Docket #0004 Date Filed: 7/5/2023

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

DECLARATION OF DAVID M. TURETSKY IN SUPPORT OF THE DEBTORS' MOTION FOR INJUNCTIVE RELIEF

I, David M. Turetsky, declare:

1. I am a partner at the law firm White & Case LLP, 1221 Avenue of the Americas, New York, New York 10020, counsel for the Debtors in the above-captioned cases. I am admitted to this Court *pro hac vice* and respectfully submit this Declaration.

2. Unless otherwise stated, the matters set forth below are of my own personal knowledge, or upon information and belief based upon review of relevant documents made available to me, and discussions with members of the Debtors' senior management.

[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.

3. I am authorized to submit this Declaration on behalf of the Debtors. If requested, I am able to testify competently to the facts set forth in this Declaration.

4. Attached hereto as Exhibit A is a true and correct copy of the operative complaint in *Thai v. Burns et al.*, No. 4:21-cv-01267 (N.D. Ohio).

5. Attached hereto as Exhibit B is a true and correct copy of the operative complaint in *In re Lordstown Motors Corp. Shareholder Derivative Litig.*, No. 21-00604-SB (D. Del.).

6. Attached hereto as Exhibit C is a true and correct copy of the operative complaint in *In re Lordstown Motors Corp. Stockholder Derivative Litig.*, C.A. No. 2021-1049-LWW (Del. Ch.).

7. Attached hereto as Exhibit D is a true and correct copy of the operative complaint in *In re Lordstown Motors Corp. Sec. Litig.*, No. 4:21-cv-616-DAR (N.D. Ohio).

8. Attached hereto as Exhibit E is a true and correct copy of the operative complaint in *In re Lordstown Motors Corp. Stockholders Litig.*, C.A. No. 2021-1066-LWW (Del. Ch.).

9. Attached hereto as Exhibit F is a true and correct copy of Lordstown Motors Corp.'s By-Laws.

10. Attached hereto as Exhibit G is a true and correct copy of Lordstown EV Corporation's By-Laws.

11. Attached hereto as Exhibit H is a true and correct copy of DiamondPeak Holding Corp.'s By-Laws.

12. Attached hereto as Exhibit I are true and correct copies of the Delaware D&O Defendants' Indemnification Agreements.

13. Attached hereto as Exhibit J is a true and correct copy of the schedules of insurance

for the Debtors' D&O Policies.[2]

14. Attached hereto as Exhibit K is a true and correct copy of the Directors' and Officers' and Corporate Liability Insurance Primary Policy issued to Lordstown Motors Corp. for the October 23, 2022 to October 23, 2023 policy period.

15. Attached hereto as Exhibit L is a true and correct copy of the Directors' and Officers' and Corporate Liability Lead Side A DIC Insurance Policy issued to Lordstown Motors Corp. for the October 23, 2020 to October 23, 2021 policy period.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: July 5, 2023
New York, New York

/s/ David M. Turetsky
David M. Turetsky

[2] Policy numbers and premium amounts in the attached insurance policies and related correspondence have been redacted.

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

AN THAI, derivatively on behalf of LORDSTOWN MOTORS CORP., Plaintiff, vs. STEPHEN S. BURNS, PHIL RICHARD SCHMIDT, JULIO C. RODRIGUEZ, ANGELA STRAND BOYDSTON, SHANE BROWN, MICHAEL FABIAN, KEITH A. FELDMAN, MICHAEL D. GATES, DAVID T. HAMAMOTO, JUDITH A. HANNAWAY, STEVEN R. HASH, MICKEY W. KOWITZ, DARREN POST, JANE REISS, ANDREW C. RICHARDSON, MARTIN J. RUCIDLO, DALE G. SPENCER, JOHN VO, and MARK A. WALSH, Defendants, and LORDSTOWN MOTORS CORP., Nominal Defendant.	**Case No.:** _____ **JUDGE:** _____ **JURY TRIAL DEMANDED**

VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT

INTRODUCTION

Plaintiff An Thai ("Plaintiff"), by Plaintiff's undersigned attorneys, derivatively and on behalf of Nominal Defendant Lordstown Motors Corp. ("Lordstown" or the "Company"), files this Verified Shareholder Derivative Complaint against Individual Defendants Stephen S. Burns, Phil Richard Schmidt, Julio C. Rodriguez, Angela Strand Boydston, Shane Brown. Michael Fabian, Keith A. Feldman, Michael D. Gates, David T. Hamamoto, Judith A. Hannaway, Steven R. Hash, Mickey W. Kowitz, Darren Post, Jane Reiss, Andrew C. Richardson, Martin J. Rucidlo,

Dale G. Spencer, John Vo, and Mark A. Walsh (collectively, the "Individual Defendants," and together with Lordstown, the "Defendants") for breaches of their fiduciary duties as controlling shareholder, directors, and/or officers of Lordstown, unjust enrichment, abuse of control, gross mismanagement, waste of corporate assets, violations of Sections 14(a), 10(b), and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), and for contribution under Sections 10(b) and 21D of the Exchange Act. As for Plaintiff's complaint against the Individual Defendants, Plaintiff alleges the following based upon personal knowledge as to Plaintiff's own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Plaintiff's attorneys, which included, among other things, a review of the Defendants' public documents, conference calls, and announcements made by Defendants, United States Securities and Exchange Commission ("SEC") filings, wire and press releases published by and regarding Lordstown, legal filings, news reports, securities analysts' reports and advisories about the Company, and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a shareholder derivative action that seeks to remedy wrongdoing committed by Lordstown's controlling shareholder, directors, and/or officers from August 3, 2020 to March 24, 2021 (the "Relevant Period").

2. Lordstown is an Ohio-based company that purports to be an electric vehicle startup company founded for the purpose of developing and manufacturing light duty electric trucks targeted for sale to the commercial fleet market. Lordstown's purported flagship vehicle, dubbed the "Endurance," is an all-electric full-size pickup truck.

3. The Company was previously called DiamondPeak Holdings Corporation

("DiamondPeak") and was a special purpose acquisition company ("SPAC") formed strictly to raise money through an initial public offering ("IPO") for the eventual acquisition of an existing company. On March 4, 2019, DiamondPeak's IPO was completed, raising more than $250 million in gross proceeds. DiamondPeak's shares began trading on the NASDAQ stock exchange under the ticker symbol "DPHC."

4. On August 3, 2020, in a joint press release, DiamondPeak and another company, also called Lordstown Motors Corp. ("Legacy Lordstown"), announced that they had entered into a definitive merger agreement under which Legacy Lordstown would become a wholly-owned subsidiary of the Company, which would then be renamed Lordstown (the "Merger"). The Merger was subject to a majority vote of Company shareholders. The August 3, 2020 press release stated that the transaction valued Legacy Lordstown "at an implied $1.6 billion pro forma equity value" and approximated the expected gross proceeds flowing from the transaction to be $675 million. The press release touted 27,000 pre-orders for the Endurance, representing $1.4 billion in potential revenue and indicating robust demand for the all-electric full-size pickup truck by fleet customers. The press release further stated that the Endurance was on track for commercial production in the second half of 2021.

5. On October 8, 2020, DiamondPeak filed a proxy statement on Schedule 14A with the SEC (the "Proxy Statement") soliciting, *inter alia*, shareholders' approval for the Merger. The Proxy Statement highlighted the existence of significant demand for Endurance vehicles and the receipt of 38,000 pre-orders, primarily from fleet customers. The Proxy Statement also underscored the planned Company's ability to meet its commercial production and sales targets.

6. On October 22, 2020, DiamondPeak shareholders, relying on the Company's representations in the Proxy Statement, approved the Merger by a majority vote. The Merger

subsequently closed on October 23, 2020.

7. On October 26, 2020, Defendant Burns claimed that the 40,000 pre-order figure was the result of "pent-up demand" for the Endurance and emphasized that he did not think "we've even scratched the surface."

8. In November 2020, the Company announced that the number of pre-orders for the Endurance had now reached 50,000 and assured investors that "[t]his figure does not capture interest the [C]ompany has received from organizations that are not in position to be able to place pre-orders." Burns further enticed investors in an interview on CNBC's *Mad Money*, on November 17, 2020, by claiming that the pre-orders were "very serious orders" because most of the pre-orders had been signed by the CEOs of large firms.

9. On January 11, 2021, the Company issued a press release, announcing that it had achieved 100,000 Endurance pre-orders and that fleet customers had booked 580 units per order. In this press release, Defendant Burns stated:

> Receiving 100,000 pre-orders from commercial fleets for a truck like the Endurance is unprecedented in automotive history . . . . Adding in the interest we have from federal, state, municipal and military fleets on top of that, I think you can see why we feel that we are about to revolutionize the pickup truck industry.

10. On February 12, 2021, Morgan Stanley analyst Adam Jonas initiated coverage of Lordstown and publicly questioned the Company's ability to deliver on its representations as to the development and production of the hub motor technology. Specifically, Jonas stated that "following a series of channel checks on the propulsion tech, we believe investors would be exposed to significantly elevated execution risk." On this news, Lordstown's share price dropped $3.84 (or 13.34%) to close at $26.91 on February 12, 2021.

11. On March 12, 2021, Hindenburg Research published a report entitled: "The Lordstown Motors Mirage: Fake Orders, Undisclosed Production Hurdles, and a Prototype

Inferno" (the "Hindenburg Report"). Among the report's allegations was that Lordstown had "no revenue and no sellable product" and that the Company "ha[d] misled investors on both its demand and production capabilities." The Hindenburg Report concluded that Lordstown's "orders are largely fictitious and used as a prop to raise capital and confer legitimacy." It also revealed that a former employee "explained how the company is experiencing delays and making 'drastic' design modifications, putting [Lordstown] an estimated 3-4 years away from production," which starkly contrasted with the Company's earlier January 11, 2021 representation that production was "on track" to begin in September 2021. On this news, Lordstown's share price dropped $2.93 (or 16.5%) to close at $14.78 on March 12, 2021.

12. On March 17, 2021, after the market had closed, the Company held an earnings call on which it disclosed the commencement of an SEC investigation into Lordstown regarding the allegations raised by the Hindenburg Report. This was a delayed disclosure because the SEC's investigation had actually commenced a full month earlier on February 17, 2021. On this news, Lordstown's share price dropped $2.08 (or approximately 14%) to close at $13.01 on March 18, 2021.

13. On March 24, 2021, Hindenburg Research published additional photographs of the Endurance truck that were reportedly taken after it broke down and had to be towed during the filming of an Endurance commercial in the summer of 2020. On this news, Lordstown's share price dropped $1.21 (or approximately 10%) to close at $11.38 on March 24, 2021.

14. On June 14, 2021, the Company reported the results of the investigation conducted by the Special Committee of its Board of Directors into the Hindenburg Report. The Board's investigation report admitted to the fact that the Company's previous statements regarding pre-orders being obtained "primarily" from commercial fleets were inaccurate. Instead:

> [M]any pre-orders were obtained from (i) fleet management companies or other end users that indicated interest in purchasing Endurance trucks . . . and (ii) so-called 'influencers' or other potential strategic partners that committed to attempt to secure pre-orders from other entities but did not intend to purchase Endurance trucks directly.

The Company further admitted that one purported purchaser of a large number of pre-orders "does not appear to have the resources to complete large purchases of trucks." Other purported purchasers "provided commitments that appear too vague or infirm to be appropriately included in the total number of pre-orders disclosed." On this news, Lordstown's share price dropped $2.15 (or 18.8%) to close at $9.26 on June 14, 2021.

15. During the Relevant Period, the Individual Defendants breached their fiduciary duties by personally making and/or causing the Company to make to the investing public a series of materially false and misleading statements and omissions regarding the Company's business, operations, and prospects. Specifically, the Individual Defendants willfully or recklessly made and/or caused the Company to make false and misleading statements to the investing public that failed to disclose, *inter alia*, that: (1) the Company's purported pre-orders were non-binding; (2) a significant number of purported pre-orders were fabricated and placed by individuals and companies without the financial means to purchase large orders of Endurance trucks; (3) Defendants paid a consulting group to artificially inflate the demand for Endurance pre-orders; (4) the Company is not and has not been "on track" to start production of Endurance in September 2021; (5) the Company misrepresented the development of its hub motor and battery technology; and (6) the Company failed to maintain internal controls. As a result of the foregoing, the Company's public statements were materially false and misleading at all relevant times.

16. The Individual Defendants failed to correct and/or caused the Company to fail to correct these false and misleading statements and omissions of material fact, rendering them

personally liable to the Company for breaching their fiduciary duties.

17. The Individual Defendants also breached their fiduciary duties by causing the Company to fail to maintain internal controls.

18. Moreover, during the Relevant Period, six of the Individual Defendants breached their fiduciary duties by engaging in insider sales for proceeds in excess of $28 million.

19. In addition, the Individual Defendants violated Section 14(a) of the Exchange Act by causing the Company to issue the October 8, 2020 Proxy Statement which contained false and misleading statements and omissions of material fact.

20. In light of the Individual Defendants' misconduct, which has subjected the Company to multiple federal securities class actions, which together name the Lordstown's former Chairman and Chief Executive Officer ("CEO"), its former Chief Financial Officer ("CFO"), its former Director of Stamping Operations ("DSO"), its President, its Chief Production Officer ("CPO"), its Vice President of Engineering ("VPE"), the former Chairman and CEO of DiamondPeak, and four other DiamondPeak directors as defendants (the "Securities Class Actions"); the need to undertake internal investigations; the need to implement adequate internal controls over its financial reporting, the losses from the waste of corporate assets, the losses due to the unjust enrichment of the Individual Defendants who were improperly over-compensated by the Company and/or who benefited from the wrongdoing alleged herein, the Company will have to expend many millions of dollars.

21. In light of the breaches of fiduciary duty engaged in by the Individual Defendants, many of whom are the Company's current directors, their collective engagement in fraud, the substantial likelihood of the directors' liability in this derivative action, the eleven current and former Lordstown and DiamondPeak officers' and directors' liability in the Securities Class

Actions, their being beholden to each other, their longstanding business and personal relationships with each other, and their not being disinterested and/or independent directors, a majority of Lordstown's Board of Directors (the "Board") cannot consider a demand to commence litigation against themselves on behalf of the Company with the requisite level of disinterestedness and independence.

JURISDICTION AND VENUE

22. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiff's claims raise a federal question under Section 14(a) of the Exchange Act (15 U.S.C. § 78n(a)(1)), Rule 14a-9 of the Exchange Act (17 C.F.R. § 240.14a-9), Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)), SEC Rule 10b-5 (17 C.F.R. § 240.10b-5) promulgated thereunder, and Section 21D of the Exchange Act (15 U.S.C. § 78u-4(f)).

23. Plaintiff's claims also raise a federal question pertaining to the claims made in the Securities Class Actions based on violations of the Exchange Act.

24. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a).

25. This derivative action is not a collusive action to confer jurisdiction on a court of the United States that it would not otherwise have.

26. The Court has personal jurisdiction over each Defendant named herein because each Defendant is an individual or corporation who has sufficient minimum contacts with this District to justify the exercise of jurisdiction over them.

27. Venue is proper in this District because Lordstown is headquartered in this District. In addition, Defendants have conducted business in this District, and Defendants' actions have had an effect in this District.

PARTIES

Plaintiff

28. Plaintiff is a current shareholder of Lordstown common stock. Plaintiff has continuously held Lordstown common stock at all relevant times.

Nominal Defendant Lordstown

29. Lordstown is a Delaware corporation with its principal executive offices at 2300 Hallock Young Road, Lordstown, Ohio 44481. Lordstown's shares trade on the NASDAQ under the ticker symbol "RIDE."

Defendant Burns

30. Defendant Stephen S. Burns ("Burns") served as Lordstown's CEO and Chairman of the Board from the Merger until June 14, 2021, when he resigned. He also served in these roles at Legacy Lordstown, which he founded in April 2019. According to the Company's Form 10-K filed on March 25, 2021 (the "2020 10-K"), as of March 1, 2021, Defendant Burns beneficially owned 46,351,745 shares of the Company's common stock, which represented 26.25% of the Company's outstanding shares of common stock on that date, making him a controlling shareholder. Given that the price per share of the Company's common stock at the close of trading on March 1, 2021 was $20.16, Defendant Burns owned approximately $934.5 million worth of Lordstown stock.

31. For the fiscal year ended December 31, 2020, Defendant Burns received $269,266 in salary, which also represents his total compensation from the Company for that year.

32. The Proxy Statement said the following of Defendant Burns, in relevant part:

> Mr. Burns is Lordstown's founder and has served as a director on the board of directors of Lordstown and as Lordstown's Chief Executive Officer since inception. Mr. Burns is the founder and former Chief Executive Officer of Workhorse Group. Mr. Burns was appointed as Chief Executive Officer, Chief Financial Officer, Treasurer and Secretary of Workhorse Group on December 28,

2009 and left Workhorse Group in February 2019. Prior to Workhorse Group, Mr. Burns founded and several start-up mobile technology services businesses.

Defendant Schmidt

33. Defendant Phil Richard Schmidt ("Schmidt") served as Lordstown's CPO from October 2019 to October 2020 and has served as Lordstown's President since November 2020. According to the 2020 10-K, as of March 1, 2021, Defendant Schmidt beneficially owned 334,148 shares of the Company's common stock. Given that the price per share of the Company's common stock at the close of trading on March 1, 2021 was $20.16, Defendant Schmidt owned approximately $6.7 million worth of Lordstown stock.

34. For the fiscal year ended December 31, 2020, Defendant Schmidt received $412,305 in total compensation, including $324,265 in salary and $88,040 in option awards.

35. During the period of time when the Company materially misstated information to the investing public to keep the stock price inflated, and before the scheme was exposed, Defendant Schmidt made the following sales of the Company's common stock:

Date	Number of Shares	Price	Proceeds
December 11, 2020	51,900	$20.29	$1,053,051
February 2, 2021	161,512	$24.77	$4,000,652.24
February 3, 2021	50,000	$27.44	$1,372,000

Thus, in total, before the fraud was exposed, he sold 263,412 Company shares on inside information, for which he received approximately $6,425,703.24. His insider sales made with knowledge of material non-public information before the material misstatements and omissions were exposed demonstrate his motive in facilitating and participating in the scheme.

36. The Proxy Statement said the following of Defendant Schmidt, in relevant part:

> Mr. Schmidt has served as Lordstown's Chief Production Officer since October 2019 and has over 30 years of automotive industry expertise, including experiences at Toyota and Nissan as a Manager in the company's Plant, Body and Plastics Engineering divisions; Hyundai as Senior Manager of Paint; Volkswagen as Senior Manager of Paint Engineering; and Tesla Motors as Director of Manufacturing,

where he oversaw the company's Paint, Plastics, and Coatings divisions, as well as general assembly, body, high pressure die cast and special projects. Mr. Schmidt has served as a Senior Automotive Consultant for the North American Fiat Chrysler Automotive Plants from July 2017 to July 2019. In that role, Mr. Schmidt provided training to manufacturing teams and worked to improve the Fiat Chrysler Automotive Plants' quality, productivity and cost.

Defendant Rodriguez

37. Defendant Julio C. Rodriguez ("Rodriguez") served as Lordstown's CFO from September 2019 to June 14, 2021, when he resigned.

38. During the period of time when the Company materially misstated information to the investing public to keep the stock price inflated, and before the scheme was exposed, Defendant Rodriguez made the following sale of the Company's common stock:

Date	Number of Shares	Price	Proceeds
February 4, 2021	9,300	$27	$251,100

His insider sale made with knowledge of material non-public information before the material misstatements and omissions were exposed demonstrate his motive in facilitating and participating in the scheme.

39. The Proxy Statement said the following of Defendant Rodriguez, in relevant part:

Mr. Rodriguez has served as Lordstown's Chief Financial Officer since September 2019 and has over 30 years of experience in financial and operational leadership roles within various industries, including the automotive industry. Most recently, he served in several executive roles for Workhorse Group from August 2013 to August 2019. Prior to Workhorse Group, Mr. Rodriguez served in executive roles with Genuine Parts Company ("GPC"), including Director Process Improvement for GPC corporate, and Vice President Finance & Corporate Secretary for Johnson Industries, a subsidiary of GPC. Prior to GPC, Mr. Rodriguez served as Director of International Finance for Federal Mogul, an OEM manufacturer of automotive systems. Mr. Rodriguez started his career in public accounting with Arthur Andersen and holds a Bachelor of Science degree in Accounting and Business Administration.

Defendant Strand

40. Defendant Angela Strand Boydston ("Strand") has served as a Company director

since October 2020. On June 14, 2021, Defendant Strand was appointed Executive Chair of the Company, following Defendant Burns' resignation.

41. For the fiscal year ended December 31, 2021, Defendant Strand is entitled to receive $232,000 in total compensation at least, including a $50,000 annual cash retainer, a $12,000 Compensation Committee Chairperson annual cash retainer, a $5,000 Nominating and Corporate Governance Committee member annual cash retainer, and an annual grant of $165,000 in restricted stock units.

42. The Proxy Statement said the following of Defendant Strand, in relevant part:

> From 2016 to 2020, Angel Strand served as a director of Integrity Applications ("Integrity"). During her time at Integrity, Ms. Strand served as Vice Chairperson of the board of directors, as chairperson of the nominating and corporate governance and compensation committees and as a member of the audit committee. Ms. Strand was a founder and senior executive of Chanje, a joint venture between Smith Electric Vehicles and FDG Electric Vehicles Ltd. (HK: 729HK) from 2016 to 2017, and a founder of In-Charge, an electric vehicle infrastructure solutions provider. Ms. Strand is also a named inventor with seven issued patents. From 2017 to 2018, Ms. Strand served as Vice President of Workhorse Group Inc.; from 2011 to 2015, Ms. Strand served as the chief marketing officer and head of business development and government affairs for Smith Electric Vehicles. Ms. Strand has also served in various executive roles at medical device, biotech and digital health firms including Proteus Digital Health (acquired by Otsuka Pharmaceutical); Aerogen (acquired by Nektar Therapeutics, NASDAQ:NKTR), Novacept (acquired by Cytyc, NASDAQ: CYTC, now NASDAQ: HOLX) and FemRx (acquired by Johnson & Johnson, NYSE: JNJ). Currently, Ms. Strand is an advisor for various companies and serves as the Founder/Managing Director of Strand Strategy. Ms. Strand holds a B.Sc. in Communications and an MBA in Marketing from the University of Tennessee. She is well qualified to serve as a director due to her board experience and her experience in the electric vehicle industry.

Defendant Brown

43. Defendant Shane Brown ("Brown") has served as Lordstown's CPO since November 2020 after serving as Lordstown's Director of Paint Operations.

44. During the period of time when the Company materially misstated information to the investing public to keep the stock price inflated, and before the scheme was exposed, Defendant

Brown made the following sale of the Company's common stock:

Date	Number of Shares	Price	Proceeds
February 2, 2021	19,008	$24.65	$468,547.20

His insider sale made with knowledge of material non-public information before the material misstatements and omissions were exposed demonstrate his motive in facilitating and participating in the scheme.

45. Lordstown's Investor Relations site[1] said the following of Defendant Brown, in relevant part:

> Mr. Brown serves as Lordstown's Chief Production Officer. He has led Lordstown's manufacturing operation as Chief Production Officer since November 2020 after serving as Lordstown's Director of Paint Operations. Mr. Brown has 28 years of manufacturing experience in many different automotive sectors. His work history includes production, engineering, and management roles at North American Bus Inc., Honda, Hyundai, Volkswagen, Kia, and New Flyer. Shane has been involved in many plant startups during his career, including green-field ventures at Hyundai in Montgomery, AL and Volkswagen in Chattanooga, TN. He has led numerous production model launches at each stop with many production models achieving the highest IQS quality ratings bestowed by J.D. Power, including the Kia Sorento, Kia Optima, and Volkswagen Passat.

Defendant Fabian

46. Defendant Michael Fabian ("Fabian") has served as Lordstown's Director of Stamping Operations since February 2020.

Defendant Feldman

47. Defendant Keith A. Feldman ("Feldman") has served as a Company director since October 2020. According to the 2020 10-K, as of March 1, 2021, Defendant Feldman beneficially owned 234,645 shares of the Company's common stock. Given that the price per share of the Company's common stock at the close of trading on March 1, 2021 was $20.16, Defendant Feldman owned approximately $4.7 million worth of Lordstown stock.

[1] https://investor.lordstownmotors.com/management/shane-brown (last visited June 21, 2021).

48. For the fiscal year ended December 31, 2021, Defendant Feldman is entitled to receive $230,000 in total compensation, including a $50,000 annual cash retainer, a $15,000 Audit Committee Chairperson annual cash retainer, and an annual grant of restricted stock units having a value of $165,000 on the grant date based on the closing market price of the Class A common stock on such date.

49. The Proxy Statement said the following of Defendant Feldman, in relevant part:

> Mr. Feldman served as the Chief Financial Officer and Treasurer of NorthStar Realty Europe Corp. (NYSE: NRE), a NYSE listed REIT focused on European commercial real estate properties from May 2017, through the acquisition by AXA Investment Managers- Real Assets, in September 2019. Mr. Feldman served as a managing director of Colony Capital, Inc., from January 2017 to October 2019 and served as a managing director of NorthStar Asset Management Group Inc., a predecessor company of Colony Capital, Inc. from July 2014 to January 2017, as a managing director of NorthStar Realty Finance Corp. from January 2014 to July 2014 and as a director of NorthStar Realty Finance Corp. from January 2012 to December 2013. In each of these roles, Mr. Feldman's responsibilities included capital markets, corporate finance, and investor relations. Earlier in his career, Mr. Feldman held various financial positions at NorthStar Realty Finance Corp., Goldman Sachs, J.P. Morgan Chase and KPMG LLP. Mr. Feldman received a Bachelor of Science in accounting from Binghamton University. Mr. Feldman is a CFA charterholder and a CPA. He is well qualified to serve as a director due to his experience with the operations and mangement [sic], financial reporting and auditing of public companies in addition to operational expertise.

Defendant Gates

50. Defendant Michael D. Gates ("Gates") has served as a Company director since October 2020. According to the 2020 10-K, as of March 1, 2021, Defendant Gates beneficially owned 10,101 shares of the Company's common stock. Given that the price per share of the Company's common stock at the close of trading on March 1, 2021 was $20.16, Defendant Gates owned approximately $ 203,000 worth of Lordstown stock.

51. For the fiscal year ended December 31, 2021, Defendant Gates is entitled to receive $220,000 in total compensation, including a $50,000 annual cash retainer, a $5,000 Nominating

and Corporate Governance Committee member annual cash retainer, and an annual grant of restricted stock units having a value of $165,000 on the grant date based on the closing market price of the Class A common stock on such date.

52. The Proxy Statement said the following of Defendant Gates, in relevant part:

> Mr. Gates has served as the founder and owner of Gridiron Development, a real estate construction and development firm in Mason, Ohio, since January 1994. Mr. Gates also previously founded and served as President of Broome Paving from January 1988 to January 1998, and as V.P. of Sales of Performance Site from January 1998 to January 2004. Mr. Gates received a Bachelor of Business Administration from the University of Cincinnati. Mr. Gates is well qualified to serve as a director due to his experience founding, building and managing businesses in real estate, construction and development.

Defendant Hamamoto

53. Defendant David T. Hamamoto ("Hamamoto") served as DiamondPeak's Chairman and CEO from its inception until the Merger in October 2020 and has served as a Company director since October 2020. According to the 2020 10-K, as of March 1, 2021, Defendant Hamamoto beneficially owned 4,229,135 shares of the Company's common stock, which represented 2.37% of the Company's outstanding shares of common stock on that date. Given that the price per share of the Company's common stock at the close of trading on March 1, 2021 was $20.16, Defendant Hamamoto owned approximately $85.3 million worth of Lordstown stock.

54. During the period of time when the Company materially misstated information to the investing public to keep the stock price inflated, and before the scheme was exposed, Defendant Hamamoto made the following sale of the Company's common stock:

Date	Number of Shares	Price	Proceeds
October 22, 2020	1,000,000	$16.38	$16,380,000

His insider sale made with knowledge of material non-public information before the material

misstatements and omissions were exposed demonstrate his motive in facilitating and participating in the scheme.

55. For the fiscal year ended December 31, 2021, Defendant Hamamoto is entitled to receive $225,000 in total compensation at least, including a $50,000 annual cash retainer, a $10,000 Nominating and Corporate Governance Committee Chairperson annual cash retainer, and an annual grant of restricted stock units of $165,000.

56. The Proxy Statement said the following of Defendant Hamamoto, in relevant part:

> Mr. Hamamoto has served as Chairman and Chief Executive Officer of DiamondPeak from inception and is the Founder of Diamond Head Partners, LLC which he established in 2017. Previously, he served as Executive Vice Chairman of Colony NorthStar (now Colony Capital, Inc. (NYSE:CLNY)), a real estate and investment management firm, from January 2017 through January 2018. The NorthStar companies, which he founded, were sold to Colony Capital in January 2017. Prior to the sale, Mr. Hamamoto was Executive Chairman of NorthStar Asset Management Group (NYSE:NSAM) ("NSAM") since 2015, having previously served as its Chairman and Chief Executive Officer from 2014 until 2015. Mr. Hamamoto was the Chairman of the board of directors of NorthStar Realty Finance Corp. (NYSE:NRF) ("NRF"), a real estate investment trust, from 2007 to January 2017 and served as one of its directors from 2003 to January 2017. Mr. Hamamoto previously served as NRF's Chief Executive Officer from 2004 until 2015 and President from 2004 until 2011. Mr. Hamamoto was Chairman of the board of directors of NorthStar Realty Europe Corp. from 2015 to January 2017. In 1997, Mr. Hamamoto co-founded NorthStar Capital Investment Corp., the predecessor to NorthStar Realty Finance, for which he served as Co-Chief Executive Officer until 2004. Prior to NorthStar, Mr. Hamamoto was a partner and co-head of the Real Estate Principal Investment Area at Goldman, Sachs & Co. During Mr. Hamamoto's tenure at Goldman, Sachs & Co., he initiated the firm's effort to build a real estate principal investment business under the auspices of the Whitehall Funds. Mr. Hamamoto received a B.S. from Stanford University and an M.B.A. from the Wharton School of Business at the University of Pennsylvania. He is well qualified to serve as a director due to his experience as a public company chairman, CEO and director and due to his extensive investment and operational experience.

Defendant Hannaway

57. Defendant Judith A. Hannaway ("Hannaway") served as a director of DiamondPeak prior to its IPO until the Merger closed on October 23, 2020.

58. According to the Proxy Statement, Defendant Hannaway received, upon closing of the Merger, "88,357 founder shares from our Sponsor, which would be valued in the aggregate at approximately $5,728,184 based on the closing price of our Class A common stock of $21.61 on Nasdaq on October 7, 2020."

59. The Proxy Statement said the following of Defendant Hannaway, in relevant part:

> **Judith A. Hannaway**, one of our Directors, currently acts as a consultant to various financial institutions. Prior to this, until 2004, Ms. Hannaway was employed by Scudder Investments, a wholly owned subsidiary of Deutsche Bank Asset Management, as a Managing Director. Ms. Hannaway joined Scudder Investments in 1994 and was responsible for Special Product Development including closed-end funds, offshore funds and REIT funds. Prior to joining Scudder Investments, Ms. Hannaway was employed by Kidder Peabody as a Senior Vice President in Alternative Investment Product Development. She joined Kidder Peabody in 1980 as a Real-Estate Product Manager. Ms. Hannaway has served as an independent director of Fortress Transportation & Infrastructure LLC since 2018, and previously served as the lead independent director of NorthStar Realty Europe Corp. (NYSE: NRE) from 2015 to 2019, NorthStar Realty Finance Corp. (NYSE: NRF) from 2004 to 2017 and NorthStar Asset Management Group Inc. (NYSE: NSAM) from 2014 to 2017. Additionally Ms. Hannaway served as chairperson of the independent committee of NRE, negotiating and overseeing its sale and assimilation into AXA in 2019. Ms. Hannaway holds a Bachelor of Arts from Newton College of the Sacred Heart and a Master of Business Administration from Simmons College Graduate Program in Management. She is well qualified to serve as a director due to her extensive investment, financial and public company experience.

Defendant Hash

60. Defendant Steven R. Hash ("Hash") served as a director of DiamondPeak prior to its IPO until the Merger closed on October 23, 2020.

61. According to the Proxy Statement, Defendant Hash received, upon closing of the Merger, "88,357 founder shares from our Sponsor, which would be valued in the aggregate at approximately $5,728,184 based on the closing price of our Class A common stock of $21.61 on Nasdaq on October 7, 2020."

62. The Proxy Statement said the following of Defendant Hash, in relevant part:

Steven R. Hash, one of our Directors, is the former President and Chief Operating Officer of Renaissance Macro Research, LLC, an equity research and trading firm focused on macro research in the investment strategy, economics, and Washington policy sectors, which he co-founded in 2012. Between 1993 and 2012, Mr. Hash held various leadership positions with Lehman Brothers (and its successor, Barclays Capital), including Global Head of Real Estate Investment Banking from 2006 to 2012, Chief Operating Officer of Global Investment Banking from 2008 to 2011, Director of Global Equity Research from 2003 to 2006, Director of U.S. Equity Research from 1999 to 2003, and Senior Equity Research Analyst from 1993 to 1999. From 1990 to 1993, Mr. Hash held various positions with Oppenheimer & Company's Equity Research Department, including senior research analyst. He began his career in 1988 as an auditor for the accounting and consulting firm of Arthur Andersen & Co. He has served as a director of Alexandria Real Estate Equities, Inc. (NYSE: ARE) since 2013 (and is currently lead director), as a director of The Macerich Company (NYSE: MAC) since 2015 (is currently non-executive chairman) and as the lead director of The Nuveen Global Cities REIT, Inc., a non-traded REIT, since 2018. Mr. Hash received a B.A. in Business Administration from Loyola University and a M.B.A. from the Stern School of Business at New York University. He is well qualified to serve as a director due to his extensive investment, public company and financial experience.

Defendant Kowitz

63. Defendant Mickey W. Kowitz ("Kowitz") has served as a Company director since October 2020. According to the 2020 10-K, as of March 1, 2021, Defendant Kowitz beneficially owned 10,060 shares of the Company's common stock. Given that the price per share of the Company's common stock at the close of trading on March 1, 2021 was $20.16, Defendant Kowitz owned approximately $203,000 worth of Lordstown stock.

64. For the fiscal year ended December 31, 2021, Defendant Kowitz is entitled to receive $221,500 in total compensation at least, including a $50,000 annual cash retainer, a $6,500 Compensation Committee member annual cash retainer, and an annual grant of restricted stock units having a value of $165,000 on the grant date based on the closing market price of the Class A common stock on such date.

65. The Proxy Statement said the following of Defendant Kowitz, in relevant part:

Mr. Kowitz has served as the President and Chief Executive Officer of

ClinMunications LLC, a leading artificial intelligence communications provider serving the largest hospitals, since November 2017. Prior to that, Mr. Kowitz was the Chief Technology Officer and a director of ClinGenuity LLC, a company that developed automation solutions for clinical trial reporting. Mr. Kowtiz has over 30 years of experience in software development and innovation of new technologies related to artificial intelligence, speech recognition, natural language processing and engineering experience. Mr. Kowitz has served as a board of director on several companies and has founded and co-founded several companies that were successfully sold to private equity groups or become public companies for over $500 million. Mr. Kowitz is well qualified to serve as a director due to his experience in software development and innovation of new technologies.

Defendant Post

66. Defendant Darren Post ("Post") has served as Lordstown's VPE since October 2020 after having served as Lordstown's Chief Engineer since November 2019.

67. During the period of time when the Company materially misstated information to the investing public to keep the stock price inflated, and before the scheme was exposed, Defendant Post made the following sale of the Company's common stock:

Date	Number of Shares	Price	Proceeds
February 4, 2021	10,000	$27.21	$272,100

His insider sale made with knowledge of material non-public information before the material misstatements and omissions were exposed demonstrate his motive in facilitating and participating in the scheme.

68. The Proxy Statement said the following of Defendant Post, in relevant part:

Prior to joining Lordstown, Mr. Post was Chief Engineer and Vice President at Karma Automotive, a start-up OEM that designs and produces plug-in hybrid luxury cars, from January 2016 to November 2019, where he launched two range extended electric vehicle luxury cars successfully into the U.S. marketplace. Prior to Karma Automotive, he was Chief Executive Officer and Executive Vice President Product Development for ALTe Technologies, an electric vehicle powertrain start-up company focused on electric vehicle and hybrid powertrains for commercial vehicles, buses and fleets for the U.S. and Chinese markets. Mr. Post also worked 32 years at GM and Delphi Automotive in product development, manufacturing and program management leadership positions. While at GM, Mr. Post led five major new vehicle programs from concept to launch and into production. Mr. Post holds a Bachelor of Science in Industrial Engineering from

> Kettering University and a Master of Science in Management from the Sloan School at Massachusetts Institute of Technology, with a concentration in Operations Management and a special certificate in Management Science.

Defendant Reiss

69. Defendant Jane Reiss ("Reiss") has served as a Company director since February 2020. According to the 2020 10-K, as of March 1, 2021, Defendant Reiss beneficially owned 83,822 shares of the Company's common stock. Given that the price per share of the Company's common stock at the close of trading on March 1, 2021 was $20.16, Defendant Reiss owned approximately $1.7 million worth of Lordstown stock.

70. For the fiscal year ended December 31, 2021, Defendant Reiss is entitled to receive $225,000 in total compensation, including a $50,000 annual cash retainer, a $10,000 Audit Committee member annual cash retainer, and an annual grant of restricted stock units of $165,000. For the fiscal year ended December 31, 2020, Defendant Reiss received $150,880 in stock awards, her total compensation for that year.

71. The Proxy Statement said the following of Defendant Reiss, in relevant part:

> Ms. Reiss is a leading member of New York City's advertising and marketing industry. Recently, Ms. Reiss served as Chief Marketing Officer and Chief Brand Experience Officer of Grey, one of the world's largest global advertising networks. Prior to joining Grey, Ms. Reiss served in the Administration of Mayor Michael Bloomberg as Chief Marketing Officer of the City of New York. Ms. Reiss worked with a variety of international companies while leading marketing and partnerships at NYC & Company, the official marketing, tourism and partnership organization for the City of New York. Before joining NYC & Company, Ms. Reiss served as Managing Director & Partner at Margeotes Fertitta, where she specialized in leading retail-driven businesses. Ms. Reiss is well qualified to serve as a director due to her extensive marketing experience and varied experience in the public and private sector.

Defendant Richardson

72. Defendant Andrew C. Richardson ("Richardson") served as a director of DiamondPeak prior to its IPO until the Merger closed on October 23, 2020.

73. According to the Proxy Statement, Defendant Richardson received, upon closing of the Merger, "88,357 founder shares from our Sponsor, which would be valued in the aggregate at approximately $5,728,184 based on the closing price of our Class A common stock of $21.61 on Nasdaq on October 7, 2020."

74. The Proxy Statement said the following of Defendant Richardson, in relevant part:

> **Andrew C. Richardson**, one of our Directors, is currently non-executive Chairman of Alpine Income Property Trust, Inc. (NYSE: PINE), a REIT focused on the net lease sector, and is also chair of its audit committee. From May 2019 to August 2020 he served as the Chief Operating Officer of Waypoint Real Estate Investments, a private real estate investment firm focused on the U.S. rental housing sector. Previously, Mr. Richardson served as the Chief Financial Officer and President of Land and Development of iStar, Inc. (NYSE: STAR), a real estate investor and developer, and as Chief Financial Officer of Safehold Inc. (NYSE: SAFE), a company focused on ground lease acquisition, management and capitalization from March 2018 to May 2019. Prior to joining iStar and Safehold Inc., Mr. Richardson was the Chief Financial Officer of The Howard Hughes Corporation (NYSE: HHC) from 2011 to 2016, one of the premier master planned community and large-scale mixed use commercial developers in the U.S. Prior to HHC, from 2006 to 2011 Mr. Richardson served as the Chief Financial Officer and Treasurer of NorthStar Realty Finance Corp., a publicly traded commercial real estate finance company focused on investment in real estate loans, fixed income securities and net-leased real estate properties. Before joining NorthStar, from 2000 to 2006, Mr. Richardson was an Executive Vice President with iStar Financial Inc. Mr. Richardson also served in various capacities at Salomon Smith Barney, including Vice President in the real estate investment-banking group focused on mergers and acquisitions and raising capital for public and private companies. Early in his career, Mr. Richardson was a Certified Public Accountant with Ernst & Young LLP. He holds a B.B.A. in Business from the University of Notre Dame and an M.B.A. from the University of Chicago Booth School of Business. He is well qualified to serve as a director due to his extensive investment, financial, public company and operational experience.

Defendant Rucidlo

75. Defendant Martin J. Rucidlo ("Rucidlo") has served as a Company director since October 2020. According to the 2020 10-K, as of March 1, 2021, Defendant Rucidlo beneficially owned 12,535 shares of the Company's common stock. Given that the price per share of the Company's common stock at the close of trading on March 1, 2021 was $20.16, Defendant Rucidlo

owned approximately $ 252,000 worth of Lordstown stock.

76. For the fiscal year ended December 31, 2021, Defendant Rucidlo is entitled to receive $225,000 in total compensation, including a $50,000 annual cash retainer, a $10,000 Audit Committee member annual cash retainer, and an annual grant of restricted stock units of $165,000.

77. The Proxy Statement said the following of Defendant Rucidlo, in relevant part:

> Martin J. Rucidlo has served as Xerion Advanced Battery Corp.'s ("Xerion") EVP of Operations since 2017. Prior to joining Xerion, Mr. Rucidlo worked at Workhorse Group Inc. from 2010 to 2017, serving as VP of Manufacturing and later, as President. Mr. Rucidlo also has extensive experience in technical sales and marketing management. From 1996 to 2010, Mr. Rucidlo has worked in sales and marketing management at the vice president or director level for start-ups and mid-sized corporations. Mr. Rucidlo holds a B.S.I.E. in Industrial and Business Systems Engineering from Pennsylvania State University. He is well qualified to serve as a director due to his experience in manufacturing, including in the automotive industry.

Defendant Spencer

78. Defendant Dale G. Spencer ("Spencer") has served as a Company director since February 2020. According to the 2020 10-K, as of March 1, 2021, Defendant Spencer beneficially owned 83,822 shares of the Company's common stock. Given that the price per share of the Company's common stock at the close of trading on March 1, 2021 was $20.16, Defendant Spencer owned approximately $1.7 million worth of Lordstown stock.

79. For the fiscal year ended December 31, 2021, Defendant Spencer is entitled to receive $221,500 in total compensation, including a $50,000 annual cash retainer, a $6,500 Compensation Committee member annual cash retainer, and an annual grant of restricted stock units of $165,000. For the fiscal year ended December 31, 2020, Defendant Spencer received $150,880 in stock awards, his total compensation for that year.

80. The Proxy Statement said the following of Defendant Spencer, in relevant part:

Mr. Spencer is the former Vice President of Automotive Maintenance and

Engineering at United Parcel Service (UPS). As Vice President, Mr. Spencer led one of the largest and most dynamic fleets in North America with responsibilities for fleet duty cycles, maintenance and innovation. Mr. Spencer formerly served as a technical advisor on the Board of Directors of the North American Council for Freight Efficiency. He also serves as a consultant with multiple companies throughout the automotive industry. Mr. Spencer is well qualified to serve as a director due to his extensive experience with fleet operators and consulting experience through the automative industry.

Defendant Vo

81. Defendant John Vo ("Vo") has served as Lordstown's Vice President of Propulsion since February 2020.

82. During the period of time when the Company materially misstated information to the investing public to keep the stock price inflated, and before the scheme was exposed, Defendant Vo made the following sales of the Company's common stock:

Date	Number of Shares	Price	Proceeds
December 14, 2020	7,800	$20	$156,000
December 15, 2020	75,500	$20.25	$1,528,875
December 16, 2020	15,000	$20.75	$311,250
February 2, 2021	100,000	$25.21	$2,521,000

Thus, in total, before the fraud was exposed, he sold 198,300 Company shares on inside information, for which he received approximately $4,517,125. His insider sales made with knowledge of material non-public information before the material misstatements and omissions were exposed demonstrate his motive in facilitating and participating in the scheme.

83. The Proxy Statement said the following of Defendant Vo, in relevant part:

Upon the consummation of the Business Combination, Mr. Vo will serve as Vice President of Propulsion. Mr. Vo has served as Lordstown's Director of Propulsion since February 2020 and is responsible for leading all battery and drive unit operations. Prior to joining Lordstown, Mr. Vo served as COO of Aikar Technology from January 2019 to February 2020 and CEO of Portable Power Innovations from August 2017 to December 2018. As one of the first employees of Tesla, Mr. Vo served as Director of Engineering and ultimately as Tesla's Head of Global Manufacturing from 2011 to 2017. Mr. Vo has extensive experience in the semiconductor and aerospace industries, holding positions at Honeywell

Aerospace, MiaSole and Cypress Semiconductors. Mr. Vo holds advanced engineering degrees from the University of Minnesota.

Defendant Walsh

84. Defendant Mark A. Walsh ("Walsh") served as a director of DiamondPeak prior to its IPO until the Merger closed on October 23, 2020.

85. The Proxy Statement said the following of Defendant Walsh, in relevant part:

> Mark A. Walsh, one of our Directors since inception, is a partner and co-founder of the Silverpeak family of companies, an alternative investment management firm with expertise in the real estate, energy and credit sectors. He is responsible for Silverpeak's strategic initiatives and origination activities, and also serves as non-Executive Chairman of Argentic Investment Management, Silverpeak's commercial real estate lending platform. Before founding Silverpeak in 2010, Mr. Walsh headed Lehman Brothers' Global Real Estate Group and served as Global Co-Head of Lehman Brothers Real Estate Private Equity. During his 20 years at Lehman Brothers, the firm became a leading debt and equity investment platform both domestically and globally. Prior to joining Lehman Brothers, Mr. Walsh was a lawyer where he represented financial institutions in all aspects of commercial mortgage loan origination, workouts and secondary market transactions. Mr. Walsh is also a Founding Member of the Ziman Center for Real Estate at UCLA's Anderson School of Management. Mr. Walsh earned his B.A. from the College of the Holy Cross and a J.D. from Fordham Law School. He is well qualified to serve as a director due to his extensive investment and operational experience.

FIDUCIARY DUTIES OF THE INDIVIDUAL DEFENDANTS

86. By reason of their positions as controlling shareholder, officers, directors, and/or fiduciaries of Lordstown and because of their ability to control the business and corporate affairs of Lordstown, the Individual Defendants owed Lordstown and its shareholders fiduciary obligations of trust, loyalty, good faith, and due care, and were and are required to use their utmost ability to control and manage Lordstown in a fair, just, honest, and equitable manner. The Individual Defendants were and are required to act in furtherance of the best interests of Lordstown and its shareholders so as to benefit all shareholders equally.

87. Each controlling shareholder, director, and officer of the Company owes to Lordstown and its shareholders the fiduciary duty to exercise good faith and diligence in the

administration of the Company and in the use and preservation of its property and assets and the highest obligations of fair dealing.

88. The Individual Defendants, because of their positions of control and authority as controlling shareholder, directors, and/or officers of Lordstown, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein.

89. To discharge their duties, the controlling shareholder, officers, and directors of Lordstown were required to exercise reasonable and prudent supervision over the management, policies, controls, and operations of the Company.

90. Each Individual Defendant, by virtue of his or her position as a controlling shareholder, director, and/or officer, owed to the Company and to its shareholders the highest fiduciary duties of loyalty, good faith, and the exercise of due care and diligence in the management and administration of the affairs of the Company, as well as in the use and preservation of its property and assets. The conduct of the Individual Defendants complained of herein involves a knowing and culpable violation of their obligations as controlling shareholder, directors, and officers of Lordstown, the absence of good faith on their part, or a reckless disregard for their duties to the Company and its shareholders that the Individual Defendants were aware or should have been aware posed a risk of serious injury to the Company. The conduct of the Individual Defendants who were also controlling shareholder, officers, and directors of the Company has been ratified by the remaining Individual Defendants who collectively comprised the Company's Board at all relevant times.

91. As controlling shareholder, senior executive officers, and directors of a publicly-traded company whose common stock was registered with the SEC pursuant to the Exchange Act and traded on the NASDAQ, the Individual Defendants had a duty to prevent and not to effect the

dissemination of inaccurate and untruthful information with respect to the Company's financial condition, performance, growth, operations, financial statements, business, products, management, earnings, internal controls, and present and future business prospects, and had a duty to cause the Company to disclose in its regulatory filings with the SEC all those facts described in this Complaint that it failed to disclose, so that the market price of the Company's common stock would be based upon truthful and accurate information.

92. To discharge their duties, the controlling shareholder, officers, and directors of Lordstown were required to exercise reasonable and prudent supervision over the management, policies, practices, and internal controls of the Company. By virtue of such duties, the controlling shareholder, officers, and directors of Lordstown were required to, among other things:

(a) ensure that the Company was operated in a diligent, honest, and prudent manner in accordance with the laws and regulations of Delaware, Ohio, and the United States, and pursuant to Lordstown's own Code of Business Conduct and Ethics ("Code of Conduct");

(b) conduct the affairs of the Company in an efficient, business-like manner so as to make it possible to provide the highest quality performance of its business, to avoid wasting the Company's assets, and to maximize the value of the Company's stock;

(c) remain informed as to how Lordstown conducted its operations, and, upon receipt of notice or information of imprudent or unsound conditions or practices, to make reasonable inquiry in connection therewith, and to take steps to correct such conditions or practices;

(d) establish and maintain systematic and accurate records and reports of the business and internal affairs of Lordstown and procedures for the reporting of the business and internal affairs to the Board and to periodically investigate, or cause independent investigation to

be made of, said reports and records;

(e) maintain and implement an adequate and functioning system of internal legal, financial, and management controls, such that Lordstown's operations would comply with all applicable laws and Lordstown's financial statements and regulatory filings filed with the SEC and disseminated to the public and the Company's shareholders would be accurate;

(f) exercise reasonable control and supervision over the public statements made by the Company's officers and employees and any other reports or information that the Company was required by law to disseminate;

(g) refrain from unduly benefiting themselves and other Company insiders at the expense of the Company; and

(h) examine and evaluate any reports of examinations, audits, or other financial information concerning the financial affairs of the Company and to make full and accurate disclosure of all material facts concerning, *inter alia*, each of the subjects and duties set forth above.

93. Each of the Individual Defendants further owed to Lordstown and the shareholders the duty of loyalty requiring that each favor Lordstown's interest and that of its shareholders over their own while conducting the affairs of the Company and refrain from using their position, influence or knowledge of the affairs of the Company to gain personal advantage.

94. At all times relevant hereto, the Individual Defendants were the agents of each other and of Lordstown and were at all times acting within the course and scope of such agency.

95. Because of their advisory, executive, managerial, directorial, and controlling shareholder positions with Lordstown, each of the Individual Defendants had access to adverse, non-public information about the Company.

96. The Individual Defendants, because of their positions of control and authority, were able to and did, directly or indirectly, exercise control over the wrongful acts complained of herein, as well as the contents of the various public statements issued by Lordstown.

CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION

97. In committing the wrongful acts alleged herein, the Individual Defendants have pursued, or joined in the pursuit of, a common course of conduct, and have acted in concert with and conspired with one another in furtherance of their wrongdoing. The Individual Defendants caused the Company to conceal the true facts as alleged herein. The Individual Defendants further aided and abetted and/or assisted each other in breaching their respective duties.

98. The purpose and effect of the conspiracy, common enterprise, and common course of conduct was, among other things, to (i) facilitate and disguise the Individual Defendants' violations of law, including breaches of fiduciary duty, unjust enrichment, waste of corporate assets, gross mismanagement, abuse of control, violations of the Exchange Act, and the claims alleged in the Securities Class Actions; (ii) conceal adverse information concerning the Company's operations, financial condition, legal compliance, future business prospects and internal controls; and (iii) to artificially inflate the Company's stock price.

99. The Individual Defendants accomplished their conspiracy, common enterprise, and common course of conduct by causing the Company purposefully or recklessly to conceal material facts, fail to correct such misrepresentations, and violate applicable laws. In furtherance of this plan, conspiracy, and course of conduct, the Individual Defendants collectively and individually took the actions set forth herein. Because the actions described herein occurred under the authority of the Board, each of the Individual Defendants who is a director of Lordstown was a direct, necessary, and substantial participant in the conspiracy, common enterprise, and/or common course of conduct complained of herein.

100. Each of the Individual Defendants aided and abetted and rendered substantial assistance in the wrongs complained of herein. In taking such actions to substantially assist the commission of the wrongdoing complained of herein, each of the Individual Defendants acted with actual or constructive knowledge of the primary wrongdoing, either took direct part in, or substantially assisted in the accomplishment of that wrongdoing, and was or should have been aware of his or her overall contribution to and furtherance of the wrongdoing.

101. At all times relevant hereto, each of the Individual Defendants was the agent of each of the other Individual Defendants and of Lordstown, and was at all times acting within the course and scope of such agency.

LORDSTOWN'S CODE OF CONDUCT AND AUDIT COMMITTEE CHARTER

102. The Company's Code of Conduct states that Lordstown's general policy is "to conduct its business activities and transactions with the highest level of integrity and ethical standards and in accordance with all applicable laws." Furthermore, "[a]ll directors, officers, and employees of the Company are subject to the policies contained in this Code."

103. The Code of Conduct provides that each employee must "[p]rovide full, fair, accurate, timely and understandable disclosure in reports and documents that the Company files with or submits to the Securities and Exchange Commission and in other public communications made by the Company."

104. Under the section, "Compliance with Laws, Rules and Regulations," the Code of Conduct instructs, in relevant part:

> It is the personal responsibility of each employee, officer and director to adhere to the [sic] both the spirit and the form of the standards and restrictions imposed by those laws, rules and regulations in the performance of their duties for the Company, including those relating to accounting and auditing matters and insider trading.

105. Under the section, "Fair Dealing," the Code of Conduct states, in relevant part: "No

director, officer or employee should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair business practice."

106. Under the section, "Protection and Proper Use of Company Assets," the Code of Conduct states, in relevant part, that "[a]ll directors, officers and employees should protect the Company's assets and ensure their efficient use."

107. Under the section, "Disclosure," the Code of Conduct states, in relevant part:

> Each director, officer, and employee, to the extent involved in the Company's disclosure process, must: (a) be familiar with and comply with the Company's disclosure controls and procedures and its internal control over financial reporting, to the extent relevant to his or her area of responsibility, so that the Company's public reports and documents filed with the SEC comply in all material respects with the applicable federal securities laws and SEC rules; and (b) to the extent appropriate within his or her area of responsibility, take all necessary steps to ensure that all filings with the SEC and all other public communications about the financial and business condition of the Company provide full, fair, accurate, timely and understandable disclosure.

Furthermore, each director, officer, or employee must "not knowingly misrepresent, or cause others to misrepresent, facts about the Company to others, whether within or outside the Company, including to the Company's independent auditors, governmental regulators and self-regulatory organizations."

108. Under the section, "Record Keeping," the Code of Conduct states that the Company "requires honest and accurate recording and reporting of information in order to make responsible business decisions."

109. The "Record Keeping" section of the Code of Conduct goes on to state:

> Employees who contribute to or prepare the Company's financial statements, public filings, submissions or communications should do so in accordance with the following guidelines:
>
> - All accounting records, as well as reports produced from those records, must

be prepared in accordance with the laws of each applicable jurisdiction.

- All records must fairly and accurately reflect the transactions or occurrences to which they relate.
- All records must fairly and accurately reflect, in reasonable detail, the Company's assets, liabilities, revenues, and expenses.
- The Company's accounting records must not contain any false or intentionally misleading entries.
- No transactions should be intentionally misclassified as to accounts, departments or accounting periods.
- All transactions must be supported by accurate documentation in reasonable detail and recorded in the proper account and in the proper accounting period.
- No information should be concealed from independent auditors.
- Compliance with the Company's system of internal accounting controls is required.

110. Under the section, "Reporting Violations of this Code," the Code of Conduct instructs the following, in relevant part: "The Audit Committee is responsible for applying and has the authority to interpret this Code in any particular situation. Directors, officers and employees are responsible for being aware of the corporate policies applicable to their activities and to comply with them fully."

111. The Company's Audit Committee Charter also entrusts the Individual Defendants on the Audit Committee with additional responsibilities. The Audit Committee Charter states, in relevant part:

PURPOSE

The purpose of the Audit Committee (the "**Audit Committee**") of the Board of Directors (the "**Board**") of Lordstown Motors Corp. (the "**Company**") is to oversee the accounting and financial reporting processes of the Company and the audits of the financial statements of the Company and:

- To assist the Board in oversight of:
  - the integrity of the Company's financial statements,
  - the Company's compliance with legal and regulatory requirements,
  - the independent auditor's qualifications, independence and performance,
  - the organization and performance of the Company's internal audit function,

- the Company's internal accounting and financial controls,
- the Company's treasury and finance matters, and
- the Company's risk management and assessment pertaining to, amongst other matters, the financial, operational, accounting and tax matters of the Company, including data privacy and security.

- To provide to the Board such information and materials as it may deem necessary to make the Board aware of significant financial matters that require the attention of the Board.

- To prepare the report required to be prepared by the Audit Committee pursuant to the rules and regulations of the SEC for inclusion in the Company's annual proxy statement.

* * *

The Company's management is responsible for the preparation, presentation and integrity of the Company's financial statements and for the effectiveness of internal control over financial reporting. The Company's management and the internal auditing department are responsible for maintaining appropriate accounting and financial reporting principles and policies and internal controls and procedures that provide for compliance with accounting standards and applicable laws and regulations.

112. The Audit Committee Charter also charges the Audit Committee, *inter alia*, with the following responsibilities:

8. Earnings Press Releases and Earnings Guidance. The Audit Committee shall review and discuss with management the type and presentation of information to be included in earnings press releases (with particular attention to any use of "pro forma" or "adjusted" non-GAAP information) and financial information and earnings guidance provided to analysts and rating agencies.

9. Internal Controls. The Audit Committee shall:

- Advise management, the internal auditing department and the independent auditor that they are expected to provide to the Audit Committee a timely analysis of significant issues and practices relating to accounting principles and policies, financial reporting and internal control over financial reporting;

- Consider any reports or communications (and management's and/or the internal audit department's responses thereto) submitted to the Audit Committee by the independent auditor required by or referred to in SAS 61 (as codified by AU Section 380), as it may be modified or supplemented or

other professional standards;

- Review and discuss with management, the internal auditor (or other personnel or service providers responsible for the internal audit function), and the independent auditor the adequacy and effectiveness of the Company's internal controls over financial reporting, including any significant changes, significant deficiencies or material weaknesses in those controls reported by the independent auditor, the internal auditor (or other personnel or service providers responsible for the internal audit function) or management and any special audit steps adopted in light of any such significant control deficiencies or material weaknesses and any fraud, whether or not material, that involves management or other Company employees who have a significant role in the Company's internal controls; and

- Inquire of the Chief Executive Officer and Chief Financial Officer as to the existence of any significant deficiencies or material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information, and as to the existence of any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting

* * *

10. Disclosure Controls and Procedures. The Audit Committee shall review and discuss the adequacy and effectiveness of the Company's disclosure controls and procedures.

* * *

12. Legal and Regulatory Compliance. The Audit Committee shall review and discuss with Lordstown Motors Corp.'s General Counsel (the "General Counsel") and the independent auditor (i) the overall adequacy and effectiveness of the Company's legal, regulatory and ethical compliance programs, including the Company's Code of Business Conduct and Ethics, and make a recommendation to the Board of Directors with respect to the disposition of any proposed waiver and review any potential ethics violations brought to the attention of the Audit Committee and (ii) reports regarding compliance with applicable laws, regulations and internal compliance programs in each case to the extent pertaining to financial, accounting and/or tax matters. The Audit Committee shall discuss with the General Counsel and the independent auditor any significant legal, compliance or regulatory matters (including any correspondence, notices or inquiries with or from regulators or governmental agencies and any published reports) that may have a material effect on the Company's financial statements or accounting policies. The Audit

Committee shall periodically discuss with the Company's Legal Department, or outside legal counsel, as applicable, legal, compliance or regulatory matters that may have a material impact on the financial statements or the Company's business, financial statements or compliance procedures that pertain to financial, accounting or tax matters of the Company. The Audit Committee shall have direct communication with the Company's Legal Department, or outside legal counsel, as applicable, as needed.

* * *

14. Risks. The Audit Committee shall review and discuss with management and the independent auditor the Company's major enterprise risk exposures and the steps management has taken to monitor and control those exposures, including:

- the Company's guidelines and policies with respect to financial risk assessment and financial risk management pertaining to financial, accounting and tax matters;

- the Company's information technology risk management guidelines and policies, including with respect to data security and privacy; and

- the Company's other major risk exposures, including with respect to operational matters, and the steps management has taken to monitor and control such exposures.

INDIVIDUAL DEFENDANTS' MISCONDUCT

Background

113. On November 13, 2018, DiamondPeak was formed as a SPAC under the laws of Delaware. With no commercial operations of its own, DiamondPeak was formed strictly to raise money through an IPO for the eventual acquisition of an existing company.

114. On January 18, 2019, DiamondPeak filed a preliminary prospectus with the SEC in which DiamondPeak stated that it would "search for a target business with a real estate related component" and "an enterprise value of between $350 million and $2.0 billion." It also stated that "[i]f we are unable to complete our business combination within 24 months, we will redeem 100% of the public shares at a per-share price, payable in cash."

115. On March 4, 2019, DiamondPeak's IPO was completed, raising more than $250

million in gross proceeds. DiamondPeak's shares began trading on the NASDAQ stock exchange under the ticker symbol "DPHC."

116. Lordstown purports to be an electric vehicle startup company that was founded in 2019 by Defendant Burns, the former CEO of Workhorse Group ("Workhorse"), for the purpose of developing and manufacturing light duty electric trucks targeted for sale to the commercial fleet market. The Company's flagship vehicle, the Endurance, is a full-size electric pickup truck that is purported to be powered by an innovative hub motor system involving four electric hub motors, with each wheel having its own motor.

117. In March 2020, Legacy Lordstown paid Workhorse $12 million dollars for the licensing rights to the intellectual property of Workhorse's W-15 light-duty electric pickup truck. Legacy Lordstown intended to use Workhorse's design as a basis for the development of its own electric pickup truck. As part of this deal, Workhorse acquired a 10% equity stake in Legacy Lordstown. According to the 2020 10-K, as of March 1, 2021, Workhorse still owned 16,478,402 shares of the Company's common stock, representing 9.33%. This amounted to more than $332 million worth of Company common stock given the March 1, 2021 price of $20.16 per share.

118. Defendant Burns wrote in a blog post on April 21, 2020 that Legacy Lordstown would begin delivering the Endurance to commercial fleets in January 2021, after previously stating that deliveries could be expected to begin in late 2020.

119. On May 22, 2020, the *Detroit Free Press* published an article entitled "GM's former plant in Lordstown will return to mass vehicle production, thousands of jobs" which reported that Defendant Burns "expects to employ 4,000 to 5,000 people in the plant in the near future based on demand for electric vehicles." Defendant Burns provided a first-year projected volume of 20,000 trucks based upon initial interest, stating, "I think we'll have well, well north of

the 20,000 well spoken for. ***The demand side is super strong,*** I am starting to worry we won't be able to make them fast enough." (Emphasis added.)

120. On June 25, 2020, Legacy Lordstown unveiled a prototype of the Endurance electric pickup truck during a live-stream event that was attended by Vice President Mike Pence. Lordstown claimed that the Endurance's hub motor design was innovative, providing an improvement to performance, efficiency, safety, and cost. According to a *TechCrunch* article published on June 25, 2020 entitled, "Lordstown debuts a $52,000 electric pickup alongside a campaigning Mike Pence," Defendant Burns was quoted as follows:

> Our battery is, of course very important in a truck this size, but the big innovation is these hub motors[.] There are only four moving parts in the drivetrain of this vehicle and those are the four wheels. Just to put that in perspective, a modern-day four-wheel-drive pickup truck has thousands of moving parts . . . and every moving part has to be lubricated and every moving part is a decrease in efficiency.

121. Legacy Lordstown also claimed to be the only manufacturer of full-size electric pickup trucks focused exclusively on the large commercial fleet market and that it expected to be the first to come to market with the innovative hub motor design. At the time, Legacy Lordstown stated that production would commence in early 2021 and that deliveries would commence later that same year. It also claimed to have a full year's worth of pre-orders on its books.

122. A July 31, 2020 article published at *AutoTrends.org* entitled "About the 2021 Lordstown Endurance" reported that Legacy Lordstown was targeting fleet buyers who were required "to purchase at least five trucks with a $1,000 refundable deposit each" and that Legacy Lordstown would begin manufacturing the truck in the summer of 2021.

False and Misleading Statements

August 3, 2020 Press Release and Conference Call

123. On August 3, 2020, Legacy Lordstown and DiamondPeak issued a joint press release, announcing that they had entered into a definitive merger agreement. The press release

stated that "Lordstown unveiled the prototype of its flagship Endurance pickup truck on June 25, 2020, and to date, has received more than 27,000 pre-orders for the vehicle representing over $1.4 billion of potential revenue, primarily from commercial fleet customers."

124. The press release included the following quote by Defendant Burns:

> We are thrilled with the opportunity to build Lordstown Motors into a top-tier electric truck company that is highly differentiated from the competition. We are uniquely positioned to be a leader in the industry**,** with our first vehicle, the revolutionary Lordstown Endurance. Our all-electric full-size pickup truck delivers the equivalent of 75 miles per gallon and has been systematically engineered and competitively priced specifically for the large commercial fleet market, which includes companies in manufacturing, contracting, utilities, transportation and delivery, and agriculture, among others. Since its unveiling just over a month ago, the Endurance has been met with enthusiastic support, and to date, ***we have secured $1.4 billion of pre-orders.*** Our platform is rooted in sustainability, and the entire Lordstown team is committed to ensuring we contribute to a healthier planet for generations to come.

(Emphasis added).

125. Defendant Hamamoto was also quoted in the same press release as saying: "The team's vast experience and track-record in launching both traditional and electric vehicles, as well as the company's strong strategic relationships, ***provides Lordstown with a unique competitive advantage and positions the company to achieve its milestone of commencing production of the Endurance in the second half of 2021.***" (Emphasis added.)

126. On August 3, 2020, Legacy Lordstown and DiamondPeak conducted a conference call with analysts and investors, making additional positive representations about the planned Company's business and financial prospects. Defendant Hamamoto began the conference call with the following statement:

> ***Lordstown has attracted a clear lane of customers in the commercial fleet segment of the market, as evidenced by its 1.4 billion dollars of pre-orders to-date***, with a product that has a significant total cost of ownership advantage over competitors in both traditional and electric trucks, supports sustainable clean energy, and has a simple design that provides a robust, safe and stable ride.

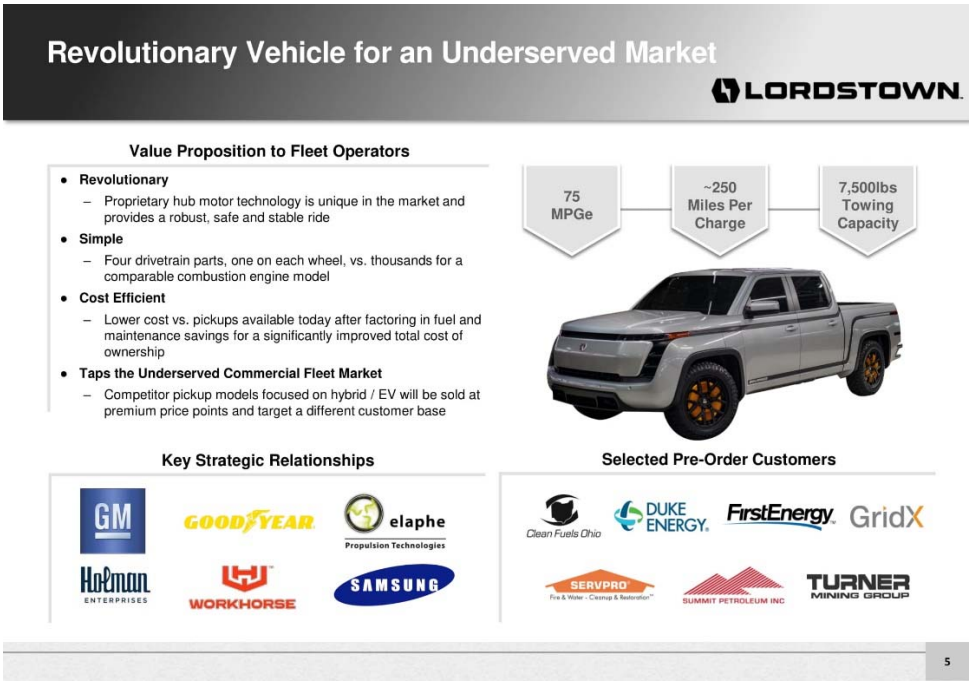
(Emphasis added).

127. During the same call, Defendant Burns also pointed to Legacy Lordstown's pre-orders as evidence of robust demand for the Endurance, stating:

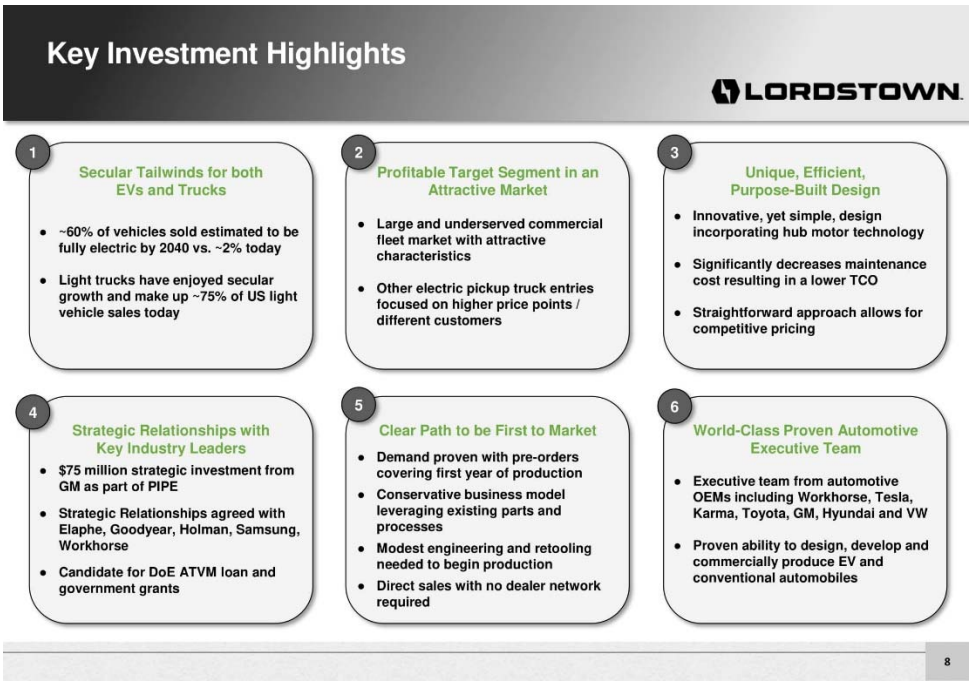
> We officially unveiled the Endurance in late-June. ***The Endurance was met with great excitement and acclaim, and we now have garnered significant demand with pre-orders totaling approximately 27,000 vehicles since inception, representing more than 1.4 billion dollars of potential revenue. We hear from many fleets who cannot wait to get their hands on the Endurance***. The electric vehicle market is expected to grow significantly the next decade, underlying our expectations of selling more than 100,000 vehicles per year by 2024.

(Emphasis added).

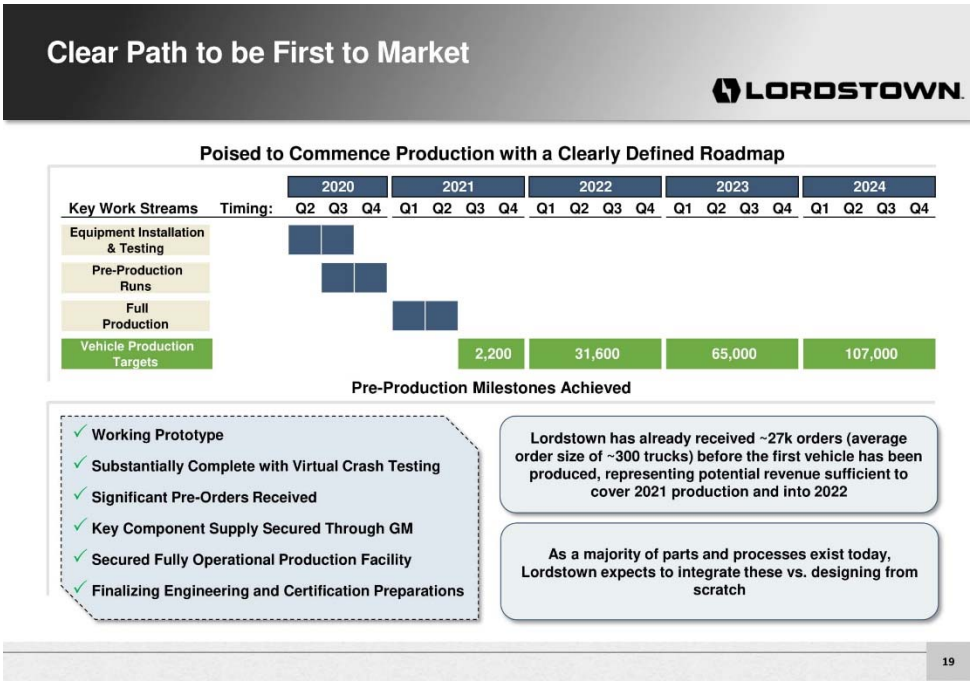
128. During the August 3, 2020 conference call, Legacy Lordstown and DiamondPeak presented an investor presentation slide deck, which was subsequently filed with the SEC in DiamondPeak's Form 8-K filing. The slides highlighted purported "Selected Pre-Order Customers" as pictured below:



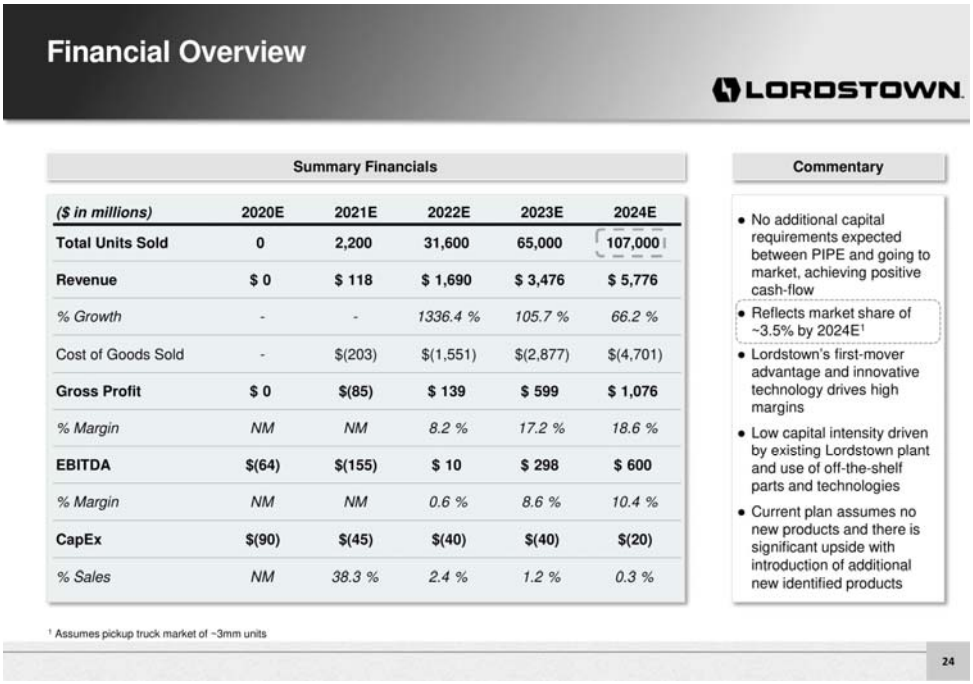
129. The August 3, 2020 slides also repeated the claim that demand for the Endurance was "***proven with pre-orders covering the first year of production***." (Emphasis added.)



130. The August 3, 2020 slides claimed that Legacy Lordstown had received approximately 27,000 pre-sales for the Endurance, "representing potential revenue sufficient to cover 2021 production and into 2022." The slides also set forth a timeline for commercial production beginning in Q3 2021.



131. The investor presentation slide deck also included a "Financial Overview" which contained "Summary Financials" reiterating that the Company was on track to sell an estimated 2,220 units in 2021 reaping $118 million in revenues, 31,600 units in 2022 reaping $1.69 billion in revenues, 65,000 units in 2022 reaping $3.476 billion in revenues, and 107,000 units in 2024 reaping $5.776 billion in revenues.



Financial Overview

LORDSTOWN

Summary Financials

($ in millions)	2020E	2021E	2022E	2023E	2024E
Total Units Sold	0	2,200	31,600	65,000	107,000
Revenue	$ 0	$ 118	$ 1,690	$ 3,476	$ 5,776
% Growth	-	-	*1336.4 %*	*105.7 %*	*66.2 %*
Cost of Goods Sold	-	$(203)	$(1,551)	$(2,877)	$(4,701)
Gross Profit	$ 0	$(85)	$ 139	$ 599	$ 1,076
% Margin	*NM*	*NM*	*8.2 %*	*17.2 %*	*18.6 %*
EBITDA	$(64)	$(155)	$ 10	$ 298	$ 600
% Margin	*NM*	*NM*	*0.6 %*	*8.6 %*	*10.4 %*
CapEx	$(90)	$(45)	$(40)	$(40)	$(20)
% Sales	*NM*	*38.3 %*	*2.4 %*	*1.2 %*	*0.3 %*

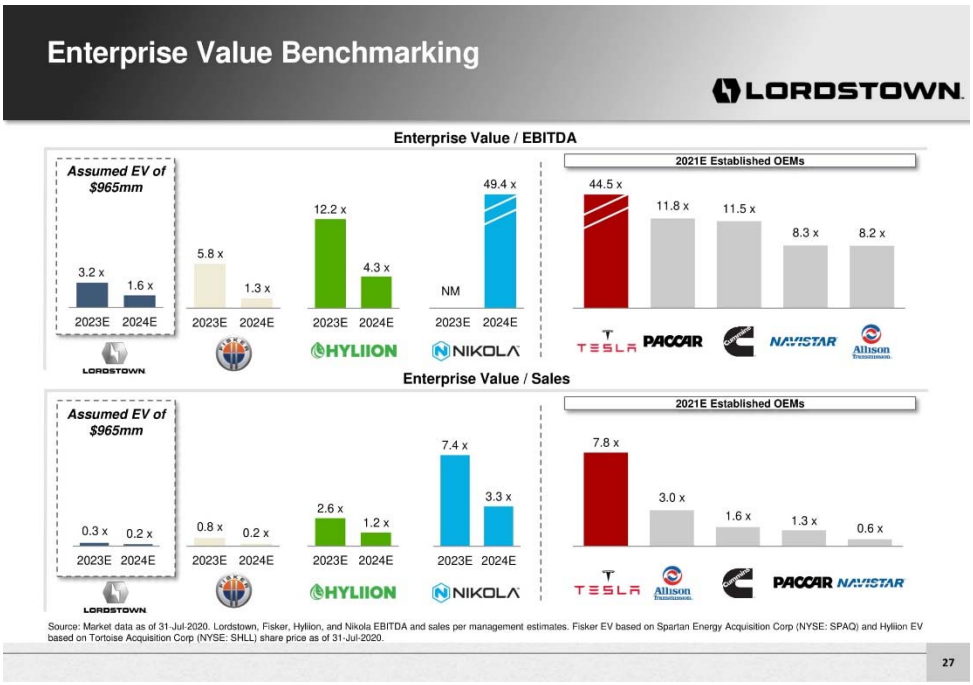
Commentary

- No additional capital requirements expected between PIPE and going to market, achieving positive cash-flow
- Reflects market share of ~3.5% by 2024E[1]
- Lordstown's first-mover advantage and innovative technology drives high margins
- Low capital intensity driven by existing Lordstown plant and use of off-the-shelf parts and technologies
- Current plan assumes no new products and there is significant upside with introduction of additional new identified products

[1] Assumes pickup truck market of ~3mm units

24

132. Based on these sales projections, another slide placed an "Assumed [Enterprise Value] of $965mm" on Legacy Lordstown.



133. The above statements on August 3, 2020 were false and misleading because they failed to disclose that: (1) the purported pre-orders were non-binding; (2) a significant number of purported pre-orders were fabricated and placed by individuals and companies without the financial means to purchase large orders of Endurance trucks; (3) Defendants paid a consulting group to artificially inflate the demand for Endurance pre-orders; and (4) Legacy Lordstown was not and the Company is not "on track" to start production of Endurance in September 2021. As a result of the foregoing, these statements concerning the planned Company's business and financial prospects were materially false and misleading when made.

August 24, 2020 Preliminary Proxy Statement

134. On August 24, 2020, DiamondPeak filed its preliminary proxy statement on Schedule 14A with the SEC, in which DiamondPeak's Board requested that stockholders vote in favor of the Merger. The preliminary proxy statement touted Legacy Lordstown's 27,000 pre-orders from fleet operators and repeated that the Company expected full production to begin in 2021, with 2,200 vehicles produced and sold that year.

135. The above statements on August 24, 2020 were false and misleading because they failed to disclose that: (1) the purported pre-orders were non-binding; (2) a significant number of purported pre-orders were fabricated and placed by individuals and companies without the financial means to purchase large orders of Endurance trucks; (3) Defendants paid a consulting group to artificially inflate the demand for Endurance pre-orders; and (4) Legacy Lordstown was not and the Company is not "on track" to start production of Endurance in September 2021. As a result of the foregoing, these statements concerning the planned Company's business and financial prospects were materially false and misleading when made.

September 17, 2020 Investor Presentation

136. On September 17, 2020, DiamondPeak and Legacy Lordstown hosted an analyst day with select Wall Street firms to give an overview of Legacy Lordstown's business and discuss historical and projected financial performance, as well as recent developments with Legacy Lordstown and the electric vehicle industry generally. During the presentation, DiamondPeak and Legacy Lordstown hosted an investor presentation, showcasing a slide deck that was subsequently filed with the SEC in DiamondPeak's Form 8-K filing on September 18, 2020.

137. The September 17, 2020 slides were nearly identical to the August 3, 2020 slides and repeated the claim that demand for the Endurance was "***proven with pre-orders covering the first year of production.***" (Emphasis added.) The slides also highlighted purported "Selected Pre-Order Customers" such as Clean Fuels Ohio, Duke Energy, FirstEnergy, Grid-X, ServePro, Summit Petroleum Inc., and Turner Mining Group. The slides further boasted of existing pre-orders representing more than "$2.0bn+" of potential revenue that "have been achieved with minimal marketing costs."

138. The September 17, 2020 slides also claimed that Legacy Lordstown had now received "Significant Pre-Orders" of approximately 40,000 pre-sales for the Endurance which represented "potential revenue sufficient to cover production into 2023," and set forth a timeline for commercial production beginning in Q3 2021. The slides included a "Financial Overview" which contained "Summary Financials" reiterating that the Company was on track to sell an estimated 2,200 units in 2021 for $118 million in revenues, 31,600 units in 2022 for $1.69 billion in revenues, 65,000 units in 2022 for $3.476 billion in revenues, and 107,000 units in 2024 for $5.776 billion in revenues.

139. The above statements on September 17, 2020 were false and misleading because they failed to disclose that: (1) the purported pre-orders were non-binding; (2) a significant number of purported pre-orders were fabricated and placed by individuals and companies without the financial means to purchase large orders of Endurance trucks; (3) Defendants paid a consulting group to artificially inflate the demand for Endurance pre-orders; and (4) Legacy Lordstown was not and the Company is not "on track" to start production of Endurance in September 2021. As a result of the foregoing, these statements concerning the Company's business and financial prospects were materially false and misleading when made.

October 8, 2020 Proxy Statement

140. On October 8, 2020, DiamondPeak filed the Proxy Statement on Schedule 14A with the SEC. Defendants Hamamoto, Hannaway, Hash, Richardson, and Walsh solicited the

Proxy Statement filed pursuant to Section 14(a) of the Exchange Act, which contained material misstatements and omissions.[2]

141. The Proxy Statement called for Company shareholders to, *inter alia*: (1) elect Defendants Burns, Strand, Feldman, Gates, Hamamoto, Kowitz, Reiss, Rucidlo, and Spencer to serve staggered terms on the Board; (2) approve the Agreement and Plan of Merger, dated August 1, 2020 (the "Merger Agreement"); (3) approve amendments to DiamondPeak's amended and restated certificate of incorporation in connection with the Merger to increase the number of authorized shares of DiamondPeak's capital stock and eliminate certain provisions relating to the Class B common stock; (4) approve, in connection with the Merger and for purposes of complying with applicable listing rules of the NASDAQ, *inter alia*, the issuance of shares of Class A common stock to Lordstown stockholders and the issuance of shares of Class A common stock to certain qualified institutional buyers and accredited investors; and (5) approve the 2020 Equity Incentive Plan (the "2020 Plan") to add an additional total number of shares of common stock that "will not exceed the sum of (x) 13,000,000 and (y) the number of shares underlying awards that were initially granted under the 2019 Plan and will be converted into awards under the Plan upon the consummation of [the Merger,]" as well as "the grant of stock options, restricted stock, restricted stock units, stock appreciation rights, and performance units and performance shares" for issuance to Company employees, directors, and/or consultants.

142. The Proxy Statement also detailed the principal functions of the Audit Committee,

[2] Plaintiff's allegations with respect to the misleading statements in the Proxy Statement are based solely on negligence; they are not based on any allegation of reckless or knowing conduct by or on behalf of the Individual Defendants, and they do not allege, and do not sound in, fraud. Plaintiff specifically disclaims any allegations of, reliance upon any allegation of, or reference to any allegation of fraud, scienter, or recklessness with regard to these allegations and related claims.

which at that time consisted of Defendants Hannaway, Hash, and Richardson. These functions included the following:

- the appointment, compensation, retention, replacement, and ***oversight of the work of the independent auditors and any other independent registered public accounting firm engaged by us***;

- pre-approving all audit and permitted non-audit services to be provided by the independent auditors or any other registered public accounting firm engaged by us, and establishing pre-approval policies and procedures;

- ***reviewing and discussing with the independent auditors all relationships the auditors have with us in order to evaluate their continued independence***;

- setting clear hiring policies for employees or former employees of the independent auditors;

- setting clear policies for audit partner rotation in compliance with applicable laws and regulations;

- ***obtaining and reviewing a report, at least annually, from the independent auditors describing (i) the independent auditor's internal quality-control procedures and (ii) any material issues raised by the most recent internal quality-control review, or peer review, of the audit firm, or by any inquiry or investigation by governmental or professional authorities within the preceding five years respecting one or more independent audits carried out by the firm and any steps taken to deal with such issues***;

- ***reviewing and approving any related party transaction required to be disclosed pursuant to Item 404 of Regulation S-K promulgated by the SEC prior to us entering into such transaction***; and

- ***reviewing with management, the independent auditors, and our legal advisors, as appropriate, any legal, regulatory or compliance matters, including any correspondence with regulators or government agencies and any employee complaints or published reports that raise material issues regarding our financial statements or accounting policies*** and any significant changes in accounting standards or rules promulgated by the Financial Accounting Standards Board, the SEC or other regulatory authorities.

(Emphasis added.)

143. The Proxy Statement claimed that while Legacy Lordstown had only "engaged in limited marketing activities," it had already obtained pre-orders for more than "38,000 Endurance vehicles," primarily from fleet purchasers.

144. The Proxy Statement also contained a "Risk Factor" section which stated, in relevant part: "To date, Lordstown has engaged in limited marketing activities and Lordstown has no binding contracts with customers. The non-binding pre-orders that Lordstown has signed did not require customer deposits and may not be converted into binding orders or sales."

145. Additionally, under the heading entitled "Role of the Board in Risk Oversight," the Proxy Statement stated the following:

> Upon the consummation of the Business Combination, one of the key functions of the board will be informed oversight of the Company's risk management process. The board expects to administer this oversight function directly through the board as a whole, as well as through various standing committees of the board that address risks inherent in their respective areas of oversight. In particular, the board will be responsible for monitoring and assessing strategic risk exposure and the audit committee will have the responsibility to consider and discuss the Company's major financial risk exposures and the steps its management will take to monitor and control such exposures, including guidelines and policies to govern the process by which risk assessment and management is undertaken. The audit committee also will monitor compliance with legal and regulatory requirements. The compensation committee also will assess and monitor whether the Company's compensation plans, policies and programs comply with applicable legal and regulatory requirements.

146. The October 8, 2020 Proxy Statement further stated that the Company "achieved several key milestones" to "commencing commercial production and sales," and that the Company anticipated commencing full production in 2021, "with a target of 2,200 vehicles produced and sold in the year."

147. The above statements in the Proxy Statement were false and misleading because they failed to disclose that: (1) contrary to the Proxy Statement's description of DiamondPeak's Audit Committee's responsibilities, DiamondPeak's Audit Committee was not adequately

exercising these functions, was causing or permitting DiamondPeak to issue false and misleading statements, and the Individual Defendants on the Board and the Audit Committee at that time were breaching their fiduciary duties; (2) the Individual Defendants on the Board at that time who were breaching their fiduciary duties were improperly interested in increasing their unjust compensation by seeking shareholder approval of the 2020 Plan; and (3) contrary to the Proxy Statement's description regarding the risk oversight function of the Board upon closing of the Merger, the Board upon closing of the Merger would utterly fail in the administration of its risk oversight function, resulting in the Individual Defendants' misconduct and breach of their fiduciary duties.

148. The above statements in the Proxy Statement were false and misleading because they also failed to disclose that: (1) the proposed Company's purported pre-orders were non-binding; (2) a significant number of purported pre-orders were fabricated and placed by individuals and companies without the financial means to purchase large orders of Endurance trucks; (3) Defendants paid a consulting group to artificially inflate the demand for Endurance pre-orders; and (4) the proposed Company was not "on track" to start production of Endurance in September 2021. As a result of the foregoing, these statements concerning the Company's business and financial prospects were materially false and misleading when made.

149. As a result of the material misstatements and omissions contained in the Proxy Statement, Company shareholders: (1) elected Defendants Burns, Strand, Feldman, Gates, Hamamoto, Kowitz, Reiss, Rucidlo, and Spencer to the Board, which allowed them to breach their fiduciary duties to the Company; (2) approved the Merger Agreement based on materially false and misleading statements regarding the Company's business and financial prospects; and (3) approved the 2020 Plan, allowing the Company's Board to improperly increase their and the other Individual Defendants' unjust compensation to the detriment of the Company.

October 23, 2020 Press Release

150. The Merger between Legacy Lordstown and DiamondPeak closed on October 23, 2020, accompanied by a press release issued by the Company. In the press release, Defendant Burns announced: "Lordstown Motors, which unveiled the prototype of its flagship Endurance pickup truck in June 2020, remains on pace to commence commercial production in the second half of 2021 at its plant in Lordstown, Ohio."

151. The above statements on October 23, 2020 were false and misleading because they failed to disclose that the Company is not and was not "on track" to start production of Endurance in September 2021. As a result of the foregoing, these statements concerning the Company's business and financial prospects were materially false and misleading when made.

November 12, 2020 Prospectus and Registration Statement

152. On November 12, 2020, Lordstown filed its preliminary prospectus and registration statement on Form S-1 with the SEC to sell approximately 153 million shares of Lordstown Class A common stock. The registration statement was amended on November 23, 2020 and declared effective by the SEC on December 4, 2020 (the "Registration Statement"). The final prospectus was filed on December 4, 2020 (the "Prospectus"). The Registration Statement and the Prospectus stated that Lordstown had pre-orders for more than 50,000 vehicles, primarily from fleet purchasers, and claimed to have built "an operational prototype" of the Endurance. The Registration Statement also stated that Lordstown was "targeting commencement of commercial production of the Endurance and initial sales in the second half of 2021." Lordstown Motors' Form S-1 also stated that the Company "achieved several key milestones" to "commencing commercial production and sales," and that the Company anticipated commencing full production in 2021 "with a target of 2,200 vehicles produced and sold in the year."

