Docket #0002 Date Filed: 7/5/2023

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

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| In re<br><br>Lordstown Motors Corp., *et al.*,[1]<br><br>Debtors. | Chapter 11<br><br>Case No. 23-10831 (MFW)<br><br>(Jointly Administered) |
| Lordstown Motors Corp., *et al.*,<br><br>Plaintiffs,<br><br>v.<br><br>ATRI AMIN and BENJAMIN HEBERT, on behalf of themselves and similarly situated stockholders of Lordstown Motors Corp. (f/k/a DiamondPeak Holdings Corp.),<br><br>Defendants. | Adv. Pro. No. 23-50428 (MFW) |

**DEBTORS' MOTION TO EXTEND THE AUTOMATIC STAY AND FOR INJUNCTIVE RELIEF PURSUANT TO 11 U.S.C. § 105, AND REQUEST FOR HEARING DATE**

Lordstown Motors Corp. ("**LMC**" or the "**Company**") and its affiliated debtors in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the "**Debtors**"), respectfully represent as follows in support of this motion (the "**Motion**") and in support of their *Adversary Complaint for Preliminary Injunctive Relief* [Adv. D.I. 1] (the

[1] The Debtors and the last four digits of their respective taxpayer identification numbers are: Lordstown Motors Corp. (3239); Lordstown EV Corporation (2250); and Lordstown EV Sales LLC (9101). The Debtors' service address is 27000 Hills Tech Ct., Farmington Hills, MI 48331.



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"**Complaint**"),[2] seeking an extension of the automatic stay to a subset of the Company's current and former directors and officers that served on the board of the Debtors' predecessor entity, which was known as DiamondPeak Holding Corp. (the "**Delaware D&O Defendants**"),[3] and entry of a preliminary injunction staying further litigation against them in substantially the form annexed hereto as **Exhibit A** (the "**Proposed Order**"):

## RELIEF REQUESTED

1. By this Motion, pursuant to sections 362 and 105(a) of title 11 of the United States Code (the "**Bankruptcy Code**") and Rule 7065 of the Federal Rules of Bankruptcy Procedure, the Debtors request entry of a preliminary injunction to enjoin and stay the Delaware Class Action against the D&O Defendants. In accordance with Local Rule 7007-3, the Debtors also request that the Court schedule a hearing date promptly after the completion of briefing.

## JURISDICTION AND VENUE

2. The Court has jurisdiction to consider this matter under 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012. Under Rule 9013–1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent it is later determined that the Court, absent consent of the parties, cannot enter

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[2] Capitalized terms used but not otherwise defined herein have the meanings given to those terms in the Complaint.

[3] The five D&O Defendants named in the Delaware Class Action are former DiamondPeak directors: David Hamamoto, Mark Walsh, Andrew Richardson, Steven Hash and Judith Hannaway. Of these five D&O Defendants, David Hamamoto is currently an LMC board member.

final orders or judgments consistent with Article III of the United States Constitution. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The non-exclusive examples of "core" proceedings listed in section 157 include "motions to terminate, annul, or modify the automatic stay." 28 U.S.C. § 157(b)(2)(G). Bankruptcy courts in the Third Circuit consistently hold that "motions to extend an automatic stay and injunction to non-debtor third parties pursuant to sections 362 and 105 qualify as 'core' proceedings." *See LTL Mgmt., LLC v. Those Parties Listed on Appendix A to Complaint*, No. CV 21-20252 (FLW), 2022 WL 190673, at *4 (D.N.J. Jan. 21, 2022) (collecting cases).

4. Additionally, the Court has "related to" jurisdiction over litigation between non-debtor third parties where "the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." *In re W.R. Grace & Co.*, 386 B.R. at 25 (citing *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)). As a result, the bankruptcy court will have jurisdiction over any action where "the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate." *Id.* at 994.

5. The Delaware Class Action against the Delaware D&O Defendants will impact the administration of the bankruptcy estate. The Third Circuit has held that bankruptcy courts have "related to" jurisdiction over actions against non-debtors that implicate the debtor's contractual indemnification obligations to the non-debtor. *See Belcufine v. Aloe*, 112 F.3d 633, 636–37 (3d Cir. 1997). All of the Actions raise substantially similar questions of law and fact as between the Debtors and the D&O Defendants and, if the Delaware Class Action is allowed to proceed, it will create a substantial risk of collateral estoppel against the Debtors, which clearly

impacts the claims against the estate. *See In re Union Tr. Phila., LLC*, 460 B.R. 644, 657 (E.D. Pa. 2011) (holding bankruptcy court had related to jurisdiction in part because of risk of collateral estoppel).

