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IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL SIMONS, on behalf of himself and all other similarly-situated former holders of Series A Convertible Participating Preferred Stock and AMC Preferred Equity Units of AMC Entertainment Holdings, Inc., Plaintiff Below, Appellant v. AMC ENTERTAINMENT HOLDINGS, INC., Defendant Below, Appellee	No. 457, 2024 Court Below: Court of Chancery of the State of Delaware, C.A. No. 2023-0835-MTZ

ANSWERING BRIEF OF APPELLEE AMC ENTERTAINMENT HOLDINGS, INC.

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Dated: January 24, 2025

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NATURE OF PROCEEDINGS

This action arises out of the approval of a class action settlement (the "Settlement") in *In re AMC Entertainment Holdings, Inc. Stockholder Litigation*, C.A. No. 2023-0215-MTZ (the "Stockholder Litigation"), as affirmed by this Court,[1] which allowed the reverse stock split of AMC Entertainment Holdings, Inc.'s ("AMC" or the "Company") Common Stock (the "Reverse Stock Split") and the conversion of AMC's Preferred Equity Units ("APEs") into AMC Common Stock (the "Conversion"). Under the terms of the Settlement, holders of AMC Common Stock prior to the Conversion were given one additional share of Common Stock for every 7.5 shares that they held, after giving effect to the Reverse Stock Split (the "Settlement Payment").

As the Court of Chancery explained when it approved the Settlement, the "Settlement reallocates AMC's equity between its common stockholders and APE unitholders," and it "thus ameliorates some of the dilution the APE issuances inflicted on the common stockholders."[2] Plaintiff Michael Simons ("Plaintiff") filed the instant action months after the Reverse Stock Split and Conversion were

[1] *In re AMC Ent. Hldgs., Inc. S'holder Litig.*, 319 A.3d 310 (Del. 2024) (TABLE) ("*AMC III*"), *cert. denied sub nom. Izzo v. AMC Ent., Inc.*, 2024 WL 4427257 (U.S. Oct. 7, 2024) ("*Izzo*").

[2] *In re AMC Ent. Hldgs., Inc. S'holder Litig.*, 2023 WL 5165606, at *34 (Del. Ch. Aug. 11, 2023) ("*AMC II*").

announced -- but before they were completed -- alleging that holders of APEs were also entitled to the Settlement Payment under the terms of the Certificate of Designations (the "COD") that governed the APEs prior to the Conversion. In his initial complaint, Plaintiff demanded that, "prior to the conversion," AMC distribute the Settlement Payment to APE holders "at the same time and on the same terms as it will be distributed to the holders of Common Stock."[3] Plaintiff, however, did nothing to pursue that relief. He did not file a motion to expedite, much less a motion for a temporary restraining order or a preliminary injunction. Of course, doing nothing, as Plaintiff did, was a logical and economically rational move, as Plaintiff expected to *gain* from the Conversion of his APEs into Common Stock, which was trading at a much higher price than the APEs.

With the Conversion safely completed, Plaintiff filed a Verified Amended Complaint (the "Amended Complaint" or "AC"), asserting claims for breach of contract and breach of the implied covenant of good faith and fair dealing based on Sections III and VI of the COD, and seeking an "award [of] monetary damages to" former APE holders "to adjust for the dilution" that the Settlement Payment

[3] B242 (Verified Complaint, *Simons v. AMC Ent. Hldgs., Inc.*, C.A. No. 2023-0835-MTZ (Del. Ch. Aug. 14, 2023) ("Compl.") (¶ 11)).

allegedly caused them.[4] Plaintiff's claims seek to undo the Settlement Payment and re-write the COD. The Court of Chancery correctly rejected Plaintiff's claims and dismissed the Amended Complaint in its entirety and with prejudice.[5] That well-reasoned decision should be affirmed.

[4] A014 (Verified Amended Complaint, *Simons v. AMC Ent. Hldgs, Inc.*, C.A. No. 2023-0835-MTZ (Del. Ch. Dec. 22, 2023) (¶ 1)); *see also* A039-A041 (AC ¶¶ 76-87).

[5] A205-A216 (Transcript of Oral Argument and Rulings of the Court on Defendant's Motion to Dismiss, *Simons v. AMC Ent. Hldgs., Inc.*, C.A. No. 2023-0835-MTZ (Del. Ch. Oct. 2, 2024) ("Tr."), at 60-71); B383-B384 (Order Granting Defendant's Motion to Dismiss the Verified Amended Complaint, *Simons v. AMC Ent. Hldgs., Inc.*, C.A. No. 2023-0835-MTZ (Del. Ch. Oct. 2, 2024)).

SUMMARY OF ARGUMENT

1. Denied. The Court of Chancery correctly dismissed Plaintiff's claim for breach of Section VI of the COD. As the Court of Chancery correctly held, Section VI of the COD only provided former APE holders with rights *before* the Conversion occurred, and the Settlement Payment was made *after* the Conversion. Plaintiff makes myriad arguments why the Settlement Payment should be viewed as having been constructively issued prior to the Conversion and, thus, subject to Section VI of the COD. None of these arguments, however, were raised below, and they therefore should not be considered by this Court. In any event, they all also fail as a matter of law.

2. Denied. The Court of Chancery correctly held that Section VI of the COD was clear and ambiguous and, thus, should be interpreted according to its plain meaning. Plaintiff's attempts to rely on extrinsic evidence -- outside both the four corners of the COD and the Amended Complaint -- to introduce ambiguity into Section VI of the COD fail as a matter of law.

3. Denied. The Court of Chancery correctly dismissed Plaintiff's claim for breach of the implied covenant. As the Court of Chancery correctly held, the COD provided APE holders with clear, unambiguous, and comprehensive anti-dilution rights only *before* the APEs were converted into Common Stock, not *after*. That makes perfect sense given that the APEs would cease to exist once the

Conversion occurred. Accordingly, the Court of Chancery correctly held that there was no "gap" in the COD for the implied covenant to fill.

4. Denied. The Court of Chancery correctly dismissed Plaintiff's claim for breach of Section III of the COD. As the Court of Chancery correctly held, Section III of the COD, like Section VI, only provided former APE holders with rights *before* the Conversion occurred. Thus, Section III was also inapplicable to the Settlement Payment, which was made *after* the Conversion. Moreover, Section III of the COD only applied to "cash dividends or distributions," which the stock Settlement Payment was not.

5. Alternatively, there is an additional and independent ground, not reached by the Court of Chancery, on which this Court could affirm the complete dismissal of Plaintiff's claims. Namely, this is one of the rare cases where the affirmative defense of laches is clear from the face of the Amended Complaint. Although the Court of Chancery did not need to reach this argument, this Court is free to affirm the decision below on this ground, which was presented below.

STATEMENT OF FACTS

A. The Parties

Plaintiff Michael Simons alleges that, prior to the Conversion, he "held AMC Preferred Equity (APE) units during all relevant times."[6]

Defendant AMC is a Delaware corporation with its principal executive offices located in Leawood, Kansas.[7] AMC owns and operates "[movie] theatres primarily located in the United States and Europe."[8]

B. AMC Creates The APEs To Raise Much Needed Equity Capital

The second quarter of 2020 was "the most challenging quarter in the 100-year history of AMC," with "almost no revenues coming in the door."[9] To avoid the threat of bankruptcy and financial collapse, "AMC sold nearly all of the Company's remaining authorized shares of Common Stock to raise new funding."[10]

Equity raises were of critical importance to AMC's financial future. Accordingly, the Company twice asked its stockholders to approve an amendment to its Certificate of Incorporation that would allow AMC to issue additional shares

[6] A018 (AC ¶ 14).

