

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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| IN RE AMC ENTERTAINMENT HOLDINGS, INC. STOCKHOLDER LITIGATION |))))) | Consolidated C.A. No. 2023-0215-MTZ |
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**PLAINTIFF ANTHONY FRANCHI’S RESPONSE TO
THE COURT’S JUNE 20, 2023 LETTER**

Plaintiff Anthony Franchi (“Franchi”) submits this response to the Court’s June 20, 2023 letter providing pre-settlement hearing questions (the “Letter”).¹ Allegheny County Employees’ Retirement System (“Allegheny,” with Franchi, “Plaintiffs”) previously responded to the question directed to it on June 21.² Plaintiffs remain at the Court’s disposal to provide any additional information or response that may be helpful.

i. *Has Mr. Franchi owned AMC common stock continuously from the wrongs alleged by the plaintiffs through the present? Or did his ownership begin on November 8, 2022?*

Mr. Franchi has owned AMC common stock continuously from November 8, 2022 through the present.

ii. *If the latter, does Mr. Franchi have standing to bring claims based on wrongs that predated his stock ownership?*

Mr. Franchi has standing to bring the asserted claims, irrespective of whether

¹ Trans. ID 70224836.

² See Plaintiff Allegheny County Employees’ Retirement System’s Response To The Court’s June 20, 2023 Letter, Trans. ID 70237247 (the “Allegheny Response”).

some of the conduct described in the Complaints predates his purchases.

The contemporaneous ownership requirement is a product of Delaware statute and applies only to derivative actions. 8 *Del. C.* § 327. No corresponding statutory requirement exists for direct claims. Rather, all direct causes of action travel with the shares—also by statute—and are transferrable subject to certain inapplicable exceptions.³ Thus, Mr. Franchi’s standing is not affected by the fact that he acquired his shares after August 2022, given that as a purchaser of those shares, he acquired all rights of prior holders.

This conclusion is supported by examination of the particular claims asserted. Regarding the equitable “*Blasius*” claim, Mr. Franchi alleged that Defendants “act[ed] for the primary purpose of impeding stockholders’ franchise rights”⁴ in a course of conduct that *began* with issuance of the APE units, but *continued* well-after his stock purchase—*i.e.*, through the Antara agreement and announced

³ 6 *Del. C.* § 8-302 (a purchaser of a security “acquires all rights in the security that the transferor had or had power to transfer”); *Urdan v. WR Capital Partners, LLC*, 244 A.3d 668, 677 (Del. 2020) (same); *In re Activision Blizzard, Inc. S’holder Litig.*, 124 A.3d 1025, 1050 (Del. Ch. 2015), *as revised* (May 21, 2015), *judgment entered sub nom. In re Activision Blizzard, Inc. Stockholder Litig.*, 2015 WL 2415559 (Del. Ch. May 20, 2015) (“When a share of stock is sold, the property rights associated with the shares, including any claim for breach of those rights and the ability to benefit from any recovery or other remedy, travel with the shares”).

⁴ *Coster v. UIP Cos.*, 255 A.3d 952, 962 (Del. 2021) (citing *Blasius Indus., Inc. v. Atlas Corp.*, 564 A.2d 651 (Del. Ch. 1988)).

Conversion in December 2022, and vote in March 2023.⁵ In fact, no ripe claim (or any basis to seek relief in equity) existed until the planned conversion was announced.

With respect to the statutory “242(b)” claim, Mr. Franchi did not originally assert this claim, and it is beyond question that Allegheny has standing to assert it.⁶ Even so, Mr. Franchi has standing. “A corporate charter violation claim travels with a stock sale because the injury ‘is to the stock and not the holder.’”⁷ Thus, the claims associated with Mr. Franchi’s shares became his at the time of purchase. Plaintiffs are not aware of any Delaware case suggesting that a corporation may continue to engage in an ongoing statutory violation on the basis that it began before a representative stockholder first acquired stock, or that a later-acquiring stockholder lacks standing to sue to rectify the statutory breach.

