Docket #0289 Date Filed: 07/25/2024

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: FISKER INC., *et al.*, Debtors.[1]	Chapter 11 Case No. 24-11390 (TMH) (Jointly Administered)

AMENDED DECLARATION OF JOHN C. DIDONATO AS CHIEF RESTRUCTURING OFFICER OF THE DEBTORS IN SUPPORT OF DEBTORS' CHAPTER 11 PROCEEDINGS AND FIRST DAY PLEADINGS

JOHN C. DIDONATO declares and says:

1. I am the Chief Restructuring Officer of each of the above-captioned debtors (collectively, the "**Debtors**" and, together with their non-Debtor affiliates, "**Fisker**" or the "**Company**"). I have served as the Debtors' Chief Restructuring Officer since April 25, 2024, and am familiar with the Company's business, financial affairs, and day-to-day operations.[2]

2. I am also a Managing Director of Huron Consulting Services LLC ("**Huron**"), a consulting firm that specializes in, among other things, restructuring, operational, and financial consulting, and interim management to financially troubled companies. I have more than 30 years of experience counseling companies through operational transformations, capital raising, buy and sell side advisories, and merger integrations, primarily in special situations serving as a lead advisor in both out-of-court and court-supervised situations. I have served more than 100 debtors,

[1] The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers or Delaware file numbers, are as follows: Fisker Inc. (0340); Fisker Group Inc. (3342); Fisker TN LLC (6212); Blue Current Holding LLC (6668); Platinum IPR LLC (4839); and Terra Energy Inc. (0739). The address of the debtors' corporate headquarters is 14 Centerpointe Drive, La Palma, CA 90623.

[2] As to certain of the matters set forth below that occurred prior to my service as Chief Restructuring Officer I am relying on the personal knowledge of other Fisker employees and professionals.

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functioning for many as a chief restructuring strategist. My expertise encompasses a wide range of industries, including automotive, logistics, distribution, transportation, automotive suppliers, aerospace suppliers, engineering and construction, metals, equipment leasing, and retail.

3. I am over the age of 18 and authorized to submit this declaration (this "**Declaration**") on behalf of each of the Debtors in support of their petitions and requests for relief in the form of motions and applications (the "**First Day Pleadings**"), each filed prior hereto. Except as otherwise indicated, the facts set forth in this Declaration are based upon my personal knowledge, my review of the relevant documents, information prepared or provided to me by employees of and professional advisors to the Company, information prepared or provided to me by employees of Huron (the Company's proposed financial advisors), or my opinion based upon experience, knowledge, and information concerning the operations of the Debtors. I have reviewed the First Day Pleadings or have otherwise had their contents explained to me, and it is my belief that the relief sought therein is necessary to preserve the value of the Debtors' estates. If called upon to testify, I would testify competently to the facts set forth in this Declaration. Unless otherwise indicated, the financial information contained herein is unaudited and provided on a consolidated basis.

COMMENCEMENT OF BANKRUPTCY PROCEEDINGS

4. On June 17 and 19, 2024 (collectively, the "**Petition Date**"), Fisker Inc. and certain of its affiliates filed voluntary petitions (the "**Chapter 11 Cases**") for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). The Debtors remain in possession of their property and continue to operate and manage their business as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

5. Fisker is an American automotive company that designs, develops, markets, and sells electric vehicles. Passionately driven by a vision of a clean future for all, Fisker created the

world's most sustainable and emotional electric vehicles. Headquartered in California, Fisker operates in several countries (including the United States, Austria, Germany, China, and India) and conducts sales operations in North America and throughout Europe.

6. As described in Part II below, Fisker engages in a business that requires a substantial amount of capital and, to date, it has relied upon the issuance of debt, structured equity, and the sales of its electric vehicles ("**EVs**") to fund its liquidity needs. However, Fisker has been significantly impacted by uncontrollable macroeconomic events. The negative impacts of these industry-wide events have been accelerated by unprecedented liquidity challenges stemming from an unexpected decline in sales brought on by negative sentiments in the EV industry generally, negative media reports about Fisker, and the rapid decline in Fisker Inc.'s share price. Fisker lost S-3 eligibility upon failing to timely file its Form 10-Q for the quarter ended September 30, 2023, which impacted its ability to file new registration statements on Form S-3 to pursue certain types of transactions without additional SEC approval. However, Fisker could have continued to use its existing S-3 shelf registration statement until the filing of its Form 10-K for the year ended December 31, 2023, at which time the Section 10(a)(3) update would have resulted in that registration statement no longer being eligible for use. Additionally, unregistered transactions were potentially still available to Fisker without future S-3 eligibility, including but not limited to Private Investment in Public Equity (PIPE) conducted pursuant to Reg D or 4(a)(2), 144A and Convertible notes issued pursuant to 4(a)(2) or other available exemptions. The Debtors have tried diligently to navigate these liquidity challenges. As described in more detail herein, for the past several months, the Debtors have explored numerous potential avenues to address their liquidity and capital structure challenges. Ultimately, the Debtors determined that the best path to maximize

stakeholder value would be an organized and efficient liquidation of assets in a chapter 11 proceeding.