153. The above statements in the Registration Statement and Prospectus were false and misleading because they failed to disclose that: (1) the Company's purported pre-orders were non-binding; (2) a significant number of purported pre-orders were fabricated and placed by individuals and companies without the financial means to purchase large orders of Endurance trucks; (3) Defendants paid a consulting group to artificially inflate the demand for Endurance pre-orders; and (4) the Company is not and has not been "on track" to start production of Endurance in September 2021. As a result of the foregoing, these statements concerning the Company's business and financial prospects were materially false and misleading when made.

November 16, 2020 Press Release and Reuters Article

154. On November 16, 2020, Lordstown issued a press release announcing that it "Remains on Track to Begin Production of the Lordstown Endurance in September 2021." The press release also stated that Lordstown had received "approximately 50,000 non-binding" pre-orders from "commercial fleets for its Lordstown all-electric pickup truck, with an average order size of approximately 500 vehicles per fleet." The press release went on to say that "[t]his figure does not capture interest the company has received from organizations that are not in position to be able to place pre-orders, such as federal, state and municipal governments, and military fleets."

155. On November 16, 2020, *Reuters* published an article entitled "Lordstown Motors says electric pickup launch 'on track' for fall 2021." The article included a picture that featured Defendants Fabian and Schmidt at the White House alongside President Donald Trump, who was "inspecting" the Endurance. The *Reuters* report stated that Lordstown "remained 'on track' to begin building electric pickup trucks next September at a former General Motors Co. plant in northeastern Ohio." The *Reuters* article further reported that "[t]he company said it had received 50,000 non-binding reservations for the new truck." At the event the *Reuters* article was reporting

on, Defendant Schmidt stated, in relevant part, that "[w]e can't wait to launch [the Endurance] this year coming." In response to President Trump asking: "[Y]ou'll make how many a year when you get it going?," Defendant Burns replied, "Well, we'll make north of 100,000 once we get going."

156. The above statements on November 16, 2020 were false and misleading because they failed to disclose that: (1) a significant number of purported pre-orders were fabricated and placed by individuals and companies without the financial means to purchase large orders of Endurance trucks; (2) Defendants paid a consulting group to artificially inflate the demand for Endurance pre-orders; and (3) the Company is not and has not been "on track" to start production of Endurance in September 2021. As a result of the foregoing, these statements concerning the Company's business and financial prospects were materially false and misleading when made.

November 17, 2020 Mad Money Interview

157. On November 17, 2020, during an interview on CNBC's *Mad Money*, Defendant Burns declared "we sell to commercial fleets. That's our first customer. And like I said, we've already got 50,000 pre-orders." Defendant Burns further claimed that most of the orders were signed by the CEOs of large firms, emphasizing the orders were "***very serious orders.***" (Emphasis added.)

158. The above statements on November 17, 2020 were false and misleading because they failed to disclose that: (1) the Company's purported pre-orders were non-binding; (2) a significant number of purported pre-orders were fabricated and placed by individuals and companies without the financial means to purchase large orders of Endurance trucks; (3) Defendants paid a consulting group to artificially inflate the demand for Endurance pre-orders; and (4) the Company is not and has not been "on track" to start production of Endurance in

September 2021. As a result of the foregoing, these statements concerning the Company's business and financial prospects were materially false and misleading when made.

December 2, 2020 Credit Suisse Conference

159. On December 2, 2020 at the Credit Suisse 8th Annual Global Industrials Virtual Conference, in response to the question: "How do you find these fleet buyers?" Defendant Burns explained the "pent-up demand" accruing from the fleet market and "different disciplines." Specifically, he stated:

> Yeah. Well, it's been almost all incoming. We're just starting to build out the sales team. So we've been able to do again these 50,000 pre-orders just by incoming. The pent-up demand, these fleets have watched all the electrification coming – have been hearing and coming and there's been nothing for them. So the pent-up demand, I don't know, if it always be this robust. It is very, very strong. And the 50,000 doesn't include state vehicles, municipal vehicles, police vehicles, military vehicles, it's just – that's just on the commercial side. And so we just – it's spread across all different disciplines. Our average order is about 500 vehicles per order. So it's larger fleets. And even though we do have the landscape over three trucks, it's very meaningful those cost savings, if you could say the landscaper $20,000 per vehicle over five years, that's meaningful to them.

160. The above statements on December 2, 2020 were false and misleading because they failed to disclose that: (1) the Company's purported pre-orders were non-binding; (2) a significant number of purported pre-orders were fabricated and placed by individuals and companies without the financial means to purchase large orders of Endurance trucks; (3) Defendants paid a consulting group to artificially inflate the demand for Endurance pre-orders; and (4) the Company is not and has not been "on track" to start production of Endurance in September 2021. As a result of the foregoing, these statements concerning the Company's business and financial prospects were materially false and misleading when made.

December 21, 2020 Current Report

161. On December 21, 2020, Lordstown announced on its Form 8-K filed with the SEC that it had received 80,000 pre-orders for the Endurance to date and that the "Company remain[ed] on track to begin production of the Endurance in September 2021."

162. The above statements on December 21, 2020 were false and misleading because they failed to disclose that: (1) the Company's purported pre-orders were non-binding; (2) a significant number of purported pre-orders were fabricated and placed by individuals and companies without the financial means to purchase large orders of Endurance trucks; (3) Defendants paid a consulting group to artificially inflate the demand for Endurance pre-orders; and (4) the Company is not and has not been "on track" to start production of Endurance in September 2021. As a result of the foregoing, these statements concerning the Company's business and financial prospects were materially false and misleading when made.

January 11, 2021 Press Release

163. On January 11, 2021, Lordstown issued a press release, announcing it had achieved a milestone of 100,000 Endurance pre-orders. In this press release, Defendant Burns stated the following:

> Receiving 100,000 pre-orders from commercial fleets for a truck like the Endurance is unprecedented in automotive history[.] Adding in the interest we have from federal, state, municipal and military fleets on top of that, I think you can see why we feel that we are about to revolutionize the pickup truck industry.

The press release continued that "Lordstown is now building the first Beta Endurance vehicles" and that the Company was "on track for start of production in September of this year.

164. The above statements on January 11, 2021 were false and misleading because they failed to disclose that: (1) the Company's purported pre-orders were non-binding; (2) a significant number of purported pre-orders were fabricated and placed by individuals and companies without the financial means to purchase large orders of Endurance trucks; (3) Defendants paid a consulting

group to artificially inflate the demand for Endurance pre-orders; and (4) the Company is not and has not been "on track" to start production of Endurance in September 2021. As a result of the foregoing, these statements concerning the Company's business and financial prospects were materially false and misleading when made.

January 28, 2021 Press Release

165. On January 28, 2021, Lordstown issued a press release announcing that the Company was "Prepar[ing] Ohio Factory to Begin Building Betas Next Month." Defendant Burns stated that "[w]e are hard at work in the factory preparing to begin Beta builds in the coming weeks," and that "[w]ith this step on the horizon, we remain on track to meet our September start-of-production timeline while continuing to see indicators of strong demand for an all-wheel drive, full-size electric pickup truck with 250 miles of range from commercial, government and military fleets."

166. The above statements on January 28, 2021 were false and misleading because they failed to disclose that: (1) the Company's purported pre-orders were non-binding; (2) a significant number of purported pre-orders were fabricated and placed by individuals and companies without the financial means to purchase large orders of Endurance trucks; (3) Defendants paid a consulting group to artificially inflate the demand for Endurance pre-orders; and (4) the Company is not and has not been "on track" to start production of Endurance in September 2021. As a result of the foregoing, these statements concerning the Company's business and financial prospects were materially false and misleading when made.

February 17, 2021 Press Release

167. On February 17, 2021, Lordstown issued a press release announcing that it had registered its Endurance Beta skateboard in the 2021 SCORE International San Felipe 250, part of

the SCORE World Desert Championship race series. In the press release, Lordstown claimed that "[a]fter successful prototype and Alpha builds, Lordstown is now building the first Beta Endurance vehicles and is on track for start of production in September of this year."

168. The above statement on February 17, 2021 were false and misleading because they failed to disclose that the Company is not and has not been "on track" to start production of Endurance in September 2021. As a result of the foregoing, these statements concerning the Company's business and financial prospects were materially false and misleading when made.

February 23, 2021 Yahoo! Finance Live Interview

169. On February 23, 2021, in an interview with *Yahoo! Finance Live*, Defendant Burns stated that Lordstown's "initial foray is into fleets, and we have pre-sold 100,000 of these vehicles to various fleets across America – really a big appetite." He continued by saying, "[y]ou've got a fleet using a 17-mile per gallon pickup truck for the last 30 years and we come out with one that gets the equivalent of 75 miles per gallon. There is a lot of demand and excitement about it." The article further provided that "Burns said production for the Endurance will begin in September."

170. The above statements on February 23, 2021 were false and misleading because they failed to disclose that: (1) the Company's purported pre-orders were non-binding; (2) a significant number of purported pre-orders were fabricated and placed by individuals and companies without the financial means to purchase large orders of Endurance trucks; and (3) Defendants paid a consulting group to artificially inflate the demand for Endurance pre-orders. As a result of the foregoing, these statements concerning the Company's business and financial prospects were materially false and misleading when made.

The Truth Emerges

March 12, 2021 Hindenburg Research Report

171. On March 12, 2021, before the markets opened, Hindenburg Research published a report titled: "The Lordstown Motors Mirage: Fake Orders, Undisclosed Production Hurdles, and a Prototype Inferno." Hindenburg Research summarized the findings set forth in the detailed Hindenburg Report as follows:

- Lordstown is an electric vehicle SPAC with no revenue and no sellable product, which we believe has misled investors on both its demand and production capabilities.

- The company has consistently pointed to its book of 100,000 pre-orders as proof of deep demand for its proposed EV truck. Our conversations with former employees, business partners and an extensive document review show that ***the company's orders are largely fictitious and used as a prop to raise capital and confer legitimacy***.

- ***For example, Lordstown recently announced a 14,000-truck deal from E Squared Energy, supposedly representing $735 million in sales. E Squared is based out of a small residential apartment in Texas that doesn't operate a vehicle fleet.***

- ***Another 1,000-truck, $52.5 million order comes from a 2-person startup that operates out of a Regus virtual office with a mailing address at a UPS Store. We spoke with the owner who acknowledged it won't actually order any vehicles,*** instead describing the "pre-order" as a mere marketing relationship.

- Yet another firm that is supposedly set to buy 500 trucks from Lordstown told us: "…The letters of interest are non-binding. It's not like you'd obligate yourself to a pre-order or that you would contractually bind yourself to buying this truck. That's not what they are."

- ***Lordstown CEO Steve Burns has called these arrangements "very serious orders". The actual customer agreements, which we present for the first time today, require no deposit and are non-binding.*** Many of the supposed customers do not operate fleets nor do many have the means to actually make the stated purchases.

- Former employees and litigation records reveal that in order to raise capital and confer credibility, Steve Burns began paying consultants for every truck pre-order as early as 2016 while he was serving as CEO at Workhorse.

- Later, heading into Lordstown's eventual go-public transaction in 2020***, a small consulting group called Climb2Glory was paid to generate pre-***

orders. Climb2Glory openly described the purpose behind the pre-order game: "the faster the pre-orders arrived, the greater investors' confidence would be in the company and the faster funds would flow in."

- One company rep that committed to buy 40 trucks through Climb2Glory told us: "…I'm not committed to anything, not to buying a single vehicle. I committed to consider buying vehicles. I'd have a lot of questions before I commit to anything."

- Others had similar remarks. "The commitment of that size (15) is totally impossible," a representative for the City of Ravenna told us about its pre-order. We document numerous other "customers" that disclaim any intent to actually purchase vehicles.

- Multiple former senior employees who have worked with Lordstown Founder & CEO Steve Burns openly described him as a "con man", or a "PT Barnum" figure. One senior employee told us that, while working with Steve for a couple of years, they saw more questionable and unethical business practices than they had seen in their entire career.

- Despite being allowed to resign from Workhorse, former senior employees described how Burns was pushed out of his old company by the board for wasting R&D money and missing promised deadlines. He then launched Lordstown months later.

- ***Despite claims that Lordstown will be producing vehicles by September, a former employee explained how the company is experiencing delays and making "drastic" design modifications, putting them an estimated 3-4 years away from production.*** For example, in mid-January the company "totally switched from a plastic exterior to aluminum," we were told.

- Despite claims that battery packs would be manufactured in-house, we were told that the equipment is months away from arriving, let alone being put into a production environment. In the meantime, we were told that battery packs are being put together by hand.

- Former employees also shared that the company has completed none of its needed testing or validation, including cold weather testing, durability testing, and Federal Motor Vehicle Safety Standards (FMVSS) testing required by the NHTSA.

- ***In January 2021, Lordstown's first street road test resulted in the vehicle bursting into flames 10 minutes into the test drive.*** We share copies of the 911 call and a police report we received through FOIA requests.

- Lordstown only went public in October 2020, but in that brief time,

> executives and directors have unloaded ~$28 million in stock. We think it bodes poorly when executives unload stock in a company with no actual product that claims to be on the cusp of mass-production.

(Emphasis added.)

172. The Hindenburg Report further revealed that "Lordstown's order book consists of fake or entirely non-binding orders, from customers that generally do not even have fleets of vehicles." After conversing with former Lordstown employees and business partners and conducting an extensive document review, Hindenburg Research stated, "CEO Steven Burns sought to book orders, regardless of quality, purely as a tool to raise capital and confer legitimacy." In Defendant Burns' effort to drum up purported demand for the Endurance, the report stated that "[Burns] paid for customers to book valueless, non-binding pre-orders."

173. Hindenburg Research also spoke to a former sales representative for the Lordstown Endurance, who was quoted as saying the following regarding the purported pre-orders:

> You're right to have some apprehension. ***I think the way it's being communicated especially to the media is probably not accurate.*** Everywhere I read is pre-orders, pre-orders, pre-orders. ***There's no such thing as a preorder. What they're doing is getting letters of intent and there is no commitment whatsoever. I could commit to 100,000 pre-orders or reservations but I have no commitment, no financial commitment,*** no nothing I hope they can get all 100,000 of them but I think that's extraordinarily unlikely.

(Some emphasis added.)

174. In support of its findings, the Hindenburg Report cited several examples of "fake pre-orders" from customers that did not operate a commercial fleet and/or did not have the financial means to purchase the trucks. For example, the Hindenburg Report drew attention to a $735 million, 14,000 truck order (representing approximately 18% of the Company's pre-orders at the time) from a two-employee, non-registered corporation apparently operating out of an individual's studio apartment, and a $52.5 million, 1,000-truck order (representing approximately

13% of the Company's total order book) from a company that had a UPS Store mailing address with neither a fleet of its own nor a plan to actually purchase the trucks.

175. The Hindenburg Report further explained Defendant Burns' desperation to increase the number of Endurance pre-orders as he eyed the capital raise on the horizon in early 2020. To accomplish this, Lordstown hired Climb2Glory, a small consulting firm, and paid Climb2Glory $30 to $50 for each Endurance pre-order it could obtain. The Hindenburg Report further noted that "***Climb2Glory boasts on its own website how it was key in helping Lordstown generate pre-orders faster in order to use the orders as a capital raising tool.***" (Emphasis added.) According to the Climb2Glory's website, "the more pre-orders achieved, the greater the confidence levels of prospective borrowers."

176. Hindenburg Research also conducted a phone interview with Climb2Glory's managing partner, Pat Mangin, who was quoted as saying the following about the business arrangement between Climb2Glory and the Company: "Because of the letters of intent from Climb2Glory and some marketing, Diamond Group came to the table and they did the reverse merger. So our role was to help influence and acquire interest that would lead to investment. That was Climb2Glory's role." Pat Mangin further elaborated that though Climb2Glory initially paid in "contract dollars," that later they were compensated with an ownership share in Lordstown, stating: "We did get a significant amount of shares in the deal so what we do now is we still leverage our network."

177. Hindenburg Research described other "pre-orders" that "appear similarly meaningless," including with First Energy, Momentum Groups, Summit Petroleum Inc., Mike Albert Fleet Solutions, Grid-X, and the City of Ravenna.

178. The Hindenburg Report also described how the Endurance burst into flames during its first road test. After obtaining copies of the 911 call and a police report via FOIA requests, the Hindenburg Report revealed that the police report provided that "the vehicle was a 2021 Lordstown Endurance that had cleared testing inside of the facility" and that during "the first road test for the Endurance," the vehicle had been driven "for about ten minutes before it caught on fire."

179. The Hindenburg Report stated that Lordstown announced just two weeks after this fire, that the Company would commence building beta trucks in a month. Belatedly, about a month later, Lordstown finally acknowledged the occurrent of "an event," stating that "we do not generally comment on individual testing conditions."

180. The Hindenburg Report further described why the Endurance was actually three to four years away from production rather than the Endurance being on track to start production in September 2021, as was publicly represented on numerous occasions in the past by the Company. The report highlighted an interview with a former Lordstown employee "who was intimately familiar with the path toward production. They explained that Lordstown has built fewer than 10 prototypes so far, and that the company is still making extensive modifications." This former employee also detailed how in mid-January 2021, Lordstown "totally switched from a plastic exterior to aluminum" to order to lessen the weight of the Endurance. According to the former employee, this was a "drastic" change that would "essentially restart any testing and validation process."

181. This former employee continued by describing how the Endurance had not completed any of its required testing and validation, including: "[c]old weather testing, which typically takes about 3 months and had not begun"; "[a] 'million mile' test or similar durability

test done by major automakers," which typically "requires 6 months of 24/7 testing"; or "[m]ajor testing required for the Federal Motor Vehicle Safety Standards (FMVSS) by the NHTSA."

182. Providing further support, the Hindenburg Report included the following quote from a senior union leader who had worked for decades at the Lordstown plant for GM:

> ***I know they're way behind.*** If nothing else went wrong then Covid threw them way behind. They can't fire up the old machines. Some of them they can. But ***everything else has to be reprogrammed and some of it has to be rebuilt.*** . . . ***It's not ready. It is not ready. They showed some stuff on TV in the body shop with the robots that do the welding. But if you never worked in a body shop you didn't realize they weren't working. They were moving but not welding. There were no sparks.***

(Emphasis added.)

183. On this news, Lordstown's share price dropped $2.93 (or 16.5%) from its March 11, 2021 closing price of $17.71 to close at $14.78 on March 12, 2021.

March 17, 2021 Press Release and Current Report

184. On March 17, 2021, after the market closed, Lordstown issued a press release and a Form 8-K filed with the SEC announcing financial results for the Q4 2020, reporting a net loss of $101 million. In a call with investors conducted after the market closed, Defendant Burns disclosed for the first time that the SEC had launched an investigation into the Company. He went on to state that the Company's Board had assembled a special committee to conduct an internal inquiry.

March 18, 2021 CNBC Interview

185. On March 18, 2021, before the market opened, Defendant Burns claimed during an interview with *CNBC* that the Company had "***never said we had orders.***" (Emphasis added.) He admitted that ***Lordstown "[didn't] have a product yet" and that "[b]y definition we can't have orders."*** He further stated that the pre-orders were intended to "[g]auge interest." Despite his own personal, repeated statements touting the number of preorders and describing how this meant

demand for the Endurance was high, Defendant Burns now stated: "Nobody knew if fleets would buy an electric pickup truck. It was completely unknown science, no data around it. . . . ***I don't think anybody thought we had actual orders.*** That's just not the nature of this business." (Emphasis added.) On this news, Lordstown's share price dropped $2.08 (or approximately 14%) to close at $13.01 per share on March 18, 2021.

March 24, 2021 Hindenburg Research Photographs

186. On March 24, 2021, Hindenburg Research published some "behind the scenes" photographs, taken in the summer of 2020, of the Endurance truck after it had reportedly broken down and had to be towed while being filmed for an Endurance commercial, which aired days prior to the start of the Relevant Period.

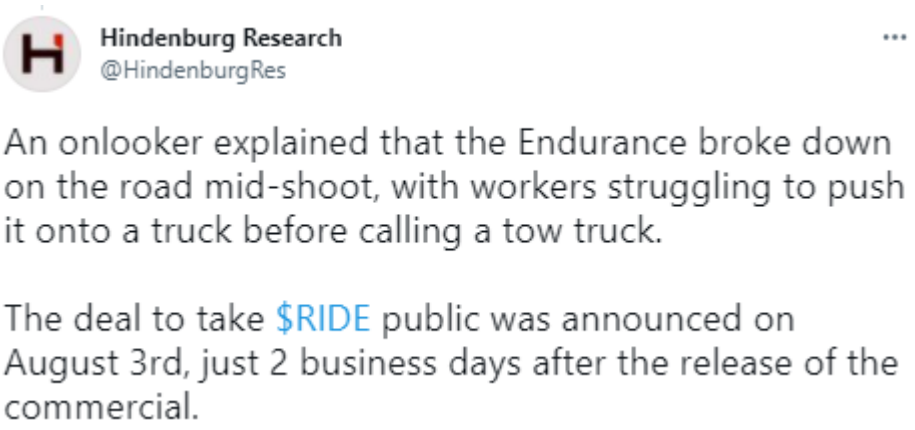












187. On this news, Lordstown's share price dropped $1.21 (or approximately 10%) to close at $11.38 on March 24, 2021.

Subsequent Events and Disclosures

June 14, 2021 Current Report and Press Release

188. On June 14, 2021, the Company announced on its Form 8-K filed with the SEC that Defendant Burns had resigned from his position as Chairman and CEO and that Defendant Rodriguez had also resigned from his position as CFO. It further announced that "Lead Independent Director Angela Strand has been appointed Executive Chairwoman of the Company, and will oversee the organization's transition until a permanent CEO is identified, and Becky Roof, will serve as interim Chief Financial Officer."

June 14, 2021 Special Committee's Report

189. On June 14, 2021, the Company also reported the results of the investigation conducted by the Special Committee of its Board of Directors into the Hindenburg Report that was published on March 12, 2021. The Company admitted to the fact that its previous statements regarding pre-orders being obtained "primarily" from commercial fleets were inaccurate. Instead,

> [M]any pre-orders were obtained from (i) fleet management companies or other end users that indicated interest in purchasing Endurance trucks . . . and (ii) so-called 'influencers' or other potential strategic partners that committed to attempt to secure pre-orders from other entities but did not intend to purchase Endurance

trucks directly.

The Company further admitted that one purported purchaser of a large number of pre-orders "does not appear to have the resources to complete large purchases of trucks." Other purported purchasers "provided commitments that appear too vague or infirm to be appropriately included in the total number of pre-orders disclosed." On this news, Lordstown's share price dropped $2.15 (or 18.8%) to close at $9.26 on June 14, 2021.

June 21, 2021 Wall Street Journal Article

190. On June 21, 2021, the *Wall Street Journal* published an article entitled "Lordstown Motors Executives Sold Stock Ahead of Reporting Results and Before Troubles Came to Light" which reported that "five top executives, including the company's president and its former chief financial officer, sold more than $8 million in stock over three days in early February." Specifically, over the course of these three days in February, Defendant Schmidt sold "39% of his remaining vested equity for $4.6 million," Defendant Vo sold "99.3% of his remaining vested equity for $2.5 million," and "[t]hree other executives [*i.e*, Defendants Brown, Post, and Rodriguez], including the former CFO [Defendant Rodriguez], [sold] between roughly $250,000 and $400,000 of stock."

191. Despite the Company claiming in the Special Committee's Report published on June 14, 2021 that the aforementioned stock sales were "'made for reasons unrelated to the performance of the company,'" the article noted that securities lawyers, accountants and analysts viewed the transactions as "highly unusual," particularly due to the fact that the transactions transpired "during a [blackout] period when many other publicly traded companies bar executives from selling shares."

192. The article further stated that "[m]ost listed companies" implement this "so-called blackout [period]" as an intended measure to ward off the appearance of insider trading by preventing "business leaders from trading company stock outside of prearranged plans from some time around the end of a quarter to when results are released publicly." According to a 2020 survey conducted by Deloitte, "98% of companies reported having blackout periods prohibiting trades by top officers around quarterly disclosures."

193. The decisions of five of the Individual Defendants to sell stock in early February 2021 ahead of the Form 10-K being filed with the SEC on March 25, 2021, when they possessed material non-public information and before the material misstatements and omissions were exposed, demonstrate the Individual Defendants' motive in facilitating and participating in the scheme to make or cause the Company to make false and misleading statements throughout the Relevant Period.

DAMAGES TO LORDSTOWN

194. As a direct and proximate result of the Individual Defendants' conduct, Lordstown has lost and expended, and will lose and expend, many millions of dollars.

195. Such expenditures include, but are not limited to, legal fees associated with the Securities Class Actions filed against the Company and certain of its current and former officers and directors, the investigation into the Company being conducted by the SEC, additional governmental investigations, any internal investigations, including the investigation conducted by the Special Committee into the Hindenburg Report, and amounts paid to outside lawyers, accountants, and investigators in connection thereto.

196. Such losses include, but are not limited to, handsome compensation and benefits paid to the Individual Defendants who breached their fiduciary duties to the Company.

197. As a direct and proximate result of the Individual Defendants' conduct, Lordstown

has also suffered and will continue to suffer a loss of reputation and goodwill, and a "liar's discount" that will plague the Company's stock in the future due to the Company's and their misrepresentations and the Individual Defendants' breaches of fiduciary duties and unjust enrichment and other violations of law.

DERIVATIVE ALLEGATIONS

198. Plaintiff brings this action derivatively and for the benefit of Lordstown to redress injuries suffered, and to be suffered, as a result of the Individual Defendants' breaches of their fiduciary duties as controlling shareholder, directors, and/or officers of Lordstown, unjust enrichment, abuse of control, gross mismanagement, waste of corporate assets, and violations of the Exchange Act, as well as the aiding and abetting thereof.

199. Lordstown is named solely as a nominal party in this action. This is not a collusive action to confer jurisdiction on this Court that it would not otherwise have.

200. Plaintiff is, and has continuously been at all relevant times, a shareholder of Lordstown. Plaintiff will adequately and fairly represent the interests of Lordstown in enforcing and prosecuting its rights, and, to that end, has retained competent counsel, experienced in derivative litigation, to enforce and prosecute this action.

DEMAND FUTILITY ALLEGATIONS

201. Plaintiff incorporates by reference and realleges each and every allegation stated above as if fully set forth herein.

202. A pre-suit demand on the Board of Lordstown is futile and, therefore, excused. At the time of filing of this action, the Board consists of the following eight individuals: Defendants Strand, Hamamoto, Feldman, Reiss, Spencer, Gates, Kowitz, and Rucidlo (the "Directors"). Plaintiff needs only to allege demand futility as to four of these eight Directors.

203. Demand is excused as to all of the Directors because each one of them faces, individually and collectively, a substantial likelihood of liability as a result of the schemes they engaged in knowingly or recklessly to make and/or cause the Company to make false and misleading statements and omissions of material fact while one of them engaged in insider sales based on material non-public information, all of which renders the Directors unable to impartially investigate the charges and decide whether to pursue action against themselves and the other perpetrators of the scheme.

204. In complete abdication of their fiduciary duties, the Directors either knowingly or recklessly participated in making and/or causing the Company to make the materially false and misleading statements alleged herein. The fraudulent scheme was, *inter alia*, intended to make the Company appear more profitable and attractive to investors. As a result of the foregoing, the Directors breached their fiduciary duties, face a substantial likelihood of liability, are not disinterested, and demand upon them is futile, and thus excused.

205. Additional reasons that demand on Defendant Strand is futile follow. Defendant Strand has served as a Company director since October 2020 and as the Executive Chairwoman of the Company since June 14, 2021. She also serves as the Chair of the Compensation Committee and as a member of the Nominating and Corporate Governance Committee. As the Executive Chairwoman, Defendant Strand is a non-independent director. She benefited from the Proxy Statement, containing false and misleading statements, which led to her election to the Board and allowed her to breach her fiduciary duties to the Company. Moreover, she previously worked with Defendants Burns, Rodriguez and Rucidlo at another company founded by Defendant Burns: Workhorse. As a trusted Company director, she conducted little, if any, oversight of the scheme to make false and misleading statements, consciously disregarded her duties to monitor such controls

over reporting and engagement in the scheme, and consciously disregarded her duties to protect corporate assets. For these reasons, Defendant Strand breached her fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon her is futile and, therefore, excused.

206. Additional reasons that demand on Defendant Hamamoto is futile follow. Defendant Hamamoto served as Chairman and CEO of DiamondPeak and as a Company director since October 2020. As Chairman and CEO of DiamondPeak. he oversaw negotiations with Legacy Lordstown in connection with the Merger. Defendant Hamamoto engaged in insider trading, selling one million shares of Lordstown common stock for proceeds of $16.38 million while the share price of Lordstown's common stock was artificially inflated. Furthermore, the Proxy Statement, which contained further false and misleading statements, was solicited on his behalf and led to his reelection to Board, allowing him to continue breaching his fiduciary duties. Moreover, Defendant Hamamoto is a defendant in one of the Securities Class Actions. For these reasons, Defendant Hamamoto breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterred, and thus demand upon him is futile and, therefore, excused.

207. Additional reasons that demand on Defendant Reiss is futile follow. Defendant Reis has served as a Company director since February 2020. She also serves as a member of the Audit Committee. Defendant Reiss has received and continues to receive significant compensation for her role as a director as described herein. She benefited from the Proxy Statement, containing false and misleading statements, which led to her election to the Board and allowed her to breach her fiduciary duties to the Company. As a trusted Company director, she conducted little, if any, oversight of the scheme to make false and misleading statements, consciously disregarded her

duties to monitor such controls over reporting and engagement in the scheme, and consciously disregarded her duties to protect corporate assets. For these reasons, Defendant Reiss breached her fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon her is futile and, therefore, excused.

208. Additional reasons that demand on Defendant Spencer is futile follow. Defendant Spencer has served as a Company director since February 2020. He also serves as a member of the Compensation Committee. Defendant Spencer has received and continues to receive significant compensation for his role as a director as described herein. He benefited from the Proxy Statement, containing false and misleading statements, which led to his election to the Board and allowed him to breach his fiduciary duties to the Company. As a trusted Company director, he conducted little, if any, oversight of the scheme to make false and misleading statements, consciously disregarded his duties to monitor such controls over reporting and engagement in the scheme, and consciously disregarded his duties to protect corporate assets. For these reasons, Defendant Spencer breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon him is futile and, therefore, excused.

209. Additional reasons that demand on Defendant Feldman is futile follow. Defendant Feldman has served as a Company director since October 2020. He also serves as the Chair of the Audit Committee. Defendant Feldman has received and continues to receive significant compensation for his role as a director as described herein. He benefited from the Proxy Statement, containing false and misleading statements, which led to his election to the Board and allowed him to breach his fiduciary duties to the Company. As a trusted Company director, he conducted little, if any, oversight of the scheme to make false and misleading statements, consciously disregarded his duties to monitor such controls over reporting and engagement in the scheme, and consciously

disregarded his duties to protect corporate assets. For these reasons, Defendant Feldman breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon him is futile and, therefore, excused.

210. Additional reasons that demand on Defendant Rucidlo is futile follow. Defendant Rucidlo has served as a Company director since October 2020. He also serves as a member of the Audit Committee. Defendant Rucidlo has received and continues to receive significant compensation for his role as a director as described herein. Moreover, he previously worked with Defendants Burns, Rodriguez and Strand at another company founded by Defendant Burns: Workhorse. He benefited from the Proxy Statement, containing false and misleading statements, which led to his election to the Board and allowed him to breach his fiduciary duties to the Company. As a trusted Company director, he conducted little, if any, oversight of the scheme to make false and misleading statements, consciously disregarded his duties to monitor such controls over reporting and engagement in the scheme, and consciously disregarded his duties to protect corporate assets. For these reasons, Defendant Rucidlo breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon him is futile and, therefore, excused.

211. Additional reasons that demand on Defendant Gates is futile follow. Defendant Gates has served as a Company director since October 2020. He also serves as a member of the Nominating and Corporate Governance Committee. Defendant Gates has received and continues to receive significant compensation for his role as a director as described herein. He benefited from the Proxy Statement, containing false and misleading statements, which led to his election to the Board and allowed him to breach his fiduciary duties to the Company. As a trusted Company director, he conducted little, if any, oversight of the scheme to make false and misleading

statements, consciously disregarded his duties to monitor such controls over reporting and engagement in the scheme, and consciously disregarded his duties to protect corporate assets. For these reasons, Defendant Gates breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon him is futile and, therefore, excused.

212. Additional reasons that demand on Defendant Kowitz is futile follow. Defendant Kowitz has served as a Company director since October 2020. He also serves as a member of the Compensation Committee. Defendant Kowitz has received and continues to receive significant compensation for his role as a director as described herein. He benefited from the Proxy Statement, containing false and misleading statements, which led to his election to the Board and allowed him to breach his fiduciary duties to the Company. As a trusted Company director, he conducted little, if any, oversight of the scheme to make false and misleading statements, consciously disregarded his duties to monitor such controls over reporting and engagement in the scheme, and consciously disregarded his duties to protect corporate assets. For these reasons, Defendant Kowitz breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon him is futile and, therefore, excused.

213. Defendants Feldman, Reiss, and Rucidlo (the "Audit Committee Defendants") served as members of the Audit Committee. Pursuant to the Company's Audit Committee Charter, the Audit Committee Defendants are responsible for overseeing, among other things, the integrity of the Company's financial statements, the Company's internal accounting and financial controls, the Company's risk management and assessment pertaining to, *inter alia*, the financial, operational, accounting, and tax matters of the Company, including data privacy and security, the organization and performance of the Company's internal audit function, and the Company's

compliance with legal and regulatory requirements. The Audit Committee Defendants failed to fulfill these obligations, as they are charged to do under the Audit Committee Charter, allowing the Company to issue materially false and misleading statements to the public during the Relevant Period and to fail to maintain internal controls. Thus, the Audit Committee Defendants breached their fiduciary duties, are not disinterested, and demand is excused as to them.

214. The Directors have longstanding business and personal relationships with each other and the Individual Defendants that preclude them from acting independently and in the best interests of the Company and the shareholders. For instance, Defendants Hamamoto and Feldman have concurrently served on the board of directors and/or as managers of the same companies over the course of the past decade. Defendant Hamamoto served as Executive Chairman of NorthStar Asset Management Group while Defendant Feldman concurrently served as a managing director. Defendant Hamamoto and Defendant Feldman also had overlapping tenures at Colony Capital, Inc., and NorthStar Realty Finance Corp. Furthermore, Defendants Strand and Rucidlo worked together at Workhorse, where Defendant Burns was the founder, former CEO, and former CFO and where Defendant Rodriguez also worked in various executive capacities. These conflicts of interest precluded the Directors from adequately monitoring the Company's operations and internal controls and calling into question the Individual Defendants' conduct. Thus, the Directors face a substantial likelihood of liability and demand is futile as to them.

215. In violation of the Code of Conduct and the Audit Committee Charter, the Directors conducted little, if any, oversight of the Company's internal controls over public reporting, and of the Company's engagement in the Individual Defendants' scheme to issue materially false and misleading statements to the public and facilitate and disguise the Individual Defendants' violations of law, including breaches of fiduciary duty, unjust enrichment, gross mismanagement,

abuse of control, waste of corporate assets, violations of the Exchange Act, and the claims alleged in the Securities Class Actions. In violation of the Code of Conduct and the Audit Committee Charter, the Directors failed to comply with laws and regulations, maintain the accuracy of company records, public reports and communications, and uphold the responsibilities related thereto. Thus, the Directors face a substantial likelihood of liability and demand is futile as to them.

216. Lordstown has been and will continue to be exposed to significant losses due to the wrongdoing complained of herein, yet the Directors have not filed any lawsuits against themselves or others who were responsible for that wrongful conduct to attempt to recover for Lordstown any part of the damages Lordstown suffered and will continue to suffer thereby. Thus, any demand upon the Directors would be futile.

217. The Individual Defendants' conduct described herein and summarized above could not have been the product of legitimate business judgment as it was based on bad faith and intentional, reckless, or disloyal misconduct. Thus, none of the Directors can claim exculpation from their violations of duty pursuant to the Company's charter (to the extent such a provision exists). As a majority of the Directors face a substantial likelihood of liability, they are self-interested in the transactions challenged herein and cannot be presumed to be capable of exercising independent and disinterested judgment about whether to pursue this action on behalf of the shareholders of the Company. Accordingly, demand is excused as being futile.

218. The acts complained of herein constitute violations of fiduciary duties owed by Lordstown officers and directors, and these acts are incapable of ratification.

219. The Directors may also be protected against personal liability for their acts of mismanagement and breaches of fiduciary duty alleged herein by directors' and officers' liability insurance if they caused the Company to purchase it for their protection with corporate funds, i.e.,

monies belonging to the stockholders of Lordstown. If there is a directors' and officers' liability insurance policy covering the Directors, it may contain provisions that eliminate coverage for any action brought directly by the Company against the Directors, known as, *inter alia*, the "insured-versus-insured exclusion." As a result, if the Directors were to sue themselves or certain of the officers of Lordstown, there would be no directors' and officers' insurance protection. Accordingly, the Directors cannot be expected to bring such a suit. On the other hand, if the suit is brought derivatively, as this action is brought, such insurance coverage, if such an insurance policy exists, will provide a basis for the Company to effectuate a recovery. Thus, demand on the Directors is futile and, therefore, excused.

220. If there is no directors' and officers' liability insurance, then the Directors will not cause Lordstown to sue the Individual Defendants named herein, since, if they did, they would face a large uninsured individual liability. Accordingly, demand is futile in that event, as well.

221. Thus, for all of the reasons set forth above, all of the Directors, and, if not all of them, at least four of the Directors, cannot consider a demand with disinterestedness and independence. Consequently, a demand upon the Board is excused as futile.

FIRST CLAIM

Against Defendants Hamamoto, Hannaway, Hash, Richardson, and Walsh for Violations of Section 14(a) of the Exchange Act

222. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

223. Section 14(a) of the Exchange Act, 15 U.S.C. § 78n(a)(1), provides that "[i]t shall be unlawful for any person, by use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, in contravention of such rules and regulations as the [SEC] may prescribe as necessary or appropriate in the public

interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered pursuant to section 12 of this title [15 U.S.C. § 78l]."

224. Rule 14a-9, promulgated pursuant to § 14(a) of the Exchange Act, provides that no proxy statement shall contain "any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading." 17 C.F.R. § 240.14a-9.

225. Under the direction and watch of the Defendants Hamamoto, Hannaway, Hash, Richardson, and Walsh, the Proxy Statement failed to disclose, *inter alia*: (1) contrary to the Proxy Statement's description of DiamondPeak's Audit Committee's responsibilities, DiamondPeak's Audit Committee was not adequately exercising these functions, was causing or permitting DiamondPeak to issue false and misleading statements, and the Individual Defendants on the Board and the Audit Committee at that time were breaching their fiduciary duties; (2) the Individual Defendants on the Board at that time who were breaching their fiduciary duties were improperly interested in increasing their unjust compensation by seeking shareholder approval of the 2020 Plan; and (3) contrary to the Proxy Statement's description regarding the risk oversight function of the Board upon closing of the Merger, the Board upon closing of the Merger would utterly fail in the administration of its risk oversight function, resulting in the Individual Defendants' misconduct and breach of their fiduciary duties.

226. Furthermore, under the direction of the Defendants Hamamoto, Hannaway, Hash, Richardson, and Walsh, the Proxy Statement failed to disclose, *inter alia*: (1) the Company's purported pre-orders were non-binding; (2) a significant number of purported pre-orders were

fabricated and placed by individuals and companies without the financial means to purchase large orders of Endurance trucks; (3) Defendants paid a consulting group to artificially inflate the demand for Endurance pre-orders; (4) the Company is not and has not been "on track" to start production of Endurance in September 2021; (5) the Company misrepresented the development of its hub motor and battery technology; and (6) the Company failed to maintain internal controls. As a result of the foregoing, the Company's public statements were materially false and misleading at all relevant times.

227. In the exercise of reasonable care, the Individual Defendants should have known that by misrepresenting or failing to disclose the foregoing material facts, the statements contained in the Proxy Statement were materially false and misleading. The misrepresentations and omissions were material to Plaintiff in voting on the matters set forth for shareholder determination in the Proxy Statement, including, but not limited to, approval of the Merger and the approval of the 2020 Plan, allowing the Individual Defendants to receive further unjust compensation.

228. The false and misleading elements of the Proxy Statement also led to, *inter alia*, the election of Defendants Burns, Strand, Feldman, Gates, Hamamoto, Kowitz, Reiss, Rucidlo, and Spencer, which allowed them to breach their fiduciary duties to the Company.

229. The Company was damaged as a result of Defendants Hamamoto, Hannaway, Hash, Richardson, and Walsh's material misrepresentations and omissions in the Proxy Statement.

230. Plaintiff on behalf of Lordstown has no adequate remedy at law.

SECOND CLAIM

Against the Individual Defendants for Violations of Section 10(b) and Rule 10b-5 of the Exchange Act

231. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

232. The Individual Defendants participated in a scheme to defraud with the purpose and effect of defrauding Lordstown. Not only is Lordstown now defending claims that it violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, but the Company itself is also a victim of the unlawful scheme perpetrated upon Lordstown by the Individual Defendants.

233. The Individual Defendants employed devices, schemes and artifices to defraud while in possession of adverse, material, non-public information and engaged in acts, practices and a course of conduct that included the making of, or participation in the making of, untrue and/or misleading statements of material facts and/or omitting to state material facts necessary in order to make the statements made about Lordstown not misleading.

234. The Individual Defendants, as top executives and directors of the Company, are liable as direct participants in the wrongs complained of herein. Through their positions of control and authority as directors and officers of the Company, the Individual Defendants were able to and did control the conduct complained of herein and the content of the public statements disseminated by Lordstown. The Individual Defendants acted with scienter during the Relevant Period, in that they either had actual knowledge of the schemes and the misrepresentations and/or omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose the true facts, even though such facts were available to them. The Individual Defendants were the top executives of the Company, or received direct briefings from them, and were therefore directly responsible for the schemes set forth herein and for the false and misleading statements and/or omissions disseminated to the public through filings with the SEC.

235. By virtue of the foregoing, the Individual Defendants have violated § 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

236. Plaintiff on behalf of Lordstown has no adequate remedy at law.

THIRD CLAIM

Against the Individual Defendants for Violations of Section 20(a) of the Exchange Act

237. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

238. The Individual Defendants, by virtue of their positions with Lordstown and their specific acts, were, at the time of the wrongs alleged herein, controlling persons of Lordstown and each of its officers and directors who made the false and misleading statements alleged herein within the meaning of § 20(a) of the Exchange Act. The Individual Defendants had the power and influence and exercised the same to cause Lordstown and the other Individual Defendants to engage in the illegal conduct and practices complained of herein and violate § 10(b) of the Exchange Act.

239. Plaintiff on behalf of Lordstown has no adequate remedy at law.

FOURTH CLAIM

Against Individual Defendants for Breach of Fiduciary Duties

240. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

241. Each Individual Defendant owed to the Company the duty to exercise candor, good faith, and loyalty in the management and administration of Lordstown's business and affairs.

242. Each of the Individual Defendants violated and breached his or her fiduciary duties of candor, good faith, loyalty, reasonable inquiry, oversight, and supervision.

243. The Individual Defendants' conduct set forth herein was due to their intentional or reckless breach of the fiduciary duties they owed to the Company, as alleged herein. The Individual Defendants intentionally or recklessly breached or disregarded their fiduciary duties to protect the

rights and interests of Lordstown.

244. In breach of their fiduciary duties owed to Lordstown, the Individual Defendants also willfully or recklessly made and/or caused the Company to make false and misleading statements and omissions of material fact that failed to disclose, *inter alia*, that: (1) the Company's purported pre-orders were non-binding; (2) a significant number of purported pre-orders were fabricated and placed by individuals and companies without the financial means to purchase large orders of Endurance trucks; (3) Defendants paid a consulting group to artificially inflate the demand for Endurance pre-orders; (4) the Company is not and has not been "on track" to start production of Endurance in September 2021; (5) the Company misrepresented the development of its hub motor and battery technology; and (6) the Company failed to maintain internal controls. As a result of the foregoing, the Company's public statements were materially false and misleading at all relevant times.

245. The Individual Defendants failed to correct and/or caused the Company to fail to rectify any of the wrongs described herein or correct the false and misleading statements and omissions of material fact referenced herein, rendering them personally liable to the Company for breaching their fiduciary duties.

246. In further breach of their fiduciary duties, the Individual Defendants failed to maintain an adequate system of oversight, disclosure controls and procedures, and internal controls.

247. Moreover, during the Relevant Period, six of the Individual Defendants breached their fiduciary duties by engaging in insider sales for proceeds in excess of $28 million.

248. The Individual Defendants had actual or constructive knowledge that they had caused the Company to improperly engage in the fraudulent scheme set forth herein and to fail to

maintain adequate internal controls. The Individual Defendants had actual knowledge that the Company was engaging in the fraudulent scheme set forth herein, and that internal controls were not adequately maintained, or acted with reckless disregard for the truth, in that they caused the Company to improperly engage in the fraudulent scheme and to fail to maintain adequate internal controls, even though such facts were available to them. Such improper conduct was committed knowingly or recklessly and for the purpose and effect of artificially inflating the price of the Company's securities, and engaging in insider sales. The Individual Defendants, in good faith, should have taken appropriate action to correct the schemes alleged herein and to prevent them from continuing to occur.

249. These actions were not a good-faith exercise of prudent business judgment to protect and promote the Company's corporate interests.

250. As a direct and proximate result of the Individual Defendants' breaches of their fiduciary obligations, Lordstown has sustained and continues to sustain significant damages. As a result of the misconduct alleged herein, the Individual Defendants are liable to the Company.

251. Plaintiff on behalf of Lordstown has no adequate remedy at law.

FIFTH CLAIM

Against Individual Defendants for Unjust Enrichment

252. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

253. By their wrongful acts, violations of law, and false and misleading statements and omissions of material fact that they made and/or caused to be made, the Individual Defendants were unjustly enriched at the expense of, and to the detriment of, Lordstown.

254. The Individual Defendants either benefited financially from the improper conduct or received unjustly lucrative bonuses tied to the false and misleading statements, or received

bonuses, stock options, or similar compensation from Lordstown that was tied to the performance or artificially inflated valuation of Lordstown, or received compensation that was unjust in light of the Individual Defendants' bad faith conduct. This includes compensation received under the 2020 Plan, which certain Individual Defendants induced the Company's shareholders to approve through false and misleading representations.

255. Plaintiff, as a shareholder and a representative of Lordstown, seeks restitution from the Individual Defendants and seeks an order from this Court disgorging all profits—including from insider sales, benefits, and other compensation, including any performance-based or valuation-based compensation—obtained by the Individual Defendants due to their wrongful conduct and breach of their fiduciary duties.

256. Plaintiff on behalf of Lordstown has no adequate remedy at law.

SIXTH CLAIM

Against the Individual Defendants for Abuse of Control

257. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

258. The Individual Defendants' misconduct alleged herein constituted an abuse of their ability to control and influence Lordstown, for which they are legally responsible.

259. As a direct and proximate result of the Individual Defendants' abuse of control, Lordstown has sustained significant damages. As a result of the misconduct alleged herein, the Individual Defendants are liable to the Company.

260. Plaintiff on behalf of Lordstown has no adequate remedy at law.

SEVENTH CLAIM

Against the Individual Defendants for Gross Mismanagement

261. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

262. By their actions alleged herein, the Individual Defendants, either directly or through aiding and abetting, abandoned and abdicated their responsibilities and fiduciary duties with regard to prudently managing the assets and business of Lordstown in a manner consistent with the operations of a publicly-held corporation.

263. As a direct and proximate result of the Individual Defendants' gross mismanagement and breaches of duty alleged herein, Lordstown has sustained and will continue to sustain significant damages.

264. As a result of the misconduct and breaches of duty alleged herein, the Individual Defendants are liable to the Company.

265. Plaintiff on behalf of Lordstown has no adequate remedy at law.

EIGHTH CLAIM

Against Individual Defendants for Waste of Corporate Assets

266. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein.

267. As a result of the foregoing, and by failing to properly consider the interests of the Company and its public shareholders, Defendants have caused Lordstown to waste valuable corporate assets, to incur many millions of dollars of legal liability and costs to defend unlawful actions, and to lose financing from investors and business from future customers who no longer trust the Company and its products.

268. As a result of the waste of corporate assets, the Individual Defendants are each

liable to the Company.

269. Plaintiff on behalf of Lordstown has no adequate remedy at law.

NINTH CLAIM

Against Defendants Burns, Brown, Fabian, Hamamoto, Hannaway, Hash, Post, Richardson, Rodriguez, Schmidt, and Walsh for Contribution Under Sections 10(b) and 21D of the Exchange Act

270. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

271. Defendants Burns, Brown, Fabian, Hamamoto, Hannaway, Hash, Post, Richardson, Rodriguez, Schmidt, and Walsh are each named as defendants in at least one, if not many, of the Securities Class Actions, which variously assert claims under the federal securities laws for violations of Sections 10(b), 14(a), 20(a), and 20A of the Exchange Act, as well as Rules 10b-5 and 14a-9 promulgated thereunder. If and when the Company is found liable in the Securities Class Actions for these violations of the federal securities laws, the Company's liability will be in whole or in part due to Defendants Burns', Brown's, Fabian's, Hamamoto's, Hannaway's, Hash's, Post's, Richardson's, Rodriguez's, Schmidt's, and Walsh's willful and/or reckless violations of their obligations as controlling shareholder, officers, and/or directors of Lordstown.

272. Defendants Burns, Brown, Fabian, Hamamoto, Hannaway, Hash, Post, Richardson, Rodriguez, Schmidt, and Walsh, because of their positions of control and authority as controlling shareholder, officers, and/or directors of Lordstown, were able to and did, directly and/or indirectly, exercise control over the business and corporate affairs of Lordstown, including the wrongful acts complained of herein and in the Securities Class Actions.

273. Accordingly, Defendants Burns, Brown, Fabian, Hamamoto, Hannaway, Hash, Post, Richardson, Rodriguez, Schmidt, and Walsh are liable under 15 U.S.C. § 78j(b), which creates a private right of action for contribution, and Section 21D of the Exchange Act, 15 U.S.C.

§ 78u-4(f), which governs the application of a private right of action for contribution arising out of violations of the Exchange Act.

274. As such, Lordstown is entitled to receive all appropriate contribution or indemnification from Defendants Burns, Brown, Fabian, Hamamoto, Hannaway, Hash, Post, Richardson, Rodriguez, Schmidt, and Walsh.

PRAYER FOR RELIEF

275. FOR THESE REASONS, Plaintiff demands judgment in the Company's favor against all Individual Defendants as follows:

(a) Declaring that Plaintiff may maintain this action on behalf of Lordstown, and that Plaintiff is an adequate representative of the Company;

(b) Declaring that the Individual Defendants have breached and/or aided and abetted the breach of their fiduciary duties to Lordstown;

(c) Determining and awarding to Lordstown the damages sustained by it as a result of the violations set forth above from each of the Individual Defendants, jointly and severally, together with pre-judgment and post-judgment interest thereon;

(d) Directing Lordstown and the Individual Defendants to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with applicable laws and to protect Lordstown and its shareholders from a repeat of the damaging events described herein, including, but not limited to, putting forward for shareholder vote the following resolutions for amendments to the Company's Bylaws or Certificate of Incorporation and the following actions as may be necessary to ensure proper corporate governance policies:

1. a proposal to strengthen the Board's supervision of operations and develop and implement procedures for greater shareholder input into the policies and guidelines of the Board;

2. a provision to permit the shareholders of Lordstown to nominate at least four candidates for election to the Board; and

3. a proposal to ensure the establishment of effective oversight of compliance with applicable laws, rules, and regulations.

(e) Awarding Lordstown restitution from the Individual Defendants, and each of them;

(f) Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and experts' fees, costs, and expenses; and

(g) Granting such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

/s/ David N. Truman
One of the attorneys for Plaintiff

Dated: June 30, 2021

Respectfully submitted,

/s/David N. Truman
David N. Truman (0082347)
david@ekrtlaw.com
Stuart G. Torch (0079667)
stuart@ekrtlaw.com
Christina M. Royer (0073695)
chris@ekrtlaw.com
ELFVIN, KLINGSHIRN, ROYER & TORCH, LLC
4700 Rockside Road, Suite 530
Independence, Ohio 44131
216.382.2500 (voice)
216.381.0250 (facsimile)

Local Counsel for Plaintiff

/s/Timothy Brown
THE BROWN LAW FIRM, P.C.
Timothy Brown (New York Bar No. 4301495)
767 Third Avenue, Suite 2501
New York, NY 10017
Tel: (516) 922-5427
Fax: (516) 344-6204
tbrown@thebrownlawfirm.net

PRO HAC VICE ADMISSION ANTICIPATED
Lead Counsel for Plaintiff

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re LORDSTOWN MOTORS CORP. SHAREHOLDER DERIVATIVE LITIGATION	Lead Case No. 1:21-cv-00604 LPS (Consolidated with Case Nos. 1:21-cv-00724 and 1:21-cv-00910)
This Document Relates To: ALL ACTIONS	

CONSOLIDATED VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT FOR VIOLATIONS OF FEDERAL SECURITIES LAWS, BREACH OF FIDUCIARY DUTY, AND UNJUST ENRICHMENT

Plaintiffs Daniel J. Cohen, David M. Cohen, Alicia Kelley, Herbert Stotler, Claude L. Patterson, and Evaristo Sarabia (together, "Plaintiffs"), by their attorneys, submit this Consolidated Verified Stockholder Derivative Complaint for (i) violations of §§ 14(a) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act"); (ii) contribution for violations of §§ 10(b) and 21D of the Exchange Act; (iii) Breach of Fiduciary Duties; (iv) Insider Selling; and (v) Unjust Enrichment derivatively for the benefit of Nominal Defendant Lordstown Motors Corp. ("Lordstown," or the "Company"). Plaintiffs base their allegations on personal knowledge and, as to all other matters outside their personal knowledge, upon information and belief based on the investigation of counsel, which includes without limitation: (i) review and analysis of public filings with the United States Securities and Exchange Commission ("SEC"); (ii) review and analysis of filings in federal court, including pleadings in the related securities fraud class action *Rico v. Lordstown Motors Corp. et al*., No. 4:21-cv-00616, (the "Securities Class Action);[1] and (iii) review and analysis of

[1] *Palumbo v. Lordstown Motors Corp. et al.*, No. 4:21-cv-00633, *Zuod v. Lordstown Motors Corp. et al.*, No. 4:21-cv-00720, *Brury v. Lordstown Motors Corp. et al.*, No 4:21-cv-00760 were consolidated with *Rico* the United States District Court for the Northern District of Ohio on April 13, 2021. *Rico*, ECF. No. 9.

press releases, news reports, analyst reports, industry reports, investor conference call transcripts and slides, and other information available in the public domain.

I. INTRODUCTION

1. This is a stockholder derivative action brought on behalf of and for the benefit of Lordstown against certain of the Company's (and its predecessor's) officers and directors seeking to remedy their violations of the federal securities laws, breaches of fiduciary duty, and unjust enrichment. Defendants' actions have caused substantial financial and reputational harm to Lordstown.

2. Lordstown is an automotive company that develops and manufactures light duty electric vehicle ("EV") trucks targeted for sale to fleet customers. Its flagship vehicle is called "Endurance," an electric full-size pickup truck.

3. DiamondPeak Holdings Corp. ("DiamondPeak") was a special purpose acquisition company ("SPAC")—sometimes called a "blank check" company—formed for the sole purpose of acquiring an existing business. DiamondPeak, which had no commercial operations of its own, went public in its February 2019 initial public offering ("IPO") raising more than $250 million, with its shares trading on the NASDAQ stock exchange under the ticker symbol "DPHC." At the time, DiamondPeak stated that it would "focus [its] search for a target business with a real estate related component" and "with an enterprise value of between $350 million and $2.0 billion." Under the terms of its IPO, DiamondPeak was required to redeem all its publicly traded shares if it failed to complete a business combination within two years of the offering.

4. With time running out on its two-year window to complete a business combination, DiamondPeak identified its acquisition target in the fall of 2020: Lordstown. Founded in 2019, Lordstown sought to design, manufacture, and sell the first mass-produced, light duty electric pickup truck. Shortly after founding, the Company acquired a recently shuttered six million

square-foot factory from General Motors in Lordstown, Ohio that had once employed more than 10,000 workers. Lordstown Motors was therefore viewed by many as the savior of this Northern Ohio region after it promised to transform the Mahoning Valley into the epicenter of electric vehicle production, which it dubbed "Voltage Valley." In June 2020, Lordstown revealed its flagship "Endurance" electric pickup truck in a highly publicized ceremony attended by then-Vice President of the United States Michael R. Pence.

5. On August 3, 2020, DiamondPeak and Lordstown announced that they had entered into a merger agreement through which Lordstown would become a publicly traded company (the "Merger"). Upon closing of the Merger, DiamondPeak would be renamed "Lordstown Motors Corp." and would continue to be listed on the NASDAQ and trade under the new ticker symbol, "RIDE." The Merger, however, would only close if it received the approval of the majority of DiamondPeak's voting shares.

6. In connection with the Merger announcement, DiamondPeak and Lordstown trumpeted the reported 27,000 pre-orders for the Endurance, representing $1.4 billion in potential revenue, which they touted as evidence of the significant demand for the electric truck by fleet customers. They also stated that the Endurance was on track for commercial production in the second half of 2021.

7. Thereafter, DiamondPeak and Lordstown continued to promote the Merger. For example, in a September 17, 2020 presentation to analysts and investors, they touted a "Working Prototype" and claimed that Lordstown had received "significant pre-orders" for about 40,000 trucks which represented "potential revenue sufficient to cover production into 2023." They also set forth a timeline for commercial production of the Endurance beginning in third quarter 2021.

8. On October 8, 2020, DiamondPeak announced that it would hold a Special Meeting of its stockholders to vote on the proposed Merger on October 22, 2020. Two weeks later, DiamondPeak shareholders approved the Merger at the Special Meeting. On October 23, 2020, Lordstown and DiamondPeak issued a press release announcing the successful stockholder vote, the closing of the business combination, and that beginning on October 26, 2020, the combined company's shares would trade on the NASDAQ.

9. Post-Merger, Lordstown continued to aggressively promote its business to bolster its ongoing efforts to raise additional capital. In an interview published on October 26, 2020, just days after the stockholder vote, Lordstown's founder and then-Chief Executive Officer ("CEO") Stephen S. Burns ("Burns") bragged about the Company's 40,000 pre-orders, stating that he "was surprised that the truck has attracted so much attention this soon," and attributing the success to "a pent-up demand."

10. On November 12, 2020, Lordstown filed a Registration Statement on Form S-1 with the SEC, in which the Company announced its intent to sell additional shares of Lordstown Class A common stock and warrants, raising an additional $182 million in capital. The "Selling Shareholders"—including most of the Individual Defendants (defined below)—registered for sale more than $2.4 billion of their individual holdings of Lordstown common stock and warrants.

11. On November 16, 2020, Lordstown issued a press release announcing that it "Remains on Track to Begin Production of the Lordstown Endurance in September 2021," and highlighting that the Company had now reached 50,000 pre-orders. Several weeks later, on December 21, 2020, Lordstown claimed 80,000 pre-orders and reaffirmed that it was "on track" to commence production of the Endurance by September 2021.

12. On January 11, 2021, Lordstown issued a press release announcing that it had "surpasse[d] 100,000 pre-orders for the Lordstown Endurance." In this release, Defendant Burns stated: "[r]eceiving 100,000 pre-orders from commercial fleets for a truck like the Endurance is unprecedented in automotive history . . . . Adding in the interest we have from federal, state, municipal and military fleets on top of that, I think you can see why we feel that we are about to revolutionize the pickup truck industry." This press release further provided that "Lordstown is now building the first Beta Endurance vehicles and is on track for start of production in September of this year."

13. The following month, on February 23, 2021, Defendant Burns stated: "our initial foray is into fleets, and we have pre-sold 100,000 of these vehicles to various fleets across America. So really a big appetite." He again confirmed that production for the Endurance was set to begin in September.

14. But then, on March 12, 2021, Lordstown's smooth ride came to a screeching halt. Analyst Hindenburg Research published a scathing report on Lordstown entitled: "The Lordstown Motors Mirage: Fake Orders, Undisclosed Production Hurdles, and a Prototype Inferno" (the "Hindenburg Report").[2] As alleged in greater detail below, Hindenburg revealed that Lordstown has "no revenue and no sellable product," and wrote that the Company "has misled investors on both its demand and production capabilities." The Hindenburg Report concluded that Lordstown's "orders are largely fictitious and used as a prop to raise capital and confer legitimacy," and that a former employee "explained how the company is experiencing delays and making 'drastic' design modifications, putting [Lordstown] an estimated 3-4 years away from production," rather than the Company being "on track" for a September 2021 production start.

[2] Available at https://hindenburgresearch.com/lordstown/ (last visited 8/25/2021).

15. On this news, the price of Lordstown common stock crashed more than 16% in a single day, down from its March 11, 2021 closing price of $17.71 per share to a March 12, 2021 close of just $14.78 per share. This drop represented more than $517 million in lost market capitalization.

16. Then, on March 17, 2021, the Company held an earnings call on which Defendant Burns belatedly disclosed that Lordstown was being probed by the SEC. The SEC's initial inquiry had occurred a full month earlier, on February 17, 2021, when Lordstown received a request for the voluntary production of documents and information relating to the Merger and the Company's claimed pre-orders for the Endurance truck. On this news, Lordstown's stock price fell another 13%, erasing an additional $367 million in market capitalization.

17. When interviewed on *CNBC* on the morning of March 18, 2021 before the opening of trading, Defendant Burns claimed that the Company had "never said we had orders," and admitted that the Company "[didn't] have a product yet," adding that "[b]y definition we can't have orders." He added: "I don't think anybody thought we had actual orders. That's just not the nature of this business."

18. Then, on March 24, 2021, Hindenburg Research published some "behind the scenes" pictures of the Endurance truck breaking down, which were reportedly taken during the filming of an Endurance commercial during the summer of 2020. One of the pictures, posted to Twitter, shows the Endurance loaded onto a tow truck. Hindenburg added that "[a]n onlooker explained that the Endurance broke down on the road mid-shoot, with workers struggling to push it onto a truck before calling a tow truck." In response, Lordstown's stock price fell nearly 10%, erasing an additional $213 million in stockholder value.

19. On June 14, 2021, defendants caused the Company to issue a press release via Form 8-K filed with the SEC announcing that, "pursuant to mutual agreements with the Company, [Burns] resigned as the [CEO] of the Company and from the Company's [Board]." The release further announced that "Julio Rodriguez [had] resigned as Chief Financial Officer of the Company."

20. But the departure of the CEO and Chief Financial Officer did not stop senior executives from continuing to issue false and misleading statements. In a June 17, 2021 press release, defendants caused the Company to admit that statements made at an Automotive Press Association online media event by Defendant Phil Richard Schmidt ("Schmidt") that the Company had "firm" and "binding" orders sufficient for limited production of the Endurance for 2021 and 2022 were categorically false. The press release stated that "we have engaged in limited marketing activities and we have no binding purchase orders or commitments from customers."

21. Finally, on July 15, 2021, defendants caused Lordstown to reveal in a regulatory filing that the United Stated Department of Justice ("DOJ"), acting through the United States Attorney's Office for the Southern District of New York, had also initiated an investigation into the Merger and pre-orders of vehicles.

22. The Individual Defendants are responsible for making and/or allowing false and misleading statements, thereby misleading Company stockholders and investors, violating state and federal securities laws, and breaching their fiduciary duties. As a direct result, Lordstown has suffered significant damage. In addition to the SEC and DOJ investigations, the Company expended significant funds to compensating officers and directors who were breaching their fiduciary duties. Lordstown now also faces the Securities Class Action alleging that the Company and Defendants Burns, Schmidt, Julio C. Rodriguez, and Michael Fabian violated Sections 10(b)

and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act"). The cases seek to recover hundreds of millions of dollars on behalf of stockholders who purchased or acquired the common stock of Lordstown (or its predecessor company, DiamondPeak) between August 3, 2020 and March 24, 2021, inclusive.

23. Due to the Lordstown Board of Directors' (the "Board") direct involvement in the wrongdoing, the substantial likelihood of liability its members face, and its members' lack of independence, any demand upon the Board to rectify this wrongdoing would be a wasteful and useless act. Accordingly, Plaintiffs now bring this action to remedy the harm to Lordstown caused by Defendants' faithless actions.

24. At least half of the Company's current Board could not disinterestedly and independently respond to a litigation demand in connection with the misleading representations because, among other things, the entire Board is beholden to Defendant Burns who nominated a majority of the directors on the Board and therefore would not take action against him. As a result, a majority of the Board could not disinterestedly investigate whether their conduct constituted breaches of fiduciary duties under Delaware law.

II. JURISDICTION AND VENUE

25. Pursuant to 28 U.S.C. § 1331 and Section 27 of the Exchange Act (15 U.S.C. § 78aa), this Court has jurisdiction over the claims asserted herein for violations of Sections 10(b), 14(a), and 20(a) of the Exchange Act. This Court has supplemental jurisdiction over the remaining claims under 28 U.S.C. § 1367. This action is not a collusive one to confer jurisdiction on a court of the United States which it would not otherwise have.

26. This Court has personal jurisdiction over each of the Defendants because each Defendant has expressly or implicitly consented to personal jurisdiction through, among other things, Lordstown's forum selection clause which requires that the sole and exclusive forum for a

stockholder derivative action is a Delaware state or federal court. Additionally, each Defendant is either a Delaware corporation or an individual who is either present in this District for jurisdictional purposes or has, directly and indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the United States mails, interstate telephone communications, and the facilities of the national securities exchanges and markets, such that each Defendant has sufficient minimum contacts with this District so as to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

27. Venue is proper in this jurisdiction pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1391(b) because Lordstown is a Delaware corporation, and this action is governed by a forum selection clause which requires that the sole and exclusive forum for a stockholder derivative action is a Delaware state or federal court.

III. PARTIES

A. Plaintiffs

28. Plaintiffs Daniel J. Cohen and David M. Cohen are current stockholders of Lordstown and have continuously owned such shares in Lordstown (and its predecessor company, DiamondPeak), since at least August 3, 2020 and August 27, 2020, respectively.

29. Plaintiff Alicia Kelley is a current stockholder of Lordstown and has continuously owned such shares since November 2020.

30. Plaintiff Herbert Stotler is a current stockholder of Lordstown and has continuously owned such shares since November 2020.

31. Plaintiff Claude L. Patterson is a current stockholder of Lordstown and has continuously owned such shares since October 2020.

32. Plaintiff Evaristo Sarabia is a current stockholder of Lordstown and has continuously owned such shares since December 2020.

B. Nominal Defendant

33. Nominal Defendant Lordstown is an automotive company founded for the purpose of developing and manufacturing light duty electric trucks targeted for sale to fleet customers. Lordstown is incorporated under the laws of the State of Delaware with its principal executive offices located at 2300 Hallock Young Road, Lordstown, Ohio 44481.

34. Shares of Lordstown common stock trade on the NASDAQ stock exchange under the ticker "RIDE" on October 26, 2020. Lordstown's predecessor company, DiamondPeak, traded on the NASDAQ under the ticker symbol "DPHC."

C. Individual Defendants

35. Defendant Burns founded Lordstown in April 2019 and served as its Chairman of the Board and CEO from inception until his resignation on or about June 14, 2021. Burns was also the founder and former CEO of Workhorse Group Inc. ("Workhorse Group"), from which Lordstown later licensed certain intellectual property of Workhorse Group's W-15 pickup truck for use in the design and development of the Endurance. Burns is named as a defendant in the Securities Class Action that alleges he violated Sections 10(b) and 20(a) of the Exchange Act. Defendant Burns knowingly, recklessly, or with gross negligence made (or allowed to be made) improper statements in Lordstown's SEC filings, press releases, and other public statements. Defendant Burns also negligently violated Sections 14(a) and 20(a) of the Exchange Act by making improper statements in connection with the proxy solicitation of stockholder votes in favor of the Merger. In 2020, Lordstown paid Burns a total salary of $269,266. As of July 1, 2021, Burns beneficially owned 46,351,745 shares of Lordstown Class A common stock which was worth more than $479 million.

36. Defendant Schmidt has served as Lordstown's President since November 2020 and Chief Production Officer from October 2019 until October 2020. Schmidt is named as a defendant

in the Securities Class Action that alleges he violated Sections 10(b) and 20(a) of the Exchange Act. Defendant Schmidt knowingly, recklessly, or with gross negligence made (or allowed to be made) improper statements in Lordstown's SEC filings, press releases, and other public statements. In 2020, Lordstown paid Schmidt a total salary of $412,305. As of July 1, 2021, Schmidt beneficially owned 334,148 shares of Lordstown Class A common stock which was worth more than $3.4 million. Additionally, on December 11, 2020 and February 2-3, 2021, while the price of Lordstown's common stock was artificially inflated by the Individual Defendants' false and misleading public statements and omissions, and while Schmidt was in possession of material, adverse nonpublic information, he sold 263,412 shares of personally held Lordstown stock at artificially inflated prices for proceeds of $6,383,710.

37. Defendant Julio C. Rodriguez ("Rodriguez") served as Lordstown's Chief Financial Officer ("CFO") from September 2019 until on or about June 14, 2021. Previously, he served in several executive roles for Workhorse Group from August 2013 to August 2019. Rodriguez is named as a defendant in the Securities Class Action that alleges he violated Sections 10(b) and 20(a) of the Exchange Act. Defendant Rodriguez knowingly, recklessly, or with gross negligence made (or allowed to be made) improper statements in Lordstown's SEC filings, press releases, and other public statements. In 2019 and 2020, Lordstown paid Rodriguez a base salary of $250,000 per year plus stock options and other equity compensation. As of November 30, 2020, Rodriguez beneficially owned 568,437 shares of Lordstown Class A common stock which was worth $13.9 million. Additionally, on February 4, 2021, while the price of Lordstown's common stock was artificially inflated by the Individual Defendants' false and misleading public statements and omissions, and while Rodriguez was in possession of material, adverse nonpublic information,

he sold 9,300 shares of personally held Lordstown stock at artificially inflated prices for proceeds of $251,100.

38. Defendant Michael Fabian ("Fabian") serves as the Director of Stamping Operations of Lordstown since February 2020. Fabian is named as a defendant in the Securities Class Action that alleges he violated Sections 10(b) and 20(a) of the Exchange Act. Defendant Fabian knowingly, recklessly, or with gross negligence made (or allowed to be made) improper statements in Lordstown's public communications.

39. Defendant David T. Hamamoto ("Hamamoto") served as DiamondPeak's Chairman and CEO between November 2018 and October 2020, and has served as a director to its successor, Lordstown, since the Merger. Defendant Hamamoto knowingly, recklessly, or with gross negligence made (or allowed to be made) improper statements in Lordstown's (and its predecessor, DiamondPeak's) SEC filings, press releases, and other public statements. Defendant Hamamoto also negligently violated Sections 14(a) and 20(a) of the Exchange Act by making improper statements in connection with the proxy solicitation of stockholder votes in favor of the Merger. As of July 1, 2021, Hamamoto beneficially owned 4,229,135 shares of Lordstown Class A common stock and 1,826,396 warrants which were worth more than $64 million. Additionally, on October 22, 2020, while the price of Lordstown's common stock was artificially inflated by the Individual Defendants' false and misleading public statements and omissions, and while Hamamoto was in possession of material, adverse nonpublic information, he sold one million shares of personally held Lordstown stock at artificially inflated prices for proceeds of $16.38 million.

40. Defendant Mark A. Walsh ("Walsh") served as a director of DiamondPeak beginning prior to its IPO until the Merger closed on October 23, 2020. Walsh is a partner and co-

founder of Silverpeak, an alternative investment management firm that was part of a joint venture that controlled DiamondPeak's sponsor. Defendant Walsh knowingly, recklessly, or with gross negligence made (or allowed to be made) improper statements in Lordstown's (specifically its predecessor, DiamondPeak's) SEC filings, press releases, and other public statements. Defendant Walsh negligently violated Sections 14(a) and 20(a) of the Exchange Act by making improper statements in connection with the proxy solicitation of stockholder votes in favor of the Merger. As of November 30, 2020, Walsh beneficially owned 1,896,960 shares of Lordstown Class A common stock and 802,832 warrants which were worth more than $53 million. Walsh agreed to resign from DiamondPeak's board of directors upon the closing of the Merger.

41. Defendant Andrew C. Richardson ("Richardson") served as a director of DiamondPeak beginning prior to its IPO until the Merger closed on October 23, 2020. In connection with the Merger, Richardson received 88,357 founder shares of Class A common stock which were valued at more than $1.6 million at the time. Defendant Richardson knowingly, recklessly, or with gross negligence made (or allowed to be made) improper statements in Lordstown's (specifically its predecessor, DiamondPeak's) SEC filings, press releases, and other public statements. Defendant Richardson negligently violated Sections 14(a) and 20(a) of the Exchange Act by making improper statements in connection with the proxy solicitation of stockholder votes in favor of the Merger. Richardson agreed to resign from DiamondPeak's board of directors upon the closing of the Merger.

42. Defendant Steven R. Hash ("Hash") served as a director of DiamondPeak beginning prior to its IPO until the Merger closed on October 23, 2020. In connection with the Merger, Hash received 88,357 founder shares of Class A common stock which were valued at more than $1.6 million at the time. Defendant Hash knowingly, recklessly, or with gross

negligence made (or allowed to be made) improper statements in Lordstown's (specifically its predecessor, DiamondPeak's) SEC filings, press releases, and other public statements. Defendant Hash negligently violated Sections 14(a) and 20(a) of the Exchange Act by making improper statements in connection with the proxy solicitation of stockholder votes in favor of the Merger. Hash agreed to resign from DiamondPeak's board of directors upon the closing of the Merger.

43. Defendant Judith A. Hannaway ("Hannaway") served as a director of DiamondPeak beginning prior to its IPO until the Merger closed on October 23, 2020. In connection with the Merger, Hannaway received 88,357 founder shares of Class A common stock which were valued at more than $1.6 million at the time. Defendant Hannaway knowingly, recklessly, or with gross negligence made (or allowed to be made) improper statements in Lordstown's (specifically its predecessor, DiamondPeak's) SEC filings, press releases, and other public statements. Defendant Hannaway negligently violated Sections 14(a) and 20(a) of the Exchange Act by making improper statements in connection with the proxy solicitation of stockholder votes in favor of the Merger. Hannaway agreed to resign from DiamondPeak's board of directors upon the closing of the Merger.

44. Defendant Keith A. Feldman ("Feldman") has served as a Lordstown director and the Chair of the Board's Audit Committee since October 2020. Defendant Feldman knowingly, recklessly, or with gross negligence made (or allowed to be made) improper statements in Lordstown's SEC filings, press releases, and other public statements. As of July 1, 2021, Feldman beneficially owned 234,645 shares of Lordstown Class A common stock which was worth more than $2.4 million.

45. Defendant Jane Reiss ("Reiss") served as a director of (legacy) Lordstown from February 2020 until October 2020 and has served as a Company director and member of the

Board's Audit Committee since the Merger. Defendant Reiss knowingly, recklessly, or with gross negligence made (or allowed to be made) improper statements in Lordstown's SEC filings, press releases, and other public statements. Defendant Reiss also negligently violated Sections 14(a) and 20(a) of the Exchange Act by making improper statements in connection with the proxy solicitation of stockholder votes in favor of the Merger. In February 2020, in consideration of her service on (legacy) Lordstown's board of directors, Reiss was granted 2,500 stock options. As of July 1, 2021, Reiss beneficially owned 83,822 shares of Lordstown Class A common stock which was worth more than $867,000.

46. Defendant Dale G. Spencer ("Spencer") served as a director of (legacy) Lordstown from February 2020 until October 2020 and has served as a director of Lordstown since the Merger. Defendant Spencer knowingly, recklessly, or with gross negligence made (or allowed to be made) improper statements in Lordstown's SEC filings, press releases, and other public statements. Defendant Spencer also negligently violated Sections 14(a) and 20(a) of the Exchange Act by making improper statements in connection with the proxy solicitation of stockholder votes in favor of the Merger. In February 2020, in consideration of his service on (legacy) Lordstown board of directors, Spencer was granted 2,500 stock options. As of July 1, 2021, Spencer beneficially owned 83,822 shares of Lordstown Class A common stock which was worth more than $867,000.

47. Defendant Michael D. Gates ("Gates") has served as a Lordstown director since October 2020. Defendant Gates knowingly, recklessly, or with gross negligence made (or allowed to be made) improper statements in Lordstown's SEC filings, press releases, and other public statements. As of July 1, 2021, Gates beneficially owned 10,101 shares of Lordstown Class A common stock which was worth more than $104,000.

48. Defendant Mickey W. Kowitz ("Kowitz") has served as a Lordstown director since October 2020. Defendant Kowitz knowingly, recklessly, or with gross negligence made (or allowed to be made) improper statements in Lordstown's SEC filings, press releases, and other public statements. As of July 1, 2021, Kowitz beneficially owned 10,060 shares of Lordstown Class A common stock which was worth more than $104,000.

49. Defendant Angela Strand Boydston ("Strand Boydston") has served as a Lordstown director since October 2020 and Executive Chair of the Board since June 2021. Defendant Strand Boydston knowingly, recklessly, or with gross negligence made (or allowed to be made) improper statements in Lordstown's SEC filings, press releases, and other public statements.

50. Defendant Martin J. Rucidlo ("Rucidlo") has served as a Lordstown director and a member of the Board's Audit Committee since October 2020. Defendant Rucidlo knowingly, recklessly, or with gross negligence made (or allowed to be made) improper statements in Lordstown's SEC filings, press releases, and other public statements. As of July 1, 2021, Rucidlo beneficially owned 12,535 shares of Lordstown Class A common stock which was worth more than $129,000.

51. Defendants Burns, Schmidt, Rodriguez, and Fabian are the "Officer Defendants" or the "Securities Class Action Defendants." Defendants Burns, Hamamoto, Walsh, Richardson, Hash, Hannaway, Feldman, Reiss, Spencer, Gates, Kowitz, Strand Boydston, and Rucidlo are the "Director Defendants." Defendants Feldman, Reiss, and Rucidlo are the "Audit Committee Defendants." Defendants Hamamoto, Walsh, Richardson, Hash, Hannaway, Burns, Reiss, and Spencer are the "Proxy Defendants." The Officer Defendants and the Director Defendants are sometimes collectively referred to as the "Individual Defendants."

IV. SUBSTANTIVE ALLEGATIONS

A. DiamondPeak Goes Public as a SPAC and Acquires Lordstown

1. DiamondPeak

52. DiamondPeak was a blank check company or "SPAC" formed under the laws of the State of Delaware on November 13, 2018 for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization, or similar business combination with one or more businesses. DiamondPeak was led by Defendant Hamamoto, its CEO and Chairman. DiamondPeak's sponsor, DiamondPeak Sponsor LLC, was a joint venture between an entity controlled by Defendant Hamamoto (DHP SPAC Sponsor LLC) and an entity controlled by the principals of Silverpeak (SP SPAC Sponsor LLC), an alternative investment management firm, led by its partners, including Defendant Walsh.

53. On January 18, 2019, DiamondPeak filed for its $250 million IPO.

54. DiamondPeak's preliminary prospectus filed that day stated in part:

> We have not selected any business combination target and we have not, nor has anyone on our behalf, initiated any substantive discussions, directly or indirectly, with any business combination target. We intend to focus our search for a target business with a real estate related component.

55. DiamondPeak further stated that it was targeting a business "with an enterprise value of between $350 million and $2.0 billion."

56. The preliminary prospectus disclosed that "[i]f we are unable to complete our business combination within 24 months, we will redeem 100% of the public shares at a per-share price, payable in cash . . . ."

57. On February 27, 2019, the SEC declared effective DiamondPeak's registration statement for its IPO.

58. On March 4, 2019, DiamondPeak announced that it had closed its IPO of 25 million units at $10 per unit, resulting in gross proceeds of $250 million. Simultaneously with the closing of the IPO, DiamondPeak sold 4,666,667 warrants at a price of $1.50 per private placement warrant in a private placement, generating an additional $7 million in proceeds. On March 18, 2019, in connection with the underwriters' election to partially exercise their over-allotment option, DiamondPeak sold an additional 3 million units and an additional 400,000 private placement warrants, generating another $30.6 million in proceeds.

59. DiamondPeak's units were listed on the NASDAQ and commenced trading under the ticker symbol "DPHCU." Each unit consisted of one share of the company's Class A common stock and one-third of one redeemable warrant, each whole warrant enabling the holder thereof to purchase one share of Class A common stock at a price of $11.50 per share.

60. Even after the IPO, Defendants Hamamoto and Walsh exerted significant control over DiamondPeak. According to DiamondPeak's 2019 Form 10-K, which was filed on March 25, 2020, Defendants Hamamoto and Walsh beneficially owned 88.4% of DiamondPeak's Class B common stock (that is, 6,187,500 of 7,000,000 shares) as on March 20, 2020. Hamamoto owned an additional one million Class A common shares of 28 million outstanding as of March 20, 2020.

2. Lordstown

61. Lordstown was founded in 2019 as a private company by Defendant Burns, the former CEO of Workhorse Group.

62. On November 7, 2019, Lordstown became the owner of the recently shuttered General Motors plant located in Lordstown, Ohio, a 6.2 million square foot facility, after signing a sales agreement with automaker General Motors in May 2019. The General Motors Lordstown assembly plant had employed more than 10,000 workers in the early 1990s, and 4,200 workers

who had manufactured the Chevrolet Cruze through early 2019. General Motors provided a $40 million loan to Lordstown so it could purchase and retool the plant.

63. Lordstown touted itself as the savior of this Northeastern Ohio region after it promised to transform the Mahoning Valley (which was known as "Steel Valley") into the epicenter for electric vehicle production, which it dubbed "Voltage Valley."

64. In March 2020, Lordstown paid Burns' former company, Workhorse Group, $12 million dollars for the licensing rights to the intellectual property of Workhorse Group's W-15 light-duty electric pickup truck. Lordstown intended on developing its own electric pickup truck based upon Workhorse's design. As part of the business deal, Workhorse Group was given a 10% equity stake in Lordstown.

65. An April 21, 2020 blog post by Defendant Burns stated that Lordstown would begin delivering its Endurance electric pickup truck to commercial fleets in January 2021, after previously claiming to expect deliveries to begin in late 2020.

66. On May 22, 2020, a *The Detroit Free Press* article entitled "GM's former plant in Lordstown will return to mass vehicle production, thousands of jobs" reported that Defendant Burns "expects to employ 4,000 to 5,000 people in the plant in the near future based on demand for electric vehicles." Defendant Burns provided a first-year projected volume of 20,000 trucks based upon initial interest, stating, "I think we'll have well, well north of the 20,000 well spoken for. The demand side is super strong, I am starting to worry we won't be able to make them fast enough."

67. Lordstown unveiled the prototype of its flagship Endurance pickup truck during a live-stream event on June 25, 2020 from its Lordstown, Ohio headquarters to much fanfare, in a ceremony attended by Vice President Mike Pence. After riding inside an Endurance prototype,

Pence declared "the best days in Lordstown and Ohio and America are yet to come" and "Endurance isn't just the name of the pickup truck, endurance describes the character of the people of the Mahoning Valley."

68. Lordstown claimed that the Endurance's use of an in-wheel hub motor design would improve performance, efficiency, and safety, while providing a significant reduction in total cost of ownership. Further, Lordstown claimed to be the only manufacturer of full-size electric pickup trucks focused exclusively on the large commercial fleet market and that it expected to be the first to come to market with the innovative hub motor design. At the time, Lordstown stated that production would begin in early 2021 with deliveries commencing later that year. It also claimed to have a full year's worth of pre-orders on its books.

69. A July 31, 2020 article published at *AutoTrends.org* entitled "About the 2021 Lordstown Endurance" noted that the June 25, 2020 "news conference was scarce on tech details" about the truck and matters such as charging times, payload, available trims, and interior remained unknown. The article reported that Lordstown was targeting fleet buyers who were required "to purchase at least five trucks with a $1,000 refundable deposit each" and that Lordstown would begin manufacturing the truck in the summer of 2021.

3. DiamondPeak Acquires Lordstown

70. On August 3, 2020, DiamondPeak announced that it had entered into a definitive agreement for a business combination with Lordstown, which would result in Lordstown becoming a publicly traded company. The transaction was described as follows:

> **Transaction Overview**
>
> The business combination values Lordstown at an implied $1.6 billion pro forma equity value, at the $10.00 per share PIPE price and assuming minimal redemptions by DiamondPeak stockholders. The boards of directors of both DiamondPeak and Lordstown have unanimously approved the proposed transaction, which is expected to be completed in the fourth quarter of 2020, subject to, among other things, the

> approval by DiamondPeak's stockholders and satisfaction or waiver of the other conditions stated in the definitive documentation.

71. On October 8, 2020, DiamondPeak announced that it would hold a Special Meeting of its stockholders to vote on the proposed Merger. DiamondPeak's board of directors did not obtain a third-party valuation or fairness opinion in connection with their recommendation that stockholders approve the Merger.

72. On October 22, 2020, DiamondPeak announced that at the Special Meeting, DiamondPeak's stockholders voted to approve all stockholder proposals necessary to complete the Merger, which would close on October 23, 2020.

73. An article published on *Freightwaves.com* that same day entitled "SPAC shareholders approve Lordstown Motors reverse merger" noted that the quick stockholder vote was quite unusual:

> The deal went from announcement on Aug. 3 to Thursday's vote in about 11 weeks. That is fast even by special purpose acquisition company (SPAC) standards. Due diligence by the shell company of its target and [SEC] review typically take four to six months.

74. Additionally, according to DiamondPeak's October 8, 2020 Schedule 14A, DiamondPeak's board of directors did not obtain a third-party valuation or fairness opinion in connection with their recommendation that stockholders approve the Merger.

75. On October 23, 2020, Lordstown and DiamondPeak announced the closing of the business combination and that beginning on October 26, 2020, DiamondPeak would change its name to "Lordstown Motors Corp." and its shares would begin trading on the NASDAQ under the new ticker symbol "RIDE." Upon closing of the Merger, each legacy share of DiamondPeak was converted into 55.8817 shares of Lordstown Series A common stock and options to purchase DiamondPeak common stock were converted into options to purchase Class A shares of Lordstown common stock.

B. The Undisclosed Truth About Lordstown's Business

76. On March 12, 2021, the Hindenburg Report stated that, among other things, "Lordstown is an electric vehicle SPAC with no revenue and no sellable product, ***which we believe has misled investors on both its demand and production capabilities***."[3] The Hindenburg Report continued, "the [C]ompany has consistently pointed to its book of 100,000 pre-orders as proof of deep demand for its proposed EV truck. Our conversations with former employees, business partners and an extensive document review show that ***the [C]ompany's orders are largely fictitious and used as a prop to raise capital and confer legitimacy***."

77. Accordingly, between at least August 2020 and March 2021, numerous statements made by and on behalf of Lordstown (and its predecessor, DiamondPeak) were materially false and misleading when made because of the failure to disclose the following true facts about the Company's business, operations, and prospects (as described in greater detail at ¶¶ 118-129, 137, below):

(a) Lordstown greatly overstated potential demand for the Endurance pickup truck because, among other things, the number of Endurance pre-orders was largely fictitious, significantly inflated, and reflected "pre-orders" by customers lacking the intent and/or means to purchase its trucks;

(b) Lordstown overstated and misrepresented its pre-orders in order to raise capital, confer legitimacy, and provide investors with an overstated and false sense of confidence in the Company's prospects;

(c) Lordstown faced considerable undisclosed design, performance, reliability, and production obstacles that would continue to delay production and delivery of the Endurance for potentially years beyond the third quarter of 2021; and

(d) as a result of the foregoing, statements by and on behalf of Lordstown concerning its business, operations, and prospects were materially false and misleading and/or lacked a reasonable basis when made.

[3] Unless otherwise noted, all emphasis is added in materials quoted in this Complaint.

C. The Individual Defendants Made a Series of Improper Public Statements

78. Beginning on or before August 3, 2020 and continuing until at least March 24, 2021, the Individual Defendants made, allowed the Company (or its predecessor) to make, and/or failed to correct improper statements in Lordstown's SEC filings, press releases, and other public statements concerning the Company's business, operations, and prospects.

79. On August 3, 2020, Lordstown and DiamondPeak jointly announced that they had entered into a definitive merger agreement. DiamondPeak filed a Form 8-K concerning the Merger announcement with the SEC, attaching the agreement and plan of merger, a form subscription agreement, the August 3, 2020 joint press release announcing the Merger, the August 3, 2020 investor slide presentation, the transcript from the August 3, 2020 joint conference call, and a script from an Endurance commercial. The Form 8-K specifically noted: "[t]he Company [DiamondPeak] and its directors and executive officers may be deemed to be participants in the solicitation of proxies from the stockholders of the Company in respect of the Merger. . . . [Lordstown] and its directors and executive officers may also be deemed to be participants in the solicitation of proxies from the stockholders of the Company in connection with the Merger."

80. The August 3, 2020 joint press release provided, in relevant part, that the transaction valued Lordstown "at an implied $1.6 billion pro forma equity value," and that the transaction was expected to deliver approximately $675 million in gross proceeds. It also stated that the boards of directors of DiamondPeak and Lordstown had both "unanimously approved the proposed transaction," which was expected to close in the fourth quarter of 2020, subject to the approval by DiamondPeak's stockholders. The announcement included the following quote by Defendant Burns:

> We are thrilled with the opportunity to build [Lordstown] into a top-tier electric truck company that is highly differentiated from the competition. We are uniquely positioned to be a leader in the industry, with our first vehicle, the revolutionary

> Lordstown Endurance. Our all-electric full-size pickup truck delivers the equivalent of 75 miles per gallon and has been systematically engineered and competitively priced specifically for the large commercial fleet market, which includes companies in manufacturing, contracting, utilities, transportation and delivery, and agriculture, among others. ***Since its unveiling just over a month ago, the Endurance has been met with enthusiastic support, and to date, we have secured $1.4 billion of pre-orders.*** Our platform is rooted in sustainability, and the entire Lordstown team is committed to ensuring we contribute to a healthier planet for generations to come.

81. The August 3, 2020 joint press release also included the following quote by Defendant Hamamoto:

> We have evaluated hundreds of companies for more than a year and Lordstown stood out as a differentiated, high growth company at the confluence of electric vehicles and light-duty trucks, two highly valuable areas of focus and tremendous opportunity in the automotive sector. Lordstown's top-tier management team, led by Steve Burns, has captured a clear lane of customers in the fleet market. ***The team's vast experience and track-record in launching both traditional and electric vehicles, as well as the company's strong strategic relationships, provides Lordstown with a unique competitive advantage and positions the company to achieve its milestone of commencing production of the Endurance in the second half of 2021***.

82. This August 3, 2020 joint press release further provided that "Lordstown unveiled the prototype of its flagship Endurance pickup truck on June 25, 2020, and ***to date, has received more than 27,000 pre-orders for the vehicle representing over $1.4 billion of potential revenue, primarily from commercial fleet customers.***"

83. Lordstown and DiamondPeak also held an analyst and investor conference call on August 3, 2020 to further promote the proposed business combination. On the conference call, Defendant Hamamoto stated that the significant pre-orders for Endurance demonstrated the robust demand for the truck. He stated:

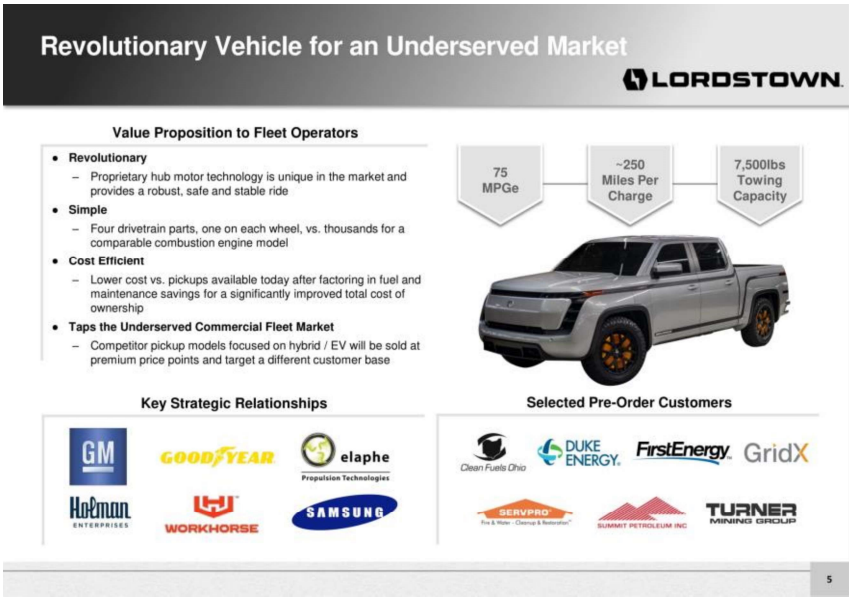
> ***Lordstown has attracted a clear lane of customers in the commercial fleet segment of the market, as evidenced by its 1.4 billion dollars of pre-orders to-date***, with a product that has a significant total cost of ownership advantage over competitors in both traditional and electric trucks, supports sustainable clean energy, and has a simple design that provides a robust, safe and stable ride.

