresses Jordan Affholter’s Motion for Adjournment of the Settlement Hearing Due to the Violation of the Putative Class Members’ Due Process Rights<sup>1</sup> (the “First Affholter Motion”) and Motion for an Affidavit Report, Hearing, and Shareholder Data Audit Due to the Violation of the Putative Class Members’ Due Process Rights<sup>2</sup> (the “Second Affholter Motion”) and Etan Leibovitz’s Notice of Motion Oral Argument Requested<sup>3</sup> (the “Leibovitz Motion”) (collectively, the “Motions”).<sup>4</sup> The Motions challenge the Court-ordered notice of the proposed settlement and settlement hearing. For the reasons set forth herein, I recommend that the Court deny the Motions.<sup>5</sup>

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<sup>1</sup> Trans. ID 70098907.

<sup>2</sup> Trans. ID 70101528.

<sup>3</sup> Trans. ID 70096341.

<sup>4</sup> The Court has issued opinions in this matter and I have issued reports and recommendations. I, therefore, presume familiarity with the general nature of this dispute.

<sup>5</sup> The Court appointed me as a Special Master in this action. *See* Order Appointing Special Master ¶ 1 (Trans. ID 69885808); Letter to Counsel & Interested Parties from Vice Chancellor Zurn, dated May 2, 2023, Regarding Special Master’s Authority (Trans. ID 69935078). A recommendation concerning the Motions falls within the scope of my authority.

## BACKGROUND

### A. Court-Ordered Notice Requirements

On May 1, 2023, the Court entered the Scheduling Order With Respect to Notice and Settlement Hearing (the “Scheduling Order”) requiring the provision of notice to AMC Entertainment Holdings, Inc. (“AMC”) stockholders.<sup>6</sup> The Court ordered the following forms of notice:

1. “the filing with the United States Securities and Exchange Commission (the “SEC”) of a Current Report on Form 8-K describing the Settlement and stating where stockholders can locate the Stipulation and the Notice on AMC’s investor relations website;”
2. “the publication of the Stipulation and the Notice on AMC’s investor relations website;”
3. “the publication of the Summary Notice over the *PR Newswire*;”
4. “the posting of a notice regarding the Settlement on AMC’s Twitter account;”
5. “the publication of the Stipulation and the Notice on Lead Counsel’s respective websites;” and

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<sup>6</sup> Trans. ID 69929995.

6. “the process for Strategic Claims Services (the “Notice Administrator”) to send a post card notice to record and beneficial owners of AMC Common Stock....”<sup>7</sup>

The Scheduling Order includes a process for delivering post cards to record holders of AMC common stock in the first instance and beneficial holders second, with the assistance of nominees and custodians.<sup>8</sup>

The Court determined that these measures are the “best notice practicable under the circumstances” and satisfy Delaware Court of Chancery Rule 23, due process and all other applicable law and rules.<sup>9</sup> No later than June 22, 2023, defendants and/or the Notice Administrator must file proof of compliance with the notice requirements.<sup>10</sup>

## **B. Post Card Notice**

One form of notice—the post cards—appears to be causing considerable consternation in an online community of purported AMC stockholders. Accounts identified as “Wall Street Apes” and “BAM Investor” have posted informal Twitter

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<sup>7</sup> Scheduling Order ¶ 11.

<sup>8</sup> *Id.* ¶ 14. On May 1, the parties advised the Court of their proposed process for delivery of the post cards so that they would “generally be provided to beneficial holders of AMC stock by May 24, 2023.” Trans. ID 69923487.

<sup>9</sup> Scheduling Order ¶ 11.

<sup>10</sup> *Id.* ¶ 16.

polls asking whether Twitter members have received notice via post card (the “Twitter Polls”).<sup>11</sup> Plaintiffs’ counsel have also fielded telephone calls and emails regarding the post cards.<sup>12</sup>

On May 26, 2023, Affholter and Leibovitz raised concerns regarding delivery of the post cards. Affholter claims to have not received a post card by 8:00 p.m. EST on May 24, 2023 and argues that this is likely not a unique issue among AMC stockholders as evidenced by the results of the Twitter Polls.<sup>13</sup> Affholter extrapolates from the Twitter Polls that many AMC stockholders have not received a post card<sup>14</sup> and seeks an adjournment of the settlement hearing “so that putative class members can be properly served due process.”<sup>15</sup>

Leibovitz argues that the Court “has not delineated a lucid protocol by which the AMC Defendants could be held to account for ensuring that each record holder of AMC Common Stock is in receipt of the postcard notice.”<sup>16</sup> Leibovitz asks that

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<sup>11</sup> First Affholter Motion, Exs. A, B.

<sup>12</sup> *Id.*, Ex. C.

<sup>13</sup> First Affholter Motion ¶¶ 3, 4.

<sup>14</sup> *Id.* ¶ 7.

<sup>15</sup> *Id.* ¶ 14. Affholter also seeks an adjournment so that class members may review the existing discovery record and exhibits to plaintiffs’ settlement brief that were publicly available by May 20, 2023. *Id.*; Trans. ID 70053757. I previously denied both requests. Trans. ID 70089417.