[7] *Id.* (AC ¶ 15).

[8] *Id.*

[9] B001 (Exhibit 99.1 to August 6, 2020 AMC Form 8-K (Def. Ex. 3), at 1).

[10] A019 (AC ¶ 19).

of Common Stock.[11] AMC's Board of Directors (the "Board") ultimately withdrew both proposals, given that "many" stockholders told AMC "to wait," and because the Company expected "[m]any yes" and "many no" votes on the proposals.[12] Left without any other way to raise equity capital, on August 4, 2022, AMC created the APEs, declared a special dividend of one APE for each share of Common Stock, and created approximately 483 million APEs for its treasury, which it could use to raise equity capital and pay down its debt.[13]

Prior to the Conversion, the APEs were governed by the COD. Section III of the COD provided that APE holders were entitled to any "cash dividends or distributions" paid to holders of Common Stock to the extent those distributions were paid prior to the Conversion. Specifically, Section III(a) provided:

> From and after the [date that the Preferred Stock is first issued] *to but excluding the* Conversion *Date*, (i) the Holders [of Preferred Stock] shall be entitled to receive . . . *all cash dividends or distributions* . . .

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[11] *Id.*; *see also In re AMC Ent. Hldgs. Inc. S'holder Litig.*, 299 A.3d 501, 509-10 (Del. Ch. 2023) ("*AMC I*").

[12] B021 (April 27, 2021 AMC Press Release, AMC Entertainment Announces At-The-Market Offering Program and Withdraws Proposal to Increase Authorized Shares (Def. Ex. 4), at 1); B025 (July 6, 2021 AMC Proxy Statement (Def. Ex. 5), at 2); *see also AMC I*, 299 A.3d at 509-10.

[13] The approximately 483 million APEs is the difference between the number of APEs AMC created (*i.e.*, 10 million preferred stock units, each of which represented 100 APEs) and the 516,820,595 APEs AMC issued as a dividend to holders of Common Stock on August 4, 2022. *See* B027-B028 (August 4, 2022 AMC Form 8-K (Def. Ex. 6), at 1-2) and B030 (Exhibit 99.1 to August 4, 2022 AMC Form 8-K (Def. Ex. 7), at 1); *see also AMC I*, 299 A.3d at 511-12.

> declared and paid or made in respect of the shares of Common Stock, at the same time and on the same terms as holders of Common Stock.[14]

Section VI of the COD similarly provided APE holders with "Anti-Dilution Adjustments" "prior to the Conversion."[15] Specifically, Section VI(a) provided:

> In the event the [Company] shall *at any time prior to the Conversion Date* issue Additional Shares of Common Stock, then the Applicable Conversion Rate shall be adjusted, concurrently with such issue, to a rate determined in accordance with [a set formula].[16]

AMC successfully deployed the APEs to raise needed equity capital. As of December 31, 2022, AMC had raised approximately $228.8 million of gross proceeds through the sale of 207.8 million APEs via the Company's at-the-market equity distribution program,[17] and, as of June 30, 2023, AMC had raised "gross proceeds of approximately $114.5 million" from APE sales in 2023.[18]

Despite the Company's expectation that the APEs and Common Stock would trade at a similar price,[19] a large price differential existed between the two

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[14] A047 (COD § III(a)) (emphasis added).

[15] A049 (COD § VI(a)) (emphasis added).

[16] *Id.* (emphasis added). "'Additional Shares of Common Stock' . . . mean[s] all shares of Common Stock issued (or deemed to be issued) by the [Company] after the Closing Date and *prior to the Conversion Date* as a distribution, dividend, stock split, stock combination or other similar recapitalization with respect to the Common Stock. . . ." A049 (COD § VI(c)) (emphasis added).

[17] B039 (Exhibit 99.1 to February 28, 2023 AMC Form 8-K (Def. Ex. 8), at 4).

[18] B152 (August 8, 2023 AMC Form 10-Q (Def. Ex. 9), at 9).

[19] B033 (Exhibit 99.1 to August 18, 2022 AMC Form 8-K (Def. Ex. 10), at Item 11).

securities.[20] As a result, AMC was left with a highly discounted and, thus, highly dilutive security with which to raise equity capital, which was undesirable for AMC and all of its stockholders.[21] AMC therefore recommended that its stockholders approve the Reverse Stock Split and Conversion, which would provide AMC with a significant amount of authorized and unissued Common Stock that it could use to raise equity capital at non-discounted rates.

C. AMC Settles Expedited Litigation Seeking To Enjoin The Conversion

On February 20, 2023, two actions challenging the Reverse Stock Split and Conversion were filed in the Court of Chancery and ultimately consolidated into the Stockholder Litigation.[22]

On February 27, 2023, the Court of Chancery entered a status quo order in the Stockholder Litigation, which, among other things, allowed AMC to hold a March 14, 2023 stockholder vote on the Reverse Stock Split and Conversion, but prevented AMC from effectuating the results of that vote pending the Stockholder Litigation plaintiffs' to-be-filed preliminary injunction motion.[23] The Court of

[20] *AMC II*, 2023 WL 5165606, at *43.

[21] *Id.*

[22] *AMC I*, 299 A.3d at 515-16.

[23] A027 (AC ¶ 40); *see also AMC I*, 299 A.3d at 516.

Chancery also set a hearing on the preliminary injunction motion for April 27, 2023, and expedited the Stockholder Litigation.[24]

On March 14, 2023, the Reverse Stock Split and Conversion were approved by holders of Common Stock and APEs.[25]

On April 2, 2023, after expedited discovery, the parties to the Stockholder Litigation executed a term sheet reflecting the parties' agreement-in-principle to settle the Stockholder Litigation.[26]

On April 3, 2023, the parties to the Stockholder Litigation filed a Motion to Lift the Status Quo Order with the Court of Chancery, which stated that the parties to the Stockholder Litigation had reached a proposed settlement of the action. That motion explained that:

> The parties' pending Settlement contemplates that *following* and subject to AMC's completion of the conversion and reverse split, the Company will issue to its existing Common Stockholders as of immediately *prior to* the conversion one additional share of Common Stock for every seven-and-one-half (7.5) shares of Common Stock held as of the issuance. The conversion and reverse split require a ten (10) day notice period under NYSE rules.[27]

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[24] A027 (AC ¶ 40).

[25] A028 (AC ¶¶ 42-43); *see also AMC I*, 299 A.3d at 516.

[26] *AMC I*, 299 A.3d at 517.

[27] B056 (Plaintiffs' Unopposed Motion To Lift The *Status Quo* Order Due To The Parties' Proposed Settlement, *In re AMC Ent. Hldgs., Inc. S'holder Litig.*, C.A. No. 2023-0215-MTZ (Del. Ch. Apr. 3, 2023), Dkt. 59 (¶ 5)) (emphasis in original).