Defendant Burns similarly touted Lordstown's pre-orders as evidence of significant demand:

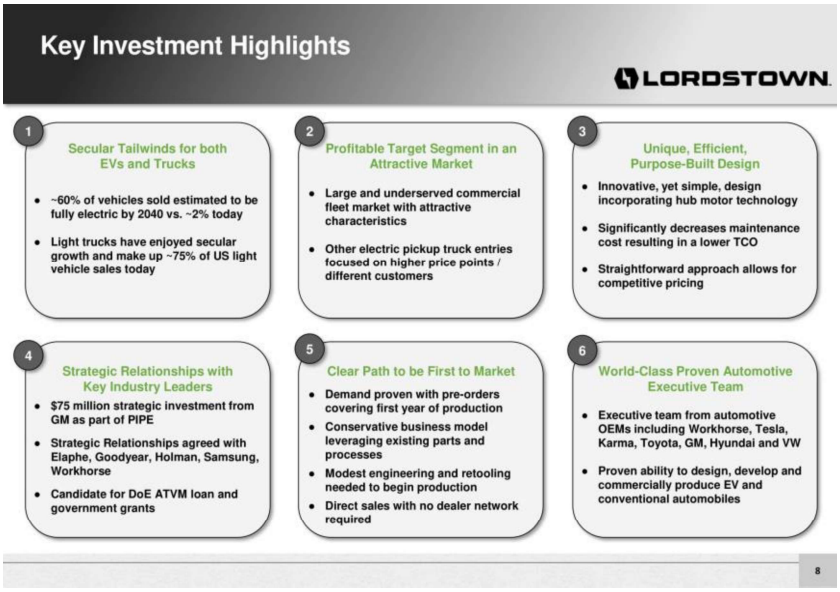
> We officially unveiled the Endurance in late-June. ***The Endurance was met with great excitement and acclaim, and we now have garnered significant demand with pre-orders totaling approximately 27,000 vehicles since inception, representing more than 1.4 billion dollars of potential revenue. We hear from many fleets who cannot wait to get their hands on the Endurance***. The electric vehicle market is expected to grow significantly the next decade, underlying our expectations of selling more than 100,000 vehicles per year by 2024.

Burns also stated on the call that Lordstown expected "full production" to commence "in early 2021 ahead of anticipated deliveries later that year."

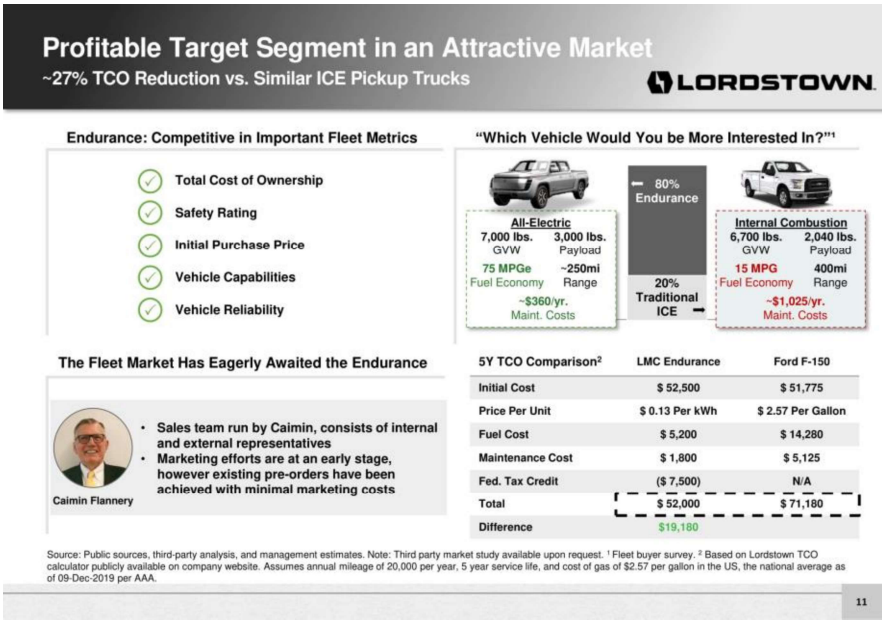
84. During the conference call, Lordstown and DiamondPeak presented slides which were later made available to all investors in DiamondPeak's Form 8-K filing with the SEC. The August 3, 2020 slides highlighted Lordstown's purported pre-order customers including Clean Fuels Ohio, Duke Energy, FirstEnergy, Grid-X, ServePro, Summit Petroleum Inc., and Turner Mining Group:



85. The August 3, 2020 slides repeated the claim that demand for the Endurance was "proven with pre-orders covering the first year of production":

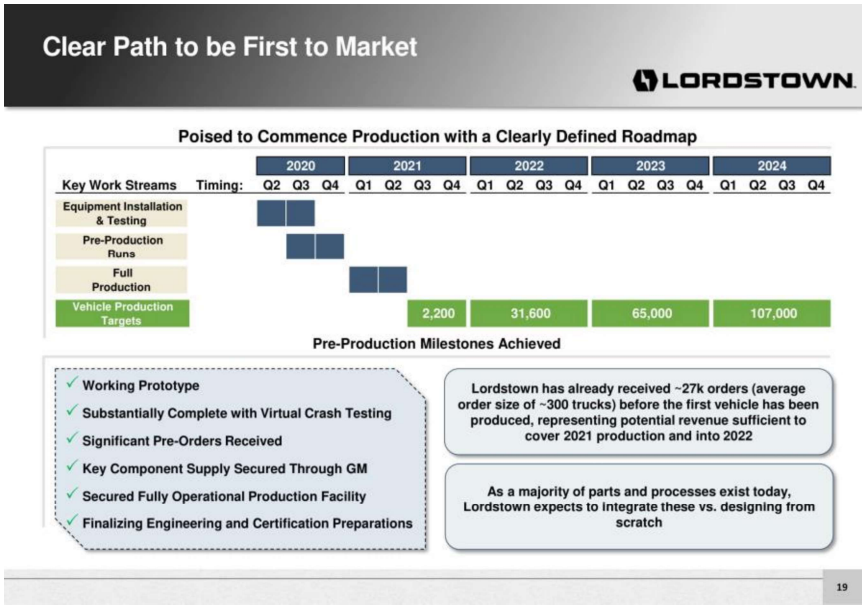


86. The August 3, 2020 slides further boasted that "existing pre-orders have been achieved with minimal marketing costs," suggesting that the orders were largely driven by pent-up demand from the "Fleet Market":

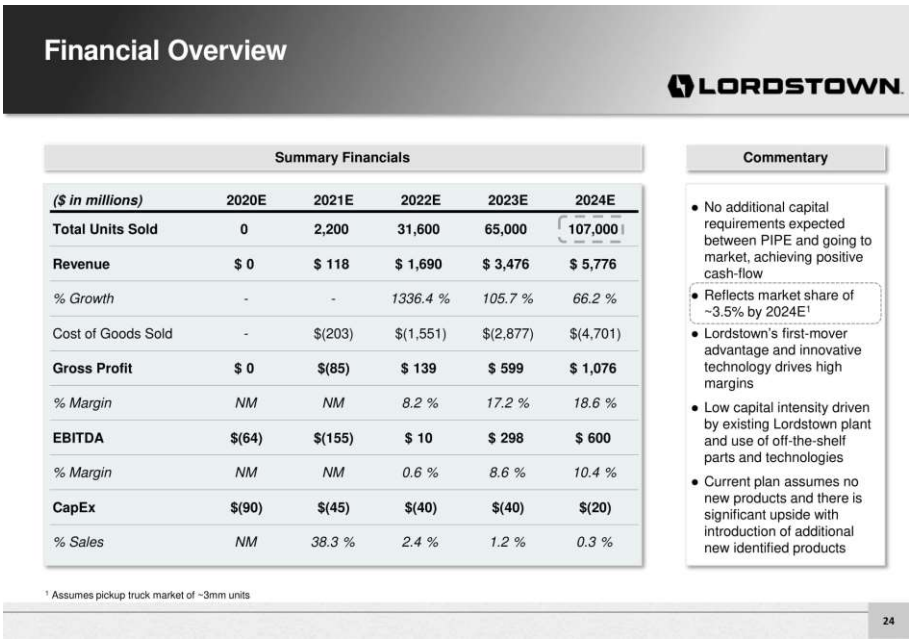


87. The August 3, 2020 slides also touted a "Working Prototype" and showed that Lordstown had received "Significant Pre-Orders" of about 27,000 pre-sales for the Endurance

which represented "potential revenue sufficient to cover 2021 production and into 2022," and set forth a timeline for commercial production beginning in Q3 2021:



88. The August 3, 2020 slides included a "Financial Overview" which contained "Summary Financials" reiterating that the Company was set to sell an estimated 2,200 units in 2021 for $118 million in revenues, 31,600 units in 2022 for $1.69 billion in revenues, 65,000 units in 2022 for $3.476 billion in revenues, and 107,000 units in 2024 for $5.776 billion in revenues:



89. The August 3, 2020 statements concerning Lordstown's pre-orders, pre-order customers, and the demand for its Endurance pickup truck, along with the statements concerning its production timeline and sales estimates, were false and materially misleading for the reasons set forth at ¶¶ 77(a)-(d), above.

90. On August 24, 2020, DiamondPeak filed its preliminary proxy statement on Schedule 14A with the SEC, in which DiamondPeak's board of directors requested that stockholders vote in favor of the Merger. The filing touted Lordstown's 27,000 pre-orders from fleet operators and repeated that the Company expected full production to begin in 2021, with 2,200 vehicles produced and sold that year.

91. On September 17, 2020, DiamondPeak and Lordstown hosted an analyst day with select Wall Street firms to provide an overview of Lordstown's business and discuss historical and projected financial performance and various other matters, including recent developments with Lordstown and the electric vehicle industry generally. During the presentation, the companies exhibited slides which were later made available to all investors in a DiamondPeak SEC filing.

92. The September 17, 2020 slides were substantially similar to the August 3, 2020 slides and repeated the claim that demand for the Endurance was "proven with pre-orders covering the first year of production." They also highlighted Lordstown's purported pre-order customers including Clean Fuels Ohio, Duke Energy, FirstEnergy, Grid-X, ServePro, Summit Petroleum Inc., and Turner Mining Group. The slides further boasted of "$2.0bn+ of Existing Pre-Orders" that "have been achieved with minimal marketing costs," indicating that the orders were largely driven by pent-up demand from the "Fleet Market."

93. The September 17, 2020 slides also touted a "Working Prototype" and showed that Lordstown had now received "Significant Pre-Orders" of about 40,000 pre-sales for the Endurance

which represented "potential revenue sufficient to cover production into 2023," and set forth a timeline for commercial production beginning in Q3 2021. The slides included a "Financial Overview" which contained "Summary Financials" reiterating that the Company was on track to sell an estimated 2,200 units in 2021 for $118 million in revenues, 31,600 units in 2022 for $1.69 billion in revenues, 65,000 units in 2022 for $3.476 billion in revenues, and 107,000 units in 2024 for $5.776 billion in revenues.

94. The August 24, 2020 and September 17, 2020 statements set forth above concerning Lordstown's working prototype, commercial production and sales targets, its pre-orders, pre-order customers, and the demand for its Endurance pickup truck were false and materially misleading for the reasons set forth at ¶¶ 77(a)-(d), above.

95. On September 18, 2020, DiamondPeak supplemented its proxy statement by filing a Form DEFA 14A with the SEC. The supplement to the proxy statement stated "DiamondPeak, Lordstown and their respective directors and executive officers may be deemed to be participants in the solicitation of proxies from the holders of common stock in respect of the proposed transaction." The supplement included a September 1, 2020 *The Detroit News* article where Defendant Burns touted 40,000 pre-orders and the slides from the September 17, 2020 investor presentation, as described above.

96. On October 8, 2020, DiamondPeak filed its definitive proxy statement on Schedule DEFM14A with the SEC. The proxy statement claimed that while Lordstown had only "engaged in limited marketing activities," it already had pre-orders for more than 38,000 vehicles, primarily from fleet purchasers. It also contained a "Risk Factor" which stated, in part: "To date, Lordstown has engaged in limited marketing activities and Lordstown has no binding contracts with customers. The non-binding pre-orders that Lordstown has signed did not require customer

deposits and may not be converted into binding orders or sales." The proxy statement further stated that that the Company "achieved several key milestones" to "commencing commercial production and sales," and that the Company anticipated commencing full production in 2021, "with a target of 2,200 vehicles produced and sold in the year." DiamondPeak's board of directors also expressly recommended that stockholders vote in favor of the Merger.

97. The October 8, 2020 statements concerning Lordstown's ability to meet its commercial production and sales milestones, its pre-orders, and the demand for its Endurance pickup truck were false and materially misleading for the reasons set forth at ¶¶ 77(a)-(d), above. Additionally, the purported "Risk Factor" misrepresented and failed to disclose the true risks associated with Lordstown's reported pre-orders because, among other things, the Company had secretly paid consultants for each pre-order received such that they were highly motivated to and did accumulate largely fictitious pre-orders from "customers" lacking the intent and/or means to purchase the trucks.

98. On October 23, 2020, Lordstown and DiamondPeak issued a press release announcing the closing of the business combination, and that beginning on October 26, 2020, Lordstown shares would commence trading on the NASDAQ under the symbol "RIDE," with Lordstown warrants trading under the symbol "RIDEW." The press release stated, in part:

> "We are proud of this momentous occasion. Electrification of the automotive industry is at an inflection point, and this transaction helps us play our part in this transformation," commented [Burns], Founder and [CEO] of [Lordstown]. "At Lordstown, we have built a differentiated company, and we look forward to combining our EV startup culture with the infrastructure and assets we already have in place in order to successfully achieve our production milestones."
>
> [Lordstown], which unveiled the prototype of its flagship Endurance pickup truck in June 2020, ***remains on pace to commence commercial production in the second half of 2021 at its plant in Lordstown, Ohio***. The Endurance's revolutionary use of an in-wheel hub motor design is expected to deliver superior performance, efficiency, and safety, while providing a significant reduction in total cost of ownership for commercial fleet owners. 'We have a near production-ready plant

> and approximately $675 million in proceeds from this transaction, which is more than enough funding to get us through initial production,' continued [Burns].

99. In an interview published by Youngstown Publishing Co. in *The Business Journal* on October 26, 2020, Defendant Burns highlighted that the Company's beta vehicles were "nearly production ready" and would launch into full production by September 2021. Defendant Burns also noted that the Company had received 40,000 pre-orders and that he "was surprised that the truck has attracted so much attention this soon," attributing the success to "a pent-up demand."

100. The October 23 & 26, 2020 statements concerning Lordstown's ability to meet its commercial production milestones, its pre-orders, and the demand for its Endurance pickup truck were false and materially misleading for the reasons set forth at ¶¶ 77(a)-(d), above.

101. On November 12, 2020, Lordstown filed its preliminary prospectus and registration statement on Form S-1 with the SEC, which was amended by the Company's December 1, 2020 Form S-1/A (together with the Prospectus dated December 4, 2020, the "Registration Statement"), in which the Company registered to sell (i) 5,066,667 shares of Class A common stock that were issuable upon the exercise of private placement warrants and (ii) 9,333,333 shares of Class A common stock that were issuable upon the exercise of certain public warrants, with expected proceeds to the Company of approximately $182.1 million.

102. In the Registration Statement, Lordstown also registered for resale 143,666,024 shares of Class A common stock by the "Selling Shareholders," including Defendants Burns (46,351,745 shares), Schmidt (72,778 shares), Rodriguez (43,380 shares), Hamamoto (4,229,135 shares and 1,826,396 warrants), Walsh (1,896,960 shares and 802,832 warrants), Richardson (88,357 shares), Hash (88,357 shares), Hannaway (88,357 shares), Feldman (234,645 shares and 91,613 warrants), Gates (10,101 shares), Kowitz (10,060 shares), and Rucidlo (7,535 shares). Climb2Glory LLC, which was paid to gather pre-orders and later took a stake in Lordstown,

registered 62,628 shares for resale, which were valued at more than $1.4 million on December 4, 2020 when the Registration Statement was declared effective. Some or all of the securities registered on behalf of the Selling Shareholders had been issued pursuant to private placements and, in any event, were not freely tradeable absent SEC registration or an applicable exemption. Lordstown would not receive any proceeds from the sale of these shares.

103. The Registration Statement, which was signed by Defendants Burns, Rodriguez, Hamamoto, Feldman, Reiss, Spencer, Gates, Kowitz, Strand Boydston, and Rucidlo, claimed that Lordstown, which had only "engaged in limited marketing activities," now had ***pre-orders for more than 50,000 vehicles***, primarily from fleet purchasers. Lordstown also claimed to have built "an operational prototype" of the Endurance and that it was "targeting commencement of commercial production of the Endurance and initial sales in the second half of 2021." Lordstown's Form S-1 also stated that the Company "achieved several key milestones" to "commencing commercial production and sales," and that the Company anticipated commencing full production in 2021 "with a target of 2,200 vehicles produced and sold in the year."

104. The statements in the Registration Statement concerning Lordstown's operational prototype, its limited marketing activities, commercial production and sales targets, its pre-orders, and the demand for its Endurance pickup truck, were false and materially misleading for the reasons set forth at ¶¶ 77(a)-(d), above.

105. On November 16, 2020, Lordstown issued a press release providing a business update. In this release, Lordstown announced that it "Remains on Track to Begin Production of the Lordstown Endurance in September 2021." The Company also detailed several "[n]otable developments," including:

> • **[Lordstown] has received approximately 50,000 non-binding production reservations** from commercial fleets for its Lordstown all-electric

> pickup truck, with an average order size of approximately 500 vehicles per fleet. This figure does not capture interest the company has received from organizations that are not in position to be able to place pre-orders, such as federal, state and municipal governments, and military fleets. Deliveries of the Lordstown Endurance are expected to begin in September 2021, with full production ramping up throughout 2022.

(emphasis in original).

106. On November 16, 2020, *Reuters* published a report entitled "Lordstown Motors says electric pickup ***launch 'on track' for fall 2021***," that included a picture of U.S. President Donald Trump "inspecting" the Endurance on the South Lawn of the White House accompanied by Defendants Fabian and Schmidt. The *Reuters* report quoted "Startup Lordstown [stating that] it ***remained 'on track'*** to begin building electric pickup trucks next September at a former General Motors Co. plant in northeastern Ohio." The *Reuters* report further represented that "[t]he company said it had received ***50,000 non-binding reservations*** for the new truck." A transcript of the President's remarks listed Defendants Burns, Schmidt, and Fabian being present and included comments by Defendants Burns and Schmidt. Defendant Schmidt stated in pertinent part that "our truck [is] a world-class vehicle. ***We can't wait to launch it this year coming***." In response to the President's inquiry: "[Y]ou'll make how many a year when you get it going?" Defendant Burns replied: "Well, ***we'll make north of 100,000 once we get going***."

107. In an interview on CNBC's *Mad Money* the following day, on November 17, 2020, Defendant Burns declared "we sell to commercial fleets. That's our first customer. And like I said, we've already got 50,000 pre-orders." Burns went on to say that most of the orders were signed by the CEOs of large firms – "so very serious orders."

108. On December 4, 2020, the SEC declared Lordstown's Registration Statement effective.

109. On December 21, 2020, Lordstown announced that it received ***80,000 pre-orders*** for the Endurance and that the Company remained on track to begin production of the Endurance in September 2021. In a Tweet promoting the news, the Company declared, "we have hit a new milestone."

110. The November 16 & 17, 2020 and December 21, 2020 statements concerning Lordstown's commercial production and deliveries, its pre-orders, and the demand for its Endurance pickup truck were false and materially misleading for the reasons set forth at ¶¶ 77(a)-(d), above.

111. On January 11, 2021, Lordstown issued a press release announcing that it had "surpasse[d] ***100,000 pre-orders*** for the Lordstown Endurance," wherein Defendant Burns stated: "[r]eceiving 100,000 pre-orders from commercial fleets for a truck like the Endurance is unprecedented in automotive history . . . . Adding in the interest we have from federal, state, municipal and military fleets on top of that, I think you can see why we feel that we are about to revolutionize the pickup truck industry." The press release further provided that "Lordstown is now building the first Beta Endurance vehicles and is on track for start of production in September of this year."

112. On January 28, 2021, Lordstown issued another press release wherein it provided business updates and stated that the Company was "Prepar[ing] Ohio Factory to Begin Building Betas Next Month." Defendant Burns stated in the press release that "[w]e are hard at work in the factory preparing to begin Beta builds in the coming weeks," and that "[w]ith this step on the horizon, we remain on track to meet our September start-of-production timeline while continuing to see indicators of strong demand for an all-wheel drive, full-size electric pickup truck with 250 miles of range from commercial, government and military fleets."

113. On February 17, 2021, Lordstown issued another press release announcing that it had entered the Endurance Beta skateboard in the 2021 SCORE International San Felipe 250, part of the SCORE World Desert Championship race series. In this release, the Company stated that "[a]fter successful prototype and Alpha builds, Lordstown is now building the first Beta Endurance vehicles and is on track for start of production in September of this year."

114. The January 11 & 28, 2021 and February 17, 2021 statements concerning Lordstown's commercial production timeline, its pre-orders, and the demand for its Endurance pickup truck were false and materially misleading for the reasons set forth at ¶¶ 77(a)-(d), above.

115. Also, on February 17, 2021, Lordstown received a non-public request from the SEC for the voluntary production of documents and information, including relating to the Merger and the pre-orders of the Company's Endurance pickup truck. ***Lordstown did not publicly disclose the SEC's inquiry***. The Individual Defendants' failure to disclose the SEC investigation rendered their previous statements concerning the Merger and the Company's pre-orders materially misleading.

116. On February 23, 2021, in an interview with *Yahoo! Finance Live*, Defendant Burns stated: "[o]ur initial foray is into fleets, and ***we have pre-sold 100,000 of these vehicles*** to various fleets across America – really a big appetite." He continued: "[y]ou've got a fleet using a 17-mile per gallon pickup truck for the last 30 years and we come out with one that gets the equivalent of 75 miles per gallon. There is a lot of demand and excitement about it." This article further provided that "Burns said production for the Endurance will begin in September. That will make the Endurance the first all electric pickup truck on the market."

117. The February 23, 2021 statements concerning Lordstown's commercial production timeline, its pre-orders, and the demand for its Endurance pickup truck were false and materially

misleading for the reasons set forth at ¶¶ 77(a)-(d), above. Additionally, Defendants' failure to disclose the SEC investigation rendered the statements concerning Lordstown's commercial production timeline, its pre-orders, and the demand for its Endurance pickup truck incomplete and materially misleading.

D. The Truth Emerges

118. On March 12, 2021, investment analyst Hindenburg Research, which specializes in forensic financial research, published the Hindenburg Report.

119. The Hindenburg Report summarized the findings set forth in its detailed report as follows:

(a) "Lordstown is an electric vehicle SPAC with no revenue and no sellable product, which we believe has misled investors on both its demand and production capabilities."

(b) "The [C]ompany has consistently pointed to its book of 100,000 pre-orders as proof of deep demand for its proposed EV truck. Our conversations with former employees, business partners and an extensive document review show that the [C]ompany's orders are largely fictitious and used as a prop to raise capital and confer legitimacy."

(c) "For example, Lordstown recently announced a 14,000-truck deal from E Squared Energy, supposedly representing $735 million in sales. E Squared is based out of a small residential apartment in Texas that doesn't operate a vehicle fleet."

(d) "Another 1,000-truck, $52.5 million order comes from a 2-person startup that operates out of a Regus virtual office with a mailing address at a UPS Store. We spoke with the owner who acknowledged it won't actually order any vehicles, instead describing the 'pre-order' as a mere marketing relationship."

(e) "Yet another firm that is supposedly set to buy 500 trucks from Lordstown told us: '…The letters of interest are non-binding. It's not like you'd obligate yourself to a pre-order or that you would contractually bind yourself to buying this truck. That's not what they are.'"

(f) "Lordstown CEO [Burns] has called these arrangements 'very serious orders'. The actual customer agreements, which we present for the first time today, require no deposit and are non-binding. Many of the supposed

customers do not operate fleets nor do many have the means to actually make the stated purchases."

(g) "Former employees and litigation records reveal that in order to raise capital and confer credibility, [Burns] began paying consultants for every truck pre-order as early as 2016 while he was serving as CEO at Workhorse."

(h) "Later, heading into Lordstown's eventual go-public transaction in 2020, a small consulting group called Climb2Glory was paid to generate pre-orders. Climb2Glory openly described the purpose behind the pre-order game: 'the faster the pre-orders arrived, the greater investors' confidence would be in the company and the faster funds would flow in.'"

(i) "One [C]ompany rep that committed to buy 40 trucks through Climb2Glory told us: '…I'm not committed to anything, not to buying a single vehicle. I committed to consider buying vehicles. I'd have a lot of questions before I commit to anything.'"

(j) "Others had similar remarks. 'The commitment of that size (15) is totally impossible,' a representative for the City of Ravenna told us about its pre-order. We document numerous other 'customers' that disclaim any intent to actually purchase vehicles."

(k) "Multiple former senior employees who have worked with Lordstown Founder & CEO [Burns] openly described him as a 'con man', or a 'PT Barnum' figure. One senior employee told us that, while working with Steve for a couple of years, they saw more questionable and unethical business practices than they had seen in their entire career."

(l) "Despite being allowed to resign from Workhorse, former senior employees described how Burns was pushed out of his old company by the board for wasting R&D money and missing promised deadlines. He then launched Lordstown months later."

(m) "Despite claims that Lordstown will be producing vehicles by September, a former employee explained how the [C]ompany is experiencing delays and making 'drastic' design modifications, putting them an estimated 3-4 years away from production. For example, in mid-January the company 'totally switched from a plastic exterior to aluminum,' we were told."

(n) "Despite claims that battery packs would be manufactured in-house, we were told that the equipment is months away from arriving, let alone being put into a production environment. In the meantime, we were told that battery packs are being put together by hand."

(o) "Former employees also shared that the company has completed none of its needed testing or validation, including cold weather testing, durability

testing, and Federal Motor Vehicle Safety Standards (FMVSS) testing required by the [National Highway Traffic Safety Administration]."

(p) "In January 2021, Lordstown's first street road test resulted in the vehicle bursting into flames 10 minutes into the test drive. We share copies of the 911 call and a police report we received through FOIA requests."

(q) "Lordstown only went public in October 2020, but in that brief time, executives and directors have unloaded ~$28 million in stock. We think it bodes poorly when executives unload stock in a company with no actual product that claims to be on the cusp of mass-production."

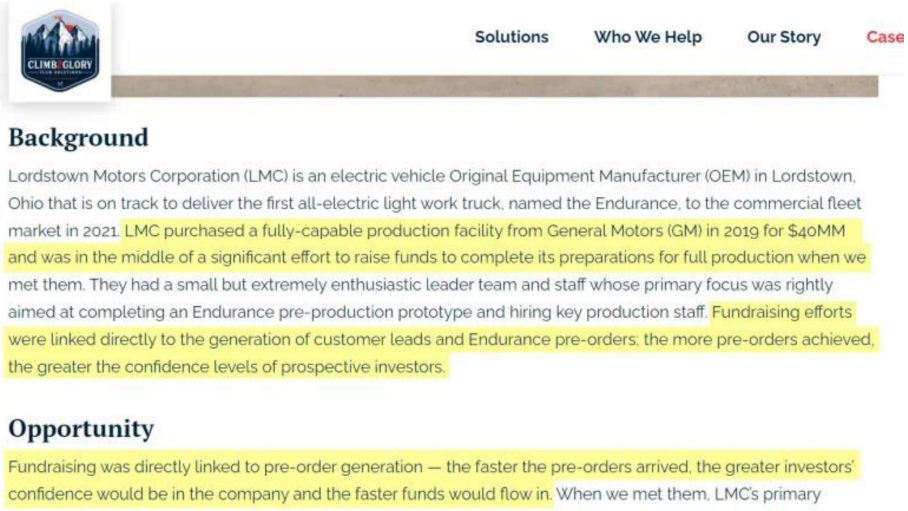
120. Hindenburg Report further exposed that:

> Our research has revealed that Lordstown's order book consists of fake or entirely non-binding orders, from customers that generally do not even have fleets of vehicles. According to former employees and business partners, CEO [Burns] sought to book orders, regardless of quality, purely as a tool to raise capital and confer legitimacy. In addition, we show how, in desperation to claim there was demand for the proposed vehicle, [**Burns] paid for customers to book valueless, non-binding pre-orders**. (Emphasis in original).

121. The Hindenburg Report quoted a former sales representative for the Lordstown Endurance, who stated:

> You're right to have some apprehension. I think the way it's being communicated especially to the media is probably not accurate. Everywhere I read is pre-orders, pre-orders, pre-orders. **There's no such thing as a preorder. What they're doing is getting letters of intent and there is no commitment whatsoever.** I could commit to 100,000 pre-orders or reservations but I have no commitment, no financial commitment, no nothing I hope they can get all 100,000 of them but I think that's extraordinarily unlikely. (Emphasis in original).

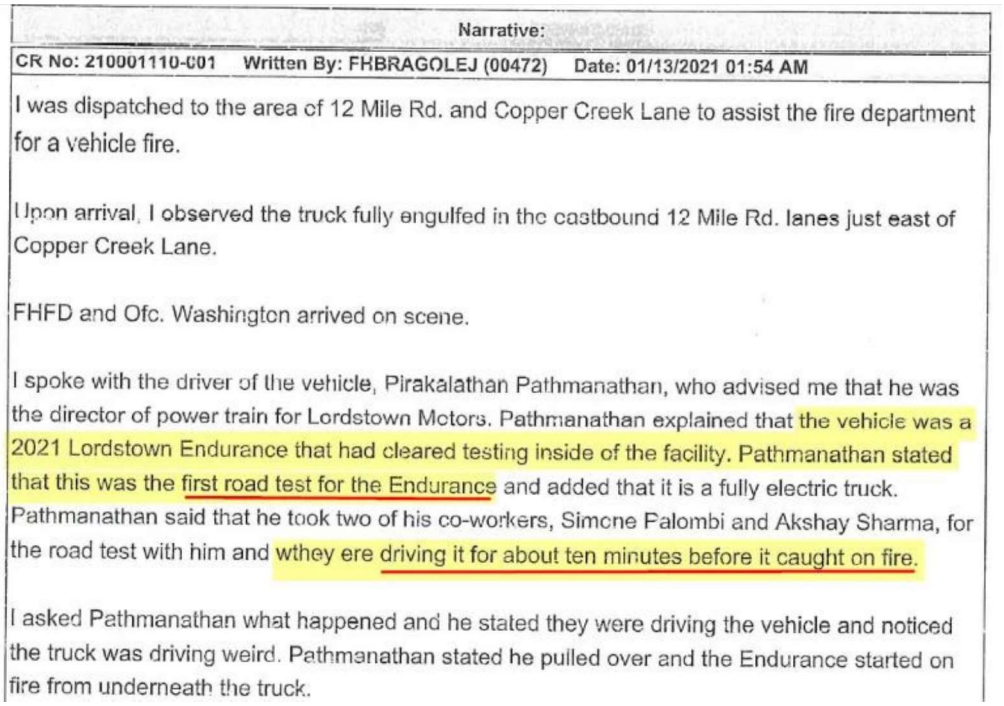
122. The Hindenburg Report further stated that Lordstown "hired small consulting group Climb2Glory, which was to receive $50 per truck pre-order, according to former employees." It further noted that "Climb2Glory boasts on its own website how it was key in helping Lordstown generate pre-orders faster in order to use the orders as a capital raising tool":



123. The Hindenburg Report also included a quote from Climb2Glory's managing partner, Pat Mangin, from a phone interview: "[b]ecause of the letters of intent from Climb2Glory and some marketing, Diamond Group came to the table and they did the reverse merger. So our role was to help influence and acquire interest that would lead to investment. That was Climb2Glory's role." Mangin further explained that initially Climb2Glory represented the Endurance for "contract dollars," but later took a stake in Lordstown: "[w]e did get a significant amount of shares in the deal so what we do now is we still leverage our network." *See* ¶ 102, above (regarding Climb2Glory's registration for resale of $1.4 million in Lordstown shares).

124. The Hindenburg Report detailed numerous additional purported "pre-orders" that "appear similarly meaningless," including purported deals with FirstEnergy, Momentum Groups, Summit Petroleum Inc., Mike Albert Fleet Solutions, Grid-X, and the City of Ravenna. *See* ¶¶ 84, 92, above (touting various pre-order customers including FirstEnergy, Grid-X, and Summit Petroleum Inc.).

125. The Hindenburg Report further detailed what happened with the first road test for the Endurance: it burst into flames. The Hindenburg Report included a portion of the police report which it received through a FOIA request:



Narrative:

CR No: 210001110-001 Written By: FHBRAGOLEJ (00472) Date: 01/13/2021 01:54 AM

I was dispatched to the area of 12 Mile Rd. and Copper Creek Lane to assist the fire department for a vehicle fire.

Upon arrival, I observed the truck fully engulfed in the eastbound 12 Mile Rd. lanes just east of Copper Creek Lane.

FHFD and Ofc. Washington arrived on scene.

I spoke with the driver of the vehicle, Pirakalathan Pathmanathan, who advised me that he was the director of power train for Lordstown Motors. Pathmanathan explained that the vehicle was a 2021 Lordstown Endurance that had cleared testing inside of the facility. Pathmanathan stated that this was the first road test for the Endurance and added that it is a fully electric truck. Pathmanathan said that he took two of his co-workers, Simone Palombi and Akshay Sharma, for the road test with him and wthey ere driving it for about ten minutes before it caught on fire.

I asked Pathmanathan what happened and he stated they were driving the vehicle and noticed the truck was driving weird. Pathmanathan stated he pulled over and the Endurance started on fire from underneath the truck.

126. According to the Hindenburg Report, just two weeks after this disastrous initial road test, Lordstown announced that it would begin building beta trucks in a month. Lordstown did not acknowledge until a month later that "it did have 'an event', stating that 'we do not generally comment on individual testing conditions.'"

127. In the Hindenburg Report, Hindenburg Research described its conversation with a former Lordstown employee "who was intimately familiar with the path toward production. They explained that Lordstown has built fewer than 10 prototypes so far, and that the [C]ompany is still making extensive modifications." This former employee also detailed that in mid-January 2021, Lordstown "totally switched from a plastic exterior to aluminum" to reduce weight. The former employee called this change "drastic" and suggested that this would "essentially restart any testing and validation process."

128. This same former employee also explained that Lordstown had not completed any of its required testing and validation, including: "[c]old weather testing, which typically takes about 3 months and had not begun"; "[a] 'million mile' test or similar durability test done by major

automakers," which typically "requires 6 months of 24/7 testing"; or "[m]ajor testing required for the [FMVSS] by the [National Highway Traffic Safety Administration]."

129. The Hindenburg Report also quoted a union leader, who worked for decades at the Lordstown plant for GM, who stated:

> I know they're way behind. If nothing else went wrong then Covid threw them way behind. They can't fire up the old machines. Some of them they can. But everything else has to be reprogrammed and some of it has to be rebuilt. . . . It's not ready. It is not ready. They showed some stuff on TV in the body shop with the robots that do the welding. But if you never worked in a body shop you didn't realize they weren't working. They were moving but not welding. There were no sparks.

130. In response to the Hindenburg Report, the price of Lordstown common stock plummeted more than 16% in one day, down from its March 11, 2021 closing price of $17.71 per share to a March 12, 2021 close of just $14.78 per share, thereby erasing $517 million in stockholder value.

131. On March 17, 2021, Lordstown held an earnings call on which Defendant Burns first disclosed that Lordstown had received an inquiry from the SEC.

132. When interviewed by *CNBC* on the morning of March 18, 2021 before the opening of trading, Defendant Burns now claimed that the Company had "never said we had orders," and admitted that the Company "[didn't] have a product yet," adding that "[b]y definition we can't have orders." He further stated that the previously much hyped "preorders did exactly what they were supposed to do. Gauge interest. Nobody knew if fleets would buy an electric pickup truck. It was completely unknown science, no data around it." He concluded, stating: "I don't think anybody thought we had actual orders. That's just not the nature of this business."

133. On this news, the stock dropped another 13% to $13.01 per share, thereby erasing an additional $367 million in market capitalization.

134. Beginning on March 18, 2021, Lordstown investors filed a series of class actions in the United States District Court for the Northern District of Ohio (as previously defined, the "Securities Class Action"). The Securities Class Action seeks to recover millions of dollars in investor losses from the Company and its senior officers caused by the false and misleading statements concerning the Company's business, operations, and prospects.

135. On March 24, 2021, Hindenburg Research posted pictures of the Endurance prototype breaking down during a commercial shoot about three months prior to the Merger (around July 2020), at which time the Company had claimed it would begin delivering its pickup trucks in early 2021:





136. On this disclosure, the market price of Lordstown common stock declined another $1.21 per share, closing down at $11.38 per share on March 24, 2021 and erasing another $213 million in market capitalization.

137. On March 25, 2021, Youngstown Ohio NBC Station, WFMJ-TV, posted an article on its website entitled, "Lordstown Motors knew of SEC investigation month before public announcement." The article reported Lordstown's failure to timely disclose the SEC investigation and described the pending Securities Class Action, stating in part:

> The company that plans to manufacture all-electric pickup trucks at the former GM Lordstown Assembly plant has formally acknowledged that it is being investigated by the [SEC] and that began in mid-February.
>
> An annual report filed with the SEC by [Lordstown] states that on February 17, 2021, [Lordstown] received a request from the SEC for the voluntary production of documents and information, including relating to the merger between DiamondPeak and Legacy Lordstown and pre-orders of vehicles.
>
> [Lordstown] CEO [Burns] did not reveal the SEC request to members of the news media until one month later during a March 17 conference call with members of the press and investors.
>
> There was also no mention of the SEC probe in [Lordstown's] fourth quarter and year-end financial report that was filed last week.

> That omission was mentioned in one of two lawsuits filed by investors alleging securities violations by [Lordstown].
>
> As late as January 11, one month before the SEC request, [Lordstown] issued a press release announcing that it had surpassed 100,000 pre-orders for the Lordstown Endurance.
>
> The company says it expects those lawsuits, which seek to become class actions, will be consolidated in U.S. District Court.
>
> "..we intend to vigorously defend against the claims, but there can be no assurances as to the outcome," [Lordstown] says in its latest SEC filing.
>
> [Lordstown] says in the Annual Report that it is responding to the SEC's requests and intend to cooperate with the inquiry.

138. On June 14, 2021, defendants caused the Company to issue a press release via Form 8-K filed with the SEC announcing that, "pursuant to mutual agreements with the Company, [Burns] resigned as the [CEO] of the Company and from the Company's [Board]." In addition, the release explained that "[Rodriguez] resigned as [CFO] of the Company." Pursuant to a Separation and Release Agreement, Burns will receive "continued base salary payments for a period of 18 months in the aggregate amount of $750,000" and Rodriguez will receive "continued base salary payments for a period of six months in the aggregate amount of $200,000 and continued vesting of certain outstanding stock options with an exercise price per share equal to $1.79 that are scheduled to vest in November 2021."

139. Also on June 14, 2021, Lordstown issued a press release admitting that certain prior statements regarding pre-orders were inaccurate. That day, Lordstown announced the results of an investigation conducted by a Special Committee of the Board of purportedly independent directors (Defendants Hamamoto, Reiss, and Spencer) into the allegations of the Hindenburg Report published on March 12, 2021. Among other things, the press release stated:

4. Pre-Orders

The Hindenburg Report raised various questions regarding the Company's practices and disclosures regarding "pre-orders." Among other things, the Hindenburg Report stated that [Lordstown's] pre-orders (i) are non-binding letters of intent, (ii) require no reservation payment and in some instances were procured through the payment of sales commissions, (iii) are from customers that generally do not operate fleets, and (iv) include pre-orders from customers that do not have the means to make the purchases indicated.

[Lordstown] has repeatedly disclosed that its pre-orders are non-binding, and it has highlighted the risk that pre-orders may not be converted to actual orders.

In most instances, [Lordstown's] pre-orders did not require a reservation or similar payment, though pre-orders submitted through a website portal required a refundable $100 payment. [Lordstown] entered into an arrangement to pay one entity commissions for procuring pre-orders. That entity procured approximately 1,000 pre-orders and also assisted [Lordstown] into entering into an important commercial relationship with a leading fleet management company.

[Lordstown] has obtained tens of thousands of pre-orders from fleets, fleet management companies, or other end users. If converted to orders, this demand will comprise substantially all of the Company's expected production volume through 2022.

[Lordstown] made periodic disclosures regarding pre-orders which were, in certain respects, inaccurate.

- [Lordstown] has stated on several occasions that its pre-orders were from, or "primarily" from commercial fleets. In fact, many pre-orders were obtained from (i) fleet management companies or other end users that indicated interest in purchasing Endurance trucks, similar to commercial fleets, and (ii) so-called "influencers" or other potential strategic partners that committed to attempt to secure pre-orders from other entities, but did not intend to purchase Endurance trucks directly.

- One entity that provided a large number of pre-orders does not appear to have the resources to complete large purchases of trucks. Other entities provided commitments that appear too vague or infirm to be appropriately included in the total number of pre-orders disclosed.

140. On June 15, 2021, one day after terminating the former CEO and CFO, Angela Strand, interim CEO, and Schmidt, President of the Company, attended an Automotive Press Association online media event. During the event, Strand stated that it is a "new day" for the

automaker. Schmidt stated that the Company has enough orders for limited production of the Endurance for 2021 and 2022, calling those orders "firm" and "binding."

141. Then, on June 17, 2021, defendants caused the Company to issue another press release via Form 8-K filed with the SEC announcing that Company executives had made false and misleading statements at the June 15, 2021 Automotive Press Association online media event regarding so-called vehicle purchase agreements. Specifically, the Company admitted it has "no binding purchase orders or commitments from customers":

> To clarify recent remarks by company executives at the Automotive Press Association online media event on June 15, although these vehicle purchase agreements provide us with a significant indicator of demand for the Endurance, these agreements do not represent binding purchase orders or other firm purchase commitments. As previously disclosed in our Form 10-K/A for the year ended December 31, 2020, filed with the [SEC] on June 8, 2021, to date, we have engaged in limited marketing activities and we have no binding purchase orders or commitments from customers.

E. Defendants Rodriguez, Fabian, and Hamamoto Sold Nearly $23 Million in Lordstown Stock While in Possession of Material Non-Public Information

142. Defendant Rodriguez was the Company's CFO and has a highly sophisticated understanding of the Company's results and their import.

143. As set forth herein, Defendant Rodriguez possessed material negative information about the Company which he knew was being concealed from investors. Defendant Rodriguez consciously acted to exploit his knowledge by selling 9,300 shares of Lordstown stock on February 4, 2021 for proceeds of $251,100.

144. Defendant Schmidt is the Company's President and possesses a highly sophisticated understanding of the Company's results and their import.

145. As set forth herein, Defendant Schmidt possessed material negative information about the Company which he knew was being concealed from investors. Defendant Schmidt

consciously acted to exploit his knowledge by selling 263,412 shares of Lordstown stock on December 11, 2020 and February 2-3, 2021 for proceeds of $6,383,710.

146. Defendant Hamamoto is a director of the Company and served as DiamondPeak's Chairman and CEO until the Merger. Defendant Hamamoto possesses a highly sophisticated understanding of the Company's results and their import.

147. As set forth herein, Defendant Hamamoto possessed material negative information about the Company which he knew was being concealed from investors. Defendant Hamamoto consciously acted to exploit his knowledge by selling one million shares of Lordstown stock on October 22, 2020 for proceeds of $16.38 million.

148. Defendants Rodriguez, Schmidt, and Hamamoto used their fiduciary positions to enrich themselves and failed to discharge their duties by causing the Company to candidly reveal the truth of its business condition.

V. DAMAGES TO LORDSTOWN

149. As a result of the Individual Defendants' faithless misconduct, Lordstown disseminated improper public statements concerning its business, operations, and prospects. These improper statements have devastated Lordstown's credibility, caused the Company to lose more than $1 billion in market capitalization, and exposed the Company to significant investigatory costs and risk of loss associated with the SEC and DOJ investigations and Securities Class Action.

150. Defendants' wrongdoing has also irreparably damaged Lordstown's corporate image and goodwill. For at least the foreseeable future, Lordstown will suffer from what is known as the "liar's discount," a term applied to the stock of companies who have been implicated in misleading the investing public, such that Lordstown's ability to raise equity capital or debt on favorable terms in the future is now and will continue to be impaired. The Company stands to incur higher marginal costs of capital and debt because of the misconduct.

151. As a direct and proximate result of the Individual Defendants' misconduct, the Company has needlessly expended, and will continue to expend, significant sums of money. These expenditures include, without limitation: (i) costs and damages associated with the overpayment for the acquisition of Lordstown in the Merger; (ii) costs incurred in connection with issuing false and misleading proxy solicitations seeking approval of the Merger; (iii) costs incurred to compensate "consultants" for generating fictious and significantly inflated pre-orders; (vi) costs incurred responding to the Hindenburg Report and related analyst, investor, customer, media, and/or similar inquiries; (v) costs incurred in investigating and defending Lordstown and the Securities Class Action Defendants in the Securities Class Action; (vi) costs incurred responding to the SEC and DOJ inquiries and any future regulatory investigations and actions; (vii) lost sales and orders resulting from exposure of Lordstown's misleading disclosures regarding its business, operations, and prospects; and (viii) costs incurred from compensation and benefits paid to the Individual Defendants, who have breached their fiduciary duties to Lordstown.

VI. DEFENDANTS' DUTIES

A. The Individual Defendants' Fiduciary Duties

152. By reason of their positions as officers and/or directors of Lordstown and because of their responsibility to control the business and corporate affairs of the Company, the Individual Defendants owed, and owe, the Company and its stockholders the fiduciary obligations of good faith, loyalty, due care, and candor and were, and are, required to use their utmost ability to control and manage the Company in a just, honest, fair, and equitable manner. Each Individual Defendant owed, and owes, the Company and its stockholders the fiduciary duty to exercise good faith and diligence in the administration of the affairs of the Company, as well as the highest obligations of fair dealing and not to act in furtherance of their personal interest or benefit.

153. Because of their positions of control and authority as officers and/or directors of Lordstown, the Individual Defendants were able to, and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein. Because of their advisory, executive, managerial, and directorial positions with Lordstown, each of the Individual Defendants had knowledge of material, nonpublic information regarding the Company. In addition, as officers and/or directors of a publicly held company, the Individual Defendants had a duty to promptly disseminate accurate and truthful information regarding the Company's business, operations, and prospects so that the market price of the Company's stock would be based on truthful and accurate information.

154. At all times relevant hereto, each of the Individual Defendants was the agent of each of the other Individual Defendants and of Lordstown and was at all times acting within the course and scope of such agency.

155. To discharge their duties, the Individual Defendants were, and are, required to exercise reasonable and prudent oversight and supervision over the management, policies, practices, and controls of Lordstown. By virtue of such duties, the Individual Defendants were, and are, required to, among other things:

a. exercise good faith to ensure that the Company is operated in a diligent, efficient, honest, and prudent manner and in accordance with all applicable laws (including federal and state laws, government rules and regulations, and the Company's Certificate of Incorporation and Bylaws);

b. neither violate nor knowingly permit any officer, director, or employee of Lordstown to violate any applicable laws, rules, or regulations;

c. remain informed as to the status of Lordstown's operations, and upon receipt or notice of information of imprudent or unsound practices, to make a reasonable inquiry in connection thereto and to take steps to correct such conditions or practices;

d. establish and maintain systematic and accurate records and reports of the business and affairs of Lordstown and procedures for the reporting of the

Company's business and affairs to the Board and to periodically investigate, or cause independent investigation to be made of, said reports and records;

e. maintain and implement an adequate, functioning system of internal controls, such that the affairs and operations of Lordstown are conducted in accordance with all applicable laws, rules, and regulations;

f. truthfully and accurately inform and guide investors and analysts with respect to the business operations of the Company.

g. Exercise good faith to ensure that the Company's communications with the public and with shareholders are made with due candor in a timely and complete fashion; and

h. When put on notice of problems with the Company's business practices and operations, exercise good faith in taking appropriate action to correct the misconduct and prevent its recurrence.

B. Duties Pursuant to the Company's Corporate Governance Guidelines

156. The Company's Corporate Governance Guidelines ("Governance Guidelines") were adopted by the Board to, along with the certificate of incorporation, bylaws, and Board committee charters, form the framework for governance of the Company. These guidelines apply to the Director Defendants in connection with their membership on Lordstown's Board.

157. According to the Governance Guidelines, the Board's responsibilities include the following:

> *Risk Assessment* — The Board shall maintain oversight of the Company's risk management processes. The Compensation Committee shall periodically evaluate whether there are any risks arising from the Company's compensation policies for all employees and overall actual compensation practices which are reasonably likely to have a material adverse effect on the Company, and recommend to the Board any changes deemed appropriate by such committee. The Audit Committee shall review and discuss with management and the independent auditor the Company's major enterprise risk exposures and the steps management has taken to monitor and control those exposures, including the Company's policies with respect to risk assessment and risk management with respect to operational, financial, accounting and tax matters of the Company, including data privacy and security. To the extent risk oversight is a focus of one or more committees of the Board, those committees shall report key findings periodically to the full Board.

158. According to the Governance Guidelines, "Board Operations" include the following:

> D) *Director Responsibilities* — Directors must exercise their business judgment to act in the best interests of the stockholders and the Company. Directors are expected to attend and participate in all meetings of the Board and of committees on which they serve and to spend the time needed and prepare for and meet as frequently as necessary to discharge their responsibilities. The Board shall make the determination that at least one of the members of the Audit Committee meets the Audit Committee financial expert requirements. Each director should be sufficiently familiar with the business of the Company, including its financial statements and capital structure, and the risks and competition it faces, to facilitate active and effective participation in the deliberations of the Board and of each committee on which he or she serves. Upon request, management will make appropriate personnel available to answer any questions a director may have about any aspect of the Company's business. Directors should also review the materials provided by management and advisors in advance of the meetings of the Board and its committees and should arrive prepared to discuss the issues presented.
>
> E) *Director Loyalty and Ethics* — In their roles as directors, all directors owe a duty of loyalty to the Company. This duty of loyalty mandates that the best interests of the Company take precedence over any interests possessed by a director. The Company has adopted a Code of Business Conduct and Ethics. Certain portions of the Code deal with activities of directors, particularly with respect to transactions in the securities of the Company, potential conflicts of interest, the taking of corporate opportunities for personal use, and competing with the Company. Directors should be familiar with the Code's provisions in these areas and should consult with the Company's counsel in the event of any issues.

C. Duties Pursuant to the Company's Code of Business Conduct and Ethics

159. The Individual Defendants were also bound by the Company's Code of Business Conduct and Ethics (the "Code of Conduct"), which applies to all Lordstown directors, officers, and employees. Among other things, the Code of Conduct states that: "It is the general policy of [Lordstown] to conduct its business activities and transactions with the highest level of integrity and ethical standards and in accordance with all applicable laws."

160. With respect to the Company's "Basic Principles and Practices," the Code of Conduct includes the following:

1. Compliance with Laws, Rules and Regulations

It is the Company's policy to comply with all applicable laws, rules and regulations. It is the personal responsibility of each employee, officer and director to adhere to the both the spirit and the form of the standards and restrictions imposed by those laws, rules and regulations in the performance of their duties for the Company, including those relating to accounting and auditing matters and insider trading.

* * *

5. Fair Dealing

We believe in succeeding through honest business competition. We do not seek competitive advantages through illegal or unethical business practices. Each director, officer and employee should endeavor to deal fairly with the Company's customers, suppliers, competitors and employees. No director, officer or employee should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair business practice.

* * *

8. Insider Trading

You are not permitted to use, share or disseminate confidential information to, or enable others to, purchase or sell securities in violation of the federal securities laws or for any other purpose except the conduct of our business. To use confidential information for personal financial benefit or to "tip" others who might make an investment decision on the basis of this information is not only unethical, but is also illegal. You are expected to comply with the Company's Insider Trading Policy.

* * *

10. Disclosure

The Company's periodic reports and other documents filed with the [SEC], including financial statements and other financial information, must comply with applicable federal securities laws and SEC rules. Each director, officer and employee, to the extent involved in the Company's disclosure process, must: (a) be familiar with and comply with the Company's disclosure controls and procedures and its internal control over financial reporting, to the extent relevant to his or her area of responsibility, so that the Company's public reports and documents filed with the SEC comply in all material respects with the applicable federal securities laws and SEC rules; and (b) to the extent appropriate within his or her are responsibility, take all necessary steps to ensure that all filings with the SEC and all other public communications about the financial and business condition of the Company provide full, fair, accurate, timely and understandable disclosure.

Each director, officer or employee, to the extent involved in the Company's disclosure process, must:

• familiarize himself or herself with the disclosure requirements applicable to the Company as well as the business and financial operations of the Company; and

• not knowingly misrepresent, or cause others to misrepresent, facts about the Company to others, whether within or outside the Company, including to the Company's independent auditors, governmental regulators and self-regulatory organizations

D. Additional Duties of the Audit Committee Defendants

161. In addition to the fiduciary duties discussed above, the Audit Committee Defendants owed specific duties to Lordstown under the Audit Committee Charter (the "Audit Charter"). According to the Audit Charter "[t]he function of the Audit Committee is primarily one of oversight."

162. According to the Audit Charter, the Audit Committee was responsible for assisting the Board in oversight of:

- the integrity of the Company's financial statements,
- the Company's compliance with legal and regulatory requirements,
- the independent auditor's qualifications, independence and performance,
- the organization and performance of the Company's internal audit function,
- the Company's internal accounting and financial controls,
- the Company's treasury and finance matters, and
- the Company's risk management and assessment pertaining to, amongst other matters, the financial, operational, accounting and tax matters of the Company, including data privacy and security.

163. According to the Audit Charter, the Audit Committee was also responsible for providing to the Board "such information and materials as it may deem necessary to make the Board aware of significant financial matters that require the attention of the Board."

164. The Audit Charter charges the Audit Committee Defendants with the following additional duties and responsibilities, among others:

5. Review Financial Statements. The Audit Committee shall review and discuss the following with management, the independent auditor and, if appropriate, the director of the internal auditing department:

- The scope and timing of the annual audit of the Company's financial statements;

- The Company's annual audited and quarterly financial statements and annual and quarterly reports on Forms 10-K and 10-Q (when the Company is required to comply with such reporting obligations), including the disclosures in "Management's Discussion and Analysis of Financial Condition and Results of Operations", and recommend to the Board, if deemed appropriate, whether the audited financial statements and "Management's Discussion and Analysis of Financial Condition and Results of Operations" should be included in the Company's Form 10-K, in accordance with the rules and regulations of the SEC;

- The results of the independent audit and the quarterly reviews, any significant matters arising from any audit, including any audit problems or difficulties (including any critical audit matter ("CAM") addressed in the audit and the relevant financial statement accounts or disclosures that relate to each CAM, whether raised by management, the internal auditing department or the independent auditor, relating to the Company's financial statements;

- The form of opinion the independent auditor propose to render to the Board of Directors and shareholders;

- The reports and certifications regarding internal control over financial reporting and disclosure controls and procedures and any "management" or "internal control" letter issued, or proposed to be issued, by the independent auditor to the Company;

- Major issues regarding accounting principles and financial statement presentations, including any significant changes in the Company's selection or application of accounting principles;

- Analyses prepared by management or the independent auditor setting forth significant financial reporting issues and judgments made in connection with the preparation of the financial statements, including analyses of the effects of alternative generally accepted accounting principles ("GAAP") methods on the financial statements and major issues as to the adequacy of the Company's internal controls and any special audit steps adopted in light of material control deficiencies; on the financial statements;

- The effect of regulatory and accounting initiatives, as well as off-balance-sheet structures, on the Company's financial statements;

- Any significant changes required or taken in the audit plan as a result of any significant control deficiency or material weakness;

• Any problems or difficulties the independent auditor encountered in the course of its audit work, including any restrictions on the scope of the auditor's activities or on access to requested information, and management's response; and

• Any significant disagreements between management and the independent auditor and management's response.

* * *

8. Earnings Press Releases and Earnings Guidance. The Audit Committee shall review and discuss with management the type and presentation of information to be included in earnings press releases (with particular attention to any use of "pro forma" or "adjusted" non-GAAP information) and financial information and earnings guidance provided to analysts and rating agencies.

9. Internal Controls. The Audit Committee shall:

• Advise management, the internal auditing department and the independent auditor that they are expected to provide to the Audit Committee a timely analysis of significant issues and practices relating to accounting principles and policies, financial reporting and internal control over financial reporting;

• Consider any reports or communications (and management's and/or the internal audit department's responses thereto) submitted to the Audit Committee by the independent auditor required by or referred to in SAS 61 (as codified by AU Section 380), as it may be modified or supplemented or other professional standards;

• Review and discuss with management, the internal auditor (or other personnel or service providers responsible for the internal audit function), and the independent auditor the adequacy and effectiveness of the Company's internal controls over financial reporting, including any significant changes, significant deficiencies or material weaknesses in those controls reported by the independent auditor, the internal auditor (or other personnel or service providers responsible for the internal audit function) or management and any special audit steps adopted in light of any such significant control deficiencies or material weaknesses and any fraud, whether or not material, that involves management or other Company employees who have a significant role in the Company's internal controls; and

• Inquire of the [CEO] and [CFO] as to the existence of any significant deficiencies or material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information, and as to the existence of any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting.

10. Disclosure Controls and Procedures. The Audit Committee shall review and discuss the adequacy and effectiveness of the Company's disclosure controls and procedures.

* * *

12. Legal and Regulatory Compliance. The Audit Committee shall review and discuss with [Lordstown's] General Counsel (the "General Counsel") and the independent auditor (i) the overall adequacy and effectiveness of the Company's legal, regulatory and ethical compliance programs, including the Company's Code of Business Conduct and Ethics, and make a recommendation to the [Board] with respect to the disposition of any proposed waiver and review any potential ethics violations brought to the attention of the Audit Committee and (ii) reports regarding compliance with applicable laws, regulations and internal compliance programs in each case to the extent pertaining to financial, accounting and/or tax matters. The Audit Committee shall discuss with the General Counsel and the independent auditor any significant legal, compliance or regulatory matters (including any correspondence, notices or inquiries with or from regulators or governmental agencies and any published reports) that may have a material effect on the Company's financial statements or accounting policies. The Audit Committee shall periodically discuss with the Company's Legal Department, or outside legal counsel, as applicable, legal, compliance or regulatory matters that may have a material impact on the financial statements or the Company's business, financial statements or compliance procedures that pertain to financial, accounting or tax matters of the Company. The Audit Committee shall have direct communication with the Company's Legal Department, or outside legal counsel, as applicable, as needed.

* * *

14. Risks. The Audit Committee shall review and discuss with management and the independent auditor the Company's major enterprise risk exposures and the steps management has taken to monitor and control those exposures, including:

• the Company's guidelines and policies with respect to financial risk assessment and financial risk management pertaining to financial, accounting and tax matters;

• the Company's information technology risk management guidelines and policies, including with respect to data security and privacy; and

• the Company's other major risk exposures, including with respect to operational matters, and the steps management has taken to monitor and control such exposures.

15. Related Party Transactions. The Audit Committee shall review the Company's policies and procedures with respect to related party transactions and review and approve all related party transactions of the Company in accordance with the policies and procedures of the Company in effect from time to time.

16. Conflicts of Interest. The Audit Committee shall:

• Review and monitor compliance with the Company's Code of Business Conduct and Ethics, and from time to time or as necessary recommend to the Board any revisions to the Board that the Audit Committee deems appropriate or to ensure compliance with such laws, regulations and rules;

• Consider questions of possible conflicts of interest of Board members and of corporate officers; and

• Review actual and potential conflicts of interest of Board members and corporate officers and approve or prohibit any involvement of such persons in matters that may involve a conflict of interest or the taking of a corporate opportunity.

VII. DERIVATIVE ALLEGATIONS

165. Plaintiffs bring this action derivatively in their own right and for the benefit of the Company to redress injuries suffered, and to be suffered, by Lordstown as a direct result of the Individual Defendants' violations of the federal securities laws, breaches of fiduciary duty, and unjust enrichment.

166. Lordstown is named as a nominal defendant in this case solely in a derivative capacity. This is not a collusive action to confer jurisdiction on this Court that it would not otherwise have.

167. Plaintiffs are current stockholders of Lordstown (and its predecessor company, DiamondPeak) and have continuously owned such shares since at least at least August through November 2020. Plaintiffs plan to hold Lordstown shares continuously throughout the pendency of this action. Plaintiffs will adequately and fairly represent the interests of the Company and its stockholders in prosecuting this action.

168. Because current members of the Lordstown Board lack independence and/or face a substantial likelihood of liability for the acts and omissions complained of herein, prosecution of this action, independent of the current Board, is in the best interests of the Company and its stockholders.

169. The wrongful acts complained of herein subjected, and continue to subject, Lordstown to harm.

VIII. FUTILITY ALLEGATIONS

170. Plaintiffs incorporate by reference all prior paragraphs as if fully set forth herein.

171. When this action was filed,[4], Lordstown's Board consisted of Defendants Burns, Hamamoto, Feldman, Reiss, Spencer, Gates, Kowitz, Strand Boydston, and Rucidlo (the "Demand Board"). Plaintiffs have not made any demand on the Demand Board to institute this action because such a demand would be a futile and useless act.

A. Demand Is Excused as to Burns and Hamamoto Because They Lack Independence

172. Lordstown has conceded in its SEC filings that Burns is not an independent director. Specifically, in the Company's December 4, 2020 Prospectus on SEC Form 424B3, Lordstown concedes that the Board did not find Burns to be independent under the NASDAQ's listing rules. Burns is not an independent director because his principal professional occupation is his employment with Lordstown. Burns is the Company's founder and its former CEO and Chairman, and has received and continues to receive substantial monetary compensation and other benefits. Moreover, Burns holds a significant percentage of Lordstown's outstanding common stock which was worth $479 million as of July 1, 2021. Burns was also the primary negotiator on behalf of Lordstown in connection with the Merger and was the individual who stood to gain the most by its consummation and the continued misrepresentation of Lordstown's business. This lack of independence renders Burns incapable of impartially considering a demand to commence and vigorously prosecute this action.

[4] The lead case in this consolidated action was filed on April 28, 2021.

173. Hamamoto lacks independence due to having recently served as CEO and Chairman of Lordstown's predecessor, DiamondPeak, and having been the primary negotiator on behalf of DiamondPeak in connection with the Merger. Hamamoto beneficially owns a significant amount of Lordstown common stock which was worth $43.8 million as of July 1, 2021, and which he received as a result of the consummation of the Merger through materially false and misleading proxy solicitations. Like Burns, Hamamoto was interested in the Merger transaction given his significant financial interest in its consummation and the continued misrepresentation of Lordstown's business. This lack of independence renders Hamamoto incapable of impartially considering a demand to commence and vigorously prosecute this action.

B. Demand Is Excused Because All Demand Board Members Face a Substantial Likelihood of Liability for Their Misconduct

174. As set forth herein, the Demand Board breached their fiduciary duties of loyalty and good faith by making or allowing to be made improper statements in Lordstown's (and DiamondPeak's) press releases, public filings, and other public statements. Notably, these defendants signed the Company's false and misleading Registration Statement which registered for sale their personally held Lordstown shares[5] and which misrepresented Lordstown's Endurance prototype, its limited marketing activities, its commercial production timeline and sales targets, its pre-orders, and the demand for its Endurance pickup truck.

175. Demand Board members Feldman, Reiss, and Rucidlo, as members of the Audit Committee, had a duty to adequately oversee Lordstown's compliance with legal and regulatory requirements, including public disclosure controls and procedures, as well as its risk assessment and management, and internal control functions. Thus, the Audit Committee

[5] Although Reiss, Spencer, and Strand Boydston signed the Registration Statement, it appears they did not register any of their personally-held Company shares for resale.

Defendants were responsible for knowingly or recklessly allowing the improper statements detailed herein. The Audit Committee Defendants breached their fiduciary duty of loyalty and good faith by approving or otherwise allowing the improper statements, and therefore failing to properly oversee Lordstown's compliance with legal and regulatory requirements, risk assessment, and the Company's internal controls.

176. Demand Board member Hamamoto violated his fiduciary duties by trading on inside information. On October 22, 2020, while the price of Lordstown's common stock was artificially inflated by the Individual Defendants' false and misleading public statements and omissions, and while Hamamoto was in possession of material, adverse nonpublic information, he sold one million shares of personally held [Lordstown] stock at artificially inflated prices for proceeds of $16.38 million.

177. Demand Board members Burns, Hamamoto, Reiss, and Spencer further violated Sections 14(a) and 20(a) of the Exchange Act by negligently making material misstatements and omitting material facts in connection with their proxy solicitations, as described herein.

178. Burns is also named as a defendant in the pending Securities Class Action which allege that he violated Sections 10(b) and 20(a) of the Exchange Act by affirmatively making false and misleading statements and/or controlling Lordstown and its Section 10(b) violations.

179. Accordingly, all the members of the Demand Board face a substantial likelihood of liability for their breaches of fiduciary duty and violations of state and federal law, making any demand upon them futile.

C. Demand Is Excused Due to Burns' Control Over the Demand Board

180. Defendants Hamamoto, Feldman, Reiss, Spencer, Gates, Kowitz, Strand Boydston, and Rucidlo also lack independence from Defendant Burns, an interested director, due to Defendant Burns' domination and control over the Demand Board. Burns is the founder of

Lordstown and, at the time this action was initiated, its CEO and Chairman, and by all accounts was the driving force behind the Company. As of July 1, 2021, he owned 26.25% of the Company's outstanding Class A common stock. Given this level of control, Burns handpicked the majority of Lordstown's officers and directors. Indeed, while at Workhorse Group, Burns developed a reputation for hiring friends and relatives as top executives.

181. Demand Board members Reiss and Spencer were chosen by Burns and first appointed to Lordstown's Board prior to the Merger, in February 2020. As result, they each received 83,822 shares of Lordstown Class A common stock which was worth more than $1.68 million post-Merger. Each of these directors owe their position on the Lordstown Board and their substantial stock remuneration to Defendant Burns. Both Reiss and Spencer are therefore beholden to Burns.

182. In connection with the closing of the Merger, Burns was given the power to unilaterally nominate six of the nine members of the post-Merger (Demand) Board and also empowered to nominate a seventh director, in consultation with DiamondPeak. As described in the Company's October 8, 2020 proxy statement:

> ***[Burns] will have significant influence over us after the closing.***
>
> Upon closing, [Burns] will beneficially own our Class A common stock representing approximately 27.7% of our outstanding voting power (or 35.5% assuming a maximum redemption by our public stockholders of 27,000,000 public shares). As long as [Burns] own or control a significant percentage of our outstanding voting power, he will have the ability to influence certain corporate actions requiring stockholder approval.
>
> In addition, assuming the [d]irector [e]lection [p]roposal is approved, our [Board] following the closing will include, in addition to one director designated by DiamondPeak, one director designated by DiamondPeak in consultation with [Burns] and one director designated by [Burns] in consultation with DiamondPeak, six directors designated by [Burns]. See section entitled "Proposal Number 4 — The Director Election Proposal" for more information with respect to the nomination of individuals to our board of directors following the closing.

183. Moreover, each of the directors on the Demand Board (with the exception of Burns) has received and will continue to receive substantial cash and equity compensation for their service on the Board and its committees. On February 5, 2021, each director also received an annual grant of $165,000 in restricted stock units for "their earlier service on the Board."

184. Accordingly, at least six of the nine directors were unilaterally chosen by Burns, are beholden to him, and would not be able to objectively determine whether to prosecute Burns (and others) for their breaches of fiduciary duty and other violations of law.

185. There is reasonable doubt that a majority of Demand Board members are capable of independently considering a demand to commence and vigorously prosecute an action against Burns (and others, including themselves) due to Burns' domination and control of the Board at the time this action was initiated.

D. Demand Is Excused For Additional Reasons

186. Any suit by the Demand Board to remedy these wrongs would significantly increase the exposure of Nominal Defendant Lordstown to liability for violations of the federal securities laws in the pending Securities Class Action and would potentially result in civil actions being filed against one or more additional Director Defendants. If the Board elects for the Company to press forward with its rights of action in this case, then Lordstown's efforts would compromise its own defense of the Securities Class Action.

187. Hamamoto, Feldman, Reiss, Spencer, Gates, Kowitz, Strand Boydston, and Rucidlo are likewise conflicted and unable to pursue the Company's claims against the Officer Defendants. Any effort to prosecute such claims against the Officer Defendants for their direct roles in the violations of applicable law carried out in Lordstown's name would necessarily expose the Board's own culpability for the very same conduct. In other words, given that the Board was required to be regularly informed concerning the Company's operations, business,

prospects, and public reporting, any effort by the Board to hold the Officer Defendants liable would lead the Officer Defendants to defend on the ground that their own conduct was consistent with corporate policy and practice, as established by and known to the Demand Board. This is particularly true with respect to Hamamoto, who oversaw DiamondPeak's due diligence on and negotiations with (legacy) Lordstown and who led DiamondPeak's efforts to solicit stockholder votes in support of the Merger.

188. The acts complained of constitute violations of the fiduciary duties owed by Lordstown's officers and directors, and these acts are incapable of ratification. Despite having knowledge of the claims and causes of action raised by Plaintiffs, the Board has failed to take any action against those responsible, much less seek to recover on behalf of the Company for any of the wrongdoing by the Individual Defendants.

189. Demand Board members Spencer and Strand Boydston serve together on the Compensation Committee. These individuals set their own compensation, as well as the compensation of their colleagues on the Demand Board. Their capacity to dole out compensation for themselves and their colleagues makes it impossible for each of them, and any of them, to independently and disinterestedly consider a stockholder demand to investigate or prosecute an action pertaining to the Individual Defendants' improper conduct.

IX. CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION

190. In committing the wrongful acts alleged herein, the Individual Defendants have pursued, or joined in the pursuit of, a common course of conduct and have acted in concert with and conspired with one another in furtherance of their common plan or design. In addition to the wrongful conduct alleged herein as giving rise to primary liability, the Individual Defendants further aided and abetted and/or assisted each other in breaching their respective duties.

191. During all times relevant hereto, the Individual Defendants, collectively and individually, initiated a course of conduct that was designed to and did: (i) deceive the investing public, including stockholders of Lordstown (and its predecessor), regarding the Company's business, operations, and prospects; and (ii) enhance the Individual Defendants' executive and directorial positions at Lordstown and the profits, power, and prestige that the Individual Defendants enjoyed as a result of holding these positions. In furtherance of this plan, conspiracy, and course of conduct, the Individual Defendants, collectively and individually, took the actions set forth herein.

192. The Individual Defendants engaged in a conspiracy, common enterprise, and/or common course of conduct. During this time, the Individual Defendants caused and/or allowed the Company to issue improper public statements.

193. The purpose and effect of the Individual Defendants' conspiracy, common enterprise, and/or common course of conduct was, among other things, to disguise the Individual Defendants' violations of law, breaches of fiduciary duty, and unjust enrichment, and to conceal adverse information concerning the Company's business, operations, and prospects.

194. The Individual Defendants accomplished their conspiracy, common enterprise, and/or common course of conduct by causing the Company to release improper statements. Because the actions described herein occurred under the authority of the Board, each of the Individual Defendants was a direct, necessary, and substantial participant in the conspiracy, common enterprise, and/or common course of conduct complained of herein.

195. Each of the Individual Defendants aided and abetted and rendered substantial assistance in the wrongs complained of herein. In taking such actions to substantially assist the commission of the wrongdoing complained of herein, each Individual Defendant acted with

knowledge of the primary wrongdoing, substantially assisted in the accomplishment of that wrongdoing, and was aware of his or her overall contribution to and furtherance of the wrongdoing.

X. CLAIMS FOR RELIEF

COUNT I

Violations of Section 14(a) and 20(a) of the Exchange Act (Against the Proxy Defendants)

196. Plaintiffs incorporate by reference and realleges each and every allegation contained above (except as set forth in the following ¶ 197), as though fully set forth herein.

197. The Section 14(a) and 20(a) Exchange Act claims alleged herein are based solely on negligence. They are not based on any allegation of reckless or knowing conduct by or on behalf of the Individual Defendants. The Section 14(a) and 20(a) Exchange Act claims alleged herein do not allege and do not sound in fraud. Plaintiffs specifically disclaim any allegation of, reliance upon any allegation of, or reference to any allegation of fraud, scienter, or recklessness with regard to these nonfraud claims

198. Section 14(a) of the Exchange Act, 15 U.S.C. § 78n(a)(1), provides that "[i]t shall be unlawful for any person, by use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, in contravention of such rules and regulations as the [SEC] may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his [or her] name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered pursuant to section 12 of this title [15 U.S.C. § 78l]."

199. Rule 14a-9, promulgated pursuant to Section 14(a) of the Exchange Act, provides that no proxy solicitation shall contain "any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or

which omits to state any material fact necessary in order to make the statements therein not false or misleading." 17 C.F.R. § 240.14a-9.

200. Between August 3, 2020 and October 22, 2020, the Proxy Defendants solicited stockholder votes in favor of the Merger through use of materially false and misleading statements and failures to disclose in their proxy solicitations as set forth at ¶¶ 77-97, above. In soliciting stockholder votes, the Proxy Defendants misrepresented and failed to disclose the following true facts about the Company's business, operations, and prospects (as described in greater detail at ¶¶ 118-129, 137):

(a) Lordstown greatly overstated potential demand for the Endurance pickup truck because, among other things, the number of Endurance pre-orders was largely fictitious, significantly inflated, and reflected "pre-orders" by customers lacking the intent and/or means to purchase its trucks;

(b) Lordstown overstated and misrepresented its pre-orders in order to raise capital, confer legitimacy, and provide investors with an overstated and false sense of confidence in the Company's prospects;

(c) Lordstown faced considerable undisclosed design, performance, reliability, and production obstacles that would continue to delay production and delivery of the Endurance for potentially years beyond the third quarter of 2021; and

(d) as a result of the foregoing, statements by and on behalf of Lordstown concerning its business, operations, and prospects were materially false and misleading and/or lacked a reasonable basis when made.

201. The Proxy Defendants negligently issued, caused to be issued, and participated in the issuance of materially false and misleading statements to stockholders, which were made for the purpose of soliciting stockholder votes to approve DiamondPeak's acquisition of Lordstown in the Merger. In the exercise of reasonable care, the Proxy Defendants should have known that by misrepresenting or failing to disclose the foregoing material facts, the statements made would be rendered materially false and misleading.

202. The proxy solicitation process was an essential link in the approval of the Merger. The misrepresentations and omissions were material to DiamondPeak stockholders in voting on the matters set forth for stockholder determination, including the approval of the Merger.

203. As a direct and proximate result of these defendants' wrongful conduct, DiamondPeak, Lordstown, and the Proxy Defendants misled and/or deceived DiamondPeak's stockholders by making materially false and misleading statements that were an essential link in stockholders heeding the DiamondPeak board of directors' recommendation to approve the acquisition of Lordstown.

204. The Company was damaged as a result of the Individual Defendants' materially false and misleading statements in their proxy solicitations. Plaintiffs, on behalf of Lordstown, hereby seek relief for damages inflicted upon the Company based upon the misleading proxy solicitations in connection with the Merger approval of the acquisition of Lordstown by DiamondPeak.

205. Because of their positions of control and their authority over DiamondPeak and Lordstown, the Proxy Defendants were able to and did control the actions of the companies, their employees, and the contents of the proxy solicitations, as set forth herein. The Proxy Defendants therefore qualify as "controlling persons" within the meaning of Section 20(a) of the Exchange Act. By reason of the above conduct, the Proxy Defendants are also, or alternatively, liable as control persons of Lordstown (or its predecessor) pursuant to Section 20(a) of the Exchange Act.

COUNT II

For Contribution for Violations of Section 10(b) and 21D of the Exchange Act (Against the Securities Class Action Defendants)

206. Plaintiffs incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

207. Defendants Burns, Schmidt, Rodriguez, and Fabian are named defendants in the Securities Class Action.

208. Lordstown is named as a defendant in the Securities Class Action, which assert claims under the federal securities laws for, *inter alia*, violations of Section 10(b) of the Exchange Act. If the Company is found liable for violating the federal securities laws, the Company's liability will arise, in whole or in part, from the intentional, knowing, or reckless acts or omissions of some or all of these defendants as alleged herein. The Company is entitled to receive contribution from the Securities Class Action Defendants in connection with the Securities Class Action against the Company.

209. Defendants Burns, Schmidt, Rodriguez, and Fabian as directors and officers and otherwise, had the power and/or ability to, and did, directly or indirectly, control or influence the Company's general affairs, including the content of public statements about Lordstown, and had the power and/or ability, directly or indirectly, to control or influence the specific corporate statements and conduct that violated Section 10(b) of the Exchange Act and Rule 10b-5.

210. Defendants Burns, Schmidt, Rodriguez, and Fabian are liable under Section 21D of the Exchange Act, 15 U.S.C. § 78u-4(f), which governs the application of any private right of action for contribution asserted pursuant to the Exchange Act.

211. As a result, Defendants Burns, Schmidt, Rodriguez, and Fabian damaged Lordstown and are liable to the Company for contribution.

212. No adequate remedy at law exists for Plaintiffs by and on behalf of the Company.

COUNT III

Breach of Fiduciary Duties of Care and Loyalty (Against the Officer Defendants)

213. Plaintiffs incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

214. The conduct of the Officer Defendants complained of herein involves a knowing and culpable violation of their obligations as officers of Lordstown, the absence of good faith on their part, and a reckless disregard for their duties to the Company that the Officer Defendants were aware, or reckless in not being aware, posed a risk of serious injury to the Company.

215. The Officer Defendants owed fiduciary duties to Lordstown and its stockholders. By reason of their positions as fiduciaries to the Company, the Officer Defendants owed duties of care, good faith, loyalty, candor, and truthful disclosure. In addition, the Officer Defendants had specific fiduciary duties as defined by the Company's corporate governance documents, including its Code of Conduct, and principles that, had they been discharged in accordance with the Officer Defendants' obligations, would have prevented the misconduct and the consequent harm to the Company.

216. The Officer Defendants consciously breached their fiduciary duties and violated their corporate responsibilities in at least the following ways:

(a) Affirmatively making, allowing, controlling, and/or failing to correct improper and misleading statements in Lordstown's press releases, SEC filings, conference calls, and other public statements, relating to, among other things, Lordstown's business, operations, and prospects;

(b) Failing to ensure the Company's compliance with relevant legal and regulatory requirements, as well as its own internal policies and procedures, including but not limited to requirements imposed under federal and state securities laws and the Company's Code of Conduct;

(c) Failing to implement, maintain, and monitor adequate internal controls; and

(d) Paying or causing the Company to pay themselves compensation while in breach of their fiduciary duties, which also included share-based compensation awarded at share prices that were artificially inflated by their misconduct.

217. As a direct and proximate result of the Officer Defendants' breaches of their fiduciary obligations, Lordstown has sustained significant damages. Accordingly, the Officer Defendants are liable to the Company.

218. In addition, each of the Officer Defendants had actual knowledge of the Individual Defendants' breaches of fiduciary duties, knowingly participated in the breaches, and Lordstown has sustained significant damage as a result. Accordingly, the Officer Defendants are further liable to the Company for aiding and abetting their fellow defendants' breaches.

219. Plaintiffs, on behalf of Lordstown, have no adequate remedy at law.

COUNT IV

Breach of Fiduciary Duties of Loyalty
(Against the Director Defendants)

220. Plaintiffs incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

221. The Director Defendants owed fiduciary duties to Lordstown and/or its predecessor and their stockholders. By reason of their positions as fiduciaries, the Director Defendants owed duties of good faith, loyalty, candor, and truthful disclosure. In addition, the Director Defendants have and had specific fiduciary duties as defined by relevant corporate governance documents, including the Governance Guidelines, the Code of Conduct, the charters of various Board committees, and principles that, had they been discharged in accordance with the Director Defendants' obligations, would have prevented the misconduct and the consequent harm to the Company.

222. The Director Defendants consciously breached their fiduciary duties and violated their corporate responsibilities in at least the following ways:

(a) Affirmatively making, allowing, controlling, and/or failing to correct improper and misleading statements in Lordstown's press releases, SEC filings, conference calls, and other public statements, relating to, among other things, Lordstown's business, operations, and prospects;

(b) Failing to ensure the Company's compliance with relevant legal and regulatory requirements, as well as its own internal policies and procedures, including but not limited to requirements imposed under federal and state securities laws and the Company's Code of Conduct, Governance Guidelines, and the Board's Audit Charter;

(c) Failing to implement, maintain, and monitor adequate internal controls, including adequate and effective disclosure controls; and

(d) Paying or causing the Company to pay themselves and the Officer Defendants annual compensation while in breach of their fiduciary duties, which also included share-based compensation awarded at share prices that were artificially inflated by their misconduct.

223. The Director Defendants that were members of the Audit Committee further breached their duties by approving or otherwise allowing the improper statements, which they knew or were reckless in not knowing omitted material facts and contained material misstatements. The Audit Committee Defendants also completely and utterly failed in their duty of oversight and failed to properly oversee Lordstown's (i) compliance with legal and regulatory requirements, (ii) public disclosure controls and procedures, (iii) risk assessment and management, and (iv) internal control functions.

224. The Director Defendants that are also Proxy Defendants breached their fiduciary duties by approving the Merger on the terms agreed to and later approved by DiamondPeak's stockholders. Defendants Hamamoto, Walsh, Richardson, Hash, and Hannaway breached their fiduciary duties by failing to perform sufficient due diligence prior to approving the Merger and by recommending that DiamondPeak stockholders vote in favor of the Merger.

225. As a direct and proximate result of the Director Defendants' breaches of their fiduciary obligations, Lordstown has sustained significant damages. Accordingly, the Director Defendants are liable to the Company.

226. In addition, each of the Director Defendants had actual knowledge of the Individual Defendants' breaches of fiduciary duties, knowingly participated in the breaches, and Lordstown has sustained significant damage as a result. Accordingly, the Director Defendants are further liable to the Company for aiding and abetting their fellow defendants' breaches.

227. Plaintiffs, on behalf of Lordstown, have no adequate remedy at law.

COUNT V

Insider Selling
(Against the Defendants Rodriguez, Schmidt, and Hamamoto)

228. Plaintiffs incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

229. At the time Rodriguez, Schmidt, and Hamamoto sold their Lordstown stock, they knew the undisclosed information described herein and sold such stock on the basis of such information. That information was material adverse, nonpublic information concerning the Company's business, operations, and prospects. It was an asset belonging to the Company which Rodriguez, Schmidt, and Hamamoto used for their own benefit when they sold Lordstown stock.

230. At the time of their stock sales, Rodriguez, Schmidt, and Hamamoto knew the truth about the Company's business, operations, and prospects. These stock sales while in possession and control of this material adverse, nonpublic information was a breach of their fiduciary duty of loyalty and good faith.

231. By reason of the foregoing, Lordstown was damaged.

232. Since the use of the Company's nonpublic information for their own gain constitutes a breach of fiduciary duty, the Company is entitled to the imposition of a constructive trust on any profits that Rodriguez, Schmidt, and Hamamoto retained thereby.

233. Plaintiffs, on behalf of Lordstown, have no adequate remedy at law.

COUNT VI

Unjust Enrichment
(Against the Individual Defendants)

234. Plaintiffs incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

235. By their wrongful acts and omissions, the Individual Defendants were unjustly enriched at the expense of and to the detriment of Lordstown. The Individual Defendants were unjustly enriched as a result of the compensation and officer and director remuneration they received while breaching their fiduciary duties.

236. Defendants Rodriguez, Schmidt, and Hamamoto sold Lordstown stock while in possession of material, adverse nonpublic information that artificially inflated the price of Lordstown stock. As a result, Rodriguez, Schmidt, and Hamamoto profited from their misconduct and were unjustly enriched through their exploitation of material and adverse inside information.

237. Plaintiffs, as stockholders and representatives of Lordstown, seek restitution from these defendants, and each of them, and seek an order of this Court disgorging all profits, benefits, and other compensation obtained by these defendants, and each of them, from their wrongful conduct and fiduciary breaches.

238. Plaintiffs, on behalf of Lordstown, have no adequate remedy at law.

XI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment as follows:

A. Finding that a stockholder demand on the Demand Board would have been a futile and useless act;

B. Finding that the Individual Defendants violated the federal securities laws, breached their fiduciary duties to the Company, and were unjustly enriched;

C. Directing Lordstown to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with applicable laws and to protect Lordstown and its stockholders from a repeat of the damaging events described herein, including, but not limited to, putting forward for stockholder vote resolutions for amendments to the Company's Bylaws or Articles of Incorporation, and taking such other action as may be necessary to place before stockholders for a vote the following corporate governance proposals or policies:

- a proposal to appropriately test, and then strengthen, the Company's internal-operational control functions;
- a proposal to appropriately test, and then strengthen, the Company's disclosure controls to ensure that all material information is adequately and timely disclosed to the SEC and public;
- a proposal to strengthen the Board's supervision of operations and compliance with applicable state and federal laws and regulations;
- a proposal to develop and implement procedures for greater stockholder input into the policies and guidelines of the Board;
- a proposal to require an independent Chairman of the Board;
- a proposal to declassify the Board; and
- a proposal to permit the stockholders of Lordstown to nominate three candidates for election to the Board.

D. Against each of the Individual Defendants in favor of Lordstown for the amount of damages sustained by Lordstown (and its predecessor company), jointly and severally, in an amount to be determined at trial, together with pre- and post-judgment interest at the maximum legal rate allowable by law;

E. Requiring the Individual Defendants to return to Lordstown all compensation and remuneration of whatever kind paid to them by Lordstown (or its predecessor company) during the time that they were in breach of the fiduciary duties;

F. Directing the Individual Defendants to establish, maintain, and fully fund effective corporate governance and compliance programs to ensure that Lordstown's directors, officers, and employees do not engage in wrongful or illegal practices;

G. Granting appropriate equitable and/or injunctive relief to remedy the Individual Defendants' misconduct, as permitted by law;

H. Awarding to Plaintiffs the costs and disbursements of this action, including reasonable attorneys' and experts' fees and expenses; and

I. Granting such other and further relief as this Court deems just and equitable.

XII. DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury.

Dated: August 27, 2021

COOCH AND TAYLOR, P.A.

/s/ Blake A. Bennett
Blake A. Bennett (#5133)
The Nemours Building
1007 N. Orange Street, Suite 1120
Wilmington, DE 19801
Telephone: (302) 984-3800
bbennett@coochtaylor.com

Liaison Counsel for Plaintiffs and Attorneys for Plaintiffs Daniel J. Cohen, David M. Cohen, Alicia Kelly, and Herbert Stotler

JOHNSON FISTEL, LLP
MICHAEL I. FISTEL, JR.
40 Powder Springs Street
Marietta, GA 30064
Telephone: (470) 632-6000
Facsimile: (770) 200-3101

MichaelF@johnsonfistel.com

JOHNSON FISTEL, LLP
FRANK J. JOHNSON
655 West Broadway, Suite 1400
San Diego, CA 92101
Telephone: (619) 230-0063
Facsimile: (619) 255-1856
FrankJ@johnsonfistel.com

Co-Lead Counsel for Plaintiffs and Attorneys for Plaintiffs Daniel J. Cohen and David M. Cohen

GLANCY PRONGAY & MURRAY LLP
Benjamin I. Sachs-Michaels
712 Fifth Avenue
New York, New York 10019
Telephone: (212) 935-7400
bsachsmichaels@glancylaw.com

GLANCY PRONGAY & MURRAY LLP
Robert V. Prongay
Pavithra Rajesh
1925 Century Park East, Suite 2100
Los Angeles, California 90067
Telephone: (310) 201-9150
rprongay@glancylaw.com
prajesh@glancylaw.com

Co-Lead Counsel for Plaintiffs and Attorneys for Plaintiffs Alicia Kelley and Herbert Stotler

ANDREWS & SPRINGER LLC
Peter B. Andrews (#4623)
Craig J. Springer (#5529)
David M. Sborz (#6203)
3801 Kennett Pike
Building C, Suite 305
Wilmington, DE 19807
Telephone: (302) 504-4957
pandrews@andrewsspringer.com
cspringer@andrewsspringer.com
dsborz@andrewsspringer.com

ROBBINS GELLER RUDMAN & DOWD LLP
Benny C. Goodman III

Erik W. Luedeke
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: (619) 231-1058
BennyG@rgrdlaw.com
ELuedeke@rgrdlaw.com

ROBBINS LLP
Brian J. Robbins
Craig W. Smith
Shane P. Sanders
Emily R. Bishopo
5040 Shoreham Place
San Diego, CA 92122
Telephone: (619) 525-3990
brobbins@robbinsllp.com
csmith@robbinsllp.com
ssanders@robbinsllp.com
ebishop@robbinsllp.com

Attorneys for Plaintiff Claude L. Patterson

BIELLI & KLAUDER, LLC
Ryan M. Ernst (No. 4788)
1204 N. King Street
Wilmington, DE 19801
Telephone: (302) 803-4600
Facsimile: (302) 397-2557
rernst@bk-legal.com

LEVI & KORSINSKY, LLP
Gregory M. Nespole
Correy Kamin
Ryan Messina
55 Broadway, 10th Floor
New York, NY 10006
Telephone: (212) 363.7500
Facsimile: (212) 363.7171
gnespole@zlk.com
ckamin@zlk.com
rmessina@zlk.com

Attorneys for Plaintiff Evaristo Sarabia

DocuSign Envelope ID: 7C085696-CED3-439B-B03A-E15C3C3487AB

VERIFICATION

I, Daniel J. Cohen, am the plaintiff in the within action. I have reviewed the allegations made in this verified consolidated stockholder derivative complaint for violations of federal securities laws, breach of fiduciary duty, and unjust enrichment, know the contents thereof, and authorize its filing. To those allegations of which I have personal knowledge, I believe those allegations to be true. As to those allegations of which I do not have personal knowledge, I rely upon my counsel and their investigation and believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 8/23/2021

DocuSigned by:

D7DC4CA041C845...

Daniel J. Cohen

DocuSign Envelope ID: D12E3E28-2C05-4E18-B401-1521EB3EB3ED

VERIFICATION

I, Alicia Kelley, am a plaintiff in the within action. I have reviewed the allegations made in this verified consolidated stockholder derivative complaint for violations of federal securities laws, breach of fiduciary duty, and unjust enrichment, know the contents thereof, and authorize its filing. To those allegations of which I have personal knowledge, I believe those allegations to be true. As to those allegations of which I do not have personal knowledge, I rely upon my counsel and their investigation and believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 8/23/2021th of August, 2021.

Alicia Kelley

Alicia Kelley

VERIFICATION

I, Evaristo Sarabia, am the plaintiff in the within action. I have reviewed the allegations made in this verified consolidated stockholder derivative complaint for violations of federal securities laws, breach of fiduciary duty, and unjust enrichment, know the contents thereof, and authorize its filing. To those allegations of which I have personal knowledge, I believe those allegations to be true. As to those allegations of which I do not have personal knowledge, I rely upon my counsel and their investigation and believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24th of August, 2021.

Evaristo Sarabia

Evaristo Sarabia (Aug 24, 2021 09:45 CDT)

Evaristo Sarabia

VERIFICATION

I, Claude L. Patterson, am a plaintiff in the within action. I have reviewed the allegations made in this verified consolidated stockholder derivative complaint for violations of federal securities laws, breach of fiduciary duty, and unjust enrichment, know the contents thereof, and authorize its filing. To those allegations of which I have personal knowledge, I believe those allegations to be true. As to those allegations of which I do not have personal knowledge, I rely upon my counsel and their investigation and believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 8/24/2021th of August, 2021.