7. On August 3, 2023, the Company hosted a product vision showcase during which it displayed certain of its EVs and, thereafter, began exploring a strategic partnership with an original equipment manufacturer. The Company engaged J.P. Morgan Securities ("**JPM**") to assist with these efforts. JPM developed comprehensive investment materials and conducted outreach to select original equipment manufacturers. The efforts resulted in extensive discussions and diligence with a particular large original equipment manufacturer (the "**OEM**") regarding the terms of a potential partnership with, or investment from, the OEM. In December 2023, the Debtors engaged Davis Polk & Wardwell LLP ("**Davis Polk**") to provide legal advice in connection with a potential transaction with the OEM, including with respect to a conditional release of certain intellectual property that was pledged in favor of Heights (as defined below), the Company's senior secured creditor, in connection therewith. In January 2024, the Company also engaged PJT Partners ("**PJT**") and TD Cowen Securities (f/k/a Cowen Inc.) ("**Cowen**") to provide advice on structuring a transaction with the OEM in light of the Company's complex capital structure, and to explore other financial investments. In addition, in February 2024, the Company engaged FTI Consulting Inc. ("**FTI**") to assist management with rendering cash flow forecasts in connection with a potential transaction with the OEM and to advise the Company on vendor and cash management.

8. In late March 2024, after several months of discussions, diligence, and term sheet negotiations, the OEM chose to terminate discussions with the Debtors. Without the OEM as a potential source of investment (and coupled with a precipitous decrease in sales and in its share price), Fisker was left in a precarious position, with an unsustainable capital structure and a need

to move with urgency to protect its value. As a result, the Debtors, with the assistance of its advisors, determined that new financing options were limited given the Company's capital structure and, as such, determined that their best prospect of maximizing value, particularly in light of the Company's limited liquidity runway, would be a sale of all (or substantially all) of the Debtors' assets. Accordingly, the Debtors retained Deutsche Bank Securities Inc. ("**DB**") to assist the Debtors in pursuing and consummating a sale.

9. The Debtors, with the assistance of DB and the other advisors, commenced their sale process in April 2024. The Debtors devoted extensive efforts to a sale marketing process prior to the Petition Date, contacting more than 40 potential purchasers, some of which expressed an interest of purchasing the Debtors' assets as part of a chapter 11 process.

10. During this same period, however, the Company's financial condition continued to deteriorate, leaving the Debtors with a need for incremental financing in order to conduct a marketing and sale process. On March 18, 2024, the Debtors obtained a financing commitment from Heights (the "**Prepetition Notes Commitment**") pursuant to which Fisker Inc. agreed to issue $166.7 million in additional senior secured convertible notes to Heights in four tranches. The Prepetition Notes Commitment was intended to provide Fisker with sufficient liquidity to operate in the ordinary course of business while discussions with the OEM progressed. Funding under the Prepetition Notes Commitment was conditioned upon ongoing discussions with the OEM. In late March 2024, before any amounts were funded under the Prepetition Notes Commitment, the OEM informed Fisker that it no longer wished to continue negotiations. Thereafter, to avoid the occurrence of defaults or events of default under its Prepetition Senior Secured Notes SPA (as defined below) while it continued to seek financing and continue its sale process, Fisker entered into a forbearance agreement with Heights (as defined below), its senior

secured creditor, on April 4, 2024, pursuant to which Heights agreed to forbear on certain defaults arising under the Prepetition Senior Secured Notes SPA through April 21, 2024 (the "**Initial Forbearance Period**"). Though the Company progressed the sale process during the Initial Forbearance Period, the Company was not able to solidify any actionable bids during this period. As a result, the Debtors began negotiating a further forbearance (the "**Second Forbearance**") with Heights and, ultimately, the Debtors and Heights agreed to an extension of the Initial Forbearance Period to May 1, 2024 (the "**Second Forbearance Period**"). The negotiations with respect to the Second Forbearance resulted in my appointment as Chief Restructuring Officer (as of April 25, 2024). Thereafter, Heights agreed to further extend the Second Forbearance Period to May 17, 2024 (the "**Third Forbearance Period**"). To support the Debtors as they continued to seek solutions to the capital structure issues, Heights also provided the Debtors with approximately $7 million in incremental liquidity commitments (of which $3.456 million has been drawn) in the form of the Prepetition 2024 Secured Notes (as defined below).

11. By mid-May 2024, the Debtors' marketing process had not resulted in any actionable bids for sale of the Debtors' assets outside of a bankruptcy proceeding. As such, the Debtors engaged Morris, Nichols, Arsht & Tunnell LLP ("**Morris Nichols**" and, collectively with Huron, Davis Polk, FTI, PJT, JPM, Cowen, and DB, the "**Advisors**")[3] as their local Delaware counsel to provide advice in connection with a potential bankruptcy filing. Beginning around this same time, the Debtors were also focused on selling their existing fleet finished vehicles. The Debtors and a vehicle leasing counterparty are in advanced discussions to execute a fleet sales agreement to provide for the purchase and sale of substantially all of the Company's existing fleet

[3] The Debtors' engagements with FTI, PJT, JPM, and Cowen were terminated prior to the Petition Date.

of vehicles. The fleet sale, if executed and approved, would provide the Debtors with a substantial amount of cash proceeds.

12. With the potential execution of the fleet sales agreement—and, in turn, the sale of a substantial portion of its remaining inventory—the Debtors determined that an orderly liquidation of its remaining assets would best maximize value for the Debtors stakeholders. While the Debtors were in discussions with its Advisors and its secured creditor to implement such a process in an orderly manner, the Debtors received yet another blow to their business in the days before the Petition Date. On June 17, 2024, one of the Debtors' critical contract vendors, which provides mission-critical software services to the Debtors, notified Debtor Fisker Group Inc. that it planned to terminate its contract with Fisker Group Inc. as of June 18, 2024. As a result, in order to protect the value of the business, Debtor Fisker Group Inc. made the difficult decision to file a voluntary petition on June 17, 2024. The remaining Debtors filed voluntary petitions on June 19, 2024. The Debtors hope to leverage the "breathing room" that chapter 11 provides to stabilize operations while pursuing an orderly and efficient liquidation of assets, all with the goal of preserving the value of the Debtors' estates for the benefit of all stakeholders.

