

**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 FOR EQUAL PROTECTION UNDER THE LAW REGARDING  
ACCESS TO CONFIDENTIAL INFORMATION AND DISCOVERY**

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

*Special Master*

Dated: June 6, 2023

## REPORT AND RECOMMENDATION

I recommend that the Court deny Jordan Affholter’s (“Affholter”) Motion for Equal Protection under the Law Regarding Access to Confidential Information and Discovery (the “Motion”).<sup>1</sup> Affholter has failed to identify any basis for the requested relief.<sup>2</sup>

### I. BACKGROUND

Affholter first wrote to the Court on April 8, 2023, in a letter docketed on April 17, 2023, raising concerns with the proposed settlement of this action.<sup>3</sup> Affholter has since moved to intervene, sought access to discovery, and made other requests of the Court.<sup>4</sup> I recommended that the Court deny some of those requests, including Affholter’s request to intervene in this action.<sup>5</sup> Affholter did not take exception to my recommendation on the request to intervene.<sup>6</sup>

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<sup>1</sup> Trans. ID 70127630. 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>2</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 regarding the Motion falls within the scope of my authority.

<sup>3</sup> Trans. ID 69835190.

<sup>4</sup> Trans. IDs 69875639, 69990687, 69958472, 69941676.

<sup>5</sup> Trans. IDs 70033944, 70051660, 70089417, 70101662.

<sup>6</sup> Ct. Ch. R. 144(c).

On May 19, 2023, I recommended that objectors and other class members considering whether to object to the proposed settlement be permitted access to the existing discovery record, conditioned on providing proof of AMC Entertainment Holdings, Inc. (“AMC”) stock ownership and execution of a confidentiality agreement<sup>7</sup> that includes a prohibition on transacting in AMC securities until final resolution of this action.<sup>8</sup> The Court adopted that recommendation.<sup>9</sup> Defendants then made the discovery record available to potential objectors who satisfied the preconditions to access.<sup>10</sup>

On May 22, 2023, Affholter filed a Motion for Enlargement of Time and Objection to the Discovery Process (the “May 22 Motion”), objecting to the process implemented by the Court for class members to access the discovery record, including the trading restrictions.<sup>11</sup> The Court rejected Affholter’s objections two days later, confirming that “more stringent protections are warranted to ensure the

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<sup>7</sup> Trans. ID 70051000.

<sup>8</sup> Report and Recommendation of Special Master Regarding Class Member Access to the Discovery Record (Trans. ID 70051000) (“Discovery Recommendation”).

<sup>9</sup> Letter Opinion Adopting Special Master Report (Trans. ID 70053696) (“Discovery Letter Opinion”); Letter Decision Regarding Jordan Affholter’s Objection to the Discovery Process (Trans. ID 70073710) (“Objection to Discovery Process Letter Opinion”).

<sup>10</sup> Defendants’ Opposition to Jordan Affholter’s Request to Extend the Deadline to Submit Objections ¶ 4 (Trans. ID 70078952).

<sup>11</sup> Trans. ID 70062036 at 6-9.

access afforded numerous unrepresented objectors does not lead to securities violations or misuse of confidential information.”<sup>12</sup>

Since then, Affholter has not sought access to the existing discovery record, and the deadline to submit objections to the proposed settlement passed on May 31, 2023.<sup>13</sup> Affholter did not submit a timely objection to the proposed settlement.

Affholter filed the instant Motion on June 2, 2023, making unverified allegations that “AMC insiders [such as Antara] and [AMC’s] board of directors sold many of their vested shares on insider information.”<sup>14</sup> Based upon these purported claims, Affholter requests that the Court issue an order that

all parties privy to confidential discovery, confidential insider information from AMC’s Board of Directors, or those directly represented by such parties (inclusive of the AMC Defendants, AMC’s Board of Directors, Allegheny, the Lead Plaintiffs, and Antara Capital), shall be barred from trading (buying, selling, or vesting through compensation plans or other means) AMC common stock or related assets such as APE stock, AMC Performance Share Units (PSUs), APE PSUs, AMC Restricted Stock Units (RSUs), APE RSUs, or AMC derivatives (calls or puts) until the current Court case or any subsequent appeal is unequivocally resolved.<sup>15</sup>

Essentially, Affholter contends that parties and non-parties to this action have traded on inside information and, therefore, the Court should impose a broad trading

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<sup>12</sup> Objection to Discovery Process Letter Opinion at 5.

<sup>13</sup> Trans. ID 69929995 ¶ 18.

<sup>14</sup> Motion ¶ 5.

<sup>15</sup> *Id.* ¶ 10.

restriction on anyone with access to AMC’s confidential information—similar to the restrictions that objectors must accept before accessing the existing discovery record.<sup>16</sup> Affholter believes that this will “ensure fairness and equitable treatment across the applicable parties and that parties are not participating in potential illegal trading.”<sup>17</sup>

Affholter also asks in the Motion whether class members who access the existing discovery record may “utilize a Blind Trust where limit orders for buying or selling at certain price levels are provided (before accessing discovery) is permitted or prohibited.”<sup>18</sup>

## **II. ANALYSIS AND RECOMMENDATION**

I recommend that the Court deny the Motion.