In fact, this Court has approved settlements of claims for statutory violations where the representative plaintiff purchased stock after the violation began. For example, in *In re Palantir Technologies Inc. Class F Stock Litigation*, C.A. No. 2021-0275-SG, plaintiff alleged direct statutory violations on a classwide basis arising out of Palantir’s pre-direct listing recapitalization. Plaintiff purchased stock

⁵ See Verified Stockholder Class Action Complaint, Trans. ID 69170312, ¶¶12-37, 85-131, 140-52.

⁶ See Allegheny Response.

⁷ *Urdan*, 244 A.3d at 677 (citation omitted).

in the direct listing and subsequently challenged the pre-listing actions as statutorily invalid.⁸ This Court later certified a settlement class around that plaintiff and approved the settlement.⁹

This outcome makes sense. Otherwise, a corporation could, for example, adopt charter provisions that violate the Delaware General Corporation Law before public listing and escape any judicial review.

iii. *If the answer to (ii) is “no,” how does that lack of standing to press at least one of the claims before the Court inform Mr. Franchi’s ability to serve as class representative, his personal interest in pursuing claims he has no standing to bring, and the typicality of his claims vis a vis the class?*

Plaintiffs refer to their answers to Questions (i) and (ii) above. Please also note that Allegheny has owned continuously since 2015.¹⁰

iv. *Is the Settlement Class limited to AMC common stockholders that continuously held AMC common stock the entire time from August 3, 2022, through and including the Settlement Class Time? Or does it also include AMC common stockholders that held AMC common stock at any time between August 3, 2022, through and including the Settlement Class Time?*

The Settlement Class includes all stockholders who held at any time between August 3, 2022 through and including the Settlement Class Time.

In this respect, the Settlement Class Period is analogous to multi-day class periods running from announcement to closing of a corporate merger or acquisition,

⁸ Trans. ID 66474464, ¶¶ 27, 36-43, 52.

⁹ Trans. ID 68095054.

¹⁰ See Allegheny Response.

which are routinely approved by the Court.¹¹ Because Delaware corporate law claims (whether for breach of fiduciary duty or statutory violations) travel with the shares,¹² and “seller claims” are not recognized, releases for a multi-day class period are approved absent some articulation that there valuable and unasserted released claims.¹³ Both the equitable and statutory claims “travel with the shares,” and thus any harm from the Conversion and attendant right to settlement consideration belong to holders as of the Settlement Class Time.

v. *Does the Settlement Class include Mr. Franchi?*

Yes. Mr. Franchi held AMC common stock during the Settlement Class Period. He is also a current holder and intends to hold through any Settlement Class Time, and thus would receive his *pro rata* portion of the Settlement Consideration.

vi. *If the Settlement Class includes Mr. Franchi and others who bought stock after August 3, 2022, please address the commonality requirement and the standing of class members to bring both claims pending before the Court.*

The claims of both pre- and post-August 3, 2022 purchasers “aris[e] from the

¹¹ See Plaintiffs’ Reply in Further Support of Settlement, Award of Attorneys’ Fees and Expenses, and Incentive Awards, Trans. ID 70161266 (the “Reply”), at 41, 41 n.106.

¹² See *Activision*, 124 A.3d at 1043-44 (Delaware corporate law claims, including a direct claim “is a property right associated with the shares. By default, that property right travels with the shares.”).

¹³ See Reply at 40-41, 41 n.105. The Special Master has recommended against objections criticizing the multi-day Settlement Class Period on this basis. Report and Recommendation of Special Master Regarding Objections to Proposed Settlement, Trans. ID 70221082, at 32, 32 n.107.

relationship among stockholder, stock and the company,” and thus “inhere in the security itself.”¹⁴ Claims embedded in the shares of both pre- and post-August 3, 2022 purchasers are “common” under Rule 23(a)(3) because both sets of claims have an identical relationship to Defendants’ breaching conduct. Delaware law does not look to unique characteristics of stockholders (like for example purchase price) when considering commonality issues.¹⁵

Recent precedent examining this issue holds that timing of purchase did not impact commonality of claims.¹⁶ In *Straight Path*, the Court examined commonality in the context of an M&A transaction where the class consisted of stockholders who purchased both before and after a course of breaching conduct *began* and was partially disclosed, but before it *completed*. There, plaintiffs challenged a controlling stockholder’s receipt of an unfair nonratable benefit in connection with a third-party acquisition. The term sheet documenting the nonratable benefit was filed with the SEC almost a year before the deal closed.