13. To better familiarize the Court with Fisker, its business, the circumstances leading up to the Chapter 11 Cases, and the relief that the Debtors are seeking in the First Day Pleadings, I have organized this Declaration into three sections. Section I of this Declaration describes Fisker's business; Section II describes the circumstances giving rise to the need for chapter 11 relief and Fisker's various prepetition restructuring initiatives; and Section III sets forth the relevant facts in support of the First Day Pleadings.

I.

THE DEBTORS' BUSINESS

A. Operations

i. Operations and Activities

14. Fisker was launched for the purpose of developing and selling EVs. Fisker's focus was on building a technology-enabled, asset-light automotive business model that would be among the first of its kind. Fisker's business model was distinct from other EV companies by virtue of its proprietary Fisker Flexible Platform Design process that allows the design and development of a vehicle to be adapted to different EV designs. Through this hardware agnostic process, Fisker intended to significantly reduce the capital intensity and investments that are typically associated with the new car manufacturing business, accelerate the development cycle of new products, and expedite the adoption of advanced technologies. Fisker's innovative model was driven by its co-founder and CEO, Henrik Fisker, who brings unique design and development expertise—including as the acclaimed designer of the BMW Z8, Aston Martin's award winning DB9 and the V8 Vantage, Aston Martin's best-selling car of all time—to Fisker.

15. Fisker's first EV model, the award winning Fisker Ocean®, is an all-electric sport utility vehicle (SUV) targeted at the "premium with volume" segment of premium automakers.

The Ocean is designed to be one of the world's most sustainable vehicles, made from upcycled, low-carbon, and recycled materials, with a vegan interior and full-length solar roof that can add over 1,500 miles per year of clean, free charging from the sun. The Ocean also has the longest battery range of any electric vehicle in its class, ranging from 250-350 miles. The Ocean is currently Fisker's only vehicle that is available for purchase and delivery. Fisker commenced delivery of the Ocean in the third quarter of 2023 and, as of June 19, 2024, Fisker sold over 7,155 Oceans to customers around the world.

16. The Ocean's design has garnered numerous awards, the prestigious iF Design Award for Best Electric SUV, the Automobile Awards (France) award for SUV of the Year, and the Danish Car of the Year Awards Design Award, among many others.

17. In addition to the Ocean, Fisker also developed designs for a compact crossover SUV (the Fisker PEAR®), a premium pick-up truck (the Fisker Alaska®), and a convertible sports

car (the Fisker Rōnin®). The PEAR, which, prior to the Petition Date, had been in advanced development is a lifestyle-built crossover vehicle. The PEAR was uniquely designed to use 35% fewer parts than other EVs in its class. The PEAR was also designed to include a number of unique features, including a proprietary central computing platform, optional three-passenger front seat configuration that would enable the PEAR to accommodate six passengers, a hideaway liftgate, and front storage compartment. The PEAR was anticipated to have an electric range of approximately 300 miles.

18. In addition to the Ocean and the PEAR, Fisker developed designs for two additional models, the Alaska and the Rōnin. The Alaska was designed to be a highly advanced, all electric, four-door pickup truck, with an anticipated driving range of 340 miles and the ability to reach 60 miles per hour in as few as 3.9 seconds. The Alaska was designed to have a 4.5-foot bed that, with its unique "Houdini partition," could be extended to up to 9.2 feet. Prior to the Petition Date, the Alaska was in late-stage development.

19. Fisker also developed designs for the Rōnin, a high-performance, four-door, five seat convertible GT sports car. The Rōnin was designed for high performance, both in its acceleration and driving range. The Rōnin was designed to have three electric motors and designed to provide all-wheel traction and up to 1,000 horsepower. The Rōnin's battery was targeted to provide 600 miles in driving range and the vehicle is designed with the capability to reach 60 miles per hour in about 2.0 seconds. The Rōnin has

been shown in concept form without a powertrain or interior. Reservations for the Rōnin opened in August 2023.

20. On April 23, 2024, Fisker Inc. filed its annual report on Form 10-K with the Securities and Exchange Commission, in which Fisker reported GAAP revenues of approximately $273 million and GAAP net losses of approximately $940 million.

21. EV Production. Prior to the Petition Date, Fisker worked with an array of manufacturing partners to produce and build its vehicles, thereby enabling Fisker to lower its upfront costs by leveraging existing manufacturing facilities and trained workforces. One such partner that has been involved at every stage of development is Magna International Inc. and its affiliates (collectively, "**Magna**"). In 2020, Fisker selected Magna (out of numerous top companies in the field) to assist in Fisker's development, production, manufacture, service, and support of its vehicles. Magna promised to serve as a "one-stop shop" for all of Fisker's manufacturing needs and, over the following months, Fisker entered into various partnerships with multiple Magna entities, including for powertrain, engineering, and platform products and services. In connection with these partnerships, Fisker and Magna entered into a Memorandum of Understanding on January 28, 2020, a Cooperation Agreement on October 14, 2020, a Development Services Agreement on October 2, 2020, an Initial Contract Manufacturing Agreement on December 16, 2020, and a Non-Exclusive Car Platform Sharing Agreement on December 15, 2020, among others.

22. In June 2021, Fisker entered into a binding Contract Manufacturing Agreement with Magna Fahrzeugtechnik AG & Co KG ("**Magna Steyr**"), an affiliate of Magna, to manufacture the Ocean at Magna Steyr's facility in Graz, Austria. Magna Steyr has over 100 years of experience in vehicle production (including six years of EV production) and currently produces

vehicles for BMW, Jaguar, Mercedes-Benz, and Toyota. Fisker's relationship with Magna was designed to allow Fisker to maintain an asset-light business model, while leveraging Magna Steyr's existing production infrastructure. Production of the Ocean commenced in November 2022. As of the Petition Date, Magna Steyr produced over 11,000 EVs for Fisker. In addition, as of the Petition Date, Fisker has approximately 4,300 Oceans in its inventory that have completed production and are ready for sale (the "**Fisker EV Inventory**").