The motion further made clear that the Settlement Payment was "contingent upon [the] lifting of the *status quo* order and the conversion and reverse split being consummated."[28]

Later on April 3, AMC filed a Form 8-K with the U.S. Securities and Exchange Commission (the "SEC") announcing the proposed settlement, which expressly disclosed that "[t]he obligation to make the Settlement Payment *only arises if* the Status Quo Order has been lifted *and the Conversion has taken place*."[29]

On April 5, 2023, the Court of Chancery denied the request of the parties to the Stockholder Litigation to lift the status quo order.[30]

On April 27, 2023, the parties to the Stockholder Litigation finalized their proposed settlement and submitted a Stipulation and Agreement of Compromise, Settlement, and Release (the "Stipulation") to the Court of Chancery, which also explained that the Settlement Payment would be paid "following the Conversion":

> In consideration for the full and final release, settlement, dismissal, and discharge of any and all of the Released Plaintiffs' Claims against the Released Defendants' Persons, upon entry of the Order and Final Judgment, AMC, on behalf of Defendants, shall, *promptly following the*

[28] B061 (Plaintiffs' Unopposed Motion To Lift The *Status Quo* Order Due To The Parties' Proposed Settlement, *In re AMC Ent. Hldgs., Inc. S'holder Litig.*, C.A. No. 2023-0215-MTZ (Del. Ch. Apr. 3, 2023), Dkt. 59 (¶ 23)).

[29] B069 (April 3, 2023 AMC Form 8-K (Def. Ex. 11), at 2) (emphasis added); *see also* A028 (AC ¶ 44) (referencing the Form 8-K).

[30] B077 (Letter Decision Regarding Plaintiffs' Unopposed Motion To Lift The Status Quo Order Due To The Parties' Proposed Settlement, *In re AMC Ent. Hldgs., Inc. S'holder Litig.*, C.A. No. 2023-0215-MTZ (Del. Ch. Apr. 5, 2023), Dkt. 69, at 6).

> *Conversion*, issue the Settlement Payment to the record holders of Common Stock as of the Settlement Class Time (after giving effect to the Reverse Stock Split).[31]

The Notice of Pendency of Stockholder Class Action and Proposed Settlement, Settlement Hearing, and Right To Appear (the "Notice") that was submitted with the Stipulation similarly provided that:

> Record holders of Common Stock as of the Settlement Class Time will be issued the Settlement Payment directly, *promptly following Conversion*. Beneficial holders of Common Stock will be issued the Settlement Payment through their nominee, in accordance with the procedures of their nominee, including with respect to any fractional interest or cash in lieu thereof.[32]

The Stipulation and Notice were also attached as exhibits to a Form 8-K that AMC filed with the SEC shortly after those documents were filed with the Court of Chancery.[33]

After submitting the Stipulation to the Court of Chancery, AMC provided notice of the proposed settlement. "The Company distributed notice electronically and by publication: on AMC's investor relations website, on AMC's Twitter account, via a Form 8-K, over *PR Newswire*, and on the Depository Trust

[31] B095 (Stipulation, Exhibit 99.1 to May 8, 2023 AMC Form 8-K (Def. Ex. 12), at 18) (emphasis added); *see also* A029 (AC ¶ 46) (referencing the Stipulation).

[32] B130 (Notice, Exhibit 99.2 to May 8, 2023 AMC Form 8-K (Def. Ex. 13), at 15) (emphasis added); *see also* A031 (AC ¶ 50 n.4) (citing Notice).

[33] B078- B139 (Exhibits 99.1 and 99.2 to May 8, 2023 AMC Form 8-K (Def. Exs. 12 and 13)).

Company's Legal Notice System."[34] "In addition, in this high-profile case, these electronic disclosures were amplified in the press and on social media."[35]

The proposed settlement of the Stockholder Litigation garnered extraordinary engagement from AMC's stockholder base,[36] which culminated in a two-day settlement hearing before the Court of Chancery on June 29-30, 2023.[37]

On Friday, July 21, 2023, the Court of Chancery declined to approve the proposed settlement of the Stockholder Litigation on the ground that the release provided for in the Stipulation was overly broad.[38] The next day, the parties to the Stockholder Litigation submitted an addendum to the Stipulation, which narrowed the release, and asked the Court of Chancery to reconsider the proposed settlement with the narrowed release.[39] On August 11, 2023, the Court of Chancery approved the proposed settlement with the narrower release[40] and lifted the status quo order.[41]

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[34] *AMC II*, 2023 WL 5165606, at *16.

[35] *Id*.

[36] *AMC I*, 299 A.3d at 507.

[37] *Id.* at 520-21.

[38] *Id.* at 507-08.

[39] B140-B141 (Addendum to Stipulation and Agreement of Compromise, Settlement, and Release, *In re AMC Ent. Hldgs., Inc. S'holder Litig.*, C.A. No. 2023-0215-MTZ (Del. Ch. July 22, 2023), Dkt. 582-1, at 1-2).

[40] *AMC II*, 2023 WL 5165606, at *44.

[41] B224 (Order Certifying Class And Approving Settlement, *In re AMC Ent. Hldgs., Inc. S'holder Litig.*, C.A. No. 2023-0215-MTZ (Del. Ch. Aug. 11, 2023), Dkt. 616 (¶ 8)).

The Settlement Payment and the mechanics by which the Settlement Payment would be paid to holders of Common Stock never changed from when the proposed settlement was first disclosed on April 3, 2023 through when it was approved on August 11, 2023.

Before the market opened on August 14, 2023 -- the next business day following the approval of the Settlement and lifting of the status quo order -- AMC filed a Form 8-K with the SEC, stating that the Reverse Stock Split would occur on August 24, 2023, the Conversion would occur on August 25, 2023, and the Settlement Payment would be paid on August 28, 2023.[42]

D. AMC Completes The Conversion And Makes The Settlement Payment

The Reverse Stock Split, Conversion, and Settlement Payment occurred in the exact sequence that AMC disclosed they would occur. The Reverse Stock Split occurred on August 24, 2023, and the Conversion occurred on August 25, 2023.[43] Also on August 25, 2023, AMC filed a Certificate of Elimination of Series A Convertible Participating Preferred Stock with the Secretary of State of the State of

[42] B234 (August 14, 2023 AMC Form 8-K (Def. Ex. 2), at 5).

[43] *Id.*; B274-B275 (September 6, 2023 AMC Prospectus Supplement (Def. Ex. 14), at S-7, S-8).

Delaware, which eliminated the COD.[44] The Settlement Payment was issued three days later, on August 28, 2023.[45]

Subsequent challenges to the Court of Chancery's approval of the Settlement failed. On May 22, 2024, this Court affirmed the Court of Chancery's approval of the Settlement.[46] On October 7, 2024, the Supreme Court of the United States denied an objector's petition for a writ of certiorari seeking further review of the Settlement.[47]

E. Plaintiff Brings This Action Months After The Settlement Was First Disclosed

At approximately 9:00 p.m. on August 14, 2023, Plaintiff initiated this action -- nearly four-and-a-half months after the proposed settlement in the Stockholder Litigation was first disclosed, months after the Company provided notice of that proposed settlement, and a month and a half after the Court of Chancery held a highly publicized hearing concerning the proposed settlement.[48]

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[44] *See* B261 (August 25, 2023 AMC Form 8-K (Def. Ex. 15), at 2); B263-B264 (Exhibit 3.1 to August 25, 2023 AMC Form 8-K (Def. Ex. 16)).