DocuSigned by:
Claude Patterson
098A3B0F761C4A7...

Claude L. Patterson

DocuSign Envelope ID: 09D3FD30-E9C7-4AD7-AE5A-A96CE14238EA

VERIFICATION

I, Herbert Stotler, am a plaintiff in the within action. I have reviewed the allegations made in this verified consolidated stockholder derivative complaint for violations of federal securities laws, breach of fiduciary duty, and unjust enrichment, know the contents thereof, and authorize its filing. To those allegations of which I have personal knowledge, I believe those allegations to be true. As to those allegations of which I do not have personal knowledge, I rely upon my counsel and their investigation and believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 4th of August, 2021.

Herbert Stotler

DocuSign Envelope ID: EDA54988-7BC9-4E65-9395-E8BC5E6DC663

VERIFICATION

I, David M. Cohen, am the plaintiff in the within action. I have reviewed the allegations made in this verified consolidated stockholder derivative complaint for violations of federal securities laws, breach of fiduciary duty, and unjust enrichment, know the contents thereof, and authorize its filing. To those allegations of which I have personal knowledge, I believe those allegations to be true. As to those allegations of which I do not have personal knowledge, I rely upon my counsel and their investigation and believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 8/23/2021

DocuSigned by:
David M. Cohen
CDD9C70044D44FA...

David M. Cohen

EXHIBIT C

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE LORDSTOWN MOTORS CORP. STOCKHOLDER DERIVATIVE LITIGATION	CONSOLIDATED C.A. No. 2021-1049-LWW

VERIFIED CONSOLIDATED
SHAREHOLDER DERIVATIVE COMPLAINT

1. Plaintiffs Ed Lomont and Janelle Jackson, by and through their undersigned counsel, bring this action derivatively on behalf of nominal defendant Lordstown Motors Corp. ("Lordstown" or the "Company") against certain of its current and former officers and directors. The allegations below are made upon personal knowledge as to Plaintiffs and their own acts, and upon information and belief as to all other matters based upon a review of: (a) information publicly disseminated by Lordstown, including its public filings with the U.S. Securities and Exchange Commission ("SEC"), press releases, and postings on its website; (b) news reports and other publicly available sources; (c) internal corporate books and records obtained from Lordstown pursuant to an inspection demand made by Plaintiff Jackson under 8 *Del. C.* § 220 (the "Inspection Demand");[1] and (d) court dockets, filings, and orders related to pending litigation involving Lordstown.

[1] To Plaintiffs' knowledge, the same documents that were provided to David M. Cormier were provided to Plaintiff Jackson. As such, per the Court's Order dated January 24, 2022, the present Consolidated Complaint has not been filed confidentially. *See* Dkt. No. 21.

NATURE OF ACTION

2. This is a straightforward case of greed and deceit involving Lordstown, an electric vehicle startup company. Founded in 2018, Lordstown sought to become the first manufacturer of a full size, all-electric pickup truck. The individual defendants named herein, led by Defendant Stephen S. Burns, Lordstown's former Chairman and Chief Executive Officer ("CEO"), repeatedly represented to shareholders two things of material importance: (1) that Lordstown was on track to produce a marketable vehicle—a full-size electric pickup truck called the "Endurance"—by September 2021 (or earlier); and (2) that the Company had secured hundreds of millions of dollars of "pre-orders" from customers. Both were false.

3. Lordstown is nowhere close to producing a marketable vehicle. According to one insider with "intimate" knowledge of Lordstown's operations, the Company is "maybe three-to-four years" away, "if ever," from producing a finished product. In fact, dating all the way back to 2017, when Lordstown's product development was taking place under the banner of Burns's former employer, Workhorse Group Inc. ("Workhorse"), Burns and Lordstown have publicly committed themselves to several prior production timelines each of which was false and had to be pushed back.

4. Similarly, Lordstown's much-hyped "pre-orders" are a mirage of worthless, unenforceable paper. Defendant Burns nevertheless spearheaded a false and misleading public media campaign in the fall of 2020 and continuing into early 2021 in which he cast Lordstown's pre-orders as "serious orders," and at one point eagerly agreed with a television host who called them "solid" and "committed." Not only were these pre-orders completely non-binding on the companies that signed them, but investigative reporting has revealed that some of the signatories had no intent whatsoever to buy a Lordstown vehicle yet signed the documents anyway. Some apparently did it as a personal favor to Burns "to aid in the capital raising process" in the run-up to an October 2020 merger with DiamondPeak Holdings Corp. ("DiamondPeak") (the "Merger"), discussed in more detail below. Lordstown sales representatives were paid commissions to cajole companies to sign these meaningless pre-orders. Some of the signatories appeared to be mirages themselves, having little or nothing in the way of identifiable history and operating out of suspicious business addresses. The research firm that investigated Lordstown's pre-orders ultimately concluded: "All told, we found zero binding orders or genuine signs of commitment in Lordstown's order book." Lordstown has since substantiated much of this independent research with its own internal investigation conducted by a Special Committee of the Board of Directors (the "Board").

5. With respect to both of these critical areas, Lordstown's senior management and Board were fully informed of the actual truth while Burns and others conducted their false and misleading public campaign to deceive the market and temporarily drive up the Company's stock value.

6. Worse, before the deception was uncovered in March 2021, several of the defendants named herein sold millions of dollars of Company stock, taking advantage of the temporary upswing in price caused by their false and misleading scheme.

7. The SEC and Department of Justice ("DOJ") are now on the case, having each opened investigations into the wrongdoing described herein. The SEC opened an investigation into Lordstown on February 17, 2021, serving the Company with requests for documents and information relating to the Merger and the purported pre-orders of Lordstown vehicles. The Company has since disclosed that it has received two subpoenas from the SEC. The Company also disclosed in July 2021 that the U.S. Attorney for the Southern District of New York has opened an investigation into these same matters.

8. The aforementioned conduct has subjected the Company to litigation on multiple fronts. A consolidated securities class action is currently pending against the Company in the U.S. District Court for the Northern District of Ohio (the "Securities Class Action"), captioned *In re Lordstown Motors Corp. Securities*

Litigation (No. 4:21-cv-00616). In addition to the Company, several individuals are named as defendants in that action, including Shane Brown, Stephen S. Burns, Caimin Flannery, David T. Hamamoto, Darren Post, Julio Rodriguez, and Rich Schmidt. Each of these individuals is also named as a defendant herein.

9. In addition to the Securities Class Action, a consolidated class action is currently pending in Delaware Chancery Court (the "State Class Action"), captioned *In re Lordstown Motors Corp. Stockholders Litigation* (C.A. No. 2021-1066). The State Class Action names several individuals as defendants, including David Hamamoto, Mark Walsh, Andrew Richardson, Steven Hash, and Judith Hannaway. Each of these individuals is also named as a defendant herein.

10. Plaintiffs have not made a litigation demand on the Board because doing so would be futile.

PARTIES

Plaintiffs

11. Plaintiff Ed Lomont is a current holder of Lordstown shares and has continuously owned shares since December 2020. Plaintiff Lomont will fairly and adequately represent Lordstown's interests in this action.

12. Plaintiff Janelle Jackson is a current holder of Lordstown shares and has continuously owned shares since October 2020. Plaintiff Jackson will fairly and adequately represent Lordstown's interests in this action.

Nominal Defendant

13. Nominal Defendant Lordstown is a Delaware corporation with its principal executive offices located at 2300 Hallock Young Road, Lordstown, Ohio. Lordstown's common stock trades on the Nasdaq stock exchange under the symbol "RIDE."

Director Defendants

14. Defendant Keith A. Feldman has served as a director of Lordstown since October 2020. Feldman is the Chair of the Audit Committee. Since at least January 2012, Feldman has held high-level roles at various companies in the real estate and asset management industries, most recently serving as the Chief Financial Officer and Treasurer of NorthStar Realty Europe Corp., a listed REIT focused on European commercial real estate properties. Feldman is a CFA charterholder and a Certified Public Accountant.

15. Defendant Michael D. Gates served as a director of Lordstown from October 2020 until May 2022. Gates has an extensive background in construction and real property development, most recently as the founder and owner of Gridiron Development, a real estate construction and development firm in Mason, Ohio which he founded in 1994.

16. Defendant David T. Hamamoto has served as a director of Lordstown since October 2020. Prior to that, Hamamoto was the founder, Chairman, and CEO

of DiamondPeak from its inception in or around November 2018 until the Merger in October 2020. As of July 1, 2021, Hamamoto beneficially owned 4,229,135 shares of Lordstown common stock acquired in connection with the Merger.

17. Defendant Mickey W. Kowitz served as a director of Lordstown from October 2020 until August 2021. Kowitz has a background in software development and management in the areas of artificial intelligence, speech recognition, and natural language processing, most recently serving as the President and CEO of ClinMunications LLC, an artificial intelligence communications provider in the healthcare industry.

18. Defendant Jane Reiss has served as a director of Lordstown since October 2020. Reiss is a member of the Audit Committee. Prior to that, Reiss served as a director of the pre-Merger entity formally known as Lordstown Motors Corp. ("Legacy Lordstown") beginning in February 2020. Reiss's background is in marketing, describing herself as "a leading member of New York City's advertising and marketing industry." Reiss most recently served as the Chief Marketing Officer and Chief Brand Experience Officer of Grey, a global advertising network.

19. Defendant Martin J. Rucidlo served as a director of Lordstown from October 2020 until May 2022. Rucidlo was a member of the Audit Committee at relevant times. Rucidlo has a background in management and manufacturing, most

recently serving as the Executive Vice President of Operations at Xerion Advanced Battery Corp. Prior to that, Rucidlo worked with Defendants Burns and Angela Strand at Workhorse from 2010 to 2017, serving as its Vice President of Manufacturing and later its President.

20. Defendant Dale G. Spencer has served as a director of Lordstown since October 2020. Prior to that, Spencer served as a director of Legacy Lordstown beginning in February 2020. Spencer has a background in logistics and automotive maintenance, once serving as the Vice President of Automotive Maintenance and Engineering at United Parcel Service.

21. Defendant Angela Strand has served as a director of Lordstown since October 2020. Strand also served as Lordstown's Chairperson following Burns's ouster from the Company until May 2022. Strand is a published inventor and has a varied managerial background in several areas, including electric vehicles, medical devices, biotechnology, and healthcare. Strand worked with Defendants Burns and Rucidlo at Workhorse from 2017 to 2018, where she served as its Vice President.

22. Defendants Feldman, Gates, Hamamoto, Kowitz, Reiss, Rucidlo, Spencer, and Strand are collectively referred to herein as the "Director Defendants."

Officer Defendants

23. Defendant Shane Brown is the Company's Chief Production Officer and has served in that role since November 2020. Prior to that, Brown served as the Director of Paint Operations for Legacy Lordstown beginning in November 2019.

24. Defendant Stephen S. Burns served as Lordstown's Chairman and CEO from October 2020 until June 2021. Prior to that, Burns served as the Chairman and CEO of Legacy Lordstown from its founding in April 2019 until the Merger. Before founding Legacy Lordstown, Burns was the founder and CEO of Workhorse, where he employed and worked with Defendants Rucidlo and Strand. As of July 1, 2021, Burns owned 46,351,745 shares of Lordstown common stock—more than 26% of the Company's outstanding shares.

25. Defendant Caimin Flannery has served as the Company's Senior Vice President of Business Development since October 2020. Prior to that, Flannery served as the Vice President of Business Development for Legacy Lordstown beginning in October 2019. Flannery has a long-standing working relationship with Defendant Burns and was even described by one insider as Burns's "right hand man."

26. Defendant Darren Post is the Company's Vice President and Chief Engineer and has served in that role since October 2020. Prior to that, Post served as the Chief Engineer for Legacy Lordstown beginning in November 2019.

27. Defendant Julio C. Rodriguez served as Lordstown's Chief Financial Officer ("CFO") from October 2020 until June 2021. In his role as the Company's CFO for fiscal year 2020, Rodriguez was paid a base salary of $250,000 as well as additional equity compensation. Prior to that, Rodriguez served as the CFO of Legacy Lordstown beginning in September 2019.

28. Defendant Phil Richard Schmidt served as the Company's President from November 2020 until December 4, 2021. Prior to that, Schmidt served as the Chief Production Officer of Legacy Lordstown beginning in October 2019.

29. Defendant Chuan D. "John" Vo is the Company's Vice President of Propulsion and has served in that role since October 2020. Prior to that, Vo served as the Director of Propulsion for Legacy Lordstown beginning in February 2020.

30. Defendants Brown, Burns, Flannery, Post, Rodriguez, Schmidt, and Vo are collectively referred to herein as the "Officer Defendants."

31. The Officer Defendants and Director Defendants are collectively referred to herein as the "Lordstown Defendants."

DiamondPeak Defendants

32. Defendant Judith A. Hannaway served as a director of DiamondPeak prior to the Merger. Hannaway made or allowed to be made false and misleading statements and omissions to shareholders in DiamondPeak's proxy solicitations

and received 88,357 shares of Lordstown common stock upon the closing of the Merger.

33. Defendant Steven R. Hash served as a director of DiamondPeak prior to the Merger. Hash made or allowed to be made false and misleading statements and omissions to shareholders in DiamondPeak's proxy solicitations and received 88,357 shares of Lordstown common stock upon the closing of the Merger.

34. Defendant Andrew C. Richardson served as a director of DiamondPeak prior to the Merger. Richardson made or allowed to be made false and misleading statements and omissions to shareholders in DiamondPeak's proxy solicitations and received 88,357 shares of Lordstown common stock upon the closing of the Merger.

35. Defendant Mark A. Walsh served as a director of DiamondPeak prior to the Merger. Walsh made or allowed to be made false and misleading statements and omissions to shareholders in DiamondPeak's proxy solicitations for the Merger. As of November 30, 2020, Walsh beneficially owned 1,520,862 shares of Lordstown common stock and 659,055 private placement warrants acquired in connection with the Merger.

36. Defendants Hannaway, Hash, Richardson, and Walsh are collectively referred to herein as the "DiamondPeak Defendants."

37. The Officer Defendants, Director Defendants, and DiamondPeak Defendants are collectively referred to herein as the "Individual Defendants."

FIDUCIARY DUTIES OF THE INDIVIDUAL DEFENDANTS

38. By reason of their positions as officers, directors, and/or fiduciaries of Lordstown, and because of their ability to control the business and corporate affairs of Lordstown, the Individual Defendants owed, and owe, the Company and its stockholders fiduciary obligations of trust, loyalty, good faith, and due care, and were, and are, required to use their utmost ability to control and manage Lordstown in a fair, just, honest, and equitable manner. The Individual Defendants were, and are, required to act in furtherance of the best interests of Lordstown and its stockholders to benefit all stockholders equally and not in furtherance of their personal interest or benefit.

39. Each director and officer of the Company owes to Lordstown and its stockholders the fiduciary duty to exercise good faith and diligence in the administration of the affairs of the Company and in the use and preservation of its property and assets, as well as the highest obligations of fair dealing.

40. In addition, as officers and/or directors of a publicly held company, the Individual Defendants had a duty to promptly disseminate accurate and truthful information with regard to the Company's financial and business prospects so that

the market price of the Company's stock would be based on truthful and accurate information.

41. The Individual Defendants, because of their positions of control and authority as directors and/or officers of Lordstown, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein.

42. The misconduct of the Individual Defendants involves a culpable violation of their obligations, the absence of good faith on their part, and a reckless disregard for the fiduciary duties owed to Lordstown and its shareholders, which they were aware or should have been aware posed a risk of serious injury to Lordstown.

43. At all relevant times, each Individual Defendant was the agent of each other and of Lordstown, and was acting within the course and scope of such agency.

44. In addition to these duties, the directors who served on the Audit Committee owed specific duties to Lordstown to assist the Board in overseeing "the accounting and financial reporting processes of the Company …" With respect to "Responsibilities," Subsection 5, the Audit Committee Charter provides the following concerning "Review Financial Statements":

> The Audit Committee shall review and discuss the following with management, the independent auditor and, if appropriate, the director of the internal auditing department:

- The scope and timing of the annual audit of the Company's financial statements;

- The Company's annual audited and quarterly financial statements and annual and quarterly reports on Forms 10-K and 10-Q (when the Company is required to comply with such reporting obligations), including the disclosures in "Management's Discussion and Analysis of Financial Condition and Results of Operations," and recommend to the Board, if deemed appropriate, whether the audited financial statements and "Management's Discussion and Analysis of Financial Condition and Results of Operations" should be included in the Company's Form 10-K, in accordance with the rules and regulations of the SEC;

- The results of the independent audit and the quarterly reviews, any significant matters arising from any audit, including any audit problems or difficulties (including any critical audit matter ("CAM") addressed in the audit and the relevant financial statement accounts or disclosures that relate to each CAM, whether raised by management, the internal auditing department or the independent auditor, relating to the Company's financial statements;

- The form of opinion the independent auditor propose to render to the Board of Directors and shareholders;

- The reports and certifications regarding internal control over financial reporting and disclosure controls and procedures and any "management" or "internal control" letter issued, or proposed to be issued, by the independent auditor to the Company;

- Major issues regarding accounting principles and financial statement presentations, including any significant changes in the Company's selection or application of accounting principles;

- Analyses prepared by management or the independent auditor setting forth significant financial reporting issues and judgments made in connection with the preparation of the financial statements, including analyses of the effects of alternative GAAP methods on the financial statements and major issues as to the adequacy of the Company's internal controls and any special audit steps adopted in light of material control deficiencies; on the financial statements;

- The effect of regulatory and accounting initiatives, as well as off-balance-sheet structures, on the Company's financial statements;
- Any significant changes required or taken in the audit plan as a result of any significant control deficiency or material weakness;
- Any problems or difficulties the independent auditor encountered in the course of its audit work, including any restrictions on the scope of the auditor's activities or on access to requested information, and management's response; and
- Any significant disagreements between management and the independent auditor and management's response.

45. The Individual Defendants, as officers and/or directors of Lordstown, were also bound at all relevant times by the Company's Code of Business Conduct and Ethics which, sets out basic principles to guide all directors, officers, and employees of Lordstown, who are required to know and conduct themselves in accordance with the code, as well as applicable laws and regulations, and to avoid the appearance of improper behavior.

46. The section of the Code of Business Conduct and Ethics titled "Insider Trading" states:

> You are not permitted to use, share or disseminate confidential information to, or enable others to, purchase or sell securities in violation of the federal securities laws or for any other purpose except the conduct of our business. To use confidential information for personal financial benefit or to "tip" others who might make an investment decision on the basis of this information is not only unethical, but is also illegal. You are expected to comply with the Company's Insider Trading Policy.

47. The section of Code of Business Conduct and Ethics titled "Disclosure" states:

> The Company's periodic reports and other documents filed with the Securities and Exchange Commission ("SEC"), including financial statements and other financial information, must comply with applicable federal securities laws and SEC rules. Each director, officer and employee, to the extent involved in the Company's disclosure process, must: (a) be familiar with and comply with the Company's disclosure controls and procedures and its internal control over financial reporting, to the extent relevant to his or her area of responsibility, so that the Company's public reports and documents filed with the SEC comply in all material respects with the applicable federal securities laws and SEC rules; and (b) to the extent appropriate within his or her area of responsibility, take all necessary steps to ensure that all filings with the SEC and all other public communications about the financial and business condition of the Company provide full, fair, accurate, timely and understandable disclosure.
>
> Each director, officer or employee, to the extent involved in the Company's disclosure process, must:
>
> - familiarize himself or herself with the disclosure requirements applicable to the Company as well as the business and financial operations of the Company; and
>
> - not knowingly misrepresent, or cause others to misrepresent, facts about the Company to others, whether within or outside the Company, including to the Company's independent auditors, governmental regulators and self-regulatory organizations.

48. Accordingly, the Individual Defendants were responsible for ensuring that disclosures in the Company's reports and other documents filed with the SEC and issued publicly were materially complete and contained no misrepresentations or omissions.

SUBSTANTIVE ALLEGATIONS

I. Company Background and Merger with DiamondPeak

49. Lordstown is a Delaware corporation formed by the October 23, 2020 Merger of Legacy Lordstown and DiamondPeak, a special purpose acquisition company.[2] As described in Lordstown's 2020 Form 10-K, Legacy Lordstown survived the Merger as a wholly-owned subsidiary of DiamondPeak, at which time DiamondPeak adopted the name "Lordstown Motors Corp." while Legacy Lordstown became known as "Lordstown EV Corporation." The Company designs—and purports one day to be able to manufacture—electric vehicles, including its flagship "Endurance" pickup truck, which is still in development. To date, Lordstown has no revenue and has not produced a marketable vehicle.

50. Legacy Lordstown was the brainchild of Defendant Burns, who spun the idea out of his former employer, Workhorse, in or around April 2019. His idea was to create the first full-size electric pickup truck to rival more traditional

[2] A special purpose acquisition company ("SPAC")—which can also be referred to as a "blank check company"—is a publicly listed company designed solely to acquire one or more privately held companies. The SPAC is a shell company when it goes public (*i.e.*, it has no existing operations or assets other than cash and any investments). As defined by the SEC, a SPAC is a company with no operations that offers securities for cash and places substantially all the offering proceeds into a trust or escrow account for future use in the acquisition of one or more private operating companies. Following its initial public offering ("IPO"), the SPAC will seek to identify acquisition candidates and attempt to complete one or more business combination transactions, after which the company will continue the operations of the acquired company or companies as a public company.

offerings from Ford, Chevrolet, and others in that extremely lucrative sector of the automotive market. The Company's supposed novelty is in the use of four in-wheel electric hub motors, powering each wheel independently, instead of a more traditional configuration of a centralized motor (or motors) powering a driveshaft and axles. In March 2020, Legacy Lordstown paid Workhorse $12 million for the intellectual property relating to what was then the "W-15" light-duty electric pickup truck. As part of the deal, Workhorse took a 10% stake in Legacy Lordstown.

51. In or around November 2018, Defendant Hamamoto founded DiamondPeak, a special purpose acquisition company, and in January 2019 caused it to file a preliminary prospectus with the SEC in which DiamondPeak stated that it planned to "search for a target business with a real estate related component" and "an enterprise value of between $350 million and $2.0 billion." DiamondPeak conducted an IPO in March 2019 (NASDAQ: DPHC) through which it raised more than $250 million from investors. DiamondPeak gave itself twenty-four months to complete a business combination or else redeem its public shares in cash. Twenty-four months from the date of the prospectus would have elapsed in January 2021, shortly after the Merger.

52. DiamondPeak's sponsor, DiamondPeak Sponsor LLC, was a joint venture between an entity controlled by Defendant Hamamoto (DHP SPAC

Sponsor LLC) and an entity controlled by the principals of Silverpeak (SP SPAC Sponsor LLC). Defendant Walsh is one of the three principal partners of Silverpeak and, together with Defendant Hamamoto, exercised significant control over DiamondPeak. Prior to the Merger, as of March 20, 2020, Defendants Hamamoto and Walsh beneficially owned 88.4% of DiamondPeak's Class B common stock.

II. Defendants Burns and Hamamoto Hype Strong Demand and 2021 Production Readiness to Drive Interest in the Merger

53. In the run-up to the Merger and after, the Individual Defendants made several important representations to shareholders, most notably statements regarding the timing of production and the existence of what they called "pre-orders" for the Endurance pickup. For example, on April 21, 2020, Defendant Burns wrote in a blog post that Legacy Lordstown would begin Endurance deliveries in January 2021. On May 22, 2020, Burns told the *Detroit Free Press* that Legacy Lordstown had secured "well over several thousand" pre-orders and that the Company's chief concern was going to be servicing this strong demand. After telling the paper that he planned to build 20,000 vehicles in 2021 (which the Company failed to meet), Burns indicated they were already as good as sold: "I think we'll have well, well north of the 20,000 well spoken for. The demand side is super strong, I am starting to worry we won't be able to make them fast enough."

54. In June 2020, when Legacy Lordstown unveiled an Endurance prototype to significant fanfare—including a live-stream event with then-Vice President Mike Pence—Burns and Legacy Lordstown again stated that production was set to begin in early 2021 with deliveries following later in the year. Not only that, they claimed already to have a year's worth of pre-orders. During the ceremony, Burns heavily promoted the Endurance's growth prospects, declaring that "we have our whole year, our first year of production already pre-sold" and deliveries of the all-electric truck would begin in "early 2021."

55. On June 26, 2020, DiamondPeak engaged McKinsey & Company ("McKinsey") to assist DiamondPeak in the evaluation of Legacy Lordstown with respect to technical validation and comprehensive business plan assessment. In conducting this work, McKinsey interviewed members of Lordstown's management team, conducted extensive investigations, and would ultimately present its assessments to DiamondPeak in a series of presentations and teleconferences over the following month.

56. On July 30, 2020, McKinsey provided a final report (the "McKinsey Report") to the DiamondPeak Board (including Defendant Hamamoto). The McKinsey Report highlighted certain key problems that undermined the proposed merger, most notably that the public assertions that production of Lordstown's Endurance vehicle would begin by October of 2021 was a mere fantasy.

57. On August 3, 2020, Legacy Lordstown and DiamondPeak announced that they had entered into the Merger agreement, emphasizing the Endurance pre-orders in their joint press release: "Lordstown unveiled the prototype of its flagship Endurance pickup truck on June 25, 2020, and to date, has received more than 27,000 pre-orders for the vehicle representing over $1.4 billion of potential revenue, primarily from commercial fleet customers." A quote from Burns doubled down on these numbers, describing the pre-orders as having been "secured" from would-be customers: "Since its unveiling just over a month ago, the Endurance has been met with enthusiastic support, and to date, we have ***secured*** $1.4 billion of pre-orders." (Emphasis added.) Defendant Hamamoto forecasted that production would begin "in the second half of 2021."

58. During a conference call that same day, Defendants Burns and Hamamoto repeated their earlier representations about the claimed "significant demand" for the Endurance as evidenced by the pre-orders. Hamamoto said Legacy Lordstown had "attracted a clear lane of customers in the commercial fleet segment of the market, as evidenced by its $1.4 billion of pre-orders to date." Burns stated that Legacy Lordstown had "garnered significant demand with pre-orders totaling approximately 27,000 vehicles since inception, representing more than $1.4 billion of potential revenue." A slide presentation used during the conference call highlighted certain notable "pre-order customers," including Duke

Energy, First Energy, and others, and stated that demand for the Endurance was "***proven*** with pre-orders covering the first year of production." (Emphasis added.) Another slide in the same presentation even dropped the "pre" from the word pre-orders, calling them simply "orders," with an average "order" size of approximately 300 trucks per customer, "representing potential revenue sufficient to cover 2021 production and into 2022." The same slide presentation forecasted the combined Company moving 2,200 units in 2021, 31,600 in 2022, 65,000 in 2023, and 107,000 in 2024 for total revenues over the four-year period of more than $11 billion.

59. Also on August 3, 2020, Defendant Burns made an appearance on CNBC's *Fast Money* program in which he referred to the Endurance pre-orders as "orders," telling the host: "We just have to march towards our production date. ***We got 27,000 orders***. We got customers really really wanting the truck." (Emphasis added.) Later in the same appearance, Burns added that "deliveries to customers are just about a year from now—almost exactly."

60. On August 24, 2020, DiamondPeak, led by Defendants Hamamoto, Hannaway, Hash, Richardson, and Walsh, filed a preliminary proxy statement for the Merger which repeated the same basic claims of having "approximately 27,000" pre-orders for the Endurance and being able to commence full production in 2021 with a first-year target of 2,200 vehicles.

61. On September 17, 2020, DiamondPeak and Lordstown Motors hosted an analyst day with select Wall Street firms to provide an overview of Lordstown's business and discuss historical and projected financial performance and various other matters. The presentation slides shown were substantially similar to the August 3, 2020 slides and repeated the claim that demand for the Endurance was "proven with pre-orders covering the first year of production." They also highlighted Lordstown's purported pre-order customers including Clean Fuels Ohio, Duke Energy, FirstEnergy, Grid-X, ServePro, Summit Petroleum Inc., and Turner Mining Group. The slides further boasted of "$2.0bn+ of Existing Pre-Orders" that "have been achieved with minimal marketing costs," indicating that the orders were largely driven by pent-up demand from the "Fleet Market."

62. The September 17, 2020, slides also touted a "Working Prototype" and showed that Lordstown had now received "Significant Pre-Orders" of about 40,000 pre-sales for the Endurance which represented "potential revenue sufficient to cover production into 2023," and set forth a timeline for commercial production beginning in the third quarter of 2021. The slides included a "Financial Overview" which contained "Summary Financials" reiterating that the Company was on track to sell an estimated 2,200 units in 2021 for $118 million in revenues, 31,600 units in 2022 for $1.69 billion in revenues, 65,000 units in 2022 for $3.476 billion in revenues, and 107,000 units in 2024 for $5.776 billion in revenues.

63. On September 18, 2020, Diamond Peak supplemented its proxy statement, stating therein that "DiamondPeak, Lordstown and their respective directors and executive officers may be deemed to be participants in the solicitation of proxies from the holders of common stock in respect of the proposed transaction." The supplement included a September 1, 2020, *The Detroit News* article where Burns touted 40,000 pre-orders and the slides from the September 17, 2020, investor presentation, as described above.

64. DiamondPeak further amended its preliminary proxy statement twice, on September 21 and October 5, 2020, before filing a definitive proxy statement for the Merger on October 8, 2020. DiamondPeak revised each of these later documents to state that Legacy Lordstown had received "over 38,000" pre-orders which, if converted into actual purchases, would "represent sufficient demand to cover production into 2023 based on management's planned production timeline." The preliminary and definitive proxy statements for the Merger were solicited by and on behalf of Defendant Hamamoto and the DiamondPeak Defendants, with Defendant Hamamoto signing each of them and their amendments in his capacity as Chairman and CEO of DiamondPeak.

65. After the Merger, the Lordstown Defendants, led by Burns, continued hyping the Endurance pre-orders and 2021 production readiness. On October 26, 2020, Defendant Burns gave an interview to *The Business Journal*, a local

Youngstown, Ohio paper, in which he stated that the Company's "beta vehicles are nearly production-ready," continuing: "That's when you know you can touch and feel the product and know what's going to come out several months later." Burns further stated that "37 beta test models are slated for production starting in January" and that the Company "has received 40,000 in pre-orders," an amount that reportedly "surprised" Burns: "We didn't expect that much that quickly." Burns would describe the 40,000 pre-order figure as "pent-up demand" for the Endurance, emphasizing the point by claiming that "I don't think we've even scratched the surface."

66. On November 12, 2020, the Lordstown Defendants caused Lordstown to file a preliminary prospectus and registration statement with the SEC, later amended on December 1, 2020 (together, the "Registration Statement"), in which the Company stated that after engaging in "limited marketing activities" it had received "approximately 50,000" pre-orders for the Endurance which, if converted into actual purchases, "would represent sufficient demand to cover production into 2023 based on management's planned production timeline." The Registration Statement further stated that the Company was "targeting commencement of commercial production of the Endurance and initial sales in the second half of 2021" and that the Company had set a "target of 2,200 vehicles produced and sold in the year." The Registration Statement was signed by Defendants Burns,

Feldman, Gates, Hamamoto, Kowitz, Reiss, Rodriguez, Rucidlo, Spencer, and Strand.

67. On November 16, 2020, Lordstown issued a press release providing a business update. Therein, the Company announced that it "Remains on Track to Begin Production of the Lordstown Endurance in September 2021."

68. On November 17, 2020, Defendant Burns appeared on Jim Cramer's *Mad Money* program and flatly agreed with Cramer's characterization that some of the orders for the Endurance were "solid" and "committed" and that "these people are not going to be walking away." Burns responded: "Yeah, ***all of them***," before adding his own commentary that they were in fact "***serious orders***." (Emphasis added.)

69. Similar representations were made over the following weeks and months, with the number of purported pre-orders only growing over time. On December 4, 2020, the Company filed a Prospectus Form 424 with the SEC in which the Company reported that it had received "pre-orders from fleet operators to purchase approximately 50,000 Endurance vehicles." On December 21, 2020, Lordstown announced it had 80,000 pre-orders. By January 11, 2021, that number had soared to 100,000, which Lordstown hailed as "unprecedented in automotive history" and put the Company in a position to "revolutionize the pickup truck industry." In a February 23, 2021 interview with *Yahoo! Finance*, Burns

reaffirmed the 100,000 pre-order figure and emphasized that Lordstown had "pre-sold 100,000 of these vehicles to various fleets across America. So really a big appetite." All the while, Lordstown and the Lordstown Defendants continued to assure investors that the Company was on track to begin production in September 2021. Indeed, Burns emphasized "there is a lot of demand and excitement" for the Endurance, reaffirming that "[p]roduction [of the Endurance] starts in September [2021]."

70. Throughout this stretch, the Company held meetings of its Board, including on December 11, 2020 (attended by Burns, Strand, Spencer, Kowitz, Hamamoto, Reiss, Gates, Feldman, Rucidlo, and Rodriguez), January 5, 2021 (attended by the same persons), February 22, 2021 (attended by the same persons except Gates), and March 10, 2021 (attended by the same persons and Schmidt). At the December 11, 2020 and January 5, 2021 meetings, the Board was apprised of the status of Endurance, and the amount of letters of intent for the Endurance the Company received (60,000 and 85,000, respectively) and intended to convert to purchase agreements.

71. From the outside, everything was going smoothly and according to plan for the newly constituted Company. Demand appeared strong, production appeared on track, and investors were eager to buy into the Individual Defendants' representations.

72. However, on March 12, 2021, Hindenburg Research ("Hindenburg") published a scathing research report entitled "The Lordstown Motors Mirage: Fake Orders, Undisclosed Production Hurdles, and a Prototype Inferno" (the "Hindenburg Report").[3] The report detailed, among other things, several compelling examples of Lordstown's supposed pre-orders being "largely fictitious and used as a prop to raise capital and confer legitimacy" on the Company. Hindenburg also reported that, according to a former employee, Lordstown was still three-to-four years away from production—a far longer timeline than shareholders had been led to believe. On this news, Lordstown's share price plummeted 17%, falling from a closing price of $17.71 per share on March 11, 2021, to $14.78 per share on March 12, 2021, a decline of $2.93 per share.

III. Lordstown Is Nowhere Close to Producing a Marketable Vehicle

73. Hindenburg interviewed a former Lordstown employee who, according to the Hindenburg Report, was "intimately familiar with the path toward production [of the Endurance]" and stated that the Company was "maybe three-to-four years" away, "if ever," from producing a finished product. The former employee reportedly explained that the Company had "built fewer than 10 prototypes thus far" and was "still making extensive modifications" to the vehicle. Hindenburg added that "Lordstown had not completed any of its required testing

[3] *See* https://hindenburgresearch.com/lordstown/.

and validation," including critical testing for durability, safety, and cold weather performance. The report also described several additional production problems affecting the Endurance, including, among other things, issues firing up existing automotive machinery at the Lordstown manufacturing plant (formerly a General Motors plant); a lack of battery pack manufacturing equipment; questionable durability of wheel-hub motors in a full-size pickup truck application; an unclear timeline toward in-house production of motors; and legal issues surrounding the development of the vehicle's "infotainment" components.

74. Furthermore, dating back to 2017 when the Endurance was then a development project of Workhorse, Defendant Burns has displayed a clear pattern of making false production promises. While at Workhorse, the W-15 truck—the first iteration of the Endurance—was initially said to be ready by 2018. Then, when Burns shifted the project to Legacy Lordstown, deliveries were pushed back to the fourth quarter of 2020. By April 2020, deliveries were pushed back to January 2021. By January 2021, deliveries were pushed back to September 2021.

75. Burns and the Lordstown Defendants provided yet another production promise in the Company's Form 10-Q for the quarter ending June 30, 2021 that was full of new qualifications and conditions: "We are on track to begin ***early production units*** in the [*sic*] late September 2021 and complete vehicle validation and regulatory approvals in December 2021 to January 2022." (Emphasis added.)

The disclosure continued: "We expect this will be followed by deployments to ***selected early customers*** in the first quarter of 2022 in advance of ***commercial production and launch in the second quarter of 2022***, with the ramp planned to accelerate in the second half of 2022, ***subject to receipt of adequate financing***." (Emphasis added.)

76. September 2021 came and went, and Lordstown still does not have a marketable vehicle.

77. On September 30, 2021, further complicating the Company's timeline representations, Lordstown announced it had reached an agreement in principle with Hon Hai Technology Group ("Foxconn") pursuant to which Foxconn would invest in Lordstown, purchase the Lordstown, Ohio manufacturing facility, lease a portion of it back to the Company, and act as a contract manufacturer to produce the Endurance and other vehicles at the Lordstown plant. The Asset Purchase Agreement between the Company, Foxconn, and related entities and subsidiaries was formalized and entered into on November 10, 2021.

78. On October 1, 2021, Lordstown filed a prospectus supplement with the SEC in which it further modified its production-related representations and cast serious doubt on whether it even had a production timeline at all anymore:

> ***The Company continues to move forward with its plan to build a limited number of vehicles for testing, validation, verification and regulatory approvals during the balance of 2021 and the first part of 2022***. In light of the Agreement with Foxconn described above, the

> Company will ***evaluate the potential impact of the parties' contract manufacturing relationship on commercial production***, supply chain opportunities and the appropriate integration and timing of the parties' operations teams.

(Emphasis added.)

79. In the Company's Form 10-Q for the quarter ending September 30, 2021, Lordstown again pushed back its rollout, stating that it "expect[s] commercial production [of the Endurance] to begin in the third quarter of 2022, subject to receipt of adequate financing." In the Company's November 11, 2021 press release accompanying its third quarter 2021 financial results, Lordstown cast aside this revised schedule, characterizing it as just "a modest delay from earlier expectations."

80. As discussed above, this was never the "plan" as far as Lordstown's shareholders were concerned. The "plan" was for strong demand to be met with deliveries to customers in 2021. Instead, as of the time of the filing of this shareholder derivative action, the Company was selling its signature manufacturing plant and facing a monumental corporate integration challenge before it even produced a single finished vehicle.

81. None of this will has come as a surprise to the Individual Defendants. Lordstown's management and Board were fully apprised of the Company's production problems throughout the relevant time period. For example, the Board was advised the week of October 26, 2020—just shortly after the Merger—that

five of nine aspects of the Endurance engineering program were trending "red" (in a red, yellow, and green traffic-light monitoring system), with the remaining four aspects designated as "yellow." None of the areas were rated "green." Issues identified included talent and workforce gaps, lack of critical components and parts, and lack of necessary manufacturing software, among many other things. Areas trending "red" included Body & Closures, Chassis, Exterior & Interior, Safety & CAE/Virtual Eng., and Vehicle Electrical Systems.

82. The same week, the Board was also advised of problems related to purchasing and supplier development, including among other things that the Endurance's motors and wheel hub bearings were "at risk" and that the Company was facing problems securing sufficient General Motors ("GM") service parts, which Lordstown was relying on to meet its production targets. The area denoted "GM parts" was trending red: "Buying service parts ONLY a short-term solution. Per GM, availability will be an issue." (Emphasis in the original.) Moreover, the Board was advised that the hub bearing design, cost, and timeline were among the Company's "issues/concerns" and that the "frame design [was] still changing" as of the week ending October 30, 2020.

83. In the week of December 10, 2020, the same five engineering aspects were continuing to trend red: Body & Closures, Chassis, Exterior & Interior, Safety & CAE/Virtual Eng., and Vehicle Electrical Systems. The availability of

GM service parts was still a major issue, as was filling talent gaps. Additionally, Lordstown was finding that certain suppliers were "hesitant due to our timing." The Board was also advised that, due to these various issues, Lordstown was pushing back its beta production timeline from January to March 2021. Furthermore, the Company planned to build only ***five*** operational beta vehicles at that time. Recall that Defendant Burns had only recently told a Youngstown, Ohio newspaper that the Company's "beta vehicles are nearly production-ready" and that "***37*** beta test models are slated for production starting in January." (Emphasis added.) Burns and the Board would have known these representations were false given the myriad production problems the Company was facing.

84. The same week, the Company's purchasing and supplier development update to the Board was even worse than the previous one, with three major aspects of the program trending red, including Chassis, GM parts, and BOM cost. The Company was still struggling with recruiting and was also in danger of missing its transition from beta vehicles to "PV": "Beta to PV lead-time maybe [*sic*] too tight for some vendors. Are we committing enough resources to PV and SOP back up plans?" Furthermore, the Company was already forecasting having to miss its SOP build date because of challenges surrounding truck bed development: "Bed/box making progress ***but timeline still past SOP***." (Emphasis added.) The Board would also not have been encouraged to hear the following, exasperated

update on the vehicle's electrical systems: "Vehicle software – are we focusing enough on this? Design changes continue. Time and $....." In short, as of the end of 2020, the Company was still nowhere close to producing an Endurance beta vehicle—let alone a final product. Securing parts was a challenge, recruiting was behind, and major systems were still being redesigned.

85. The Board heard much the same story in its engineering update for the week of March 8, 2021. Four of the nine vehicle modules were trending red at this time (Powertrain, Vehicle Integration & Certification, Vehicle Electrical Systems, and Infotainment & Connected Car), with the other five trending yellow. The headline update was a discouraging note related to the vehicle's body and closures: "***Beta readiness at risk***." (Emphasis added.) The Company was also "behind" on its durability and integration timing "due to lack of Alpha 2 availability." Lordstown was also facing problems related to motor delays, software development, a steel shortage, further talent gaps, and missing parts.

86. The Board received special updates on the Endurance Beta Build throughout April and May of 2021, which was already well past the promised deadline for completion of beta vehicles. For example, on or around April 14 and April 23, 2021, Defendant Schmidt gave two substantially similar presentations in which he reported that the Company was having "Difficulty obtaining parts due to chip shortages and GM part shortages." Furthermore, its higher-torque "Sample B"

hub motors, which were "needed for Pickup Truck functionality," were not even forecasted to be available from the supplier until mid-May 2021.

87. Making matters worse, earlier in 2021, Lordstown's very first road-going prototype ended in flames a mere ***ten minutes*** into its maiden, late-night excursion. According to a police report of the incident, shortly after midnight on January 13, 2021, Lordstown's Powertrain Director and two of his coworkers pulled over to the side of a Michigan[4] road after noticing the truck was "driving weird." At some point a fire began underneath the vehicle that "fully engulfed" the truck by the time officers arrived on the scene. The Company waited until February 12—nearly a month later—to acknowledge the incident publicly, finally admitting in response to news reporting that the vehicle had experienced an "event," but declining to comment further.

88. After the fire, but before the Company's public disclosure of it, several of the Lordstown Defendants sold more than $8.8 million in Company stock. These and other suspicious trades are discussed in more detail below.

IV. Lordstown's Highly Touted Vehicle "Pre-Orders" Are a Mirage

89. Hindenburg noted at length in its report that Lordstown's so-called "pre-orders" were not "serious orders" at all, as Defendant Burns characterized

[4] Though Lordstown is headquartered in Ohio, the fire occurred approximately a mile from the Company's R&D facility located at 38555 Hills Tech Drive in Farmington Hills, Michigan.

them on *Mad Money*. In fact, they were completely non-binding on every company that signed them, and while that fact was disclosed by the Company in the fine print of its SEC filings, the truth is much uglier.

90. Hindenburg spoke to several companies that had no intent to buy a Lordstown truck but signed the documents anyway. Some apparently did it as a personal favor to Defendant Burns "to aid in the capital raising process," which is a very serious allegation raising the specter of securities fraud. Another signatory, operating as a two-person company out of a residential apartment in Texas, improbably managed to place a 14,000-truck, $735 million pre-order. Another, operating out of a Regis Virtual Office in Florida, claimed to be some sort of "promoter" or "influencer" on a similarly improbable 1,000-truck, $52 million deal. One CEO had no idea what Hindenburg was even talking about when asked about his company's pre-order. Hindenburg also reported that Lordstown was sometimes paying commissions of between $30 and $50 per truck to generate these illusory pre-orders. None of the signatories interviewed had any intent to fulfill their orders, a situation which Hindenburg summarized as follows: "All told, we found zero binding orders or genuine signs of commitment in Lordstown's order book."

91. A serious theme emerges in several places in the Hindenburg Report that Lordstown's "largely fictitious" pre-orders may have been mere "prop[s] to

raise capital and confer legitimacy" on the Company. In one example, Hindenburg cited the efforts of "Climb2Glory," a firm paid commissions to secure pre-orders for the Endurance, whose website described the scheme they were abetting: "Fundraising efforts were linked directly to the generation of customer leads and Endurance pre-orders; ***the more pre-orders achieved, the greater the confidence levels of prospective investors***." (Emphasis added.) Climb2Glory's managing partner, Pat Mangin, admitted in a phone interview with Hindenburg that his company's efforts were explicitly linked to Lordstown's pre-Merger capital-raising process: "Because of the letters of intent from Climb2Glory and some marketing, Diamond Group [*sic*] came to the table and they did the reverse merger. ***So our role was to help influence and acquire interest that would lead to investment. That was Climb2Glory's role.***" (Emphasis added.)

92. Unsurprisingly, Lordstown is now the subject of investigations by both the SEC and DOJ into these matters.

93. On June 14, 2021, after an investigation by a Special Committee of the Board comprised of Defendants Hamamoto, Reiss, and Spencer, the Company announced that certain of its prior statements regarding pre-orders were inaccurate. That section of the Company's announcement is reproduced below in full:

> The Hindenburg Report raised various questions regarding the Company's practices and disclosures regarding "pre-orders." Among other things, the Hindenburg Report stated that Lordstown Motors' pre-orders (i) are non-binding letters of intent, (ii) require no

reservation payment and in some instances were procured through the payment of sales commissions, (iii) are from customers that generally do not operate fleets, and (iv) include pre-orders from customers that do not have the means to make the purchases indicated.

Lordstown Motors has repeatedly disclosed that its pre-orders are non-binding, and it has highlighted the risk that pre-orders may not be converted to actual orders.

In most instances, Lordstown Motors' pre-orders did not require a reservation or similar payment, though pre-orders submitted through a website portal required a refundable $100 payment. Lordstown Motors entered into an arrangement to pay one entity commissions for procuring pre-orders. That entity procured approximately 1,000 pre-orders and also assisted Lordstown Motors into entering into an important commercial relationship with a leading fleet management company.

Lordstown Motors has obtained tens of thousands of pre-orders from fleets, fleet management companies, or other end users. If converted to orders, this demand will comprise substantially all of the Company's expected production volume through 2022.

Lordstown Motors made periodic disclosures regarding pre-orders which were, in certain respects, inaccurate.

- ***Lordstown Motors has stated on several occasions that its pre-orders were from, or "primarily" from commercial fleets. In fact, many pre-orders were obtained from (i) fleet management companies or other end users that indicated interest in purchasing Endurance trucks, similar to commercial fleets, and (ii) so-called "influencers" or other potential strategic partners that committed to attempt to secure pre-orders from other entities, but did not intend to purchase Endurance trucks directly.***

- ***One entity that provided a large number of pre-orders does not appear to have the resources to complete large purchases of trucks. Other entities provided commitments that appear too vague or infirm to be appropriately included in the total number of pre-orders disclosed.***

(Emphasis added.)

94. Even prior to this investigation, the Board was keenly aware that these pre-orders were meaningless and non-binding on their signatories. The Board discussed the pre-orders at its December 11, 2020 and January 5, 2021 meetings, with Defendant Burns noting at each meeting that there was a "plan" afoot "to convert LOIs to Purchase Agreements." These minutes show two things: (1) that Lordstown management and the Board knew that these pre-orders were meaningless and non-binding, and (2) that they knew to use more appropriate language internally than they did with external shareholders and the public, referring to them internally as mere "letters of intent," rather than the more consequential sounding "pre-orders," which they were not.

95. Indeed, confidential witnesses cited in the Securities Class Action further corroborate Hindenburg's reporting related to the pre-orders. Among other things, one confidential witness, CW-1, described in the Consolidated Amended Complaint as a manager at Lordstown during 2020 who attended meetings with Defendant Flannery, reportedly stated that the message from Lordstown executives, including Flannery, was "fairly explicit" that the pre-orders were necessary to lure additional financing from investors, not to gauge market size or forecast production requirements. CW-1 reportedly stated that the pre-orders were "not worth the paper they were written on."

96. Another confidential witness, CW-2, described in the Consolidated Amended Complaint as a high-level manager at Legacy Lordstown prior to the Merger, reportedly stated that the pre-order marketing firm Climb2Glory reported to Defendant Flannery. CW-2 reportedly characterized the efforts around generating the pre-orders as "desperation" and "smoke and mirrors" centered around obtaining additional financing for the Company, adding that the pre-orders were intended to generate buzz. CW-2 also reportedly stated that, "by design," there was "zero" due diligence conducted on the pre-order signatories because the Company did not want to know if they had the ability to follow through on them. CW-2 also reportedly stated that Defendant Flannery was Defendant Burns's "right hand man" and that the "pressure" to generate pre-orders came directly from both of them.

V. Lordstown Forces Out Defendants Burns and Rodriguez With Immediate Effect

97. On June 14, 2021, concurrent with the Special Committee's announcement of its findings on the Endurance pre-orders, Lordstown announced that "pursuant to mutual agreements with the Company," Defendants Burns and Rodriguez had "resigned" from Lordstown effective immediately. Pursuant to their separation agreements, Lordstown and the Board allowed Burns to resign with "continued base salary payments for a period of 18 months in the aggregate amount of $750,000" and Rodriguez with "continued base salary payments for a

period of six months in the aggregate amount of $200,000 and continued vesting of certain outstanding stock options with an exercise price per share equal to $1.79 that are scheduled to vest in November 2021."

VI. Several Lordstown Insiders Unloaded Millions in Company Stock to Profit from Lordstown's Material Misstatements and Omissions

98. Between October 22, 2020 and February 4, 2021, several Lordstown executives and a director made lucrative sales of Company stock while in possession of the material adverse non-public information discussed herein. Based on a review of Form 4s filed with the SEC, Defendants Brown, Hamamoto, Post, Schmidt, Rodriquez, and Vo (together, the "Selling Defendants") made more than $28 million in sales as set forth in the tables below:

Defendant Hamamoto

Trade Date	Shares	Price	Proceeds
10/22/2020	**1,000,000**	$16.38	**$16,380,000.00**

Defendant Schmidt

Trade Date	Shares	Price	Proceeds
12/11/2020	51,900	$20.29	$1,053,051.00
2/2/2021	150,000	$24.51	$3,676,500.00
2/2/2021	11,512	$25.02	$288,030.24
2/3/2021	50,000	$27.44	$1,372,000.00
Totals	**263,412**		**$6,389,581.24**

Defendant Vo

Trade Date	Shares	Price	Proceeds
12/14/2020	7,800	$20.00	$156,000.00
12/15/2020	75,500	$20.25	$1,528,875.00
12/16/2020	15,000	$20.75	$311,250.00
2/2/2021	100,000	$25.21	$2,521,000.00
Totals	**198,300**		**$4,517,125.00**

Defendant Brown

Trade Date	Shares	Price	Proceeds
2/2/2021	18,608	$24.63	$458,315.04
2/2/2021	400	$24.67	$9,868.00
Totals	**19,008**		**$468,183.04**

Defendant Post

Trade Date	Shares	Price	Proceeds
2/4/2021	**10,000**	$27.21	**$272,100.00**

Defendant Rodriquez

Trade Date	Shares	Price	Proceeds
2/4/2021	**9,300**	$27.00	**$251,100.00**

99. At the times of these trades, the Selling Defendants were in possession of material adverse non-public information, including, among other things, information pertaining to pre-orders of the Endurance, its progress toward manufacturing and sale, and the fire that engulfed the Company's first-ever road-going prototype in January 2021.

HARM TO THE COMPANY

100. On February 17, 2021, the SEC served the Company with requests for documents and information relating to the Merger and the purported "pre-orders" of Lordstown vehicles. The Company has since disclosed that it has received two subpoenas from the SEC. The Company also disclosed in July 2021 that the U.S. Attorney for the Southern District of New York has opened an investigation into these same matters.

101. On March 18, 2021, Lordstown shareholders began filing substantially similar class action lawsuits against the Company and certain of its executive officers in the U.S. District Court for the Northern District of Ohio. That litigation is now consolidated under the caption *In re Lordstown Motors Corp. Securities Litigation* (No. 4:21-cv-00616). The plaintiffs in the Securities Class Action allege violations of federal securities laws under Sections 10(b), 14(a), and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 against Lordstown and Defendants Brown, Burns, Flannery, Hamamoto, Post, Rodriguez, and Schmidt.

102. In addition to the Securities Class Action, a consolidated class action brought by DiamondPeak/Lordstown shareholders is currently pending in Delaware Chancery Court, captioned *In re Lordstown Motors Corp. Stockholders Litigation* (C.A. No. 2021-1066). This State Class Action alleges breaches of

fiduciary duty claims against Defendants Hamamoto, Hannaway, Hash, Richardson, and Walsh.

103. On June 8, 2021, Lordstown filed a Form 10-K/A with the SEC that disclosed substantial doubt as to the Company's ability to continue as a going concern without raising additional capital. The Company's disclosure reads in pertinent part:

> The opinion of our independent registered public accountants on our audited financial statements as of and for the year ended December 31, 2020 contains an explanatory paragraph regarding substantial doubt about our ability to continue as a going concern. ***Our ability to continue as a going concern is dependent on our ability to complete the development of our electric vehicles, obtain regulatory approval, begin commercial scale production and launch the sale of such vehicles. The Company believes that our current level of cash and cash equivalents are not sufficient to fund commercial scale production and the launch of sale of such vehicles.*** These conditions raise substantial doubt regarding our ability to continue as a going concern for a period of at least one year from the date of issuance of the consolidated financial statements included in this report. If we are not able to continue as a going concern, or if there is continued doubt about our ability to do so, the value of your investment would be materially and adversely affected.
>
> ***To alleviate these conditions, management is delaying certain expenditures in order to fund operations at reduced levels and currently evaluating various funding alternatives and may seek to raise additional funds through the issuance of equity, mezzanine or debt securities, through arrangements with strategic partners or through obtaining credit from government or financial institutions. As we seek additional sources of financing, there can be no assurance that such financing would be available to us on favorable terms or at all.*** Our ability to obtain additional financing in the debt and equity capital markets is subject to several factors, including

> market and economic conditions, our performance and investor sentiment with respect to us and our industry.

(Emphasis added.)

104. According to Lordstown's most-recent SEC filings, there currently remains substantial doubt as to the Company's ability to continue as a going concern. In its Form 10-Q filed with the SEC on May 9, 2022, Lordstown disclosed in pertinent part:

> Since inception, we have been developing our flagship vehicle, the Endurance, an electric full-size pickup truck. ***The Company's ability to continue as a going concern is dependent on our ability to*** complete the Foxconn Transactions and to do so in a timely manner, ***raise substantial additional capital, complete the development of the Endurance, obtain regulatory approval, begin commercial production and launch the sale of the Endurance. The Company's current level of cash and cash equivalents are not sufficient to execute our 2022 business plan and achieve scaled production of the Endurance, due to the capital required to complete testing and validation, purchase the raw materials and vehicle components for saleable vehicles, invest in the hard tooling to lower our bill of materials cost and fund future engineering and corporate expenditures. These conditions raise substantial doubt regarding the Company's ability to continue as a going concern for a period of at least one year from the date of issuance of these condensed consolidated financial statements.***
>
> * * * *
>
> Our business plan contemplates that we will build a limited number of pre-production vehicles (PPVs) in the first half of 2022 for testing, certification, validation, regulatory approvals and to demonstrate the capabilities of the Endurance to potential customers. For the foreseeable future, we will incur significant operating expenses, capital expenditures and working capital funding that will deplete our cash on hand. Absent any material delays, we believe that we have sufficient funds to close the Foxconn Transactions. If the closing

> occurs, we will receive the final proceeds and retain the down payments as contemplated by the APA. However, ***the Company will be required to raise additional capital in order to execute our business plan and achieve our production targets for the Endurance in 2022 and beyond. The proceeds contemplated in the Asset Purchase Agreement will not be sufficient for these purposes.***
>
> * * * *
>
> ***As we seek additional sources of financing, there can be no assurance that such financing would be available to us on favorable terms or at all. The Company's ability to obtain additional financing in the debt and equity capital markets is subject to several factors, including*** market and economic conditions, the significant amount of capital required, ***the fact that the Endurance bill of materials cost is currently, and expected to continue to be, substantially higher than the anticipated selling price of the Endurance, uncertainty surrounding regulatory approval and the performance of the vehicle, meaningful exposure to material expenses and losses related to ongoing litigation, our performance and investor sentiment with respect to the Company and our business and industry***, as well as the Foxconn Transactions. ***As a result of these uncertainties, and notwithstanding management's plans and efforts to date, there continues to be substantial doubt about the Company's ability to continue as a going concern. If we are unable to raise substantial additional capital in the near term, our operations and production plans will be scaled back or curtailed. If the funds raised are insufficient to provide a bridge to full commercial production, our operations could be severely curtailed or cease entirely.***

(Emphasis added.)

105. The Individual Defendants have severely harmed the Company. Damages to the Company include substantial loss of shareholder value and significant costs already incurred, and to be incurred, stemming from the events and allegations described herein, including (i) costs already incurred and to be incurred defending against the Securities Class Action and any judgment against

Lordstown that may issue therefrom, (ii) costs already incurred and to be incurred regarding the investigations by the SEC and DOJ, and (iii) any fines or other liability resulting from the Company's violations of federal and/or state law.

106. The Company's business, goodwill, and reputation with its business partners, regulators, and shareholders have also been gravely impaired, and the credibility and motives of management and the Board are in serious doubt.

107. While the Individual Defendants' actions have severely harmed the Company, each of them has been awarded generous compensation and stock packages. Furthermore, the Selling Defendants have reaped millions of dollars in unjust profits from sales of Company stock while in possession of material adverse nonpublic information, in violation of their fiduciary duties.

DEMAND WOULD BE FUTILE

108. Plaintiffs bring this action derivatively in the right and for the benefit of Lordstown pursuant to Rule 23.1 of the Delaware Court of Chancery, to redress injuries suffered by the Company as a direct result of the breaches of fiduciary duty by the Individual Defendants alleged herein. Lordstown is named as a nominal defendant solely in a derivative capacity. Plaintiffs will adequately and fairly represent the interests of Lordstown in enforcing and prosecuting its rights, and Plaintiffs have retained counsel experienced in shareholder litigation. Plaintiffs

are current Lordstown shareholders and were Lordstown shareholders at the time of the wrongdoing alleged herein and continuously since that time.

109. Lordstown's Board at the time this action was initially filed consisted of eight members, including Defendants Feldman, Gates, Hamamoto, Reiss, Rucidlo, Spencer, and Strand (the "Demand Defendants") along with non-party director and CEO Daniel Ninivaggi, who joined the Company in August 2021 (collectively, the "Demand Board"). Plaintiffs have not made a litigation demand on the Demand Board to institute this action against the Individual Defendants. Any such demand would be a futile and useless act because the Board is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action.

110. Because the Lordstown Demand Board lack independence and/or face a substantial likelihood of liability for the acts and omissions complained of herein, prosecution of this action, independent of the Demand Board, is in the best interests of the Company and its stockholders.

Defendant Hamamoto and Non-Party Ninivaggi Are Not Independent

111. Defendant Hamamoto lacks independence because he served as the Chairman and CEO of Lordstown's predecessor, DiamondPeak. Hamamoto was also the principal negotiator on behalf of DiamondPeak in connection with the Merger and oversaw DiamondPeak's due diligence into Legacy Lordstown.

Defendant Hamamoto was incentivized to complete the deal with Legacy Lordstown. In addition to cementing his position on the Board, Defendant Hamamoto had a significant financial stake in the transaction. The proxy materials in connection with the merger note that DiamondPeak's sponsor (which was effectively controlled by Hamamoto) paid an aggregate of approximately $6,690,000 for an aggregate of 4,460,000 private placement warrants that would expire worthless if an initial business combination was not completed. Thus, there was tremendous financial incentive for Hamamoto to ensure the Merger occurred. As of July 1, 2021, the Company disclosed that Hamamoto beneficially owned 4,229,135 shares of Lordstown common stock (representing 2.37% of the outstanding shares) derived in whole or in part from the Merger, which was premised on false and misleading indicators of demand in the form of Lordstown's "pre-orders" and other representations made in proxy materials as alleged herein. In addition, Defendant Hamamoto was well aware of the contents of the McKinsey Report, including that Legacy Lordstown's publicly projected timeline for production of Endurance was not realistic. Hamamoto's lack of independence prevents him from impartially considering a demand from Plaintiffs.

112. Non-party Ninivaggi lacks independence because he served as the Company's CEO at the time this action was filed, and continues to do so. His position and livelihood depend upon the good graces of the Demand Defendants.

Ninivaggi only recently joined the Company in August 2021. He receives a base salary of $750,000 per year plus an annual bonus target of 125% of his salary, the latter subject to the discretion of the Board and based on his and the Company's performance. Ninivaggi received 700,000 stock options and 700,000 restricted stock units under the Company's 2020 Equity Incentive Plan, which options and units vest over a three-year period subject to Ninivaggi's continued employment with the Company. These amounts are material to Ninivaggi, and Ninivaggi would never act to jeopardize these substantial payments by pursuing claims against the same directors who determine his compensation and continued employment. For these reasons, Ninivaggi would never act adversely to the Demand Defendants in pursuing the claims alleged herein.

Seven of Eight Demand Board Members Face a Substantial Likelihood of Liability for their Wrongful Conduct

113. Seven members of the eight-person Demand Board, including all of the Demand Defendants, face a substantial likelihood of liability for their misconduct as alleged herein. These members breached their fiduciary duties to the Company by issuing or causing and/or allowing to be issued false and misleading statements to shareholders in the Company's press releases and SEC filings. Each of the Demand Defendants signed the December 1, 2020 Registration Statement. Defendant Hamamoto made false and misleading statements when DiamondPeak and Legacy Lordstown announced the Merger in August 2020. Defendant

Hamamoto also signed the preliminary and definitive proxy statements for the Merger in his capacity as Chairman and CEO of DiamondPeak. The proxy materials for the Merger were prepared for the benefit of all the Demand Defendants, each of whom received lucrative directorships with the combined Company that were material to them.

114. Defendants Feldman, Reiss, and Rucidlo were members of the Audit Committee at relevant times (the "Audit Committee Defendants"), and therefore had a duty to oversee Lordstown's compliance with legal and regulatory requirements, including its public disclosures and its risk assessment- and internal control-related functions. In their capacity as members of the Audit Committee, the Audit Committee Defendants were privy to specific information related to the Company's business, operations, and prospects, which would reasonably put them on notice that the statements set forth above in the Company's public filings were materially false and misleading when made. The Audit Committee Defendants were responsible for knowingly or recklessly issuing or causing and/or allowing to be issued the false and misleading statements alleged herein and thus breached their fiduciary duties to the Company. By allowing documents to be filled with misleading information, the Audit Committee Defendants face a sufficiently significant likelihood of liability so as to render them interested. Accordingly, the Audit Committee Defendants cannot adequately independently consider a demand.

115. In addition, demand is excused as to Hamamoto because he directly benefited from the wrongs and acts complained of herein. While in possession of material adverse non-public information regarding the Company, Hamamoto sold more than $16 million in Company stock on the basis of material adverse non-public information on October 22, 2020. Defendant Hamamoto is also named as a defendant in the Securities Class Action.

Seven of Eight Demand Board Members Are Still Beholden to Defendant Burns

116. Though he was no longer employed by the Company or served on its Board, Defendant Burns remained Lordstown's single largest shareholder at the time this action was filed, owning 46,351,745 shares of Company stock—more than 26% of the outstanding shares. Each of the Demand Defendants owe their lucrative directorship roles to Defendant Burns's long-standing pattern of surrounding himself with personal friends and close allies—regardless of their qualifications. To wit, one of the confidential witnesses in the Securities Class Action, CW-2, described as a high-level manager at Legacy Lordstown prior to the Merger, reportedly stated that much of Lordstown's staff was comprised of people with personal connections to Burns, including members of his family or his church. As a result, CW-2 reportedly stated that much of the senior staff was not qualified for their roles.

117. Indeed, according to the Company's proxy materials for the Merger, Defendant Burns, due to his outsized voting power, was given "significant influence" over the combined Company, including the right to unilaterally nominate ***six*** members to the Board with further input on two others in consultation with DiamondPeak, led by Defendant Hamamoto. Thus, as many as six members of the Demand Board were personally chosen by Defendant Burns and owe their lucrative public company directorships to him alone.

118. Defendants Strand and Rucidlo have long-standing working relationships with Defendant Burns dating back to their time together at Workhorse. Defendant Rucidlo worked for Workhorse from 2010 to 2017 when he served as Workhorse's Vice President of Manufacturing and later its President. Defendant Strand was a Vice President at Workhorse from April 2017 to December 2018.

119. Defendants Reiss and Spencer were hand-picked by Defendant Burns to serve on the board of Legacy Lordstown beginning in February 2020. They hold their current positions at Lordstown due to the Merger, the negotiations for which Defendants Reiss and Spencer personally participated in as directors of Legacy Lordstown.

120. The Demand Defendants' subservience to Defendant Burns is most plainly demonstrated in their decision to allow him to "resign" from the Company

and collect lucrative severance payments despite his wrongful conduct as alleged herein. The Board created a Special Committee to investigate Burns's deception, found that the allegations relating to pre-orders were substantially true, and then let their benefactor depart the Company on immensely favorable terms. The Demand Defendants will not take any action against Defendant Burns for the misconduct alleged herein.

Additional Demand Futility Allegations

121. Demand is further excused because any suit by the Demand Board to address the wrongdoing alleged herein would increase the exposure of Nominal Defendant Lordstown to liability for violations of the federal securities laws in the Securities Class Action and would potentially result in additional lawsuits being filed against members of the Demand Board. If the Company pursued its rights of action in this case, then the Company's efforts would undercut or even compromise the defense and settlement of the Securities Class Action.

CLAIMS FOR RELIEF

COUNT I
Derivative Claim for Breach of Fiduciary Duty
Against the Individual Defendants

122. Plaintiffs incorporate by reference and reallege each and every allegation above as though fully set forth herein.

123. As officers and/or directors of Lordstown and/or DiamondPeak, the Individual Defendants owed and owe the Company fiduciary duties of care and loyalty.

124. By virtue of their positions as officers and/or directors, the Individual Defendants at all relevant times had the power to and did control, influence, and cause the Company to engage in the practices complained of herein.

125. The Individual Defendants, and each of them, knowingly or recklessly breached their fiduciary duties to the Company by repeatedly approving and issuing false and misleading statements to shareholders and failing to disclose material information related to pre-orders for the Endurance and its production timeline.

126. The Company's alleged liability in the Securities Class Action is a result of the conduct described herein and arises from the knowing, disloyal, and/or bad faith acts and omissions of the Individual Defendants.

127. The Individual Defendants acted in bad faith and violated their fiduciary duties of care and loyalty owed to the Company.

128. As a direct and proximate result of the Individual Defendants' breaches of their fiduciary duties, the Company has sustained significant damages.

129. As a result of the misconduct alleged herein, the Individual Defendants are liable to the Company.

COUNT II
Derivative Claim for Breach of Fiduciary Duty and Misappropriation of Information Under *Brophy* Against the Selling Defendants

130. Plaintiffs incorporate by reference and reallege each and every allegation above as though fully set forth herein.

131. By virtue of their positions as Company officers and/or directors, the Selling Defendants (Brown, Hamamoto, Post, Schmidt, Rodriquez, and Vo) had access to and knowledge of highly material information regarding the Company and knew that the public disclosure of this information would adversely affect the market price of Company stock.

132. The Selling Defendants used the Company's non-public information in breach of their fiduciary duties. Their sales of Company stock were motivated in whole or in part by the material non-public information alleged herein, including, among other things, information pertaining to pre-orders of the Endurance, its progress toward manufacturing and sale, and the fire that engulfed the Company's first-ever road-going prototype in January 2021. The concealment of this material non-public information allowed the Selling Defendants to knowingly sell their shares at artificially inflated prices. Once the truth regarding these matters became known to the investing public, the price of the Company's stock fell.

133. The inside information was a proprietary asset belonging to Lordstown which was usurped for the Selling Defendants' benefit.

134. The Selling Defendants profited through their fiduciary positions and are obliged to disgorge their unlawful profits to Lordstown. Since the use of the Company's own propriety information for their own gain constitutes a disloyal act in breach of the Selling Defendants' fiduciary duties, Plaintiffs, as stockholders of Lordstown and on its behalf, seek restitution from the Selling Defendants and an order of this Court imposing a constructive trust and disgorging all profits, benefits, and other compensation obtained by them as a result of their wrongful conduct and fiduciary breaches.

COUNT III
Derivative Claim for Unjust Enrichment Against the Individual Defendants

135. Plaintiffs incorporate by reference and reallege each and every allegation above as though fully set forth herein.

136. By their wrongful acts and omissions, the Individual Defendants were unjustly enriched at the expense of and to the detriment of the Company.

137. The Individual Defendants were unjustly enriched as a result of the compensation and stock they received while breaching their fiduciary duties and issuing false and misleading statements to shareholders. The Selling Defendants also received unlawful insider trading proceeds as described herein.

138. Plaintiffs, as shareholders and representatives of the Company, seek restitution from the Individual Defendants, and each of them, and seek an order of

this Court disgorging all their profits, benefits, and other compensation obtained by reason of the wrongful conduct and breaches of fiduciary duty alleged herein.

139. Plaintiffs, on behalf of the Company, have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of Lordstown, demand judgment against the Individual Defendants, and each of them, jointly and severally, as follows:

a) Determining that this action is a proper derivative action and that Plaintiffs are appropriate representatives of the Company for said action;

b) Determining that a litigation demand on the Board would be futile;

c) Declaring that each of the Individual Defendants breached their fiduciary duties to the Company and were unjustly enriched as set forth above;

d) Declaring that Defendants Brown, Hamamoto, Post, Schmidt, Rodriquez, and Vo engaged in unlawful insider trading;

e) Determining and awarding to the Company the damages sustained by it as a result of the breaches set forth above, or disgorgement or restitution, from each of the Individual Defendants, jointly and severally, together with interest thereon;

f) Awarding to Plaintiffs the costs and disbursements of this action, including reasonable fees and costs to Plaintiffs' attorneys, accountants, and experts; and

g) Granting such further relief as the Court may deem just and proper.

June 24, 2022

Long Law, LLC

/s/ Brian D. Long
Brian D. Long (Del. Bar No. 4347)
3828 Kennett Pike, Suite 208
Wilmington, DE 19807
(302) 729-9100

P. Bradford deLeeuw (Del. Bar No. 3569)
deLeeuw Law LLC
1301 Walnut Green Road
Wilmington, DE 19807
(302) 274-2180

Co-Delaware Counsel

Of Counsel:

Robert C. Schubert
Willem F. Jonckheer
Schubert Jonckheer & Kolbe LLP
Three Embarcadero Center
Suite 1650
San Francisco, California 94111
(415) 788-4220

Joshua M. Lifshitz
Lifshitz Law PLLC
1190 Broadway
Hewlett, New York 11557
(516) 493-9780

Co-Lead Counsel

Edward F. Haber
Shapiro Haber & Urmy LLP
Seaport East
Two Seaport Lane
Boston, Massachusetts 02210
(617) 439-3939

Additional Counsel

EXHIBIT D

Multiple Documents

Part	Description
1	Main Document
2	Exhibit A - The Lordstown Motors Mirage
3	Exhibit B - Troicky Certification
4	Exhibit C - Tavares Certification
5	Exhibit D - Globestar Systems Inc. Certification
6	Exhibit E - FNY Managed Accounts LLC Certification
7	Summons for Caimin Flannery
8	Summons for Darren Post
9	Summons for David T. Hamamoto
10	Summons for Lordstown EV Corporation
11	Summons for Shane Brown

Bloomberg Law®
© 2023 Bloomberg Industry Group, Inc. All Rights Reserved. Terms of Service

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE LORDSTOWN MOTORS CORP. SECURITIES LITIGATION	Case No. 4:21-cv-00616 (PAG) **CLASS ACTION** JURY TRIAL DEMANDED

CONSOLIDATED AMENDED COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS

TABLE OF CONTENTS

Page

TABLE OF ABBREVIATIONS 3

I. INTRODUCTION 2

II. JURISDICTION AND VENUE 13

III. PARTIES AND KEY PLAYERS 14

A. Parties 14

B. Other Relevant Persons and Entities 19

IV. SUBSTANTIVE ALLEGATIONS 19

A. Early Background on Lordstown and DiamondPeak Holding Corp. 19

B. Defendants Mislead Investors as They Pitch and Close the Merger 25

C. The Misrepresentations Escalate After the Merger 31

D. The Truth Begins to Emerge 38

(1) The Truth About Lordstown's Order Book 39

(2) The Truth About Lordstown's Production Capabilities 58

(3) The Market Reaction to the Hindenburg Report 62

E. Lordstown Attempts a Clumsy Cover-Up as the Truth Continues to Emerge 63

V. ADDITIONAL ALLEGATIONS 77

A. False and Misleading Statements 77

(1) Statements Concerning Lordstown's Supposed Pre-Orders 78

(2) Statements Concerning Lordstown's Production Capabilities 107

(3) Defendants' Omissions of Information Required by Item 105 116

B. Allegations of Scienter as to Certain Claims 118

(1) Motive and Circumstantial Evidence of Scienter 119

(2) Scienter as to Lordstown's Supposed Pre-Orders 120

(3) Scienter as to Lordstown's Production Capabilities 127

(4) The "Resignations" and Conclusions of the Internal Investigation Support the Inference of Scienter 128

(5) The SEC and DOJ Investigations Support the Inference of Scienter 128

(6) Both the Pre-Orders and Lordstown Production Capabilities Were Essential to the Company's Success 130

(7) Defendants' Other Illegality Supports the Inference of Scienter 131

(8) Insider Stock Sales Support the Inference of Scienter 134

C. Transaction Causation — Reliance 135

D. Loss Causation 138

E. No Safe Harbor 142

VI. CLASS ACTION ALLEGATIONS 143

VII. COUNTS 146

A. COUNT I: Violation of Section 10(b) of the Exchange Act and Rule 10b-5(b) Promulgated Thereunder Against All Defendants Except Defendants Hamamoto, Schmidt, Brown, and Post 146

B. COUNT II: Violation of Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c) Promulgated Thereunder Against All Defendants Except Defendants Hamamoto, Schmidt, Brown, and Post 148

C. COUNT III: Violation of Section 14(a) of the Exchange Act Against Defendants LTM, Lordstown EV Corporation, Burns, Flannery, and Hamamoto 150

D. COUNT IV: Violations of §20A of the Exchange Act Against Defendants Schmidt, Rodriguez, Brown, and Post 153

E. COUNT V: Violations of Section 20(a) of the Exchange Act Against the Individual Defendants 154

VIII. PRAYER FOR RELIEF 155

IX. JURY DEMAND 156

TABLE OF ABBREVIATIONS

Term or Terms	Definition[1]
Class	Defined herein
Class Period	The period from August 3, 2020, through July 2, 2021
DiamondPeak	DiamondPeak Holding Corp.
DOJ	U.S Department of Justice
DPHC	DiamondPeak Holding Corp. The former ticker for Lordstown's Class A common stock
DPHCU	The ticker for units listed by Lordstown while the company was named DiamondPeak Holding Corp.
DPHCW	The ticker for warrants listed by Lordstown while the company was named DiamondPeak Holding Corp.
Endurance	The Endurance pickup truck that Lordstown was purportedly developing and marketing
Exchange Act	The Securities Exchange Act of 1934
GM	General Motors
Hindenburg	Hindenburg Research
Hindenburg Report	The Report about Lordstown published by Hindenburg Research on March 12, 2021
Item 105 Disclosure	The material factors that make an investment in the registrant or offering speculative or risky
Lead Plaintiff	George Troicky
Lordstown	The business purportedly engaged in the development and production of the Endurance pickup truck
Lordstown Options	Any publicly traded option to purchase or sell DPHC or LTM's class A common stock.

[1] To the extent that the term is defined differently herein, the term should be interpreted broadly enough to carry both the meaning in this table and the meaning herein.

Lordstown Securities	Lordstown Options and securities trading under the tickers DPHC, RIDE, DPHCW, RIDEW, and DPHCW
LOI	Letter of Intent
LTM	Lordstown Motors Corp. F/K/A DiamondPeak Holding Corp.
Merger	The merger between DiamondPeak Holding Corporation and Lordstown Motors Corp.
Merger Sub	DPL Merger Sub Corp.
Plaintiffs	George Troicky, Daniel Tavares, Globestar Systems Inc., and Ashith Pabbathi, and FNY Managed Accounts LLC, together
SEC	The U.S. Securities and Exchange Commission
RIDE	The ticker for Lordstown's Class A Common stock
SPAC	Special Purpose Acquisition Corporation
RIDEW	The ticker for warrants listed by Lordstown
Sponsor	DiamondPeak Sponsor LLC
Workhorse	Workhorse Group Inc.
§10(b)	Section 10(b) of the Exchange Act
§14(a)	Section 14(a) of the Exchange Act
§20(a)	Section 20(a) of the Exchange Act

Lead Plaintiff George Troicky ("Lead Plaintiff"), and additional named Plaintiffs Daniel Tavares, Globestar Systems Inc., Ashith Pabbathi, and FNY Managed Accounts LLC (together, "Plaintiffs") bring this consolidated complaint against Defendants Lordstown Motors Corp. F/K/A DiamondPeak Holding Corp. ("LTM"), Lordstown EV Corporation F/K/A Lordstown Motors Corp., Stephen S. Burns, Shane Brown, Caimin Flannery, David T. Hamamoto, Julio Rodriguez, Rich Schmidt, and Darren Post.

Plaintiffs allege the following upon personal knowledge as to those allegations concerning Plaintiffs and, as to all other matters, upon the investigation of counsel, which included: (a) review and analysis of public filings made with the U.S. Securities and Exchange Commission ("SEC"); (b) review and analysis of press releases, analyst reports, news articles, and other publications; (c) a review of interviews and other public statements by Defendants; (d) interviews with former employees of Defendants and Defendants' purported customers, business partners, and affiliates; (e) consultation with experts on the automotive industry; (f) review of court filings in other matters concerning Defendants and their current or former affiliates; and (g) review of information obtained through freedom of information requests, such as police reports. Plaintiffs believe that substantial additional evidentiary support exists for the allegations herein that will be revealed through continued investigation and discovery.

As more fully stated herein, Plaintiffs brings this federal securities class action on behalf of themselves and all persons or entities who (a) purchased LTM's publicly traded warrants (Ticker: "RIDEW" and prior ticker: "DPHCW"), LTM's publicly traded units (Ticker: "DPHCU"), or any publicly traded option to purchase or sell LTM's Class A Common Stock, from August 3, 2020, through July 2, 2021, inclusive (the "Class Period"), and/or (b) held LTM's Class A Common Stock as of September 21, 2020.

I. INTRODUCTION

1. This is a classic "fake it 'til you make it" fraud. After being pushed out of his role as CEO of the previous company he had founded, Defendant Stephen S. Burns had an exciting opportunity. He could buy a recently closed plant from General Motors ("GM") at a steep discount. Burns hatched the idea to use the plant to manufacture a new electric pickup truck (the "Endurance") with an in-wheel "hub motor" design, which had never been used in automobiles.

2. Burns formed a business ("Lordstown") and bought the plant from GM, but he still needed to raise the cash to develop and manufacture the truck. To attract investments, Burns developed a ***false and misleading,*** but compelling, narrative about the fledgling company. He touted a growing book of "pre-orders," which he claimed as evidence of demand for the vehicle.

3. On November 14, 2019, Burns boasted to Ohio-politicians that the plant would enable Lordstown to be first to market, concluding: "First mover market, ***we've already got pre-orders for these vehicles***." On May 22, 2020, the *Detroit Free Press* reported that Burns claimed "well over several thousand" pre-orders and that he had said, "[t]he demand side is super strong, I am starting to worry we won't be able to make them fast enough." At a June 2020 prototype unveiling event, featuring Vice President Mike Pence, Burns claimed, "our whole year, ***our first year of production [is] already pre-sold***," and later in the event, Vice President Pence stated, "Steve actually told me that they've already ***pre-sold*** 14,000 additions of the . . . truck."

4. After months of unsuccessfully trying to raise cash from private sources, Burns found a solution. On August 3, 2020, he announced that Lordstown was jumping on the "SPAC" bandwagon, and that it would be taken public by merging (the "Merger") with DiamondPeak Holding Corporation ("DPHC" or "DiamondPeak"), a publicly traded shell company that held cash reserves. To secure this funding, Burns would need to persuade shareholders of DPHC to

approve the Merger, and to do so, he doubled down on his false claims about Lordstown's supposed pre-orders.

5. **Touting Pre-Orders to Promote the Merger**. The Merger proxy materials stated that Lordstown had "***secured* $1.4 billion of pre-orders***.*" The proxies claimed 27,000 pre-orders, "***from commercial fleet customers***" or "from fleet operators," which Defendants claimed would provide "revenue sufficient to cover 2021 production and into 2022" and represented "clear demand" for the truck. The narrative that these pre-orders were coming from fleets was important because it suggested they represented true demand from Lordstown's target market.

6. An investor slide deck published in the proxy materials repeated the claim of "~$1.4bn of Existing Pre-Orders" and listed logos of certain "Selected Pre-Order Customers." In the conference call presenting that slide deck, Defendant Burns referred to the "***significant*** pre-order activity," repeating the supposed numbers. During the call, Defendant Hamamoto (Chairman of the SPAC) stated that he had evaluated hundreds of companies on behalf of DPHC and that Lordstown stood out, noting that it had "attracted a clear lane of customers in the commercial fleet segment of the market, as evidenced by its $1.4 billion in pre-orders to-date. While promoting the Merger, Burns appeared on CNBC claiming "[w]e got 27,000 ***orders***." Burns even appeared with President Trump and nodded in agreement as the President, speaking about Lordstown's truck, told reporters: "I heard the ***sales*** are great."

7. The market believed the story. For example, BTIG published a report on October 12, 2020, recommending a buy rating, noting: "First Year of Production Sold Out." The analyst report commented on how they liked that the sales came from "fleet managers."

8. **Touting Production Capability Prior to the Merger**. In addition to touting the "pre-orders," Burns also spun a false story regarding the company's production capabilities. For

example, the proxy materials claimed the plant was "near production ready," required only "modest incremental investment," and that the plant "positions Lordstown to be first to market." More specifically, Defendants claimed production would begin in September 2021. Furthermore, the proxy materials also claimed that after the Merger Lordstown would have sufficient cash to both move through production and become "cash flow positive." Similarly, in an investor call, Defendant Hamamoto claimed that the Merger would "fully fund Lordstown's current business plan and position the company to achieve positive EBITDA and cash flow."

9. **The Merger Is Approved; the Misrepresentations Continue**. On October 22, 2020, shareholders approved the Merger on the basis of these assurances. Following the Merger, Defendants continued to promote the company with these same misleading talking points.

10. For example, on October 26, 2020, Burns rang the bell to open trading at NASDAQ and in his short remarks stated, "This brings the final chapter where we get the necessary resources to be able to bring [the] Endurance all the way to market . . . And we are on target to do that in September." That same day *The Detroit News* quoted Burns as saying the Merger provided the funding they needed to be "***assured***" they could begin production by September. In the same article he claimed 40,000 pre-orders and that he was "surprised" by the number and that now "he's got to" make them, emphasizing the veracity of the orders.

11. On November 17, 2020, Burns appeared on CNBC's *Mad Money* with Jim Cramer. Defendant Burns claimed, "we've already got 50,000 pre-orders" and added "we sell to commercial fleets." Then Cramer asked how "solid" the orders were, suggesting "these people are not going to be walking away? They are committed?" and Burns responded:

> Right. Yeah. ***All of them***. When you order, I think our average order size is about 500 trucks at a time. And as most of them were signed by the CEOs of these large firms, and bringing in 500 electric vehicles into your fleet, it's not trivial. So you've got to plan all the charging and everything. ***So it's very serious orders***.

12. On November 16, 2020, Lordstown issued a press release claiming they were "on track" for the September 2021 date for production and "deliveries." The same press release claimed 50,000 reservations "***from commercial fleets***." The press release also stated that the 50,000 figure did not capture demand from any organization that was "not in [a] position to be able to place pre-orders," such as "federal, state and municipal governments."[2] In addition to being literally false, this statement conveyed that whatever the 50,000 figure represented, it was a degree of commitment that was serious enough that government organizations would not be able to participate.

13. That same day Burns reiterated these remarks in an interview hosted by the website *IPO Edge*: "50,000 pre-sales already, ***all from fleets***. That's just the commercial sector. Does not count military or police departments, municipalities, state vehicles, so really just to have that many commercial vehicles sold already is a big deal." Later in the interview he was asked where the demand was coming from, and Burns said: "the bulk of them, our average order is about 500 trucks ***per order***, so larger fleets," and referred to a recent "***order***" of 400 vehicles.

14. In a December 2, 2020, Credit Suisse event, Burns said "we sell to fleets" while claiming the "50,000 pre-orders" or "***almost $3 billion in pre-orders.***" When asked "how do you find these fleet buyers," Burns claimed, "it's almost all incoming." He reiterated that the number was "just on the commercial side" from "larger fleets," and not from governments.

15. On January 11, 2021, Lordstown issued a press release stating it was "on track for start of production in September" and claiming 100,000 pre-orders "from commercial fleets," concluding "I think you can see why we feel that we are about to revolutionize the pickup truck industry."

[2]Notably, government organizations cannot buy vehicles unless they are on an approved list.

16. On February 6, 2021, Burns appeared on a popular investing YouTube channel and once again claimed 100,000 pre-orders, said that it did not include governmental organizations and promised, "those numbers are just commercial fleets." The interviewer responded, "Yeah, jeez. So that's ***literally*** just for fleets?" and Burns responded, "Yeah. That's just commercial fleets." In the same interview, Burns boasted of how serious the orders were, noting that they were "signed by the CEO . . . or at least some C-suite person" and then claiming:

> ***They take it very seriously.*** They've got to figure out how they're going to layer these electrics in there. And the appetite for them to do that way early like that, a year out from some of them means they're trying to do their part to ensure this comes to market. So ***they're standing behind it and they're putting these pre-orders in.*** But I'd say it's much stickier than a consumer putting a hundred dollars down refundable down on a Cybertruck, let's say. And I think these orders are very, very sticky because I know what it takes to get them, the education you have to do. This isn't somebody again on a website, a hundred bucks, refundable with a credit card. ***This is a fleet.*** And fleets generally take their business very, very seriously. So I think they're very sticky.

17. **Defendants Continue to Mislead After Learning of the SEC Investigation**. On February 17, 2021, Lordstown received an information inquiry from the SEC into the pre-orders issue. Lordstown did not disclose the SEC investigation at the time, but has since admitted that the SEC's investigation "relates" to the allegations at issue in this action. Even after Defendants learned of this SEC investigation, Burns continued to mislead investors.

18. On February 18, 2021, Burns was interviewed on CNBC. The opening segment for the TV spot noted the 100,000 supposed orders, which Burns did not correct. He then reasserted that Lordstown was on track for the September production date and that they had "enough liquidity" to get there.

19. On February 23, 2021, Burns was interviewed by Yahoo Finance. He lauded the September production date. He then stated: "Our initial foray is into fleets and ***we have pre-sold***

100,000 of these to various fleets across America. So, really a big appetite." Later adding that the fleets "buy in big chunks" and make "very sticky orders."

20. **The Truth Begins to Emerge**. On March 12, 2021, renowned research firm, Hindenburg Research ("Hindenburg"), published a lengthy analysis of the company (the "Hindenburg Report"), which included information from interviews with Lordstown's supposed pre-order customers and Lordstown's former employees.

21. The Hindenburg Report stated that "Lordstown's order book consists of fake or entirely non-binding orders, from customers that generally do not even have fleets of vehicles," and that "Burns sought to book orders, regardless of quality, purely as a tool to raise capital and confer legitimacy." In addition, the Hindenburg Report disclosed how Lordstown had paid a third-party lucrative, per-truck commissions to obtain non-binding letters of intent ("LOIs"), and how in a case study posted to that third-party's website they had stated that Lordstown's fundraising was directly linked to pre-order generation — "the faster the pre-orders arrived, the greater **investors' confidence** would be in the company and the faster funds would flow in."

22. Investigation of counsel has confirmed that the same sentiment was understood within Lordstown. For example, CW-1, one of just a couple sales representatives at Lordstown, recalled a "fairly explicit" message that they needed to procure the reservations in order to get additional financing from investors. CW-2, a high-level manager at Lordstown with detailed knowledge of Lordstown's sales practices, worked regularly with Defendants Burns and Flannery, and described the pre-orders as "pie in the sky" and stated that "all it was for" was to generate buzz. CW-2 stated that, there was "zero" due diligence conducted on the ability of potential customers to support their orders "by design." CW-2 explained that when it came to

securing letters of intent the only guideline provided to Lordstown's sales staff was to get "as many as possible in the shortest period of time."

23. Just a few examples of the information disclosed by the Hindenburg Report are summarized below:

- Lordstown counted E Squared as making a massive 14,000 truck pre-order worth $735 million (more than the entirety of the cash Lordstown raised in the Merger), even though E Squared was a non-incorporated "doing business as" name for a 1-2 person operation, run out of a modest one-bedroom apartment, which did not operate a fleet or own trucks, and instead hoped to eventually serve as an intermediary to sell trucks, which E Squared's operator called a "brand new business."
- Lordstown counted Innervations LLC for a 1,000 truck pre-order, a self-described "influencer" business operated as a side hustle by two individuals with other jobs, which did not operate a fleet, or "get involved in the actual ordering," and instead sought to act as a promoter for Lordstown trucks, by hosting events.
- Lordstown listed Grid-X as a "Select Pre-Order Customer" in its Merger proxy, even though Grid-X was an internet cloud services company, and did not appear to operate a fleet or own trucks. The Hindenburg Report stated that Grid-X's CEO had indicated they were "completely unaware" of the deal when asked about it and that the inquiry was "the first time" they had heard about it.
- Lordstown listed Duke Energy as a "Select Pre-Order Customer," based on years-stale letters of intent with Workhorse to buy an entirely different truck.
- Lordstown counted a 500 truck pre-order by Clean Fuels Ohio, even though it was a non-profit dedicated to educating on clean energy, not a fleet operator. The non-profit said the deal was "promotional" and about "getting the word out," and was "really clear" with Lordstown about that fact.
- Lordstown counted Momentum Groups for a 900 truck pre-order in its Merger proxy, even though the group is not a fleet operator and instead hosted a webpage inviting others to sign up to pre-order the truck.

24. Investigation of counsel has confirmed that Lordstown's supposed pre-order book was full of similar non-committal indications of interest from parties other than fleet managers.

25. For example, Lordstown had booked pre-orders from both the City of Ravenna and the City of Lordstown. The mayors of both cities confirmed that they had made no orders and had not even signed letters of interest. In the words of the mayor of the City of Ravenna, he was "shocked" when he received a notice that he had made a commitment for approximately 20

Endurance trucks and there was "no way on God's green earth" that such an order would be within the city of 12,000's budget.

26. Lordstown claimed "Summit Petroleum" as one of its "Select Pre-Order Customers," including in the Merger proxy documents, but a company representative found it "interesting" that Lordstown would call the arrangement a pre-order, noting that their indication of interest had not listed any particular number of trucks and had done so as a "friend of a friend" type of deal. Auto-Flex was claimed by Lordstown in its pre-orders, despite the fact that it only acted as an intermediary for governmental fleets; a representative said that while he provided a "rough" estimate of the number of trucks by email, he never saw a price sheet or any other spec sheet for the truck.

27. The Hindenburg Report also detailed various facts showing that Lordstown's production capabilities had been overstated. For example, Lordstown was relying on a small Slovenian company to manufacture its hub motors, even though it appeared highly doubtful the supplier could manufacture the critical component at scale. Lordstown had experienced a fire while conducting an overnight test of its vehicle on public roads, and the vehicle was fully engulfed in flame, showcasing how far its vehicle was from production. The Hindenburg Report also cited a former employee's account of how critical development activity had not yet occurred, including specific testing activities that would take months to complete.

28. Counsel has also conferred with an automobile expert who explained that Defendants' assurances that it would produce the vehicle by September 2021 were unrealistic. The expert explained that even if Lordstown was developing an ordinary vehicle it could not launch production by September 2021, and that Lordstown's unique vehicle would take even longer than typical. This also meant that Lordstown's assurances that it had the resources needed

to become profitable without the need to raise additional capital were misleading, as they would not even begin substantial production within the stated time and would need to raise additional capital. Confidential witnesses confirm that even before the Merger closed Lordstown was already behind schedule.