23. In May 2021, Fisker entered into the Project PEAR Cooperation Framework Agreement with AFE, Inc. (an affiliate of Foxconn Technology Group ("**Foxconn**")), which contemplated entering into a manufacturing agreement with Foxconn for manufacture of the PEAR. Based on Fisker's prepetition production schedule, it projected that Foxconn's production of the PEAR would commence in 2025.

24. In addition to Fisker's relationship with third-party partners like Magna and Foxconn, Fisker also owns certain manufacturing assets utilized by Magna Steyr in the production of Fisker's EVs. These assets include, among others, 180 assembly robots, sub-assembly cells, closure cells, underbody line, a paint shop, and certain other specialized assembly tools.

25. Sales and Marketing. Fisker is headquartered in California with a presence in 15 countries and sales in 12 countries. Fisker currently markets and sells its vehicles across North America and Europe, with California and Florida as its largest markets, and, to date, has sold 6,200 Oceans globally. Historically, Fisker exclusively used a direct-to-consumer model to market and sell its EVs. In January 2024, Fisker announced that it was developing and incorporating a dealer partnership model into its sale model, which the Company sought to roll out throughout North America and Europe (the "**Dealership Sales Model**"). The incorporation of the Dealership Sales Model was part of a broader strategic transformation which was, in part, a response to changes in

the EV market. The Dealership Sales Model was intended to enable Fisker to pursue a hybrid of direct sales and dealer arrangements that aligned with the Company's asset-light business strategy, with the hope that the transition would deliver significant acceleration of Ocean sales (by, among other things, providing the Company access to larger markets) and higher volume production of additional future models. In March 2024, however, in an effort to align inventory levels and to progress strategic and financing initiatives, Fisker paused production of its EVs and, since that time, the Debtors and their Advisors have pursued any and all options to monetize the Fisker EV Inventory, including selling EVs at discounts, in auctions, or in a fleet transaction.

26. In addition to sales of its EVs, Fisker's vehicle platforms were designed with engineering flexibility for high content carry-over, which enabled the Company to license its vehicle platforms. This flexibility historically reduced the time and cost to bring multiple vehicle designs to market. Moreover, Fisker's technologies also provide for licensing opportunities, including with respect to the Company's rotating center screen and invisible antenna designs, powertrain components, solar roof, and proprietary Blade Computer software.

27. <u>Research and Development</u>. Fisker's research and development activities primarily take place at its facilities located in La Palma, San Francisco, and Culver City, California. The majority of Fisker's current activities are focused on research and development of its EVs and software technology platforms. Fisker undertakes significant testing and validation of its products to ensure that all products will meet the demands of its customers.

28. <u>Intellectual Property</u>. Fisker's success depends, in part, on its ability to protect its core technology and intellectual property. As of the Petition Date, Debtor Fisker Inc. owns 60 patents issued in the U.S. and 11 patents issued in non-U.S. jurisdictions. Finally, Fisker has 162

registered trademarks and 13 pending trademark applications. Fisker's patents and patent applications relate to, among other things, vehicle design, engineering, and battery technology.

ii. *Employees*

29. Crucial to its business, Fisker employs a talented and dedicated workforce that enables Fisker to maintain its high standards of quality, safety, and sustainability. As of the Petition Date, Fisker employed over 400 people (collectively, including the current members of the Debtors' boards of directors or similar governing bodies, the "**Employees**"), primarily based in California, Munich, and Hyderabad. None of the Employees are represented by a union or are party to a collective bargaining agreement. As detailed below in connection with the "Wages Motion" (*see* Part III of this Declaration), the Employees are located in multiple sites throughout North America, Asia, and Europe.

B. Corporate Structure

30. Debtor Fisker Inc. is a public holding company that is the ultimate parent of 23 direct or indirect subsidiaries (including the Debtors). A chart illustrating Fisker's corporate structure is attached hereto as **Exhibit A**. In October 2020, Fisker consummated a business combination (the "**Business Combination**") with Spartan Energy Acquisition Corp. ("**Spartan**"), a special purpose acquisition company backed by Apollo Global Management Inc., pursuant to which pre-Business Combination private company Fisker Inc. merged with Spartan Merger Sub Inc., a subsidiary of Spartan, which became Debtor Fisker Group Inc., and Spartan was renamed Fisker Inc. Following consummation of the Business Combination, Fisker Inc.'s Class A common stock (the "**Class A Common Stock**") publicly traded on the New York Stock Exchange under the ticker symbol "FSR." As of April 8, 2024, Fisker Inc. had (a) 2,000,000,000 shares of Class A Common Stock authorized and 1,250,822,032 outstanding and (b) 150,000,000 shares of Class B common stock (the "**Class B Common Stock**") authorized and 132,354,128 shares outstanding.

On March 25, 2024, the NYSE notified Fisker Inc. of the delisting of Fisker Inc.'s Class A Common Stock from the exchange due to abnormally low share prices (*i.e.* under $0.10).

C. Capital Structure[4]

31. As of the Petition Date, Fisker has approximately $854 million in the aggregate of outstanding principal funded debt obligations, as reflected below:[5]

Funded Debt	***Approximate Outstanding Principal Amount***
Prepetition 2024 Notes	$3.456 million
Prepetition 2025 Convertible Notes	$183.05 million
Prepetition 2026 Convertible Notes	$667.5 million

i. Prepetition 2024 Notes

32. On May 10, 2024, Debtor Fisker Inc., as issuer, and CVI Investments, Inc. ("**Heights**") entered into that certain Securities Purchase Agreement (as amended, modified, or supplemented from time to time, the "**Prepetition 2024 Note SPA**"), pursuant to which Heights purchased approximately $3.5 million in the aggregate principal amount of senior secured notes (the "**Prepetition 2024 Notes**"). The Prepetition 2024 Notes have a stated maturity of June 24, 2024. Pursuant to the Prepetition 2024 Note SPA, if requested by Debtor Fisker Inc., Heights had the option to purchase up to $4.044 million in aggregate principal amount of additional Prepetition 2024 Notes.