[45] A017, A031 (AC ¶¶ 12, 50); B234 (August 14, 2023 AMC Form 8-K (Def. Ex. 2), at 5); B322 (Stipulation and Order of Dismissal, *In re AMC Ent. Hldgs., Inc. S'holder Litig.*, C.A. No. 2023-0215-MTZ (Del. Ch. Sept. 15, 2023), Dkt. 671, at 2).

[46] *AMC III*, 319 A.3d 310.

[47] *Izzo*, 2024 WL 4427257.

[48] A003 (Docket Sheet, *Simons v. AMC Ent. Hldgs., Inc.*, C.A. No. 2023-0835-MTZ (Del. Ch. 2023) ("Docket Sheet"), at Dkt. 1).

On September 12, 2023, AMC moved to dismiss the initial complaint.[49] On December 26, 2023, Plaintiff filed the Amended Complaint.[50]

AMC moved to dismiss the Amended Complaint on January 9, 2024.[51] The Court of Chancery heard oral argument on AMC's motion to dismiss on October 2, 2024, and entered an order the same day dismissing the Amended Complaint in its entirety and with prejudice.[52] On October 30, 2024, Plaintiff appealed the Court of Chancery's decision to this Court.

[49] A004 (Docket Sheet, at Dkt. 5).

[50] A006 (Docket Sheet, at Dkt. 11).

[51] A007 (Docket Sheet, at Dkt. 14); *see also* B327-B360 (Opening Brief In Support Of Defendant's Motion To Dismiss The Verified Amended Complaint, *Simons v. AMC Ent. Hldgs., Inc.*, 2023-0835-MTZ (Del. Ch. Feb. 16, 2024) ("Mot.")); A084-A145 (Plaintiff's Answering Brief In Opposition To Defendant's Motion To Dismiss, *Simons v. AMC Ent. Hldgs., Inc.*, 2023-0835-MTZ (Del. Ch. Apr. 12, 2024) ("Ans. Br.")); B361-B382 (Reply Brief In Further Support Of Defendant's Motion To Dismiss, *Simons v. AMC Ent. Hldgs., Inc.*, 2023-0835-MTZ (Del. Ch. May 10, 2024) ("Reply")).

[52] A011 (Docket Sheet, at Dkts. 27-29).

ARGUMENT

I. THE COURT OF CHANCERY CORRECTLY DISMISSED PLAINTIFF'S CLAIM FOR BREACH OF SECTION VI OF THE COD

A. Question Presented

Did the Court of Chancery correctly dismiss Plaintiff's claim that Section VI of the COD provided former APE holders with a right to the Settlement Payment? This question was presented below at A111-A120 (Ans. Br. at 19-28), B347-B351 (Mot. at 16-20), and B368-B373 (Reply at 4-9).

B. Standard Of Review

The Court "review[s] *de novo* the . . . decision to grant a motion to dismiss under Court of Chancery Rule 12(b)(6)."[53] Further, "[a] judicial interpretation of a contract presents a question of law that this Court reviews *de novo*."[54]

C. Merits Of The Argument

1. Section VI Of The COD Only Provided Rights To APE Holders *Prior To* The Conversion, And The Settlement Payment Was Made *After* The Conversion

As the Court of Chancery correctly held, "Section VI of the COD states that the conversion rate would be adjusted 'in the event the Corporation shall at any time *prior to* the Conversion Date issue Additional Shares of Common Stock,'" and, thus, "[n]othing in the plain terms of the COD required a distribution to the preferred or

[53] *Allen v. Encore Energy P'rs, L.P.*, 72 A.3d 93, 100 (Del. 2013).

[54] *Alta Berkeley VI C.V. v. Omneon, Inc.*, 41 A.3d 381, 385 (Del. 2012).

conversion rate adjustment because the distribution to the common occurred after the preferred converted."[55]

Plaintiff -- citing the Court of Chancery's decision that declined to approve the initial proposed settlement of the Stockholder Litigation -- contends that "[i]n approving the settlement with common stockholders, the Chancery Court understood that AMC would distribute shares 'after the Reverse Split, *but before the Conversion*.'"[56] That is incorrect.

In its August 11, 2023 Opinion approving the Settlement, the Court of Chancery correctly noted that the Settlement Payment would be issued to holders of Common Stock *after* the Conversion.[57] Furthermore, from the date the Settlement was first proposed, April 3, 2023, through the date that the Court of Chancery approved it, August 11, 2023, AMC consistently and continually disclosed that the Settlement Payment was to be issued *after* the Conversion because, by its very nature, the Settlement Payment was *contingent upon* the Conversion and designed to compensate holders of *Common Stock* for an alleged harm arising *as a result of*

[55] A207 (Tr. at 62) (emphasis added).

[56] Op. Br. at 2 (quoting *AMC I*, 299 A.3d at 534) (emphasis in original).

[57] *See AMC II*, 2023 WL 5165606, at *40 ("[T]he Settlement Shares . . . will be paid 'promptly' after the Reverse Stock Split and the Conversion are completed.") (citing Notice ¶ 48).

the Conversion.[58] Accordingly, the Court of Chancery correctly held that Section VI of the COD did not provide former holders of APEs with a right to the Settlement Payment.

2. The Settlement Payment Was Not "Deemed To Be Issued" Before The Conversion

In order to avoid this correct, simple, and straightforward result, Plaintiff spends 14 pages theorizing about the meaning of the phrase "deemed to be issued." Section VI of the COD defined "'Additional shares of Common Stock'" to mean "all shares of Common Stock issued (*or deemed to be issued*) by the Corporation . . . prior to the Conversion Date."[59] Plaintiff makes many arguments about the meaning of the phrase "deemed to be issued" in an effort to try to show that the Settlement Payment should be viewed as having been *constructively* issued prior to the Conversion and, in turn, subject to the anti-dilution provisions of Section VI of the COD.[60]

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[58] *See id.* ("[T]he defendants have consistently maintained they intend to pursue the Proposals and Conversion promptly upon settlement approval."); B069 (April 2, 2023 AMC Form 8-K (Def. Ex. 11), at 2); B095 (Stipulation, Exhibit 99.1 to May 8, 2023 AMC Form 8-K (Def. Ex. 12), at 18); B130 (Notice, Exhibit 99.2 to May 8, 2023 AMC Form 8-K (Def. Ex. 13), at 15).

[59] A207 (Tr. at 62) (ellipsis in original) (emphasis added).

[60] Op. Br. at 16-30.

As an initial matter, this Court can -- and should -- disregard these arguments entirely because they were not raised below.[61] Indeed, below, Plaintiff initially alleged that the Settlement Payment was made "before the Conversion."[62] Then -- apparently realizing that that was factually inaccurate -- Plaintiff pivoted in his briefing below to an argument that the language "issued (or deemed to be issued)" in Section VI of the COD was ambiguous.[63] But nowhere below did Plaintiff advance his "definitional[], contextual[], grammatical[]," or "legal fiction"[64] arguments that are the headlines of his Opening Brief in this Court. "It is a basic tenet of appellate practice that an appellate court reviews only matters considered in the first instance by a trial court. Parties are not free to advance arguments for the first time on appeal."[65] Plaintiff's definitional, contextual, grammatical, and legal fiction arguments were not advanced below and, thus, should not be considered.

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[61] Sup. Ct. R. 8.

[62] B251 (Compl. ¶ 48).

[63] A112 (Ans. Br. at 20) (emphasis omitted).

[64] Op. Br. at 6.