29. **The Fallout From the Hindenburg Report**. Lordstown's stock opened down 20.95% upon the publication of the report as countless news organizations summarized its revelations. By the close of trading on March 12, 2021, Lordstown's market capitalization had decreased by nearly $500 million. Three days later, on March 15, 2021, Lordstown issued a press release asserting that production was still on track for September. Five days after the publication of the Hindenburg Report, during a conference call on March 17, 2021, Lordstown disclosed that the company was the subject of a SEC investigation.

30. On March 18, 2021, Burns appeared on CNBC and attempted a revisionist history, asserting he had never claimed the pre-orders he had touted just months earlier on the network were serious. Most incredibly – in direct contravention to many of his statements detailed herein – Burns claimed "[w]e've never said we had orders." He went on to absurdly claim that he had never said the pre-orders were "serious." Later that day, Jim Cramer exclaimed, "I had pressed him on Mad Money about how serious the orders were . . . and he said, they're very serious," adding, "So to me, **I thought it was like the prosecution rests**." Another reporter responded to Cramer noting Burns' claim that they never claimed orders, and Cramer responded: "***he point blank said the opposite to me*** . . . he said to me, our average order size is 500 trucks at a time and most of them are signed by the CEOs of these large firms. . . That's the core evidence . . . if we had to do like . . . stock market, CSI. Well, there you go."

31. After the disclosure of the SEC investigation and after Defendant Burns' CNBC interview, in which he admitted that the pre-orders were not serious—albeit while dishonestly claiming he never had claimed otherwise—the market reacted sharply, with Lordstown's stock closing the day down 13.78% below its prior closing price, for a loss of market capitalization of over $300 million.

32. **Lordstown Continues Declining as the Truth Continues to Emerge**. On May 24, 2021, after market close, Lordstown released its First Quarter 2021 results, and disclosed that any production occurring in September would be at "limited capacity," slashing prior production guidance by 50%, and revealing that the company would need additional funding to ramp up production. Lordstown's stock price fell 15.51% on this news. On June 8, 2021, Lordstown released an amended 10-K, announcing a "going concern" notice disclosing that the company was facing insolvency and that to ramp up production the company may need "significant" capital. This stood in stark contrast with the prior assurance that the company had sufficient capital, not just to launch full production, but also to achieve positive cash flows. The amended 10-K also revealed that the company had "material weaknesses in internal control over financial reporting." On this news, Lordstown's stock price fell to a daily low 20.86% below its prior closing price.

33. On June 14, 2021, Lordstown released the results of its own internal investigation. The report admitted that there were "issues regarding the accuracy of certain statements regarding the Company's pre-orders." It admitted that Lordstown had paid for pre-orders, that the company had misrepresented that orders came from fleets when they had not, corroborated specific allegations in the Hindenburg Report, and admitted that Lordstown had booked large

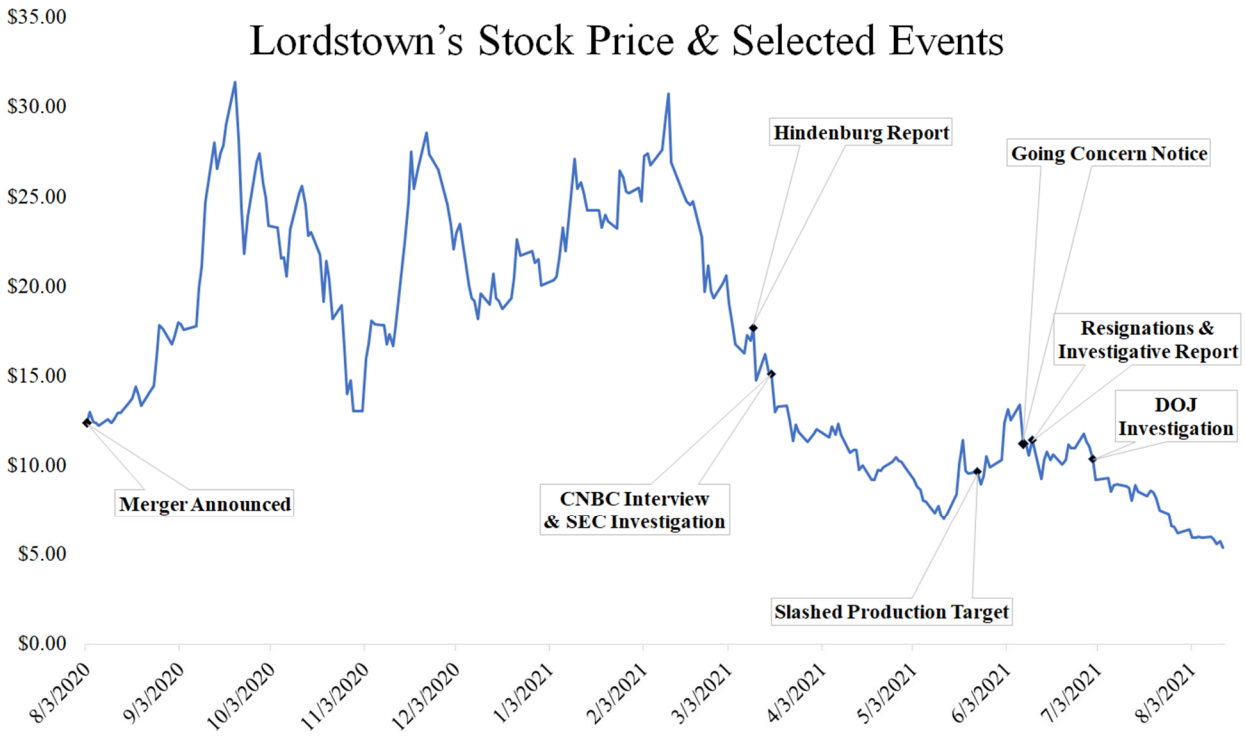
pre-orders from companies without resources to complete the orders, or booked orders that were "too vague or infirm to be appropriately included in the total number of pre-orders disclosed."

34. Concurrently with the release of the internal investigation report, Lordstown announced the "resignation" of CFO Rodriguez and CEO/Chairman Burns. Numerous facts strongly indicate that Rodriguez and Burns had been ousted for their fraud—including that Lordstown did not immediately announce replacements for these critical roles, and only recently named a new CEO. On the news disclosed on June 14, 2021, Lordstown's stock fell 18.84%.

35. On July 2, 2021, *The Wall Street Journal* reported that Lordstown was also under a Department of Justice investigation related to Defendants' disclosures regarding the pre-orders. Lordstown's stock price fell 10.82%.

36. Next, on August 11, 2021, Lordstown issued its Second Quarter 2021, results, disclosing that while vehicle "production" may begin in September, the regulatory approvals to sell the vehicle would not even be complete until at least December 2021, meaning that deliveries would not occur until at least 2022, and even then only to "selected early customers." On August 13, 2021, Lordstown filed a form 10-Q, which included a revised "going concern" notice indicating that despite recent fundraising (securing $400 million, about 60% of what Lordstown raised in the Merger) the company was still at risk of insolvency.

37. This action seeks to recover the losses investors suffered due to Defendants' misrepresentations and omissions. Lordstown's stock price reached a Class Period high of $31.57 on February 11, 2021, as a result of Defendants misrepresentations and omissions, as alleged herein. As the truth was partially revealed to the market, Lordstown's stock price fell to a Class Period low of $6.69.



II. JURISDICTION AND VENUE

38. The claims asserted herein arise under and pursuant to the Securities Exchange Act of 1934 (the "Exchange Act") and certain rules promulgated by the SEC. Specifically, this Complaint asserts claims under: **(1)** Section 10(b) of the Exchange Act ("§10(b)") and Rule 10b-5 promulgated thereunder by the SEC, *see* 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5; **(2)** Section 14(a) of the Exchange Act ("§14(a)") and Rule 14a-9 promulgated thereunder by the SEC, *see* 15 U.S.C. § 78n(a); 17 C.F.R. §240.14a-9; and **(3)** Section 20(a) of the Exchange Act ("§20(a)"), *see* 15 U.S.C. § 78t(a)).

39. Venue is proper in this district pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa), Section 22 of the Securities Act (15 U.S.C. § 77v), and 28 U.S.C. § 1391(b). Substantial acts in furtherance of the alleged Securities Act and Exchange Act violations or the effects of the violations have occurred in this judicial district. Many of the acts charged herein, including the preparation and/or dissemination of materially false and misleading information,

occurred in substantial part in this judicial district. Defendant LTM's primary manufacturing facility and principal executive office is located in Lordstown Ohio, which is located in Trumbull County, Ohio.

40. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, Section 27 of the Exchange Act (15 U.S.C. § 78aa), and Section 22 of the Securities Act (15 U.S.C. § 77v).

41. In connection with the acts alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications, and the facilities of the NASDAQ, a national exchange within the United States.

III. PARTIES AND KEY PLAYERS

A. Parties

42. Lead Plaintiff George Troicky is and at all relevant times was a resident of Cleveland, Ohio. He invested in Lordstown common stock on his own behalf. He generates income through investments, including investments in commercial real estate, mainly warehouses and storage facilities. As set forth in the certification attached hereto as Exhibit B, Lead Plaintiff Troicky purchased LTM's Class A common stock during the Class Period.

43. Additional named Plaintiff Daniel Tavares is a resident of Ontario, Canada. Plaintiff Tavares is the Chairman of the Board of Directors of Plaintiff Globestar Systems Inc. As set forth in the certification attached hereto as Exhibit C, Plaintiff Tavares purchased LTM's Class A common stock during the Class Period.

44. Additional named Plaintiff Globestar Systems Inc. is a healthcare software company. The Chairman of Plaintiff Globestar Systems Inc. is Plaintiff Tavares. As set forth in

the certification attached hereto as Exhibit D, Plaintiff Globestar Systems Inc. purchased LTM's Class A common stock during the Class Period.

45. Additional named Plaintiff Ashith Pabbathi is a resident of Okemos, Michigan. Plaintiff Pabbathi's purchased LTM's Class A common stock during the Class Period ECF No. 23-2, which is incorporated by reference herein.

46. Additional named Plaintiff FNY Managed Accounts LLC is in the business of providing securities brokerage and investment services. As set forth in the certification attached hereto as Exhibit E, Plaintiff FNY Managed Accounts LLC purchased LTM's Class A common stock during the Class Period.

47. Defendant Lordstown Motors Corp. ("LTM") is a holding company that owns the Lordstown business, which is purportedly developing and planning to manufacture and sell a light duty electric truck known as the "Endurance." LTM's headquarters are located at 2300 Hallock Young Road, Lordstown, Ohio 44481. LTM is incorporated in Delaware. Prior to the Merger, LTM was named "DiamondPeak Holding Corp." ("DPHC" or "DiamondPeak") and references herein to DPHC refer to the pre-merger conduct of, or stock issued by, the entity now known as LTM.

48. Following the Merger, the entity previously known as DiamondPeak Holdings Corp. was renamed Lordstown Motors Corp. Following the Merger, the entity that was previously known as Lordstown Motors Corp., was renamed Lordstown EV Corporation and became a wholly owned subsidiary of DiamondPeak Holdings Corp. (which itself, as just stated, was renamed Lordstown Motors Corp.). Notably, Lordstown EV Corporation is the only business of the post-Merger LTM, and as such, explanations of the conduct of LTM or

Lordstown include conduct of LTM by way of its agent and subsidiary Lordstown EV Corporation.

49. DPHC was a SPAC formed for the purpose of acquiring a privately owned company to take that company public. Prior to the Merger, DPHC's Chairman and Chief Executive Officer was Defendant Hamamoto. After the Merger, the entity's Chairman and CEO was Defendant Burns, until his resignation. Certain of the claims alleged herein are based on conduct of the entity now known as Lordstown Motors Corp., when that entity was known as DiamondPeak Holding Company, and because any liability of that entity survived its name change, LTM remains liable for such conduct.

50. Prior to the Merger, DPHC (now LTM) issued a Class A common stock that traded on the NASDAQ under the ticker "DPHC." Following the Merger, the ticker of that Class A common stock was changed to "RIDE," and continues to trade on the NASDAQ. Prior to the Merger, DPHC (now LTM) listed warrants that were exercisable for shares of DPHC (now LTM)'s Class A common stock, and these warrants traded under the ticker ("DPHCW"). After the Merger, DPHC maintained the listing of those warrants (until all such warrants were redeemed or exercised), under the ticker "RIDEW." Prior to the Merger, DPHC (now LTM) listed units that were comprised of one share of its Class A common stock and 1/3 off a DPHCW warrant. Additionally, throughout the Class Period options based on the DPHC and LTM common stock, which provided the right to purchase or sell DPHC or LTM's Class A common stock, at a specific price, also publicly traded (all such options defined as "Lordstown Options"). The term "Lordstown Securities" is used to describe each security listed in his paragraph,

including those Lordstown Options and securities trading under the tickers DPHC, RIDE, DPHCW, RIDEW, and DPHCW.[3]

51. Defendant Stephen S. Burns was Lordstown's Founder, CEO and the chairman of Lordstown's board. Prior to founding Lordstown, Burns was CEO of Workhorse, which he founded. According to his official biography on Lordstown's website, Burns' experience prior to founding Workhorse involved work on several startups, none of which are in the automotive industry.[4] On June 14, 2021, Lordstown announced that Defendant Burns was resigning "[e]ffective immediately, pursuant to mutual agreements," and as explained herein, it is alleged that this resignation was a result of Burns' misstatements.

52. Defendant Julio Rodriguez has served as Lordstown's Chief Financial Officer since September 2019. Prior to working at Lordstown, Defendant Rodriguez served as the Chief Information Officer at Workhorse. On June 14, 2021 Lordstown announced that Defendant Rodriguez was resigning "[e]ffective immediately, pursuant to mutual agreements," and as explained herein, it is alleged that this resignation was a result of Rodriguez' misstatements.

53. Defendant Caimin Flannery was Lordstown's Vice President Business Development from October 2019 until October 2020, when he was promoted to Senior Vice President of Business Development. Lordstown's presentations state that Defendant Flannery ran the sales team at Lordstown. Prior to working at Lordstown, Defendant Flannery was an executive at Workhorse. Lordstown's 10-K lists Defendant Flannery as one of its executive officers and states that he has a "long-standing working relationship with Mr. Burns."

[3] At any point in time, the Lordstown Securities reflected the price of Lordstown's Class A common stock, and thus any allegation herein regarding the price or change in price of the common stock was also reflected in the price or change in price of the other Lordstown Securities.

[4] Burns seems to have fed media outlets a narrative that he graduated from Ohio State University with a degree in electrical engineering. However, attempts to verify his degree — through the National Student Clearinghouse — come back with an "unverified" status, suggesting that he did not receive such a degree.

54. Defendant Shane Brown has served as Lordstown's Chief Production Officer since November 2020.

55. Defendant Darren Post has served as Lordstown's Chief Engineer since November 2019. His public LinkedIn profile states that he was Responsible for executing all aspects of vehicle engineering and launch for the all new LMC Endurance plug-in battery electric pickup trucks. It also states that he was responsible for building the start-up company's engineering staff, infrastructure and capabilities to develop and launch their first and future vehicles.

56. Defendant Rich Schmidt has served as Lordstown's President since November 2020, and prior to that, was Lordstown's Chief Production Officer since October 2019.

57. Defendant David T. Hamamoto was the Chairman and Chief Executive Officer of DPHC. Previously, Defendant Hamamoto worked at Goldman Sachs for 14 years and served on the board of at least two other companies, including as chairman and chief executive officer of Northstar Realty Finance Corp., a New York-based real estate investment trust. Defendant Hamamoto signed the proxy statements soliciting investors of DPHC to approve the merger between a subsidiary of DPHC ("Merger Sub") and LTM, through which LTM would become a wholly-owned subsidiary of DPHC. Defendant Hamamoto was the controller of an entity that formed DiamondPeak Sponsor LLC, in a joint venture with affiliates of SilverPeak, and the Sponsor organized the creation and management of DPHC. Defendant Hamamoto, through his positions of Chairman and Chief Executive Officer of DPHC, was entrusted with identifying, evaluating, and acquiring a business with a real estate component or where the management team had significant expertise. In carrying out the acquisition plan, Defendant Hamamoto assured DPHC investors of his care, when DPHC stated that that it would undertake "comprehensive due diligence, thoughtful underwriting and deep strategic analysis, resulting in a thorough evaluation

of each investment opportunity." In fact, DPHC expected Defendant Hamamoto to "leverage [his] longstanding relationships, network of industry connections and . . . uncover unique opportunities and support them with market expertise."

58. Together, Defendants Burns, Rodriguez, Flannery, Brown, Post, Schmidt, and Hamamoto are referred to herein as the "Individual Defendants."

59. The term "Lordstown" as used herein refers to the business purportedly engaged in the development and production of the Endurance pickup truck. The terms LTM and DPHC refer to specific entities, whereas the term "Lordstown" is used to refer to the business enterprise at issue in this litigation that existed before the Merger and continued thereafter.

B. Other Relevant Persons and Entities

60. DiamondPeak Sponsor LLC (the "Sponsor") was an entity incorporated in Delaware that was involved in the formation of DPHC. It was an investment fund that was created as a joint venture between DHP SPAC Sponsor LLC, an entity owned by Defendant Hamamoto, and SP SPAC Sponsor LLP, an entity controlled by Silverpeak.

61. Silverpeak is defined in SEC filings as a "platform of entities" and is associated with the formation and management of SPAC companies. Silverpeak's principals are Kaushik Amin, Brett Bossung, and Mark A. Walsh. Silverpeak controlled SP SPAC Sponsor LLP, which was one of two entities that formed the Sponsor through a joint venture.

IV. SUBSTANTIVE ALLEGATIONS

A. Early Background on Lordstown and DiamondPeak Holding Corp.

62. Defendant Burns founded Workhorse in 1998. Workhorse primarily manufactured commercial delivery vehicles, such as vans used by mail delivery companies. While Workhorse utilized electric propulsion systems, its vehicles had relatively conventional drive systems powered by a BMW motor (*i.e.*, it did not use "hub motors," which are discussed

further herein). Workhorse had at one point endeavored to produce an electric truck, but the proposed specifications of the Workhorse truck were vastly different from the truck Lordstown ultimately sought to develop, not only because it utilized an entirely different propulsion system, but also because Workhorse's truck was designed for a different maximum range in mind, utilized a range extender system and had many other design differences.

63. As explained by industry publication *Electrive*, in an article published on March 13, 2020, Workhorse terminated its development of an electric pickup truck following Burns' departure from Workhorse.

64. In November 2018, GM announced it was planning to close its manufacturing plant in Lordstown Ohio. Prior to closing, the plant had produced the Chevrolet Cruze, a conventional internal combustion engine sedan. The Lordstown plant was one of the largest auto manufacturing plants in the country and had produced nearly 300,000 vehicles in a single year prior to its closure.

65. On January 18, 2019, DPHC filed an S-1 Registration Statement with the SEC and organized as a SPAC. The purpose of a SPAC is to raise funds through an initial public offering, hold those funds in trust for a period of time while shopping for an acquisition target, and then merge with that acquisition target, effectively taking the target public. DPHC, like most SPACs, had no businesses besides this fundraising, shopping, and acquisition.

66. DPHC was led by Defendant Hamamoto. It sought to raise $250 million through its IPO, which could be used to fund an acquisition or invest into an acquisition target. At the time of the S-1 Registration Statement, it does not appear that DPHC had any intention of acquiring Lordstown. At that time, it was reported that DPHC would be targeting an acquisition in the real estate industry.

67. Burns formally resigned from Workhorse on January 30, 2019. As is typical, this was technically a resignation, but the abrupt notice of his departure, which stated he was ending his role as CEO "effective immediately" suggests he was pushed out of the company. According to the Hindenburg Report, former senior employees of Workhorse indicated that Burns was actually pushed out by the Board for wasting R&D money and missing deadlines.

68. On March 4, 2019, DPHC completed its initial public offering ("IPO") and on March 18, 2019, DPHC reported selling additional shares and units, generating net proceeds of $280 million.

69. The Lordstown plant was closed in March of 2019, and the plant closure led to the elimination of 4,200 jobs. GM's decision brought significant political pressure upon GM, including tweets from President Donald Trump asking GM to "do something quickly" about the issue and suggesting that GM should reopen the plant "maybe in a different form or with a new owner, FAST!"

70. In June of 2019, Defendant Burns formed Lordstown Motors Corp. and on August 2, 2019, *The Detroit News* reported that he was planning to acquire the Lordstown plant. On September 25, 2019, the *Youngstown Ohio Business Journal* reported that negotiations for Burns' company to acquire the plant were ongoing and that Burns was planning to manufacture an electric pickup truck at the factory. The article also indicated that the plant would be the headquarters for Burns' new company.

71. In November 2019, GM agreed to sell the plant to Lordstown. It was publicly reported that, as a component of that sale, GM loaned Lordstown $40 million to facilitate the purchase and retooling of the plant and county records indicate the purchase price for the plant and land was recorded at $20 million.

72. On November 7, 2019, Workhorse disclosed in an SEC filing that it had licensed intellectual property relating to its abandoned electric truck project to Lordstown in exchange for certain royalty rights and a 10% stake in Lordstown. This filing also stated that Lordstown would "endeavor" to complete a "capital raise" to retrofit the Lordstown plant and that, "upon completion" of that raise, Workhorse would "transfer its ~6,000 existing orders for [trucks] to [Lordstown], **subject to customer consent**." As discussed herein, Lordstown boasted this book of orders, prior to any such capital raise and even though customer consent was not obtained.

73. On November 14, 2019, Defendant Burns spoke with Ohio-based politicians about the Lordstown plant and boasted about the condition of the facility and how it would help the company be first to market in the electric pickup truck business. During that event Burns exclaimed: "First mover market, **we've already got pre-orders for these vehicles**. We know there's a strong demand."

74. Generally speaking, (*i.e.*, according to the *Oxford English Dictionary*) a pre-order refers to "an order for an item that has not yet been made commercially available." While a pre-order may not ultimately be binding, it is understood to represent a significant transaction, often accompanied by a deposit payment, evidencing a specific intent to buy the item.[5]

75. On December 5, 2019, the sale of the plant to Lordstown from GM was closed. On December 23, 2019, industry publication *AutoBlog* reported that Lordstown was working to secure $300 million in financing to develop its electric pickup truck. The article also reported that Burns was targeting April 2020 for the launch of preproduction vehicles and that the plant

[5] When the term "pre-order(s)" or similar phrases are used herein to refer to the purported pre-orders Lordstown had, that is a reference to Defendants' representation(s) claiming pre-orders. Contrary to such representations, Lordstown did not have pre-orders, they had non-binding letters of intent for a portion of the purported pre-orders. References herein to Lordstown's "order book," "pre-order book," or any similar phrase, refers to the purported pre-orders Lordstown was touting.

would begin producing trucks by the following November. The article also reported that the company was taking pre-orders for the vehicle upon a $100 deposit and that the purchase price would be $52,000. As noted in the article, this timeline would mean that Lordstown would bring the first electric pickup truck to market, which would provide it with a material strategic advantage. The article explained that the vehicle would use a unique "hub motor" design.

76. Hub motors are electric motors incorporated into the wheel of a vehicle. They are currently used in scooters and certain other light vehicles, but they have not been used in the production of cars or trucks. As discussed herein, while the upside of the technology is substantial, the use of hub motors in a production vehicle poses huge hurdles in terms of durability and safety.

77. On April 21, 2020, Defendant Burns published a letter to the public on Lordstown's website. He stated that the COVID-19 pandemic had delayed their production timeline. However, he also stated that they planned to unveil the Endurance pickup truck through a virtual event in the Summer of 2020. He also indicated that the company would begin distributing vehicles to customers in January 2021, writing: "We look forward to introducing you to the world's first-fully electric pickup truck this summer, and handing the keys to fleets across the country in January 2021." This amounted to a one-month delay from his prior target of December 2020.

78. On April 30, 2020, Lordstown published a video touting the capabilities of the Lordstown plant. The video boasted that the plant was "very, very capable" and "very modern." He also downplayed the task of preparing the plant for production of the Endurance, stating "for us it's just reconfiguring" and added that "this plant has been perfect for us."

79. On May 22, 2020, the *Detroit Free Press* published an article quoting Defendant Burns as boasting that Lordstown had secured "well over several thousand" pre-orders, even though the vehicle had yet to be formally unveiled. The article further explained that Burns planned to unveil the truck in late June and that after that event, Burns expected to take pre-orders for all 20,000 pickups the automaker planned to produce in its first year of production. Burns was also quoted as saying, "The demand side is super strong, I am starting to worry we won't be able to make them fast enough." According to the article, at that time, Lordstown employed about 70 people, nearly all engineers. The article explained that Lordstown would be building its battery pack systems in-house, adding to the momentous challenge of bringing the vehicle to production.

80. On June 25, 2020, Lordstown hosted an event unveiling of the Endurance. At the event, Vice President Mike Pence sat in the pickup truck as the company rolled the vehicle on stage. At that event, Defendant Burns claimed that their assembly line "enables high volume production" that "the plant itself is very, very capable," and that it was a "very automated line." He also continued to trumpet the supposed pre-orders that the company had secured, stating:

> ***We started pre-selling.*** I think we have our whole year, ***our first year of production already pre-sold*** and we haven't even showed the vehicle yet. If we get lucky, today we might get fivefold that people buying online once they see it. So we're very excited.

81. Vice President Mike Pence also spoke at the event, and recited Defendant Burns' false assertions that the company had "pre-sold" a large number of vehicles. Vice President Pence stated: "Steve actually told me that they've already pre-sold 14,000 additions of the Lordstown Endurance truck."

B. Defendants Mislead Investors as They Pitch and Close the Merger

82. On August 1, 2020, DPHC and Lordstown entered into a Merger agreement, whereby DPHC would acquire Lordstown and take the company public. However, the Merger was contingent upon approval by DPHC shareholders. If approved, the deal would dilute existing holders of DPHC shares through the issuance of new shares. As part of the Merger, DPHC would offer new shares to Lordstown's pre-Merger shareholders, and would conduct a large private offering of securities to raise additional capital. With the cash DPHC had raised in its IPO and in the offerings taking place as part of the Merger, it was expected that the Merger would contribute $675 million in funding to Lordstown, including a $75 million investment from GM.

83. On August 3, 2020, Defendant Burns announced the Merger through his twitter account and DPHC filed certain materials with the SEC that same day. Those SEC materials were filed as "definitive proxy soliciting materials"—meaning that they were part of DPHC and Lordstown's formal attempt to solicit shareholders to vote in favor of the Merger.

84. Among the proxy materials filed by DPHC on August 3, 2020, was a press release issued jointly by Lordstown and DPHC. In that press release, Defendant Burns boasted: "Since its unveiling just over a month ago, the Endurance has been met with enthusiastic support, and to date, ***we have secured $1.4 billion of pre-orders***." Later, the same press release stated that Lordstown had "received more than 27,000 pre-orders for the vehicle representing over $1.4 billion of potential revenue, primarily from commercial fleet customers."

85. The press release also stated that the Lordstown plant was "estimated to be capable of producing in excess of 600,000 electric vehicles annually, with only modest incremental investment," described the plant as "near production ready," and stated that the plant "positions Lordstown to be first to market." Similarly, an investor presentation prepared by

Lordstown and filed with the SEC by DPHC on August 3, 2020 stated that "Lordstown has already received ~27K orders (average order size of ~300 trucks) before the first vehicle has been produced, representing potential revenue sufficient to cover 2021 production and into 2022."

86. The proxy materials published on August 3, 2020, also included an "investor presentation" marketing Lordstown's business. That presentation disclosed that Lordstown would have "$675 million of cash to fund operations and growth" after the Merger, meaning that prior to the Merger the fledgling company had essentially no cash.

87. The investor presentation listed the logos of certain "Pre-Order Customers" and boasted of "~$1.4bn of Existing Pre-Orders." The presentation also stated that "Based on the excellent condition of the plant and equipment at the Lordstown Complex, LMC Projects ~$120 million of investment to retool the equipment for full production readiness." Incredibly, the presentation boasted that the "Capital Raise" of $675 million provided through the Merger and related transactions, were "expected to be sufficient to achieve cash flow positive." This was an amazing proposition for investors, as it meant that Lordstown would become profitable based just on the capital raised in the proposed transactions, and would not need to raise additional funds to achieve its ambitious production schedule. The same statement was reiterated in the financial section of the presentation, which stated, "No additional capital requirements expected between PIPE[6] and going to market, achieving positive cash-flow."

88. As part of the August 3, 2020 proxy materials, Defendants published an investor conference call transcript for an event that they held at 8:30am on August 3, 2020. At that event

[6] The term PIPE refers to "private investment in public equity," and as relevant here the PIPE investment that occurred as part of the transactions defined herein as the Merger, was additional capital raising that coincided with the formal merger between DPHC and LTM.

Defendant Hamamoto described how DPHC had "valuated hundreds of companies" on behalf of DPHC but that Lordstown stood out. Defendant Hamamoto stated that "Lordstown has attracted a clear lane of customers in the commercial fleet segment of the market, as evidenced by its 1.4 billion dollars of pre-orders to-date." He also stated that "This capital will fully fund Lordstown's current business plan and position the company to achieve positive EBITDA and cash flow."

89. Importantly, the reference to "fleets" has a clear meaning in the automotive industry. As explained by the industry publication Automotive Fleet, "to qualify as a fleet, a business must have purchased five vehicles in a year or have 15 total units in operation." Federal emission standards use a similar definition, defining fleets as "10 or more motor vehicles which are owned or operated by a single person." 42 U.S.C. § 7581.

90. During the same August 3, 2020 conference call, Defendant Burns stated that the plant was "estimated to be capable of producing in excess of 600,000 electric vehicles annually with only modest incremental investment." Defendant Burns again boasted of the pre-orders, stating that the company's partners had demonstrated their "confidence in this technology with significant pre-order activity." Defendant Burns followed that statement by claiming: "The Endurance was met with great excitement and acclaim, and we now have garnered significant demand with pre-orders totaling approximately 27,000 vehicles since inception, representing more than 1.4 billion dollars of potential revenue. We hear from many fleets who cannot wait to get their hands on the Endurance. The electric vehicle market is expected to grow significantly the next decade, underlying our expectations of selling more than 100,000 vehicles per year by 2024." Defendant Burns also mirrored Defendant Hamamoto's remarks stating that the "cash proceeds" from the Merger and related transactions, "will be used to fund production of the

Endurance and we do not expect that we will need any additional equity capital requirements to achieve positive cash-flow."

91. Also on August 3, 2020, Defendant Burns appeared on CNBC and stated that "We got 27,000 ***orders***. We got customers really wanting the truck." A transcript of this media appearance was published as "definitive proxy soliciting materials" through an SEC filing made by DPHC on August 5, 2020.

92. On August 24, 2020, DPHC published a preliminary proxy statement with the SEC. That document stated that "To date, Lordstown has received pre-orders from fleet operators to purchase approximately 27,000 Endurance vehicles." That document also stated, "Lordstown anticipates it will be able to commence full production in 2021 with a target of 2,200 vehicles produced and sold in the year. Lordstown currently has pre-orders from fleet operators to purchase 27,000 vehicles. Although these pre-orders are nonbinding and did not require any deposit, Lordstown believes they demonstrate clear demand that will lead to binding orders once the Endurance is complete and potential customers are able to see firsthand the value that it offers."

93. On September 17, 2020, Lordstown and DPHC hosted a virtual analyst event and filed the presentation used in that event as "definitive proxy soliciting materials" with the SEC. That presentation included the same statements that were included in the presentation filed with the SEC on August 3, 2020.

94. September 21, 2020 was the official "Record Date" for the Merger vote. This meant that shareholders who held DPHC shares on that date would be entitled to vote on the Merger.

95. On September 28, 2020, President Trump hosted Lordstown at an event at the Whitehouse, complete with a prototype of the Endurance outside the White House. While Defendant Burns' remarks were primarily limited to answering a few questions posed by the President about the hub motor technology, even in this venue the false sales narrative resurfaced. Away from the microphone Burns could faintly be heard telling Trump that production would be starting in September and mentioning 30,000 trucks, presumably referring to the purported number of pre-orders, which were listed at 27,000 on the most recent proxy documents. Then, in the formal remarks to the press, President Trump stated, talking about the Endurance, "I heard the sales are great," and Defendant Burns nodded repeatedly in agreement, without clarifying that any such "sales" were, at most, mere indications of interest.

96. On October 8, 2020, DPHC published the final proxy statement soliciting shareholders for the Merger. It contained many statements that were substantively the same as the statements that were previously described in the August 24, 2020, preliminary proxy.

97. On October 12, 2020, securities analyst BTIG, published a report with a buy rating, that was substantially based on the company's supposed order book. The report stated that Lordstown has the "First Year of Production Sold Out" and explained that "while the first Endurance pickup truck delivery is not scheduled until late 2021, 2022 targeted production (~30,000 units) is already sold out with over 40,000 pre-orders ($2B+ backlog) from established fleet customers." The analyst report went on to explain that fleets focus on cost of ownership and stated" [t]hat is why we like management's decision to focus the Endurance on commercial fleets. And with over 40,000 pre-orders for the Endurance across multiple fleet managers, management's focus on this segment of the pickup truck market looks to have already borne a lot of fruit with the first year of production already sold out."

98. On October 22, 2020, the shareholder meeting was held to vote on the Merger. Approval of the Merger required majority support from the holders of DPHC Class A common stock that were entitled to vote. A sufficient number of shareholders voted in favor of the Merger and the Merger was closed the following day. As a result of the Merger closing, DPHC acquired Lordstown Motor Company and took control of it as a wholly owned subsidiary. DPHC was renamed Lordstown Motor Company and the former Lordstown Motor Company was renamed Lordstown EV Corporation.

99. Just days later, on October 26, 2020, Defendant Burns appeared virtually at the NASDAQ to "ring the bell" to ceremonially mark Lordstown's inclusion on the exchange. Burns once again reiterated that the funding raised in the IPO would provide Lordstown sufficient capital to reach production and that they would be first to market, with a September 2021 launch. Specifically, Defendant Burns stated: "This brings the final chapter where we get the necessary resources to be able to bring this Endurance all the way to market. . . . We fully intend for this to be the first full-size electric pickup truck in the world, specifically in the US. And we are on target to do that in September."

100. Also on October 26, 2020, *The Detroit News* published an article that included statements from Defendant Burns. In that article, Burns reiterated the September production date and that the funding provided Lordstown the financial resources needed to reach that target, stating that the Merger "gives us the financial acumen to be able to get this done," and adding that "since we're in a race to be first, it was really important for us to get that funding, so that we could be **assured** of production by September." The article also reiterated that Lordstown had 40,000 pre-orders and added that Burns was "surprised when he got up to 40,000 orders" and that "now he's got to make more vehicles faster than expected," further emphasizing the

supposed veracity of the orders, or pre-orders, in that it supposedly meant the "he's got to" produce a certain number of trucks.

C. The Misrepresentations Escalate After the Merger

101. On November 12, 2020, Defendant LTM filed an S-1 Registration Statement with the SEC registering shares of its stock. That filing stated that "We currently have pre-orders primarily from fleet operators to purchase over 44,000 vehicles, which pre-orders are nonbinding and did not require any deposit. We expect to ramp up our sales and marketing efforts, which were limited prior to the Business Combination."

102. On November 16, 2020, Defendant LTM filed a Form 8-K with the SEC attaching a press release. The press release was titled: "Lordstown Motors Releases Business Updates; Remains on Track to Begin Production of the Lordstown Endurance in September 2021." The first line of the press release reiterated that Lordstown "remains on track to begin production of the Lordstown Endurance, the world's first full-size, all-electric pickup truck, in September 2021."

103. That same November 16, 2020, press release stated:

> Lordstown Motors has received approximately 50,000 non-binding production reservations from commercial fleets for its Lordstown Endurance all-electric pickup truck, with an average order size of approximately 500 vehicles per fleet. This figure does not capture interest the company has received from organizations that are not in position to be able to place pre-orders, such as federal, state and municipal governments, and military fleets. Deliveries of the Lordstown Endurance are expected to begin in September 2021, with full production ramping up throughout 2022.

104. On November 16, 2020, Defendant Burns participated in an interview hosted by the investor website *IPO Edge*. He reiterated that the vehicle would be launched in September, stating: "Our first fully electric full size pickup truck, the Endurance, is coming out in September." He again boasted about the pre-order numbers, stating: "Today we announced a

couple big things. A, demand, like you said, 50,000 pre-sales already, all from fleets. That's just the commercial sector. Does not count military or police departments, municipalities, state vehicles, so really just to have that many commercial vehicles sold already is a big deal."

105. Throughout the November 16, 2020, interview Defendant Burns further emphasized that they were selling to fleets, commenting "These fleets buy on total cost of ownership," and adding "we're enjoying the pent up demand. I don't know if it's going to be this aggressive all the time, but to a fleet operator that's getting 15 miles per gallon in a pickup truck . . . every thing's [else has] completely passed them by with all this electrification," and that "we just got an order for 400 vehicles from an agriculture company." When the interviewer asked him: "talk about where that demand might be coming from?" Burns responded, "the bulk of them, our average order is about 500 trucks per order, so larger fleets." Later in the interview Defendant Burns again claimed Lordstown was selling to fleets, stating: "Almost everybody that comes out with an electric vehicle starts at a luxury price point, kind of like cell phones were when they first came out, and they say, 'We'll move down with volume,' But we wouldn't be able to get fleets to really buy that, not many fleets."

106. On November 17, 2020, Defendant Burns appeared on the CNBC television program *Mad Money* with Jim Cramer. In this interview, Defendant Burns brazenly misrepresented the orders and—under direct questioning from Cramer—falsely represented the order book. The exchange was as follows:

> **Burns**: We sell to commercial fleets. That's our first customer. And like you said, we've already got 50,000 pre-orders. And when you sell to fleets, we couldn't do what most EV companies are doing, where you come out with the luxury price point and move downstream. A fleet guy would get fired for buying a luxury truck. So we had to come out on par with the gas trucks pricing, and to do that, we had to invent a new drive train. And that drive train had to be reasonably priced, but rough and tough enough, what people expect of a modern day pickup truck. They think it should be able to climb a wall and haul and tow. So we used hub motors, which

are, if you think of a Lime or a Bird scooter, right? There's no motor with a sprocket and a chain going to the back. The motor's in the wheel. And so we have very large versions of that. And as a result, we didn't just kind of make a pickup truck to compared to, let's say a Ford 150, we really feel it's better on almost every metric.

Cramer: It seems as if some of these orders, the 50,000 are from solid, Duke Energy, FirstEnergy. These people are not going to be walking away? They are committed?

Burns: ***Right. Yeah. All of them. When you order, I think our average order size is about 500 trucks at a time. And as most of them were signed by the CEOs of these large firms, and bringing in 500 electric vehicles into your fleet, it's not trivial. So you've got to plan all the charging and everything. <u>So it's very serious orders</u>***.

* * *

Cramer: All right. So we've got Ford coming in. Obviously we've got Tesla coming in. I've got a Rivian truck in front of me that looks pretty darn good. I mean, have we got room for everybody?

Burns: Well, first of all, I think everybody in America knows number one, number two, and number three best-selling vehicles in America are pickup trucks. So lots of room. We've picked a lane. So nobody else, although that seems pretty crowded, what you're discussing there. Nobody else has this lane where we're building a truck for fleets. A full-size, like the Rivian that you mentioned is not a full-size truck. The Tesla truck, reinventing it into the cyber truck. We feel that it's not really a work truck per se. Other three components of course will come out with electric trucks. But they're a little bit conflicted because they can't cannibalize their gasoline trucks. So they're going to be a little slower to market. And I don't think anybody's at our price point, right? So we really maniacally have kept the price low.

107. Defendant Burns participated in a conference call hosted by Credit Suisse on December 2, 2020. During this event Burns stated, "we sell to fleets," adding that fleets buy in big chunks and are easier to provide maintenance and service to because they allow the company more geographical focus, concluding, "that's why we like fleets." After that, he explained "[w]e have 50,000 pre-orders already well, well in advance of what we, what we thought we would have." Defendant Burns then launched into discussing the potential benefit of electric vehicles before concluding, "that's all pretty compelling to a fleet [so] that even though we're a new

[manufacturer], that carrot is so strong, that we've been able to garner almost $3 billion in pre-orders already."

108. The Credit Suisse analyst hosting the event asked Burns "How do you, how do you find these, these fleet buyers?" Defendant Burns responded:

> [I]t's been almost all incoming. We're just starting to build out the sales team. So we've been able to do again these 50,000, pre-orders just by incoming. The pent up demand. These fleets have watched all the electrification coming . . . and there's been nothing for them. So the, the, the pent up demand, I don't know if it'll always be this robust, it's very, very strong. And the 50,000 doesn't include state vehicles, municipal vehicles, police vehicles, military vehicles. It's just, that's just on the commercial side. And so we, you know, we just it's spread across all different disciplines. Our average order is about 500 vehicles per order. So that's larger fleets.

109. On December 21, 2020, Lordstown filed another Form 8-K with the SEC boasting about the status of the pre-orders the company had secured and its supposed status toward production. The sole purpose of this public filing was to publish the following sentence, "[Lordstown] has received 80,000 non-binding reservations for the Endurance to date. The Company remains on track to begin production of the Endurance in September 2021."

110. The next day, on December 22, 2020, securities analyst R.F. Lafferty Equity Research published a report on Lordstown with a "buy" rating. The report noted the 80,000 pre-orders Lordstown was touting at the time as a leading point of focus, noting that it should provide a "steady revenue stream through 2022." It recounted the supposed "average customer order" of approximately 500 vehicles. Latching onto Defendant Burns' representations that the pre-orders had all been made by fleets, the report explained that the "company focuses on selling the Endurance directly to commercial fleet operators, bypassing the traditional OEM dealership sales model. The direct sales model is similar to Tesla, where potential customers for the Endurance can place a pre-order on the company's website and pay a reserve fee." Finally, the

report emphasized that Lordstown was less than one year away from production of the Endurance.

111. On December 16, 2020, Lordstown issued a notice that it would be redeeming all outstanding publicly traded warrants (RIDEW) on January 15, 2021 for $0.0001—essentially nothing. This meant that warrant holders would need to exercise the warrants by that date or they would become nearly worthless, and that Lordstown would be raising an additional amount of capital as these warrant holders purchased shares from the company through the warrant exercise. This ultimately raised an additional $82 million in cash.[7]

112. On January 11, 2021, Lordstown issued a press release providing a supposed update on its order procurement and production schedule. The press release stated that they were "on track for start of production in September of this year." The press release described Lordstown as a company "focused on the commercial fleet market" and stated it had received "more than 100,000 non-binding production reservations from commercial fleets for its Lordstown Endurance™ all-electric pickup truck, with an average order size of nearly 600 vehicles per fleet." The press release also quoted Defendant Burns as stating:

> Receiving 100,000 pre-orders from commercial fleets for a truck like the Endurance is unprecedented in automotive history. . . . Adding in the interest we have from federal, state, municipal and military fleets on top of that, I think you can see why we feel that we are about to revolutionize the pickup truck industry.

113. On January 28, 2021, Lordstown issued a press release indicating that it had completed the first step in becoming authorized to sell vehicles to government fleets. The press

[7] This is notable, in that, Lordstown later announced a going concern notice (even with this extra cash) notwithstanding the fact that it had previously claimed the IPO proceeds themselves provided sufficient capital to fund Lordstown's operations until it reached profitability. It now appears that Lordstown foresaw that in the near-term it would (a) need additional capital and (b) its stock would be trading below the $11.50 strike price for the warrants.

release also quoted Defendant Burns as stating: "we remain on track to meet our September start-of-production timeline while continuing to see indicators of strong demand."

114. While the price of Lordstown's common stock was artificially inflated, Lordstown's insiders sold hundreds of thousands of shares of Lordstown common stock into the secondary market, as follows:

Insider	Date	Price	Shares Sold	Total Proceeds
Defendant Schmidt	Feb. 2-3, 2021	$25.23	211,512	$5,336,530.00
Defendant Brown	Feb. 2, 2021	$24.63	19,008	$468,183.00
Defendant Post	Feb. 4, 2021	$27.21	10,000	$272,100.00
Defendant Rodriguez	Feb. 4, 2021	$27.00	9,300	$251,100.00
		Total	***249,820***	***$6,327,913.00***

115. On February 6, 2021, Defendant Burns appeared for an interview on the popular investment YouTube Channel "Jack Spencer Investing." Once again Burns falsely boasted about the number of pre-orders, in the following exchange:

> **Spencer**: So I remember, I think the first number we had from you guys was when the initial investor presentation came out with something around like 28,000. And then I remember it just kept going up and up and up. And it was just, it was immense.
>
> **Burns**: Yeah. Yeah. And again, all those numbers are just commercial fleets. That doesn't count municipality, state vehicles, federal vehicles, military vehicles, all those folks use a lot of pickup trucks. And most of them use them in a local fashion, so the range is perfect for them. So they can't do pre-orders. They're government entities. So that a hundred thousand that we've announced doesn't even count all that.
>
> **Spencer**: Yeah, jeez. So that's literally just for fleets?
>
> **Burns**: Yeah. That's just commercial fleets.
>
> **Spencer**: I don't think anybody's going to be upset to hear that piece of news though. That's awesome. And what's the average order at now? Was it 600, the latest one?

Burns: Yeah. That's on the commercial side.

Spencer: 600 on the commercial side. And would there be a few bigger names in there that you can share or would it be a lot of bits and pieces going on?

Burns: Well, I think we just shared a few of them. Like Duke Energy was a big one. ServPro was a big one. I think we're either going to give a list of them or name a few more key other ones, but right now we're trying to keep it as a big number. And for our purposes, the reason you do pre-orders, this business of tooling up, all the money you spend on tooling, you tool based on how many you're going to sell. And let's say it's a normal business and you get caught by surprise and people want your product more than you had planned to build. You find a way. In this business, it's a year lag time. You've got to plan a year ahead of time. And I think Musk invented this and it's really brilliant. Let's give them a good feel for what this vehicle is and ask them, "Would you order it if we make it for this price in this timeframe, and these specs?" And that lets us know. That appetite lets us know what to tool for. So we've been really surprised by these numbers. So we are then trying to prepare to build more than we originally had planned.

* * *

Burns: Well, all I can tell you is these big ones, if a company to orders 600 pre-orders, that is signed by the CEO of that company all likelihood or at least some C-suite person. They take it very seriously. They've got to figure out how they're going to layer these electrics in there. And the appetite for them to do that way early like that, a year out from some of them means they're trying to do their part to ensure this comes to market. So they're standing behind it and they're putting these pre-orders in. But I'd say it's much stickier than a consumer putting a hundred dollars down refundable down on a Cybertruck, let's say. And I think these orders are very, very sticky because I know what it takes to get them, the education you have to do. This isn't somebody again on a website, a hundred bucks, refundable with a credit card. This is a fleet. And fleets generally take their business very, very seriously. So I think they're very sticky.

116. On February 18, 2021, Defendant Burns appeared on CNBC for an interview about Lordstown's production status. The opening segment for the television spot noted the 100,000 supposed orders. The interviewer then asked Burns "in terms of the September timeframe for full production of the Endurance Steve, do you have enough liquidity to get you to there from here?" Defendant Burns responded: "Yep. We've been really maniacal about that and we're on track."

117. On February 23, 2021, Yahoo Finance hosted an interview with Defendant Burns where he continued to perpetuate the false narrative about the pre-orders and the Company's production progress. He began the interview stating unequivocally "Production starts in September." He also continued to falsely represent the company's pre-orders—after a direct question from the interviewer asking: "Steve, how many pre-orders do you have and who's ordering these trucks?" and Burns stated:

> Yeah. We set out a fleet. This is a full-size pickup truck, and as I think most people know, it's a favorite of consumers and of workers. Our initial foray is into fleets and ***we have pre-sold 100,000 of these to various fleets*** across America. So, really a big appetite. You've got a fleet that's been using a 17 mile per gallon pickup truck for the last 30 years and we come out with one that gets the equivalent of 75 miles per gallon. And it's just what we had hoped, a lot of pent up demand, a lot of excitement around it. And you do these pre-orders to get a feel what to tool for. In this business, tooling and all the costs associated with the automation required to bring these to market. And so it gives you a good feel of what to tool for, what to build for, and we've been just really happy with 100,000 pre-orders.
>
> * * *
>
> Commercial has a lot of benefits. They buy in big chunks, very sticky orders, a lot of loyalty once you're good to them. And consumer can be a little more fickle, and so for a new OEM with a new kind of vehicle, cutting our teeth on fleets that are very focused, they know exactly what they want their vehicles to do, they buy your vehicle only if it matches that definition. So, by definition, you get a good fit and a happy customer.

D. <u>The Truth Begins to Emerge</u>

118. The truth about Lordstown began to emerge on March 12, 2021, when the renowned research firm, Hindenburg Research ("Hindenburg"), published a lengthy analysis of the company (the "Hindenburg Report"). Hindenburg specializes in forensic financial research and its website states that its most impactful research results from uncovering hard-to-find information from atypical sources. This was no exception, as Hindenburg's Report included information from many interviews with Lordstown's purported customers and former employees of Workhorse and Lordstown, as well as information uncovered from other sources like freedom

of information law requests.[8] Investigation of counsel has corroborated the veracity and credibility of the Hindenburg Report. As detailed below, there were two main sets of allegations in the Hindenburg Report: (1) The Truth About Lordstown's Order Book; and (2) The Truth About Lordstown's Production Capabilities.

(1) The Truth About Lordstown's Order Book

119. Despite nearly constantly touting the importance of having "pre-sold" a large volume of trucks to "fleets" representing billions of dollars in forthcoming revenue, these figures were vastly inflated, including by: (i) booking supposed pre-orders from supposed customers that had made no such pre-orders by any name whatsoever; (ii) booking pre-orders based on entirely non-binding LOIs, where Lordstown clearly knew the relationship was not representing actual demand; (iii) booking pre-orders from parties that could not possibly order the volume of trucks claimed by Lordstown, including by counting supposed pre-orders from non-fleet customers; and (iv) employing many other practices aimed at inflating the pre-order count. As explained herein, these practices were an effort by Lordstown and members of its management to deceive the investing public into believing that the Endurance—and the company—was on track to be an instant success.

(i) *The Hindenburg Report*

120. The Hindenburg Report documented how Lordstown had repeatedly lauded the strength and seriousness of the pre-orders it allegedly had secured, when in fact these orders did not indicate true customer demand. For example, the Hindenburg Report stated:

> Our research has revealed that Lordstown's order book consists of fake or entirely non-binding orders, from customers that generally do not even have fleets of vehicles. According to former employees and business partners, CEO Steve Burns

[8] A copy of the Hindenburg Report is attached as Exhibit A to this complaint. It has been generated by copying the content of the Hindenburg Report from Hindenburg's website and has been modestly reformatted for readability in PDF form.

> sought to book orders, regardless of quality, purely as a tool to raise capital and confer legitimacy. In addition, we show how, in desperation to claim there was demand for the proposed vehicle, he paid for customers to book valueless, non-binding pre-orders.
>
> We detail conversations with Lordstown "customers" who were eager to explain that the letters of intent ("LOI"s) with the company were "promotional". Others assured us they were "not committed to anything" and that the pre-order commitment size recorded by Lordstown was "totally impossible." One CEO at a 'key' customer told us our outreach was the first he had heard of any arrangement with Lordstown.

121. The Hindenburg Report also quoted statements from former employees regarding the veracity of the order book. For example, one former sales representative explained "You're right to have some apprehension. I think the way it's being communicated especially to the media is probably not accurate." The former employee went on to explain, "I could commit to 100,000 pre-orders or reservations but I have no commitment, no financial commitment, no nothing. . . I hope they can get all 100,000 of them but I think that's extraordinarily unlikely."

122. The report gave numerous specific examples of the ways that Lordstown had inflated its order book, several of which are detailed in the following paragraphs.

123. The Hindenburg Report investigated a massive purported pre-order of 14,000 trucks that was announced on December 24, 2020, from a from a business called "E Squared Energy." This supposed pre-order represented almost 17.5% of the 80,000 total pre-orders Lordstown was touting at the time. At the $52,500 price point, this supposed pre-order represented $735 million in demand for Lordstown – *i.e.*, substantially more money than the company had raised in the Merger, and correspondingly substantially more cash than Lordstown had in its coffers.

124. As the Hindenburg Report detailed, E Squared's principal was an individual named Tim Grosse, and according to LinkedIn, E Squared had only one other employee. The other employee identifies as a "retired freelance energy consultant." The report explained that E

Squared was not an incorporated business, but merely a "doing business as" name given to Grosse's business. The business address for E Squared was registered to Grosse's apartment, which the Hindenburg Report explained was modest – with similar units in the building renting for just over $1,000 per month.

125. The website for E Squared indicates that it is focused on advising companies on cutting energy costs through energy audits, LED lighting, and other power-saving means. The Hindenburg Report explained that there was no indication on E Squared's website that it had a fleet of trucks or even that it focuses on the electric vehicle space. Further, the Hindenburg Report detailed how, when asked whether E Squared operates a fleet, Grosse responded: "We don't operate a fleet but we provide the fleets. It's kind of a hybrid of a lease but it's not a lease" and then explained "It's a brand-new program we're offering. We've primarily been in the building sector."

126. The Hindenburg Report also looked at Lordstown's supposed deal with Innervations LLC. On April 7, 2020, Lordstown announced a 1,000 truck order (worth $52.5 million at the price Lordstown was marketing the Endurance at), with Innervations. At the time, this was the largest order Lordstown had ever announced.

127. The Hindenburg Report detailed that Innervations was incorporated four months prior to the announcement, and listed a virtual office as its address. The report explained that Innervations' corporate documents list two individuals – one a 2018 law school graduate who works full time at a software company and the other worked full time at an architecture design firm and runs a contracting firm out of his modest 2-bedroom home (valued by Zillow at $187,000).

128. According to the Hindenburg Report, Innervations' website did not provide any indication that it operated vehicle fleets. Instead, the report detailed that Innervations' role was primarily as a promoter, not as a purchaser. It quoted Innervations' David Hein as explaining the business as follows:

> What we do is we host and support events with companies and then we invite Lordstown Motors to the event to show the product. We just direct the company to Lordstown directly. When they tell us they're interested in purchasing trucks that's what we do. **We don't get involved in the actual ordering**.
>
> * * *
>
> We're influencers, our numbers, that's a very small number but what Innervations does is we promote the product… We think we can influence. Remember, we don't sell the truck, we just influence companies, and it's more on a broader spectrum.

129. The Hindenburg Report explained that Lordstown had booked 40 trucks of pre-orders from the Catholic Cemeteries Association. But the Hindenburg Report explained that this supposed pre-order customer, made clear to Lordstown that its interest was entirely premised on the non-binding nature of the order, stating "I'm not committed to anything, **not to buying a single vehicle**. I committed to consider buying vehicles. I'd have a lot of questions before I commit to anything."

130. The Hindenburg Report also probed the supposed 500 truck pre-order secured by Lordstown from Clean Fuels Ohio, in March 2020. However, as the report explained, Clean Fuels Ohio was a non-profit focused on educating fleet operators around Ohio and was merely planning to encourage purchases of trucks. The report quoted the Executive Director of Clean Fuels Ohio as agreeing with that characterization and then adding: "It is really that, promotional and getting the word out. And when we signed those letters of intent, we were really clear with them that that's what we would be doing, and they understood that and welcomed that."

131. The Hindenburg Report explained that Lordstown had issued a public statement claiming the Momentum Groups had pre-ordered 900 Endurance trucks. The Hindenburg Report further explained that Momentum Groups is a vehicle reseller that does not operate a fleet or purchase vehicles on its own behalf. In fact, it explained that the Momentum Groups instead had launched a page on its website marketing the vehicle and trying to find actual customers for the Endurance. Thus, this supposed "pre-order" did not represent any actual demand for the product, but merely that Momentum Group might be interested in buying trucks *if* it could find end-customers that did have an interest in buying the vehicle.

132. The Hindenburg Report explained that Lordstown's September 17, 2020, investor presentation had listed "First Energy" as one of their "Select Pre-Order Customers," and explained that Lordstown had issued a public statement claiming that First Energy had pre-ordered 250 trucks, quoting one of First Energy's executives Dennis Chack. By the time of the September 17, 2020, investor presentation, First Energy had been embroiled in a massive bribery scheme that had led to the Ohio Speaker of the House of Representatives being arrested and to Mr. Chack being fired. While this did not *necessarily* mean the orders were fake, it certainly suggested that one of Lordstown's "key customers" lacked credibility. It would have been even more doubtful that pre-orders by a fired executive terminated in the bribery scandal would convert into actual orders.

133. The Hindenburg Report explained that Lordstown's September 17, 2020, investor presentation had listed Summit Petroleum Inc. as one of their "Select Pre-Order Customers." However, the report explained that Summit Petroleum was a small Ohio-based oil & gas exploration company with about 24 total employees. Thus, the notion that they could produce a large number of orders was highly unlikely – as a company of that size would not be expected to

buy *even* 24 trucks. The Hindenburg Report quoted William Kinney, the president of Summit Petroleum, as stating "For us it's really just a look-see[.] I don't know enough about them to make an honest…We want to evaluate them on their merits. . . A friend of a friend is involved in [Lordstown] and asked us if we would consider it and we said we would and we are not locked in."

134. The Hindenburg Report explained that Lordstown's September 17, 2020, investor presentation had listed Grid-X as one of their "Select Pre-Order Customers," complete with a picture of the company's logo. However, the report explained, that Grid-X is an internet cloud services company. The report pointed out that Grid-X does not appear to own any fleet trucks according to department of transportation records, and a review of their website does not reveal that they perform any services requiring the use of trucks. The Hindenburg Report quoted the company's CEO, Jian Zhang, as stating, "I don't know anything about LMC or Lordstown Endurance pick-up" and as stating, "We are completely unaware of this. I heard of them from your inquiry message the first time."

135. The Hindenburg Report explained that Lordstown's September 17, 2020 investor presentation had listed Duke Energy as one of their "Select Pre-Order Customers," complete with a picture of the company's logo. The Hindenburg Report explained that former employees told them that this deal was essentially for show and done as a favor to CEO Steve Burns in order to aid in the capital raising process. In fact, the report published a copy of the letter of intent that Lordstown was using to claim the pre-orders. That LOI was between Duke Energy and Workhorse (not Lordstown), and firmly stated that there was no reservation payment, and no obligation to purchase, related to an entirely different vehicle than the one Lordstown was developing, the Workhorse LD1500 (a vehicle with a conventional electric engine, not hub

motors), and listed a different price than the one Lordstown was promoting. Furthermore, the LOI was dated November 1, 2016, and called for trucks to be delivered (if actually ordered) over a two-year period, meaning there was no credible basis to claim that this LOI indicated interest as of September 2020 for delivery of an entirely different truck in September 2021 (or whenever thereafter Lordstown might actually produce vehicles). The Hindenburg Report quoted Duke Energy's media spokesperson as saying they would need to "see the truck and kick the tires before we buy."

136. The Hindenburg Report explained that Lordstown had also counted Ryder as having made pre-orders for 2,500 trucks. However, the Hindenburg Report explained that, as with Duke Energy, former employees told them that this deal was essentially for show and done as a favor to CEO Steve Burns in order to aid in the capital raising process. As with Duke Energy, the purported agreement with Ryder was actually a deal with Workhorse for an entirely different truck that had been penned back in early 2017. Furthermore, the report noted that in a public interview Ryder explained that they were partnering with Workhorse to provide maintenance and service for the Ryder trucks. Public documents do not show any similar agreement between Lordstown and Ryder, and Burns promised the maintenance and service relationship to Camping World – casting even greater doubt on the notion that Ryder's stale LOI with Workhorse was a meaningful indication of its demand for the Endurance.

137. The Hindenburg Report explained that Lordstown had announced procuring pre-orders from Mike Albert Fleet Solutions, in a press release calling it a "major" step forward, and noted that it was the only deal announced by press release in January of 2021, when Lordstown's pre-order book supposedly jumped from 80,000 to 100,000. The Hindenburg Report explained that this purported "pre-order" was actually merely an agreement to potentially place referrals.

The report quoted Nate Shadoin, Director of Sales at Mike Albert Fleet Solutions as explaining: "They (Lordstown) are an Ohio-based company and so are we (Mike Albert Fleet Solutions) and I have a personal relationship with some of the business development executives that are there. And we go out and talk to the same people and so they're talking to fleets and I'm talking to fleets. We refer business introductions and opportunities to each other."

138. The Hindenburg Report explained that, according to Lordstown documents reviewed by the report's author, Lordstown had recorded pre-orders of 15 vehicles from Frank Seman, the Mayor of the City of Ravenna. However, the report explained that when Mayor Seman was asked about the order, he explained:

> I was asked to write a letter of support to help get the plant repurposed and reopened to help provide more jobs for residents of Northeast Ohio. While we have an interest in the plant's success and this technology, we did not commit to the purchase of any vehicles. We are a small town. The commitment of that size is totally impossible.

139. Similarly, the Hindenburg Report noted that the same situation was true as to the City of Kent, where city manager Dave Ruller told the report's author that their city could potentially be in the market for 3 or 4 trucks subject to a formal bidding process, but not the 15 recorded by Lordstown as pre-orders. Mr. Ruller added, "We were happy to write that letter to show our support — and to help them finalize all their production financing — knowing that it is not an official bid document or purchase order so it is not legally binding us to buy something that hasn't even been produced yet beyond a prototype."

140. In addition to these specific examples, the Hindenburg Report also explained how many of the pre-orders that Workhorse had procured, which Lordstown had marketed as its own, were the result of commission-based sales efforts by a former Workhorse employee who had since sued the company for failure to pay those commissions. That employee was paid $30 commissions per truck for each pre-order obtained, even though the pre-orders were entirely

nonbinding. The complaint filed by that former employee stated that he had obtained the orders with Duke Energy, Clean Fuels Ohio, and Ryder under such arrangements.

141. The Hindenburg Report also explained that in early 2020, according to former employees, Defendant Burns was desperate to increase the number of pre-orders, regardless of quality and that he wanted to get to 10,000 pre-orders to secure better financing terms. Toward that end, the company hired an outside firm called Climb2Glory to procure additional pre-orders on a commission basis. Through this arrangement, the report explained, Lordstown would pay $50 commissions per truck for each LOI obtained.

(ii) *Investigation of Counsel*[9]

142. Investigation of counsel was able to confirm many of the claims in the Hindenburg Report and found the report to be reliable. Additionally, counsel has interviewed several of Lordstown's purported pre-order customers and former Lordstown employees and continues to find evidence that Lordstown misrepresented its supposed pre-order book.

143. CW-1 was a Manager at Lordstown in 2020. According to CW-1, he met several times a week with former Senior Vice President of Business Development Defendant Flannery and attended meetings with him as well.

144. According to CW-1, the executive team, including Chief Operating Officer John LaFleur, Defendant Flannery, and former CEO Defendant Burns, were all "very close," with each other and "like-minded." He noted that they had all worked together before working at Lordstown.

[9] Confidential witnesses ("CWs") are identified herein by number (CW-1, CW-2, etc.). All CWs are described in the masculine to protect their identities. Plaintiffs believe that the details of the responsibilities of the CWs contained herein are sufficient to satisfy the requirements of the PSLRA. However, Plaintiffs can provide additional specificity to the Court through an *in camera* submission.

145. CW-1 explained that the internal sales team at Lordstown and Caimin Flannery had access to and could edit a shared Excel file that was used to keep track of letters of intent (LOIs)/pre-orders. CW-1 explained that all the number of trucks listed in the LOI's figures were counted in the total pre-order number, regardless of the likelihood that a customer would even be able to fulfill them when the time came to do so. CW-1 added that Lordstown "counted everything."

146. According to CW-1, when Lordstown counted the total number of pre-orders, it included LOIs that had originally been obtained by Workhorse. CW-1 continued to say that he did not recall any attempts being made to reconfirm LOI quantities with those companies that had signed LOIs with Workhorse prior to the formation of Lordstown. CW-1 added that he did not experience any follow ups being made to customers that signed on with Lordstown either, though he did recall conversation about how they should eventually do so.

147. CW-1 explained that he did not feel comfortable referring to the letters of intent (LOIs) signed by customers as pre-orders, or anything with the word "order" in them. According to CW-1, he would refer to them instead as "reservations" given the non-binding nature of the agreements. CW-1 recalled that the document that the supposed customers would sign made it very clear in bold text that the agreements were non-binding.

148. CW-1 recalled the message from executives at Lordstown being "fairly explicit" that they needed to obtain these reservations in order to get additional financing from investors. According to CW-1, Defendant Flannery expressed this sentiment to CW-1 directly in meetings that he attended. According to CW-1, he had multiple conversations with Flannery per week and recalled conversations where Flannery explicitly made the point that the LOIs were for generating investment interest. CW-1 continued to say that there was pressure to meet

benchmarks of pre-orders solely for Lordstown's investment timeline. CW-1 continued to say that Flannery regularly said that he had spoken with former CEO Steve Burns and provided him with updates about the pre-orders. CW-1 noted that he could not see how Burns would not have been aware of the practices surrounding the LOIs given his communications with Flannery who knew everything related to sales at that time.

149. According to CW-1, the letter of intent figures were not used to gauge market size or forecast the supplies that would be required to actually produce the vehicles, they were solely used by the company for the image that "we [Lordstown] have all these orders" and to lure investors. CW-1 added that he would be "shocked" if Defendant Burns was not aware of the nature of the pre-orders and the reasoning behind them (the need to generate buzz for investors), given how close Burns was with Flannery and LaFleur.

150. CW-1 recalled an instance on a call where CW-1 grew frustrated by the frivolous nature of the pre-orders and asked why Lordstown did not just open the phonebook and put a million orders for random people, implying that the orders they were obtaining were equally as meaningless. CW-1 described the LOIs as "not worth the paper they were written on." CW-1 continued to say that he had grown suspicious that customers were just being signed up without their consent. More specifically, CW-1 heard of two instances where significant pre-orders were obtained from one company that operated out of a P.O. box and another that operated out of an apartment that were particularly questionable to him and he recalled there was one customer based out of an apartment that had an LOI for over 10,000 vehicles.

151. CW-2 was a high-level manager at Lordstown who left pre-merger. CW-2 interacted with Defendants Burns and Flannery.

152. CW-2 recalled that Flannery was Burns' "right hand man" and that much of Lordstown's staff was comprised of people with personal connections to Burns, including

members of his family or his church. As a result, according to CW-2 much of the senior staff was not qualified. CW-2 added that much of the experience of working at Lordstown was a result of the "nature of Steve Burns."

153. CW-2 explained that during his tenure Lordstown's sales team was comprised of Vice President of Business Development Caimin Flannery, a director of sales, and up to two sales representatives. According to CW-2, Climb2Glory reported to Flannery and was paid a commission of $50 for each truck listed in a letter of intent and that the sales representatives were also financially incentivized to get as many LOIs as they could.

154. CW-2 characterized Lordstown's pursuit of LOIs, which were marketed as Pre-Orders, as desperate, explaining that there was "nothing binding" about the agreements Lordstown was getting, which he described as "pie in the sky." According to CW-2, the "desperation" around reaching pre-order totals was fueled by the effort to get funding for Lordstown, adding that the purpose of the pre-orders was to generate buzz and that that was "all it was for." CW-2 advised that the pressure related to sales and the LOIs came directly from Flannery and Burns.

155. According to CW-2, there was "zero" due diligence conducted on the ability of potential customers to support their orders based on existing fleet size "by design," adding that the company did not want to know, because they just wanted to get the signed letters. CW-2 explained that when it came to securing letters of intent the only guideline provided to Lordstown's sales staff was to get "as many as possible in the shortest period of time." CW-2 continued to say that there were no instructions regarding what types of customer-leads to pursue.

156. According to CW-2, Lordstown "counted everything," as pre-orders, including all the LOIs, even if the customer's ability to fulfill them was not apparent or even likely. CW-2 continued to say that the "pressure" to continue to grow LOI numbers "100%" came from Burns and Flannery. CW-2 explained that Burns "micromanaged every aspect" of Lordstown's business down to the "smallest minutia." CW-2 stated that he "talked with Steve frequently," and that Burns "knew every single order" that was counted as a Pre-Order, as well as the customers behind them. CW-2 also recalled talking with a more senior employee at Lordstown about how the LOIs were "all smoke and mirrors."

157. As an example of Burns' knowledge of the truth about the pre-orders, CW-2 recalled that one of the two sales associates had gotten a 1,000 truck LOI from Innervations LLC, but that someone had done a quick search and seen that it had no operating history and was a two-person operation run out of an apartment. According to CW-2, Lordstown spokesperson Ryan Hallett had indicated that they should not publish a press release because of how weak the LOI was. CW-2 explained that Hallett did not want to publicize the LOIs given how they were non-binding and given that everyone at Lordstown knew that all the big orders were "BS." Lead Counsel understands, from talking with CW-2, that a member of the sales team had called Burns to explain how sketchy the LOI with Innervations was, and has strongly advised Burns not to publish a press release about Innervations, but despite that warning Burns went ahead with publishing a press release and counted Innervations in the tally of pre-orders.

158. With respect to particular supposed pre-order customers, Lordstown has engaged in a wide range of practices to exaggerate the size and strength of the order book. A few such examples are listed below:

159. **First**, Lordstown apparently counted the City of Ravenna among its supposed pre-order customers, as has been reported in news articles. According to the Hindenburg Report, Lordstown's pre-order book counted 15 pre-orders from the City of Ravenna. However, the city had not placed any pre-orders or even made an indication of interest regarding the vehicle.

160. Lead Counsel spoke with the Mayor of the City of Ravenna. The city has a population of just under 12,000 people. The mayor recalled writing a letter of support for the Lordstown Motors' project, and the economic support it could provide to Lordstown and the surrounding area.

161. The mayor explained that while he wrote a letter of support, he was "shocked" when he received a notice that he had made a commitment for approximately 20 Endurance trucks. According to the mayor, there was "no way on God's green earth" that such an order would be within the City of Ravenna's budget. The mayor noted that people in Ravenna are familiar with the city budget and would think "where the hell is the money coming from" regarding an order of this size. According to the mayor, there is no deficit spending for cities in Ohio, so purchases need to be planned well in advance, like they had recently done with the acquisition of a $600,000 firetruck.

162. He recalled a representative from Lordstown coming to confirm the order and that she "hemmed and hawed" when the mayor informed her that there was never any such order. He explained that he thought that there was "something wrong" with the situation and that it seemed like a "scam." According to the mayor, the Lordstown representative finally admitted that there was indeed no order. He added that no one from his office had ordered any trucks from Lordstown.

163. **Second**, just as with the City of Ravenna, Lordstown touted the city of Lordstown as having made indications of interest. However, the city had not made any sort of indication of interest with the company.

164. Lead Counsel spoke with the Mayor of Lordstown regarding the city's purported pre-orders of the Endurance truck. The mayor explained that while he did participate in brief conversations with representatives from Lordstown regarding the village's possible interest in purchasing Endurance trucks that no orders or pre-orders were made.

165. **Third**, Lordstown trumpeted "Summit Petroleum" as one if its "Select Pre-Order Customers," including in the Merger proxy documents. However, Summit had only provided a non-binding letter of intent, and believed that "pre-order" was an "interesting" term to describe the relationship. Summit did not even put in a LOI for a specific quantity of trucks.

166. Lead Counsel spoke with a representative of Summit Petroleum, an oil and gas company located in Twinsburg, Ohio. The representative recalled that he had spoken with a representative of Climb2Glory LLC and had said that he "would be interested" in looking at the Lordstown Endurance. He also recalled informing the Climb2Glory representative that he typically purchases 20 pickup trucks per year but did not place an order with Lordstown.

167. The representative of Summit Petroleum further stated that the phrase "pre-order" was an interesting term to use, since he had only signed a non-binding letter of intent. While on the call he pulled up the LOI and noted that it did not specify a quantity. He added that he signed the letter of intent as a "friend of a friend" type of deal to show support. The representative continued to say that he "definitely had not placed an order."

168. **Fourth**, Lordstown touted Auto-Flex Inc., as having provided letters of intent to buy trucks, as was reported in news articles. However, AutoFlex could not itself be considered a

"fleet" as it operates as an intermediary that assists governmental organizations in securing vehicles and only actually places orders once AutoFlex's customers order trucks. Accordingly, Defendant Burns' statements that Lordstown's pre-order tally did not include demand from governmental fleets was materially misleading.

169. Lead Counsel spoke with a representative of AutoFlex stated that he met with representatives of Lordstown at an industry event in 2020 and within six months of that meeting he had exchanged e-mails with a Lordstown sales representative and provided a "rough" number of potential trucks that he may want to purchase via e-mail, indicating that he may be interested in approximately 100 units within the first year of production. He explained that he never saw a price sheet, or other spec sheet about the truck, but believes the price would ultimately be approximately $50,000.

170. The representative of AutoFlex, explained that he was very upfront about his business model when talking with Lordstown which includes him purchasing vehicles to lease to customers only after a customer has requested the truck from him. He noted that "it's up to the customer" to place an order. He also explained that he felt his customers would be interested in Lordstown's truck, but that he had not received any specific indications from customers asking him to order Lordstown's truck for them. He added that fleet managers lean towards companies with an established track record, but that Lordstown's technology was interesting. The representative of AutoFlex stated that he has not received any updates from Lordstown regarding the status of production.

171. **Fifth**, according to the Hindenburg Report, Lordstown booked pre-orders based on non-binding indications of interest from an organization that purchases 2-4 trucks a year in total, where the would-be customer indicated that he may be interested in 40 trucks at some point in the future and over a stretch of many years.

172. Lead Counsel spoke with a representative of Catholic Cemeteries Association – Diocese of Cleveland. The representative explained that his organization has 60-70 vehicles and estimated that he purchases between two and four medium to light-duty trucks each year. He had signed a document regarding his interest in the Endurance, but had made it "very clear" to the employee from Climb2Glory that he was dealing with that he was not prepared to commit to anything and that he "intended to take a hard look" at the Endurance before ordering anything. The representative, said that he was told that the letter of intent was just a way to gauge interest and he wanted to support a new local business given that he was upset when GM departed.

173. The representative of the Catholic Cemeteries Association noted the nonbinding letter of intent listed 40 trucks as a figure he might buy at some point in the future, but that he made clear at the time that this number represented an estimate of the number of trucks he might want over a stretch of many years, as he only buys a couple trucks a year in total. He added that he did not have the ability to invest in 40 trucks all at once and that he "never would've signed the letter of intent if there was any commitment to buy any trucks at all." The representative recalled the Climb2Glory employee telling him that the LOIs were non-binding and "don't worry." The representative further recalled that he has not received any updates or follow-ups regarding the status of his letter of intent or production.

174. **Sixth**, among the "pre-orders" that Lordstown supposedly received from Workhorse was an arrangement Workhorse had with the City of Orlando. The City of Orlando had signed an LOI to buy 500 trucks from Workhorse, but that deal has long since lapsed and the City of Orlando has only verbally indicated it was interested in buying two trucks from Lordstown.

175. Counsel spoke with a representative of the fleet management division for the City of Orlando, who had dealt with Workhorse in that capacity. The representative confirmed that

he had signed a letter of intent regarding 500 trucks with Workhorse, based upon the contingency that the company would provide him with a prototype vehicle to pilot for three months first.

176. The representative explained that Workhorse "went dark" and "fell off the earth" approximately two and a half to three years ago, at which time the company stopped returning his e-mails. According to the representative, around this time, his relationship with Workhorse "fell apart" as they missed their deadline to deliver the pilot vehicles and had stopped responding to him. He even recalled attending a trade show in Nashville, where he knew Workhorse had a booth, in hopes of contacting them, but nobody from the company showed up at the event.

177. The representative of the fleet management division for the City of Orlando explained that he had communicated with a Lordstown salesperson regarding making a pre-order for the Endurance truck for approximately $52,000. He recalled receiving a "boiler plate" LOI for two trucks that he had not signed by a deadline set by the sales representative. However, he stated that his lot had hosted a "Central Florida Show and Tell" for Lordstown, which allowed fleet managers to test drive and view a prototype, and that after this event the Lordstown sales representative reached out to him "on behalf of management" to offer him the opportunity to sign for two trucks off the initial rollout and around March 2020 the representative verbally indicated he was interested in buying two trucks from Lordstown, but did not sign an LOI. The representative explained that he had not made any additional pre-orders with Lordstown since placing that initial order for two trucks.

178. The representative explained that his LOI with Workhorse was separate and distinct from any order he would place with Lordstown. He stated that the trucks were different between the two companies and that any pre-order he had placed with Workhorse was not valid

as to Lordstown. He added that he had not discussed his pre-orders carrying over with representatives from either company.

179. **Seventh**, Lordstown touted a deal with Mike Albert Fleet Solutions, which stated that the deal called for "delivery of a significant quantity of the Lordstown Endurance pickup." While the number of trucks was not specified, Lordstown's book of supposed pre-orders jumped by 20,000 the month of the announcement, and no other major deals were announced that month. In fact, Lordstown only has non-binding LOIs with the company. Mike Albert Fleet Solutions operates as an intermediary for fleets, not as a purchaser, and as part of agreeing to the LOI the company made it "very clear" to Lordstown that it was just signing up for a "a chance to order vehicles," at a later date, when its customers actually placed orders.

180. Lead Counsel spoke with a representative of Mike Albert Fleet Solutions, who had held that position since at least 2016. The representative explained that Mike Albert Fleet Solutions buys and leases vehicles to customers, explaining that the company only actually places an order with a manufacturer once they have a customer placing an order with them. The representative explained that while he believed there may be customer demand for the Endurance, they did not have specific orders from customers for the vehicle.

181. The representative of Mike Albert Fleet Solutions explained that he has a relationship with some of the business development employees at Lordstown, since they occupy the same business circles and he "wanted to help." He detailed how Lordstown was looking for individuals to sign non-binding letters of intent, "just like [it was described] in the Hindenburg report."

182. The representative of Mike Albert Fleet Solutions indicated that prior to COVID the company had signed a LOI for a number of trucks and told Lordstown that if they have

customers who ultimately want the trucks they would order them. According to the representative, it was made "very clear" that the letter of intent was non-binding and was just "a chance to order vehicles" at a later date. The representative of Mike Albert Fleet Solutions explained that the discussion was framed as a "slow roll out" of possible orders over a two-year period.

183. **Eighth**, Lordstown had supposedly inherited a deal between Workhorse and the Southern California Public Power Authority, which was counted in Lordstown's pre-order book. However, the non-binding LOI that Workhorse had with this organization could not properly be counted as Lordstown pre-orders.

184. Lead Counsel spoke with a representative of the Southern California Public Power Authority. He explained that while they had signed a non-binding LOI from Workhorse Motors in February 2017 that expired in February 2020. He further explained that the LOI outlined tiers of discounts that would be provided based upon how many trucks were eventually purchased. The representative added that the LOI was signed by Burns in his former capacity as Workhorse's CEO.

185. The representative of the Southern California Public Power Authority explained that they had not had any dealings with Lordstown nor has he received any direct communications. He added that while he was not familiar with the Lordstown truck, Southern California Public Power Authority would not sign a similar LOI today, as now they would prefer to have the individual entities under the Southern California Public Power Authority sign their own LOIs.

(2) The Truth About Lordstown's Production Capabilities

186. Despite routinely boasting that Lordstown would be "first to market," that it would be producing vehicles by September 2021, and that it would become profitable ("cash

flow positive") without the need to raise additional capital, in truth Lordstown was touting impossible production plans and omitting to disclose the enormous specific risks its business faced.

187. The Hindenburg Report explained that Lordstown had faced several production issues. Most prominently, it explained that on January 13, 2021, Lordstown had conducted overnight testing on a public road, and during this test their prototype caught on fire within about ten minutes and became fully engulfed in flame. This dramatic failure of their vehicle clearly evidenced that their production schedule was too ambitious, as they were not able to even safely drive their test vehicle at this time.

188. The Hindenburg Report also detailed how the supplier for Lordstown's primary component – the hub motor – was a small Slovenian company (Elaphe), indicating that Lordstown would not be likely to produce sufficient components for Lordstown to meet its production schedule. Specifically, the report quoted an employee who noted that the supplier was developing the capability of producing 100,000 hub motors a year, but was "far from that number." Even if Elaphe could produce 100,000 hub motors, this would only be enough for 25,000 vehicles, as each truck needed 4 hub motors.

189. The Hindenburg Report also detailed that in mid-January 2021 Lordstown had dramatically changed its production design, shifting from a plastic exterior to an aluminum one, further evidencing the lack of progress the company had made toward meeting its publicly touted development goal.

190. The Hindenburg Report also explained that a former Lordstown employee had explained that Lordstown had not completed necessary testing and validation for the vehicle, including (1) cold weather testing, which the Hindenburg Report explained typically takes three

months, but had not yet begun; (2) durability testing, which the Hindenburg Report explained typically takes 6 months of 24/7 testing; and (3) major testing required by the Federal Motor Vehicle Safety Standards.

191. As further evidence of Lordstown's unrealistic development targets, the Hindenburg Report noted that Burns had claimed the company would assemble battery packs inside the plant, however, the report stated that former employees explained that all the battery packs were being assembled by hand and that it would take 5-7 months to even receive the parts needed to manufacture the battery packs, not including installation, testing, and getting the equipment into production.

192. The Hindenburg Report also detailed that Lordstown was being sued by Karma automotive for allegedly secretly hiring its employees and taking its intellectual property, a lawsuit that could further delay Lordstown's ability to produce its vehicles.

193. Investigation by Lead Counsel has further confirmed that Lordstown had overstated its production capabilities. Lead Counsel consulted with an automotive industry expert with 40 years of experience including as a Senior Chief Engineer, decades of experience at GM, and expertise in developing and industrializing automobiles for global production and sale.

194. The expert explained that new vehicle launches take between 32 and 36 months to produce a fully developed and validated vehicle meeting all Safety requirements. Upon reviewing available information regarding the Endurance at the time of the Merger, he explained Lordstown could not have realistically launched a production vehicle by September 2021. He further explained that manufacturing steps including: (1) designing the vehicle body in a compliant fashion, which would take over a year; (2) fabrication and tuning of the components,

which would take over half a year; (3) tool delivery and assembly, which would take over a month; verification and vehicle validation, which would take about four months; and (4) tooling trial and certification, which would take almost 4 months. He further explained that these steps need to be performed sequentially (not simultaneously) and that at the time of the Merger, Lordstown appeared to be near the start of this process. Even if all this work had previously been done, a full validation of the vehicle would require two winters of testing to ensure that the vehicle dynamics and thermal management systems are operating the vehicle in safe manner.

195. The expert further explained that the fastest vehicle launch in the industry appears to have been by VinFast in Vietnam in 2019, and that process took 24 months, and was only capable of that quick timing due to the fact that VinFast's vehicle was essentially a localization of an existing BMW model with slight cosmetic modifications. In contrast, Lordstown was developing an entirely new vehicle which included an industry first in the hub motor technology.

196. Additionally, the notion that Lordstown had sufficient capital to complete production was premised on the unrealistic prospect of them launching the vehicle by September 2021. As would come to light shortly after the Hindenburg Report was published, Lordstown would not be able to meet this deadline and lacked the resources to produce their vehicle, contrary to their prior public assurances.

197. Additionally, interviews with Confidential Witnesses also confirm that Lordstown was not on schedule to meet its assurances that production would begin in September 2021.

198. CW-3 worked as an administrative assistant at a third-party contractor that provided services to Lordstown from within the Lordstown plant. He worked in that role from September 2020 to December 2020, and his responsibilities included taking down minutes for various meetings for Lordstown.

199. CW-3 recalled taking down minutes for various meetings related to stamping and body and production. He recalled one meeting on September 19, 2020, which was attended by Mike Wood (Information Technology Director), Michael Fabian (Director of Stamping Operations), John Ritter (current Director of Facilities and Central Maintenance at Lordstown) and others. During this meeting it was said that "we [Lordstown] are running way behind" and Mike Wood said that software was "running severely behind."[10]

(3) The Market Reaction to the Hindenburg Report

200. The market reaction to the Hindenburg Report was sharply negative, as it partially revealed that many of Defendants' prior positive statements about the company were false and omitted to disclose the truth about the company.

201. The Hindenburg Report was published before markets opened on March 12, 2020. Lordstown's stock price closed at $17.71 on March 11, 2020 and opened at $14.00 on March 12, 2020, for a decline of 20.95%. The stock recovered slightly by the close of markets on March 12, 2020, to a closing price of $14.78, but even at this price there was a 16.54% decline compared to the prior day's closing price.

202. A multitude of news articles and media reports commented on the publication of the Hindenburg Report, further emphasizing its significance to investors. Headlines of articles published on March 12, 2021 included: *Seeking Alpha*, "Lordstown Motors slides after

[10] CW-3 detailed observing a series of bizarre activities at Lordstown including: (a) another employee being asked to duplicate a manufacturer's manual so that Lordstown could "rework it" and "make it Lordstown," even though the words "do not duplicate" were printed on the manual; (b) being told to have documents notarized on behalf of individuals who were not actually present to sign the document; (c) Director of Paint Operation at Lordstown Shane Brown setting up a hunting perch and actively baiting animals on the property, despite this being against Ohio law; (d) receiving directions to not hire older candidates or women as well as racial profiling candidates; and (e) discussion during a meeting about building Endurance trucks using a Silverado's frame, which he included in his notes, before he was instructed to erase it.

Hindenburg accuses it of 'fake orders;'" *The Motley Fool,* "Why Lordstown Motors Stock Is Crashing Today;" *Forbes*, "Lordstown Motors Stung By Short Seller's Accusations Electric Truckmaker Misled Investors;" *The New York Post*, "Lordstown Motors stock sinks after report calls pre-orders a 'mirage;'" *Tech Crunch*, "Lordstown Motors accused of faking EV truck pre-orders by short-seller firm Hindenburg Research;" *The Wall Street Journal*, "Short Seller Trains Sights on EV Startup Lordstown, Prompting Share Slide;" *Bloomberg*, "Lordstown Motors Sinks After Attack by Short That Hit Nikola."

E. Lordstown Attempts a Clumsy Cover-Up as the Truth Continues to Emerge

203. On March 15, 2021, Lordstown issued a press release indicating that it was aware of the Hindenburg Report and that it would respond "in due time." The press release also asserted that Lordstown "remains on track for start of production of its Lordstown Endurance all electric pickup truck in September 2021."

204. On March 17, 2021, after the close of trading, Lordstown issued a press release regarding its full year 2020 results. This report reiterated that the "Timeline to Start of Production (SoP) in September 2021 remains on track, with beta prototype build underway and the first beta vehicles to be ready by the end of March; vehicles to be sent for durability, crash, validation, and lighting testing with various partners and to early initial customers for feedback."

205. During the conference call for Lordstown's full year 2020 results on March 17, 2020, which was held after the close of trading, Defendant Burns stated that the company had received an SEC inquiry and disclosed that the board had formed a special committee to review the matter. He stated, "We are aware of the short sellers' report and we have also received a request for information from the SEC and we are cooperating with that inquiry, in addition the board of directors has formed a special committee to review these matters."

206. On March 18, 2021, before markets opened, Defendant Burns returned to CNBC to speak with Phil LeBeau of *Squawk Box* to address the allegations in the report. Throughout the interview, Defendant Burns unsuccessfully—and in stark contradiction of his previous *Mad Money* interview—tried to defend his statements. The exchange was as follows:

> **LeBeau**: Let's be clear here. The way that you have characterized your pre-orders or reservations in the past, I mean, you called these on CNBC "serious orders." Now, people would look at this and say, "If you have a company that's not putting down a deposit, that doesn't have a fleet, but basically are collecting letters of interest, are those truly 'serious orders?'"
>
> **Burns**: Well, no, we've been... Phil, we always been very clear, right? These are just what they're intended to be, right? These are non-binding letter intents. They're called pre-orders out in the kind of real world. So, always classified them for that. And we have a lot of those pre-orders. I think we have pre-orders directly from fleets. We have pre-orders from people that sell to fleets because that's the way fleets buy. Fleets don't buy. . . in general, they don't buy like consumers buy. They buy through intermediaries.
>
> And so all we've done is gone out and gauge interest because you've got a tool to build something like this in an automated fashion. We're going to build one of these every six minutes. We kind of have to know how to tool, and you've got to know about a year in front of your building.
>
> So that's what everybody uses pre-orders for. They are always, by definition, nonbinding, no money down. I mean, that's the nature of EV startups trying to gauge interest.
>
> **LeBeau**: I understand that, Steve, but some people would look at this and say, "Look, you were far more aggressive in characterizing those pre-orders as true commitments, that you have Company X, Y, Z, that has said, 'Sign us up for 5,000 or 6,000.'" Do you regret the way you characterize those reservations?
>
> **Burns**: Well, reservation... Phil, all I can tell you. I don't want to get into the specifics. All I can tell you is demand is robust. We've never said we had orders. We don't have a product yet. By definition, we can't have orders, right? So when you're early and you're years away from a product, in this case one year, and now, we're down to six months, so now that we have the betas. We are starting to be able to shore some of that up.
>
> But the pre-orders did exactly what they were supposed to do: gauge interest. Nobody knew if fleets would buy an electric pickup truck, right? It was completely unknown science, no data around it. So we queried them. We have very robust interest, and that's just what they are. They're letters of interest. You can't do any

> more than that in this stage. So I don't think anybody thought that we had actual orders, right? That's just not the nature of this business.

207. Following the interview, later in the day Jim Cramer spoke on the issue commenting on his previous interview with Burns. His reaction is demonstrative of the feeling many investors had upon seeing the truth about Lordstown begin to emerge. He stated:

> Well, Nate Anderson of Hindenburg first put out a report when I was away. They talked about how Lordstown could have had some serious issues with the truth. And I found it gut wrenching because I had pressed Steve Burns when he was on the show and the CEO of Lordstown. I had pressed him on Mad Money about how serious the orders were for the company. And he said, they're very serious. He had signed letters with CEO. He could have easily said, look, they, we never know what's going to happen with orders, which is fine. He could have said that he did not say that. Well, this morning Phil LeBeau who is an amazing reporter, asked him point blank. And Burns said, I never said that they were serious. I don't know where he got that. So then we ran the tape of when Burns said it to me on Mad Money. So to me, **I thought it was like the prosecution rests**. You don't even need to have a discussion. You just listen to what he said to Phil. You listen to what he said to me, case closed you decide. I listened. And I just said, that is someone that is hard for me to trust. And that's where I come out.

208. The other CNBC reporter in the segment responded to Cramer stating: "the quote that really stood out for me from Burns himself was I don't think anybody thought we had actual orders to say that on television," to which Cramer responded:

> I know he point blank said the opposite to me. And you know, as I go through, I mean, there's, it was, I mean, I had, obviously I was frantically getting my people to cut the tape of when, when he was on Mad Money, but the quotes that would, that you know, that we were struck by were basically, let me see if I can just call some of them up. But, you know, we were, were struck by the fact that there was just simply no doubt in this man's mind, that things were, that the orders were serious and solid. And it, it was, it was quite, you know, one point he wrote, he said to me, our average order size—order size, order size—is 500 trucks at a time and most of them are signed by the CEOs of these large firms. Now, is that not saying we have serious orders? I'm asking is the order serious, give me any help, make me feel better about how serious the orders were. How about if you said, well, look, first of all, our average order size is 500 trucks at a time. And then I will also tell you, the most of them are signed by the CEOs of these large firms. That's how serious I am. Well, that's the evidence. That's the core evidence. I mean, if we had to do like, you know, stock market, I don't know, CSI. Well, there you go.

209. Lordstown's stock closed on March 17, 2021, at $15.09 per share. The Fourth Quarter 2021 results were published after markets closed on March 17, 2021, and Lordstown's conference call was also held after markets closed that day. Defendant Burns' interview on *Squawk Box* was aired before markets opened on March 18, 2021. The price of Lordstown's stock opened at $13.85, an 8.21% decline from the prior closing price. During the day, Lordstown stock price continued to fall on this news, closing on March 18, 2021, at a price of $13.01—a decline of 13.78% from the prior closing price.

210. On March 18, 2021, Morgan Stanley issued an analyst report slashing their price target for Lordstown by 33% on reduced expectations for their sales.