<sup>16</sup> Leibovitz Motion ¶ 19. Leibovitz generally challenges the Court-ordered notice procedure that has been in place since May 1, 2023. I will not address these

defendants “generate and submit a comprehensive report [by May 30, 2023] that explicates the methodology employed in processing the postcards.”<sup>17</sup> Leibovitz also demands additional discovery regarding AMC’s list of record holders of common stock.<sup>18</sup>

On May 29, 2023, Affholter filed the Second Affholter Motion raising similar concerns about the purported lack of post card notice.<sup>19</sup> From there, Affholter asks a litany of rhetorical and non-rhetorical questions, regarding, among other things, efforts to provide notice of the proposed settlement, AMC’s stock ledger, including whether AMC is in violation of 8 *Del. C.* § 219, and AMC’s financial position. Some of the questions rehash issues I addressed in prior reports and recommendations.<sup>20</sup> Some, like the questions regarding Section 219, are new.<sup>21</sup>

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arguments here, but Leibovitz may raise them in a formal objection to the proposed settlement.

<sup>17</sup> *Id.* ¶ 21; Proposed Order Granting Etan Leibovitz’s Motion.

<sup>18</sup> Leibovitz Motion ¶¶ 14, 16, 21.

<sup>19</sup> Second Affholter Motion ¶ 3.

<sup>20</sup> For example, in paragraph 11, Affholter requests a hearing to confirm the veracity of a statement made by defense counsel on April 25, 2023 concerning AMC’s financial position. I denied that request on May 23, 2023. Trans. ID 70051660.

<sup>21</sup> I have not endeavored to answer Affholter’s non-rhetorical questions, because the Court cannot provide parties or class members with legal advice or issue advisory opinions. *See* Report and Recommendation of Special Master Regarding Jordan Affholter’s Motion for Sanctions and Notice Correspondence at 5 (Trans. ID 70051660).

Affholter also expands his request for relief to include (i) “an Affidavit report, meticulously outlining the sequence of events that led to the oversight of failing to notify the settlement class within the stipulated time frame;” (ii) “a hearing to address the issue of delayed notification to settlement class members, to rectify this oversight and establish a revised timeline for this case going forward;” (iii) disclosure of AMC’s stock list; and (iv) “a comprehensive audit to verify the validity and accuracy” of AMC’s stock list including the disclosure of data files pertaining to “AMC and APE share counts” and the March 14, 2023 AMC stockholder vote.<sup>22</sup>

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<sup>22</sup> Second Affholter Motion ¶ 19.

## ANALYSIS AND RECOMMENDATION

### A. Recommendation Regarding Request to Adjourn the Settlement Hearing

The Scheduling Order permits extensions of deadlines for good cause shown and grants the Court discretion to adjourn the settlement hearing.<sup>23</sup> Affholter seeks an adjournment of the settlement hearing scheduled for June 29-30, 2023, because Affholter evidently has not received a post card and is concerned about the adequacy of the notice process.<sup>24</sup> Affholter's numerous filings with the Court—challenging the adequacy of the settlement, plaintiffs' counsel's representation of the class and the notice process itself—establish that Affholter has actual notice of the settlement.<sup>25</sup> Since April 17, 2023, Affholter has filed more than ten documents requesting various forms of relief related to the proposed settlement, including a request to intervene, access to existing discovery, additional discovery and extensions of time.<sup>26</sup> Affholter cannot complain about a lack of notice because

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<sup>23</sup> Scheduling Order ¶¶ 7, 25. Court of Chancery Rule 6(b) likewise requires good cause to modify an existing deadline. Good cause may be found where “the moving party has been generally diligent, the need for more time [is] neither foreseeable nor its fault, and refusing to grant the continuance would create a substantial risk of unfairness to that party.” *Coleman v. PricewaterhouseCoopers, LLC*, 902 A.2d 1102, 1107 (Del. 2006).

<sup>24</sup> Affholter's statement that he did not receive a post card is not verified. *See* First Affholter Motion ¶ 4.

<sup>25</sup> Trans. IDs 69835190, 69990687, 69958472, 70101469.

<sup>26</sup> Trans. IDs 69875639, 69941676, 70062036, 70098907.



Affholter is admittedly well aware of the proposed settlement and the action generally. Affholter's individual interest in having additional notice through a post card falls far short of providing good cause, or any reason, to adjourn the settlement hearing.

Affholter's statements about what information other AMC stockholders possess are unverified and inconclusive, at best. For example, Affholter relies on the Twitter Polls to assert that many AMC's stockholders have not received post cards. I have no way of evaluating the accuracy of those online votes or determining whether they were even cast by AMC stockholders. More importantly, the Court required notice of the settlement through AMC's Twitter account.<sup>27</sup> It is likely that AMC stockholders that use Twitter received notice of the proposed settlement through Twitter (or another online source) and need not wait for notice via post card.