33. The Prepetition 2024 Notes bear interest at a rate equal to the three-month Secured Overnight Financing Rate plus 12.00% per annum. As of the Petition Date, approximately $3.456 million in aggregate principal amount of Prepetition 2024 Notes remained outstanding.

[4] The following summary is qualified in its entirety by reference to the operative documents, agreements, schedules, and exhibits.

[5] The table is for illustrative and summary purposes only. The Debtors do not admit to the validity, priority and/or allowance of any claim, lien, or interest in property and reserve their rights in relation to such issues.

ii. Prepetition 2025 Convertible Notes

34. On July 10, 2023, Debtor Fisker Inc., as issuer, and Heights entered into that certain Securities Purchase Agreement (as amended, modified, or supplemented from time to time, the "**Original Prepetition 2025 Note SPA**"), pursuant to which Heights purchased $340 million in the aggregate principal amount of senior unsecured convertible notes due July 10, 2025 (the "**Prepetition 2025 Convertible Notes**") at a 12% original issue discount. The Prepetition 2025 Convertible Notes have a stated maturity of July 10, 2025. Pursuant to the Original Prepetition 2025 Note SPA, Heights had the option to purchase up to $226.7 million in aggregate principal amount of additional Prepetition 2025 Convertible Notes and, upon election of such option, Fisker Inc. had the option to require Heights to purchase an additional $113.3 million in aggregate principal amount of incremental Prepetition 2025 Convertible Notes (the "**Additional Prepetition 2025 Convertible Notes**"). On September 29, 2023, Fisker Inc. and Heights entered into amendment No. 1 to the Original Prepetition Note SPA, pursuant to which, among other things, the aggregate principal amount of available Additional Prepetition 2025 Convertible Notes was increased to $793.4 million in aggregate and Heights agreed to purchase an additional $170 million of Prepetition 2025 Convertible Notes (as may be amended, modified, or supplemented from time to time, the "**Amended Prepetition 2025 Note SPA**").

35. On November 22, 2023, Fisker Inc., along with certain of its subsidiaries, including the Debtors, and the trustee under the Prepetition 2025 Convertible Notes and the Additional Prepetition 2025 Convertible Notes entered into a supplemental indenture (the "**Supplemental Indenture**") in exchange for certain covenant waivers provided by Heights on account of, among other things, Fisker Inc.'s failure to timely file with the Securities and Exchange Commission its quarterly report on Form 10-Q for the third quarter of 2023. In connection with the Supplemental Indenture, which lowered the minimum cash covenant in the notes from $340 million to $250

million, the Debtors and non-Debtor Fisker GmbH agreed to grant the collateral agent, in favor of Heights, a first-priority security interest on all existing and future assets of the Debtors and non-Debtor Fisker GmbH. Heights also agreed to reduce certain financial covenants effective immediately. In connection with the Supplemental Indenture, Fisker Inc. and certain of its direct and indirect wholly owned subsidiaries entered into a Pledge Agreement (the "**Pledge Agreement**"), dated as of November 22, 2023, in favor of Heights as collateral agent, pursuant to which the Prepetition 2025 Convertible Notes and the Additional Prepetition 2025 Convertible Notes became secured by a first-priority security interest in all of the existing and future assets of the Debtors and non-Debtor Fisker GmbH, including a pledge of all of the share capital of certain subsidiaries of the Company. Also on November 22, 2023, Fisker entered into an amendment and waiver agreement (the "**Waiver**") with Heights. Pursuant to the Waiver, Heights agreed to waive a covenant event of default resulting from the late filing of Fisker Inc.'s quarterly report on Form 10-Q for the third quarter of 2023.

36. On December 28, 2023, the Pledge Agreement was amended and restated (as may be amended, modified, or supplemented from time to time, the "**Amended Pledge Agreement**") to amend and define the scope of the security interest created by the Pledge Agreement in all of the existing and future assets of Fisker Inc. and the other grantors party thereto. In addition, on December 28, 2023, certain subsidiaries of Fisker Inc. entered into a guaranty agreement. As a result, Heights is now secured by a first-priority senior lien on substantially all of the Debtors' and non-Debtor Fisker GmbH's assets and properties.

37. The Prepetition 2025 Convertible Notes bear interest at a rate equal to 0% per annum and are convertible into shares of Class A Common Stock at any time at the election of Heights at an initial conversion price of $7.80 and $7.60 with respect to the Series A-1 notes and

Series B-1 notes, respectively, issued pursuant to the Amended Prepetition 2025 Note SPA. However, as a result of an event of a default under the Amended Prepetition 2025 Note SPA, the Prepetition 2025 Convertible Notes became convertible using an alternative conversion price equal to the lower of (a) the conversion price in effect or (b) 80% of the average stock price of the Class A Common Stock preceding conversion. Since the event of default arising out of Fisker Inc.'s failure to timely file its Form 10-Q for the third quarter of 2023, Heights exercised its conversion rights numerous times and substantially reduced the outstanding principal amount due under Prepetition 2025 Convertible Notes to $183.05 million.

iii. Prepetition 2026 Convertible Notes

38. On August 17, 2021, Debtor Fisker Inc. completed the issuance and sale of $667.5 million in the aggregate principal amount of senior notes due 2026 in a private placement under rule 144A of the Securities Act of 1933 (the "**Prepetition 2026 Convertible Notes**").[6] The Prepetition 2026 Convertible Notes are "Holdco" only notes for Fisker Inc., and no other Debtor is a guarantor or obligor under these notes.