211. On March 25, 2021, Lordstown published its 10-K annual report (which it would later be required to amend). The document asserted that Lordstown would meet its previously stated production schedule. Specifically, it stated: "We are targeting commencement of commercial production of the Endurance in September 2021 and initial sales starting in late 2021."

212. Additionally, and critically, the 10-K disclosed that Lordstown had actually been notified of the SEC investigation almost a month before the Hindenburg Report was published. The filing stated that "[o]n February 17, 2021, the company received a request from the SEC for the voluntary production of documents and information, including relating to the merger between DiamondPeak and Legacy Lordstown and pre-orders of vehicles. The Company is responding to the SEC's requests and intends to cooperate with its inquiry."

213. Similarly, the 10-K disclosed that the Lordstown was the subject of an SEC inquiry. The 10-K stated that "on February 17, 2021, we received a request from the SEC for the voluntary production of documents and information, including relating to the merger between

DiamondPeak and Legacy Lordstown and pre-orders of vehicles." Notably, the 10-K followed this statement by describing two "***related***" class actions. It stated: "We are responding to the SEC's requests and intend to cooperate with its inquiry. Additionally, on March 18 and 19, 2021, two related putative class action lawsuits were filed against us and certain of our officers in the U.S. District Court for the Northern District of Ohio (Case Nos. 21-cv-616 and 21-cv-633)."

214. On May 24, 2021, Lordstown issued a press release announcing its First Quarter 2021 results. It reiterated that the "Timeline to Start of Production (SoP) in late-September 2021, which will be at limited capacity, remains on track." However, the company previewed that it was in truth facing production delays. Despite the fact that Lordstown became public and constantly promoted its production schedule even after COVID-19 had fully emerged as a global event, the company now vaguely blamed COVID-19 for production delays.

215. In the press release regarding the results, Lordstown stated, ""we do need additional capital to execute on our plans," and in the May 24, 2021 analyst call for Lordstown's First Quarter results, Defendant Burns stated "the pace of our production ramp will depend on our ability to secure additional funding," and similarly stated that "capital may limit our ability to make as many vehicles as we would like." Putting numbers on this point, Defendant Burns explained that Lordstown now planned to end the year with a mere $75-50 million of cash on hand, without additional financing, and that even meeting this expectation would require, "pursuing a conservative budget, reducing costs and delaying investments and the production would start" and that as a result, "in September would be at best 50% of the prior 2021 unit expectations."

216. The May 24, 2020, press release was released after markets closed that day, and the analyst call was also held after markets closed. As of the close of markets on May 24, 2020, Lordstown's stock price was $9.67, and the next day, the opening stock price was a mere $8.17—a decline of 15.51% from the prior closing price. By the close of trading on May 25, 2021, Lordstown's stock price was at $8.95, which was still a decline of 7.45%, compared to the prior closing price.

217. On May 27, 2021, Avise Analytics issued an analyst report questioning "Can Lordstown Motors Withstand The Latest Test Of Its Endurance" focusing on the Hindenburg Report, SEC investigation, and the company's "higher than expected forecasted expenses and lowering of the production forecast." Similarly, on May 28, 2021, Deutsche Bank issued an analyst report recognizing that "Lordstown's business has so far been running quite differently than presented in its initial business plan." The report explained "[o]n its 1Q earnings call this week, Lordstown guided for a 50% production cut this year without any additional financing, limiting its planned output to just ~1k units this year. Therefore, we worry that Lordstown will be unable to get a strong enough foothold in the market in just a few short months before more well-established models enter the market." Additionally, Morgan Stanley issued an analyst report, further slashing their price target for Lordstown by 33%, citing its "reduced forecast" and "need for outside capital."

218. On June 8, 2021, Lordstown released an amended 10-K, disclosing that it was facing financial catastrophe. The filing included a "going concern notice" stating that: "We require additional capital to implement our business plan, and it may not be available on acceptable terms, if at all, creating substantial doubt as to our ability to continue as a going concern." In addition to revealing that Lordstown was on the brink of insolvency, the filing

stated that: "Our current budget only provides for limited commencement of production in 2021. Additional funding is needed for production in 2022 and beyond and to continue our ramp up to full commercial production. The amounts required may be significant."

219. This "going concern notice" was obviously in stark contrast to Defendants' promises that the Merger provided adequate resources—not just to begin production of the Endurance, but to push production and sales forward to the point that the company would become cash flow positive and profitable.

220. Additionally, the amended 10-K disclosed that the company had materially deficient internal controls. It stated that management had identified a "material weaknesses in internal control over financial reporting." Accompanying this disclosure was a notice that the company had developed a plan to remediate its reporting weaknesses.

221. The amended 10-K also disclosed that Lordstown had received two subpoenas from the SEC and provided some additional details about the investigation. Specifically, the filing disclosed that: We have in the past been and may in the future be subject to, or become a party to, litigation, regulatory actions, and government investigations and inquiries. For example, we have received two subpoenas from the SEC for the production of documents and information, including relating to the Merger between DiamondPeak and Legacy Lordstown and pre-orders of vehicles. We are responding to the SEC's requests and are cooperating with its inquiry."

222. The amended 10-K with the going concern notice and additional details about the SEC investigation was filed after the close of markets on June 8, 2021. As of the close of the market on June 8, 2021, Lordstown was trading at $11.22 a share, and at market open the next day, it was trading at $10.12—a 9.8% decline from the prior close. On June 9, 2021, the

Lordstown's stock price reached a daily low of $8.88, for a total decline of 20.86% compared to the prior closing price. However, on June 9, 2021, Lordstown issued a new statement that it was supposedly actively pursuing additional financing with several parties, and the share price increased on this news.

223. On June 8, 2021, RBC published an analyst report that advised that Lordstown would underperform. It focused on whether the fleet market will buy Lordstown's vehicles at levels claimed by the company, noting that the Hindenburg report had "placed increased scrutiny on RIDE's orders and management's credibility." On June 10, 2021, Morgan Stanley issued an analyst report focused on Lordstown's going concern notice. The report stated "The stock has reacted very negatively and, based on our discussions with clients, we are concerned that there has not been a greater level of consideration about the alternative use-cases for RIDE's assets." Put differently, Morgan Stanley was considering what would happen to Lordstown's assets if it were to go bankrupt, which emphasizes the dire nature of the situation.

224. On June 14, 2021, Lordstown issued a press release reporting the results of the company's internal investigation into the allegations in the Hindenburg Report. While the press release disclosed that the company was continuing to deny the Hindenburg Report's allegations regarding its production capabilities, it admitted that: "The investigation did, however, identify **issues regarding the accuracy of certain statements regarding the Company's pre-orders**."

225. The internal investigation report admitted that:

> In most instances, Lordstown Motors' pre-orders did not require a reservation or similar payment, though pre-orders submitted through a website portal required a refundable $100 payment. Lordstown Motors entered into an arrangement to pay one entity commissions for procuring pre-orders. That entity procured approximately 1,000 pre-orders and also assisted Lordstown Motors into entering into an important commercial relationship with a leading fleet management company.

226. This disclosure conceded that Lordstown had paid a third-party to procure pre-orders, but itself was at odds with other publicly available information about that practice. The third-party at issue was Climb2Glory, but Climb2Glory itself claimed to have generated 25% of Lordstown's pre-orders during a six-month period preceding March 2021, which starkly contradicts the company's claim that Climb2Glory had only procured 1,000 pre-orders.

227. Most significantly, the internal investigation admitted that the company had made inaccurate statements regarding pre-orders. The relevant portion of the internal investigation report is as follows:

> Lordstown Motors made periodic disclosures regarding pre-orders which were, in certain respects, **inaccurate**.
>
> Lordstown Motors has stated on several occasions that its pre-orders were from, or "primarily" from commercial fleets. In fact, many pre-orders were obtained from (i) fleet management companies or other end users that indicated interest in purchasing Endurance trucks, similar to commercial fleets, and (ii) so-called "influencers" or other potential strategic partners that committed to attempt to secure pre-orders from other entities, but did not intend to purchase Endurance trucks directly.
>
> One entity that provided a large number of pre-orders does not appear to have the resources to complete large purchases of trucks. Other entities provided commitments that appear too vague or infirm to be appropriately included in the total number of pre-orders disclosed.

228. While these findings largely admitted to some of the misstatements alleged herein, Lordstown nevertheless tried to downplay the issue. It emphasized the word "primarily," to imply that the language regarding pre-orders had typically been offset by qualifying language. In fact, Defendant Burns' actual statements were far more emphatic. *E.g.*, Burns: "50,000 pre-sales already, **all from fleets.**" (November 16, 2020); Burns: "**all** those numbers are just commercial fleets," Spencer: "that's **literally** just for fleets?" Burns: "Yeah. That's just commercial fleets." (February 6, 2021); Burns: "Lordstown Motors has received approximately 50,000 non-binding production reservations **from commercial fleets** for its Lordstown

Endurance all-electric pickup truck" (November 16, 2020); Burns: "We sell to commercial fleets." (November 7, 2020); Burns: "more than 100,000 non-binding production reservations **from commercial fleets**" (January 11, 2021); Burns: "Our initial foray is into fleets and **we have pre-sold 100,000 of these to various fleets** across America." (February 23, 2021).

229. Similarly, while Lordstown admitted that "[o]ne entity that provided a large number of pre-orders does not appear to have the resources to complete large purchases of trucks," it failed to disclose that many of Lordstown's other supposed customers—including several of those listed as "Selected Pre-Order Customers" in Defendants' pre-Merger investor deck and proxy materials—also were clearly not viable purchasers of any significant number of Endurance trucks. Likewise, while the report of the special committee correctly stated: "Other entities provided commitments that appear too vague or infirm to be appropriately included in the total number of pre-orders disclosed," it failed to disclose that in many instances Lordstown was booking pre-orders from entities that had not made *any* indication of interest whatsoever, like the Mayor of City of Ravenna.

230. Concurrently with the release of the internal investigation report, On June 14, 2021 Lordstown also issued a press release regarding the departures of Defendant Burns and Defendant Rodriguez. The press release did not provide much detail explaining the sudden departure of the company's founder, CEO, and board Chairman and the departure of its CFO. Instead, it stated that the departures were being made "as the Company begins to transition from the R&D and early production phase to the commercial production phase of its business," which did not explain why that transition called for the immediate departure of key executives.

231. The obvious truth was that Defendants Burns and Rodriguez had been pushed out for their roles in misrepresenting the business to the investing public. This fact is all the more

obvious given that the company did not announce any long-term replacement for either executive – and instead left the CEO role vacant as former director Angela Strand took over as Executive Chairwoman and Becky Roof took over as "interim CFO." The notion that Defendants Burns and Rodriguez had departed as part of an orderly progression as the company transitioned to the "production phase" is completely belied by any common-sense inquiry, given that narrative would necessarily be predicated on the idea that other management would more effectively handle the new phase, whereas the company was not announcing any such new management. In fact, Lordstown operated without a CEO for more than two months, until August 26, 2021.

232. The news of the CEO and CFO "resignations" and the investigative report was released before markets opened on June 14, 2021. On the prior trading day, at the close of trading, Lordstown's stock price was $11.41. When markets opened on June 14, 2011, Lordstown's stock price was $9.39, a 17.7% decline of from the prior close. By the close of trading on June 14, 2021, Lordstown's stock price was $9.26—a staggering 18.84% decline from the prior close.

233. Before markets opened on June 14, 2021, *Seeking Alpha* wrote, "Lordstown Motors stock down 12% as CEO and CFO exit following board probe," and later in the day that publication wrote, "down sharply after this morning's bombshell double resignation of the electric truck maker's CEO and CFO. On top of that, an independent report found issues with the pre-order statements made by the company." That same day, *The Wall Street Journal* reported, "Lordstown Motors Executives Resign Amid Inaccurate Preorder Disclosures." *Bloomberg* reported, "Lordstown Motors Slumps Most Ever on CEO Exit, Misstatements."

234. Clearly worried about the sharp market reaction to the prior day's disclosures, on June 15, 2021, Lordstown made bizarre statements to the media. Defendant Schmidt claimed in

a media event that the company had "firm orders" for "two years" of production. This sent shares sharply upward. For example, *Reuters* reported that day, that Lordstown claimed it has that "has 'firm' and 'binding' orders for the first two years of production of its electric pickup truck . . . sending shares up 6.4%."

235. However, two days later, on June 17, 2021, Lordstown corrected this statement, noting that even by that date it did not have binding orders. That day *Reuters* wrote, "EV maker Lordstown backtracks to say it has no binding orders." Similarly, *The New York Times* reported that day that, "Lordstown Motors reverses itself again, telling SEC it has no 'binding' orders." In reporting on this correction, the *Detroit Tribune* noted that Executive Chairwoman Angela Strand had tried to rebuild confidence in her remarks two days prior, calling it a "new day," but that with this near immediate correction of continued misstatements, it appeared to be the "[s]hortest new day ever." The publication ZeroHedge, wrote ""Lordstown Motors Lied About "Binding" Orders, Again, Just One Day After Its CEO And CFO Resigned." That same day *Seeking Alpha* wrote, "Lordstown Motors tumbles after clarifying that it has no binding orders."

236. On July 2, 2021, *The Wall Street Journal* announced that Lordstown was under criminal investigation by the U.S. Department of Justice ("DOJ"). Citing people familiar with the matter, the article explained that the DOJ inquiry was being handled by the Manhattan U.S. Attorney's Office, *i.e.*, the office for the Southern District of New York. The article also quoted a Lordstown spokesperson, who stated that the company is committed to cooperating with any investigations and inquiries.

237. *The Wall Street Journal* article publishing this news was released mid-day on July 2, 2021. Lordstown stock price opened at $10.35 on July 2, 2021, and fell to $9.23 by close—a total same day decline of 10.8%.

238. News coverage regarding revelation of the DOJ investigation was striking. For example, on July 2, 2021, *Seeking Alpha* ran the headline, "Lordstown Motors stock falls sharply on report of DOJ probe." That same day, CNBC wrote that the investigation was "sending shares of the embattled electric-vehicle start-up plunging." Also that same day, *The Detroit News* ran the headline "Lordstown Motors' shares tank after WSJ reports DOJ investigation." Similarly, *Bloomberg's* headline that day stated: "Lordstown Motors Tumbles as Justice Department Begins Probe."

239. About two weeks later, on July 15, 2021, Lordstown disclosed additional details about the previously disclosed investigations it was facing. Specifically, the filing disclosed that: "we have received two subpoenas from the SEC for the production of documents and information, including relating to the Merger between DiamondPeak and Legacy Lordstown and pre-orders of vehicles, and we have been informed by the U.S. Attorney's Office for the Southern District of New York that it is investigating these matters. We have cooperated, and will continue to cooperate, with these and any other regulatory or governmental investigations and inquiries."

240. The further revelation about the subject and status of the SEC and DOJ probes was widely covered in news articles. For example, *Market Watch* wrote in a July 16, 2021, article that "The electric-truck startup says probe focuses on matter related to its reverse merger deal and preorders for Endurance."

241. On July 26, 2021, Lordstown announced that it has secured a source of some additional financing for the company. The technologies publication *TechCrunch* aptly published a July 26, 2021, article titled "Troubled EV company Lordstown Motors gets $400M lifeline in stock-sale agreement."

242. On August 11, 2021, Lordstown published a press release announcing its Second Quarter 2021 results. The press release regarding the results claimed that the company would "[b]egin[] limited vehicle production in late September," a far cry from its prior and repetitive disclosures that it would be in full production by September. Similarly, the press release stated that "production in 2021 will be limited to coincide with commercialization roadmap," which again contradicted the prior claims that the company would be in full production by September 2021.

243. Furthermore, in the August 11, 2021, press release, the company stated that it would not even "complete vehicle validation and regulatory approvals [until] December and January," meaning that while "limited" ***production*** might begin in September, meaningful vehicle sales would be delayed until well after then. Furthermore, even once the company began selling vehicles in 2022, it apparently was only expecting "selected early customers in Q1 in advance of commercial deliveries in early Q2."

244. On August 13, 2021, Lordstown filed a Form 10-Q about its previously released Second Quarter results. This filing reiterated much of the information disclosed two days prior. However, it notably also included a renewed "going concern" notice. The disclosure noted the capital raising activity that the company conducted the prior month, but concluded: "notwithstanding management's plans and efforts to date, there continues to be substantial doubt about our ability to continue as a going concern."

245. On August 26, 2021, Lordstown announced that—more than two months after the resignations of Defendants Burns and Rodriguez—it had finally selected a new CEO, Daniel Ninivaggi. Mr. Ninivaggi was previously an executive working at Carl Icahn's business Icahn

Enterprises, but who has not held a full-time job since August 2019, according to his LinkedIn profile.

V. ADDITIONAL ALLEGATIONS

A. False and Misleading Statements

246. Plaintiffs allege that the statements highlighted in ***bold and italics*** within this Section were materially false, misleading, and omitted to disclose material information. In some instances, graphical material is alleged to be false and misleading and no bold and italic text has been applied. As alleged herein, the false and misleading statements artificially inflated or artificially maintained the price of the Lordstown Securities. As described below, Defendants created an impression of a state of affairs related to the company's pre-orders and production capabilities that differed in a material way from the one that actually existed.

247. Each statement attributed to Defendant Burns prior to the close of the Merger was also made by Defendant Lordstown EV Corporation, which was known at the time as Lordstown Motor Corp., and each statement attributed to Defendant Burns after the close of the Merger, was also made by Defendant LTM, in both cases because he was speaking on behalf of the relevant entity as its CEO and chairman of its board. Each statement by Defendant Hamamoto was also made by Defendant LTM, which prior to the Merger closing was known as DPHC, because he was speaking as its CEO and the chairman of its Board. Each statement contained in a public filing, presentation, or press release issued by an entity was made by that entity. Throughout this Section, entities are referred to by their name at the time that the statement was made. The use of three asterisks in the middle of a quoted passage signifies the omission of a paragraph. That a statement is not included in this Section or marked as false and misleading in this Section does not imply its accuracy. The reference to a statement being "misleading" includes statements that are misleading due to the omission of truthful information.

(1) Statements Concerning Lordstown's Supposed Pre-Orders

248. Statements touting the number of pre-orders obtained by Lordstown were false and misleading for the following reasons, both together and individually: (a) Lordstown did not have any pre-orders and instead had non-binding letters of intent; (b) Lordstown counted pre-orders from entities that did not sign letters of intent to buy the Endurance, either because they had not signed any LOI at all or because they had signed a LOI with Workhorse to buy an entirely different truck and had not agreed to buy the Endurance; (c) Lordstown counted pre-orders from businesses that could not plausibly be expected to order the listed number of trucks; (d) Lordstown counted pre-orders from entities that merely operated as intermediaries for ultimate purchasers, or who had no such operations but sought to open such lines of business, even though such orders could not reasonably be counted as pre-orders, and even though Defendant Burns expressly claimed all orders were from "fleets," when such intermediaries do not own or operate fleets; (e) Lordstown counted pre-orders from LOIs obtained by Workhorse, even though the conditions precedent for Lordstown to receive such pre-orders had not been satisfied; and (e) Lordstown counted pre-orders from persons and entities that Lordstown knew or was reckless in not knowing did not intend to order Endurance trucks or the number of trucks Lordstown used in its count. The number of pre-orders was material because it was a key fact broadcasted to investors, served as a signal of demand for the Endurance, served as a signal of expected future revenues, served as an indicator of industry opinions of Lordstown and the Endurance, and served as an indicator of the capabilities and success of Lordstown's sales and marketing functions.

249. On August 3, 2020, before markets opened, DPHC filed proxy materials with the SEC that included a press release issued by Lordstown and DPHC, and this press release included statements made by Burns. Thus, DPHC, Lordstown and Burns stated the following:

> Steve Burns, Founder and Chief Executive Officer of Lordstown, commented, "We are thrilled with the opportunity to build Lordstown Motors into a top-tier electric truck company that is highly differentiated from the competition. We are uniquely positioned to be a leader in the industry, with our first vehicle, the revolutionary Lordstown Endurance. Our all-electric full-size pickup truck delivers the equivalent of 75 miles per gallon and has been systematically engineered and competitively priced specifically for the large commercial fleet market, which includes companies in manufacturing, contracting, utilities, transportation and delivery, and agriculture, among others. ***Since its unveiling just over a month ago, the Endurance has been met with enthusiastic support, and to date, we have secured $1.4 billion of pre-orders***. Our platform is rooted in sustainability, and the entire Lordstown team is committed to ensuring we contribute to a healthier planet for generations to come."
>
> * * *
>
> ***Lordstown unveiled the prototype of its flagship Endurance pickup truck on June 25, 2020, and to date, has received more than 27,000 pre-orders for the vehicle representing over $1.4 billion of potential revenue, primarily from commercial fleet customers.***

250. The statement(s) in the prior paragraph touted Lordstown's supposed pre-orders and therefore was false and misleading for the reasons set forth in paragraph 248. Furthermore, the statements were especially misleading because the use of the words "secured" and "received" implied that the pre-orders were concrete, when in reality, the purported "pre-orders" were anything but concrete and often, for example, were based on supposed deals where the persons or entities signed a non-binding LOI, did not even sign a non-binding LOI, or were clearly not in a position to order the number of trucks Lordstown was counting from them. In addition, the statements were especially misleading by representing that the pre-orders came "primarily" from "commercial fleet customers," because it implied that Lordstown was receiving reliable orders representing true demand from its target market. This was untrue as the number of pre-orders was completely fabricated, and at a minimum, involved a significant number of fabricated orders from individuals and non-fleet organizations.

251. On August 3, 2020, before markets opened, DPHC filed proxy materials with the SEC that included an investor presentation issued by Lordstown, and thus DPHC and Lordstown made the statements therein. The presentation included the following graphic, which contains false and misleading statements:



252. The statement(s) in the prior paragraph touted Lordstown's supposed pre-orders and therefore was false and misleading for the reasons set forth in paragraph 248. Furthermore, it was especially misleading to boast that the pre-orders had come from a number of established companies when these pre-orders were highly fabricated. For example, the purported pre-orders from "Selected Pre-Order Customer[]," Grid-X, were baseless as Grid-X had indicated they were "completely unaware" of the deal when asked about it, and that the inquiry was "the first time" they had heard about it.

253. On August 3, 2020, before markets opened, DPHC filed proxy materials with the SEC that included an investor presentation issued by Lordstown. The presentation included the following graphic, which contains false and misleading statements:



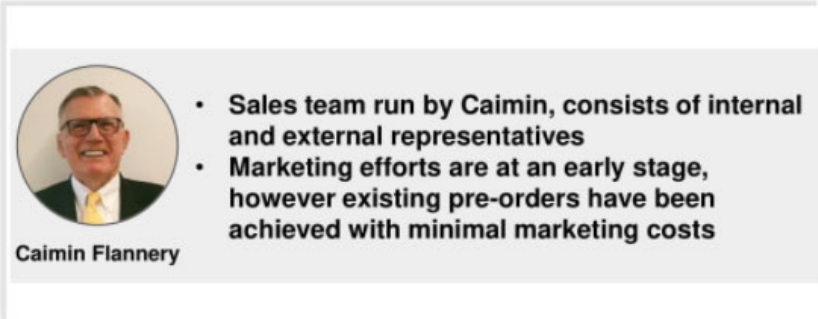
254. The statements in the prior paragraph touted Lordstown's supposed pre-orders and therefore were false and misleading for the reasons set forth in paragraph 248. Furthermore, Defendants' claim that demand is "proven" was highly misleading as the basis for the purported demand was fabricated pre-orders.

255. On August 3, 2020, before markets opened, DPHC filed proxy materials with the SEC, which included an investor presentation issued by Lordstown. The presentation stated: "***~$1.4bn of Existing Pre-Orders***."

256. The statement in the prior paragraph touted Lordstown's supposed pre-orders and therefore was false and misleading for the reasons set forth in paragraph 248. Furthermore, the statement was especially misleading because the use of the word "existing" implied that the pre-orders were concrete, when in reality, the purported "pre-orders" were anything but concrete and often, for example, were based on supposed deals where the persons or entities signed a non-binding LOI, did not even sign a non-binding LOI, or were clearly not in a position to order the number of trucks Lordstown was counting from them.

257. On August 3, 2020, before markets opened, DPHC filed proxy materials with the SEC, which included an investor presentation issued by Lordstown. Additionally, the following statement was also made by Defendant Flannery, because he provided or allowed his image to be

used in propagating the statement, in a way that conveyed his assent to the statement being made. The presentation included the following graphic, which contains false and misleading statements:



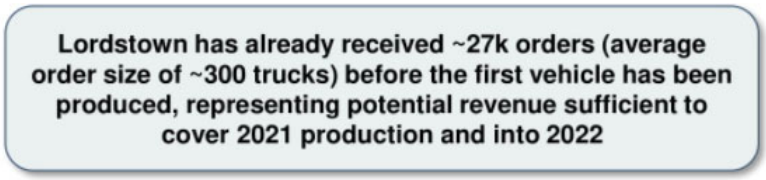
258. The statement in the prior paragraph touted Lordstown's supposed pre-orders and therefore were false and misleading for the reasons set forth in paragraph 248. Furthermore, the statements were especially misleading because the use of the word "existing" implied that the pre-orders were concrete, when in reality, the purported "pre-orders" were anything but concrete and often, for example, were based on supposed deals where the persons or entities signed a non-binding LOI, did not even sign a non-binding LOI, or were clearly not in a position to order the number of trucks Lordstown was counting from them. In addition, the statement that the pre-orders were "achieved with minimal marketing costs" is further misleading as it conveys that the pre-orders could be further increased once marketing is increased and because Lordstown had engaged in substantial and expensive marketing, including paying Climb2Glory lofty commissions to procure totally non-binding LOIs.

259. On August 3, 2020, before markets opened, DPHC filed proxy materials with the SEC, which included an investor presentation issued by Lordstown. The presentation stated: "***Significant Pre-Orders Received***."

260. The statements in the prior paragraph touted Lordstown's supposed pre-orders and therefore was false and misleading for the reasons set forth in paragraph 248. Furthermore, the statement was especially misleading because the use of the word "received" implied that the

pre-orders were concrete, when in reality, the purported "pre-orders" were anything but concrete and often, for example, were based on supposed deals where the persons or entities signed a non-binding LOI, did not even sign any LOI at all (binding or otherwise), or was clearly not in a position to order the number of trucks Lordstown was counting from them.

261. On August 3, 2020, before markets opened, DPHC filed proxy materials with the SEC, which included an investor presentation issued by Lordstown. The presentation included the following graphic, which contains false and misleading statements:



262. The statements in the prior paragraph touted Lordstown's supposed pre-orders and therefore were false and misleading for the reasons set forth in paragraph 248. Furthermore, the statement that "Lordstown has *already received . . . orders*" was especially misleading because it implied that the pre-orders were concrete, when in reality, the purported "orders" were anything but concrete and often, for example, were based on supposed deals where the persons or entities signed a non-binding LOI, did not even sign a non-binding LOI, or were clearly not in a position to order the number of trucks Lordstown was counting from them.

263. On August 3, 2020, before markets opened, DPHC filed proxy materials with the SEC, which included a transcript of a conference call that Defendants Burns and Hamamoto participated in. The following statement was uttered by Defendant Burns during that call:

> We are uniquely positioned as a leader in the pickup truck industry with the revolutionary Lordstown Endurance, an all-electric full-size pickup truck that delivers the equivalent of 75 miles per gallon, total EV range of 250 miles and a towing capacity of an impressive 7,500 pounds. One of the most unique elements of the vehicle is its innovative in-wheel drive system, the first of its kind in a commercial vehicle. Equipped with hub motors in each wheel, and seamlessly integrated with our software system, we are effectively able to deliver a motor and

> mind in each wheel – benefiting efficiency of the vehicle and driver experience. This has long been sought after in the automotive industry, and we're excited to be the first to accomplish this major innovation. ***We appreciate the support by our world-class partners who are evidencing their confidence in this technology with significant pre-order activity.***
>
> * * *
>
> We officially unveiled the Endurance in late-June. The Endurance was met with great excitement and acclaim, and ***we now have garnered significant demand with pre-orders totaling approximately 27,000 vehicles since inception, representing more than 1.4 billion dollars of potential revenue. We hear from many fleets who cannot wait to get their hands on the Endurance***. The electric vehicle market is expected to grow significantly the next decade, underlying our expectations of selling more than 100,000 vehicles per year by 2024.

264. The statements in the prior paragraph touted Lordstown's supposed pre-orders and therefore were false and misleading for the reasons set forth in paragraph 248. Furthermore, the statement that Defendants "have garnered significant demand" is highly misleading as the basis for the purported demand was fabricated pre-orders. In addition, the statements were especially misleading by representing that "many fleets" "cannot wait to get their hands on the Endurance" because it implied that Lordstown was receiving reliable orders representing true demand from its target market. This was untrue as the number of pre-orders was completely fabricated, and at a minimum, involved a significant number of made-up orders from individuals and non-fleet organizations. Additionally, the reference to the "pre-order activity" as "significant" was false and misleading given that the pre-orders were non-binding and from sources that did not credibly evidence demand at the level Lordstown was claiming.

265. On August 3, 2020, before markets opened, DPHC filed proxy materials with the SEC, which included a transcript of a conference call that Defendants Burns and Hamamoto participated in. The following statement was uttered by Defendant Hamamoto during that call:

> The Lordstown Endurance is a full sized electric pick-up truck, which utilizes the revolutionary hub motor design that is expected to be the first electric pick-up truck to market. ***Lordstown has attracted a clear lane of customers in the commercial***

> ***fleet segment of the market, as evidenced by its $1.4 billion dollars of pre-orders to-date***, with a product that has a significant total cost of ownership advantage over competitors in both traditional and electric trucks, supports sustainable clean energy, and has a simple design that provides a robust, safe and stable ride.

266. The statements in the prior paragraph touted Lordstown's supposed pre-orders and therefore were false and misleading for the reasons set forth in paragraph 248. Furthermore, the statements were especially misleading by representing that Lordstown had "a clear lane of customers in the commercial fleet segment of the market" because it implied that Lordstown was receiving reliable orders representing true demand from its target market. This was untrue as the number of pre-orders was completely fabricated, and at a minimum, involved a significant number of made-up orders from individuals and non-fleet organizations.

267. On August 3, 2020, after markets closed, Defendant Burns appeared for an interview on CNBC. During that interview, he stated: "***We got 27,000 orders. We got customers really really wanting the truck.***"

268. The statements in the prior paragraph touted Lordstown's supposed pre-orders and therefore were false and misleading for the reasons set forth in paragraph 248. Furthermore, the statement that "***We got 27,000 orders***" is especially misleading because it implied that the pre-orders were concrete, when in reality, the purported "orders" were anything but concrete and often, for example, were based on supposed deals where the persons or entities signed a non-binding LOI, did not even sign a non-binding LOI, or were clearly not in a position to order the number of trucks Lordstown was counting from them. In addition, the statements were especially misleading by representing that "customers really really want[ed] the truck." This was not the case as the number of pre-orders was highly fabricated.

269. On August 5, 2020, before markets opened, DPHC filed proxy materials with the SEC, which included a transcript of Defendant Burns' August 3, 2020, interview with CNBC. Thus, DPHC made the same false statements for the same reasons listed in paragraphs 268.

270. On August 24, 2020, before markets opened, DPHC filed proxy materials with the SEC. This material substantively began with a letter signed by Defendant Hamamoto encouraging shareholders to read the proxy materials and vote, and thus he and DPHC are makers of the following statement therein:

> To date, ***Lordstown has received pre-orders from fleet operators to purchase approximately 27,000 Endurance vehicles.*** These pre-orders are not binding and did not require any deposit, so there can be no assurance that Lordstown will successfully convert them into binding orders or sales. It is possible that a significant number of customers who submitted pre-orders may cancel or delay their pre-orders.

271. The statements in the prior paragraph touted Lordstown's supposed pre-orders and therefore were false and misleading for the reasons set forth in paragraph 248. Furthermore, the statements were especially misleading because the use of the word "received" implied that the pre-orders were concrete, when in reality, the purported "pre-orders" were anything but concrete and often, for example, were based on supposed deals where the persons or entities signed a non-binding LOI, did not even sign a non-binding LOI, or were clearly not in a position to order the number of trucks Lordstown was counting from them. In addition, the statements were especially misleading by representing that the pre-orders came "from fleet operators," because it implied that Lordstown was receiving reliable orders representing true demand from its target market. This was untrue as the number of pre-orders was completely fabricated, and at a minimum, involved a significant number of made-up orders from individuals and non-fleet organizations.

272. On August 24, 2020, before markets opened, DPHC filed proxy materials with the SEC. This material substantively began with a letter signed by Defendant Hamamoto encouraging shareholders to read the proxy materials and vote, and thus he made the following statement therein:

> Growing Sales. If Lordstown is able to complete the foregoing actions consistent with expectations, Lordstown anticipates it will be able to commence full production in 2021 with a target of 2,200 vehicles produced and sold in the year. ***Lordstown currently has pre-orders from fleet operators to purchase 27,000 vehicles***. Although these pre-orders are nonbinding and did not require any deposit, ***Lordstown believes they demonstrate clear demand that will lead to binding orders once the Endurance is complete and potential customers are able to see firsthand the value that it offers***. As described in the Business Combination section above, Lordstown also expects to ramp up its sales and marketing efforts following the Business Combination, which have been limited to date.

273. The statements in the prior paragraph touted Lordstown's supposed pre-orders and therefore were false and misleading for the reasons in paragraph 248. Furthermore, the statements were especially misleading because the use of the word "currently" implied that the pre-orders were concrete, when in reality, the purported "pre-orders" were anything but concrete and often, for example, were based on supposed deals where the persons or entities signed a non-binding LOI, did not even sign a non-binding LOI, or were clearly not in a position to order the number of trucks Lordstown was counting from them. In addition, the statements were especially misleading by representing that the pre-orders came "from fleet operators," because it implied that Lordstown was receiving reliable orders representing true demand from its target market. This was untrue as the number of pre-orders was completely fabricated, and at a minimum, involved a significant number of made-up orders from individuals and non-fleet organizations.

274. On September 24, 2020, Lordstown participated in an event hosted by The Transportation and Innovation Partners, and a recording of the event was broadcast over the

internet. During the event Defendant Flannery spoke on Defendant LTM's behalf. While presenting the following graphic, Flannery stated, "***we have as was announced yesterday in the paper when the Endurance was shown at Columbus, Ohio that our estimates [are] that we have up to 40,000 pre-orders for the Endurance, which again reiterates the demand in the fleet area. And these are some of the, the entities that have been working very closely with us.***" The graphic Defendant Flannery referenced was as follows:



275. The statements in the prior paragraph touted Lordstown's supposed pre-orders and therefore were false and misleading for the reasons set forth in paragraph 248. Furthermore, it was especially misleading to claim Defendants had been "working very closely with" several "Selected Pre-Order Customers," as, for example, Grid-X had indicated they were "completely unaware" of the deal when asked about it, and that the inquiry was "the first time" they had heard about it.

276. On September 28, 2020, President Trump met with Defendant Burns and stated, referring to the Endurance, "***I heard the sales are great***." Defendant Burns stood next to President Trump, did not correct or modify this statement, and nodded repeatedly in agreement and thus can be deemed a maker of the statement uttered by President Trump, and/or made the statement of affirming President Trump's statement. The event was broadcast by news services including C-SPAN.

277. The statements in the prior paragraph touted Lordstown's supposed pre-orders and therefore was false and misleading for the reasons set forth in paragraph 248. Furthermore, the acknowledgment of "sales" was especially misleading because it, at a minimum, implied that the pre-orders were concrete, when in reality, the purported "pre-orders" were anything but concrete and often, for example, were based on supposed deals where the persons or entities signed a non-binding LOI, did not even sign a non-binding LOI, or were clearly not in a position to order the number of trucks Lordstown was counting from them.

278. On October 8, 2020, before markets opened, DPHC filed proxy materials with the SEC. These materials substantively began with a letter signed by Defendant Hamamoto encouraging shareholders to read the proxy materials and vote, and thus he made the following statement therein. Additionally, the proxy statement itself was signed by Defendant Hamamoto. The proxy materials stated:

> To date, Lordstown has ***received pre-orders primarily from fleet operators to purchase over 38,000 Endurance vehicles***. These pre-orders are not binding and did not require any deposit, so there can be no assurance that Lordstown will successfully convert them into binding orders or sales. It is possible that a significant number of customers who submitted pre-orders may cancel or delay their pre-orders.

279. The statements in the prior paragraph touted Lordstown's supposed pre-orders and therefore were false and misleading for the reasons set forth in paragraph 248. Furthermore, the statements were especially misleading because the use of the word "received" implied that the pre-orders were concrete, when in reality, the purported "pre-orders" were anything but concrete and often, for example, were based on supposed deals where the persons or entities signed a non-binding LOI, did not even sign a non-binding LOI, or was clearly not in a position to order the number of trucks Lordstown was counting from them. In addition, the statements were especially misleading by representing that the pre-orders came "primarily from fleet

operators," because it implied that Lordstown was receiving reliable orders representing true demand from its target market. This was untrue as the number of pre-orders was completely fabricated, and at a minimum, involved a significant number of made-up orders from individuals and non-fleet organizations.

280. On October 8, 2020, before markets opened, DPHC filed proxy materials with the SEC. This material substantively began with a letter signed by Defendant Hamamoto encouraging shareholders to read the proxy materials and vote, and thus he made the following statement therein. Additionally, the proxy statement itself was signed by Defendant Hamamoto. The proxy materials stated:

> Growing Sales. If Lordstown is able to complete the foregoing actions consistent with expectations, Lordstown anticipates it will be able to commence full production in 2021 with a target of 2,200 vehicles produced and sold in the year. ***Lordstown currently has pre-orders primarily from fleet operators to purchase 38,000 vehicles.*** Although these pre-orders are nonbinding and did not require any deposit, ***Lordstown believes they demonstrate clear demand that will lead to binding orders once the Endurance is complete and potential customers are able to see firsthand the value that it offers.*** As described in the Business Combination section above, Lordstown also expects to ramp up its sales and marketing efforts following the Business Combination, which have been limited to date.

281. The statements in the prior paragraph touted Lordstown's supposed pre-orders and therefore were false and misleading for the reasons set forth in paragraph 248. Furthermore, the statements were especially misleading because the use of the word "currently" implied that the pre-orders were concrete, when in reality, the purported "pre-orders" were anything but concrete and often, for example, were based on supposed deals where the persons or entities signed a non-binding LOI, did not even sign a non-binding LOI, or were clearly not in a position to order the number of trucks Lordstown was counting from them. In addition, the statements were especially misleading by representing that the pre-orders came "primarily from fleet operators," because it implied that Lordstown was receiving reliable orders representing true

demand from its target market. This was untrue as the number of pre-orders was completely fabricated, and at a minimum, involved a significant number of made-up orders from individuals and non-fleet organizations.

282. On October 26, 2020, during the trading day, *The Detroit News* published an article that included statements from Defendant Burns. The statements were not written as exact quotes from Burns, but conveyed his statements as follows:

> ***Burns was surprised when he got up to 40,000 orders. Now he's got to make more vehicles faster than expected, and he's hired about 200 folks to help make it happen, including former Tesla Inc. employees.***

283. The statements in the prior paragraph touted Lordstown's supposed pre-orders and therefore were false and misleading for the reasons set forth in paragraph 248. Furthermore, that Defendant Burns stated he was "surprised" that Lordstown received 40,000 orders was highly misleading as it implied that the pre-orders were concrete, when in reality, the purported "pre-orders" were anything but concrete and often, for example, were based on supposed deals where the persons or entities signed a non-binding LOI, did not even sign a non-binding LOI, or were clearly not in a position to order the number of trucks Lordstown was counting from them.

284. On October 26, 2020, during the trading day, *The Detroit News* published a video of Burns discussing Lordstown. Defendant Burns stated: "Next September deliveries start. ***We have pre-sold 40,000 of them to fleet customers already and we expect that number to increase dramatically between now and then***."

285. The statements in the prior paragraph touted Lordstown's supposed pre-orders and therefore were false and misleading for the reasons set forth in paragraph 248. Furthermore, the statements were especially misleading because the use of the word "*pre-sold*" implied that the pre-orders were concrete, when in reality, the purported "pre-orders" were anything but concrete and often, for example, were based on supposed deals where the persons or entities

signed a non-binding LOI, did not even sign a non-binding LOI, or were clearly not in a position to order the number of trucks Lordstown was counting from them.

286. On October 26, 2020, the Youngstown *Business Journal* published an article including statements by Defendant Burns. The article stated: "***Burns said the company has received 40,000 in pre-orders for The Endurance, which is targeted initially for the commercial fleet market.***" It also quoted Burns as saying, "***We didn't expect that much that quickly***," and as saying, "***It's just a pent-up demand. Fleets are bypassed by the electrification effort – there are a lot of passenger cars coming but nothing for fleets.***"

287. The statements in the prior paragraph touted Lordstown's supposed pre-orders and therefore were false and misleading for the reasons set forth in paragraph 248. The statement was also misleading because it claimed the pre-orders were "just a pent-up demand," further implying the pre-orders were credible reflections of demand, when in fact they were highly fabricated, and reflected Lordstown's heavy use of marketing, including paying Climb2Glory hefty commissions to generate entirely non-binding orders, and when they reflected indications of interest between Workhorse and potential customers. Furthermore, the statements were especially misleading because the use of the word "received" implied that the pre-orders were concrete, when in reality, the purported "pre-orders" were anything but concrete and often, for example, were based on supposed deals where the persons or entities signed a non-binding LOI, did not even sign a non-binding LOI, or was clearly not in a position to order the number of trucks Lordstown was counting from them.

288. On October 27, 2020, during the trading day, Defendant Burns participated in an interview on *Fox Business*. During that interview Burns was asked, "when can I actually buy

one?" and Burns responded: "***You can buy one now, but you can take delivery in September.***" Later that day Defendant LTM's official Twitter account posted a link to that interview.

289. The statement in the prior paragraph was false and misleading because, in the context of Defendants' repeated statements about the pre-order numbers it falsely conveyed to investors that those pre-orders represented people or companies "buy[ing]" the trucks, when in reality Lordstown was not selling any trucks at the time and was only gathering non-binding letters of intent.

290. On November 12, 2020, after markets closed, Defendant LTM filed an S-1 Registration Statement with the SEC. That filing stated: "***We currently have pre-orders primarily from fleet operators to purchase over 44,000 vehicles***, which pre-orders are nonbinding and did not require any deposit. We expect to ramp up our sales and marketing efforts, which were limited prior to the Business Combination."

291. The statements in the prior paragraph touted Lordstown's supposed pre-orders and therefore were false and misleading for the reasons set forth in paragraph 248. Furthermore, the statements were especially misleading because the use of the word "currently" implied that the pre-orders were concrete, when in reality, the purported "pre-orders" were anything but concrete and often, for example, were based on supposed deals where the persons or entities signed a non-binding LOI, did not even sign a non-binding LOI, or were clearly not in a position to order the number of trucks Lordstown was counting from them. In addition, the statements were especially misleading by representing that the pre-orders came "primarily from fleet operators," because it implied that Lordstown was receiving reliable orders representing true demand from its target market. This was untrue as the number of pre-orders was completely

fabricated, and at a minimum, involved a significant number of made-up orders from individuals and non-fleet organizations.

292. On November 16, 2020, before markets opened, Defendant LTM filed a Form 8-K with the SEC, attaching a press release. The press release stated:

> ***Lordstown Motors has received approximately 50,000 non-binding production reservations from commercial fleets for its Lordstown Endurance all-electric pickup truck, with an average order size of approximately 500 vehicles per fleet. This figure does not capture interest the company has received from organizations that are not in position to be able to place pre-orders, such as federal, state and municipal governments, and military fleets.*** Deliveries of the Lordstown Endurance are expected to begin in September 2021, with full production ramping up throughout 2022.

293. The statements in the prior paragraph touted Lordstown's supposed pre-orders and therefore were false and misleading for the reasons set forth in paragraph 248. Furthermore, the statements were especially misleading because the statement, "received . . . production reservations from commercial fleets" implied that the pre-orders were concrete, when in reality, the purported "pre-orders" were anything but concrete and often, for example, were based on supposed deals where the persons or entities signed a non-binding LOI, did not even sign a non-binding LOI, or were clearly not in a position to order the number of trucks Lordstown was counting from them. In addition, the statement that the 50,000 pre-order figure does not capture interest from others that are not in a position to place pre-orders is especially misleading because it implies that pre-orders could be even higher, when in reality, the "received" pre-orders were already highly fabricated.

294. On November 16, 2020, Defendant Burns participated in an interview hosted by the investor website *IPO Edge*. During the interview, Burns stated:

> Today we announced a couple big things. ***Demand, like you said, 50,000 pre-sales already, all from fleets. That's just the commercial sector. Does not count military or police departments, municipalities, state vehicles, so really just to have that many commercial vehicles sold already is a big deal***.

295. The statements in the prior paragraph touted Lordstown's supposed pre-orders and therefore were false and misleading for the reasons set forth in paragraph 248. Furthermore, the statements were especially misleading because the use of the word "*pre-sales*" implied that the pre-orders were concrete, when in reality, the purported "pre-orders" were anything but concrete and often, for example, were based on supposed deals where the persons or entities signed a non-binding LOI, did not even sign a non-binding LOI, or were clearly not in a position to order the number of trucks Lordstown was counting from them. In addition, the statements were especially misleading by representing that the pre-orders came "all from fleets," because it implied that Lordstown was receiving reliable orders representing true demand from its target market. This was untrue as the number of pre-orders was completely fabricated, and at a minimum, involved a significant number of made-up orders from individuals and non-fleet organizations. Also, the statement that the 50,000 pre-order figure only represents the "commercial sector" and "[d]oes not count" other potential customers was wildly misleading as it implies that pre-orders could be even higher, when in reality, the "received" pre-orders were already highly fabricated.

296. On November 16, 2020, Defendant Burns participated in an interview hosted by the investor website *IPO Edge* and failed to correct the interviewer who confirmed the recent update of pre-orders was 50,000. The following is an excerpt of that interview:

> **Interviewer**: Well, let's talk about your product, the pickup truck that you mentioned, and the demand now. ***I think the last update was 40,000, so now we're hearing today it's up to 50,000***, which congratulations on all that. Where is the demand coming from?
>
> **Burns**: This is a full size truck. In pickup truck world, there's two classes, full size and mid size. Full size is what the Ford 150, the Silverado, and the Ram are. I think most people know that the Silverado, the Ram, and the 150 represent number one, number two, and number three best selling vehicles in America. If the number one, number two, and three best selling vehicles don't even have a mild hybrid, right and we're coming with a full electric, we're enjoying the pent up demand. I

> don't know if it's going to be this aggressive all the time, but to a fleet operator that's getting 15 miles per gallon in a pickup truck, and they have to use a pickup truck for their vocation, and every thing's completely passed them by with all this electrification and all the sedans and SUVs coming out, but no work trucks, so it's coming from almost. We have to look, but we just got an order for 400 vehicles from an agriculture company. . . I think everybody has been behind a pickup truck in traffic and noticed all the different things people do with a pickup truck, so it's a best selling consumer vehicle, it's a best selling fleet vehicle, so it's just a natural that we would see this demand.

297. The statement(s) in the prior paragraph touted Lordstown's supposed pre-orders and therefore were false and misleading for the reasons set forth in paragraph 248.

298. On November 16, 2020, Defendant Burns participated in an interview hosted by the investor website *IPO Edge*. During the interview, Burns was asked if he could "talk about where that demand might be coming from," and Burns responded:

> ***We got everybody, the bulk of them, our average order is about 500 trucks per order, so larger fleets.*** But we have a landscaper with three trucks. Really, it's very... since we are on par, the initial purchase price is the same as if they'd bought a gas truck. They start making money on fuel and maintenance the first day. To a landscaper, it's significant. Really, they're even more in tune to it. What we were seeing is small businesses that use trucks, and you tell them, you start making a thousand dollars a month savings, it's significant.

299. The statements in the prior paragraph touted Lordstown's supposed pre-orders and therefore were false and misleading for the reasons set forth in paragraph 248.

300. On November 17, 2020, Burns appeared on the CNBC television program *Mad Money* with Jim Cramer. An excerpt of the interview is provided below:

> **Burns**: ***We sell to commercial fleets. That's our first customer. And like you said, we've already got 50,000 pre-orders. And when you sell to fleets, we couldn't do what most EV companies are doing, where you come out with the luxury price point and move downstream.*** A fleet guy would get fired for buying a luxury truck. So we had to come out on par with the gas trucks pricing, and to do that, we had to invent a new drive train. And that drive train had to be reasonably priced, but rough and tough enough, what people expect of a modern day pickup truck. They think it should be able to climb a wall and haul and tow. So we used hub motors, which are, if you think of a Lime or a Bird scooter, right? There's no motor with a sprocket and a chain going to the back. The motor's in the wheel. And so we have very large versions of that. And as a result, we didn't just kind of

> make a pickup truck to compared to, let's say a Ford 150, we really feel it's better on almost every metric.
>
> **Cramer**: It seems as if some of these orders, the 50,000 are from solid, Duke Energy, FirstEnergy. These people are not going to be walking away? They are committed?
>
> **Burns: *Right. Yeah. All of them. When you order, I think our average order size is about 500 trucks at a time. And as most of them were signed by the CEOs of these large firms, and bringing in 500 electric vehicles into your fleet, it's not trivial. So you've got to plan all the charging and everything. So it's very serious orders.***

301. The statements in the prior paragraph touted Lordstown's supposed pre-orders and therefore were false and misleading for the reasons set forth in paragraph 248. Furthermore, the statements were especially misleading by representing that the pre-orders came from fleets because it implied that Lordstown was receiving reliable orders representing true demand from its target market. This was untrue as the number of pre-orders was completely fabricated, and at a minimum, involved a significant number of made-up orders from individuals and non-fleet organizations.

302. On December 2, 2020, during the trading day, Defendant Burns participated in a conference call hosted by Credit Suisse. During the conference call Burns stated:

> ***[W]e sell to fleets.*** I learned this at my previous company at Workhorse fleets are in big chunks. They only buy if the duty cycle that need matches your duty cycles. So you get happy customers and you can kind of control your geographical layout to make sure you have support centers where they need them. So that's why we like fleets. ***We have 50,000 pre-orders already well, well in advance of what we, what we thought we would have.*** We compete mostly with internal combustion engine vehicles.

303. The statements in the prior paragraph touted Lordstown's supposed pre-orders and therefore were false and misleading for the reasons set forth in paragraph 248. Furthermore, the statements were especially misleading because the statement that Lordstown has "50,000 pre-orders already well, well in advance of what we, what we thought we would have," implied that

the pre-orders were concrete, when in reality, the purported "pre-orders" were anything but concrete and often, for example, were based on supposed deals where the persons or entities signed a non-binding LOI, did not even sign a non-binding LOI, or were clearly not in a position to order the number of trucks Lordstown was counting from them. In addition, the statements were especially misleading by representing that Lordstown "sell[s] to fleets," because it implied that Lordstown was receiving reliable orders representing true demand from its target market. This was untrue as the number of pre-orders was completely fabricated, and at a minimum, involved a significant number of made-up orders from individuals and non-fleet organizations.

304. On December 2, 2020, during the trading day, Defendant Burns participated in a conference call hosted by Credit Suisse. During the conference call a Credit Suisse analyst asked Burns: "How do you, how do you find these, these fleet buyers?" and Defendant Burns responded:

> [I]t's been almost all incoming. We're just starting to build out the sales team. ***So we've been able to do, again, these 50,000, pre-orders just by incoming the pent up demand.*** These fleets have watched all the electrification coming . . . and there's been nothing for them. So the, the, the pent up demand, I don't know if it'll always be this robust, it's very, very strong. ***And the 50,000 doesn't include state vehicles, municipal vehicles, police vehicles, military vehicles. It's just, that's just on the commercial side. And so we, you know, we just it's spread across all different disciplines. Our average order is about 500 vehicles per order. So that's larger fleets.***

305. The statements in the prior paragraph touted Lordstown's supposed pre-orders and therefore were false and misleading for the reasons set forth in paragraph 248. Furthermore, the statement that the 50,000 pre-order figure only represents the "commercial side" and does not include other potential customers is especially misleading as it implies that pre-orders could be even higher, when in reality, the pre-orders were already highly fabricated. The statement was also misleading because it claimed the pre-orders were "almost all incoming," further implying the pre-orders were credible reflections of demand, when in fact they were highly fabricated, and

reflected Lordstown's heavy use of marketing, including paying Climb2Glory hefty commissions to generate entirely non-binding orders, and when they reflected indications of interest between Workhorse and potential customers.

306. On December 4, 2020, after markets closed, Lordstown filed a prospectus with the SEC. The prospectus stated that: "***As of the date of this prospectus, we have received pre-orders primarily from fleet operators to purchase approximately 50,000 Endurance vehicles.***"

307. The statement in the prior paragraph touted Lordstown's supposed pre-orders and therefore was false and misleading for the reasons in paragraph 348. Furthermore, the statement was especially misleading because the use of the word "received" implied that the pre-orders were concrete, when in reality, the purported "pre-orders" were anything but concrete and often, for example, were based on supposed deals where the persons or entities signed a non-binding LOI, did not even sign a non-binding LOI, or were clearly not in a position to order the number of trucks Lordstown was counting from them. In addition, the statements were especially misleading by representing that the pre-orders came "primarily from fleet operators," because it implied that Lordstown was receiving reliable orders representing true demand from its target market. This was untrue as the number of pre-orders was completely fabricated, and at a minimum, involved a significant number of made-up orders from individuals and non-fleet organizations.

308. On December 21, 2020, after markets closed, Defendant LTM filed a Form 8-K with the SEC. This filing stated: "***[Lordstown] has received 80,000 non-binding reservations for the Endurance to date.***"

309. The statement in the prior paragraph touted Lordstown's supposed pre-orders and therefore was false and misleading for the reasons set forth in paragraph 248. Furthermore, the

statement was especially misleading because the use of the word "received" implied that the pre-orders were concrete, when in reality, the purported "pre-orders" were anything but concrete and often, for example, were based on supposed deals where the persons or entities signed a non-binding LOI, did not even sign a non-binding LOI, or were clearly not in a position to order the number of trucks Lordstown was counting from them.

310. On December 21, 2020, while markets were open, Defendant LTM posted the following false and misleading message via its Twitter account:



311. The statement in the prior paragraph touted Lordstown's supposed pre-orders and therefore was false and misleading for the reasons set forth in paragraph 248. Furthermore, this statement was especially misleading because it referred to the 80,000 figure as a "milestone" signifying that it was an important metric, when in reality it did not meaningfully represent actual demand for the Endurance.

312. On January 11, 2021, before markets opened, Defendant LTM issued a press release that included the following statement, including statements attributed to Defendant Burns:

> Lordstown Motors Corp. (Nasdaq: RIDE), ("Lordstown Motors"), an emerging OEM producing electric light duty trucks focused on the commercial fleet market, has ***received more than 100,000 non-binding production reservations from commercial fleets for its Lordstown Endurance™ all-electric pickup truck, with an average order size of nearly 600 vehicles per fleet.***
>
> ***"Receiving 100,000 pre-orders from commercial fleets for a truck like the Endurance is unprecedented in automotive history***," said Steve Burns, CEO of Lordstown Motors. "***Adding in the interest we have from federal, state, municipal and military fleets on top of that, I think you can see why we feel that we are about to revolutionize the pickup truck industry.***"

313. The statements in the prior paragraph touted Lordstown's supposed pre-orders and therefore were false and misleading for the reasons set forth in paragraph 248. Furthermore, the statements were especially misleading because the use of the words "received" and "production reservations" implied that the pre-orders were concrete, when in reality, the purported "pre-orders" were anything but concrete and often, for example, were based on supposed deals where the persons or entities signed a non-binding LOI, did not even sign a non-binding LOI, or were clearly not in a position to order the number of trucks Lordstown was counting from them. In addition, the statements were especially misleading by representing that the pre-orders came "from commercial fleets," because it implied that Lordstown was receiving reliable orders representing true demand from its target market. This was untrue as the number of pre-orders was completely fabricated, and at a minimum, involved a significant number of made-up orders from individuals and non-fleet organizations. Also, the statement conveys that the 100,000 pre-order figure does not include government fleets, which is wildly misleading as it implies that pre-orders could be even higher, when in reality, the "received" pre-orders were already highly fabricated.

314. On January 14, 2020, while markets were open, Defendant LTM posted the following false and misleading message via its Twitter account:



315. The statements in the prior paragraph was false and misleading because it claimed that Lordstown's had 100,000 reservations when in fact it was including within that number LOIs that had been made with parties to Workhorse, supposed reservations where no LOI existed at all, supposed reservations where the counter-party either was not plausibly in a position to order the stated number of trucks or where the counter-party had indicated they were unlikely to order the stated number of trucks. Furthermore, the statement was false and misleading because the statement claimed the "reservations" were from "fleets" when they were often from non-fleet organizations, including non-profits that did not operate fleets and intermediaries that did not operate fleets.

316. On January 28, 2021, before markets opened, Defendant LTM issued a press release stating: "[W]e remain on track to meet our September start-of-production timeline ***while continuing to see indicators of strong demand.***"

317. The statement in the prior paragraph touted Lordstown's supposed pre-orders and therefore was false and misleading for the reasons set forth in paragraph 248. Furthermore, that Defendants claimed demand was "strong" was highly misleading, as the basis for the purported demand was fabricated pre-orders.

318. On February 6, 2021, while markets were open, Defendant Burns appeared for an interview on the popular investment YouTube Channel "Jack Spencer Investing." The following is an excerpt of that interview:

Spencer: So I remember, I think the first number we had from you guys was when the initial investor presentation came out with something around like 28,000. And then I remember it just kept going up and up and up. And it was just, it was immense.

Burns: ***Yeah. Yeah. And again, all those numbers are just commercial fleets. That doesn't count municipality, state vehicles, federal vehicles, military vehicles, all those folks use a lot of pickup trucks. And most of them use them in a local fashion, so the range is perfect for them. So they can't do pre-orders. They're government entities. So that a hundred thousand that we've announced doesn't even count all that.***

Spencer: Yeah, jeez. So that's literally just for fleets?

Burns: ***Yeah. That's just commercial fleets.***

Spencer: I don't think anybody's going to be upset to hear that piece of news though. That's awesome. And what's the average order at now? Was it 600, the latest one?

Burns: ***Yeah. That's on the commercial side.***

Spencer: 600 on the commercial side. And would there be a few bigger names in there that you can share or would it be a lot of bits and pieces going on?

Burns: ***Well, I think we just shared a few of them. Like Duke Energy was a big one. ServPro was a big one. I think we're either going to give a list of them or name a few more key other ones, but right now we're trying to keep it as a big number. And for our purposes, the reason you do pre-orders, this business of tooling up, all the money you spend on tooling, you tool based on how many you're going to sell.*** And let's say it's a normal business and you get caught by surprise and people want your product more than you had planned to build. You find a way. In this business, it's a year lag time. You've got to plan a year ahead of time. And I think Musk invented this and it's really brilliant. Let's give them a good feel for what this vehicle is and ask them, "Would you order it if we make it for this price in this timeframe, and these specs?" And that lets us know. That appetite lets us know what to tool for. ***So we've been really surprised by these numbers. So we are then trying to prepare to build more than we originally had planned.***

* * *

Burns: Well, all I can tell you is these big ones, if a company to orders 600 pre-orders, that is signed by the CEO of that company all likelihood or at least some C-suite person. They take it very seriously. They've got to figure out how they're going to layer these electrics in there. And the appetite for them to do that way early like that, a year out from some of them means they're trying to do their part to ensure this comes to market. So they're standing behind it and they're putting

> these pre-orders in. But I'd say it's much stickier than a consumer putting a hundred dollars down refundable down on a Cybertruck, let's say. ***And I think these orders are very, very sticky because I know what it takes to get them, the education you have to do. This isn't somebody again on a website, a hundred bucks, refundable with a credit card. This is a fleet. And fleets generally take their business very, very seriously. So I think they're very sticky***.

319. The statements in the prior paragraph touted Lordstown's supposed pre-orders and therefore were false and misleading for the reasons set forth in paragraph 248. Furthermore, the statements were especially misleading by characterizing the pre-orders as "very, very sticky," which implied that the pre-orders were concrete, when in reality, the purported "pre-orders" were anything but concrete and often, for example, were based on supposed deals where the persons or entities signed a non-binding LOI, did not even sign a non-binding LOI, or were clearly not in a position to order the number of trucks Lordstown was counting from them. In addition, the statements were especially misleading by representing that the pre-orders came entirely from "commercial fleets," because it implied that Lordstown was receiving reliable orders representing true demand from its target market. This was untrue as the number of pre-orders was completely fabricated, and at a minimum, involved a significant number of made-up orders from individuals and non-fleet organizations. Also, the statement conveys that the 100,000 pre-order figure does not include government fleets, which is wildly misleading as it implies that pre-orders could be even higher, when in reality, the "received" pre-orders were already highly fabricated.

320. On February 17, 2021, Lordstown hosted a news conference. During that conference, on behalf of Defendant LTM, Chris Kerzich, claimed: "***demand for the Endurance has been overwhelming. And so we have a really interesting market of, of the fleet commercial user. Right now we have over 100,000 pre-orders for the Endurance***."

321. The statements in the prior paragraph touted Lordstown's supposed pre-orders and therefore were false and misleading for the reasons set forth in paragraph 248. Furthermore, the statements were especially misleading by representing that demand was "overwhelming" and from "fleet commercial user[s]" because it implied that Lordstown was receiving reliable orders representing true demand from its target market. This was untrue as the number of pre-orders was completely fabricated, and at a minimum, involved a significant number of made-up orders from individuals and non-fleet organizations.

322. On February 17, 2021, Lordstown hosted a news conference. During that conference, on behalf of LTM, Chris Kerzich, claimed: "***as we stated earlier, we have overwhelming demand for commercial, from commercial users for this vehicle – over a hundred thousand pre-orders, uh, right now it's gonna take us a couple of years to fulfill that demand. We are really trying to ramp up as fast as we can to, to meet the demand***."

323. The statements in the prior paragraph touted Lordstown's supposed pre-orders and therefore were false and misleading for the reasons set forth in paragraph 248. Furthermore, the statements were especially misleading by representing that Lordstown had "overwhelming demand" from "commercial users" because it implied that Lordstown was receiving reliable orders representing true demand from its target market. This was untrue as the number of pre-orders was completely fabricated, and at a minimum, involved a significant number of made-up orders from individuals and non-fleet organizations.

324. On February 23, 2021, *Yahoo Finance* hosted an interview with Defendant Burns. During the interview Defendant Burns was asked "how many pre-orders do you have and who's ordering these trucks?" and Burns responded:

> Yeah. We set out a fleet. This is a full-size pickup truck, and as I think most people know, it's a favorite of consumers and of workers. ***Our initial foray is into fleets***

> ***and we have pre-sold 100,000 of these to various fleets across America. So, really a big appetite.*** You've got a fleet that's been using a 17 mile per gallon pickup truck for the last 30 years and we come out with one that gets the equivalent of 75 miles per gallon. And it's just what we had hoped, a lot of pent up demand, a lot of excitement around it. And you do these pre-orders to get a feel what to tool for. In this business, tooling and all the costs associated with the automation required to bring these to market. ***And so it gives you a good feel of what to tool for, what to build for, and we've been just really happy with 100,000 pre-orders.***

325. The statements in the prior paragraph touted Lordstown's supposed pre-orders and therefore were false and misleading for the reasons set forth in paragraph 248. Furthermore, the statements were especially misleading because the use of the word "pre-sold" implied that the pre-orders were concrete, when in reality, the purported "pre-orders" were anything but concrete and often, for example, were based on supposed deals where the persons or entities signed a non-binding LOI, did not even sign a non-binding LOI, or were clearly not in a position to order the number of trucks Lordstown was counting from them. In addition, this statement was misleading because it claimed that the 100,000 orders came from fleets, when in reality they came from a variety of individuals and non-fleet organizations.

326. On February 23, 2020, after markets closed, Defendant LTM posted a message to its Twitter account linking to the *Yahoo Finance* interview mentioned in paragraph 348. The false and misleading Twitter message was as follows:



327. The statement in the prior paragraph touted Lordstown's supposed pre-orders and therefore was false and misleading for the reasons set forth in paragraph 248. Furthermore, the statement was especially misleading because the use of the word "pre-sold" implied that the pre-orders were concrete, when in reality, the purported "pre-orders" supporting the 100,000 figure were anything but concrete and often, for example, were based on supposed deals where the persons or entities signed a non-binding LOI, did not even sign a non-binding LOI, or were clearly not in a position to order the number of trucks Lordstown was counting from them.

(2) Statements Concerning Lordstown's Production Capabilities

328. Statements touting Lordstown's supposed production capabilities, including its ability to begin production in September 2021, were false and misleading, because Lordstown did not realistically have any hope of beginning the kind of production it was boasting during that time period. While Lordstown may literally manufacture some vehicles in that month, the statements conveyed that Lordstown would begin commercial production and begin delivering vehicles in that time period, but this omitted to disclose the present fact that doing so was unrealistic or impossible, given the development, manufacturing, and regulatory steps that the company would need to be complete by that time to begin commercial production. At the time of making these statements, Defendants omitted to disclose present facts about its current development, production, and regulatory progress that rendered its statements claiming production would begin in September materially incomplete and misleading. The lauded September production date was material to investors because it conveyed information about the status of Lordstown's production capabilities and regulatory process, and because it was highly relevant to when Lordstown would begin generating revenue and when it would become profitable.

329. Statements claiming that Lordstown had (or, upon completion of the Merger, would have) the financial resources needed to begin production in September 2021 were false and misleading because Lordstown did not have the financial resources needed to begin production in that time frame. Defendants failed to disclose specific information about the costs and expenses necessary to begin commercial production. Information about whether Lordstown had the financial resources needed to begin production in September 2021 were material to investors because they conveyed important information about the status of Lordstown's production capabilities, conveyed important information about the risks that Lordstown would become insolvent or risk insolvency and need to issue a "going concern" notice, conveyed important information about the risk to investors that their shares would be diluted or otherwise made less valuable through capital markets or other fundraising activity, and conveyed important information about the prospect and timeline over which Lordstown could be expected to generate revenue and positive cash flows.

330. On August 3, 2020, before markets opened, DPHC filed proxy materials with the SEC, which included a press release issued by Lordstown and DPHC. The press release stated:

> ***To accomplish Lordstown's mission, in November 2019 the company purchased the former General Motors Lordstown Assembly Plant, a 6.2 million square foot facility estimated to be capable of producing in excess of 600,000 electric vehicles annually, with only modest incremental investment. Lordstown is believed to be one of the first electric vehicle manufacturers to acquire a near production ready plant. The Lordstown complex provides Lordstown with critical flexibility and line-of-sight to production, immediate access to a well-trained and highly capable workforce in Ohio's Mahoning Valley, and positions Lordstown to be first to market.***

331. The statements in the prior paragraph touted Lordstown's supposed production capabilities and misrepresented the investment necessary for Lordstown to begin commercial production, and therefore were false and misleading for the reasons stated in paragraphs 328-29.

332. On August 3, 2020, before markets opened, DPHC filed proxy materials with the SEC, which included an investor presentation issued by Lordstown. The presentation included the following graphic, which contains false and misleading statements:



333. The statements in the prior paragraph touted Lordstown's supposed production capabilities and misrepresented the investment necessary for Lordstown to begin commercial production, and therefore was false and misleading for the reasons stated in paragraphs 328-29. Specifically, it was especially misleading that Lordstown boasted the capabilities of the plant because it implied that the company could achieve its production timeline, when in reality, Lordstown was unequipped to bring the Endurance to production by September 2021.

334. On August 3, 2020, before markets opened, DPHC filed proxy materials with the SEC, which included an investor presentation issued by Defendant Lordstown, and thus DPHC and Lordstown made the statements therein. The presentation included the following graphic, which contains false and misleading statements:



335. The statements in the prior paragraph touted Lordstown's supposed production capabilities and misrepresented the investment necessary for Lordstown to begin commercial production, and therefore were false and misleading for the reasons stated in paragraphs 328-29. The statements were especially misleading because they claimed that in addition to having financial resources needs to begin production, Lordstown would also have resources to meet the much more challenging further step of operating profitably, *i.e.,* having positive cash flows.

336. On August 3, 2020, before markets opened, DPHC filed proxy materials with the SEC, which included an investor presentation issued by Lordstown. The presentation stated: "***Based on the excellent condition of the plant and equipment at the Lordstown Complex, LMC Projects ~$120 million of investment to retool the equipment for full production readiness.***"

337. The statement in the prior paragraph touted Lordstown's supposed production capabilities and misrepresented the investment necessary for Lordstown to begin commercial production, and therefore was false and misleading for the reasons stated in paragraphs 328-29. Specifically, it was especially misleading that Lordstown boasted the condition of the Plant because it implied that the company could achieve its production timeline, when in reality, Lordstown was unequipped to bring the Endurance to production by September 2021.

338. On August 3, 2020, before markets opened, DPHC filed proxy materials with the SEC, which included a transcript of an analyst call that Defendants Burns and Hamamoto participated in. The following statement was uttered by Defendant Hamamoto during that call:

> Based on strong investor demand, the PIPE was upsized to 500 million dollars, anchored by GM as well as several long-term institutional investors, including Fidelity, BlackRock and Federated. ***This capital will fully fund Lordstown's current business plan and position the company to achieve positive EBITDA and cash flow, and there are no cashing out shareholders. Finally, we feel investors have the opportunity to buy into this exciting and high-growth company at a very compelling valuation, especially on a relative basis.***

339. The statements in the prior paragraph touted Lordstown's supposed production capabilities and misrepresented the investment necessary for Lordstown to begin commercial production, and therefore were false and misleading for the reasons stated in paragraphs 328-29. The statements were especially misleading because they claimed that in addition to having financial resources needs to begin production, Lordstown would also have resources to meet the much more challenging further step of operating profitably, *i.e.,* having positive cash flows.

340. On August 3, 2020, before markets opened, DPHC filed proxy materials with the SEC, which included a transcript of an analyst call that Defendants Burns and Hamamoto participated in. The following statement was uttered by Defendant Hamamoto during that call:

> Through the combination of DiamondPeak cash in trust and the 500 million dollar PIPE investment we expect to add 675 million dollars to the pro-forma Balance Sheet. ***The cash proceeds will be used to fund production of the Endurance and we do not expect that we will need any additional equity capital requirements to achieve positive cash-flow. We expect to achieve breakeven or better EBITDA margins in 2022, our first full year of production, and eclipse 10 percent by 2024.***

341. The statements in the prior paragraph touted Lordstown's supposed production capabilities and misrepresented the investment necessary for Lordstown to begin commercial production, and therefore were false and misleading for the reasons stated in paragraphs 328-29. The statement was especially misleading because it claimed that in addition to having financial resources needs to begin production, Lordstown would also have resources to meet the much more challenging further step of operating profitably, *i.e.,* having positive cash flows.

342. On October 26, 2020, after markets closed, Defendant Burns appeared on video to "ring the bell" at the NASDAQ. He made the following statement: "***This brings the final chapter where we get the necessary resources to be able to bring [the] Endurance all the way to market. . . . We fully intend for this to be the first full-size electric pickup truck in the world, specifically in the US. And we are on target to do that in September***."

343. The statements in the prior paragraph touted Lordstown's supposed production capabilities and misrepresented the investment necessary for Lordstown to begin commercial production, and therefore were false and misleading for the reasons stated in paragraphs 328-29. Specifically, it was especially misleading that Lordstown boasted the capabilities of production because it implied that the company could achieve its production timeline, when in reality, Lordstown was unequipped to bring the Endurance to production by September 2021.

344. On October 26, 2020, after markets closed, LTM issued a press release stating, which quoted Defendant Burns as stating: "***We have a near production-ready plant and approximately $675 million in proceeds from this transaction, which is more than enough funding to get us through initial production***."

345. The statements in the prior paragraph touted Lordstown's supposed production capabilities and misrepresented the investment necessary for Lordstown to begin commercial production, and therefore were false and misleading for the reasons stated in paragraphs 328-29. The statements were especially misleading because they claimed that Lordstown had the financial resources needed to begin production.

346. On October 26, 2020, during the trading day, *The Detroit News* published an article that included statements from Defendant Burns. A relevant passage quoting Defendant Burns was as follows:

> "***It gives us the financial acumen to be able to get this done***," Burns said of the merger, noting that he chose to go through a special purpose acquisition company rather than a traditional public offering because it's faster. "***Since we're in a race to be first, it was really important for us to get that funding, so that we could be assured of production by September***."

347. The statements in the prior paragraph touted Lordstown's supposed production capabilities and misrepresented the investment necessary for Lordstown to begin commercial production, and therefore were false and misleading for the reasons stated in paragraphs 328-29.

348. On October 26, 2020, during the trading day, the Detroit News published a video of Defendant Burns discussing Lordstown. Burns stated: "***September deliveries start.*** We have pre-sold 40,000 of them to fleet customers already and we expect that number to increase dramatically between now and then."

349. The statements in the prior paragraph touted Lordstown's supposed production capabilities and misrepresented the investment necessary for Lordstown to begin commercial

production, and therefore were false and misleading for the reasons stated in paragraphs 328-29. Specifically, it was especially misleading that Lordstown boasted that deliveries would start in September, when in reality, Lordstown was unequipped to bring the Endurance to production by September 2021.

350. On November 16, 2020, before markets opened, Defendant LTM filed a Form 8-K with the SEC, attaching a press release. The press release was titled: "Lordstown Motors Releases Business Updates; ***Remains on Track to Begin Production of the Lordstown Endurance in September 2021***." The first line of the press release stated:

> Lordstown Motors Corp. (Nasdaq: RIDE), ("Lordstown Motors"), a leader in electric light duty trucks focused on the commercial fleet market, today announced recent commercial, operational and strategic developments, ***as it remains on track to begin production of the Lordstown Endurance, the world's first full-size, all-electric pickup truck, in September 2021***.

351. The statement in the prior paragraph touted Lordstown's supposed production capabilities and misrepresented the investment necessary for Lordstown to begin commercial production, and therefore was false and misleading for the reasons stated in paragraphs 328-29. Specifically, it was especially misleading that Lordstown touted that the Endurance would be produced in in September 2021, when in reality, Lordstown was unequipped to bring the Endurance to production by September 2021.

352. On November 16, 2020, Defendant Burns participated in an interview hosted by the investor website *IPO Edge*. During the interview, Burns stated: "***Our first fully electric full size pickup truck, the Endurance, is coming out in September.***"

353. The statement in the prior paragraph touted Lordstown's supposed production capabilities and misrepresented the investment necessary for Lordstown to begin commercial production, and therefore was false and misleading for the reasons stated in paragraphs 328-29. Specifically, it was especially misleading that Lordstown boasted that the Endurance was

"coming out in September," when in reality, Lordstown was unequipped to bring the Endurance to production by September 2021.

354. On December 21, 2020, after markets closed, Defendant LTM filed a Form 8-K with the SEC. This filing stated: "***The Company remains on track to begin production of the Endurance in September 2021***."

355. The statement in the prior paragraph touted Lordstown's supposed production capabilities and misrepresented the investment necessary for Lordstown to begin commercial production, and therefore, was false and misleading for the reasons stated in paragraphs 328-29. Specifically, it was especially misleading that Lordstown boasted that the Endurance would be produced in in September 2021, when in reality, Lordstown was unequipped to bring a truck to production by September 2021.

356. On January 11, 2021, before markets opened, LTM issued a press release that included the following statement:

> The Lordstown Endurance is a full-size, all-electric pickup that has a range of 250 miles, the equivalent of 600hp and can tow up to 7,500lbs. ***After successful prototype and Alpha builds, Lordstown is now building the first Beta Endurance vehicles and is on track for start of production in September of this year.*** The initial Endurance is a crew cab configuration with medium bed length, priced at $45,000 after federal rebate.

357. The statements in the prior paragraph touted Lordstown's supposed production capabilities and misrepresented the investment necessary for Lordstown to begin commercial production, and therefore were false and misleading for the reasons stated in paragraphs 328-29. Specifically, it was especially misleading that Lordstown boasted that the Endurance would be produced in in September 2021, when in reality, Lordstown was unequipped to bring the Endurance to production by September 2021.

358. On January 28, 2021, before markets opened, Defendant LTM issued a press release stating: "***[W]e remain on track to meet our September start-of-production timeline*** while continuing to see indicators of strong demand**.**"[11]

359. The statements in the prior paragraph touted Lordstown's supposed production capabilities and misrepresented the investment necessary for Lordstown to begin commercial production, and therefore were false and misleading for the reasons stated in paragraphs 328-29. Specifically, it was especially misleading that Lordstown boasted that the Endurance would be produced in in September 2021, when in reality, Lordstown was unequipped to bring the Endurance to production by September 2021.

360. On February 18, 2021, after markets closed, Defendant Burns appeared on CNBC for an interview. The interviewer asked Burns "in terms of the September timeframe for full production of the Endurance Steve, do you have enough liquidity to get you to there from here?" Burns responded: "***Yep. We've been really maniacal about that and we're on track***."

361. The statement in the prior paragraph touted Lordstown's supposed production capabilities and misrepresented the investment necessary for Lordstown to begin commercial production, and therefore, was false and misleading for the reasons stated in paragraphs 328-29. Specifically, it was especially misleading that Lordstown boasted the capabilities of production because it implied that the company could achieve its production timeline, when in reality, Lordstown was unequipped to bring the Endurance to production by September 2021.

362. On February 23, 2021, *Yahoo Finance* hosted an interview with Defendant Burns. During the interview Burns stated: "***Production starts in September.***"

[11] The statement concerning demand is also alleged to be false and misleading, but has not been highlighted in this sub-Section because it is addressed in Section V(A)(1).

363. The statement in the prior paragraph touted Lordstown's supposed production capabilities and misrepresented the investment necessary for Lordstown to begin commercial production, and therefore, was false and misleading for the reasons stated in paragraphs 328-29. Specifically, it was especially misleading that Lordstown boasted that the Endurance would be produced in in September 2021 when in reality, Lordstown was unequipped to bring the Endurance to production by September 2021.

364. On March 17, 2021, after markets closed, Defendant LTM issued a press release that stated:

> "***Timeline to Start of Production (SoP) in September 2021 remains on track***, with beta prototype build underway and the first beta vehicles to be ready by the end of March; vehicles to be sent for durability, crash, validation, and lighting testing with various partners and to early initial customers for feedback."

365. The statement(s) in the prior paragraph touted Lordstown's supposed production capabilities and misrepresented the investment necessary for Lordstown to begin commercial production, and therefore, was false and misleading for the reasons stated in paragraphs 328-29. Specifically, it was especially misleading that Lordstown boasted that the Endurance would be produced in in September 2021, when in reality, Lordstown was unequipped to bring the Endurance to production by September 2021.

(3) Defendants' Omissions of Information Required by Item 105

366. The federal securities laws—in particular, Regulation S-K, Item 105 (17 C.F.R § 229.105)—require that certain public filings include a description of "the material factors that make an investment in the registrant or offering speculative or risky." ("Item 105 Disclosure"). These Item 105 Disclosures must be made in proxy statements, registration statements, and quarterly and annual reports.

367. The failure to disclose the information required by Item 105 Disclosures is a material omission and actionable under §10(b) and §14(a). The failure to disclose material risks is material to investors because this information helps investors to understand the company they are investing in, and the specific factors that make investment in that company risky. Defendants provided certain generic risk language, but failed to adequately disclose the material risks that made investment in Lordstown risky.

368. On August 24, 2020, before markets opened, DPHC published the following risk language in its proxy materials, which materials included a letter signed by Defendant Hamamoto:

> The design, manufacture and sale of vehicles is a capital intensive business. Although Lordstown anticipates that the funding from the Business Combination will provide sufficient capital to fund the completion of the Endurance and the retooling of the Lordstown Complex necessary to commence commercial production, Lordstown's business plan to design, produce, sell and service commercial electric pickup trucks, including the Endurance, is expected to require continued capital investment to fund operations, continue research and development and improve infrastructure. Unlike established OEMs that have greater financial resources than Lordstown does, there can be no assurance that Lordstown will have access to the capital Lordstown needs on favorable terms when required or at all. If Lordstown cannot raise additional funds when Lordstown needs them, Lordstown's financial condition and business could be materially adversely affected.

369. This statement in the prior paragraph failed to disclose the risk that Lordstown would need significantly more capital than it was raising to even begin commercial production of the Endurance truck, and instead claimed that the Merger would provide sufficient capital to begin such production. Lordstown failed to disclose the risk that it would lack sufficient capital to begin commercial production, because the money made available to Lordstown in the Merger was simply insufficient to begin production—even if no major unforeseen events occurred. In other words, DPHC failed to disclose that Lordstown's purported production plan was unrealistic and simply did not provide sufficient capital to reach its goals.

370. On October 8, 2020, after markets closed, DPHC published a proxy statement with the materially the same risk language listed in paragraph 368, and again failed to disclose the material risks identified in the paragraph 369. That proxy statement was signed by Defendant Hamamoto and included a letter signed by Defendant Hamamoto.

371. On November 12, 2020, after markets closed, Defendant LTM published a Registration Statement, with materially the same risk language listed in paragraph 368, and failed to disclose the material risks identified in the paragraph 369. That proxy statement was signed by Defendant Hamamoto and included a letter signed by Defendant Hamamoto.

372. On November 15, 2020, Defendant LTM published a quarterly report on Form 10-Q that incorporated by reference the same risk language listed in paragraph 368, and again failed to disclose the material risks identified in the paragraph 369. That 10-Q was signed by Defendants Burns and Rodriguez.

373. On December 1, 2020, Defendant LTM published an amended Registration Statement with materially the same risk language listed in paragraph 368, and again failed to disclose the material risks identified in the paragraph 369. That amended Registration Statement was signed by Defendants Burns, Rodriguez, and Hamamoto.

374. On December 4, 2020, after markets closed, Defendant LTM filed a prospectus with the SEC with materially the same risk language listed in paragraph 368 prior, and again failed to disclose the material risks identified in the paragraph 369.

B. Allegations of Scienter as to Certain Claims

375. The allegations in this Section allege scienter as to each Defendant, except Defendant Hamamoto. The inference and conclusion that Defendants acted with scienter, *i.e.*, that they intended to mislead the investing public or were reckless as to the possibility of

misleading the investing public, is supported by the following facts. While organized into sub-Sections for readability, the following allegations of scienter are mutually corroborating.

(1) Motive and Circumstantial Evidence of Scienter

376. From the moment Defendant Burns founded Lordstown, it had a very unique trajectory. Burns had been ousted from Workhorse and Lordstown offered him an opportunity to revive his career. Everything about Lordstown's business was predicated upon buying the Lordstown plant from GM, which was itself a unique opportunity likely only existing due to political pressure on GM to sell the plant — in the words of President Trump, GM was to "do something quickly."

377. Defendant Burns had the unique opportunity to buy the Lordstown plant, but it also posed huge challenges. The plant was one of the largest automotive plants in the country, and such plants are either on or off—they are not built for limited small batch production. This meant that Burns needed a business plan whereby he could sell the idea that the business would reach scale immediately.

378. At the same time, prior to the Merger, Burns had supposedly "endeavored" to find financing, but had failed to do so. He needed financing to convert the abandoned GM plant into something that could be useful to the nascent startup. Recall, at the time of the Merger, Lordstown had essentially no assets.

379. So Defendant Burns needed a narrative that would convince investors to approve the Merger so that he could get financing for the plant. The pre-order lie was the perfect solution. Burns could tell investors that Defendants had an innovative business idea, and a batch of customers ready to buy—the missing ingredient was just investor cash that could allow the company to meet a production schedule. Defendant Burns told investors that the only cash he

needed was what would be raised in the Merger, and that the company would start selling in less than a year. It was exactly the story Burns needed to tell to get investors to back his project.

380. Without Defendants' misrepresentations about the pre-order quantities and production capabilities of the business, the company likely would have failed. This unique motive—the motive to avoid the existential risk of insolvency by raising money under false premises in a take-public Merger—goes far beyond the ordinary motive of executives to manage a company profitably. This motive strengthens the inference of scienter—*i.e.*, the common-sense conclusion that Defendant Burns succumbed to this motive and defrauded investors is compelling, especially in conjunction with the other allegations of scienter alleged herein.

(2) Scienter as to Lordstown's Supposed Pre-Orders

381. While the pre-orders were publicly described as a legitimate tool for Lordstown to assess the demand for its product, numerous facts demonstrate that the true purpose of developing the order book was to mislead investors about the value of the business.

382. **Defendants Used the Pre-Orders to Sell Lordstown to Investors.** Many facts show that Defendants viewed the gathering and lauding of pre-orders as a key tool to persuade investors to place a high value on Lordstown's stock. This fact directly indicates that Defendants understood the importance of the information to investors and the risk that investors would be misled if Defendants misrepresented those pre-orders. It also supports the inference that the now-admitted misrepresentations were either a deliberate effort to mislead investors or the product of a reckless indifference to the possibility of investors being so misled. Further, former employees of Lordstown establish that Defendants intentionally permitted the pre-order book to be inflated as part of their effort to induce investors to place a high value on the company.

383. While Lordstown did not publish the LOI form in any of their public filings, the form was published by the Hindenburg Report. Notably, while the form states in multiple ways

that the indication of interest is entirely non-binding and states that it does not require any sort of deposit payment, one of its very few concrete terms relates to publicity. The LOI states that the parties will "consider cooperating in drafting and release a press release" regarding the agreement. This indicates the direct connection between procuring the LOI's and advertising them to investors, which runs contrary to Burns' assertion that the LOIs were merely a tool to assess demand for the truck.

384. Lordstown relied heavily on third-party contractors from a company called Climb2Glory to procure supposed pre-orders. This was notable for several reasons – including because Burns had publicly claimed that the efforts to market the truck were "limited" at the time of the Merger, even though, by that time, they had already been relying heavily on Climb2Glory, who had been frantically "marketing" the Endurance since at least September 2020, well before the Merger. Contrary to Defendant Burns' repeated representations that pre-orders had "been almost all incoming" and the result of "pent up demand," in fact Lordstown's order book was dependent on its marketing effort, including the marketing efforts of Climb2Glory. Furthermore, it was peculiar to describe Lordstown's marketing effort as "limited" because Climb2Glory was being paid a commission of $50 per truck pre-order, a hefty sum for entirely non-binding orders, from a company that (at that time) had essentially no spare cash.

385. Climb2Glory published a case study on their website regarding the success of their marketing effort on Lordstown's behalf.[12] That case study makes clear that Climb2Glory was instructed by Lordstown as to the true purpose of running up the book of supposed orders. First, Climb2Glory notes that when they were hired, Lordstown "was in the middle of a

[12] This case study stayed on the Climb2Glory website until the Hindenburg Report surfaced and then was scrubbed from the internet, in an apparent attempt to hide the evidence; it does not appear that Climb2Glory has similarly deleted any of their case studies for other companies.

significant effort to raise funds to complete its preparations for full production." Then they directly state: "**Fundraising efforts** were **linked directly** to the generation of customer leads and Endurance pre-orders; the more pre-orders achieved, the greater the confidence levels of prospective investors." This same point is reiterated again later in the case study:

> Fundraising was directly linked to pre-order generation — the faster the pre-orders arrived, the greater **investors' confidence** would be in the company and the faster funds would flow in. When we met them, LMC's primary challenge was that it was not generating pre-orders fast enough. It needed to find a way to accelerate its pre-order capture process.

386. According to the Hindenburg Report, Climb2Glory reiterated this same sentiment—that the purpose of the pre-orders was to influence investor sentiment—during a phone interview. The Hindenburg report quotes Climb2Glory managing partner Pat Mangin, as stating:

> Because of the letters of intent from Climb2Glory and some marketing, Diamond Group came to the table and they did the reverse merger. So our role was to help influence and acquire interest that would lead to investment. That was Climb2Glory's role.

387. As detailed herein, Defendants routinely used their book of supposed pre-orders to market the company to investors, including in media appearances, proxy materials, other SEC filings, press release, and in various other events. For example, the pre-orders were prominently featured in the investor deck, filed as proxy materials, as a "Key Investment Highlight" given the supposed "[d]emand proven with pre-orders covering first year production" and with a flashy list of the logos showing "Selected Pre-Order Customers."

388. CW-1 recalled the message from executives at Lordstown being "fairly explicit" that they needed to obtain these reservations in order to get additional financing from investors. According to CW-1, Defendant Flannery expressed this sentiment to CW-1 directly in meetings that he attended. According to CW-1, he had multiple conversations with Flannery per week and

recalled conversations where Flannery explicitly made the point that the LOIs were for generating investment interest. CW-1 continued to say that there was pressure to meet benchmarks of pre-orders solely for Lordstown's investment timeline. CW-1 continued to say that Flannery regularly said that he had spoken with former CEO Steve Burns and provided him with updates about the pre-orders. CW-1 noted that he could not see how Burns would not have been aware of the practices surrounding the LOIs given his communications with Flannery who knew everything related to sales at that time.

389. CW-2 recalled that Flannery was Burns' "right hand man" and that much of Lordstown's staff was comprised of people with personal connections to Burns, including members of his family or his church. As a result, according to CW-2 much of the senior staff was not qualified. CW-2 added that much of the experience of working at Lordstown was a result of the "nature of Steve Burns."

390. CW-2 explained that during his tenure Lordstown's sales team was comprised of Vice President of Business Development Caimin Flannery, a director of sales, and up to two sales representatives. According to CW-2, Climb2Glory reported to Flannery and was paid a commission of $50 for each truck listed in a letter of intent and that the sales representatives were also financially incentivized to get as many LOIs as they could.

391. CW-2 characterized Lordstown's pursuit of LOIs, which were marketed as Pre-Orders, as desperate, explaining that there was "nothing binding" about the agreements Lordstown was getting, which he described as "pie in the sky." According to CW-2, the "desperation" around reaching pre-order totals was fueled by the effort to get funding for Lordstown, adding that the purpose of the pre-orders was to generate buzz and that that was "all

it was for." CW-2 advised that the pressure related to sales and the LOIs came directly from Flannery and Burns.

392. According to CW-2, there was "zero" due diligence conducted on the ability of potential customers to support their orders based on existing fleet size "by design," adding that the company did not want to know, because they just wanted to get the signed letters. CW-2 explained that when it came to securing letters of intent the only guideline provided to Lordstown's sales staff was to get "as many as possible in the shortest period of time." CW-2 continued to say that there were no instructions regarding what types of customer-leads to pursue.

393. According to CW-2, Lordstown "counted everything," as pre-orders, including all the LOIs, even if the customer's ability to fulfill them was not apparent or even likely. CW-2 continued to say that the "pressure" to continue to grow LOI numbers "100%" came from Burns and Flannery. CW-2 explained that Burns "micromanaged every aspect" of Lordstown's business down to the "smallest minutia." CW-2 stated that he "talked with Steve frequently," and that Burns "knew every single order" that was counted as a Pre-Order, as well as the customers behind them. CW-2 also recalled talking with a more senior employee at Lordstown about how the LOIs were "all smoke and mirrors."

394. As an example of Burns' knowledge of the truth about the pre-orders, CW-2 recalled that one of the two sales associates had gotten a 1,000 truck LOI from Innervations LLC, but that someone had done a quick search and seen that it had no operating history and was a two-person operation run out of an apartment. According to CW-2, Lordstown spokesperson Ryan Hallett had indicated that they should not publish a press release because of how weak the LOI was. CW-2 explained that Hallett did not want to publicize the LOIs given how they were

non-binding and given that everyone at Lordstown knew that all the big orders were "BS." Lead Counsel understands, from talking with CW-2, that a member of the sales team had called Burns to explain how sketchy the LOI with Innervations was, and has strongly advised Burns not to publish a press release about Innervations, but despite that warning Burns went ahead with publishing a press release and counted Innervations in the tally of pre-orders.

395. **Defendants blatantly misrepresented the pre-orders, in ways that further demonstrate that their true motive was to mislead investors**. While Lordstown occasionally disclosed that the orders were "non-binding," Defendant Burns frequently described them in much stronger terms, indicating his clear desire to exaggerate the veracity of the supposed orders. *E.g.*, Burns: "***our first year of production already pre-sold.***" (June 25, 2020); Burns: "the Endurance has been met with enthusiastic support, and to date, ***we have secured $1.4 billion of pre-orders."*** (August 23, 2020); Burns: ***the pre-orders represent "over $1.4 billion of potential revenue."*** Lordstown Investor Presentation***: "Lordstown has already received ~27K orders (average order size of ~300 trucks)."*** (August 3, 2020); Burns: ***"We got 27,000 orders. We got customers really really wanting the truck."*** (August 5, 2020); President Trump, with Burns agreeing, ***"the sales are great"*** (September 28, 2020); Burns: ***"to have that many commercial vehicles sold already is a big deal."*** (November 16, 2020); Burns: ***"we just got an order for 400 vehicles . . . our average order is about 500 trucks per order."*** (November 16, 2020); Burns: ***"average order size of nearly 600 vehicles per fleet."*** (January 11, 2021).