6. Taken together, the Court has "core" or at least "related to" jurisdiction over the Actions against all D&O Defendants, including the Delaware D&O Defendants.

## BASIS FOR RELIEF REQUESTED

7. The Debtors are also filing (i) the Complaint; (ii) a brief in support of this Motion; (iii) the *Declaration of David M. Turetsky in Support of the Debtors' Motion for Injunctive Relief* (the "**Turetsky Declaration**"); and (iv) the *Declaration of Adam Kroll in Support of the Debtors' Motion for Injunctive Relief* (the "**Kroll Declaration**"), which provide details of the factual and legal bases for the requested relief.

## RESERVATION OF RIGHTS

8. Nothing contained herein is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, or (ii) a waiver of the Debtors' or any appropriate party in interest's rights to dispute any claim.

## NO PREVIOUS REQUEST

9. No previous request for the relief sought herein has been made by the Debtors to this or any other court

WHEREFORE the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: July 5, 2023

Respectfully submitted,

/s/ *Cory D. Kandestin*

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**Exhibit A**

**Proposed Order**

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| Lordstown Motors Corp., *et al.*,<br><br>Plaintiffs,<br><br>v.<br><br>ATRI AMIN and BENJAMIN HEBERT, on behalf of themselves and similarly situated stockholders of Lordstown Motors Corp. (f/k/a DiamondPeak Holdings Corp.),<br><br>Defendants. | Adv. Pro. No. 23-50428 (MFW)<br><br>Re: D.I. ___ |

**ORDER GRANTING DEBTORS' MOTION FOR PRELIMINARY INJUNCTIVE RELIEF PURSUANT TO 11 U.S.C. § 105**

This matter coming before the Court on the above-captioned Debtors' *Adversary Complaint for Preliminary Injunctive Relief* [D.I. 1] ("**Complaint**")[2] and the *Motion to Extend the Automatic Stay and for Injunctive Relief Pursuant to 11 U.S.C. § 105* (the "**Motion**"); the Court having reviewed the Complaint, the Motion, the Debtors' brief in support of Motion, the Turetsky Declaration and the Kroll Declaration, and other evidence and argument submitted by the Debtors

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[2] Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Complaint.

in support thereof, and any oppositions thereto; and the Court having held a hearing; the Court finds and concludes as follows:

A. The Plaintiffs in this adversary proceeding are the Debtors. The Defendants in these adversary proceedings are the plaintiffs in the putative class action pending in the Delaware Court of Chancery captioned *In re LMC Stockholders Litig.*, C.A. No. 2021-1066-LWW (Del. Ch. Dec. 8, 2021) (the "**Delaware Class Action**"), claiming injuries allegedly arising from, among other things, the Delaware D&O Defendants' actions and statements relating to the production capabilities, timeline, and the extent of customer pre-orders for Debtors' flagship electric vehicle, the Endurance.

B. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

C. This Court's failure to grant preliminary injunctive relief would result in irreparable harm to the Debtors. The Debtors have demonstrated that the continued prosecution of the Actions would subject the Debtors to substantial, but ultimately unproductive, costs, time and resources, which would materially lessen the Debtors' ability to maximize value and recovery to creditors. Moreover, the Debtors have demonstrated that any harm to the Delaware Class Action plaintiffs from a stay is outweighed by the irreparable harm that the Debtors will suffer in the absence of preliminary injunctive relief.

D. Accordingly, this Court finds it appropriate to enter a preliminary injunction pursuant to section 105(a) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 7065.

E. The legal and factual bases set forth in the Complaint, the Motion and supporting brief, the Turetsky Declaration, the Kroll Declaration, other supporting papers, and at the hearing establish just cause for the relief granted herein.

Based on these findings, **IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as provided herein.
2. The Defendants in this adversary proceeding are prohibited and enjoined, pursuant to sections 105(a) and 362(a) of the Bankruptcy Code, from continuing to prosecute the Delaware Class Action as against any of the Delaware D&O Defendants until the closing of these chapter 11 cases.
3. This Court finds and declares that the continued prosecution of the Delaware Class Action against any of the Delaware D&O Defendants while the chapter 11 cases remain pending would violate the automatic stay imposed by section 362 of the Bankruptcy Code and extended by this Order, and therefore, are prohibited.
4. This Order is entered without prejudice to the Debtors' right to request that this Court extend this Order to include other entities or persons not previously identified in the Complaint.
5. This Order shall be promptly filed in the clerk's office and entered into the record.
6. The Debtors are authorized to take all steps necessary or appropriate to carry out this Order.
7. This Court shall retain jurisdiction to hear and determine all matters arising from, or related to, the implementation, interpretation, or enforcement of this Order.