

**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)

Re: Docket Nos. 110, 193, 194

**SUPPLEMENTAL DECLARATION OF JOHN C. DIDONATO AS
CHIEF RESTRUCTURING OFFICER OF THE DEBTORS IN FURTHER
SUPPORT OF 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**

JOHN C. DIDONATO declares and says:

1. I submit this supplemental declaration (this “**Declaration**”) on behalf of the Debtors in further support of 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* [D.I. 110] (the “**Fleet Sales Motion**”)² filed on July 2, 2024.

2. In support of the Fleet Sales Motion, I previously submitted the (a) *Declaration of John C. DiDonato as Chief Restructuring Officer of the Debtors in Support of the Motion of*

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 Each capitalized term used herein but not otherwise defined herein shall have the meaning ascribed to it in the Fleet Sale Motion.



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 [D.I. 111] (the “**DiDonato Sale Declaration**”) and (b) *Supplemental Declaration of John C. DiDonato as Chief Restructuring Officer of the Debtors in Support of 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* [D.I. 171] (the “**DiDonato First Supplemental Declaration**”), as well as the (c) *Declaration of John C. DiDonato as Chief Restructuring Officer of the Debtors in Support of Debtors' Chapter 11 Proceedings and First Day Pleadings* [D.I. 37] (the “**DiDonato First Day Declaration**”), each of which is incorporated herein by reference.

3. 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 Debtors, information prepared or provided to me by employees of Huron (the Company's proposed Chief Restructuring Officer and restructuring advisor), or my opinion based upon experience, knowledge, and information concerning the operations of the Debtors. I have reviewed the Fleet Sales Motion, including the Fleet Sales Agreement, the Objections, and the Reply, or have otherwise had their contents explained to me, and it is my belief that the relief sought therein is necessary to maximize the value of the Debtors' estates. If called upon to testify, I would testify competently to the facts set forth in this Declaration. I am over the age of 18 years and authorized to submit this Declaration.

A. Ample Business Purpose Exists to Sell the Fisker Inventory Pursuant to the Terms of the Fleet Sales Agreement

4. As I have previously stated in the DiDonato Declarations, the relief sought by the Fleet Sales Motion is essential as the Debtors' ability to continue to fund vital business expenses is dependent on their receipt of cash proceeds from the delivery of Sale Vehicles under the Fleet Sales Agreement by July 18, 2024, at the latest.³ Absent the ability to perform under the Fleet Sales Agreement, the Debtors will be unable to make critical payments in the immediate term, threatening the prospect of continuing these Chapter 11 Cases and effectuating an orderly liquidation.

5. I believe there is ample business justification for consummating the sale transactions contemplated under the Fleet Sales Agreement, as there is simply no prospect of finding another purchaser willing to, among other things, (a) purchase the entire fleet for more than \$46.25 million, (b) commit both resources and manpower to repairing the Sale Vehicles, (c) consent to an injunction against its operation of the Sale Vehicles until all necessary safety repairs are completed and related Stop-Sale Holds are cleared, (d) accept delivery of the vehicles across the U.S. and bear transportation, shipping, and other incidental costs, and (e) transact without a single post-sale contingency.

6. On or around July 8, 2024, the Debtors learned that a potential alternative bidder (the "**Potential Alternative Bidder**") had expressed interest in purchasing the Fisker Inventory. I understand that the Potential Alternative Bidder is a competitor of the Buyer in the ride-share leasing industry in the New York metropolitan area. The Debtors and my team immediately engaged in good faith with the Potential Alternative Bidder. However, within days, the Potential

³ See DiDonato First Suppl. Decl., ¶7 ("Therefore, in my view, it is critical that the Debtors are able to realize cash proceeds from the delivery of Sale Vehicles under the Fleet Sales Agreement by July 18, 2024, at the latest.").