39. The Prepetition 2026 Convertible Notes bear interest at a rate equal to 2.50% and are convertible (subject to certain conditions) into shares, at the option of the holders thereof, of Class A Common Stock at a conversion rate of 50.7743 Class A Common Shares per $1,000 principal amount of Prepetition 2026 Convertible Notes. The Prepetition 2026 Convertible Notes have a stated maturity of September 15, 2026. As of the Petition Date, approximately $667.5 in aggregate principal amount of Prepetition 2026 Convertible Notes remained outstanding.

[6] The Prepetition 2026 Convertible Notes were issued pursuant to that certain Indenture, dated as of August 17, 2021, by and among Fisker Inc., as issuer, and U.S. Bank National Association, as trustee (as may be amended, modified, or supplemented from time to time, the "**Prepetition 2026 Notes Indenture**").

D. Cash Needs

40. Fisker's business did rely upon its ability to use cash to, among other things, (a) satisfy payroll, pay vendors and suppliers, and meet overhead expenses, and (b) pay property taxes and other taxes. Any limitation on the Debtors' use of cash would have disastrous effects on Fisker's operations and result in a rapid deterioration of the value of the Debtors' estates, as the Debtors would lack sufficient working capital to make payments to Employees, vendors, suppliers, and other key providers of goods and services on a timely basis.

E. Senior Management

41. Henrik Fisker has served as Chairman of the board of directors and as Fisker's Chief Executive Officer since October 2020. Prior to serving in these roles, Mr. Fisker served as Chief Executive Officer of Fisker's predecessor prior to the Business Combination since September 2016 and as President since October 2020. Prior to serving as Fisker's chief executive, Mr. Fisker also held senior roles at HF Design LLC, McKinsey & Company, VLF Automotive, LLC, Ford Motor Company, Aston Martin, and Fisker Automotive, Inc.

42. Dr. Geeta Gupta-Fisker has served as Fisker's Chief Financial Officer and as a member of the board of directors since October 2020, and also served as Fisker's Chief Operating Officer since March 2021. Prior to this, Dr. Gupta-Fisker served as a director and Chief Financial Officer of Fisker's predecessor prior to the Business Combination since September 2016. Prior to co-founding Fisker with Mr. Fisker, Dr. Gupta-Fisker served as an Entrepreneur and Investment Manager for the Fisker family from 2014 to 2020.

43. David King has served as Fisker's Chief Technical Officer since November 2023. Mr. David King has over 30 years of vehicle engineering and product development leadership experience, primarily at Aston Martin. Mr. King's accomplishments include (a) developing Aston Martin's DB7 V12 Vantage and clean-sheet platform development, which resulted in the DB9 and

V8 Vantage and (b) serving as President of Aston Martin Racing. Prior to joining Fisker, Mr. King served as Aston Martin Lagonda's VP and Chief Special Operations Officer, successfully leading a team of approximately 100 engineers to launch a series of specialty vehicles and develop the 'Q by Aston Martin' bespoke customization service.

II.

EVENTS LEADING TO THE CHAPTER 11 CASES

A. Recent Macroeconomic Trends and Company-Specific Events

44. Over the last year, Fisker contended with a parade of significant macroeconomic and company-specific headwinds that have strained its business and resources and ultimately led the Debtors to seek chapter 11 relief. This section describes the circumstances and the immediate catalysts motivating the filing of the Chapter 11 Cases.

45. Negative Industry Trends. The EV market has been subject to a number of industry-wide headwinds in 2023 and the first half of 2024. During the course of 2023 and into 2024, consumer demand for EVs decreased, driven, in part, by higher interest rates and lower fuel costs. Decreased consumer demand has had a negative impact on Fisker's business. Moreover, the recent decrease in consumer demand is magnified by increasing competition in the EV market. As a result, in late 2023, Fisker made the decision to cut the price of the Ocean by approximately 11% in an effort to adapt to the competitive realities. This, in turn, had a negative impact on Fisker's margins. Moreover, Fisker recently experienced unprecedented liquidity challenges due to a dramatic and unexpected decline in sales, thereby resulting in the need for additional capital investment and a restructuring of its current untenable capital structure.

46. Production and Delivery Delays. As a result of Fisker's asset-light business model, Fisker is heavily reliant on third-party partners to produce its vehicles. During the course of 2023, a number of delays prevented the Company from delivering Oceans as quickly as projected.

47. Beginning as early as January 2021, development of the Ocean platform hit several delays. Fisker's management took serious measures during this time to address such issues, but, nevertheless, production delays continued.

48. Sales Model Transition. Fisker has also experienced unexpected headwinds in its efforts to establish a dealership sales model in North America and Europe. Fisker historically utilized a direct-to-consumer model to market and sell its vehicles. During the course of 2023, Fisker faced a number of challenges with this model, including rising interest rates, lack of sufficient levels of skilled labor, and an inability to identify appropriate real estate locations to make the direct-to-consumer model function effectively. These factors had a negative impact on Fisker's business. As a result, in early 2024, Fisker began to incorporate the Dealership Sales Model into its sales and marketing model in an attempt to respond to changes in the EV market. The Dealership Sales Model was intended to enable Fisker to pursue a hybrid of direct sales and dealer arrangements that aligned with Fisker's asset-light business strategy, with the hope that the transition would deliver significant acceleration of Ocean sales (by, among other things, providing Fisker access to larger markets) and higher volume production of additional future models As noted above, however, in March 2024, since the time Fisker paused production of its EVs, the Debtors and their Advisors have pursued any and all options to monetize the Fisker EV Inventory.