[65] *Del. Elec. Co-op., Inc. v. Duphily*, 703 A.2d 1202, 1206 (Del. 1997); *see also Tumlinson v. Advanced Micro Devices, Inc.*, 106 A.3d 983, 989 (Del. 2013) (under Supreme Court Rule 8, "a party may not raise new arguments on appeal"); *Price v. Boulden*, 2014 WL 3566030, at *2 (Del. July 14, 2014) (evidence that was "not available to the [trial] [c]ourt in the first instance" and "is outside of the record on appeal" "cannot properly be considered by th[e] [Delaware Supreme] Court").

In any event, the Court of Chancery correctly rejected the notion that the Settlement Payment was ever "deemed to be issued,"[66] much less deemed to be issued on some unspecified date prior to the Conversion. As the Court of Chancery correctly held, the phrase "deemed to be issued" "must mean something *other* than 'issued,' as the phrase is there in the alternative to 'issued' [in Section VI of the COD] and cannot be surplusage."[67] The Court of Chancery then correctly interpreted the phrase "deemed to be issued" according to its plain meaning:

> The plain dictionary meaning is "to consider or judge something in a particular way," per Cambridge, or to "regard as," per Dictionary.com. And Collins dictionary calls it a transitive verb -- "if something is deemed to have a particular quality or to do a particular thing, it is considered to have that quality or do that thing." "Deemed to be issued" cannot be referring to stock that is actually issued; it must be referring to stock that someone, some authority or instrument, has considered or judged to be issued even though it was not.[68]

Moreover, Plaintiff failed to plead *any* facts surrounding his bare theory that the Settlement Payment was "deemed to be issued": Who deemed the Settlement

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[66] A209 (Tr. at 64).

[67] A207 (Tr. at 62) (emphasis added). *See also Osborn v. Kemp*, 991 A.2d 1153, 1159 (Del. 2010) ("We will read a contract as a whole and we will give each provision and term effect, so as not to render any part of the contract mere surplusage."); *Norton v. K-Sea Transp. P'rs L.P.*, 67 A.3d 354, 365 n.52 (Del. 2013) ("Delaware courts interpret contracts to avoid rendering any part of the contract mere surplusage."); *Fillip v. Centerstone Linen Servs., LLC*, 2014 WL 793123, at *4 (Del. Ch. Feb. 27, 2014) ("all language in a contract is to be given meaning so far as possible" before finding surplusage).

[68] A207-A208 (Tr. at 62-63).

Payment issued? In what circumstance was the Settlement Payment deemed issued? The Court of Chancery correctly noted that Plaintiff's Amended Complaint answered none of these critical questions: "Plaintiff has not pled a circumstance in which anyone or anything deemed the [Settlement Payment] to be issued, and what such a circumstance might entail or who might do the deeming. . . . Here, as pled, the distribution was simply issued."[69] Plaintiff fails to grapple with the Court of Chancery's correct analysis that all of these critical facts were absent from his Amended Complaint.

Instead, Plaintiff offers a blunderbuss of new facts and theories in an attempt to cure his defective pleading and manufacture an explanation as to why the Settlement Payment was "deemed to be issued on or before the Record Date" for the Settlement Payment.[70] All of these attempts fail.

First, Plaintiff argues that the plain meaning of the phrase "deemed to be issued" should be interpreted to mean when the Board "made its decision about when and how to issue the [Settlement Payment]."[71] Plaintiff takes issue with the Court of Chancery's plain dictionary meaning of "deem" and, instead, relies on an interpretation of *other* "Middle English" and "Old English" words to argue that

[69] A209 (Tr. at 64).

[70] Op. Br. at 16-30.

[71] *Id.* at 18 (emphasis omitted).

"deem" *exclusively* means "decide."[72] But Plaintiff's own authorities undercut his narrow reading. Merriam Webster refers to "deem" as a transitive verb that means "to come to think or judge."[73] This is entirely consistent with the Court of Chancery's analysis. Nor can Plaintiff divorce the phrase "to be issued" from the word "deem[ed]" in an effort to suggest that "deemed to be issued" means "to 'decide'" a "forthcoming conveyance."[74] The Court of Chancery was correct to hold that "'[d]eemed to be issued' . . . must be referring to stock that someone, some authority or instrument, has considered or judged to be issued *even though it was not*"[75] -- it does not correspond to when the Board decided to make the Settlement Payment, a payment which was in fact issued on August 28, 2023 by AMC,[76] as Plaintiff correctly alleged in his Amended Complaint.[77]

Second, Plaintiff asserts that use of the word "deem" elsewhere in the COD supports his interpretation of Section VI.[78] Yet, the examples Plaintiff cites are *not* found in the COD, but, instead, in a *separate* agreement -- the Deposit Agreement

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[72] *Id.* at 16-19.

[73] *Deem*, Merriam-Webster, https://www.merriam-webster.com/dictionary/deem (last visited Jan. 24, 2025).

[74] Op. Br. at 18.

[75] A208 (Tr. at 63) (emphasis added).

[76] A206 (Tr. at 61); B234 (August 14, 2023 AMC Form 8-K (Def. Ex. 2), at 5).

[77] A017, A031 (AC ¶¶ 12, 50).

[78] Op. Br. at 19-20.

between AMC, Computershare Inc., Computershare Trust Company, N.A., and holders of the APEs, dated August 4, 2024:

> (i) "any such action is deemed necessary or advisable by the Depositary"[79] (citing Art. 2.5);
>
> (ii) "The Corporation hereby agrees to take all reasonable action which may be deemed necessary by the Depositary"[80] (citing Art. 4.5); and
>
> (iii) "documents of title and other instruments as the Depositary may deem appropriate"[81] (citing Art. 2.4).

The use of the word "deem" in an *entirely different* contract and context has no bearing on the interpretation of the word "deem" in Section VI of the COD.[82] And, in any event, as explained above, Plaintiff cannot divorce the phrase "to be issued" from the word "deemed."[83] When the phrase "deemed to be issued" is considered in its entirety, it has the plain meaning that the Court of Chancery correctly gave it.[84]

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[79] *Id.* at 19.

[80] *Id.*

[81] *Id.*

[82] *Richard B. Gamberg 2007 Fam. Tr. v. United Rest. Grp., L.P.*, 2018 WL 566417, at *4 (Del. Ch. Jan. 26, 2018) ("When interpreting a contract, this Court 'will give priority to the parties' intentions as reflected in the four corners of the agreement.'"); *All. Data Sys. Corp. v. Blackstone Cap. P'rs V L.P.*, 963 A.2d 746, 769 (Del. Ch. 2009) ("[An] attempt to introduce extrinsic evidence to contradict the plain terms of [a contract] is not permitted by the contract law of this state."), *aff'd*, 976 A.2d 170 (Del. 2009) (TABLE).

[83] *See* p. 23, *supra*.

[84] A207-A209 (Tr. at 62-64).