The Court-ordered notice was reasonably calculated to inform stockholders of the proposed settlement.<sup>28</sup> "In the absence of a deviation from [that] Court-ordered notice,"<sup>29</sup> Affholter has failed to show good cause to extend any deadlines in the

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<sup>27</sup> Scheduling Order ¶ 12.

<sup>28</sup> *Id.* ¶ 11.

<sup>29</sup> *In re Riverbed Tech., Inc. Stockholders Litig.*, 2015 WL 5458041, at \*2 n.5 (Del. Ch. Sept. 17, 2015). Affholter relies on *Kahn v. Sullivan*, 594 A.2d 48, n.21 (Del. 1991), but that case is distinguishable, as there was an oversight in complying with the court-ordered notice. If the Court-ordered notice and affidavits on the issue, due on June 22, 2023, show a failure to comply with the Scheduling Order, the Court may consider whether and what remedy is appropriate.

Scheduling Order and adjourn the settlement hearing. Nor is there any need to hold a hearing dedicated to notice and establishing new deadlines. I recommend that the Court deny the First Affholter Motion without prejudice such that Affholter may raise any notice concerns in an objection if Affholter chooses to submit one.<sup>30</sup>

**B. Recommendation Regarding Requests for Affidavits, Reports and Additional Discovery**

I also recommend that the Court deny (i) Leibovitz’s request for “a comprehensive report that explicates the methodology employed in processing the postcards, clarif[ies] which specific record holders of AMC Common Stock list was utilized, and disclose[s] the original source of this list, supported by sworn affidavits”<sup>31</sup> and (ii) Affholter’s similar request for an “Affidavit report.”<sup>32</sup> The Scheduling Order already requires that defendants and/or the Notice Administrator file proof of compliance with the notice requirements by June 22, 2023. The Court will have the benefit of this proof in advance of the settlement hearing. Affholter

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<sup>30</sup> Affholter and Leibovitz both argue that the supposed lack of post card delivery violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution. First Affholter Motion ¶¶ 2, 8; Leibovitz Motion ¶ 4. Affholter and Leibovitz both have actual notice of the settlement. Moreover, the Court will determine whether or not the settlement offends due process at or after the settlement hearing. *See In re Countrywide Corp. S’holders Litig.*, 2009 WL 846019, at \*10 (Del. Ch. Mar. 31, 2009).

<sup>31</sup> Leibovitz Motion ¶ 21.

<sup>32</sup> Second Affholter Motion ¶ 19.

and Leibovitz fail to identify any reason to disrupt the already-established and orderly process by requiring proof of compliance sooner than June 22.

As to Affholter's and Leibovitz's requests for a stock list, and Affholter's request for stock and voting data and a comprehensive audit,<sup>33</sup> I previously recommended that the Court deny similar requests for additional discovery and do so again here.<sup>34</sup> They have not made the necessary showing to require the production of additional discovery.<sup>35</sup>

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<sup>33</sup> Leibovitz Motion ¶ 21.

<sup>34</sup> Report and Recommendation of Special Master Regarding Etan Leibovitz's Rule 5.1 Notice of Challenge and Omnibus Motion at 3 (Trans. ID 70071905); Report and Recommendation of Special Master Regarding A. Mathew's Motion to Depose at 2-3 (Trans. ID 70051594). I also understand that objectors may access more than 60,000 pages of documents subject to proof of ownership and confidentiality restrictions. See Notice of Pendency of Stockholder Class Action and Proposed Settlement, Settlement Hearing, and Right to Appear ¶ 19 (Trans. ID 69929995); Trans. IDs 70051000, 70053696, 70053785. The information Affholter and Leibovitz seek, as well as answers to Affholter's questions about compliance with Section 219 (Second Affholter Motion ¶ 7), may be available in the existing discovery record but it appears they have not inspected those documents.

<sup>35</sup> An objector may not take discovery without a "*prima facie* showing of bad faith or conflicting interests" or that a class representative "failed to properly explore through discovery or otherwise the merits of the case and defenses" before agreeing to the settlement. *In re Amsted Indus., Inc. Litig.*, 521 A.2d 1104, 1108-09 (Del. Ch. 1986).

## CONCLUSION

I recommend that the Court DENY the Motions without prejudice to raise these issues in any forthcoming objection to the proposed settlement.

Dated: May 30, 2023

PRICKETT, JONES & ELLIOTT, P.A.

/s/ Corinne Elise Amato

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*Special Master*

**CERTIFICATE OF SERVICE**

I, Corinne Elise Amato, certify on this 30th day of May, 2023, that I caused a copy of the foregoing *Report and Recommendation of Special Master Regarding Certain Motions Filed by Jordan Affholter and Etan Leibovitz's Notice of Motion Oral Argument Requested* to be served via File & ServeXpress on the following counsel of record:

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I further certify that, on May 30, 2023, I caused a true and correct copy of the *Report and Recommendation of Special Master Regarding Certain Motions Filed by Jordan Affholter and Etan Leibovitz's Notice of Motion Oral Argument Requested* to be served via File & ServeXpress upon the following Pro Se parties:

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