396. **Defendant Burns' own admissions support scienter**. There is no doubt that Defendant Burns always knew that the company had neither "pre-sold" the trucks nor "secured $1.4 billion in pre-orders," that the pre-orders were neither "orders" nor "sales," that the trucks had not been "sold," and that the company did not have a 500 truck "order" or any specific

"order size." In fact, on March 18, 2021, Defendant Burns admitted that he always knew this after the Hindenburg Report surfaced, placidly claiming on CNBC that "all we've done is gone out and gauge interest," and "[w]e've never said we had orders." The now-clear attempt to trump-up the significance of the pre-orders, combined with the undisclosed truth about the order book, firmly shows Defendant Burns' true intent was to mislead investors about the order book and its significance.

397. Similarly, Defendants frequently claimed that various potential customers associated with the government were unable to make pre-orders. *E.g.*, Defendant Burns: "That doesn't count municipality, state vehicles, federal vehicles, military vehicle . . . they **can't** do pre-orders. They're government entities" (February 6, 2021); Lordstown: "This figure does not capture interest the company has received from organizations that are **not in position** to be able to place pre-orders." (November 16, 2020).

398. As a threshold issue, as explained herein, the pre-order figures that Defendants were boasting did in fact include supposed pre-orders from government entities. Therefore, these extremely specific statements by Defendant Burns clarifying where the orders were coming from were just brazenly false—and yet Burns spoke on the topic definitively. Furthermore, not only did these statements falsely convey that there was even greater demand than implied by Lordstown's present order book (because the book did not include all these supposed potential customers), but it also created a false picture regarding the certainty of the orders that had supposedly been procured. In other words, Defendant Burns was representing that the "pre-orders" were not mere indications of potential interest (which governmental organizations obviously **could** provide), but were instead something far more firm (which government organizations "could not" provide).

399. Defendant Burns made specific statements about E Squared that evidence a brazen disregard for the truth. As previously stated, Lordstown had counted 14,000 pre-orders from E Squared, even though it was a one-man operation run out of a modest apartment, with no fleet, and no history selling to fleets—despite the fact that this order meant that E Squared's supposed order would have been worth $735 million in revenue. Even though E Squared had no operations that called for the use of multiple trucks (aside from the purported hope of one day leasing or selling trucks to potential customers), in the announcement for the pre-orders Burns stated that the arrangement "positions E Squared Energy to integrate sustainable energy systems into **every element of their business structure**." This now-obvious chicanery evidences Burns' willingness to either deliberately mislead investors or to recklessly trumpet the pre-orders without concern for the truth.

400. Defendant Burns also made statements claiming that he was knowledgeable about Lordstown's sale process. For example, on February 6, 2021, Burns stated in an interview posted to YouTube that, "And I think these orders are very, very sticky because I know what it takes to get them."

(3) Scienter as to Lordstown's Production Capabilities

401. In a now-eerie preview of his true intent, Defendant Burns disclosed to a room of media correspondence at an event hosted by the *Business Journal* in Youngstown Ohio on March 6, 2020, that "in a lot of ways **this whole business is like a kidnapping case**, and we have to show proof of life. . . So we are doing little bits as we march toward production at the end of the year."

402. This seems to have meaningfully summed up Defendant Burns' view of public disclosures. He constantly provided "proof of life" updates to the market—not to accurately disclose the status of production, but to convince investors to put their confidence in him, despite

the fact that the company's schedule was unachievable and that such updated concealed massive risks and serious incidents at the company.

(4) The "Resignations" and Conclusions of the Internal Investigation Support the Inference of Scienter

403. The resignations of Defendants Burns and Rodriguez support the inference of scienter based on the specific facts of this case. Both resignations occurred on the very day that the special committee of Lordstown's board of directors published their report finding that the company (which spoke through Defendants Burns and Rodriguez) had made misrepresentations. The timing of these resignations, especially in light of the fact that the company did not have replacements lined up, strongly supports the conclusion that these executives were pushed out for their misconduct. The fact that the insiders conducting and reviewing the investigation called for the immediate ouster of Defendants Burns and Rodriguez strongly suggests that additional evidence available within the company demonstrates that Defendants' misstatements were made with scienter. In fact, Lordstown Defendant Schmidt confirmed the obvious: that the resignations were at least partially a result of the internal investigation, which Schmidt explained at an event at the Automotive Press Association on June 15, 2021.

404. Additionally, Defendant Burns also resigned from his role as chairman of Lordstown's board of directors. This powerfully indicates that his resignation was not the result of any decision about his operational capabilities, but instead was the result of his misconduct.

(5) The SEC and DOJ Investigations Support the Inference of Scienter

405. While the existence of government investigations is not *alone* sufficient to establish scienter, they do add support to the inference of scienter when combined with the other facts alleged herein.

406. The fact that both the SEC and DOJ are investigating Defendants over the same conduct alleged in this Complaint supports the inference of scienter. Prior to the announcement of an SEC investigation, the agency typically engages in fact finding to determine if the matter is sufficiently suspicious to warrant their attention. That the SEC has been investigating Lordstown for many months, and began such investigation even before the Hindenburg Report was published, provides support for the inference of scienter. Similarly, the DOJ investigation also supports the inference of scienter. Defendants have admitted that the investigations relate to the same conduct at issue in this case.

407. Most importantly, the SEC investigation demonstrates scienter in a far more direct sense as well. On February 17, 2021, Lordstown received an SEC inquiry that it admits related to the same claims alleged in this action. Defendants either knew of this inquiry or were reckless in not knowing of the inquiry, as management of a publicly traded company (especially one of this relatively modest size) would be reckless in not knowing of an SEC inquiry into the business' public disclosures. Nevertheless, even after receiving this inquiry, Defendant Burns continued to make the same sort of false and misleading statements— including those statements that were found to be misrepresentations by the independent committee's investigation. That Defendant Burns continued to make these misrepresentations after being put on notice by the SEC as to their possible illegality is nearly incontrovertible evidence of his scienter as to the statements made after February 17, 2021, and his willingness to continue to brazenly misrepresent the business even after receiving an SEC inquiry also strongly supports the inference of Defendants Burns' scienter more generally, including for the period before receipt of the SEC's inquiry.

(6) Both the Pre-Orders and Lordstown Production Capabilities Were Essential to the Company's Success

408. As described herein, the Endurance is Lordstown's only product, whereby the vast majority of Lordstown's revenue would be generated from sales of the Endurance once it reaches production. As a result, and given that Lordstown was a pre-revenue company, its ability to (1) lock in Endurance purchasers (i.e., obtain "serious" real pre-orders) and (2) fulfill the pre-orders on time (*i.e.*, meet touted production deadlines) was immensely important to the financial success of Lordstown.

409. Because the pre-orders and production capabilities for Endurance were core to the company's success, the materially false statements and omissions detailed herein could not have occurred without the Individual Defendants' knowledge and approval.

410. Defendants frequently touted the importance of Lordstown's pre-orders, with, for example, Defendant Burns stating that the company's entire "first year of production [is] already pre-sold." Further, Defendants frequently boasted of Lordstown's ability to be first to market and that it would be able to begin production of the Endurance by September 2021.

411. Given the multitude of statements concerning the pre-orders and production capabilities during the Class Period, as well as its importance to the company's financial success, it is unreasonable to think that the Individual Defendants—who were responsible for tracking or reporting Lordstown's revenue—would be unaware of the financial significance and status of the Endurance.

412. The Individual Defendants were highly sophisticated and in positions to know that their statements concerning both the pre-orders and production capabilities were false. For example, Defendant Burns founded both Lordstown and Workhorse, the latter of which he founded in 1998, meaning that he has been significantly involved in the EV and automotive

industry for over 20 years. CW-2 adds that Defendant Burns "micromanaged every aspect" of Lordstown's business down to the "smallest minutia." Defendant Rodriguez was Lordstown's CFO since September 2019 and previously served as the CIO at Workhorse from August 2017 until August 2019. Defendant Flannery was Lordstown's Vice President Business Development from October 2019 until October 2020, when he was promoted to Senior Vice President of Business Development. Defendant Flannery ran the sales team at Lordstown and thus intimately involved in the purported pre-orders. Prior to working at Lordstown, Defendant Flannery was an executive at Workhorse. Defendant Hamamoto was the Chairman and Chief Executive Officer of DPHC, and signatory to the proxy statements soliciting investors of DPHC to approve the merger. Defendant Hamamoto was actively involved in the evaluation of hundreds of companies, including Lordstown.

413. The sophistication of the Individual Defendants strengthens the allegations of scienter, by undermining an exculpating explanation for the fraud.

(7) Defendants' Other Illegality Supports the Inference of Scienter

414. Despite its short operating history, Lordstown has been embroiled in several lawsuits (not including the suits consolidated into this action or the related breach of fiduciary duty litigation), that support the common-sense conclusion that the company's management acted without regard for the legality of their conduct. Furthermore, Workhorse (from which Burns left just before founding Lordstown) has already paid a judgment resulting from a lawsuit related to its commissions owed to a sales employee who procured the very same supposed pre-orders that Lordstown touted to investors. Additionally, the company has received notices from the NASDAQ threatening delisting due to delinquent filings and has publicly admitted that it had material weaknesses in its internal controls.

415. **First**, in *Karma Automotive LLC v. Lordstown Motors Corp.*, Case No. 8:20-cv-02104 (C.D. Cal. filed Oct. 30, 2020), it is alleged that Lordstown engaged in shocking corporate espionage to steal the intellectual property of Karma Automotive LLC. The lawsuit alleges that Lordstown entered into an NDA to perform diligence on licensing Karma's automobile software system, but violated that agreement by poaching Karma employees who took the technology with them. The lawsuit attaches an email that Lordstown sent to a poached Karma employee's email address (at Karma), detailing the economic case for misappropriating the technology rather than licensing it; the email then calculated the potential lost revenue to Karma, a factor relevant to Lordstown's potential liability for the scheme. The suit also shows that Karma employees emailed confidential files to themselves, in violation of company policy, as they were being poached by Lordstown.

416. While the Karma case is ongoing, the documentary evidence already submitted is exceptionally compelling. The evidence strongly suggests that Lordstown orchestrated a brazen scheme of corporate espionage to steal Karma's intellectual property and talent. The willingness of Lordstown to commit such a scheme strongly supports the inference that its management acted with disregard for the legality of their conduct, and that they acted with such disregard when making the misrepresentations and omissions at issue in this case.

417. **Second**, *DTE Lordstown LLC v. Lordstown Motors Corp*., Case No. 2020-cv-01245 (Ohio Trumbull Ct. C.P. filed Oct. 30, 2020), the company is being sued for delinquent utility bills. The suit alleges that Lordstown almost immediately fell behind on making utility payments, negotiated a payment plan, and then promptly failed to make payments under that plan. Ultimately the suit alleges that Lordstown owes the utility $2.5 million. While not all

breach of contract claims signify foul play, here, it appears Lordstown is simply brazenly refusing to pay what it owes, consistent with Defendants' general dereliction of legal duties.

418. **Third**, in *Esfeld v. Workhorse Group Inc.,* Case No. 2:17-cv-01923 (W.D. Wash. filed Dec. 27, 2017), a former sales employee of Workhorse (during Burns' tenure as CEO of Workhorse), alleges that he was not paid for commissions he was due for obtaining "pre-orders" for Workhorse's truck. These very same supposed pre-orders were then lauded by Lordstown. Workhorse paid a judgment on the case after Plaintiff filed a motion for summary judgment arguing, "Workhorse willfully failed to pay Mr. Esfeld the commissions it admits it owes." While the failure to pay commissions could be the result of legitimate dispute, here the stronger conclusion (given the judgment paid and many other corroborating facts) is that Burns simply has little regard for fulfilling legal obligations.

419. **Fourth**, on April 27, 2021, industry publication Transport Topics published an article titled, "Unpaid Taxes Another Troubling Sign for Lordstown Motors." The article explained that Lordstown has failed to pay $570,000 in property taxes due the prior month. Lordstown has purportedly now paid the outstanding tax bill. While a delinquent tax bill is not necessarily an indicium of misconduct, it takes on relevance in the context of Defendants' pattern of behavior.

420. **Fifth**, on June 4, 2021, Lordstown disclosed that it had received a delinquency notice from the NASDAQ for Lordstown's failure to timely file a form 10-Q quarterly report for the First Quarter of 2021. While this issue was subsequently addressed, it too suggests a striking failure on the part of Defendants to comply with even the most basic legal requirements.

421. **Sixth**, on June 8, 2021, Lordstown disclosed via amendment of its 10-K Annual Report for the fiscal year ended December 31, 2020, that the company had material weaknesses

in its internal controls. Such weaknesses are a hallmark of fraud and weigh heavily in favor of Defendants' scienter, given the totality of the allegations in this Complaint.

422. **Additionally**, Burns' previously company (Workhorse) has now been accused of similar misconduct related to the fabrication of pre-orders. On September 1, 2021, *The Wall Street Journal* ran an article with the headline "SEC Is Investigating Electric Delivery-Truck Maker Workhorse." The similar allegations and SEC investigation into Workhorse indicates that the misconduct at Lordstown represents a course of deceptive conduct by Burns and his associates.

(8) Insider Stock Sales Support the Inference of Scienter

423. As part of the Merger, Defendant Burns agreed to a 2-year lockup, meaning that he could not sell his shares after the Merger. Therefore, the absence of stock sales by Burns is not a relevant consideration when assessing his scienter. However, many other key insiders at Lordstown did sell shares, which lends support for the conclusion that the true dire situation was evident to those within the company, which conclusion supports the inference of scienter.

424. On June 21, 2021, *The Wall Street Journal* reported that "five top executives, including the company's president and its Defendant Rodriguez, sold more than $8 million in stock over three days in early February." The article explained that "One of its executives, Chuan 'John' Vo, who oversees Lordstown Motors' propulsion division, sold almost all of his vested equity—99.3%—on Feb. 2, leaving him with 717 shares and proceeds of more than $2.5 million, the filings show." Similarly, it reported that "President Rich Schmidt, a former Tesla Inc. manufacturing executive who joined the company in 2019, sold 39% of his vested equity over two days in February for $4.6 million." The article also reported that there were insider sales in December as well.

425. Additionally, the article explained that trading was suspicious for a number of reasons: (1) the trades were made shortly before the company posted negative news about its production, and shortly before the Hindenburg Report was published; (2) "The size of the stakes sold by some executives within months of the company going public are unusual;" (3) the trades did not appear to be made through pre-approved trading plans; and (4) the fact that a number of different executives all sold at around the same time is also "unusual."

C. Transaction Causation — Reliance

426. To the extent that reliance or transaction causation is an element of the claims asserted herein, Plaintiffs and the Class are entitled to proceed due to the following doctrines.

427. **First**, as to claims stemming from material misstatements and/or omissions in the Proxy statements, Plaintiffs and the Class establish transaction causation because the solicitation of DPHC shareholder's votes was an essential link in completing the Merger transaction. Under *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970), where material misstatements or omissions are made in a proxy statement, and where shareholder votes were needed to complete the transaction at issue in that proxy statement, the solicitation of proxies with a deficient proxy statement itself satisfies the requirement of pleading transaction causation or reliance.

428. **Second**, the Claims herein involve primarily omissions, insofar as Defendants omitted to disclose (1) the true nature of the pre-orders, (2) the true status of Lordstown's production capabilities, and (3) that their conduct throughout the Class Period was aimed at inflating Lordstown's stock price rather than accurately informing the market about the company. Where claims, like these, involve primarily failures to disclose, the requirement of proving reliance is relieved, pursuant to the Supreme Court's decision in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128, 153 (1972).

429. **Third**, Defendants corrupted the market for Lordstown Securities through a course of conduct that misled the market as to the value of Lordstown securities, to the extent that these Defendants disrupted the integrity of the market for Lordstown securities. Plaintiffs and the Class members are not required to provide further proof of reliance, pursuant to the Supreme Court's decision in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128, 153 (1972).

430. **Fourth**, Plaintiffs and the Class members are entitled to a presumption of reliance on the material misrepresentations and omissions alleged herein pursuant to the fraud-on-the-market theory:

(a) Throughout the Class Period, LTMs stock (ticker: "RIDE" and former ticker "DPHC") met the requirements for listing on, and was traded on the NASDAQ, an informationally efficient market.

(b) Throughout the Class Period, LTM's stock traded at high volumes. Prior to the Merger, there were approximately 35 million shares of DPHC Class A common stock outstanding and average weekly trading volume was approximately 20 million. After the Merger, there were more than 164 million shares of Lordstown common stock outstanding and the average weekly trading volume was typically over 40 million shares.

(c) Throughout the Class Period, LTM's stock traded with a narrow bid-ask spread. Before the Merger, the average bid-ask spread for DPHC's Class A common stock was low at around 8 cents per share and after the Merger, the average bid-ask spread for Lordstown's Class A common stock was around 3 cents per share.

(d) Both before Merger and after the Merger, LTM's stock and Lordstown's common stock reached approximately $1 billion in market capitalization and retained a market capitalization of well above $500 million for much of the Class Period.

(e) LTM's Stock was registered with the SEC, both before and after the Merger. Throughout the Class Period, LTM (including when it was named DPHC) filed periodic reports with the SEC.

(f) DPHC and Lordstown communicated with public investors by means of established market communication mechanisms, including through regular dissemination of press releases on the major news wire services and through other wide-ranging public disclosures, such as communications with the financial press, securities analysts and other similar reporting services.

(g) The market reacted promptly to public information disseminated by and about Lordstown and DPHC.

(h) Lordstown was covered by numerous securities analysts employed by major brokerage firms and during the Class Period at least seventeen analysts provided coverage of Lordstown. Both DPHC and Lordstown were extensively covered by news media and investor publications throughout the Class Period.

(i) The material misrepresentations and omissions alleged herein would tend to induce a reasonable investor to misjudge the value of Lordstown's stock and DPHC's stock; and

(j) Without knowledge of the misrepresented or omitted material facts alleged herein, Plaintiffs and other members of the Class purchased DPHC stock and Lordstown stock

between the time Defendants misrepresented or failed to disclose material facts and the end of the Class Period.

431. As a result of the foregoing, the market for LTM's stock promptly digested current information regarding or relevant to LTM from all publicly available sources and reflected such information in the stock prices.

D. Loss Causation

432. During the Class Period, as detailed herein, Defendants' false representations and omissions of material facts about Lordstown's business caused the Lordstown Securities to trade at artificially inflated prices and deceived purchasers of the securities.

433. As the Defendants' fraud and the previously-concealed, material, adverse information was revealed to the market, the price of Lordstown Securities fell precipitously. Defendants' false and misleading statements concealed material risks from the public, including the truth concerning demand for the Endurance, the true nature of the supposed pre-orders, as well as Lordstown's true production capabilities. Through Defendants' and other public disclosures, the market became aware of these previously undisclosed risks and/or these risks materialized. As a result, the price of Lordstown Securities fell precipitously.

434. Lordstown's stock price reached a Class Period high of $31.57 on February 11, 2021, as a result of Defendants misrepresentations and omissions, as alleged herein. As the truth was partially revealed to the market, Lordstown's stock price fell to a Class Period low of $6.69.

435. As the previously-concealed, material, adverse information was revealed to the market and/or the previously undisclosed risks materialized, the price of Lordstown Securities fell precipitously. In particular:

(a) On March 12, 2021, the Hindenburg Report was published, which partially revealed Defendants' fraud concerning the misleading nature of the publicly touted pre-

orders for the Endurance and the Lordstown's production capabilities. As a result, the price of Lordstown stock fell 16.54%, when measured close-to-close. However, the disclosures on March 12, 2021 did not reveal the full extent of Defendants' fraud, including the risks that Lordstown bore, given the extent of the fabricated pre-orders and insufficient production capabilities.

(b) On March 17, 2021, after the close of trading, Lordstown issued a press release regarding its full year 2020 results and held a conference call, where Defendant Burns stated that Lordstown had received an SEC inquiry and disclosed that the board had formed a special committee to review the matters detailed in the short report. The next day, before the market opened, Defendant Burns went on CNBC to defend his prior pre-order statements, in an interview that was strongly criticized by commentators, such as Jim Cramer. As a result, the price of Lordstown stock fell 13.78%, measured close-to-close. However, the disclosures on March 17, 2021 and March 18, 2021 did not reveal the full extent of Defendants' fraud, including the risks that Lordstown bore, given the extent of the fabricated pre-orders and insufficient production capabilities.

(c) On May 24, 2021, after market close, Lordstown released its First Quarter 2021 results, and disclosed that any production occurring in September would be at "limited capacity," slashing prior production guidance by 50%, and revealing that Lordstown would need additional funding to ramp up production. As a result, the price of Lordstown stock fell 7.45%, measured close-to-open. However, the disclosures on May 24, 2021 did not reveal the full extent of Defendants' fraud, including the risks that Lordstown bore, given the extent of the fabricated pre-orders and insufficient production capabilities.

(d) On June 8, 2021, Lordstown released an amended 10-K, announcing a "going concern" notice, that may need "significant" capital to ramp up production, that the company had "material weaknesses in internal control over financial reporting," and additional information about the SEC investigation. As a result, the price of Lordstown stock fell 20.86%, measured close-to-intraday low.[13] However, the disclosures on June 8, 2021 did not reveal the full extent of Defendants' fraud, including the risks that Lordstown bore, given the extent of the fabricated pre-orders and insufficient production capabilities.

(e) On June 14, 2021, Lordstown released the results of its own internal investigation, whereby admitting that there were "issues regarding the accuracy of certain statements regarding the Company's pre-orders." The investigation results corroborated many allegations in the Hindenburg Report, including that Lordstown had paid for pre-orders, and that the company had misrepresented that the pre-orders came from fleets when they had not. Concurrently with the release of the internal investigation report, Lordstown announced the "resignation" of CEO/Chairman Burns and CFO Rodriguez. As a result, the price of Lordstown stock fell 18.84%, measured close-to-close. However, the disclosures on June 14, 2021 still did not reveal the full extent of Defendants' fraud, including the risks that Lordstown bore, given the extent of the fabricated pre-orders and insufficient production capabilities.

(f) On July 2, 2021, *The Wall Street Journal* reported that Lordstown was also under a DOJ investigation related to Defendants' disclosures regarding the pre-orders. The DOJ investigation was a risk imposed by Lordstown as a result of Defendants' misrepresentations and the revelation of the investigation informed the market of the

[13] On June 9, 2021, Lordstown issued a new statement that it was supposedly actively pursuing additional financing with several parties, and the share price increased on this news.

manifestation of this risk, and further indicated the gravity of the misrepresentations to the market. As a result, the price of Lordstown stock fell 10.82%, measured close-to-close.

436. These price declines each removed artificial inflation from the price of Lordstown's common stock, causing real economic loss to investors who had purchased or otherwise acquired Lordstown Securities during the Class Period.

437. The decline in the price of Lordstown's Securities following these revelations and/or materializations of the risk was a direct result of the nature and extent of Defendants' misrepresentations being revealed to investors and the market and/or the previously undisclosed risks having materialized. The timing and magnitude of the price declines and reactions to the news, individually and collectively, negate any inference that the loss suffered by Plaintiffs and the other Class members was caused by changed market conditions, macroeconomic or industry factors, or company-specific facts unrelated to Defendants' misrepresentations and omissions. The economic loss, *i.e.*, damages, suffered by Plaintiffs and the other Class members was a direct result of Defendants' misrepresentations and omissions, and course of conduct to artificially inflate and artificially maintain the price of Lordstown's common stock, and the subsequent material decline in the value of Lordstown's common stock when Defendants' prior misrepresentations, misleading half-truths, and other deceitful conduct were revealed.[14]

438. Additionally, investors in Lordstown's Class A common stock prior to the Merger, were entitled to redeem their securities in the Merger for a price approximately $10.15 at the time of the Merger. To the extent that any such investor sold their shares for less than that price, after the stock price declined due to the truth being revealed or partially known to the

[14] For the avoidance of doubt, it is not alleged that Defendant Hamamoto engaged in fraudulent conduct, but he did make material misrepresentations and omissions.

market, those investors suffered economic injury in being deprived of fulsome information that would have caused a reasonable investor to their redemption rights.

E. No Safe Harbor

439. The statutory safe harbor provided by the PSLRA for forward-looking statements under certain circumstances does not apply to any of the materially false and misleading statements and omissions alleged in this Complaint. The statements at issue are not protected by the PSLRA's safe harbor or the common law bespeaks caution doctrine for a variety of reasons, including the following reasons.

440. **First**, the statements and omissions alleged to be materially false and misleading relate to historical facts or then-existing conditions and, therefore, are not protected by the safe harbor. **Second**, to the extent any of the false and misleading statements alleged may be characterized as forward-looking, they were not adequately identified as "forward-looking" statements when made. **Third**, any purported forward-looking statements were not accompanied by meaningful cautionary language because risks that were warned of had already come to pass, and any cautionary language did not mention important factors of similar significance to those actually realized. **Fourth**, to the extent that there were any forward-looking statements that were identified as such, Defendants are liable because, at the time each of those forward-looking statements was made, the speaker knew the statement was false or misleading.

441. Additionally, the PSLRA safe harbor does not apply to any statements made by Defendants Burns or Flannery prior to the close of the Merger, because they were not acting on behalf of the issuer (here DPHC), and the safe harbor only applies to those acting on behalf of the issuer. 15 U.S.C. § 77z–2(a)(2). The PSLRA safe harbor also does not apply to any statement made in connection with the Merger because (i) connected with the Merger was an offering of securities, and (ii) DPHC was a blank check company, and the safe harbor does not

apply to any statement made in connection with any securities offering by a blank check company. 15 U.S.C. § 77z–2(b)(1)(B). The PSLRA safe harbor also does not apply to any statements made in connection with the Merger, because the Merger functionally was an initial public offering of Lordstown and the safe harbor does not apply to statements made in connection with an initial public offering. 15 U.S.C. § 77z–2(b)(1)(E).

VI. CLASS ACTION ALLEGATIONS

442. Plaintiffs brings this federal securities class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and all persons and entities that (a) purchased or otherwise acquired LTM's Class A Common Stock (ticker: "RIDE" and prior ticker: "DPHC"), LTM's publicly traded warrants (ticker: "RIDEW" and prior ticker: "DPHCW"), LTM's publicly traded units (ticker: "DPHCU"), or any publicly traded option to purchase or sell LTM's Class A Common Stock, from August 3, 2020 through July 2, 2021, inclusive (the "Class Period") and were damaged by the conduct alleged herein and/or (b) held LTM's Class A Common Stock (ticker: "DPHC") on September 21, 2020 and were damaged by the conduct alleged herein (altogether, the "Class").

443. For the avoidance of doubt, the Class includes persons and entities that purchased or otherwise acquired publicly traded shares, warrants, or units, during the portion of the Class Period when LTM was known as DiamondPeak Holding Corp. For the further avoidance of doubt, the Class includes persons and entities that acquired LTM's Class A Common Stock during the Class Period through the acquisition of the units listed by LTM (while it was known as DiamondPeak), that were comprised of a share of LTM Class A common stock and a portion of a warrant, which units traded under the ticker "DPHCU"). For the further avoidance of doubt, the Class includes persons and entities that acquired LTM's Class A Common Stock during the

Class Period through the exercise of warrants (which traded under the tickers "DPHCW" and "RIDEW").

444. Excluded from the Class are: (i) Defendants; (ii) members of the immediate family of any Individual Defendant; (iii) any person who was an officer or director of any entity Defendant; (iv) any company, firm, trust, corporation, or other entity in which any Defendant has or had a controlling interest; (v) affiliates of any entity Defendant, including their employee retirement and benefit plan(s) and their participants or beneficiaries, to the extent they made purchases through such plan(s); and (vi) the legal representatives, affiliates, heirs, successors-in-interest, or assigns of any such excluded person in (i)-(v) of this paragraph, in their capacities as such.

445. The members of the Class are so numerous that joinder of all members is impracticable. During the Class Period, LTM had at least 164 million Class A common shares outstanding. Thus, the disposition of their claims in a class action will provide substantial benefits to the parties and the Court.

446. While the exact number of Class members is unknown to Lead Plaintiff at this time and can only be ascertained through appropriate discovery, it is likely that the proposed Class numbers in the thousands and is geographically widely dispersed. Record owners and other members of the Class may be identified from records maintained either by Lordstown or by other customary means and may be notified of the pendency of this action by mail, using a form of notice as is customary in securities class actions.

447. Lead Plaintiff's claims are typical of the claims of the members of the Class. All members of the Class were similarly affected by Defendants' wrongful conduct in violation of the Exchange Act as alleged and complained of herein.

448. Lead Plaintiff will fairly and adequately protect the interests of the members of the Class. Lead Plaintiff has retained counsel competent and experienced in class and securities litigation.

449. There is a well-defined community of interest in the questions of law and fact involved in this case. Common questions of law and fact exist as to all members of the Class, and predominate over any questions solely affecting individual members of the Class. The questions of law and fact common to the Class include, without limit:

(a) whether the federal securities laws were violated by Defendants' acts and omissions as alleged herein;

(b) whether Defendants' statements made to the investing public during the Class Period contained material misrepresentations;

(c) whether Defendants' statements omitted material facts that Defendants had a duty to disclose;

(d) whether Defendants' statements omitted material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

(e) whether Defendants knew or recklessly disregarded that their statements were materially false and misleading;

(f) whether Defendants were negligent in issuing materially false and misleading statements or in omitting to disclose information;

(g) whether Defendants engaged in a fraudulent scheme;

(h) whether, Defendants' conduct artificially inflated and/or artificially maintained the price of Lordstown and/or DPHC's stock during the Class Period;

(i) whether the Individual Defendants were controlling persons of DPHC or Lordstown;

(j) whether the proxy materials were a substantial link in the completion of the Merger;

(k) whether reliance may be presumed pursuant to the fraud-on-the-market doctrine and/or the presumption of reliance afforded by *Affiliated Ute Citizens of Utah* v. *United States*, 406 U.S. 128 (1972); and

(l) whether and to what extent the shareholders of Lordstown and DPHC suffered losses and/or experienced injury due to acts and omissions alleged herein.

450. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because, among other things, joinder of all members of the Class is impracticable. Furthermore, because the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in maintaining this action as a class action.

VII. COUNTS

A. COUNT I: Violation of Section 10(b) of the Exchange Act and Rule 10b-5(b) Promulgated Thereunder Against All Defendants Except Defendants Hamamoto, Schmidt, Brown, and Post

451. Plaintiffs repeat, incorporate, and reallege each and every allegation set forth above as if fully set forth herein.

452. This Count is asserted pursuant to Section 10(b) of the Exchange Act and Rule 10b-5(b) promulgated thereunder by the SEC against all Defendants except Defendant Hamamoto, Schmidt, Brown, and Post.

453. Defendants, individually and in concert, directly and indirectly, by the use of the means or instrumentalities of interstate commerce, the mails, and/or the facilities of national securities exchanges, violated Section 10(b) of the Exchange Act and Rule 10b-5(b) promulgated thereunder by the SEC.

454. Defendants made false and misleading statements of material facts, omitted to state material facts which they had an affirmative duty to disclose under the Exchange Act and SEC rules promulgated thereunder, and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

455. Defendants made their false and misleading statements and omissions and engaged in the fraudulent activity described herein knowingly and intentionally or in such a reckless manner as to constitute willful deceit and fraud upon Plaintiffs and the other members of the Class.

456. Defendants engaged in a fraudulent intent to and did, as alleged herein, (i) deceive the investing public, including Plaintiffs and members of the Class; (ii) artificially inflate and artificially maintain the inflated price of Lordstown Securities including DPHC and Lordstown's Class A common stock; and (iii) cause Plaintiffs and members of the Class to purchase Lordstown Securities including DPHC and Lordstown's Class A common stock at artificially inflated prices.

457. Defendants were individually and collectively responsible for making the false and misleading statements and omissions alleged herein and having engaged in a plan, scheme, and course of conduct designed to deceive Plaintiffs and members of the Class, by virtue of having made public statements and having prepared, approved, signed and/or disseminated

documents that contained untrue statements of material fact and/or omitted facts necessary to make the statements therein not misleading.

458. In ignorance of the false and misleading nature of Defendants' statements and omissions, and relying directly or indirectly on those statements or upon the integrity of the market price for Lordstown Securities including DPHC and Lordstown's Class A common stock, Plaintiffs and the Class purchased Lordstown Securities including DPHC and Lordstown's Class A common stock at artificially inflated prices during the Class Period. But for Defendants' fraud, Plaintiffs and the Class would not have bought DPHC's Class A common stock and Lordstown's Class A common stock at such artificially inflated prices. By purchasing DPHC's Class A common stock and Lordstown's Class A common stock at these artificially inflated prices, Plaintiffs and the Class suffered economic losses, which losses were a direct and proximate result of Defendants' fraudulent conduct.

459. By virtue of the foregoing, Defendants are liable to Plaintiffs and the Class for violations of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

B. COUNT II: Violation of Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c) Promulgated Thereunder Against All Defendants Except Defendants Hamamoto, Schmidt, Brown, and Post

460. Plaintiffs repeat, incorporate, and reallege each and every allegation set forth above as if fully set forth herein.

461. This Count is brought under Section 10(b) of the Exchange Act and the provisions of SEC Rule 10b-5(a) and (c) promulgated thereunder against all Defendants except Defendant Hamamoto, Schmidt, Brown, and Post. Accordingly, Plaintiffs need not allege in this Count, nor prove in this case, that any of the Defendants made any misrepresentations or omissions of material fact for which they may also be liable under Rule 10b-5(b) and/or any other provisions of law.

462. During the Class Period, Defendants carried out a common plan, scheme, and unlawful course of conduct that was intended to, and did: (i) deceive the investing public, including Plaintiffs and the Class; (ii) artificially inflate and artificially maintain the market price of Lordstown Securities including DPHC's Class A common stock and Lordstown's Class A common stock; and (iii) cause Plaintiffs and Class members to purchase Lordstown Securities including DPHC's Class A common stock and Lordstown's Class A common stock at artificially inflated prices.

463. Defendants' manipulative conduct included, but was not limited to, raising money on the false pretense that there was incredible demand for the Endurance truck and by painting a picture of the demand for that vehicle and scale of pre-orders that was inconsistent with reality; falsely representing the timeline and financial resources needed to produce the Endurance truck in a way that would turn Lordstown into a cash-flow positive company; and hiding material information from the public, such as the fact that Lordstown had experienced a massive fire when testing one of its prototype trucks.

464. In furtherance of this unlawful plan, scheme, and course of conduct, Defendants employed devices, schemes, and artifices to defraud and manipulate, and knowingly and/or recklessly engaged in acts, transactions, practices, and courses of business that operated as a manipulation, fraud, and deceit upon Plaintiffs and the Class in connection with their purchases of Lordstown Securities including DPHC's Class A common stock and Lordstown's Class A common stock, in violation of Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c) promulgated thereunder.

465. Plaintiffs and the Class reasonably relied upon the integrity of the market in which Lordstown's stock traded.

466. During the Class Period, Plaintiffs and the Class were unaware of Defendants' fraudulent scheme and unlawful course of conduct and/or the impact of the fraudulent scheme. Had Plaintiffs and the Class known the true extent of Defendants' unlawful scheme and unlawful course of conduct, they would not have purchased Lordstown Securities including DPHC's Class A common stock and Lordstown's Class A common stock or if they had, would not have done so at the artificially inflated prices paid for such securities.

467. As a direct and proximate result of Defendants' scheme to defraud and such unlawful course of conduct, Plaintiffs and the Class suffered damages in connection with their purchases of Lordstown Securities including DPHC's Class A common stock and Lordstown's Class A common stock during the Class Period.

468. By reason of the foregoing, Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c) promulgated thereunder, and are liable to Plaintiffs and the Class for damages suffered in connection with their purchases of DPHC's Class A common stock and Lordstown's Class A common stock during the Class Period.

C. COUNT III: Violation of Section 14(a) of the Exchange Act Against Defendants LTM, Lordstown EV Corporation, Burns, Flannery, and Hamamoto

469. Plaintiffs repeat, incorporate, and reallege each and every allegation set forth above as if fully set forth herein, except that Plaintiffs expressly disclaim any allegations of fraud for purposes of these claims, including all allegations contained in Section V(B) above.

470. SEC Rule 14a-9, 17 C.F.R. § 240.14a-9, promulgated pursuant to § 14(a) of the Exchange Act, provides:

> No solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make

> the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

471. Defendants prepared, reviewed, and/or disseminated the false and misleading Proxy Statements which failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

472. As stated herein, the Proxy Statements contained untrue statements of material facts and omitted to state material facts necessary to make the statements that were made not misleading in violation of § 14(a) of the Exchange Act and SEC Rule 14a-9 promulgated thereunder, which the Proxy Statements were essential links in the consummation of the Merger.

473. Defendant Hamamoto acted negligently by signing, issuing, and disseminating the proxy materials because they contained the false and misleading statements alleged herein. Moreover, Defendant Hamamoto was the Chairman and Chief Executive Officer of DPHC, and owed investors a fiduciary duty by way of these roles. Defendant Hamamoto acted negligently by unreasonably making the false and misleading statements alleged herein, given that there was not sufficient information capable of confirming the accuracy of these statements; in fact, readily available information that would be apparent from a reasonably diligent investigation into Lordstown demonstrates the inaccuracy of Defendant Hamamoto's statements, including the truth about the purported pre-orders that Lordstown claimed it had for the Endurance and information about Lordstown's production capabilities (or lack thereof).

474. Defendant LTM acted negligently in issuing and disseminating the proxy materials because they contained the false and misleading statements alleged herein. Defendant LTM acted through Defendant Hamamoto, and therefore is negligent to the same extent as Defendant Hamamoto.

475. Defendant Burns acted negligently in issuing and disseminating the proxy materials because they contained the false and misleading statements alleged herein. Defendant Burns was intimately familiar with Lordstown's business and directly made misrepresentations in the proxy materials.

476. Defendant Lordstown EV Corporation acted negligently in issuing and disseminating the proxy materials because they contained the false and misleading statements alleged herein, and Defendant Lordstown EV Corporation acted through Defendant Burns, meaning Defendant Lordstown EV Corporation was negligent to the same extent as Defendant Burns.

477. Defendant Flannery acted negligently in making statements contained within the proxy materials, insofar as he "made" and/or had ultimate control over statements by permitting false and misleading statements to appear next to his name and image and acted negligently in so allowing the proxy statements to be disseminated with such misleading statements to appear next to his name and image. Defendant Flannery directly oversaw Lordstown's sales efforts and was intimately familiar with the true condition of Lordstown's business and sales practices.

478. The written communications made by the Defendants described herein constitute violations of Rule 14a-9 and §14(a) because such communications are materially false and/or misleading and were provided in at least a negligent manner.

479. As a direct result of the Defendants' negligent preparation, review, and dissemination of the false and/or misleading Proxy Statements, Plaintiffs and members of the Class were deprived of their right to be presented with accurate proxy materials while asked to vote on the Merger, were caused to vote in favor of the Merger, were caused to not exercise their redemption rights.

480. As a direct and proximate result of the dissemination of the false and/or misleading Proxy Statements that Defendants used to obtain shareholder approval of and thereby consummate the Merger, Lead Plaintiff and the Class have suffered damages and actual economic losses (*i.e.*, the difference between the inflated price those investors paid when purchasing DPHC stock and the true value of that stock once the inflation is removed).

481. The omissions and false and misleading statements in the Proxy Statements are material in that a reasonable shareholder would have considered them important in deciding how to vote on the Merger. In addition, a reasonable investor would view a full and accurate disclosure as having significantly altered the "total mix" of information made available in the Proxy Statements and in other information reasonably available to shareholders.

482. By reason of the misconduct detailed herein, the Defendants are liable pursuant to § 14(a) of the Exchange Act and SEC Rule 14a-9 promulgated thereunder.

D. COUNT IV: Violations of §20A of the Exchange Act Against Defendants Schmidt, Rodriguez, Brown, and Post

483. Plaintiff repeats, incorporates, and realleges each and every allegation set forth above as if fully set forth herein. As set forth in the paragraphs above, and as further set forth below, Defendants Schmidt, Rodriguez, Brown, and Post each committed underlying violations of Section 10(b) and SEC Rule 10b-5 promulgated thereunder by selling LTM's common stock while in possession of material nonpublic information about the Lordstown and, consequently, are liable to contemporaneous purchasers of that stock under Section 20A of the Exchange Act. *See* 15 U.S.C § 78t-1(a).

484. Each of Defendants Schmidt, Rodriguez, Brown, and Post possessed material nonpublic information when they sold shares between February 2, 2021 and February 4, 2021.

In total, these Defendants collectively sold 249,820 shares of LTM's common stock for proceeds of $6,327,913.00.

485. Defendants Schmidt, Rodriguez, Brown, and Post created, controlled and/or served in an executive capacity at Lordstown, possessed material nonpublic knowledge about Lordstown's operations that they knew or recklessly disregarded would cause the LTM's share price to fall when publicly disclosed, and cashed out of significant holdings at artificially inflated prices before the material nonpublic information was revealed. These Defendants were able to sell their shares at prices of between $24.63 and $27.21 per share, as opposed to the price Lordstown would fall to following the revelation of the true condition of Lordstown and materialization of the undisclosed risks.

486. Due to Defendants Schmidt, Rodriguez, Brown, and Post's conduct in selling shares while in possession of material nonpublic information, which is a violation of Section 10(b) and SEC Rule 10b5 promulgated thereunder, they are each liable under Section 20A of the Exchange Act to all Class members who purchased Lordstown's common stock at inflated prices contemporaneously with these sales, including Plaintiff FNY Managed Accounts LLC.

E. COUNT V: Violations of Section 20(a) of the Exchange Act Against the Individual Defendants

487. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

488. The Individual Defendants acted as controlling persons of LTM and DPHC within the meaning of Section 20(a) of the Exchange Act. By virtue of their positions and their power to control public statements by and about DPHC and LTM, the Individual Defendants had the power to control the actions of those entities and their employees.

489. As alleged herein, the Individual Defendants managed DPHC and LTM and the wrongful conduct alleged herein, including the dissemination of false and misleading statements and omissions through formal corporate processes (such as SEC filings). Due to their involvement in this wrongful conduct, the Individual Defendants were culpable participants in the wrongdoing and securities violations alleged herein.

490. By reason of the foregoing, the Individual Defendants violated Section 20(a) of the Exchange Act and are liable to Plaintiffs and the Class for damages suffered in connection with their sale or exchange of Lordstown securities during the Class Period.

VIII. PRAYER FOR RELIEF

491. WHEREFORE, Plaintiffs respectfully pray for judgment against the Defendants as follows:

(a) Determining that this action is a proper class action maintainable under Rule 23 of the Federal Rules of Civil Procedure, certifying Lead Plaintiff as class representative, and appointing Labaton Sucharow as lead class counsel pursuant to Rule 23(g);

(b) Determining and declaring that Defendants violated the Exchange Act by reason of the acts, omissions and, status of control alleged herein;

(c) Awarding Plaintiffs and the Class compensatory damages against all Defendants, jointly and severally, in an amount to be proven at trial, together with interest thereon;

(d) Awarding Plaintiffs and the Class their reasonable costs and expenses incurred in this action, including but not limited to attorneys' fees and costs incurred by Lead Plaintiff's consulting and testifying expert witnesses; and

(e) Granting such other and further relief as the Court deems just and proper.

IX. JURY DEMAND

Plaintiffs demand a trial by jury of all issues so triable.

[signatures on following page]

DATED: September 10, 2021

LABATON SUCHAROW LLP

By: *Carol C. Villegas*

Carol C. Villegas (admitted *pro hac vice*)
David J. Schwartz (admitted *pro hac vice*)
Jake Bissell-Linsk (admitted *pro hac vice*)
140 Broadway, 34th Floor
New York, NY 10005
Telephone: (212) 907-0700
Email: cvillegas@labaton.com
Email: dschwartz@labaton.com
Email: jbissell-linsk@labaton.com

Counsel for Lead Plaintiff George Troicky and Lead Counsel for the Class

THE SCHALL LAW FIRM

Brian Schall (*pro hac vice* forthcoming)
Rina Restaino (*pro hac vice* forthcoming)
2049 Century Park East, Suite 2460
Los Angeles, CA 60067
Telephone: (424) 303-1964
Email: brian@schallfirm.com
Email: rina@schallfirm.com

Additional Counsel for Lead Plaintiff George Troicky

HAGENS BERMAN SOBOL SHAPIRO LLP

Steve W. Berman (admitted *pro hac vice*)
715 Hearst Avenue, Suite 202
Berkeley, CA 94710
Telephone: (510) 725-3000
Email: reed@hbsslaw.com
Email: ucasg@hbsslaw.com

Reed R. Kathrein (admitted *pro hac vice*)
Lucas Gilmore (admitted *pro hac vice*)
1301 Second Ave., Suite 2000
Seattle, WA 98101
Telephone: (206) 623-7292
Email: steve@hbsslaw.com

Counsel for Additional Named Plaintiff Ashith Pabbathi and Additional Counsel for the Class Additional Counsel for the Class

THE ROSEN LAW FIRM, P.A.

Phillip Kim (admitted *pro hac vice*)
Laurence M. Rosen (admitted *pro hac vice*)
Daniel Tyre-Karp (admitted *pro hac vice*)
275 Madison Avenue, 40th Floor
New York, New York 10016
Telephone: (212) 686-1060
Email: pkim@rosenlegal.com
Email: lrosen@rosenlegal.com
Email: dtyrekarp@rosenlegal.com

Counsel for Additional Named Plaintiffs Daniel Tavares and Globestar Systems Inc. and Additional Counsel for the Class

[signatures continued on following page]

ENTWISTLE & CAPPUCCI LLP

Andrew J. Entwistle (admitted *Pro Hac Vice*)
Frost Bank Tower
401 Congress Avenue, Suite 1170
Austin, TX 78701
Telephone: (512) 710-5960
Email: aentwistle@entwistle-law.com

-and-

Robert N. Cappucci (admitted *Pro Hac Vice*)
230 Park Avenue, 3rd Floor
New York, New York 10169
Telephone: (212) 894-7200
Email: rcappucci@entwistle-law.com

Attorneys for Plaintiff FNY Managed Accounts LLC and Additional Counsel for the Class

CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2021, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List.

/s/ Carol C. Villegas
Carol C. Villegas

Exhibit A

The Lordstown Motors Mirage: Fake Orders, Undisclosed Production Hurdles, And A Prototype Inferno[1]

Published on March 12, 2021

Available at: https://hindenburgresearch.com/lordstown

- Lordstown is an electric vehicle SPAC with no revenue and no sellable product, which we believe has misled investors on both its demand and production capabilities.

- The company has consistently pointed to its book of 100,000 pre-orders as proof of deep demand for its proposed EV truck. Our conversations with former employees, business partners and an extensive document review show that the company's orders are largely fictitious and used as a prop to raise capital and confer legitimacy.

- For example, Lordstown recently announced a 14,000-truck deal from E Squared Energy, supposedly representing $735 million in sales. E Squared is based out of a small residential apartment in Texas that doesn't operate a vehicle fleet.

- Another 1,000-truck, $52.5 million order comes from a 2-person startup that operates out of a Regus virtual office with a mailing address at a UPS Store. We spoke with the owner who acknowledged it won't actually order any vehicles, instead describing the "pre-order" as a mere marketing relationship.

- Yet another firm that is supposedly set to buy 500 trucks from Lordstown told us: "…The letters of interest are non-binding. It's not like you'd obligate yourself to a pre-order or that you would contractually bind yourself to buying this truck. That's not what they are."

- Lordstown CEO Steve Burns has called these arrangements "very serious orders". The actual customer agreements, which we present for the first time today, require no deposit and are non-binding. Many of the supposed customers do not operate fleets nor do many have the means to actually make the stated purchases.

- Former employees and litigation records reveal that in order to raise capital and confer credibility, Steve Burns began paying consultants for every truck pre-order as early as 2016 while he was serving as CEO at Workhorse.

- Later, heading into Lordstown's eventual go-public transaction in 2020, a small consulting group called Climb2Glory was paid to generate pre-orders. Climb2Glory openly described the purpose behind the pre-order game: "the faster the pre-orders arrived, the greater investors' confidence would be in the company and the faster funds would flow in."

[1] Reformatted for reproduction by Counsel.

- One company rep that committed to buy 40 trucks through Climb2Glory told us: "…I'm not committed to anything, not to buying a single vehicle. I committed to consider buying vehicles. I'd have a lot of questions before I commit to anything."

- Others had similar remarks. "The commitment of that size (15) is totally impossible," a representative for the City of Ravenna told us about its pre-order. We document numerous other "customers" that disclaim any intent to actually purchase vehicles.

- Multiple former senior employees who have worked with Lordstown Founder & CEO Steve Burns openly described him as a "con man", or a "PT Barnum" figure. One senior employee told us that, while working with Steve for a couple of years, they saw more questionable and unethical business practices than they had seen in their entire career.

- Despite being allowed to resign from Workhorse, former senior employees described how Burns was pushed out of his old company by the board for wasting R&D money and missing promised deadlines. He then launched Lordstown months later.

- Despite claims that Lordstown will be producing vehicles by September, a former employee explained how the company is experiencing delays and making "drastic" design modifications, putting them an estimated 3-4 years away from production. For example, in mid-January the company "totally switched from a plastic exterior to aluminum," we were told.

- Despite claims that battery packs would be manufactured in-house, we were told that the equipment is months away from arriving, let alone being put into a production environment. In the meantime, we were told that battery packs are being put together by hand.

- Former employees also shared that the company has completed none of its needed testing or validation, including cold weather testing, durability testing, and Federal Motor Vehicle Safety Standards (FMVSS) testing required by the NHTSA.

- In January 2021, Lordstown's first street road test resulted in the vehicle bursting into flames 10 minutes into the test drive. We share copies of the 911 call and a police report we received through FOIA requests.

- Lordstown only went public in October 2020, but in that brief time, executives and directors have unloaded ~$28 million in stock. We think it bodes poorly when executives unload stock in a company with no actual product that claims to be on the cusp of mass-production.

- We think investors, workers, and the local community deserve much more transparency on what is going on at Lordstown. We ask 21 questions at the end of our piece that we think the company should answer.

Initial Disclosure: After extensive research, we have taken a short position in shares of Lordstown Motors. This report represents our opinion, and we encourage every reader to do their own due diligence. Please see our full disclaimer at the bottom of the report.

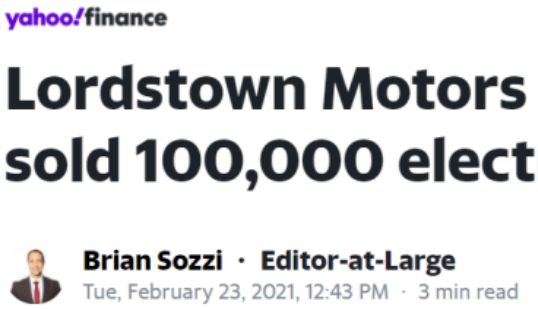
Introduction: The Illusion Of Supply And Demand

Lordstown is one of many SPAC-led electric vehicle companies that has attracted hordes of retail investors with the lure of exposure to the ongoing EV revolution.

As with several companies in the space, Lordstown has never produced a saleable product and has no revenue. [Pg. 32] It has been beset by years of production delays which we expect will continue, based on evidence we present today.

Despite the lack of a current product *supply*, one of the strongest arguments supporting the company has been the incredible *demand* for its proposed all-electric truck, the Lordstown Endurance, which it hopes will rival the Ford F-150 and other traditional internal combustion engine ("ICE") trucks.

In fact, just weeks ago, Lordstown CEO Steve Burns boasted to Yahoo Finance of having "pre-sold" 100,000 vehicles, representing over $5 billion in future revenue and a huge vote of confidence from a slew of top-tier fleet customers.


yahoo/finance

Lordstown Motors CEO: We have pre-sold 100,000 electric pickup trucks

Brian Sozzi · Editor-at-Large
Tue, February 23, 2021, 12:43 PM · 3 min read

But, as we will show, that demand appears to be fictitious.

Our research has revealed that Lordstown's order book consists of fake or entirely non-binding orders, from customers that generally do not even have fleets of vehicles. According to former employees and business partners, CEO Steve Burns sought to book orders, regardless of quality, purely as a tool to raise capital and confer legitimacy. In addition, we show how, in desperation to claim there was demand for the proposed vehicle, **he paid for customers to book valueless, non-binding pre-orders.**

We detail conversations with Lordstown "customers" who were eager to explain that the letters of intent ("LOI"s) with the company were "promotional". Others assured us they were "not committed to anything" and that the pre-order commitment size recorded by Lordstown was "totally impossible". One CEO at a 'key' customer told us our outreach was the first he had heard of any arrangement with Lordstown.

We also show, for the first time, the actual Lordstown pre-order agreements, which we received from former business partners. While the agreements entail zero commitment on the part of the "buyer", they include clauses about the parties agreeing to work on press releases to *announce* the deals.

On the supply side, we have found that Lordstown's CEO, Steve Burns, has led the company through dubious ethical territory, hyping unvetted technology and unrealistic production timelines.

Based on our conversations with former employees, the company has made extensive changes to the Endurance prototypes and hasn't begun the needed testing & validation for the reworked vehicle. While the company has been promoting a September 2021 production timeline, former employees estimate the truck is 3-4 years away from production, if it ever gets there.

We also provide new details about a disastrous recent "road test" in which Lordstown's Director of Power Train was forced to call 911 after the 2021 Lordstown Endurance he was driving spontaneously combusted and became "fully engulfed" in flames just 10 minutes after taking to the road. The truck had cleared internal testing, and this was the Endurance's very first road test. We think Lordstown has grossly misled the public about its order book and the progress of its proposed truck. We raise 21 questions at the end of our piece that we think investors, workers, and the citizens of Lordstown, Ohio, deserve answers to.

Lordstown Founder & CEO Steve Burns Was Described To Us By Former Senior Employees as a "Con Man" and a "PT Barnum" Figure

Lordstown's Chairman and CEO is Steve Burns, who formed the business in June 2019. This followed his February 2019 departure from publicly-traded Workhorse, where he had served as founder and CEO.

As part of our research, we interviewed former senior employees of Workhorse to learn about Burns' leadership style. All credited him with being the driving force and "visionary" behind both Workhorse and Lordstown.

We were told Burns has a masterful marketing approach, which includes a cultivated soft-spoken style and use of self-deprecating humor.

Despite these acknowledgements, they also shared that while he excels at presenting a vision, he lacks the ability to follow through on plans. One former employee called it "Steve's magical thinking".

Further, multiple former senior employees who had worked closely with Burns openly described him as a "con man," or a "PT Barnum" figure, referring to the famous showman and circus operator known for promoting hoaxes.

One senior employee told us that, while working with Steve for a couple of years, they saw more questionable and unethical business practices than they had seen over their entire career.

Burns Was Pushed Out of Workhorse By The Board Due to His Inability To Focus And Execute Projects, According to Former Employees

Though technically allowed to resign in February 2019, Burns was pushed out by the board for wasting R&D money and missing deadlines, former senior employees of Workhorse told us. The board believed the company needed to focus on building trucks while Burns was distracted with Horsefly (its drone program) and other pet projects, according to the employees. Workhorse retained Burns for several months as a consultant on the drone program following his ouster.

With Burns out, Workhorse essentially jettisoned its pickup truck project, choosing instead to focus on its core business of vans and last-mile delivery systems, according to a later interview with EV industry publication Electrive.

Burns Launched Lordstown 4 Months Later With Little More Than Meaningless Pre-Orders (More on this Later) and Designs

Lordstown was formed by Burns about 4 months after his ouster from Workhorse, in June 2019. By November, Lordstown had already entered into an agreement with Workhorse to purchase intellectual property relating to the now-renamed Endurance truck.

According to a former senior technology employee of Workhorse, virtually zero intellectual property was actually shared with Lordstown, aside from designs, and a book of roughly 6,000 pre-orders, which Burns has described as “sales”.

Workhorse didn’t have much technology to share in the first place; it had fewer than 10 patents, and, of those, only 2 referenced electric vehicles. [1,2] According to the same former employee, the lack of patents by Workhorse was simply due to the technology not being advanced enough to warrant patenting.

The New Company Quickly Bought a Closed GM Plant, Giving Hope to the Hard-Hit Local Community and Scoring a Political Win With Then-President Trump

In November 2018, GM announced it would be closing its plant in Lordstown, Ohio, ultimately eliminating 4,200 jobs. The planned closure in battleground-state Ohio created political ripples all the way up to the President, who tweeted aggressively at GM about the decision.
In October 2019, GM made it official; the plant would formally close.

In stepped Steve Burns and Lordstown, with a plan that was storybook perfect. The company would hire as many workers as GM had and would repurpose the factory to make electric trucks, bringing the hard-hit local community into the next chapter of the auto industry.

In November 2019, Lordstown inked a deal to buy an old GM plant with a $40 million loan from GM.

The deal was viewed as potential salvation for the local economy and was welcomed by politicians at the local, state and federal level. This slice of the Rust Belt along the Mahoning Valley, with soaring unemployment, was promptly dubbed "Voltage Valley", as the communities placed their hope in an electrification-driven resurgence.

Vice President Mike Pence attended the June 2020 unveiling of the Endurance prototype, taking the opportunity to promote the administration's record on jobs.



(Pictured: Vice President Pence and Lordstown CEO Steve Burns at the Endurance 'unveiling' event in June 2020)

At the unveiling, Pence drove up on stage in the prototype with Burns. The event went off without incident, but a former employee described how the team was "cringing", saying "that was just more of a show vehicle" with safety concerns. (Six months later, an Endurance prototype burst into flames within 10 minutes of its first road test.)

President Trump then showcased a Lordstown Endurance prototype against the backdrop of the White House on September 28, 2020, just one day before the first presidential debate, which took place in Cleveland, Ohio. He hailed the truck's technology as an "incredible concept" and praised Lordstown for creating potential new jobs.



President Trump Delivers Remarks with the Lordstown Motors 2021 Endurance

(Source: Trump White House Archive)

Lordstown then went public via SPAC in October, 2020, netting about $675 million in balance sheet cash.

Part I: Lordstown's Order Book Looks To Be Almost Entirely Fake And/Or Non-Binding, Representing No Genuine Demand

Lordstown has consistently claimed that its large order book is a key investment highlight, underscoring deep demand for the company's products, which have yet to be produced or sold. In an interview on Yahoo Finance on February 23rd, 2021, CEO Steve Burns focused on this point, declaring:

*"**We have pre-sold 100,000 of these vehicles to various fleets across America — really a big appetite**."*

Lordstown focuses on selling to fleets, which are typically defined as "businesses that have purchased 5 vehicles in a year or have 15 total units in operation."

Burns has regularly touted the pre-sold fleet trucks to the media and in Lordstown's press releases. For example, when Jim Cramer pressed Burns about the commitment represented by these orders, **Burns referred to them as "very serious orders".**

At Lordstown's launch event with Mike Pence, Burns said **"We have our whole year, our first year of production already pre-sold."**

We put together a brief video presenting several other public statements by Steve Burns about the strength of the company's order book.



[Click to watch video compilation of CEO Steve Burns touting Lordstown's large book of pre-orders]

Contrary to those claims, our research has found that Lordstown's fleet truck "orders" are a mirage, and instead:

- Are **non-binding** letters of intent.
- Require $0 as a reservation payment.
- Do not require an actual purchase.
- Are from customers that generally DO NOT operate fleets.
- Are from customers that often DO NOT have the means to make the purchases.
- Include a clause encouraging a press release to announce the deal.

Lordstown's S-1 filing discusses the non-binding nature of its pre-order book, but does not disclaim **any risks associated with whether or not such businesses even have the means to make such purchases**, or whether the businesses would have any credible demand for vehicles. [Pg. 8]

On the contrary, the company states in its legal *dis*-claimer, that it "is focused on building relationships with large fleet customers". [Pg. 8] The company has never provided the specific language of its pre-order agreements, but we received a copy from a former employee:

LORDSTOWN

Non-Binding Letter of Intent

The purpose of the Non-Binding Letter of Intent is to ensure that the party signing will receive early delivery of the Endurance™ pick up truck in 2021 when in full scale production. Initial deliveries are scheduled for early 2021.

Reservation Agreement:

1. Reservation. By entering into this Reservation Agreement, you hereby confirm that you wish to reserve the following quantity of Endurance™ trucks on a non binding basis:

Quantity	Description	Price	Federal Tax Credit	Installment Details
	Endurance™ - Light Duty Fleet Work Truck	$52,500 per vehicle	$7,500 per vehicle.	The trucks can be taken over a 2-year period, at Purchaser's option.

2. Nature of Agreement; No Reservation Payment. The Reservation is a non-binding commitment that does not require payment of any kind unless and until a legal and binding Purchase Agreement is signed by the parties. Purchasers are under no obligation to purchase the vehicle from us, and we are under no obligation to supply you with the Endurance™ or any other vehicle.

3. Effective Date; Reservation Process. This Agreement is formed and becomes effective when we receive your validly executed Purchase Agreement.

4. Order Process. LMC is in the process of developing the initial prototype vehicle of the Endurance™ (the "Prototype"). Upon completion of the Prototype, you will have the ability to test and inspect the Prototype on terms to be mutually agreed by the parties (the "Testing Period"). During or soon after the Testing Period, we provide you with a definitive purchase agreement for the Endurance™(s) ordered herein indicating the purchase price of the vehicle(s), plus estimates of any applicable taxes, duties, terms and conditions, transport and delivery charges, and any other applicable fees. We will then submit to you the order form and the Purchase Agreement for your review. If you wish to proceed and purchase the vehicles, you must sign and return the Purchase Agreement. Production of the order will then be commenced in accordance with the Purchase Agreement.

5. Non-Transferability. This Agreement is not transferable or assignable to another party without LMC's prior written approval in writing.

6. Possible Press Release: Subject to review and agreement, the parties will consider cooperating in drafting and releasing a press release disclosing the subject matter contained in this Agreement.

7. Acknowledgments. You understand that we may not complete the development of the Endurance™ or have begun manufacturing the Endurance™. You also acknowledge that, if you purchase an Endurance™, the vehicles may not be delivered to you until 2021 or later.

8. Governing Law and Jurisdiction. Your Reservation and these terms and conditions are governed by the laws State of Ohio, U.S.A., without regard to its conflict of laws provisions.

Typically, the goal behind generating pre-orders is to capture actual product demand. But a Lordstown partner that helped generate pre-orders acknowledged that the goal was to boost investor confidence in order to raise capital:

"Fundraising was directly linked to pre-order generation — the faster the pre-orders arrived, the greater investors' confidence would be in the company and the faster funds would flow in."

The company's recent January 2021 investor deck has reiterated the order book claim as a key investment highlight.



Furthermore, some electric vehicle manufacturers, like Tesla, have been *collecting* deposits for new vehicle reservations for years. Even Nikola managed to collect deposits for its imaginary Badger truck.

Lordstown, by contrast, has resorted at times to *paying* for non-binding pre-orders, then using the fictitious demand to fuel financing rounds and to confer an aura of credibility on the company. We spoke to two former sales reps that helped gather the "pre-orders" for the Lordstown Endurance and for its predecessor, the Workhorse W-15. They acknowledged the "pre-orders" they collected represented "no commitment at all". One told us:

"They are soft orders, they're absolutely. It's not a firm commitment it's "let's take a look at it and we'll decide then". But they do have a lot…I've no idea if that's a fabrication or an exaggeration or the real deal. But I know some of the people who have those orders and they are not firm orders, they are soft orders."

Another explained:

"You're right to have some apprehension. I think the way it's being communicated especially to the media is probably not accurate. Everywhere I read is pre-orders, pre-orders, pre-orders. ***There's no such thing as a preorder. What they're doing is getting letters of intent and there is no commitment whatsoever.*** *I could commit to 100,000 pre-orders or reservations but I have no commitment, no financial commitment, no nothing…I hope they can get all 100,000 of them but I think that's extraordinarily unlikely."*

E Squared Energy: A $735 Million Deal For 14,000 Trucks From an Entity Run Out of a Small Apartment in Texas

On December 24th 2020, Lordstown announced a massive 14,000 truck deal with E Squared Energy, representing almost 17.5% of its 80,000 total truck pre-orders at the time. Given the proposed base price of $52,500, the deal represents $735 million in demand. [Pg. 45]



Given the size of the order, one might imagine E Squared to be a large enterprise with ample assets.

The Lordstown press release identified the principal of E Squared as Tim Grosse. In his LinkedIn profile, Grosse identifies himself as a "transformational leader in clean energy", but we see that E Squared has only 2 employees: Grosse, along with another individual who self-identifies as a retired freelance energy consultant.



(Source: LinkedIn)

Information on E Squared Energy is not found through typical Texas corporate records as it's not a registered corporation. It's a DBA, an ***individual*** that is **D**oing **B**usiness **A**s another name, registered in Denton County Texas.

Texas records for E Squared list its registered address as 4800 Printers Way #3029.

ASSUMED NAME RECORDS
CERTIFICATE OF OWNERSHIP FOR UNINCORPORATED BUSINESS OR PROFESSION

NOTICE: "CERTIFICATES OF OWNERSHIP" ARE VALID ONLY FOR A PERIOD NOT TO EXCEED 10 YEARS FROM THE DATE FILED IN THE COUNTY CLERK'S OFFICE.
(Chapter 36, Sec. 1, Title 4 – Business and Commerce Code)

NAME IN WHICH BUSINESS IS OR WILL BE CONDUCTED
E Squared Energy Advisors / E² Energy Advisors

PHYSICAL ADDRESS OF BUSINESS 4800 Printers Way, #3029

CITY: Frisco STATE: TX ZIP CODE: 75033

PERIOD (not to exceed 10 years) DURING WHICH ASSUMED NAME WILL BE USED: 10 Years

BUSINESS IS TO BE CONDUCTED AS: (check one):
☒ Individual ☐ General Partnership ☐ Limited Partnership
☐ Other (name type)

CERTIFICATE OF OWNERSHIP
I/We, the undersigned, are the owner(s) of the above business and my/our name(s) and address(es) given is/are true and correct, and there is/are no ownership(s) in said business other than those listed herein below.

NAMES OF OWNERS
NAME Tim Grosse (print or type) SIGNATURE Tim Grosse
ADDRESS 4800 Printers Way, #3029 Frisco TX ZIPCODE 75033

That address appears to be Tim Grosse's apartment in a building where apartments on the same floor rent for a modest $1,023-$1,080 per month.



(The apartment building / office location of Lordstown's claimed $735 million customer)



(The apartment building / office location of Lordstown's claimed $735 million customer. Source: Bell Frisco Market Center)

When this pre-order from E Squared was placed out of Tim Grosse's apartment, it represented 17.5% of Lordstown's total order book.

The website for E Squared does not name a single executive and indicates that it is focused on advising companies on cutting energy costs through energy audits, LED lighting, and other power-saving means. We found no indication that E Squared has a fleet of trucks or even focuses on the electric vehicle space, aside from its non-binding deal with Lordstown.

We spoke with Grosse to learn more about the arrangement. When we asked whether E Squared operates a fleet, Grosse responded with a rather Alice-In-Wonderland answer:

*"**We don't operate a fleet** but we provide the fleets. It's kind of a hybrid of a lease but it's not a lease. That's the closest thing to describe it as that people are familiar with…"*
Pressed further, he accepted that E Squared had only worked in the building sector to date:
"It's a brand-new program we're offering. We've primarily been in the building sector we've worked a lot of large companies and technologies…various technologies."

We asked what the 14,000-truck number was based on, if anything, and were told it was an "estimate" based on Lordstown's planned production, not driven by actual customer demand:

"It's based primarily on the output of Lordstown. In the first year they'll be somewhat limited with only 20,000 vehicles and we have 2,000 on the LOI and second year we have 4,000 and production will be about 40,000. And the third year we're ramping up to 8,000…That's what we're estimating."

Innervations LLC: A $52.5 Million, 1,000 Truck Order From a 2-Person Startup With No Apparent Assets, Based Out of a Regus Virtual Office

On April 7, 2020, in the months leading up to Lordstown's IPO transaction, the company announced a 1,000-truck, ~$52.5 million order, from a company called Innervations LLC. At the time, it represented the largest ever "order" for Lordstown, not including orders brought over from Workhorse. It represented ~13% of the total order book and ~34% of the order book for the new Lordstown Endurance truck, according to a former employee we spoke with.

Innervations is a Florida entity that was formed about 4 months prior to the announcement, according to Florida corporate records. The entity lists its main office address as a Regus Virtual Office and its mailing address at the UPS Store in Hernando, Florida.

Electronic Articles of Organization
For
Florida Limited Liability Company

L19000289062
FILED 8:00 AM
November 21, 2019
Sec. Of State
rvarnadore

Article I

The name of the Limited Liability Company is:

INNERVATIONS, LLC ← 1,000 Truck Order

Article II

The street address of the principal office of the Limited Liability Company is:

8875 HIDDEN RIVER PARKWAY
SUITE 300
TAMPA, FLORIDA, . 33637 ← Regus Virtual Office

The mailing address of the Limited Liability Company is:

2609 N. FOREST RIDGE PARKWAY
#177
HERNANDO, FL. 34442 ← UPS Store

Article III

The name and Florida street address of the registered agent is:

DAVE R HEIN
2609 N. FOREST RIDGE PARKWAY
SUITE 177
HERNANDO, FL, FL. 34442

Regus



VIRTUAL OFFICES AND BUSINESS ADDRESSES FOR RENT 8875 HIDDEN RIVER PARKWAY

8875 Hidden River Parkway, Suite 300, Tampa, Florida, 33637

Elegant offices with a prestigious business address - and all set in outstanding oak-laden parkland. The Hidden River Corporate Park

Innervations does not actually seem to have a fleet of its own, but its website claims to offer "Fleet services" which apparently include selling Lordstown trucks. It is described as a "startup brought up by two like-minded individuals" by the guy that built its website.

Those two individuals, listed on Innervations corporate documents, are John Pilz and David Hein. Pilz graduated from law school in 2018 and works full time as an attorney at a local software company, per his LinkedIn profile.

Hein currently works full time at an architecture design firm, per his LinkedIn profile, but regularly makes bullish posts about Lordstown and other EV companies on his Facebook page. Hein also runs a contracting company that appears to be based out of his residence, a 468 sq/ft 2 bedroom / 1 bath that Zillow estimates is worth about $187,000.

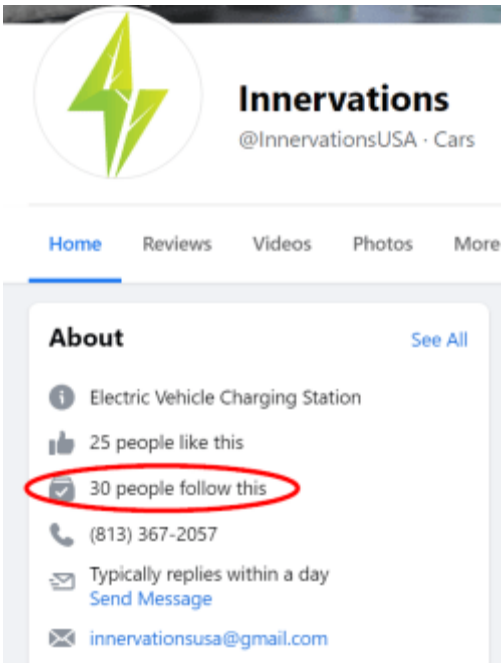
"We Don't Get Involved With The Actual Ordering": Innervations' CEO Acknowledges It has No Plans to Actually Purchase the Vehicles

We spoke with David Hein, who explained that Innervations has no plans to actually purchase the vehicles**,** instead describing his role as merely that of a promoter:

"What we do is we host and support events with companies and then we invite Lordstown Motors to the event to show the product. We just direct the company to Lordstown directly. When they tell us they're interested in purchasing trucks that's what we do. ***We don't get involved in the actual ordering.****"*

Hein, who operates the Innervations Facebook account, which currently boasts 30 followers and is linked to a Gmail address, described his role as being that of an "influencer:"

"We're influencers, our numbers, that's a very small number but what Innervations does is we promote the product…We think we can influence. Remember, we don't sell the truck, we just influence companies, and it's more on a broader spectrum."



We find it unlikely that the recent college grad (Pilz) and the EV enthusiast (Hein), who appear to operate Innervations as a side hustle, have a credible plan to influence the purchase of $52.5 million worth of trucks from customers that don't yet seem to exist.

Another 500 Truck "Order" That is Really Just A Promoter Agreement: Clean Fuels Ohio

In March 2020, Clean Fuels Ohio reportedly agreed to buy 500 trucks from Lordstown.



This news was reported despite Clean Fuels actually operating as a non-profit and merely agreeing to help educate fleet operators around Ohio to encourage purchases of the trucks. We spoke with Sam Spofforth, Executive Director of Clean Fuels Ohio who agreed with that characterization.

*"**It is really that, promotional and getting the word out**. And when we signed those letters of intent, we were really clear with them that that's what we would be doing, and they understood that and welcomed that."*

"…The letters of interest are non-binding. It's not like you'd obligate yourself to a pre-order or that you would contractually bind yourself to buying this truck. That's not what they are."

Lordstown Predecessor Under Steve Burns' Leadership Struggled to Find Enough Orders, So It Began Paying $30 Per Non-Binding "Order" As Early as 2016

Given the need for continued high-impact "order" announcements to raise capital and confer credibility, Steve Burns began paying consultants per truck for pre-orders as early as 2016 while he was serving as CEO at Workhorse.

Per a lawsuit filed by one such consultant, the company was paying $30 per each no commitment, $0 money down, non-binding LOI, aka "orders."

16 4.3 After some negotiation, Plaintiff received an offer letter dated June 16, 2016
17 specifying the terms and conditions of his employment. The offer letter stated that Plaintiff was
18 entitled to receive a base salary of $100,000, plus commissions. The offer letter stated that
19 Plaintiff would be paid a $30 commission for each signed pre-order up to 10,000 pre-orders per
20 year, and a .14% commission per vehicle on all pre-orders that convert to sales and on any

The lawsuit reveals that several orders Lordstown identifies as "key", including Duke Energy, Ryder and Clean Fuels Ohio were solicited through such arrangements.

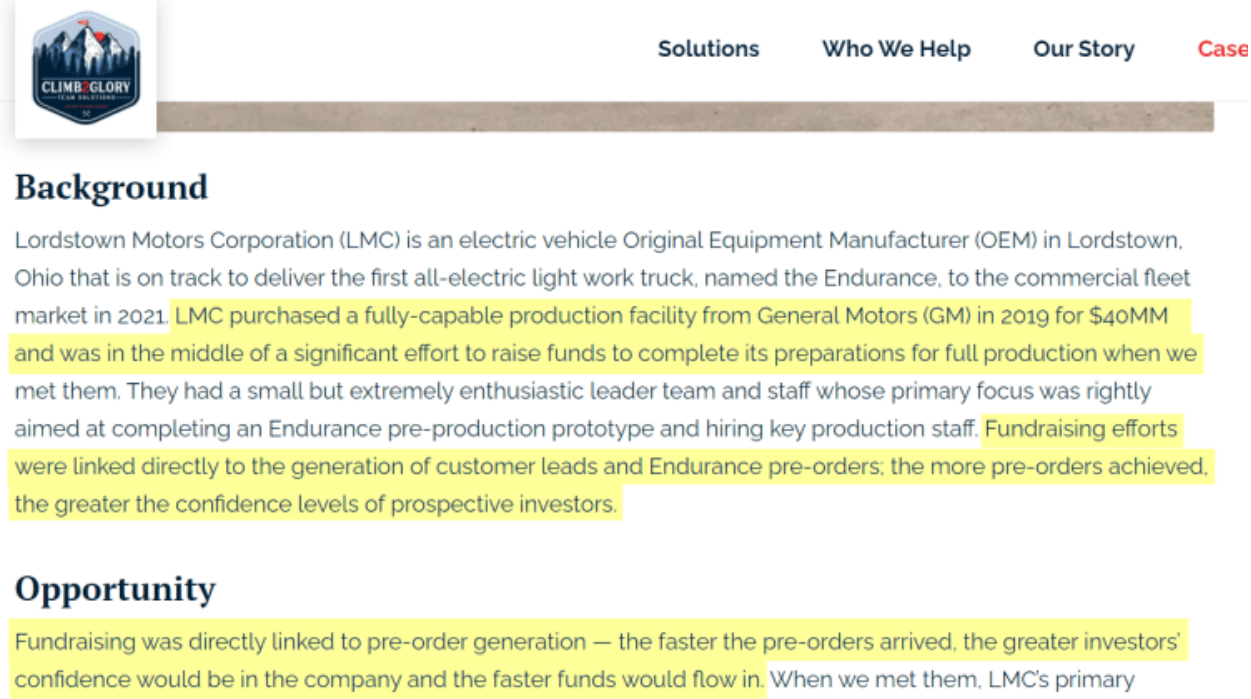
11 4.7 During his employment with Workhorse, Plaintiff obtained signed pre-orders
12 from multiple interested purchasers. In accordance with the parties' contract, Workhorse paid
13 Plaintiff pre-order commissions of $30 per vehicle on the following accounts: Duke Energy
14 (500 vehicles), Portland General Electric (50 vehicles), American Electric Power (500
15 vehicles), Southern California Public Power Authority (500 vehicles), Clean Fuels Ohio/Smart
16 Cities Columbus (500 vehicles), and the City of Orlando (500 vehicles).

1 4.18 On June 16, 2017, Plaintiff sent Workhorse employee Angela Strand an internal
2 invoice for payment of the pre-order commissions he was owed on the Ryder pre-order.
3 Workhorse refused to pay Plaintiff a commission on the Ryder pre-order.

By 2020, Desperate to Report More Orders in the Run Up to its Go-Public Transaction, Lordstown Began Paying $50 For Each Zero-Commitment Order

In early 2020, with a go-public transaction on the horizon, former employees told us that CEO Steve Burns was desperate to increase the number of pre-orders, regardless of quality. At the time, former employees described how Burns wanted to get to 10,000 pre-orders in order to secure better financing terms.

The company hired small consulting group Climb2Glory, which was to receive **$50 per truck pre-order**, according to former employees. Climb2Glory boasts on its own website how it was key in helping Lordstown generate pre-orders faster in order to use the orders as a capital raising tool.



Climb2Glory managing partner Pat Mangin reiterated that in a phone interview:

"Because of the letters of intent from Climb2Glory and some marketing, Diamond Group came to the table and they did the reverse merger. So our role was to help influence and acquire interest that would lead to investment. That was Climb2Glory's role."

Mangin explained that initially Climb2Glory represented the Endurance for "contract dollars" but later took a stake in the company:

*"**We did get a significant amount of shares in the deal** so what we do now is we still leverage our network."*

Catholic Cemeteries Association: "I'm Not Committed to Anything"

We reached one customer signed up by Climb2Glory who suggested they would not have considered themselves customers of Lordstown at all.

Andrej Lah, CEO of Catholic Cemeteries Association, had pre-orders for 40 vehicles through Climb2Glory, according to a former employee. Per our conversation with him:

*"...**I'm not committed to anything, not to buying a single vehicle**. I committed to **consider** buying vehicles. I'd have a lot of questions before I commit to anything. The way it was written I was very careful because I'm an attorney. I wasn't going to commit us to buying but the guy from Climb2Glory said it was just to give us an idea of the potential market..."*

Other "Key" Pre-Orders, Including a 250-Truck Order From A Customer Subsequently Engulfed in a Bribery Scandal, Appear Similarly Meaningless

Lordstown has provided scant detail about its pre-order customers, but a Sept 17, 2020, investor presentation introduced additional supposed customers. [Pg. 9]

These key customers show a pattern of being small companies that generally don't own or operate fleets. Often, they are just local Ohio based car dealerships or leasing services.



First Energy – An Ohio nuclear power company made infamous for a $61 million bribery scheme, resulting in the arrest of the Ohio house speaker and 4 others in mid-2020. Lordstown announced the 250-truck deal just months earlier. The Lordstown deal announcement quoted Dennis Chack, one of the First Energy executives subsequently fired over the bribery scandal.

Momentum Groups – An Ohio vehicle reseller that doesn't seem to operate a fleet yet placed a 900 truck "order". Momentum has a website dedicated to trying to find actual customers for the Endurance.

Summit Petroleum Inc – A small Ohio-based oil & gas exploration company with about 24 employees, according to LinkedIn.

"For us it's really just a look-see I don't know enough about them to make an honest…We want to evaluate them on their merits…A friend of a friend is involved in [Lordstown] and asked us if we would consider it and we said we would and we are not locked in" –William Kinney, Summit Petroleum – President

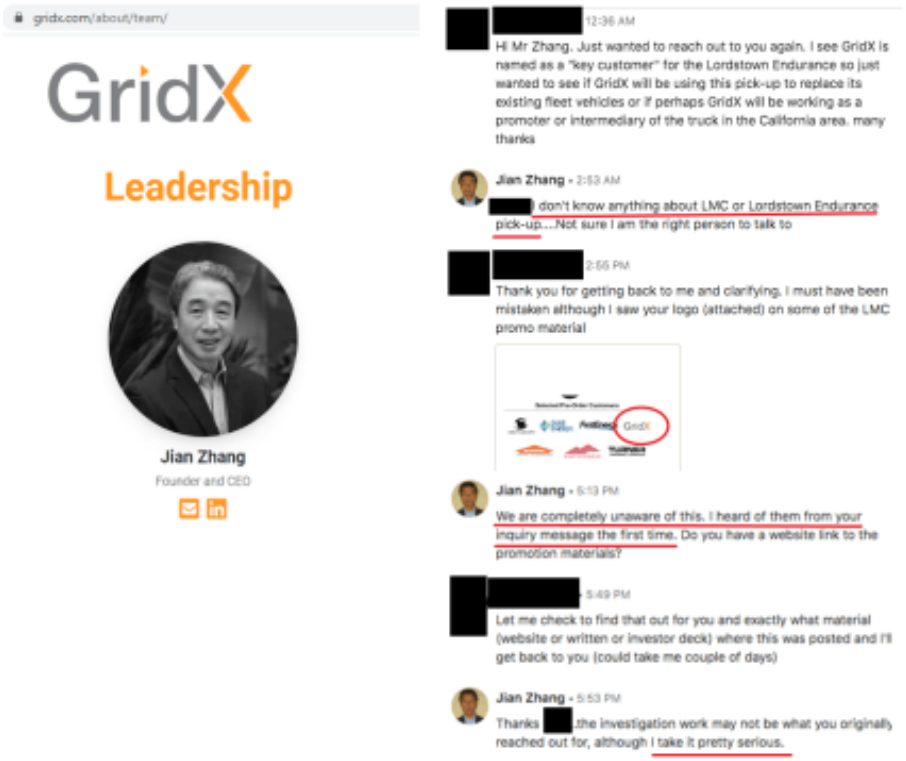
Mike Albert Fleet Solutions –The January 2021 order announcement didn't disclose the number but referred to it as "significant". It was the only order announced in a month when the order book jumped from 80,000 to 100,000 vehicles.

When asked about the relationship between Lordstown Motors and Mike Albert Fleet Solutions, Mike Albert indicated that this "pre-order" deal was actually a referral arrangement:
"They (Lordstown) are an Ohio-based company and so are we (Mike Albert Fleet Solutions) and I have a personal relationship with some of the business development executives that are there. And we go out and talk to the same people and so they're talking to fleets and I'm talking to fleets. ***We refer business introductions and opportunities to each other.****" –Nate Shadoin – Director of Sales – Mike Albert Fleet Solutions*

Grid-X – This 'key' customer is a cloud services company for utilities, based on the matching name and logo for Grid-X in Lordstown's presentation. It appears to own zero fleet trucks, according to Department of Transportation records. We were unable to identify who at Grid-X may have signed an agreement. Its CEO, Jian Zhang told us:
"I don't know anything about LMC or Lordstown Endurance pick-up.*..Not sure I am the right person to talk to."*

He later added:

*"****We are completely unaware of this.*** *I heard of them from your inquiry message the first time."*



(Source: Conversation with Grid-X CEO expressing confusion about apparently being a key Lordstown customer)

Even Lordstown's smaller supposed customers told us the order size Lordstown recorded for them is not feasible.

We spoke with Frank Seman, mayor of the City of Ravenna, which had pre-orders of 15 vehicles per Lordstown documents we reviewed. Per our conversation with him he wrote a letter out of hope that the support would help job growth in the local community:

"I was asked to write a letter of support to help get the plant repurposed and reopened to help provide more jobs for residents of Northeast Ohio. While we have an interest in the plant's success and this technology, ***we did not commit to the purchase of any vehicles****. We are a small town. The commitment of that size is totally impossible."*

Ravenna is just 20 miles west of Lordstown and as they state, city authorities have a strong desire to get thousands of autoworkers back into employment.

The same is true in the City of Kent, 25 miles west of Lordstown. City Manager Dave Ruller said Kent could potentially be in the market for 3 or 4 trucks subject to a formal bidding process – not the 15 recorded by Lordstown as pre-orders. He told us:

"We were happy to write that letter to show our support — ***and to help them finalize all their production financing —*** ***knowing that it is not an official bid document or purchase order so it is not legally binding us to buy something*** *that hasn't even been produced yet beyond a prototype."*

Lordstown's Marquee Ryder And Duke Energy Orders For 2,500 & 500 Trucks Were Mere "Favors to the CEO", According to Former Employees

In November 2016, electricity company Duke Energy entered a letter of intent to buy 500 trucks (representing ~$23 million in potential revenue) from Workhorse, the predecessor owner of what is now the Lordstown Endurance. The vote of confidence from the large NYSE-traded electricity company provided credibility to the fledgling company.

Shortly thereafter, Workhorse announced a deal for 2,500 trucks from fleet management giant Ryder, representing about $130 million in potential sales. Per an article at the time, Steven Burns declared:

"We have enough pre-orders now to justify pulling the trigger and making a march toward production."

Despite the big claims, former employees told us the deals were essentially for show and done as a favor to CEO Steve Burns in order to aid in the capital raising process.

Ryder publicly disclosed in a 2018 interview that they were primarily "supporting Workhorse with a maintenance & service program." Steve burns recently promised those same service rights to a different company, Camping World.

We received a copy of the Duke letter of intent from a former employee, which reveals for the first time how loose the deal was. The deal made explicitly clear that Duke had zero obligation whatsoever.

WORKHORSE LD1500 Non-Binding Letter of Intent

This Workhorse LD1500 Reservation Agreement between the person or entity identified below as you and Workhorse Motor Works Inc., identified below as we or us, is for your reservation of Workhorse LD1500 vehicle(s) described below with us. The fact you enter into this Agreement with us will not affect your delivery location.

1. Reservation. By entering into this Workhorse LD1500 Reservation Agreement you hereby confirm that you wish to reserve the following with us on a non-binding basis (the minimum number of units to join this Aggregate Group is 50 vehicles taken over a 2-year period):

Quantity	Description	Price	Discount (if any)	Installment Details
500	Workhorse LD1500 – Light Duty Work Truck	$52,500 per vehicle	$6000 per vehicle including volume and 7.2KW PEM discounts	The 500 trucks can be taken over a 2-year period, at Purchaser's option.

2. Nature of Agreement; No Reservation Payment. The Reservation Payment does not require payment of any kind unless and until a legal and binding Purchase Agreement is signed by both parties. This Agreement does not constitute an agreement for the sale of the above Workhorse LD1500(s) and does not lock in pricing, a production slot, or an estimated delivery date, until a definitive Purchase Agreement is entered between the parties. You are under no obligation to purchase a Workhorse LD1500(s) from us, and we are under no obligation to supply you with a Workhorse LD1500(s) or any other vehicle. If

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and do each hereby warrant and represent the execution and delivery of this Agreement has been duly authorized by all necessary and appropriate corporate action and constitutes a valid, legal and binding Agreement enforceable in accordance with its terms.

WORKHORSE MOTOR WORKS INC.

By: Stephen S. Burns

Name: Stephen S. Burns

Title: Founder & CEO

Date: 11/1/2016

Purchasing Entity:

Duke Energy Business Svcs.

By:

Name: Mike Allison

Title: Director, Fleet Svcs.

Date: 11/1/2016

At the time, it was expected that the trucks would be produced by 2018. That date has come and gone.

In a phone conversation, Duke Energy media spokesman Randy Wheeless clarified the letter-of-intent:

"We want to see the truck and kick the tires before we buy that many. We want to see that it's pretty durable, rugged and has a good range and heavy duty. We're in some rugged areas especially in storms with trees down and areas a little hard to access."

All told, we found zero binding orders or genuine signs of commitment in Lordstown's order book.

Part 2: Production Overpromises And Tech Issues – The Endurance (And its Predecessor) Have Consistently Been Beset With Delays.

Burns Has Been Late On Production Promises By 3 Years and Counting

Lordstown has yet to sell a truck. Production targets are therefore essential for modeling its future revenue potential. Production delays aren't uncommon among new companies, but Burns has distinguished himself by consistently promising very near-term mass production, often within 6-12 months, then repeatedly missing those targets.

- In May 2017, the truck (under its predecessor name and ownership by Workhorse) was said to be ready for production in early 2018.
- By late 2017/early 2018, the truck was said to be ready for production and sale to customers by Q4 2018.
- By March 2018, production was seemingly ahead of schedule, with early production to begin Q3 or Q4 2018.

In February 2019, Steve Burns was pushed out of Workhorse by the board, according to former employees.

With the truck then moved over to Lordstown and rebranded as the "Endurance", the company explained that changes would be made to the planned vehicle. It then commenced announcing aggressive production targets that it continues to miss. While some of the delay can be chalked up to covid, several revised and missed targets were made mid-pandemic.

- By November 2019, the company said deliveries would begin in Q4 2020.
- By April 2020, the company said deliveries would begin in January 2021.
- By late June 2020, the company said its first deliveries would begin in "early 2021".
- The latest January 2021 company presentation now says deliveries are expected by September 2021.

"Fully Engulfed": The Lordstown Endurance Prototype Spontaneously Burst Into Flames 10 Minutes Into Its First Road Test In January 2021

Lordstown's progress toward production has been lumpy. On January 13, 2021, Lordstown's Director of Power Train called 911 in Michigan to report that his vehicle was on fire, according to copies of the 911 call and a police report we received through FOIA requests.

The employee noted on the scene that the vehicle was a 2021 Lordstown Endurance that had cleared testing inside the facility, and that it was the first road test for the electric truck, according to a local media report.

Narrative:

CR No: 210001110-001 Written By: FHBRAGOLEJ (00472) Date: 01/13/2021 01:54 AM

I was dispatched to the area of 12 Mile Rd. and Copper Creek Lane to assist the fire department for a vehicle fire.

Upon arrival, I observed the truck fully engulfed in the eastbound 12 Mile Rd. lanes just east of Copper Creek Lane.

FHFD and Ofc. Washington arrived on scene.

I spoke with the driver of the vehicle, Pirakalathan Pathmanathan, who advised me that he was the director of power train for Lordstown Motors. Pathmanathan explained that the vehicle was a 2021 Lordstown Endurance that had cleared testing inside of the facility. Pathmanathan stated that this was the first road test for the Endurance and added that it is a fully electric truck. Pathmanathan said that he took two of his co-workers, Simone Palombi and Akshay Sharma, for the road test with him and wthey ere driving it for about ten minutes before it caught on fire.

I asked Pathmanathan what happened and he stated they were driving the vehicle and noticed the truck was driving weird. Pathmanathan stated he pulled over and the Endurance started on fire from underneath the truck.

(Source: Police report)

He noticed it was "driving weird". Within 10 minutes the Lordstown truck burst into flames.



(Source: Dashcam footage from Farmington Hills Fire Department requested through Freedom of Information Act [FOIA])



(Passenger compartment of Lordstown vehicle that had "cleared" internal testing, January 2021. Source: Farmington Hills Fire Department requested through Freedom of Information Act [FOIA])

Two weeks after its very first Endurance test truck burst into flames, Lordstown announced that it would begin building beta trucks in a month.

Lordstown Motors Releases Business Updates; Prepares Ohio Factory to Begin Building Betas Next Month

January 28, 2021

When asked about the immolation of its test vehicle, Lordstown acknowledged about a month later that it did have "an event', stating that "we do not generally comment on individual testing conditions."