Third, Plaintiff spills much ink over a grammatical interpretation of the phrase "deemed to be issued." But Plaintiff deploys that analysis to merely jump to the conclusion that the grammatical structure of "deemed to be issued" means that the Board "deemed" the Settlement Payment "issued" on or before the Record Date.[85] Not only is that analysis entirely conclusory, but as explained above, the Amended Complaint failed to plead any facts surrounding such a deemed issuance, and no amount of grammatical interpretation can cure Plaintiff's deficient pleading.[86]

Fourth, Plaintiff's "legal fiction" theory is not only inconsistent with Plaintiff's own allegations in the Amended Complaint, but would also cause havoc in the public markets.[87] If Plaintiff's interpretation of "deemed to be issued" as referring to any board approval or company announcement of a stock issuance were to stand, then, by definition, any such approval or announcement could result in a deemed issuance of stock, regardless of the legal formalities required to issue such stock. In any event, as the Court of Chancery correctly held, "[h]ere, as pled, the distribution was simply issued, not deemed to be issued, and the issuance was after the conversion date."[88]

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[85] Op. Br. at 20-24.

[86] *See* pp. 21-22, *supra*.

[87] Op. Br. at 25-28.

[88] A209 (Tr. at 64).

Fifth, Plaintiff's random assortment of arguments designed to suggest that the Court of Chancery "[a]dopted an [i]mplausible [i]nterpretation" of Section VI also fail.[89] The Court of Chancery's decision does not "fail[] to account for the possibility that stock can be *both* issued and deemed to be issued."[90] Rather, the Court of Chancery correctly gave the phrase "deemed to be issued" a separate meaning than "issued" to avoid interpreting "deemed to be issued" as surplusage, and then correctly held that Plaintiff had not pled that a distribution was "deemed to be issued" because Plaintiff did not plead "a circumstance in which anyone or anything deemed the distribution to be issued, and what such a circumstance might entail or who might do the deeming."[91] Again, "[h]ere, as pled, the distribution was simply issued, not deemed to be issued, and the issuance was after the conversion date."[92] Plaintiff's reference to Section VI(d) is unavailing because that provision merely provided for a return to the status quo if a distribution were announced, but never issued or deemed to be issued.[93] That was not what happened here, and that provision has no bearing on the Court of Chancery's analysis. Finally, Plaintiff's suggestion that "there is no scenario in which the Chancery Court's reading should

[89] Op. Br. at 28-30.

[90] Op. Br. at 28 (emphasis in original).

[91] A209 (Tr. at 64).

[92] *Id.*

[93] *See* A050 (COD § VI(d)).

affect the conversion rate" is nonsensical.[94] If a distribution were "deemed to be issued" prior to Conversion, holders of APEs would be entitled to distributions according to the terms of the COD, but, again, that was not what happened here, nor what Plaintiff alleged.

[94] Op. Br. at 30.

II. THE COURT OF CHANCERY CORRECTLY HELD THAT SECTION VI OF THE COD WAS CLEAR AND UNAMBIGUOUS

A. Question Presented

Did the Court of Chancery correctly hold that the phrase "deemed to be issued" in Section VI of the COD was clear and unambiguous, and that it therefore should be interpreted according to its plain meaning? This question was presented below at A111-A120 (Ans. Br. at 19-28), B347-B351 (Mot. at 16-20), and B368-B373 (Reply at 4-9).

B. Standard Of Review

"A judicial interpretation of a contract presents a question of law that this Court reviews *de novo*."[95]

C. Merits Of The Argument

"Unless there is ambiguity, Delaware courts interpret contract terms according to their plain, ordinary meaning."[96] "To be ambiguous, a disputed contract term must be fairly or reasonably susceptible to more than one meaning."[97] "'It is well established that a court interpreting any contractual provision, including preferred stock provisions, must give effect to all terms of the instrument, must read

[95] *Alta Berkeley*, 41 A.3d at 385.

[96] *Id.*

[97] *Id.*

the instrument as a whole, and, if possible, reconcile all the provisions of the instrument.'"[98]

The Court of Chancery correctly held that the phrase "deemed to be issued" in Section VI of the COD was clear and unambiguous, and interpreted that phrase according to its plain terms: "A distribution is deemed to be issued when an authority or instrument says it was issued, even and especially if it was not actually issued."[99]

In response, Plaintiff argues that "deemed to be issued" is a term of art, and that "in the context of securities contracts, the date on which something is 'deemed to be issued'" is the Record Date.[100] But Plaintiff offers no legal authority for this proposition, nor does he identify any legal authority to support his view that the phrase "deemed to be issued" is ambiguous. Instead, Plaintiff relies on the filings of other public companies that have no relationship with AMC to try to create an ambiguity in the COD. This gambit fails as a matter of law. "If a contract is

[98] *Id.* at 385-86 (quoting *Elliott Assocs., L.P. v. Avatex Corp.*, 715 A.2d 843, 854 (Del. 1998)).

[99] A209 (Tr. at 64).

[100] Op. Br. at 34.

unambiguous, extrinsic evidence may not be used to interpret the intent of the parties, to vary the terms of the contract or to create an ambiguity."[101]

Moreover, even if such extrinsic evidence could be considered -- and it should not be -- cherry-picking the filings of five public companies that use a phrase similar to "deemed to be issued" does not demonstrate that that term has a "common trade usage" or is a "standard anti-dilution provision[]," as Plaintiff contends.[102] Rather, the fact that other companies expressly provided in their certificates of designations that the "Record Date will be deemed to be the date of the issuance or sale of the shares of Common Stock"[103] only highlights the absence of such a provision in the COD. Accordingly, the Court of Chancery correctly held that "[t]he fact that other companies' CODs specifically provide that record dates are to be the date of issuance does not mean that all record dates, or any record date, may or must be deemed to be the date of issuance. AMC's APE COD does not make such a statement."[104]

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[101] *Kokorich v. Momentus Inc.*, 2023 WL 3454190, at *12 (Del. Ch. May 15, 2023), *aff'd*, 308 A.3d 1192 (Del. 2023) (TABLE).

[102] Op Br. at 35.

[103] *Id.* (emphasis omitted).

[104] A209 (Tr. at 64); *see also* Kenneth A. Adams, *A Manual of Style for Contract Drafting* 169 (4th ed. 2017) ("In a contract, a defined term simply serves as a convenient substitute for the definition, *and only for that contract*.") (emphasis added).

Plaintiff's suggestion that "[t]he relevant canons of contract interpretation also strongly weigh in Plaintiff's favor" also fails.[105] As discussed *supra*,[106] the Court of Chancery correctly held that "issue" and "deemed to be issued" must mean different things to avoid surplusage.[107] Consequently, the Court of Chancery did not suggest that "deemed to be issued" and "issued" both "refer[] to the Issue Date."[108] The Court of Chancery expressly gave the concepts *different* meanings. The problem for Plaintiff is that the Settlement Payment was only "issued,"[109] as Plaintiff pled in his Amended Complaint.[110]

Plaintiff argues that under the "whole-text canon," "AMC and the [Court of Chancery's] interpretations contravene the overall [COD] by allowing common stockholders to receive more benefits than preferred holders via AMC's instant scheme."[111] Not so. A correct application of the "whole-text canon" recognizes that the COD only provided rights to APE holders before the APEs were converted into Common Stock. Once the Conversion occurred, the APEs ceased to exist and the

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[105] Op. Br. at 37.

[106] *See* p. 21.

[107] A207-A208 (Tr. at 62-63).

[108] Op. Br. at 38.

[109] A209 (Tr. at 64).

[110] A017, A031 (AC ¶¶ 12, 50).

[111] Op. Br. at 39.