B. Cost-Cutting Measures and Prepetition Restructuring Efforts

49. Fisker's financial condition and share price continued to worsen during the course of the negotiations with the OEM, and, as a result, the Debtors engaged the Advisors to consider more comprehensive capital structure solutions. Beginning in early 2024, in addition to a transaction with the OEM, the Debtors and the Advisors also evaluated and pursued additional financing options, which, ultimately, were limited. On May 8, 2024, one of the Debtors' non-

Debtor affiliates, Fisker GmbH (the entity through which Fisker manages its manufacturing activies) commenced insolvency proceedings in Austria.

50. In an effort to stabilize its liquidity position while more discussions with the OEM unfolded and a comprehensive restructuring transaction was being developed, Fisker implemented a number of cost-cutting measures. These included several reductions in the Company's Employee base.[7] The Company also reduced the manufacturer's suggested retail price of many of its models and employed a number of other pricing enhancements, such as waiving destination and handling fees, in an effort to stimulate sales. In addition, in March 2024, Fisker made the decision to pause production to right size its inventory levels and limit costs. In addition, Fisker also chose to utilize the grace period with respect to a March 18, 2024 interest payment due under its Prepetition 2026 Notes as a means of preserving its liquidity.

51. Despite these efforts, the Company's financial position remained strained. In connection with the Debtors' efforts to execute a strategic transaction and to buffer its liquidity, on March 18, 2024, the Debtors obtained the Prepetition Notes Commitment from Heights pursuant to which Fisker Inc. agreed to issue $166.7 million in additional senior secured convertible notes to Heights in four tranches. The Prepetition Notes Commitment was intended to provide Fisker with sufficient liquidity to operate in the ordinary course of business while discussions with the OEM progressed. Funding under the Prepetition Notes Commitment was conditioned upon ongoing discussions with the OEM. In late March 2024, before any amounts were funded under the Prepetition Notes Commitment, the OEM informed Fisker that it no longer wished to continue negotiations.

[7] As of the Petition Date, the Company had reduced its Employee headcount by approximately 75%.

52. With the OEM investment off the table, and with limited incremental prepetition financing, the Debtors determined that a sale of all or substantially all of the Debtors' assets would provide the optimal path to maximize value for the Debtors' stakeholders and undertook an extensive marketing process beginning in April 2024. In order to provide the Debtors with additional time to conduct the marketing process, Fisker entered into a forbearance agreement with Heights pursuant to which Heights agreed to forbear on certain defaults arising under the Prepetition Senior Secured Notes SPA through the end of the Third Forbearance Period. Yet despite the extensive outreach, the marketing process did not yield any actionable proposal at that time.

53. As a result, the Debtors pivoted to more discrete fleet sales. Beginning in May 2024, however, Fisker entered into a fleet sales agreement, which will provide the Debtors with crucial liquidity as it navigates these Chapter 11 Cases. The Debtors have now filed these Chapter 11 Cases to conduct and orderly an efficient liquidation of its remaining assets.

III.

FIRST DAY PLEADINGS

54. Contemporaneously with the Petition Date, the Debtors have filed a number of First Day Pleadings in the Chapter 11 Cases and have requested that each of the First Day Pleadings be granted, as each is a critical element of a successful and smooth transition into chapter 11. The failure to receive such relief would cause immediate and irreparable harm to the Debtors and their estates. I believe that the relief requested in each of the First Day Pleadings (a) is critical to ensure the maximization of value of the Debtors' estates, (b) is essential to achieving a successful reorganization, and (c) serves the best interests of the Debtors' stakeholders.

55. I have reviewed each of the First Day Pleadings and am familiar with the content and substance contained therein. The facts set forth in each First Day Pleading are true and correct

to the best of my knowledge and belief with appropriate reliance on other officers and advisors and I can attest to such facts.

56. For a more detailed description of the First Day Pleadings than set forth below, I respectfully refer the Court to the respective First Day Pleadings. The facts set forth in each of the First Day Pleadings are incorporated herein in their entirety. To the extent that this Declaration and the provisions of any of the First Day Pleadings are inconsistent, the terms of the First Day Pleadings shall control.

57. The First Day Pleadings request authority to, among other things, (i) honor workforce-related compensation and benefits obligations, (ii) continue the Debtors' cash management system and other operations, and (iii) continue the Debtors' access to utilities services. For the avoidance of doubt, the Debtors request authority, but not direction, to pay amounts or satisfy obligations with respect to the relief requested in the First Day Pleadings.

A. Administrative Pleadings

*i. Motion of the Debtors for Entry of an Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief (the "**Joint Administration Motion**");*

*ii. Motion of Debtors for Entry of a Standing Order Confirming the Statutory Protections of the Bankruptcy Code (the "**Automatic Stay Motion**"*);

*iii. Application of Debtors for Authority To Employ and Retain Kurtzman Carson Consultants, LLC DBA Verita Global as Claims and Noticing Agent Nunc Pro Tunc to the Petition Date (the "**Claims Agent Application**");* and

*iv. Motion of Debtors for Entry of Interim and Final Orders (I) Waiving the Requirement to File a List of Equity Security Holders and (II) Authorizing Debtors to Redact Certain Personal Information (the "**Equity Holder List and Redaction Motion**"*).

