

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

FISKER, INC., *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-11390 (TMH)

(Jointly Administered)

Re: D.I. 110

**CONDITIONAL STATEMENT OF SUPPORT BY  
FISKER OWNERS ASSOCIATION TO DEBTORS' MOTION  
FOR ENTRY OF AN ORDER (I) AUTHORIZING AND APPROVING  
THE SALE OF CERTAIN OF THE DEBTORS' ASSETS FREE AND CLEAR  
OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS, (II) AUTHORIZING  
THE DEBTORS TO ENTER INTO AND PERFORM UNDER THE FLEET SALES  
AGREEMENT, AND (III) GRANTING RELATED RELIEF**

The Fisker Owners Association (“FOA”), by and through its undersigned counsel, files this conditional statement of support (this “Conditional Statement of Support”) to the *Motion of Debtors for Entry of an Order (I) Authorizing and Approving the Sale of Certain of the Debtors’ Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, (II) Authorizing the Debtors to Enter Into and Perform Under the Fleet Sales Agreement, and (III) Granting Related Relief* [Docket No. 110] (the “Motion”).<sup>2</sup> The FOA respectfully states as follows:

**INTRODUCTION**

1. Recognizing the need to mobilize quickly, upon commencement of these bankruptcy cases, hundreds of existing Fisker vehicle owners (collectively, the “Existing Vehicle Owners”) formed the FOA, a non-profit organization under section 501(c)(7) of the Internal

<sup>1</sup> 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 Dr., La Palma, CA 90623.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion or the Fleet Sales Agreement, as applicable.



Revenue Code. With the goal of fostering community, advocacy, and support for Existing Vehicle Owners worldwide, the FOA's membership currently includes over 2,500 verified Existing Vehicle Owners—each of whom has provided a verified VIN confirming ownership of a Fisker vehicle—with new members joining daily.<sup>3</sup> Each member of the FOA has a vested interest in the outcome of the Debtors' bankruptcy proceedings to the extent it affects owners' ability to (a) receive the benefit of the commitments Fisker Group, Inc. made pursuant to the New Vehicle Limited Warranty (the "Warranty") provided to each Existing Vehicle Owner at the time of sale, (b) access parts and services necessary to maintain the working condition of their Fisker vehicles, and/or (c) access software that, in large part, underpins the operation of a Fisker vehicle.

2. The FOA has engaged in constructive dialogue with the Debtors and the Buyer regarding these issues. While these discussions are still in their infant stages, the FOA expects, and the Buyer and the Debtors have committed to continue, these conversations to proceed in good faith. As of the filing of this statement, the Debtors and the Buyer have only been able to provide the FOA with a high-level strategy for addressing their remaining obligations to Existing Vehicle Owners with respect to: (a) the Warranty, (b) access to spare parts, (c) maintaining existing software crucial to the continued operation of a Fisker vehicle, or (d) clearing Stop-Sale Holds. Similarly, the Buyer has committed to working with the FOA to facilitate Existing Vehicle Owners' access to spare parts at a fair market price and collaborating on a solution for the long-term viability and use of critical software. Implementation of any solution will depend upon the Debtors obtaining access to critical liquidity to: (a) clear Stop-Sale Holds, (b) provide training to technicians in the Debtors' FAST tool to ensure access to ongoing maintenance and repair of

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<sup>3</sup> Recognizing the benefit of working with an organized group of Existing Vehicle Owners, the Debtors have expressed a willingness to work with the FOA to send out communications to other Existing Vehicle Owners to encourage them to join the FOA.

existing vehicles, and (c) develop a roadmap for migrating the software architecture necessary for ensuring the safe and durable use of existing vehicles. Assuming the cooperation of the Debtors' secured lender (which is not assured), approval of the Sale Transaction would count as the first step towards achieving those goals.

**CONDITIONAL STATEMENT OF SUPPORT**

3. The FOA is focused on ensuring that Existing Vehicle Owners can continue to safely operate their Fisker vehicles following the conclusion of the Debtors' Chapter 11 Cases. While the FOA has engaged in productive dialogue with the Debtors and the Buyer, these negotiations are in their early stages and remain ongoing. Based on assurances the FOA has received from the Debtors and the Buyer, the FOA currently believes that the transaction embodied in the Fleet Sales Agreement reflects the best opportunity for the Debtors to maximize value for the estates while also preserving the rights of Existing Vehicle Owners.

4. The FOA's support for the sale of the Fisker Inventory, however, is contingent upon the Debtors' and the Buyer's continued cooperation with the FOA to: (a) craft a commercially reasonable arrangement that will allow Existing Vehicle Owners access to much needed spare parts and essential software updates, (b) clear all Stop-Sale Holds impacting Fisker vehicles owned by Existing Vehicle Owners, and (c) assist Existing Vehicle Owners in maintaining or reestablishing relationships with third-party service providers (such as T-Mobile and TomTom).

5. As of the filing of this statement, the FOA has grave concerns that scarcity in the marketplace will lead to dramatically inflated pricing of available spare parts and that critical software will not be maintained to ensure the safe operation of Fisker vehicles. Without regular software updates, a Fisker vehicle could potentially suffer from performance issues ranging from

glitches with the vehicles operating system, to increased vulnerability to cyberattacks, to catastrophic failure.

6. Beyond these broader concerns, the FOA understands that the Debtors' ability to clear the June 26 Stop-Sale Hold impacting Existing Vehicle Owners is dependent upon the Debtors' ability to allocate approximately \$300,000 of cash collateral towards this objective. The communication failure with the Fisker Ocean water pump that led to the voluntary recall can cause the high voltage battery management system to enter limp mode, causing a loss of drive power, in essence immobilizing the vehicle. The FOA has not seen a cash collateral budget that includes any line item designated towards these crucial repairs, calling into question the Debtors' secured lender's willingness to give even the slightest consideration to the needs of Existing Vehicle Owners.

7. The FOA's support for the Sale Transaction is thus contingent on the Debtors' obtaining access to cash collateral to clear the Stop-Sale Holds and the assurances the FOA has received from the Debtors and the Buyer that they will work in good faith with the FOA to address the specific concerns, outlined above, of Existing Vehicle Owners.

8. The FOA otherwise reserves all rights with respect to the entry of any order approving the Fleet Sales Agreement, or any similar sale, to the extent that the terms of such sale seek to impair, limit, and/or modify any Existing Vehicle Owners' rights under the Warranty, or with respect to the operation of their vehicles, including access to spare parts, supplies, and software updates.

Dated: July 15, 2024

**STEVENS & LEE, P.C.**

/s/ Joseph H. Huston, Jr.

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*Counsel to Fisker Owners Association*

**CERTIFICATE OF SERVICE**

The undersigned certifies that on July 15, 2024, he caused a true copy of the foregoing *Conditional Statement of Support* to be served electronically through the Court's CM/ECF System upon all parties in interest registered to receive notice.

*/s/ Joseph H. Huston, Jr.*

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Joseph H. Huston, Jr. (No. 4035)