Alternative Bidder withdrew its interest in purchasing the Fisker Inventory, informing my team that it was not willing and/or able to transact on terms consistent with the Fleet Sales Agreement (e.g., without any post-sale contingencies, with the buyer assuming incidental costs of sale and delivery (e.g., shipping, transportation, insurance, customs, taxation, titling, and registration of the Sale Vehicles), and with the buyer's provision of resources, facilities, and manpower to effectuate the repairs required pursuant to the June 26 Stop-Sale Hold). Following the Petition Date, the Debtors received two additional indications of interest from prospective purchasers of the Fisker Inventory. The first of these inbounds was from another ride-share leasing company similar to the Buyer and the Potential Alternative Bidder, but, like the Potential Alternative Bidder, was also unwilling and/or unable to transact on the above-referenced terms of the Fleet Sales Agreement. The second was a vehicle manufacturer who ultimately decided it was not interested in purchasing the Fisker Inventory. Other than as referenced in this paragraph, the Debtors have not received any other indications of interest in purchasing the Fisker Inventory.

7. The sale transaction contemplated by the Fleet Sales Agreement is, in my view, the best strategic alternative for monetizing the Fisker Inventory. As set forth in the DiDonato Sale Declaration,

(a) The Debtors commenced a going-concern sale process in April 2024, with the Debtors' advisors contacting more than 40 potential purchasers;

(b) By mid-May 2024, despite the Debtors' diligent efforts, their marketing process still had not resulted in any actionable bids from a going-concern purchaser for a fulsome sale of the Debtors' assets; and

(c) In light of the disappointing results of the Debtors' marketing efforts for an enterprise sale, the Debtors and their advisors shifted their focus to, and pursued all available

options toward, monetizing the Fisker Inventory—i.e., the Debtors’ remaining inventory of Fisker Oceans that have completed production and are ready for sale—including by selling EVs in the Fisker Inventory at discounts through DTC channels and to licensed dealerships, in auctions, or in fleet transactions.

8. Throughout May 2024, the Debtors began auctioning vehicles in an effort to relieve their liquidity strain. However, upon the sale of only 60 vehicles over the course of this month, auction sale prices dropped by 17%. During this time, the Debtors did find limited success selling certain lots of EVs in the Fisker Inventory. However, once it became clear to the Debtors and, in turn, disclosed to prospective purchasers, that the Debtors were unable to ensure performance of post-sale warranty obligations (or commit to any other post-sale contingencies) as part of any sale, the universe of potential purchasers of the Fisker Inventory drastically diminished.

9. As part of the Debtors’ efforts to maximize value and ease their liquidity strain by selling the Fisker Inventory, the Debtors reached out to hundreds of potential purchasers of the Fisker Inventory, including dealerships, rental car companies, taxicab operators, and participants in the ride-share leasing industry, including the Buyer. The Buyer emerged in May 2024 as a potential purchaser of a significant number of EVs in the Fisker Inventory. Considering the potential to sell a significant portion of the Fisker Inventory, under a single agreement with a single purchaser, the Debtors opportunistically and immediately engaged with the Buyer. For the following and other reasons, as previously described in the DiDonato Sale Declaration, the Buyer is uniquely positioned to purchase the Debtors’ EVs and the Debtors’ best prospect to monetize the Fisker Inventory:

(a) The Buyer’s initial offer was for a sizable percentage of the Fisker Inventory (which percentage would increase after further negotiations with the Buyer, as described below).

At the time the Debtors were first engaging with the Buyer, the Debtors had previously consummated the Lot Sales and were receiving a fair amount of interest from potential purchasers that intended to, shortly after transacting with the Debtors, resell the purchased EVs at auction. Selling EVs in the Fisker Inventory at discount, and in small lots, risks de-valuing the remaining EVs in the Fisker Inventory. It would take a considerable amount of time to monetize the Fisker Inventory by conducting piecemeal sales thereof, particularly in light of the public issues plaguing the Debtors in the months leading up to the Petition Date and the fact that a subsequent resale of a Fisker vehicle by an initial purchaser risks meaningful devaluation of each incremental car sold. Consummating a sale of all or nearly all of the EVs in the Fisker Inventory avoids devaluation risk and allows the Debtors to, in short order, strengthen their liquidity position by, among other things, not incurring operating costs that would otherwise continue to be incurred. For these and other reasons, consummating a sale with the Buyer presented a highly attractive opportunity to the Debtors;