### **A. Trading Restriction**

There is no basis to recommend that the Court grant Affholter’s request for a trading restriction. Affholter is not a party to this action. Even if I assumed Affholter was a party and filed a verified complaint, the allegations of insider trading are nowhere near sufficient to satisfy Court of Chancery Rule 23.1 and the evidentiary

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<sup>16</sup> Affholter uses the term “parties” but does not appear to limit that term to the parties to this action.

<sup>17</sup> *Id.* ¶ 8.

<sup>18</sup> *Id.* ¶ 9.

showing required for such a claim under Delaware law.<sup>19</sup> Affholter skips far too many standing, pleading, and evidentiary requirements for me to recommend that the Court even consider granting any relief for these purported insider trading claims.

Moreover, the Court entered a confidentiality order on March 14, 2023 limiting use of confidential and highly confidential discovery material<sup>20</sup> and there is a “comprehensive array” of federal statutes in place, addressing insider trading and subjecting corporate insiders to various forms of punishment if they violate federal law.<sup>21</sup> Thus, the Court need not craft an order that potentially replicates existing prohibitions.

## **B. “Blind Trust”**

Affholter raises an untimely, hypothetical question of whether the Court will permit class members that seek access to the existing discovery record to use a

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<sup>19</sup> See, e.g., *In re Oracle Corp. Deriv. Litig.*, 867 A.2d 904, 934 (Del. Ch. 2004), *aff’d*, 872 A.2d 960 (Del. 2005).

<sup>20</sup> Trans. ID 69334080 ¶ 10 (“Confidential or Highly Confidential Discovery Material shall be used solely for purposes of the Litigation and shall not be used for any other purpose, including, without limitation, any business or commercial purpose, or any other litigation or proceeding; provided, however, that the foregoing shall not apply to Confidential or Highly Confidential Discovery Material that is or properly becomes part of the public record; and further provided that the restrictions on the use of Confidential or Highly Confidential Discovery Material may be modified for good cause shown.”).

<sup>21</sup> *Oracle*, 867 A.2d at 927.

“Blind Trust” to buy or sell AMC securities while this action is pending.<sup>22</sup> Although Affholter has made numerous filings with the Court, including one filing with proof of current ownership of AMC stock,<sup>23</sup> Affholter has not submitted an objection to the proposed settlement, and the objection deadline has passed. The purpose of granting access to the discovery record was to assist class members in determining whether to object or to aid in an objection to the proposed settlement.<sup>24</sup> Affholter does not explain why Affholter, or any class member who did not object, should now be permitted access to the discovery record with or without use of a “Blind Trust.” There is no actual issue for the Court to resolve.<sup>25</sup>

If I consider the substance of Affholter’s question, there is reason to recommend that the Court deny Affholter’s request to use a “Blind Trust” to trade AMC securities while accessing the discovery record. The Court ordered that class members must agree not to buy or sell AMC securities until final resolution of the

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<sup>22</sup> Motion ¶ 9.

<sup>23</sup> May 22 Motion, Ex. A.

<sup>24</sup> Discovery Recommendation at 2, 9 (recommending granting discovery access to any “class member who wishes to review the discovery record to determine whether to object or to aid in an objection”).

<sup>25</sup> *In re Allergan, Inc. S’holder Litig.*, 2014 WL 5791350, at \*9 (Del. Ch. Nov. 7, 2014) (“[I]t would be imprudent and inappropriate to address [] hypotheticals in the absence of a genuine controversy with concrete facts. Delaware courts typically decline to decide issues that may not have to be decided or that create hypothetical harm.”) (internal citations omitted).

action before accessing the discovery record.<sup>26</sup> The specific language the Court approved does not include any exceptions to this trading restriction.<sup>27</sup>

Affholter has tested the Court's decision to impose these trading restraints once.<sup>28</sup> In response, the Court confirmed that the restraints are "an appropriate precaution imposed on access to AMC's confidential information" and explained that "each stockholder can make his or her own determination as to whether they wish to commit to those restrictions to view the discovery record."<sup>29</sup> I see no basis to recommend that the Court make any modification to the existing and twice-approved trading restriction in response to Affholter's untimely request.

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<sup>26</sup> Discovery Letter Opinion at 3; Objection to Discovery Process Letter Opinion at 5.

<sup>27</sup> Discovery Letter Opinion at 3; Revised Stipulation and [Proposed] Order for the Production and Exchange of Confidential and Highly Confidential Information, Ex. B ¶ 8 (Trans. ID 70016779).

<sup>28</sup> May 22 Motion.

<sup>29</sup> Objection to Discovery Process Letter Opinion at 6.



## CONCLUSION

For the reasons set forth herein, I recommend that the Court DENY the Motion.

Dated: June 6, 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 6th day of June, 2023, that I caused a copy of the foregoing *Report and Recommendation of Special Master Regarding Jordan Affholter's Motion for Equal Protection under the Law Regarding Access to Confidential Information and Discovery* 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 June 6, 2023, I caused a true and correct copy of the *Report and Recommendation of Special Master Regarding Jordan Affholter's Motion for Equal Protection under the Law Regarding Access to Confidential Information and Discovery* to be served via File & ServeXpress upon the following Pro Se parties:

Jordan Affholter  
jordanaffholter@gmail.com

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