COD, logically, no longer provided the former holders of those securities with any rights. As the Court of Chancery correctly held, "[n]othing in the plain terms of the COD required a distribution to the preferred or conversion rate adjustment because the [Settlement Payment] to the common occurred after the preferred converted."[112] This makes perfect sense. The Settlement Payment was payable only *after* the Conversion because the Settlement Payment, by its very nature, was contingent upon the Conversion. Furthermore, the Settlement Payment was expressly designed to compensate holders of *Common Stock* for an alleged harm arising *as a result of* the Conversion. Simply put, there is no logical reading of the COD, as a whole, in which the Settlement Payment could be deemed to have occurred prior to the Conversion.

Finally, the doctrine of *contra proferentem* is not applicable because the COD is not ambiguous.[113] And, Plaintiff's suggestion that AMC "deprive[d]" holders of APEs of "promised benefits" is simply incorrect.[114] As the Court of Chancery correctly held, the COD "puts clear, unambiguous, and comprehensive boundaries on the APE units'" protections and affords anti-dilution rights pre-Conversion, "not after."[115]

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[112] A207 (Tr. at 62).

[113] *Norton*, 67 A.3d at 365 n.56 ("[T]he *contra proferentem* doctrine . . . only applies if the partnership agreement is ambiguous.").

[114] Op. Br. at 39.

[115] A213 (Tr. at 68).

III. THE COURT OF CHANCERY CORRECTLY DISMISSED PLAINTIFF'S CLAIM FOR BREACH OF THE IMPLIED COVENANT

A. Question Presented

Did the Court of Chancery correctly hold that Plaintiff failed to state a claim for breach of the implied covenant of good faith and fair dealing? This question was presented below at A124-A134 (Ans. Br. at 32-42), B351-B354 (Mot. at 20-23), and B375-B377 (Reply at 11-13).

B. Standard Of Review

"This Court reviews *de novo* the grant of a motion to dismiss under Court of Chancery Rule 12(b)(6)."[116] "Questions of law and contractual interpretation are [also] reviewed *de novo*."[117]

C. Merits Of The Argument

The implied covenant is "a limited and extraordinary legal remedy"[118] that "cannot be used to circumvent the parties' bargain, or to create a free-floating duty

[116] *Nemec v. Shrader*, 991 A.2d 1120, 1125 (Del. 2010) (applying *de novo* review to a breach of the implied covenant of good faith and fair dealing claim).

[117] *Oxbow Carbon & Mins. Hldgs., Inc. v. Crestview-Oxbow Acq., LLC*, 202 A.3d 482, 502 (Del. 2019) (reviewing claim for breach of the implied covenant).

[118] *Yatra Online, Inc. v. Ebix, Inc.*, 2021 WL 3855514, at *12 (Del. Ch. Aug. 30, 2021), *aff'd*, 276 A.3d 476 (Del. 2022) (TABLE); *see also* A211-A212 (Tr. at 66-67).

unattached to the underlying legal documents."[119] "[T]he implied covenant only applies where a contract lacks specific language governing an issue and the obligation the court is asked to imply advances, and does not contradict, the purposes reflected in the express language of the contract."[120] Thus, "the implied covenant is only rarely invoked successfully."[121]

Plaintiff argues that AMC "rel[ied] on a gap in the [COD]" because, "[w]hile the actual [Settlement Payment] happened after [C]onversion, the entitlement to the [Settlement Payment] was only given to the common stockholders before [C]onversion," and AMC told investors that "each AMC [APE] and each share of common stock participate equally in any dividend."[122]

As the Court of Chancery correctly held, these arguments fail as a matter of law. The COD only provided rights to APE holders before the APEs were converted into Common Stock. Once the Conversion occurred, the APEs ceased to exist. The COD "is irrelevant to post-[C]onversion distributions, for which APE holders are simply not entitled to a distribution."[123] Accordingly, the Court of Chancery

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[119] *Deluxe Ent. Servs. Inc. v. DLX Acq. Corp.*, 2021 WL 1169905, at *7 (Del. Ch. Mar. 29, 2021), *aff'd sub nom. DSG Ent. Servs. Inc. v. DLX Acq. Corp.*, 273 A.3d 274 (Del. 2022) (TABLE).

[120] *All. Data Sys.*, 963 A.2d at 770.

[121] *Kuroda v. SPJS Hldgs., LLC*, 971 A.2d 872, 888 (Del. Ch. 2009).

[122] Op. Br. at 41.

[123] A212 (Tr. at 67).

correctly held that there was no "gap" in the COD for the implied covenant to fill.[124] "The COD puts clear, unambiguous, and comprehensive boundaries on the APE units' anti-dilution and distribution protections" -- *i.e.*, protections that were in place prior to Conversion.[125] Therefore, not only is there no gap in the COD for the implied covenant to fill, but the terms that Plaintiff seeks to imply would contradict the "expressly and clearly define[d] [] rights" provided for in the COD.[126] In short, APE holders "got exactly what they were entitled to under the COD."[127]

Plaintiff's contention that upholding the Court of Chancery's decision "would encourage gamesmanship and disincentivize investment" is demonstrably false.[128] It was clear that the APEs would -- and did -- cease to exist after the Conversion. Conventional and appropriate contracting simply cannot manufacture the alleged parade of horribles that Plaintiff imagines. Plaintiff's right to any dividends or distributions with respect to his APE units were conditional on the Conversion *not* occurring. Once the Conversion occurred, the APEs ceased to exist, and Plaintiff could no longer have any reasonable expectation of receiving dividends with respect to the APEs. To hold otherwise would create "a free-floating duty unattached to the

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[124] *Id.*

[125] A213 (Tr. at 68).

[126] *Amazon.com, Inc. v. Hoffman*, 2009 WL 2031789, at *4 (Del. Ch. June 30, 2009).

[127] A215 (Tr. at 70).

[128] Op. Br. at 42.

underlying legal documents," which is precisely what the implied covenant cannot do.[129]

[129] *Deluxe Ent. Servs. Inc.*, 2021 WL 1169905, at *7.

IV. THE COURT OF CHANCERY CORRECTLY DISMISSED PLAINTIFF'S CLAIM FOR BREACH OF SECTION III OF THE COD

A. Question Presented

Did the Court of Chancery correctly dismiss Plaintiff's claim that Section III of the COD provided former APE holders with a right to the Settlement Payment? This question was presented below at A120-A124 (Ans. Br. at 28-32), B347-B351 (Mot. at 16-20), and B373-B375 (Reply at 9-11).

B. Standard Of Review

The Court "review[s] *de novo* the . . . decision to grant a motion to dismiss under Court of Chancery Rule 12(b)(6)."[130] Further, "[a] judicial interpretation of a contract presents a question of law that this Court reviews *de novo*."[131]

C. Merits Of The Argument

The Court of Chancery correctly held that "[n]othing in the plain terms of the COD required a distribution to the preferred or conversion rate adjustment because the distribution to the common occurred after the preferred converted."[132] Section III(a) of the COD provided: "From and after the Closing Date *to but excluding the Conversion Date*, (i) the Holders [of APEs] shall be entitled to receive . . . *all cash dividends or distributions* . . . declared and paid or made in

[130] *Encore Energy*, 72 A.3d at 100.

[131] *Alta Berkeley*, 41 A.3d at 385.