(b) The Buyer is well-funded, with the demonstrated economic means to fund the purchase of the entire Fisker Inventory;

(c) The Buyer is not burdened by the same time constraints that the Debtors frequently encountered with other prospective purchasers, and, therefore, could invest time and resources repairing and/or improving the EVs purchased following the sale. The Buyer operates a vehicle leasing company serving the ride-share community in and around New York City, which recently passed a mandate that requires the Buyer to convert its entire fleet to zero-emission vehicles by 2030. The Buyer not being burdened by time constraints proved critical following the issuance of the June 26 Stop-Sale Hold (as defined below) and the attendant delay in the Buyer adding the purchased EVs to its operating fleet that resulted therefrom;

(d) The weight and durability of the Fisker Ocean, which comprises the Fisker Inventory, closely align with the Buyer's needs of operating a fleet of zero-emission vehicles in the New York metropolitan area;

(e) The Buyer has its own storage and repair facilities (another factor that proved vital following the issuance of the June 26 Stop-Sale Hold) to address repairs to the Sale Vehicles (as defined below); and

(f) Most importantly, the Buyer is willing to transact without any post-sale contingencies, distinguishing the Buyer from any other prospective buyers the Debtors engaged with regarding the sale of the Fisker Inventory.

10. Critically, time is of the essence. The payments to the Debtors contemplated under the Fleet Sales Agreement represent the Debtors' only available source of liquidity, and the liquidity is about to run out. Notwithstanding the Debtors' efforts, under the current circumstances, financing is not available to the Debtors, and, to date, the Debtors have been navigating chapter 11 through three cash collateral orders that permit, one-week at a time, the Debtors' consensual use of cash collateral. As stated in the DiDonato First Supplemental Declaration, without receiving the proceeds under the Fleet Sales Agreement, employee payroll and benefits will accrue during the week starting on July 20, 2024, without the Debtors having sufficient unrestricted cash to cover such accrual.⁴

11. Further, even if Debtors possessed sufficient available resources to fund a post-petition marketing process, there is no indication, in my view, that a post-petition marketing process would result in a comparable alternative proposal to the Fleet Sales agreement with respect to the quantum of vehicles to be purchased, the purchase price, or the non-economic terms and

⁴ See DiDonato First Suppl. Decl. ¶ 5.

conditions that the Debtors require to consummate a sale. In fact, there is evidence to the contrary, as, following the Petition Date, any third-party that expressed interest (other than the Buyer) quickly withdrew from consideration. There has been opportunity for additional parties to express interest as (a) it has been more than three weeks since the Debtors first announced at the first-day hearing their intention to sell the Fisker Inventory, (b) following the first-day hearing, several national media outlets published articles regarding the Debtors' intention to sell the Fisker Inventory, and (c) the hearing to consider the Fleet Sales Motion will be held two weeks after the Debtors filed the Fleet Sales Motion. Yet, despite this adequate opportunity, no viable alternative offer has materialized. Moreover, and critically, there is no assurance that the Buyer would remain at the table through a lengthy marketing process. To risk losing the Buyer—a uniquely suited counterparty that brings minimal (if any) execution risk—to run a potentially fruitless marketing and sale process would, in my view, lack business justification.

12. Finally, I understand that the key stakeholders in the Chapter 11 Cases—Heights (the Debtors' sole secured lender) and the Committee—support the sale transaction contemplated under the Fleet Sales Agreement. Likewise, the Debtors, the Buyer, and the FOA have engaged in productive discussions regarding the Fleet Sales Agreement and are working collaboratively to attempt to address issues facing existing owners of the Debtors' vehicles. I understand that these productive discussions led to the FOA filing a conditional statement in support of the Fleet Sales Motion. Finally, I understand that the applicable U.S. governmental regulatory unit (NHTSA) does not object to entry of the Proposed Order.