B. Operational Pleadings Requiring Immediate Relief

i. *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing (A) Debtors to Continue to Maintain Existing Cash Management System, Bank Accounts, and Business Forms, (B) Debtors to Open and Close Bank Accounts, and (C) Financial Institutions to Administer the Bank Accounts and Honor and Process Related Checks and Transfers, and (II) Waiving Deposit and Investment Requirements (the "**Cash Management Motion**")*;

ii. *Motion of the Debtors for Entry of Interim and Final Orders Authorizing (I) Debtors to (A) Pay Prepetition Employee Obligations and (B) Maintain Employee Benefits Programs and Pay Related Administrative Obligations, (II) Current and Former Employees to Proceed With Outstanding Workers' Compensation Claims, and (III) Financial Institutions to Honor and Process Related Checks and Transfers (the "**Wages and Benefits Motion**")*;

iii. *Motion of Debtors for Entry of Interim and Final Orders (I) Establishing Notification and Hearing Procedures for, and Approving Restrictions on, Certain Transfers of and Declarations of Worthlessness with Respect To Interests in and Certain Claims Against the Debtors' Estates and (II) Establishing a Record Date for Notice and Sell-Down Procedures for Trading in Claims Against the Debtors' Estates (the "**Tax Attributes Motion**")*;

iv. *Motion of Debtors for Entry of Interim and Final Orders Authorizing (I) Debtors To Continue and Renew Their Liability, Property, Casualty, Surety Bond, and Other Insurance Programs and Honor All Obligations in Respect Thereof and (II) Financial Institutions To Honor and Process Related Checks and Transfers (the "**Insurance Motion**")*;

v. *Motion of Debtors for Entry of Interim and Final Orders (I) Prohibiting Utilities From Altering, Refusing, or Discontinuing Service, (II) Deeming Utilities Adequately Assured of Future Performance, and (III) Establishing Procedures for Determining Requests for Additional Adequate Assurance (the "**Utilities Motion**")*; and

vi. *Motion of Debtors for Entry of Interim and Final Orders Authorizing (I) Debtors To Pay Certain Prepetition Taxes, Governmental Assessments, and Fees and (II) Financial Institutions To Honor and Process Related Checks and Transfers (the "**Taxes Motion**").*

[*Signature page follows*]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: July 25, 2024

/s/ John C. DiDonato
John C. DiDonato

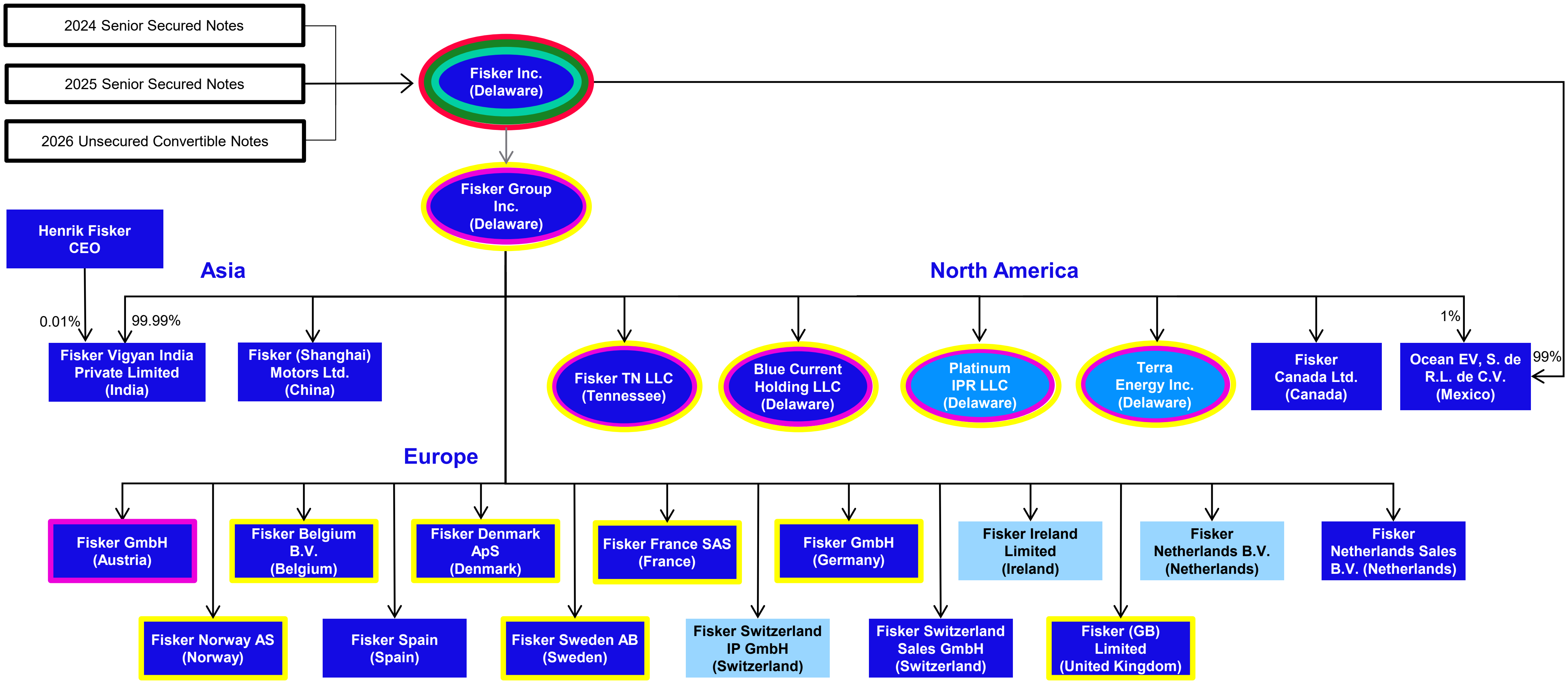
Exhibit A

Corporate Structure Chart

Fisker – Organizational Chart

Ownership is 100% unless otherwise indicated

Active
Dormant
Active/Non-Operational
Indebtedness
Chapter 11 Debtor
Issuer of 2025 Notes
Guarantor of 2025 Notes
Issuer of 2026 Notes
Issuer of 2024 Notes
Guarantor of 2024 Notes



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