Defendants challenged both the commonality of a class that contained both

¹⁴ *Urdan*, 244 A.3d. at 677.

¹⁵ *See, e.g., Leon N. Weiner & Assocs., Inc. v. Krapf*, 584 A.2d 1220, 1225 (Del. 1991) (finding commonality satisfied despite “[t]he fact that the 203 lot owners may have ‘different interests and views,’ as the trial court found,” because “[t]he case poses one legal issue common to all lot owners and the relevant facts also appear by stipulation to be undisputed and common to all lot owners.”).

¹⁶ *In re Straight Path Communications Inc. Consol. S’holder Litig.*, 2022 WL 2236192, at *6 (Del. Ch. Jun. 14, 2022).

pre- and post-filing stockholders—and the typicality of a lead plaintiff who purchased after the term sheet was filed—asserting that post-filing purchasers’ claims were differently situated as the surrendering of the nonratable benefit was known to the market at the time. The Court rejected this argument because “this matter was not ripe for judicial action until the Merger closed. The wrongdoing—that is, the diversion of the Merger consideration—had not yet crystallized, as the Merger had not yet been consummated.”¹⁷ The Court then found that the claims of class members who bought after the term sheet’s filing were sufficiently “common” with the claims who purchased earlier to satisfy Rule 23(a)(3).

The same is true here. With respect to the equitable claim, while the Complaints allege a course of breaching conduct that began perhaps as early as the APE issuance itself, material information about the nature and scope of the breach was unavailable until *after* disclosure of the Antara deal and planned Conversion. Moreover, no ripe claim challenging the wrongful impediment of the stockholder franchise existed until AMC announced the dilutive Conversion and reverse split.¹⁸ With respect to the statutory claim, it is by its nature a continuing wrong that can void an illegal transaction at any time.

¹⁷ 2022 WL 2236192, at *6 (citation omitted).

¹⁸ Indeed, had Plaintiffs brought claims prior to December 22, 2022 to enjoin a conversion that did not yet exist, they would surely (and correctly) been dismissed as seeking an advisory opinion.

vii. *If the Settlement Class does not include Mr. Franchi, how can he serve as a class representative?*

Plaintiffs refer to their answer to Question (v) above. Please also note that Allegheny has owned continuously since 2015.¹⁹

Dated: June 23, 2023

Respectfully submitted,

Of Counsel:

**BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP**

**BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP**

Mark Lebovitch
Edward Timlin
1251 Avenue of the Americas
New York, NY 10020
(212) 554-1400

By: /s/ Daniel E. Meyer
Gregory V. Varallo (#2242)
Daniel E. Meyer (#6876)
500 Delaware Avenue, Suite 901
Wilmington, DE 19801
(302) 364-3601

**FIELDS KUPKA &
SHUKUROV LLP**

William J. Fields
Christopher J. Kupka
Samir Shukurov
1441 Broadway, 6th Floor #6161
New York, New York 10018
(212) 231-1500

GRANT & EISENHOFER P.A.

By: /s/ Michael J. Barry
Michael J. Barry (#4368)
Kelly L. Tucker (#6382)
Jason M. Avellino (#5821)
123 Justison Street, 7th Floor
Wilmington, DE 19801
(302) 622-7000

SAXENA WHITE P.A.

David Wales
10 Bank St., 8th Floor
White Plains, NY 10606
(914) 437-8551
– and –
Adam Warden

SAXENA WHITE P.A.

By: /s/ Thomas Curry
Thomas Curry (#5877)
824 N. Market St., Suite 1003
Wilmington, DE 19801
(302) 485-0483
Attorneys for Plaintiffs

¹⁹ See Allegheny Response.

7777 Glades Rd., Suite 300
Boca Raton, FL 33434
(561) 394-3399

Words: 1736