B. The Purchase Price Under the Fleet Sales Agreement is Fair

13. Given the countervailing market conditions, I believe the Fleet Sales Agreement contemplates a fair purchase price. Not only has the purchase price at auction for Fisker Oceans

plummeted over recent months, but, as set forth further below, the price point for a single Ocean is nearing the purchase price per unit that the Buyer is paying for approximately 3,300 Sale Vehicles under the Fleet Sales Agreement. There is no reason for me to believe that the value of Fisker Oceans will not continue to decline along the current downward trajectory under the present circumstances.

14. As I stated in the DiDonato First Supplemental Declaration, in addition to the Fisker Inventory losing value on a continuing basis, with each passing day that the Fleet Sales Agreement is not consummated, the Debtors are incurring additional expenses and liabilities (including certain expenses and liabilities related to the Fisker Inventory that are borne by the Buyer upon the sale of each Sale Vehicle) and unquantifiable risks associated with such delay.⁵

15. I believe that reference to the Initial Fleet Sales Agreement and that certain Sales Agreement, dated June 3, 2024, between the Seller and the Buyer (the “**June 3 Sales Agreement**” and together with the Initial Fleet Sales Agreement, the “**Prior Agreements**”) as purported evidence that the Fleet Sales Agreement does not “provide[] a fair purchase price” is misplaced. I understand that, pursuant to Fleet Sales Agreement, the Prior Agreements were terminated. Both the Debtors and the Buyer never performed, and no payments were received by the Debtors, under either Prior Agreement. The Stop-Sale Holds, as well as certain other factors, rendered the Debtors unable to perform under and consummate the Prior Agreements, which, as a result, were terminated pursuant to the express terms of the Fleet Sales Agreement.

16. Moreover, contrary to the assertions in the UST Objection, nothing in the terminated Prior Agreements demonstrates that the purchase price included in the Fleet Sales Agreement is unfair. The demonstratives annexed to the Prior Agreements simply provide the

⁵ See DiDonato First Suppl. Decl., ¶¶ 5, 7.

“Original” manufacturer’s suggested retail price (“MSRP”), not the current MSRP, for the vehicles contemplated to be sold thereunder. By the end of May 2024, not only had the Debtors drastically reduced MSRPs across their fleet (with an average discount per vehicle of approximately \$19,000, or 34–39% of original MSRP), and had publicly disclosed such price reductions, but sale prices at dealer auctions in the U.S. for Fisker Oceans had already begun to spiral (given, among other things, the commencement of the Chapter 11 Cases and the events and public coverage of such events leading up to the Petition Date). The Buyer was not receiving anywhere close to the \$86.5 million and \$13.2 million discounts under the Initial Fleet Sales Agreement based on vehicle MSRPs and market valuation as of May 30, 2024 and June 3, 2024.

17. For the reasons set forth above, and because the up to \$46.25 million purchase price under the Fleet Sales Agreement is fair and reasonable and represents the highest and best offer that could reasonably be obtained for the Fisker Inventory under the circumstances, I believe that the Fleet Sales Agreement contemplates a fair purchase price.

C. Adequate Notice was Provided to Parties In Interest

18. For the reasons set forth above, I believe that it is vital to the Debtors’ ability to liquidate their assets in an orderly and efficient value-maximizing manner and the preservation of the value of the Debtors’ estates—in the best interest of the Debtors’ estates and creditors—that the sale transactions contemplated under the Fleet Sales Agreement proceed on an expedited timeline.

19. Nevertheless, I understand that Ideal Motors and the U.S. Trustee each object to the relief requested in the Fleet Sales Motion, alleging that, even under the circumstances present in this case, the 14-days’ notice of the Fleet Sales Motion is inadequate and unreasonable.