[132] A207 (Tr. at 62).

respect of the shares of Common Stock, at the same time and on the same terms as holders of Common Stock."[133] Thus, the holders of APEs were only entitled to "cash dividends or distributions" made "to but excluding the Conversion."[134] This language is "clear and unambiguous."[135] Because the Settlement Payment was made after the Conversion, the Court of Chancery correctly held that Plaintiff was not entitled to the Settlement Payment under Section III(a) of the COD.

Plaintiff argues that he was entitled to the Settlement Payment under Section III(b) because that provision purportedly "made clear that the Record Date would be used to determine whether a distribution would be payable to preferred shareholders."[136] Not so. As the Court of Chancery correctly held, Section III(b) merely provided that APE holders were entitled to "dividends or distributions declared or paid 'pursuant to' Section III (a),"[137] and Section III(a) only provided a right to dividends and distributions "to but excluding the Conversion Date."[138]

Plaintiff's arguments regarding Section III of the COD also fail for the additional reason that Section III only provided a right to "cash dividends or

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[133] A047 (COD § III) (emphasis added).

[134] *Id.*

[135] A210 (Tr. at 65).

[136] Op. Br. at 43.

[137] A210 (Tr. at 65); *see also* A047 (COD § III(a)).

[138] A047 (COD § III(a)).

distributions,"[139] whereas the Settlement Payment was a payment in stock. Plaintiff's suggestion that his reading is "supported by the [COD] as a whole" is flatly undercut by the fact that Section III specifically provided that it only applied to cash dividends and cash distributions.[140] Indeed, Section III(a)(ii) specifically referred to "*any such cash dividend* or . . . *any such cash distribution*. . . ."[141] Plaintiff's argument that Section III(a)(ii) only "confirms the unremarkable fact that cash distributions are one subset of 'cash dividends or distributions'"[142] is incorrect as a matter of law. On its face, Section III(a) provided that it covered payments made in cash -- not payments made in stock, such as the Settlement Payment.

[139] A047 (COD § III(a)(i)).

[140] Op. Br. at 44.

[141] A047 (COD § III(a)(ii)) (emphasis added).

[142] Op. Br. at 45.

V. THIS COURT CAN ALSO AFFIRM THE DECISION BELOW ON THE GROUND THAT PLAINTIFF'S CLAIMS ARE BARRED BY LACHES

A. Question Presented

There is an additional and independent ground, not reached by the Court of Chancery, on which this Court could affirm the complete dismissal of Plaintiff's claims. Are Plaintiff's claims barred as a matter of law where the affirmative defense of laches is clear from the face of the Amended Complaint? This question was presented below at A134-A143 (Ans. Br. at 42-51), B354-B359 (Mot. at 23-28), and B377-B381 (Reply at 13-17).

B. Standard Of Review

"[T]his Court may rest its appellate decision on any issue that was fairly presented to the Court of Chancery, even if that issue was not addressed by that court. Accordingly, this Court may affirm the judgment of the Court of Chancery on the basis of a different rationale."[143]

C. Merits Of The Argument

"Under Delaware law, laches bars a plaintiff from proceeding with a cause of action if he waited an unreasonable length of time before asserting his claim and the

[143] *See Cent. Laborers Pension Fund v. News Corp.*, 45 A.3d 139, 141 (Del. 2012); *see also Winshall v. Viacom Int'l, Inc.*, 237 A.3d 67, 2020 WL 3722401, at *2 n.2 (Del. July 6, 2020) (TABLE) ("[T]his Court may affirm on the basis of a different rationale than that which was articulated by the trial court.").

delay unfairly prejudiced the defendant."[144] The three elements of laches -- knowledge, unreasonable delay, and prejudice -- are all met here.

First, as the Court of Chancery correctly noted, Plaintiff knew that the Conversion preceded the distribution of the Settlement Payment. AMC made clear, consistent, and repeated disclosures that the Settlement Payment would be made after the Conversion.[145] Thus, Plaintiff had actual knowledge that the Settlement Payment would be made after the Conversion, and he did not dispute this fact below.[146]

Second, Plaintiff unreasonably delayed in bringing and prosecuting this action. "[T]he equitable doctrine of laches does not prescribe a specific time period as unreasonable. . . . An unreasonable delay can range from as long as several years to as little as one month."[147] Starting on April 3, 2023 -- four-and-a-half months *before* Plaintiff commenced this action -- AMC consistently and continuously made clear that it would issue the Settlement Payment after the Conversion.[148] Indeed, Plaintiff only commenced this action after the Court of Chancery (i) approved the Settlement, (ii) lifted the status quo order, and (iii) expressly stated that "[o]nce the

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[144] *Bean v. Fursa Cap. P'rs, LP*, 2013 WL 755792, at *4 (Del. Ch. Feb. 28, 2013).

[145] *See* pp. 10-13, *supra*.

[146] A108, A109, A119, A122, A128 (Ans. Br. at 16, 17, 27, 30, 36).

[147] *Whittington v. Dragon Grp., L.L.C.*, 991 A.2d 1, 7-8 (Del. 2009).

[148] *See* pp. 10-13, *supra*.

status quo order is lifted, the Company is free to effectuate the Reverse Stock Split and Conversion, and . . . defendants[] [have] . . . express[ed] an intention to do so as quickly as possible."[149]

Even after commencing this action, Plaintiff did nothing to obtain his purported relief "prior to" or "upon the Conversion,"[150] or "at the same time and on the same terms" that the Settlement Payment was made.[151] He did not move to expedite this action, much less seek a temporary restraining order or preliminary injunction.[152] That was an economically rational move for Plaintiff, as he expected to benefit from the Conversion when his discounted APEs converted into Common Stock. Plaintiff understandably did not want to prosecute this action expeditiously and put the Conversion at risk. But that strategy has consequences.

Third, AMC and the holders of its Common Stock prior to the Conversion will suffer prejudice. The effect of the relief that Plaintiff sought in this action would undo the Settlement Payment in the Stockholder Litigation. Indeed, Plaintiff seeks "monetary damages to" "adjust for the dilution" that the Settlement Payment

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[149] *AMC II*, 2023 WL 5165606, at *43.

[150] *See* B240, B242, B245, B250, B251, B255, B256, B257, B258 (Compl. ¶¶ 1, 11, 26, 46, 48, 67, 70, 76, Prayer for Relief B, Prayer for Relief D); *see also* B240, B241 (Compl. ¶¶ 4, 7).

[151] *See* B240, B242, B246, B252, B255, B256, B258 (Compl. ¶¶ 1, 11, 27, 50, 68, 71, Prayer for Relief C); *see also* B240, B241 (Compl. ¶¶ 4, 7).

[152] *See, e.g.*, A003-A012 (Docket Sheet).

allegedly caused APE holders.[153] This would mean that former APE holders would receive the same payment that pre-Conversion holders of Common Stock received, which would entirely eliminate the benefit that the Settlement Payment provided to holders of Common Stock.[154] AMC is the only defendant in this action. Thus, any re-jiggering of AMC's economics in favor of former APE holders prior to the Conversion will necessarily come at the expense of holders of AMC's Common Stock. Below, Plaintiff did not -- because he could not -- dispute this clear prejudice.[155]

[153] A014 (AC ¶ 1).

[154] *AMC I*, 299 A.3d at 533-34.

[155] B381 (Reply at 17).

CONCLUSION

For all of these reasons, and those set forth in the Court of Chancery's well-reasoned October 2, 2024 decision, this Court should affirm the dismissal of the Amended Complaint with prejudice.

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