20. However, between June 15, 2024 and July 1, 2024, the Debtors provided multiple updates to their dealer-partners, including Ideal Motors, regarding the sale transaction contemplated under the Fleet Sales Agreement.

21. Ideal Motors' assertion that it did not receive any notice of the Fleet Sales Motion is categorically false. On July 2, 2024, approximately 30 minutes after the Fleet Sales Motion was filed, the owner of Ideal Motors forwarded the as-filed Fleet Sales Motion to an employee of the Debtors. As such, it is my understanding that Ideal Motors was aware of the potential sale transaction prior to the Petition Date and was aware of the Fleet Sales Motion on July 2, 2024.

22. Additionally, I believe that the basis for the U.S. Trustee's objection in this regard is premised on the misguided belief that alternative purchasers exist. As noted herein, this is a complex sale transaction that requires a buyer that is uniquely situated to expeditiously transact on the very specific terms that the circumstances require. The Buyer has agreed under the Fleet Sales Agreement to, among other things, (a) transact on an "as-is/where-is" basis with no post-sale contingencies, (b) not operate Sale Vehicles until the June 26 Stop-Sale Hold has been cleared for the applicable Sale Vehicle, and (c) commit resources (including facilities, vehicle lifts, transportation, and manpower) to assist with effectuating the repairs required pursuant to the June 26 Stop-Sale Hold. Contrary to any contentions otherwise, the fact that any potential alternative purchaser quickly revoked their interest in purchasing the Fisker Inventory further evidences the lack of other interested parties.

23. Accordingly, I believe that the notice provided by the Debtors of the Fleet Sales Motion is adequate and reasonable given the exigent circumstances present here.

D. Austrian Transfer

24. As of the date the Motion was filed, one hundred eighteen (118) Sale Vehicles in the Fisker Inventory were located in Austria (the "**Austrian Sale Vehicles**") and four hundred

eighty (480) Sale Vehicles in the Fisker Inventory were located in Belgium (the “**Belgium Sale Vehicles**” and, together with the Austrian Sale Vehicles, the “**Foreign Sale Vehicles**”). In order to be able to export the Foreign Sale Vehicles from Austria and Belgium, permitting such Foreign Sale Vehicles to be sold to the Buyer as part of the Sale Transaction, the Debtors have agreed with the administrators of the Austrian Proceeding (as defined in the revised Proposed Order filed contemporaneously herewith) to transfer, on or before August 8, 2024, an amount equal to 29% (or approximately \$2.35 million) of the net proceeds (after deducting customs, duties, and logistics costs from the gross proceeds received) anticipated to be received from the sale of the Foreign Sale Vehicles under the Fleet Sales Agreement to Fisker’s non-Debtor affiliate, Fisker GmbH (Austria) (the “**Austrian Transfer**”). The Austrian Transfer will be made into an escrow account established by the Debtors’ Austrian counsel (the “**Escrow Agent**”) and will be conditioned on and subject to the execution by the Debtors and Fisker GmbH (Austria) of an escrow agreement, in form and substance acceptable to the Debtors, Fisker GmbH (Austria), and the Prepetition Secured Parties (as defined in the Proposed Order) (the “**Escrow Agreement**”). No funds shall be released from the escrow except in accordance with the Escrow Agreement and subject to (a) a further order of court in the Austrian Proceeding approving the Austrian Transfer and related transactions, which shall be in form and substance acceptable to the Debtors, Fisker GmbH (Austria), and the Prepetition Secured Parties and (b) the Escrow Agent’s receipt of a jointly executed irrevocable instruction from Fisker GmbH (Austria) and the administrators of the Austrian Proceeding to possess as owner, which instruction authorizes the Escrow Agent, without the consent of any other party, to effectuate the transfer of the Foreign Sale Vehicles to the United States. Following the release of funds from escrow in accordance the Escrow Agreement, the Foreign Sale Vehicles will be exported to the United States.

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 15, 2024

/s/ John C. DiDonato

John C. DiDonato
Chief Restructuring Officer