Lordstown's Hub Motor Technology, Core to its Vehicle's Success, Is Licensed From A Tiny Slovenian Company That Former Employees Said Burns Went With Because it Was Cheap

Lordstown's prototype issues may stem from its selection of critical parts.
The company's website features its "revolutionary" In-Wheel Drive System, which utilizes motors within its wheels.



The technology is licensed from Elaphe, a small company based in Slovenia that has raised only €15.3 million in funding in its 15-year history, according to CrunchBase.

A former employee of Elaphe said that funding for the company had dried up by the end of 2019, leading to a round of lay-offs:

"(there were) money issues at the time. Yeah, no money no investments. They obviously resolved shortly (after) because the project with U.S. came along."

In May 2020, Elaphe and Lordstown announced an exclusive licensing agreement. The deal came right in time, according to the former employee, and enabled Elaphe to raise €4.2 million in September.

We mentioned Elaphe's lack of funding to an employee at competitor Protean, a company that also develops hub motor technology, who simply replied "it is an expensive business". They explained that OEMs can spend ***half a billion*** on new projects just to test the market.

A former senior employee at Workhorse who worked on the technology agreed and provided more color. He explained that Lordstown was promised a "crazy" price from the group in Slovenia, which is what attracted Burns' interest.

Protean would not come down on price, according to the former Workhorse employee. Its technology had been far more extensively tested and integrated into other autos, the former employee said.

Hub Motor Technology Has Never Been Commercialized At Scale In the Light Vehicle Market, Posing Major Technical Challenges, According to Analysts and Industry Experts

The hub-motor technology is indeed different, but, according to analysts and a former senior employee at Workhorse who worked on the technology side of the company, there are reasons why it hasn't seen adoption.

Morgan Stanley analyst Adam Jonas, who has been an optimist on the EV space, placed an underweight rating on Lordstown in February this year, largely due to its choice in technology, writing:

*"**The company's radical new hub-motor technology (licensed from Elaphe of Slovenia) has never been commercialized at scale in the light vehicle market**. In our opinion, it's a good concept, but following a series of channel checks on the propulsion tech, **we believe investors would be exposed to significantly elevated execution risk."***

The former senior Workhorse employee also explained that hub motors are susceptible to durability issues because hub motors are considered "unsprung weight", or components not supported by a vehicle's suspension system. (These "unsprung" components also include wheels, tires and brakes, which sit below the suspension and travel up and down with bumps and potholes as they try to follow the contours of the road.)

Given that motors are typically supported by suspension, hub motors based in the wheels do not receive that protection, resulting in durability issues. We were told that a basic curb strike can break the axle and the motor. Any off-roading can also cause issues with liquids or debris creating interference.

While Elaphe's CEO Gorazd Lampic believes they have solved technical limitations, he recognizes hub motors have never been mass produced.

Elaphe has built some motors in Slovenia and others on a purpose-built assembly line in Hangzhou, China as part of a joint venture with parts manufacturer APG. A former employee said it took 12-months to build that line.

But under the licensing deal, Lordstown will build the motors for the Endurance in-house with "some support from Europe", according to Lampic.

With regard to future capacity for the production of Elaphe in-wheel motors globally, Lampic told us:

"All the processes we're developing are for 100,000 units per year. But we don't have all the processes up and running, so we're far from that number in terms of real quantity we produce."
He declined to give details about progress on building the hub motor assembly line at Lordstown. But if it plans to build a modest 20,000 Endurance trucks in the first full year that will require 80,000 motors, assuming all are 4-wheel-drive – an untested production rate.
Overall, investors are banking on an unvetted technology in a brand-new application on a scale that has never been achieved. All of this poses clear technology risk.

Lordstown's Claimed Production Target: September 2021 Former Employee: Maybe 3-4 Years, If Ever. "Drastic" Recent Changes Have Been Made to Prototypes And None of the Testing And Validation Has Been Completed

CEO Steve Burns has been saying that the company plans to begin production in September of this year, a mere 6 months away, and that the company plans to have 3,000 trucks on U.S. roads by year-end. Aside from staking that bold target, few details have been provided on actual progress toward that goal.

We spoke with a former employee who was intimately familiar with the path toward production. **They explained that Lordstown has built fewer than 10 prototypes thus far**, and that the company is still making extensive modifications.

For example, in mid-January, the company "totally switched from a plastic exterior to aluminum" in order to reduce weight. The former employee called the change "drastic" and suggested that the entirely new frames would essentially restart any testing and validation process.

The former employee also explained that Lordstown had not completed any of its required testing and validation, including:

- Cold weather testing, which typically takes about 3 months and had not begun.
- A "million mile" test or similar durability test done by major automakers. Per the former employee, "This doesn't even have 1,000 miles of testing right now, let alone a million."
- Typically, such durability testing requires 6 months of 24/7 testing, per the same employee.
- Major testing required for the Federal Motor Vehicle Safety Standards (FMVSS) by the NHTSA.

A senior UAW union leader, who worked for decades at the Lordstown plant for GM, also believes production of the Endurance is lagging way behind the stated schedule.

"I know they're way behind. If nothing else went wrong the Covid threw them way behind…They can't fire up the old machines. Some of them they can. But everything else has to be reprogrammed and some of it has to be rebuilt."

And referring to this video posted by Lordstown in late February 2021 of an Endurance body being assembled by 4 robots, only one of which generated any sparks, the union leader, basing his opinion on 40 years working for GM, said:

"It's not ready. It is not ready. They showed some stuff on TV in the body shop with the robots that do the welding. But if you never worked in a body shop you didn't realize they weren't working. They were moving but not welding. There were no sparks."

Steve Burns: We Will Make All Battery Packs In-House Former Employee: "There's No Battery Pack Manufacturing Equipment On Site There Now. They Just Put It Together By Hand."

In December 2019, CEO Steve Burns advanced a bold plan to bring all the battery pack production for Lordstown vehicles in-house. Per an article at the time:

> "We are building our own battery pack line inside the plant."

Burns reiterated the goal, mentioning it as recently as several weeks ago.

Despite these plans, however, a former employee explained that all the battery packs are being put together by hand. The company recently ordered equipment to manufacture battery packs, but delivery is expected to take 25-30 weeks (5-7 months), not including installation, testing, and getting the equipment into production.

Steve Burns has told investors that batteries are "the secret sauce of an electric OEM", yet despite spending a decade in the EV industry, neither Lordstown or Workhorse had any battery specific patents to show for it.

Former employees that worked with Steve told us that Steve hoped to rely on Tesla's open-source patents from the Model 3 and slightly change them to fit a truck, but that it was not feasible in practice.

Despite this, Burns has claimed that Lordstown's battery packs are better than what Tesla can currently produce, suggesting that Lordstown is able to just use Tesla's Model 3 packs and "tweak it, make a little bit better" and then add some "**secret magic**". So far, we have seen no evidence that any of this has happened.

Steve Burns: We Will License The Motor Technology And Produce The Motors In-House Former Employee: "They're Buying Them Direct From the Production Source (Elaphe)"

Lordstown has also claimed that it intends to construct its hub motors in-house using licensed technology from Slovenian company Elaphe. But according to the former employee, this hasn't happened yet. Instead, the company is still buying motors directly from the manufacturer. It was unclear when the company plans to start making motors in-house, let alone on a scale capable of supporting mass-production.

Given the technology risks associated with the motors, it would clearly be important to actually produce at least a single motor in order to begin the extensive testing needed to determine whether it can work and last in a consumer-ready vehicle.

Lordstown Was Sued Over Allegations That It Faked Interest In Licensing Third-Party Infotainment Software, Then Poached the Company's Employees And Stole Its Designs Instead

Lordstown has very little intellectual property of its own, and generally licenses outside technology or outsources key components.

This approach requires less up-front R&D capital but can result in compressed profit margins and a general loss of control over its manufactured and outsourced components.

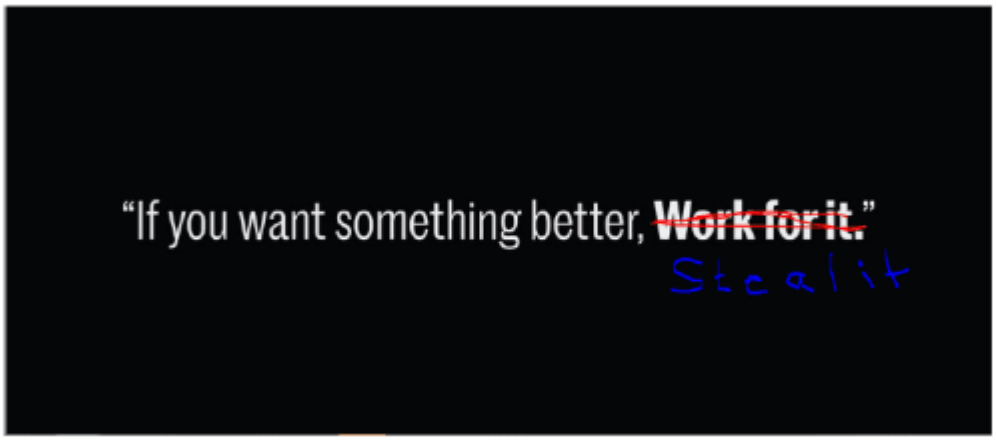


(Key Lordstown suppliers and service providers. Source: January 2021 investor presentation)
These pitfalls aside, one of the key elements of the truck that Lordstown claims to develop in-house is its infotainment system. [Pg. 172] But that claim is currently being contested in the California courts.

A lawsuit by Karma automotive, a California electric vehicle manufacturer, alleges in detail how Lordstown entered into an NDA to perform due diligence on licensing Karma's infotainment system, then stole the technology instead.

Infotainment Group." Not only that, LMC apparently incentivized at least two of Karma's former employees to accept job offers from and begin to work for LMC *while they were still employed by and working for Karma* so they could ensure that these employees downloaded, saved, and sent to their personal email addresses all of Karma's confidential and proprietary information to help LMC start the new "LMC Infotainment Group" and recreate the technology itself, which they did.

3. In short, contrary to LMC's slogan on its website which states "If you want something better, Work for It," here, LMC's actions followed this slogan instead:



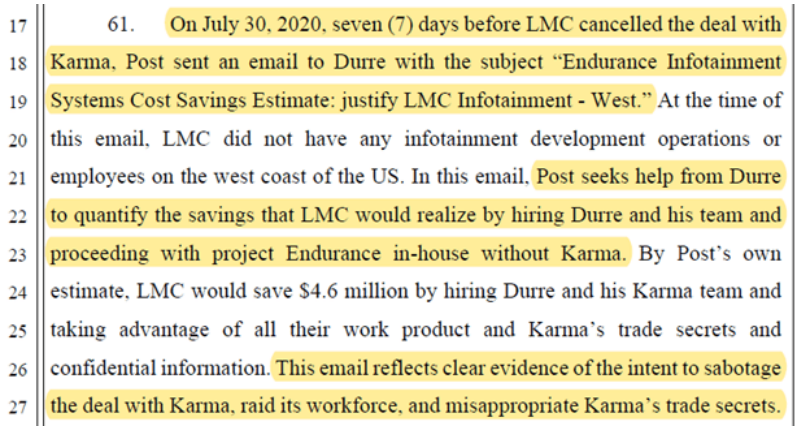
(Karma v. Lordstown Pg. 3)

The complaint contains emails showing how Lordstown secretly hired employees of Karma, sometimes while they were still employed at the firm. Karma alleges that Lordstown then encouraged the duplicitous employees to steal thousands of documents via USB flash drive, which they used to launch a new Lordstown California office focused on building the infotainment system in-house.

The Lawsuit Shows That Lordstown Accidentally Emailed the Supplier A Cost/Benefit Analysis of Licensing the Technology Legitimately Versus Stealing It And Poaching The Employees Instead

Lordstown apparently made its intentions extremely obvious when it accidentally emailed one of the poached Karma employees on his work email with a cost/benefit analysis of licensing the technology from Karma versus misappropriating it and setting up a new Lordstown California office instead.

Lordstown's accidental email helpfully calculated the potential lost revenue to Karma, a useful component of determining any liability and damages.



61. On July 30, 2020, seven (7) days before LMC cancelled the deal with Karma, Post sent an email to Durre with the subject "Endurance Infotainment Systems Cost Savings Estimate: justify LMC Infotainment - West." At the time of this email, LMC did not have any infotainment development operations or employees on the west coast of the US. In this email, Post seeks help from Durre to quantify the savings that LMC would realize by hiring Durre and his team and proceeding with project Endurance in-house without Karma. By Post's own estimate, LMC would save $4.6 million by hiring Durre and his Karma team and taking advantage of all their work product and Karma's trade secrets and confidential information. This email reflects clear evidence of the intent to sabotage the deal with Karma, raid its workforce, and misappropriate Karma's trade secrets.

(Source: Karma v. Lordstown et. al [Pg. 20])

From: Darren Post <darren.post@lordstownmotors.com>
Sent time: 07/30/2020 04:24:04 PM
To: Joe Durre
Subject: Endurance Infotainment Systems Cost Savings Estimate: justify LMC Infotainment - West

Hi Joe,

Can you help quantify the savings that a LMC Infotainment Group could save versus the Karma System quote? Here is the quote:

Start	6	$2,415,949.05	
Core	6	$1,627,572.90	9
Core+	8	$658,535.19	5
Add T&A	5	$162,885.46	2
Full Team	25	$ 3,929,911.88	

System B

	2020	2021	2022	2023	2024	
NRE (ED&D, Tooling, continuous support, etc.)	$7,082,250	$975,000	$850,000	$325,000	$325,000	
Cloud and Connectivity Support	$325,000	$325,000	$325,000	$325,000	$325,000	Subject to final Scope

Note: Cloud and Connectivity Support to be extended out through length of services contract.

This will help me justify the cost for LMC Infotainment West. From the above System B quote, LMC would pay Karma $10.982 million.

(Source: Karma v. Lordstown et. al [Pg. 96])

The complaint also shares how Karma employees emailed confidential files to their personal computers, a violation of company policy, as they were being poached by Lordstown. Aside from the potential liability associated with the complaint, it underscores an approach to business that is similarly unethical and sloppy. If Lordstown is comfortable misappropriating technology through obvious acts of deception, should investors think themselves spared the same fate?

The Lack of a Single Product Sale Hasn't Stopped Insiders From Selling ~$28 Million in Stock in 4 Months Through Open Market Sales

We do not think it bodes well when executives unload stock in a company that claims to be on the cusp of production and revenue.

Lordstown only went public in October 2020, but in that brief time, executives and directors have unloaded ~$28 million in stock despite having no actual product. These sales are driven in significant part by the company's core engineering team:

1. Lordstown's President, the former Tesla Director of Manufacturing sold 263,412 shares. [1,2]
2. The VP of Propulsion sold 198,300 shares. [1,2]
3. The VP of Engineering sold 10,000 shares.

The prototype fire took place on January 13th, but was only revealed publicly on February 10th. Lordstown executives sold $8.8 million in stock through open market sales in that time frame before the public knew about the fire.

Conclusion: Investors, Workers, And The Local Community Deserve Answers On What Is Going On At Lordstown. We Have 21 Questions For the Company

One key thread we experienced through our research was hope. Even the most skeptical workers and partners of Lordstown often still held hope that the company would somehow make it happen, despite the obvious, given how hard the local community has fared as of late.
We don't think Lordstown Motors has been transparent. These questions are an opportunity to clear the air and show the local community, investors, and the public that the hope placed in Steve Burns has been justified:

1. Lordstown announced a 14,000-truck order from E Squared Energy, representing $735 million in potential sales. We found that E Squared is based out of a small apartment in Texas that doesn't operate a fleet. How do you explain this, and how do you explain calling this a "pre-order" when there is no end customer?

2. Lordstown announced a $52.5 million, 1,000-truck order from Innervations, LLC. We found that the entity is based out of a Regus Virtual Office with a UPS store mailbox. The CEO of the apparently 2-man operation described his role as being that of a promoter. How do you explain this, and how do you explain calling this a "pre-order" when there is no end customer?

3. When we contacted the CEO of supposed key customer Grid-X, he had no idea the company was considered a customer of Lordstown. Can you explain who at Grid-X signed the agreement, apparently without the knowledge of Grid-X senior management?

4. Does Lordstown have any **binding** commitments or **deposits** from customers to purchase any trucks? If so, how many/much?

5. What percentage of your "pre-order" book is from customers that don't operate fleets?

6. Why was Lordstown paying $30-$50 to collect non-binding pre-orders of virtually no substance?

7. Lordstown's marketing partner explained that "fundraising was directly linked to pre-order generation" in order to increase investor "confidence". How do you respond?

8. Lordstown (and predecessor Workhorse) have previously claimed to be 6-12 months away from production targets for years. Why should investors believe this time will be different?

9. The police report describing the immolation of the first Lordstown test vehicle stated that the model had passed all internal testing before being taken on the road. If that is the case, why did the vehicle incinerate itself within 10 minutes of being driven on actual roads?

10. Why did Lordstown license its critical motor technology from a tiny Slovenian company, Elaphe? Have the motors ever been successfully implemented on any commercial trucks currently in production or driven by end customers?

11. Former employees described that Lordstown has completed no major testing and validation of the prototypes. What progress has Lordstown made on cold weather testing?

12. How about a million-mile test or similar durability testing?

13. How many miles of actual road testing has Lordstown completed to date?

14. Former employees described how third-party parts need to be tested by companies like ZF/TRW. Which of these parts need to be tested and what has the progress been on these tests to date?

15. A former employee explained that Lordstown hasn't completed any Federal Motor Vehicle Safety Standards (FMVSS) tests required by the NHTSA. How do you respond? Have these tests begun, and will you provide thorough detail on progress to date?

16. A former employee stated that Lordstown switched from plastic frames to aluminum frames early this year, a "drastic" change that would essentially reset any testing or validation. Did this change happen, and if so, did you expect this wouldn't affect testing and production timelines?

17. The company has said previously that it would make all battery packs in-house. A former employee said the equipment to manufacture battery packs is months away from arrival and that battery packs are currently all being made by hand. How do you respond?

18. The company has said it intends to make all hub motors in-house using licensed technology. How many hub motors have been made in-house to date? How many have been purchased directly from Elaphe?

19. Karma automotive sued Lordstown, alleging the company poached its employees and proprietary infotainment system. The lawsuit includes an email sent by Lordstown showing a cost/benefit analysis of misappropriating the capabilities versus licensing them. How do you respond?

20. Former employees have said that Lordstown is 3-4 years away from production, if ever. Aside from a high-level goal, will you provide a clear timeline of steps needed to get the Endurance to production by September from a testing, validation, and factory tooling perspective?

21. Why have insiders sold ~$28 million in stock despite there being no product and the company claiming to be on the cusp of full production?

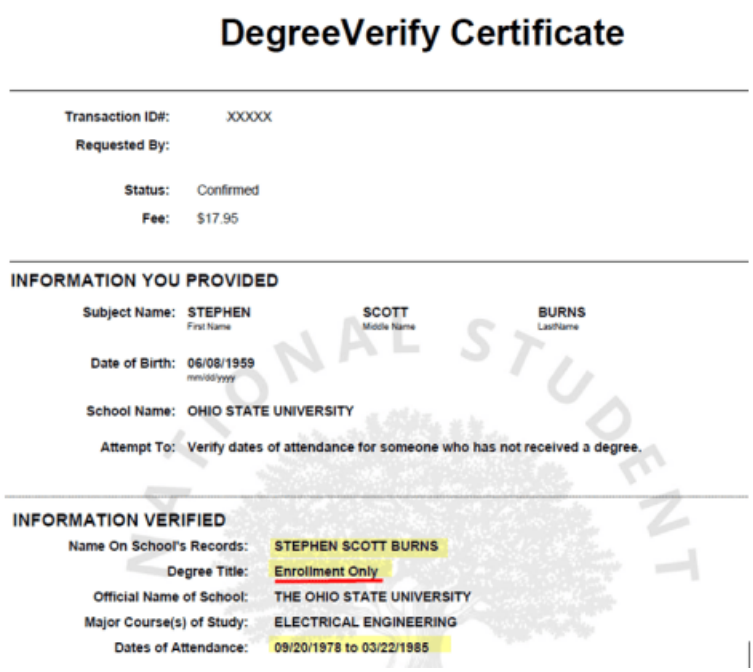
Disclosure: We are short shares of Lordstown Motors Corp. (NASDAQ:RIDE)

Appendix A: Background on Steve Burns

Typically, upstart auto companies rely heavily on engineering leadership (think Tesla or Rivian) given the intensity of launching brand new OEMs in the competitive arena of cutting-edge tech. We found that Burns' legacy seemed to be that of a dealmaker focused on a variety of small software companies, with no significant scientific or automotive credentials prior to his roles at Workhorse and Lordstown.

Burns has been described in media and personal publications as having gone to Ohio State University and earning a degree in electrical engineering or as a "graduate" of Ohio State. [Pg. 17]

These reports have been imprecise. Our review of college enrollment records show that Burns attended OSU for 6.5 years but never graduated.



DegreeVerify Certificate

Transaction ID#: XXXXX
Requested By:

Status: Confirmed
Fee: $17.95

INFORMATION YOU PROVIDED

Subject Name: STEPHEN (First Name) SCOTT (Middle Name) BURNS (LastName)
Date of Birth: 06/08/1959 (mm/dd/yyyy)
School Name: OHIO STATE UNIVERSITY
Attempt To: Verify dates of attendance for someone who has not received a degree.

INFORMATION VERIFIED

Name On School's Records: STEPHEN SCOTT BURNS
Degree Title: Enrollment Only
Official Name of School: THE OHIO STATE UNIVERSITY
Major Course(s) of Study: ELECTRICAL ENGINEERING
Dates of Attendance: 09/20/1978 to 03/22/1985

Following his college experience, Burns launched a variety of startups with a record of several modest successes and failures. All appeared to be companies that developed software without any direct relation to the auto industry, let alone manufacturing or advanced hardware development:

1. Adlink, a computer program that allowed real estate advertisers to track newspaper ads. It was formed in 1991 and sold 3 years later to Gannett Co for an unknown amount.

2. PocketScript, a provider of electronic prescription software, which was formed in 1999 and sold in 2003 for ~$1.5 million.

3. AskMeNow, a search engine that launched in 2005 and traded as an OTC stock until it went defunct in 2008.

4. MobileVoiceControl, a provider of speech-recognition software formed in 2005 and sold the next year for unspecified terms.

5. iTookThisOnMyPhone, a photo storage site formed in 2007 that went defunct in 2011.

In 2010, Burns launched the predecessor entity that would then become Workhorse, which he ran until his resignation in 2019.

Legal Disclaimer

Use of Hindenburg Research's research is at your own risk. In no event should Hindenburg Research or any affiliated party be liable for any direct or indirect trading losses caused by any information in this report. You further agree to do your own research and due diligence, consult your own financial, legal, and tax advisors before making any investment decision with respect to transacting in any securities covered herein. You should assume that as of the publication date of any short-biased report or letter, Hindenburg Research (possibly along with or through our members, partners, affiliates, employees, and/or consultants) along with our clients and/or investors has a short position in all stocks (and/or options of the stock) covered herein, and therefore stands to realize significant gains in the event that the price of any stock covered herein declines. Following publication of any report or letter, we intend to continue transacting in the securities covered herein, and we may be long, short, or neutral at any time hereafter regardless of our initial recommendation, conclusions, or opinions. This is not an offer to sell or a solicitation of an offer to buy any security, nor shall any security be offered or sold to any person, in any jurisdiction in which such offer would be unlawful under the securities laws of such jurisdiction. Hindenburg Research is not registered as an investment advisor in the United States or have similar registration in any other jurisdiction. To the best of our ability and belief, all information contained herein is accurate and reliable, and has been obtained from public sources we believe to be accurate and reliable, and who are not insiders or connected persons of the stock covered herein or who may otherwise owe any fiduciary duty or duty of confidentiality to the issuer. However, such information is presented "as is," without warranty of any kind – whether express or implied. Hindenburg Research makes no representation, express or implied, as to the accuracy, timeliness, or completeness of any such information or with regard to the results to be obtained from its use. All expressions of opinion are subject to change without notice, and Hindenburg Research does not undertake to update or supplement this report or any of the information contained herein.

Exhibit B

DocuSign Envelope ID: D8A456A1-2B58-4201-8E50-F0B9DE2F8CAA Case: 4:21-cv-00616-PAB Doc #: 14-2 Filed: 07/05/21 2 of 5. PageID #: 1562

CERTIFICATION

I, George Troicky, hereby certify as follows:

1. I have reviewed a complaint prepared against Lordstown Motors Corp. ("Lordstown") alleging violations of the federal securities laws, and authorize the filing of this pleading;

2. I did not purchase securities of Lordstown at the direction of counsel or in order to participate in any private action under the federal securities laws;

3. I am willing to serve as a lead plaintiff and representative party in this matter, including providing testimony at deposition and trial, if necessary. I fully understand the duties and responsibilities of the lead plaintiff under the Private Securities Litigation Reform Act, including the selection and retention of counsel and overseeing the prosecution of the action for the Class;

4. My transactions in Lordstown securities during the Class Period are reflected in Exhibit A, attached hereto;

5. I sought to serve as a lead plaintiff and/or representative party in the following class action under the federal securities laws filed during the last three years:

Rico v. Lordstown Motors Corp., No. 4:21-cv-0616 (N.D. Ohio)

6. Beyond my pro rata share of any recovery, I will not accept payment for serving as a lead plaintiff and representative party on behalf of the Class, except the reimbursement of such reasonable costs and expenses (including lost wages) as ordered or approved by the Court.

I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct this 9/10/2021 day of September, 2021.

DocuSigned by:
George Troicky
4ABB934507864B0...

George Troicky

DocuSign Envelope ID: D8A456A1-2B59-4201-8E50-F0B9DE2F8GAA

EXHIBIT A

TRANSACTIONS IN LORDSTOWN MOTORS CORP.

Transaction Type	Trade Date	Shares	Price Per Share	Cost / Proceeds
Purchase	11/09/20	10,000.00	$18.30	($183,000.00)
Purchase	11/13/20	10,000.00	$17.11	($171,100.00)
Purchase	11/24/20	7,953.00	$28.38	($225,706.14)
Purchase	11/24/20	2,047.00	$28.34	($58,011.98)
Purchase	11/25/20	4,900.00	$26.70	($130,830.00)
Purchase	11/25/20	100.00	$26.65	($2,665.00)
Purchase	11/25/20	5,000.00	$26.52	($132,600.00)
Purchase	11/25/20	5,000.00	$26.24	($131,200.00)
Purchase	11/30/20	5,000.00	$25.31	($126,550.00)
Purchase	12/01/20	10,000.00	$23.23	($232,300.00)
Purchase	12/04/20	5,000.00	$22.12	($110,600.00)
Purchase	12/08/20	10,000.00	$19.61	($196,100.00)
Purchase	12/08/20	5,000.00	$19.38	($96,900.00)
Purchase	12/10/20	5,000.00	$18.38	($91,875.00)
Purchase	12/10/20	5,000.00	$18.25	($91,250.00)
Purchase	12/18/20	5,000.00	$18.82	($94,100.00)
Purchase	12/24/20	5,000.00	$21.78	($108,900.00)
Sale	01/06/21	-10,000.00	$21.70	$217,000.00
Sale	01/06/21	-20,000.00	$21.52	$430,400.00
Sale	01/06/21	-20,000.00	$21.69	$433,800.00
Sale	01/07/21	-1,100.00	$22.47	$24,717.00
Sale	01/07/21	-1,200.00	$22.46	$26,952.00
Sale	01/07/21	-9,800.00	$22.44	$219,912.00
Sale	01/07/21	-7,900.00	$22.43	$177,197.00
Sale	01/07/21	-20,000.00	$23.25	$465,000.00
Purchase	01/08/21	20,000.00	$22.58	($451,600.00)
Purchase	01/08/21	20,000.00	$21.77	($435,400.00)
Sale	01/11/21	-20,000.00	$22.86	$457,200.00
Sale	01/11/21	-3,500.00	$23.23	$81,305.00
Sale	01/11/21	-4,100.00	$23.22	$95,202.82
Sale	01/11/21	-8,800.00	$23.22	$204,336.00
Sale	01/11/21	-2,000.00	$23.21	$46,420.40
Sale	01/11/21	-1,600.00	$23.21	$37,136.00
Purchase	01/11/21	1.00	$23.52	($23.52)
Sale	01/11/21	-10,000.00	$23.88	$238,800.00
Purchase	01/14/21	10,000.00	$25.47	($254,700.00)
Purchase	01/19/21	5,000.00	$23.63	($118,150.00)
Purchase	01/19/21	10,000.00	$23.39	($233,900.00)
Purchase	01/21/21	2,000.00	$23.09	($46,180.00)
Purchase	01/21/21	8,000.00	$23.08	($184,640.00)
Purchase	01/21/21	5,000.00	$22.80	($113,999.50)

DocuSign Envelope ID: D8A456A1-2B59-4201-8E50-F0B9DE2F8GAA Case: Case 23-60428-RAM ECF Doc 414 Filed 07/05/23 Page 207 of 235 Page ID: 1564

Transaction Type	Trade Date	Shares	Price Per Share	Cost / Proceeds
Purchase	01/25/21	5,000.00	$23.07	($115,350.00)
Sale	01/26/21	-5,000.00	$25.21	$126,050.00
Sale	01/27/21	-5.00	$29.03	$145.15
Sale	01/27/21	-600.00	$29.01	$17,406.00
Sale	01/27/21	-331.00	$29.00	$9,599.00
Sale	01/27/21	-30.00	$28.98	$869.40
Sale	01/27/21	-9,034.00	$28.97	$261,714.98
Purchase	01/27/21	10,000.00	$28.49	($284,900.00)
Purchase	01/27/21	10,000.00	$28.01	($280,100.00)
Purchase	01/27/21	5,000.00	$27.07	($135,350.00)
Purchase	01/27/21	5,000.00	$26.01	($130,050.00)
Sale	02/03/21	-100.00	$26.24	$2,623.50
Sale	02/03/21	-547.00	$26.22	$14,342.89
Sale	02/03/21	-1,511.00	$26.22	$39,618.42
Sale	02/03/21	-406.00	$26.20	$10,637.20
Sale	02/03/21	-100.00	$26.17	$2,617.00
Sale	02/03/21	-306.00	$26.16	$8,004.96
Sale	02/03/21	-731.00	$26.15	$19,115.65
Sale	02/03/21	-1,023.00	$26.14	$26,741.22
Sale	02/03/21	-664.00	$26.13	$17,350.32
Sale	02/03/21	-1,200.00	$26.12	$31,344.00
Sale	02/03/21	-776.00	$26.11	$20,261.36
Sale	02/03/21	-2,636.00	$26.10	$68,799.60
Sale	02/03/21	-10.00	$27.41	$274.10
Sale	02/03/21	-2,530.00	$27.39	$69,296.70
Sale	02/03/21	-400.00	$27.37	$10,948.00
Sale	02/03/21	-400.00	$27.35	$10,940.00
Sale	02/03/21	-6,660.00	$27.31	$181,884.60
Sale	02/05/21	-10.00	$26.81	$268.10
Sale	02/05/21	-15.00	$26.80	$402.00
Sale	02/05/21	-2,224.00	$26.79	$59,580.96
Sale	02/05/21	-520.00	$26.78	$13,925.60
Sale	02/05/21	-4,450.00	$26.77	$119,126.50
Sale	02/05/21	-2,763.00	$26.76	$73,937.88
Sale	02/05/21	-10,018.00	$26.75	$267,981.50
Sale	02/10/21	-20,000.00	$28.82	$576,400.00
Purchase	02/10/21	20,000.00	$27.62	($552,400.00)
Sale	02/10/21	-10,000.00	$28.79	$287,900.00
Sale	02/10/21	-200.00	$29.44	$5,888.00
Sale	02/10/21	-400.00	$29.43	$11,772.00
Sale	02/10/21	-1,616.00	$29.42	$47,542.72
Sale	02/10/21	-84.00	$29.41	$2,470.56
Sale	02/10/21	-4,000.00	$29.41	$117,644.00
Sale	02/10/21	-1,030.00	$29.41	$30,292.30
Sale	02/10/21	-300.00	$29.40	$8,820.30

DocuSign Envelope ID: D8A456A1-2B59-4201-8E50-F0B9DE2F8GAA Case: Case 23-60428-RAM Doc 414 Filed: 07/05/23 Page 208 of 235 Page ID: 1565

Transaction Type	Trade Date	Shares	Price Per Share	Cost / Proceeds
Sale	02/10/21	-1,350.00	$29.40	$39,690.00
Sale	02/10/21	-1,020.00	$29.39	$29,978.82
Purchase	02/11/21	17.00	$28.85	($490.45)
Purchase	02/12/21	9,983.00	$28.85	($288,009.55)
Purchase	02/12/21	10,000.00	$28.39	($283,900.00)
Purchase	02/12/21	20,000.00	$27.84	($556,800.00)
Purchase	02/12/21	748.00	$26.92	($20,136.16)
Purchase	02/12/21	4,044.00	$26.94	($108,945.36)
Purchase	02/12/21	1,990.00	$26.95	($53,630.50)
Purchase	02/12/21	3,218.00	$26.96	($86,757.28)
Purchase	02/16/21	5,741.00	$25.90	($148,691.90)
Purchase	02/16/21	100.00	$25.89	($2,589.00)
Purchase	02/16/21	659.00	$25.88	($17,054.92)
Purchase	02/16/21	200.00	$25.85	($5,170.00)
Purchase	02/16/21	100.00	$25.85	($2,584.90)
Purchase	02/16/21	3,200.00	$25.83	($82,656.00)
Purchase	02/16/21	10,000.00	$24.76	($247,600.00)
Purchase	02/22/21	9,900.00	$22.70	($224,730.00)
Purchase	02/22/21	100.00	$22.68	($2,268.00)
Sale	02/23/21	-200.00	$18.96	$3,792.00
Sale	02/23/21	-300.00	$18.95	$5,685.00
Sale	02/23/21	-300.00	$18.94	$5,682.00
Sale	02/23/21	-616.00	$18.93	$11,660.88
Sale	02/23/21	-410.00	$18.92	$7,757.20
Sale	02/23/21	-201.00	$18.91	$3,800.91
Sale	02/23/21	-7,973.00	$18.90	$150,689.70
Purchase	02/23/21	10,000.00	$19.64	($196,400.00)
Sale	03/02/21	-1,763.00	$20.70	$36,494.10
Sale	03/02/21	-8,237.00	$20.67	$170,258.79
Purchase	03/03/21	5,000.00	$19.45	($97,250.00)
Purchase	03/04/21	9,500.00	$17.43	($165,585.00)
Purchase	03/04/21	500.00	$17.41	($8,702.50)
Purchase	03/04/21	4,382.00	$17.73	($77,692.86)
Purchase	03/04/21	1,008.00	$17.72	($17,861.76)
Purchase	03/04/21	2,960.00	$17.71	($52,421.60)
Purchase	03/04/21	300.00	$17.71	($5,312.70)
Purchase	03/04/21	550.00	$17.70	($9,735.00)
Purchase	03/04/21	800.00	$17.69	($14,152.00)
Sale	03/05/21	-400.00	$16.78	$6,712.00
Sale	03/05/21	-500.00	$16.77	$8,385.00
Sale	03/05/21	-400.00	$16.76	$6,704.04
Sale	03/05/21	-4,280.00	$16.76	$71,732.80
Sale	03/05/21	-6,020.00	$16.75	$100,835.00
Sale	03/05/21	-13,400.00	$16.71	$223,914.00
Sale	03/05/21	-1.00	$16.68	$16.68

DocuSign Envelope ID: D8A456A1-2B59-4201-8E59-F0B9DE358GAA Case: Case 23-60428-RAM Doc 414 Filed: 07/05/23 Page 209 of 235 Page ID: 1566

Transaction Type	Trade Date	Shares	Price Per Share	Cost / Proceeds
Sale	03/05/21	-1,382.00	$16.67	$23,037.94
Sale	03/05/21	-5.00	$16.67	$83.33
Sale	03/05/21	-1,442.00	$16.66	$24,023.72
Sale	03/05/21	-1,200.00	$16.65	$19,980.00
Sale	03/05/21	-2,100.00	$16.64	$34,944.00
Sale	03/05/21	-1,600.00	$16.63	$26,608.00
Sale	03/05/21	-100.00	$16.62	$1,662.01
Sale	03/05/21	-1,519.00	$16.62	$25,245.78
Sale	03/05/21	-100.00	$16.61	$1,661.01
Sale	03/05/21	-1,248.00	$16.61	$20,729.28
Sale	03/05/21	-1,278.00	$16.60	$21,214.80
Sale	03/05/21	-400.00	$16.59	$6,636.00
Sale	03/05/21	-1,003.00	$16.58	$16,629.74
Sale	03/05/21	-200.00	$16.57	$3,314.40
Sale	03/05/21	-200.00	$16.57	$3,314.02
Sale	03/05/21	-2,216.00	$16.57	$36,719.12
Sale	03/05/21	-4,006.00	$16.56	$66,339.36
Purchase	03/05/21	1,749.00	$16.06	($28,088.94)
Purchase	03/05/21	20,000.00	$16.05	($321,000.00)
Purchase	03/05/21	10,000.00	$15.57	($155,700.00)
Purchase	03/10/21	10,000.00	$17.79	($177,900.00)
Purchase	03/12/21	19,500.00	$15.03	($293,085.00)
Purchase	03/12/21	400.00	$15.02	($6,008.00)
Purchase	03/12/21	100.00	$15.01	($1,501.00)
Purchase	03/12/21	20,000.00	$14.60	($292,000.00)
Sale	03/12/21	-20,000.00	$14.75	$295,000.00
Purchase	03/12/21	10,000.00	$14.24	($142,400.00)
Sale	03/12/21	-1,220.00	$14.49	$17,677.80
Sale	03/12/21	-2,300.00	$14.48	$33,304.00
Sale	03/12/21	-600.00	$14.46	$8,676.06
Sale	03/12/21	-1,457.00	$14.46	$21,068.22
Sale	03/12/21	-4,014.00	$14.45	$58,002.30
Sale	03/12/21	-10,409.00	$14.44	$150,305.96
Sale	03/18/21	-1.00	$13.64	$13.64
Sale	03/18/21	-500.00	$13.62	$6,810.00
Sale	03/18/21	-2.00	$13.61	$27.22
Sale	03/18/21	-5,472.00	$13.60	$74,419.20
Sale	03/18/21	-1,917.00	$13.59	$26,052.03
Sale	03/18/21	-1,423.00	$13.58	$19,324.34
Sale	03/18/21	-145.00	$13.57	$1,967.65
Sale	03/18/21	-1,500.00	$13.57	$20,347.50
Sale	03/18/21	-3,818.00	$13.56	$51,772.08
Sale	03/18/21	-2,927.00	$13.55	$39,660.85
Sale	03/18/21	-1,801.00	$13.54	$24,385.54
Sale	03/18/21	-100.00	$13.53	$1,353.10

DocuSign Envelope ID: D8A456A1-2B59-4201-8E50-F0B9DE258GAA Case: Case 23-60428-RAM ECF Doc: 414 Filed: 07/05/23 Page: 21 of 235 Page ID: 1567

Transaction Type	Trade Date	Shares	Price Per Share	Cost / Proceeds
Sale	03/18/21	-25,000.00	$13.53	$338,267.50
Sale	03/18/21	-3,000.00	$13.53	$40,591.50
Sale	03/18/21	-2,394.00	$13.53	$32,391.06
Sale	03/18/21	-2,014.00	$13.41	$27,007.74
Sale	03/18/21	-8,822.00	$13.40	$118,214.80
Sale	03/18/21	-801.00	$13.39	$10,725.39
Sale	03/18/21	-2,609.00	$13.38	$34,908.42
Sale	03/18/21	-1,696.00	$13.37	$22,675.52
Sale	03/18/21	-4,244.00	$13.36	$56,699.84
Sale	03/18/21	-6,039.00	$13.35	$80,620.65
Sale	03/18/21	-357.00	$13.33	$4,758.81
Sale	03/18/21	-5,302.00	$13.32	$70,622.64
Sale	03/18/21	-4,141.00	$13.31	$55,116.71
Sale	03/18/21	-400.00	$13.30	$5,320.04
Sale	03/18/21	-13,575.00	$13.30	$180,547.50
Sale	03/18/21	-1,749.00	$13.57	$23,734.10
Purchase	03/18/21	20,000.00	$13.20	($264,000.00)
Sale	03/19/21	-19,999.00	$13.25	$264,986.75
Sale	03/19/21	-1.00	$13.25	$13.25
Purchase	03/24/21	9,516.00	$12.44	($118,379.04)
Purchase	03/24/21	2,184.00	$12.43	($27,147.12)
Purchase	03/24/21	8,300.00	$12.42	($103,086.00)
Purchase	03/26/21	20,000.00	$12.36	($247,200.00)
Purchase	03/31/21	1,726.00	$12.04	($20,781.04)
Purchase	04/01/21	8,274.00	$12.04	($99,618.96)
Purchase	04/07/21	10,000.00	$11.85	($118,500.00)
Purchase	04/12/21	10,000.00	$11.01	($110,100.00)
Purchase	04/13/21	9,525.00	$10.40	($99,060.00)
Purchase	04/13/21	475.00	$10.40	($4,937.63)
Purchase	05/04/21	5,000.00	$8.80	($44,000.00)
Purchase	05/06/21	5,000.00	$8.25	($41,250.00)
Purchase	05/17/21	10,000.00	$8.40	($84,000.00)
Sale	05/24/21	-2.00	$9.37	$18.74
Sale	05/24/21	-5,987.00	$9.36	$56,038.32
Sale	05/24/21	-4,011.00	$9.35	$37,502.85
Sale	05/24/21	-2.00	$9.32	$18.63
Sale	05/24/21	-3,298.00	$9.31	$30,704.38
Sale	05/24/21	-1,300.00	$9.30	$12,090.00
Sale	05/24/21	-505.00	$9.29	$4,691.45
Sale	05/24/21	-4,895.00	$9.28	$45,425.60
Sale	05/24/21	-2.00	$9.22	$18.44
Sale	05/24/21	-9,998.00	$9.21	$92,081.58
Sale	05/26/21	-2.00	$9.48	$18.95
Sale	05/26/21	-710.00	$9.47	$6,724.41
Sale	05/26/21	-19,288.00	$9.47	$182,657.36

DocuSign Envelope ID: D8A456A1-2B58-4201-8E50-F0B9DE258GAA Case: Case 23-60428-RAE Doc 414 Filed 07/05/23 Page 21 of 235 Case: 23-60428-RAE Doc #: 414 Filed: 07/05/23 Page 21 of 235 PageID #: 1568

Transaction Type	Trade Date	Shares	Price Per Share	Cost / Proceeds
Purchase	06/03/21	6,506.00	$13.20	($85,879.20)
Purchase	06/03/21	100.00	$13.19	($1,319.00)
Purchase	06/03/21	1,823.00	$13.18	($24,027.14)
Purchase	06/03/21	871.00	$13.17	($11,471.07)
Purchase	06/03/21	400.00	$13.16	($5,264.00)
Purchase	06/03/21	300.00	$13.15	($3,945.00)
Sale	06/08/21	-1,500.00	$14.67	$22,005.00
Sale	06/08/21	-1,025.00	$14.66	$15,026.50
Sale	06/08/21	-7,475.00	$14.65	$109,508.75
Purchase	06/08/21	10,000.00	$14.01	($140,100.00)
Sale	06/08/21	-4,105.00	$10.05	$41,255.25
Sale	06/08/21	-1,501.00	$10.03	$15,055.03
Sale	06/08/21	-4,394.00	$10.02	$44,027.88
Sale	06/08/21	-100.00	$10.07	$1,007.00
Sale	06/08/21	-7,395.00	$10.01	$74,023.95
Sale	06/08/21	-2,505.00	$10.00	$25,050.00
Sale	06/08/21	-10,000.00	$10.30	$103,000.00
Purchase	06/09/21	10,000.00	$9.87	($98,700.00)
Purchase	06/09/21	5,000.00	$9.57	($47,850.00)
Sale	06/09/21	-10,000.00	$9.90	$99,000.00
Sale	06/09/21	-10,000.00	$10.26	$102,600.00
Purchase	06/14/21	8,339.00	$9.90	($82,556.10)
Purchase	06/14/21	1,661.00	$9.80	($16,277.80)
Purchase	06/14/21	5,000.00	$9.30	($46,500.00)
Sale	06/15/21	-5,000.00	$10.15	$50,750.00
Sale	06/23/21	-2,700.00	$10.92	$29,470.50
Sale	06/23/21	-859.00	$10.91	$9,371.78
Sale	06/23/21	-1,355.00	$10.91	$14,783.05
Sale	06/23/21	-1,000.00	$10.88	$10,875.00
Sale	06/23/21	-2,700.00	$10.87	$29,349.27
Sale	06/23/21	-900.00	$10.87	$9,783.00
Sale	06/23/21	-100.00	$10.87	$1,086.50
Sale	06/23/21	-1,600.00	$10.86	$17,376.00
Sale	06/23/21	-1,264.00	$10.85	$13,714.40
Sale	06/23/21	-200.00	$10.84	$2,168.20
Sale	06/23/21	-8,200.00	$10.84	$88,888.82
Sale	06/23/21	-11,052.00	$10.84	$119,803.68
Sale	06/23/21	-2,984.00	$10.83	$32,316.72
Sale	06/23/21	-86.00	$10.85	$933.10
Purchase	07/01/21	6,218.00	$10.30	($64,045.40)
Purchase	07/01/21	3,482.00	$10.29	($35,829.78)
Purchase	07/01/21	200.00	$10.29	($2,057.80)
Purchase	07/01/21	100.00	$10.29	($1,028.50)
Purchase	07/02/21	4,100.00	$9.17	($37,597.00)
Purchase	07/02/21	300.00	$9.16	($2,748.00)

DocuSign Envelope ID: D8A456A1-2B59-4201-8E50-F0B9DE2F8CAA

Transaction Type	Trade Date	Shares	Price Per Share	Cost / Proceeds
Purchase	07/02/21	1,600.00	$9.15	($14,640.00)
Purchase	07/02/21	3,800.00	$9.14	($34,732.00)
Purchase	07/02/21	100.00	$9.14	($913.90)
Purchase	07/02/21	100.00	$9.14	($913.50)

Exhibit C

DocuSign Envelope ID: 5582BA6E-E911-486D-9B73-639825F3B3A5

CERTIFICATION

I, Daniel Tavares, hereby certify as follows:

1. I have reviewed the consolidated amended complaint prepared against Lordstown Motors Corp. ("Lordstown") alleging violations of the federal securities laws, and authorize the filing of this pleading;

2. I did not purchase securities of Lordstown at the direction of counsel or in order to participate in any private action under the federal securities laws;

3. I am willing to serve as a lead plaintiff and/or representative party in this matter, including providing testimony at deposition and trial, if necessary. I fully understand the duties and responsibilities of the lead plaintiff under the Private Securities Litigation Reform Act, including the selection and retention of counsel and overseeing the prosecution of the action for the Class;

4. My transactions in Lordstown securities during the Class Period are reflected in Exhibit A, attached hereto;

5. I sought to serve as a lead plaintiff and/or representative party in the following class action under the federal securities laws filed during the last three years:

Rico v. Lordstown Motors Corp., No. 4:21-cv-0616 (N.D. Ohio)

6. Beyond my pro rata share of any recovery, I will not accept payment for serving as a lead plaintiff and representative party on behalf of the Class, except the reimbursement of such reasonable costs and expenses (including lost wages) as ordered or approved by the Court.

I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct this 9/10/2021 day of September, 2021.

DocuSigned by:
5D02C4F9F3824F9...

Daniel Tavares

DocuSign Envelope ID: 5582BA6E-E911-486D-9B73-639825F3B3A5

EXHIBIT A

TRANSACTIONS IN LORDSTOWN MOTORS CORP.

Transaction Type	Trade Date	Shares	Price Per Share	Cost / Proceeds
Purchase	01/25/2021	10,000.00	$24.00	($240,000.00)
Purchase	02/03/2021	2,000.00	$27.49	($54,980.00)

Exhibit D

DocuSign Envelope ID: 5582BA6E-E911-486D-9B73-639825F3B3A5

CERTIFICATION

I, Daniel Tavares, on behalf of Globestar Systems Inc. ("Globestar"), hereby certify as follows:

1. I have reviewed the consolidated amended complaint prepared against Lordstown Motors Corp. ("Lordstown") alleging violations of the federal securities laws, and authorize the filing of this pleading;

2. Globestar did not purchase securities of Lordstown at the direction of counsel or in order to participate in any private action under the federal securities laws;

3. Globestar is willing to serve as a lead plaintiff and/or representative party in this matter, including providing testimony at deposition and trial, if necessary. I fully understand the duties and responsibilities of the lead plaintiff under the Private Securities Litigation Reform Act, including the selection and retention of counsel and overseeing the prosecution of the action for the Class;

4. Globestar's transactions in Lordstown securities during the Class Period are reflected in Exhibit A, attached hereto;

5. Globestar has sought to serve as a lead plaintiff and/or representative party in the following class action under the federal securities laws filed during the last three years:

Rico v. Lordstown Motors Corp., No. 4:21-cv-0616 (N.D. Ohio)

6. Beyond my pro rata share of any recovery, Globestar will not accept payment for serving as a lead plaintiff and representative party on behalf of the Class, except the reimbursement of such reasonable costs and expenses (including lost wages) as ordered or approved by the Court.

DocuSign Envelope ID: 5582BA6E-E911-486D-9B73-639825F3B3A5

I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct this 9/10/2021 day of September, 2021.

DocuSigned by:
5D02C4F9F3824F9...

Daniel Tavares
Chairman of the Board of
Globestar Systems Inc.

DocuSign Envelope ID: 5582BA6E-E911-486D-9B73-639825F3B3A5

EXHIBIT A

TRANSACTIONS IN LORDSTOWN MOTORS CORP.

Transaction Type	Trade Date	Shares	Price Per Share	Cost / Proceeds
Purchase	02/12/2021	11,004.00	$27.00	($247,108.00)
Purchase	02/12/2021	805.00	$27.00	($21,735.00)
Purchase	02/12/2021	28,191.00	$27.00	($761,157.00)

Exhibit E

CERTIFICATION

I, Shawn Fischman, on behalf of FNY Managed Accounts LLC ("First New York") hereby certify as to claims asserted under the federal securities laws, that:

1. I am the General Counsel and Chief Compliance Officer of FNY Investment Advisers, LLC, the investment adviser of First New York, and am authorized to execute this certification on its behalf. I have reviewed the consolidated amended complaint to be filed in this action and have authorized its filing.

2. First New York did not acquire any of the securities that are the subject of this action at the direction of its counsel or in order to participate in this action or any other litigation under the federal securities laws.

3. First New York is willing to serve as a named plaintiff and class representative in this action and recognizes its duties as such to act on behalf of class members in monitoring and directing the action, and, if necessary, testifying at deposition and trial.

4. First New York will not accept any payment for serving as a representative party on behalf of the class beyond its *pro rata* share of any recovery, except reasonable costs and expenses, such as lost wages and travel expenses, directly related to the class representation, as ordered or approved by the Court.

5. First New York has not served or sought to serve as a representative party for a class in any action under the federal securities laws within the three-year period prior to the date of this Certification, except: *In re Tesla Inc. Sec. Litig.*, Case No. 3:18-cv-04865-EMC (N.D. Cal.) (FNY Investment Advisers, LLC); *The Arbitrage Event-Driven Fund v. Tribune Media Co., et al.*, Case No. 1:18-cv-06175 (N.D. Ill.) (FNY Partners Fund LP and FNY Managed Accounts LLC); *In re Dynagas LNG Partners LP Sec. Litig.*, Case No. 19-cv-04512 (S.D.N.Y.) (FNY Partners Fund LP); *In re Alta Mesa Sec. Litig.*, Case No. E19-CV-00957 (S.D. Tex.) (FNY Partners Fund LP and FNY Managed Accounts LLC); *Eric Sabatini v. Del Frisco's Restaurant Group, Inc. et al.*, Case No. 1:19-cv-01385 (D. Del.) (FNY Partners Fund LP); *James Hill v. Silver Lake Group, L.L.C. et al.*, Case No. 4:20-cv-02341-JSW (C.D. Cal.) (FNY Partners Fund LP and FNY Managed Accounts LLC); and *Bajjuri v. Raytheon Technologies Corp.*, et al., 4:20-cv-00468 (D. Ariz.) (FNY Partners Fund and FNY Managed Accounts LLC).

6. First New York made the following transactions during the Class Period (as defined in the Complaint) in Lordstown Motors Corporation (NASDAQ: RIDE) securities that are the subject of this action:

***See* Attachment A**

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 8th day of September 2021.

By: Shawn Fischman, Esq.
General Counsel and Chief Compliance Officer of
FNY Investment Advisers, LLC, investment adviser
to FNY Managed Accounts LLC

Attachment A to Certification

FNY Managed Accounts LLC
Relevant Period: August 3, 2020 - July 2, 2021
Lordstown Motors Corp. Common Stock (CUSIP: 54405Q100)

Transaction	Date	Price	Shares	Transaction Total
Purchase	08/03/2020	$ 12.39	488	$ 6,046.32
Sale	08/03/2020	$ 11.71	488	$ 5,714.48
Purchase	08/04/2020	$ 14.45	1,452	$ 20,984.45
Sale	08/04/2020	$ 14.10	1,452	$ 20,473.20
Purchase	08/28/2020	$ 17.81	321	$ 5,715.79
Sale	08/28/2020	$ 18.75	321	$ 6,018.75
Purchase	09/10/2020	$ 21.57	100	$ 2,157.00
Sale	09/10/2020	$ 22.36	100	$ 2,236.00
Purchase	09/14/2020	$ 26.05	220	$ 5,730.41
Purchase	09/14/2020	$ 28.15	650	$ 18,295.03
Purchase	09/14/2020	$ 28.36	700	$ 19,852.77
Sale	09/14/2020	$ 27.24	400	$ 10,894.00
Sale	09/14/2020	$ 28.74	950	$ 27,304.71
Sale	09/14/2020	$ 27.47	220	$ 6,043.40
Purchase	09/23/2020	$ 25.01	567	$ 14,180.67
Purchase	09/23/2020	$ 24.94	302	$ 7,531.88
Sale	09/23/2020	$ 26.67	302	$ 8,054.34
Sale	09/23/2020	$ 26.80	567	$ 15,194.98
Purchase	10/13/2020	$ 25.20	830	$ 20,916.00
Sale	10/13/2020	$ 23.72	830	$ 19,687.60
Purchase	11/16/2020	$ 22.69	1,000	$ 22,685.50
Purchase	11/16/2020	$ 21.20	34	$ 720.75
Purchase	11/16/2020	$ 22.57	34	$ 767.38
Purchase	11/17/2020	$ 22.60	100	$ 2,260.00
Purchase	11/17/2020	$ 25.14	17	$ 427.32
Sale	11/17/2020	$ 24.30	500	$ 12,150.70
Sale	11/17/2020	$ 23.11	100	$ 2,311.00
Sale	11/17/2020	$ 24.44	51	$ 1,246.62
Sale	11/18/2020	$ 27.40	500	$ 13,699.50
Sale	11/18/2020	$ 26.86	17	$ 456.68
Sale	11/18/2020	$ 25.91	17	$ 440.43
Purchase	11/30/2020	$ 25.66	1,025	$ 26,301.50
Sale	11/30/2020	$ 24.65	1,025	$ 25,264.51
Purchase	12/11/2020	$ 20.38	454	$ 9,252.52
Sale	12/11/2020	$ 19.97	454	$ 9,067.38
Purchase	12/15/2020	$ 19.97	35,000	$ 699,030.50
Purchase	12/16/2020	$ 19.59	2,000	$ 39,187.00
Purchase	12/16/2020	$ 19.59	15,900	$ 311,446.02
Purchase	12/16/2020	$ 19.52	700	$ 13,660.99
Sale	12/16/2020	$ 20.72	2,000	$ 41,445.40
Sale	12/16/2020	$ 20.06	16,600	$ 332,924.62
Purchase	12/23/2020	$ 22.91	20,000	$ 458,118.00
Purchase	12/28/2020	$ 22.82	1,300	$ 29,665.48
Purchase	12/28/2020	$ 22.81	42	$ 958.02
Purchase	12/28/2020	$ 22.96	17,500	$ 401,852.50
Sale	12/28/2020	$ 22.80	1,342	$ 30,597.60
Purchase	12/29/2020	$ 21.03	20,000	$ 420,694.00
Purchase	01/04/2021	$ 20.14	10,000	$ 201,370.00
Purchase	01/06/2021	$ 21.41	25,000	$ 535,147.50

Attachment A to Certification

FNY Managed Accounts LLC
Relevant Period: August 3, 2020 - July 2, 2021
Lordstown Motors Corp. Common Stock (CUSIP: 54405Q100)

Transaction	Date	Price	Shares	Transaction Total
Purchase	01/08/2021	$ 22.62	10,000	$ 226,181.00
Purchase	01/11/2021	$ 22.05	20,000	$ 440,914.00
Sale	01/11/2021	$ 27.37	40,000	$ 1,094,939.26
Purchase	01/13/2021	$ 26.33	29	$ 763.57
Purchase	01/13/2021	$ 27.77	192	$ 5,331.84
Purchase	01/13/2021	$ 26.44	1,200	$ 31,730.04
Sale	01/13/2021	$ 26.66	1,229	$ 32,765.14
Sale	01/13/2021	$ 26.66	192	$ 5,118.72
Purchase	01/14/2021	$ 25.26	185	$ 4,673.10
Sale	01/14/2021	$ 26.44	185	$ 4,891.40
Purchase	01/15/2021	$ 24.34	10,000	$ 243,435.00
Sale	01/26/2021	$ 27.66	2,900	$ 80,209.65
Purchase	01/27/2021	$ 28.72	209	$ 6,002.48
Purchase	01/27/2021	$ 28.71	209	$ 6,001.39
Sale	01/27/2021	$ 28.97	209	$ 6,054.73
Sale	01/27/2021	$ 30.04	209	$ 6,278.36
Sale	01/27/2021	$ 28.71	29,600	$ 849,961.04
Purchase	02/04/2021	$ 27.00	30,000	$ 810,066.00
Purchase	02/10/2021	$ 29.25	423	$ 12,372.75
Purchase	02/10/2021	$ 29.24	423	$ 12,367.72
Purchase	02/10/2021	$ 30.08	507	$ 15,251.17
Sale	02/10/2021	$ 28.57	423	$ 12,085.07
Sale	02/10/2021	$ 27.50	423	$ 11,632.50
Sale	02/10/2021	$ 29.45	169	$ 4,977.66
Purchase	02/11/2021	$ 30.56	473	$ 14,453.60
Purchase	02/11/2021	$ 29.48	15,000	$ 442,266.00
Sale	02/11/2021	$ 29.53	811	$ 23,950.78
Sale	02/11/2021	$ 30.76	15,000	$ 461,410.50
Purchase	02/12/2021	$ 26.82	2,110	$ 56,583.66
Purchase	02/12/2021	$ 26.91	962	$ 25,887.42
Sale	02/12/2021	$ 28.13	962	$ 27,061.06
Sale	02/12/2021	$ 28.13	2,110	$ 59,354.30
Purchase	02/16/2021	$ 25.50	5,000	$ 127,499.50
Purchase	02/18/2021	$ 24.38	10,000	$ 243,817.00
Purchase	02/23/2021	$ 20.37	456	$ 9,288.72
Sale	02/23/2021	$ 20.91	456	$ 9,534.96
Sale	03/05/2021	$ 16.31	70,000	$ 1,141,591.28
Sale	03/08/2021	$ 16.21	35,000	$ 567,224.00
Sale	03/10/2021	$ 17.13	35,000	$ 599,655.00
Purchase	03/12/2021	$ 14.00	1,174	$ 16,436.00
Purchase	03/12/2021	$ 14.00	2,000	$ 28,000.00
Purchase	03/12/2021	$ 14.32	25,000	$ 357,875.00
Sale	03/12/2021	$ 14.81	2,000	$ 29,618.40
Sale	03/12/2021	$ 14.45	1,100	$ 15,895.55
Sale	03/12/2021	$ 14.45	74	$ 1,069.30
Sale	03/12/2021	$ 14.77	25,000	$ 369,362.50
Purchase	03/18/2021	$ 13.01	817	$ 10,629.17
Purchase	03/18/2021	$ 12.99	180	$ 2,338.20
Purchase	03/18/2021	$ 13.16	550	$ 7,238.77

Attachment A to Certification

FNY Managed Accounts LLC
Relevant Period: August 3, 2020 - July 2, 2021
Lordstown Motors Corp. Common Stock (CUSIP: 54405Q100)

Transaction	Date	Price	Shares	Transaction Total
Purchase	03/18/2021	$ 13.21	449	$ 5,930.80
Purchase	03/18/2021	$ 14.04	313	$ 4,394.99
Purchase	03/18/2021	$ 13.01	1,089	$ 14,167.89
Purchase	03/18/2021	$ 13.72	800	$ 10,978.16
Purchase	03/18/2021	$ 13.00	3,542	$ 46,046.00
Purchase	03/18/2021	$ 12.99	2,180	$ 28,318.20
Sale	03/18/2021	$ 13.85	2,180	$ 30,193.00
Sale	03/18/2021	$ 13.85	313	$ 4,335.05
Sale	03/18/2021	$ 13.85	1,089	$ 15,082.65
Sale	03/18/2021	$ 13.85	449	$ 6,218.65
Sale	03/18/2021	$ 13.85	180	$ 2,493.00
Sale	03/18/2021	$ 13.85	800	$ 11,080.00
Sale	03/18/2021	$ 13.85	817	$ 11,315.45
Sale	03/18/2021	$ 13.85	3,542	$ 49,056.70
Sale	03/18/2021	$ 13.82	550	$ 7,599.52
Purchase	03/19/2021	$ 13.15	271	$ 3,564.35
Sale	03/19/2021	$ 12.99	271	$ 3,520.29
Purchase	05/18/2021	$ 10.09	500	$ 5,045.00
Purchase	05/18/2021	$ 10.03	91	$ 912.73
Sale	05/18/2021	$ 10.02	91	$ 911.37
Sale	05/18/2021	$ 10.00	500	$ 5,000.00
Purchase	05/25/2021	$ 8.10	553	$ 4,479.30
Sale	05/25/2021	$ 8.90	553	$ 4,920.59
Purchase	05/26/2021	$ 8.75	531	$ 4,646.25
Sale	05/26/2021	$ 9.46	531	$ 5,023.26
Sale	06/02/2021	$ 12.25	4	$ 48.98
Sale	06/02/2021	$ 12.33	16	$ 197.26
Purchase	06/07/2021	$ 13.71	20	$ 274.22
Purchase	06/08/2021	$ 12.80	298	$ 3,814.40
Sale	06/08/2021	$ 10.99	298	$ 3,276.03
Sale	06/08/2021	$ 15.18	43	$ 652.93
Purchase	06/09/2021	$ 9.85	2,000	$ 19,700.00
Purchase	06/09/2021	$ 9.85	405	$ 3,989.25
Purchase	06/09/2021	$ 9.85	1,571	$ 15,474.35
Purchase	06/09/2021	$ 9.85	847	$ 8,342.95
Purchase	06/09/2021	$ 9.85	338	$ 3,329.30
Purchase	06/09/2021	$ 9.85	4,000	$ 39,400.00
Purchase	06/09/2021	$ 12.13	78	$ 946.21
Sale	06/09/2021	$ 10.16	847	$ 8,604.93
Sale	06/09/2021	$ 9.42	338	$ 3,183.96
Sale	06/09/2021	$ 9.80	4,000	$ 39,200.00
Sale	06/09/2021	$ 9.86	1,571	$ 15,490.06
Sale	06/09/2021	$ 9.52	405	$ 3,855.60
Sale	06/09/2021	$ 9.95	2,000	$ 19,900.00
Sale	06/09/2021	$ 10.27	58	$ 595.59
Sale	06/09/2021	$ 11.31	55	$ 622.31
Purchase	06/10/2021	$ 10.70	78	$ 834.21
Sale	06/10/2021	$ 10.64	78	$ 830.24
Purchase	06/14/2021	$ 10.24	2	$ 20.47

Attachment A to Certification

FNY Managed Accounts LLC
Relevant Period: August 3, 2020 - July 2, 2021
Lordstown Motors Corp. Common Stock (CUSIP: 54405Q100)

Transaction	Date	Price	Shares	Transaction Total
Sale	06/14/2021	$ 10.27	313	$ 3,215.17
Purchase	06/15/2021	$ 10.17	389	$ 3,955.43
Sale	06/15/2021	$ 10.13	78	$ 790.02
Sale	06/15/2021	$ 9.83	117	$ 1,149.93
Purchase	06/17/2021	$ 10.78	117	$ 1,260.85
Sale	06/17/2021	$ 9.99	117	$ 1,168.62
Purchase	06/21/2021	$ 10.22	1,500	$ 15,337.05
Sale	06/21/2021	$ 10.05	1,500	$ 15,081.00
Sale	06/25/2021	$ 10.98	195	$ 2,141.10
Purchase	06/28/2021	$ 11.59	312	$ 3,615.46
Sale	06/29/2021	$ 11.20	117	$ 1,310.72
Sale	06/30/2021	$ 11.04	78	$ 861.39
Sale	07/01/2021	$ 10.55	117	$ 1,234.61

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Ohio

IN RE LORDSTOWN MOTORS CORP. SECURITIES LITIGATION

Plaintiff(s)

v.

Defendant(s)

Civil Action No. 4:21-cv-00616 (PAG)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Caimin Flannery
2300 Hallack Young Road
Lordstown, OH 44481

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Carol C. Villegas
Labaton Sucharow LLP
140 Broadway
New York, NY 10005

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No. 4:21-cv-00616 (PAG)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Caimin Flannery was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Ohio

IN RE LORDSTOWN MOTORS CORP. SECURITIES LITIGATION

Plaintiff(s)

v.

Defendant(s)

Civil Action No. 4:21-cv-00616 (PAG)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Darren Post
2300 Hallack Young Road
Lordstown, OH 44481

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Carol C. Villegas
Labaton Sucharow LLP
140 Broadway
New York, NY 10005

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No. 4:21-cv-00616 (PAG)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Darren Post was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Ohio

IN RE LORDSTOWN MOTORS CORP. SECURITIES LITIGATION

Plaintiff(s)

v.

Defendant(s)

Civil Action No. 4:21-cv-00616 (PAG)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* David T. Hamamoto
2300 Hallack Young Road
Lordstown, OH 44481

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Carol C. Villegas
Labaton Sucharow LLP
140 Broadway
New York, NY 10005

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No. 4:21-cv-00616 (PAG)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* David T. Hamamoto was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Ohio

IN RE LORDSTOWN MOTORS CORP. SECURITIES LITIGATION

Plaintiff(s)

v.

Defendant(s)

Civil Action No. 4:21-cv-00616 (PAG)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Lordstown EV Corporation F/K/A Lordstown Motors Corp.
2300 Hallack Young Road
Lordstown, OH 44481

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Carol C. Villegas
Labaton Sucharow LLP
140 Broadway
New York, NY 10005

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No. 4:21-cv-00616 (PAG)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Lordstown EV Corporation F/K/A Lordstown Motors Corp. was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Ohio

IN RE LORDSTOWN MOTORS CORP. SECURITIES LITIGATION

Plaintiff(s)

v.

Defendant(s)

Civil Action No. 4:21-cv-00616 (PAG)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Shane Brown
2300 Hallack Young Road
Lordstown, OH 44481

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Carol C. Villegas
Labaton Sucharow LLP
140 Broadway
New York, NY 10005

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 4:21-cv-00616 (PAG)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Shane Brown was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

EFiled: Jul 29 2022 03:20PM EDT
Transaction ID 67883125
Case No. 2021-1066-LWW

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE LORDSTOWN MOTORS CORP. STOCKHOLDERS LITIGATION	CONSOLIDATED C.A. No. 2021-1066-LWW **PUBLIC [REDACTED] VERSION** **AS FILED ON JULY 29, 2022**

VERIFIED AMENDED CLASS ACTION COMPLAINT

Co-Lead Plaintiffs Atri Amin and Benjamin Hebert (each, a "Plaintiff" and, together, the "Plaintiffs"), on behalf of themselves and similarly situated stockholders of Lordstown Motors Corp. ("Lordstown")[1] f/k/a DiamondPeak Holdings Corp. ("DiamondPeak," or the "Company"), bring this Verified Amended Class Action Complaint asserting breach of fiduciary duty claims stemming from the Company's merger (the "de-SPAC Acquisition") with Lordstown EV Corporation ("Legacy LMC") against: (a) David Hamamoto, Mark Walsh, Andrew Richardson, Steven Hash, and Judith Hannaway, in their capacities as members of DiamondPeak's board of directors (the "DiamondPeak Board"); and (b) DiamondPeak Sponsor LLC, (the "Sponsor"), David Hamamoto, and Mark Walsh in their capacities as controlling stockholders.

The allegations are based on Plaintiffs' respective knowledge, and on information and belief, including counsel's investigation, review of publicly

[1] In the interest of clarity, Lordstown will refer to the combined entity after the de-SPAC Acquisition (defined below), while DiamondPeak will refer to the SPAC (defined below) before the de-SPAC Acquisition.

available information, and the review of certain books and records produced by Lordstown in response to Plaintiffs' demands made under 8 *Del. C.* § 220 (the "Section 220 Documents") as to all other matters.

I. NATURE OF THE ACTION

1. Over the past few years, special purpose acquisition companies, or "SPACs," have emerged as a popular way for the public to invest in private entities. Despite certain structural differences between SPACs and operating businesses, SPACs that incorporate in Delaware are, in fact, Delaware corporations, and their fiduciaries are bound by the State's common law and statutory regime. This action highlights how important it is to reinforce that principle, lest public investors continue to lose billions of dollars due to SPAC controllers' and directors' self-interested actions.

2. After a SPAC goes public and investor capital is placed into a trust that will invest in government securities pending a business combination, the board of directors and the sponsor (*i.e.*, controller) of the SPAC have two jobs: (a) conduct a fair process and sound diligence to select an acquisition target; and (b) give the SPAC's public investors sufficient disclosure to informedly decide whether to exercise their right to redeem their shares for cash plus interest, or invest in the private company that will go public through the "de-SPAC transaction."

3. This case arises because, despite having no operational responsibility and simply needing to find a proper target and disclose the "pros" and "cons" of a deal, the DiamondPeak Board and Sponsor completely abdicated and violated their duties.

4. Rapidly approaching the two-year term limit of the DiamondPeak SPAC's window to identify an acquisition target, the DiamondPeak Board and Sponsor began to explore acquiring Legacy LMC, an electric truck startup business.

5. As proven by Tesla, Inc. in the personal electric car space, occupying market share ahead of competitors is essential to success. Thus, as the DiamondPeak Board and Sponsor each recognized, the viability of an electric truck startup's business model requires strong execution on two strategic imperatives: (a) enjoying the "first-mover advantage" and (b) having a strong backlog of demand.

6. In soliciting approval of DiamondPeak's de-SPAC Acquisition of Legacy LMC, DiamondPeak convinced public investors not to redeem stock – and thus remain invested in the post-deal entity that was re-named Lordstown – based on public representations about beginning production of vehicles by late 2021, and a rapidly growing backlog of letters of intent for electric truck purchases.

7. However, prior to the de-SPAC Acquisition, the DiamondPeak Board and Sponsor affirmatively learned (but did not disclose) (a) that Legacy LMC could not conceivably meet its own publicly reported production timeline of 2021 – and

hence likely would not enjoy "first-mover advantage," and (b) that a huge swath of its supposed order backlog was either merely unreliable or patently fabricated. Thus, the entire investment rationale for the de-SPAC Acquisition was built on a castle of sand.

8. The DiamondPeak Board and Sponsor knew the importance of Legacy LMC's anticipated timing to market and order backlog and retained McKinsey & Company ("McKinsey") to conduct diligence into and provide analysis of the issues. McKinsey did as asked, reporting to the DiamondPeak Board and Sponsor that Legacy LMC [redacted]

9. While McKinsey was not asked to specifically review the *bona fides* of the Company's letters of intent, it noted that the growth in letters of intent required a close look and highlighted several red flags about the reliability of those deals.

10. The DiamondPeak Board and Sponsor – not to be deterred and having no desire to come any closer to the two-year deadline for DiamondPeak SPAC to find an acquisition target – evidently decided to roll the dice that either (a) Legacy LMC could miraculously overcome McKinsey's warnings or (b) they could keep the truth about Legacy LMC hidden long enough, *i.e.*, just six months after the de-SPAC

Transaction, to cash out their shares at a huge profit. The de-SPAC Acquisition was then announced on August 1, 2020.

11. The Proxy on the de-SPAC Acquisition, through which Legacy LMC would merge with and into a wholly-owned subsidiary of DiamondPeak, was issued on October 8, 2020 (the "Proxy").

12. Bolstering representations of Legacy LMC's purported first-mover advantage, the Proxy stated that production was expected to commence in the ***second half of 2021***. Highlighting Legacy LMC's large and rapidly growing backlog of truck orders, the Proxy stated "[t]o date, Lordstown has received pre-orders primarily from fleet operators to purchase over 38,000 Endurance vehicles."

13. The de-SPAC Transaction closed on October 23, 2020, with almost none of DiamondPeak SPAC's investors exercising their option to redeem shares for cash. They now certainly wish they had done so.

14. Roughly five months after the deal closed, a buy-side market analyst report disclosed that Lordstown would miss the production deadline it had publicly represented as key to its head start on the competition. That report went further, stating that many of Lordstown's purported truck option contracts were completely fabricated and would never lead to binding purchase agreements.

15. Plaintiffs' review of the Section 220 Documents uncovered precisely what happened. As noted, McKinsey's reports are irreconcilable with the Proxy's

public disclosures. The DiamondPeak Board and Sponsor cannot show the fairness or adequacy of their process when they affirmatively knew that the Proxy misrepresented the time Lordstown needed to commence producing electric trucks.

16. Moreover, through their review of Section 220 Documents, Plaintiffs did exactly what any board, officer, or controlling stockholder, acting loyally and in good faith, would have done: review the actual letters of intent underlying Lordstown's purported order backlog. The result of Plaintiffs' inquiry is mind-boggling. For example: a single man signed [redacted] truck orders, for companies which self-evidently could neither afford nor make use of [redacted] trucks.

17. In sum, and as further detailed below, each member of the DiamondPeak Board and the Sponsor were deeply and personally conflicted with respect to the acquisition of Legacy LMC. Acting on those conflicts, the DiamondPeak Board and Sponsor issued a Proxy portraying a business plan and opportunity conflicting with facts they knew or could have known with minimal effort.

18. As a result of Defendants' breaches of duty, DiamondPeak SPAC investors who did not redeem when they had the right to do so were left holding stock now trading below the redemption value (the "Class"). Defendants should be held accountable to the Class for their breaches of fiduciary duty.

II. PARTIES AND RELEVANT NON-PARTIES

A. Plaintiffs

19. Plaintiff Atri Amin has consistently held and has been the beneficial owner of DiamondPeak stock at all relevant times.

20. Plaintiff Benjamin Hebert has consistently held and has been the beneficial owner of DiamondPeak stock at all relevant times.

B. Non-Party Lordstown and the Defendants

21. Non-Party Lordstown is a Delaware corporation originally formed as a SPAC. Following the de-SPAC Acquisition, Lordstown designs, develops, and intends to manufacture an all-electric pick-up truck known as the "Endurance." Lordstown trades on the NASDAQ under the ticker "RIDE."

22. Defendant Sponsor was a Delaware limited liability company. The Sponsor was a joint venture between an entity controlled by Defendant Hamamoto and an entity controlled by Silverpeak.[2]

23. Defendant David Hamamoto ("Hamamoto") served as Chairman and CEO of DiamondPeak from the time of DiamondPeak's inception until the de-SPAC

[2] "Silverpeak" includes SP SPAC Sponsor LLC, Silverpeak Real Estate Partners L.P., Silverpeak Strategic Partners LLC, Silverpeak Credit Partners LP, Silverpeak Renewables Investment Partners LP, and certain other affiliated entities.

Acquisition. He currently serves as a member on the board of directors of Lordstown.

24. Defendant Mark Walsh ("Walsh") served as a member of the DiamondPeak Board from DiamondPeak's inception until the de-SPAC Acquisition. Walsh is a Partner and Co-Founder of Silverpeak.

25. Defendant Andrew Richardson ("Richardson") served as a member of the DiamondPeak Board from DiamondPeak's IPO until the de-SPAC Acquisition.

26. Defendant Steven Hash ("Hash") served as a member of the DiamondPeak Board from DiamondPeak's IPO until the de-SPAC Acquisition.

27. Defendant Judith Hannaway ("Hannaway") served as a member of the DiamondPeak Board from DiamondPeak's IPO until the de-SPAC Acquisition.

28. Defendants Hamamoto, Walsh, Richardson, Hannaway, and Hash are referred to herein as the "Director Defendants."

29. Defendants Hamamoto, Walsh, and Sponsor are herein referred to as the "Controller Defendants."

III. SUBSTANTIVE ALLEGATIONS

A. Overview of the Inherently Conflicted Structure of Most SPACs

30. A SPAC is a publicly traded blank check company. It has no operations of its own and is formed with one goal – acquiring one or more operating companies (the "Target"). After a SPAC's initial public offering ("IPO"), money raised by the

SPAC is placed into a trust, which is later used to purchase the Target (the "de-SPAC"). The SPAC must typically complete the de-SPAC within two years of either its creation or the IPO. In the case of DiamondPeak, the last day for a de-SPAC transaction was March 4, 2021.

31. A SPAC is publicly traded before the de-SPAC transaction is completed, meaning that the SPAC itself is effectively just a place for investors to park cash while waiting for identification of the de-SPAC Target. The basis for SPAC investing is to enjoy an option to acquire equity interests in the formerly private Target.

32. Importantly, investors in a SPAC, unlike investors in a typical publicly traded operating company, are not required to sell shares into the market or continue with the investment post de-SPAC Acquisition. Instead, SPAC investors are given a contractual option to redeem their shares immediately prior to the de-SPAC Acquisition, and they can then receive their cash back, plus interest. Thus, the SPAC structure effectively allows investors to park cash, while collecting interest, in exchange for the option to participate in a future "IPO" of a private venture.

33. The SPAC and subsequent de-SPAC structure, however, differ substantively from the traditional IPO process. In the context of a traditional IPO, the investing public receives extensive disclosures on a specific company before deciding whether to invest in it. To complete a traditional IPO, a company must be

able to prepare adequate reporting systems equipped to meet the exacting reporting standards required by the Securities and Exchange Commission (the "SEC").

34. SPACs offer an alternative route for companies to become publicly traded. It starts with the people who plan to manage the SPAC creating a "sponsor" for the SPAC. In the vast majority of SPACs, the sponsor capitalizes the SPAC by purchasing shares of Class B stock (commonly referred to as founder or sponsor shares) for a nominal amount (typically $25,000).

35. The terms of the sponsor shares typically give the Sponsor and other holders of sponsor shares both complete control over the SPAC during its existence between the IPO and any de-SPAC transaction and the potential for an economic windfall if the de-SPAC is approved.

36. Specifically, these sponsor shares are structured to provide a far greater financial payout opportunity for the Sponsor than is typically paid to bankers running an IPO (who can get up to a 5-7% commission) or even to hedge fund managers (who get paid up to 2% of the fund's net asset value ("NAV") plus 20% of any profits above the prior year's NAV). Sponsor shares ultimately can convert into 20% of the SPACs total equity (*i.e.*, its NAV) at the time of the de-SPAC transaction.

37. Sponsor shares come with a hitch, however. Sponsor shares only convert into 20% of the SPAC's equity if a de-SPAC transaction is approved and closes. SPACs also have a limited amount of time to complete a de-SPAC

transaction, often 24 months.[3] Thus, after a SPAC has its IPO, founders have a strong incentive to find a deal, even if it is not a good deal, if they wish to receive a return.

38. Once the SPAC is initially funded, officers and directors ("SPAC Insiders") are selected by the sponsor. The SPAC Insiders are often compensated in sponsor shares or other shares contingent upon the completion of the de-SPAC transaction.

39. Next comes the SPAC's IPO. The process of registering a SPAC for an IPO is far simpler than registering an operating company, as the SPAC has no operations, and the risks to a particular SPAC are rarely unique. As a result, preparing documents and obtaining the necessary approvals from the SEC are less burdensome for a SPAC than an operating company.[4]

40. After completing its IPO (and receiving investors' money and placing it in a trust account typically investing in government securities), SPAC Insiders

[3] Recent federal litigation has challenged the propriety of SPACs employing a two-year period for investing in securities while seeking to identify and complete an Initial Business Combination. That litigation is pending.

[4] On March 30, 2022, the SEC proposed new rules and amendments to enhance disclosure and investor protection in SPAC IPOs and in business combination transactions involving shell companies, such as SPACs, and private operating companies.

begin searching for a target (nearly always a private company). When such a target is identified, SPAC Insiders negotiate a merger agreement.

41. Because of the ability to turn $25,000 into 20% of the SPAC's equity immediately before the de-SPAC transaction occurs, SPAC Insiders are positioned to receive an economic windfall even if the stock price of the de-SPAC entity performs poorly. To get their windfall, SPAC Insiders must overcome two threats to their big payday: (a) redemption rights and (b) a stockholder vote. Thanks to the crafty capital structure engineering of SPAC designers, the former is a more meaningful threat than the latter.

42. As noted above, SPACs are required to offer redemption rights due to listing requirements. Redemption rights allow stockholders to elect to receive their pro-rata share of the assets held in trust, rather than remain invested in the de-SPAC company. Accordingly, SPAC stockholders who do not believe in the investment opportunity of the proposed de-SPAC company can exercise a right to exchange their shares for a set amount of cash, usually the IPO price plus interest. The redemption level can pose a risk to SPAC sponsors, however, because a common condition for SPACs to close their proposed de-SPAC transaction and receive the additional funding needed for the deal (which often comes through private investment in public equity ("PIPE") commitments) is having a certain level of cash

at closing. If too many investors redeem, the sponsor's ability to close can be challenged.

43. Second, investors typically are asked to approve the de-SPAC deal through a stockholder vote. However, unlike a traditional stockholder vote, votes on SPACs are not a genuine indication of endorsement of the transaction by stockholders. This is because many SPAC investors (including many of the more sophisticated holders), hold both warrants and shares, rather than just shares, in the SPAC.

44. As redemption only requires giving up shares, a stockholder who holds warrants as well as shares may well choose to approve the deal despite believing it is a bad one. This peculiar result occurs because the stockholder can redeem his or her shares for an amount modestly exceeding the initial investment, while maintaining cost-free warrants. Such warrants retain option value until and unless the Target goes bankrupt but would be rendered worthless if no transaction occurs.

45. Provided enough stockholders either genuinely support the deal or choose to redeem their equity while voting for the deal in order to enjoy the option value of the warrants, the de-SPAC transaction occurs. Upon closing, the SPACs insiders receive their compensation (sometimes subject to certain lock-ups).

B. DiamondPeak is Formed and Raises $280 Million from Investors

i. *The IPO of DiamondPeak*

46. On November 13, 2018, DiamondPeak was incorporated in Delaware. DiamondPeak was "formed for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination with one or more businesses" (the "Initial Business Combination").

47. Shortly after DiamondPeak was formed, the Sponsor acquired 7,187,500 founder shares ("Founder Shares"),[5] for the nominal price of $25,000. The Founder Shares provided the Sponsor complete control over DiamondPeak, as well as the opportunity to convert into 20% of the SPAC's shares outstanding immediately before any de-SPAC Acquisition.

48. On February 28, 2019, DiamondPeak filed its prospectus (the "Prospectus"). The Company planned to offer 25 million units in its IPO, with the potential for 28.75 million units if underwriters exercised their over-allotment option

[5] Founder Shares were also referred to as Class B Common Stock.

in full.[6] Each unit would include one share of Class A Common Stock and one-third of a warrant.[7]

49. Holders of the Founder Shares would exert additional influence over DiamondPeak by selecting the initial members of the DiamondPeak Board. The DiamondPeak Board would be staggered with only a minority of the DiamondPeak Board being considered for election. As DiamondPeak only had until March 4, 2021 to complete an Initial Business Combination (assuming the two-year period), this would give the holders of Founder Shares control over the DiamondPeak Board before any de-SPAC transaction.

50. On March 4, 2019, DiamondPeak consummated its IPO. Ultimately, the underwriters purchased 3 million units of their over-allotment option, meaning DiamondPeak's IPO sold 28 million units, raising a total of $280 million. In connection with the IPO, the Sponsor purchased a total of 4,460,000 private

[6] For the avoidance of doubt, the 7,187,500 Founder Shares would represent 20% of shares if the over-allotment option were exercised in full. However, if the underwriters' over-allotment option were not exercised in full, the holders of Founder Shares would forfeit Founder Shares accordingly so that Founder Shares made up 20% of shares outstanding.

[7] Each whole warrant would entitle the holder to purchase one share of Class A Common Stock at a price of $11.50 per share.

placement warrants (the "Private Placement Warrants")[8] for $1.50 per Private Placement Warrant.

51. Accordingly, following DiamondPeak's IPO, there were 28 million shares of Class A Common Stock and 7 million Founder Shares, 6,187,500 of which were owned by the Sponsor.

52. The $280 million raised was then placed into a trust account (the "Trust"). The Trust would be used to pay stockholders who exercise their option to redeem their shares in connection with the anticipated de-SPAC Acquisition, with the balance being used to finance all or part of the deal.

53. With the completion of the IPO, the clock started ticking. After March 4, 2019, DiamondPeak would have, at most, 24 months to complete a transaction.

C. DiamondPeak Merges with Legacy LMC Through an Unfair Process

i. *DiamondPeak Identifies Legacy LMC as a Potential Merger Partner, But Due Diligence Uncovers Serious Flaws*

54. On June 1, 2020, Goldman Sachs presented Legacy LMC (operating under the Lordstown name) as a potential acquisition target to the DiamondPeak Board. Legacy LMC was an automobile company developing electric trucks,

[8] With limited exceptions, the Private Placement Warrants were identical to the warrants sold to the public in DiamondPeak's IPO.

primarily for fleet customers. Its flagship vehicle was the Endurance, a full-size electric pickup truck.

55. On June 3, 2020, Defendant Hamamoto, DiamondPeak's CEO, and Stephen Burns ("Burns"), the CEO of Legacy LMC and later Lordstown, had an introductory teleconference. Over the next few weeks, the DiamondPeak Board and officers conducted modest diligence on Legacy LMC and began discussions regarding the de-SPAC Acquisition.

56. By June 16, 2020, DiamondPeak and Legacy LMC entered into a Letter of Intent to merge. This Letter of Intent contemplated an enterprise value of $750 million to $950 million, with $380 million in proceeds going to the combined entity. The Letter of Intent provided an exclusivity period of 45 days, during which Legacy LMC could only negotiate with DiamondPeak.

57. Over the following weeks, DiamondPeak did further diligence on Legacy LMC. The Proxy disclosed that, on June 26, 2020, "DiamondPeak engaged a leading technical consulting firm to assist DiamondPeak in the evaluation of [Legacy LMC] with respect to technical validation and comprehensive business plan assessment." Based upon the Section 220 Documents, this technical consulting firm was McKinsey.

58. The Proxy stated that, in conducting its work, McKinsey "interviewed key members of Lordstown's management team, conducted extensive

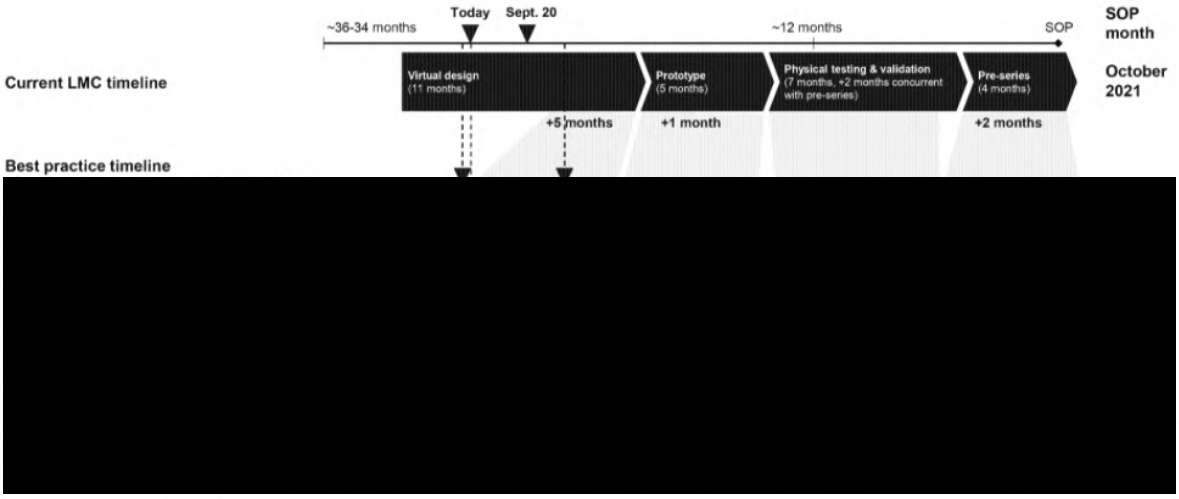
investigations, and presented its assessments to DiamondPeak in a series of presentations and teleconferences over the following month." These assessments appear to have occurred on a weekly basis, starting on July 3, 2020. Over the next four weeks, McKinsey provided a series of reports on Legacy LMC.

59. On July 30, 2020, McKinsey provided a final summary report. This report shows the final diligence the DiamondPeak Board likely received before making its final recommendation in favor of the de-SPAC, as DiamondPeak and Legacy LMC entered into a merger agreement on August 1, 2020. McKinsey's report highlighted certain key problems that undermined the proposed merger.

60. ***First***, while Legacy LMC publicly insisted that production of the Endurance would begin in October of 2021, McKinsey's research showed this goal to be mere fantasy. McKinsey projected that [redacted] McKinsey predicted that if the startup company somehow were able to improve [redacted] McKinsey's deck showed:

8. The Endurance could have an [redacted] SOP delay; compared to industry best practice timeline that could be reduced to [redacted]

Preliminary



Source: LMC Endurance Program Plan Draft 10-21-2021 SOP Scenario – Rev 6-11-2020, interviews with LMC

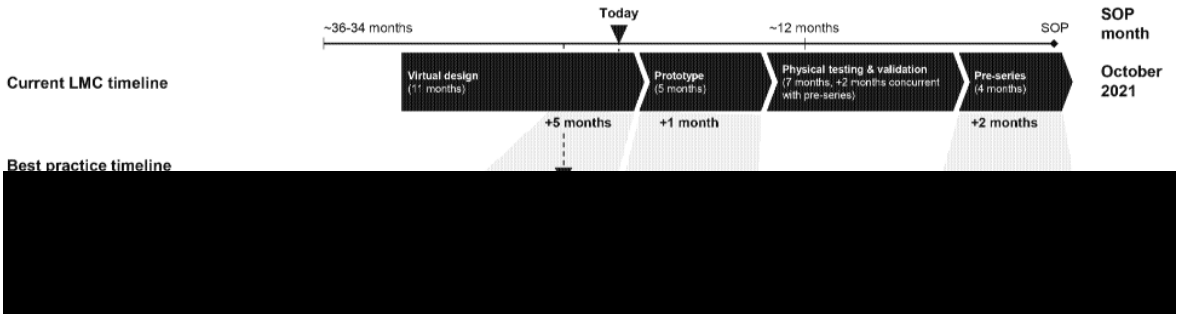
McKinsey & Company 21

Confidential

LMC_HERBERT0001172

The LMC Endurance could have an [redacted] risk to its Oct 2021 SOP when compared to industry best practice timeline

Preliminary



Source: LMC Endurance Program Plan Draft 10-21-2021 SOP Scenario – Rev 6-11-2020, interviews with LMC

McKinsey & Company 88

Confidential

LMC_HERBERT0001236

61. McKinsey also considered when competition would enter the market. Early entry is extremely important for novel products, as the first companies to the market gain an initial advantage in obtaining market share, often called the "first-mover advantage." DiamondPeak recognized this, stating in the Proxy that "[i]f Lordstown is unable . . . [to] leverage a 'first mover' advantage to build strong customer relationships, [Legacy LMC] may not be able to compete successfully."

62. Securing this advantage was particularly crucial considering how established some competitors were (including Ford, GM, and Tesla). Accordingly, the Proxy disclosed:

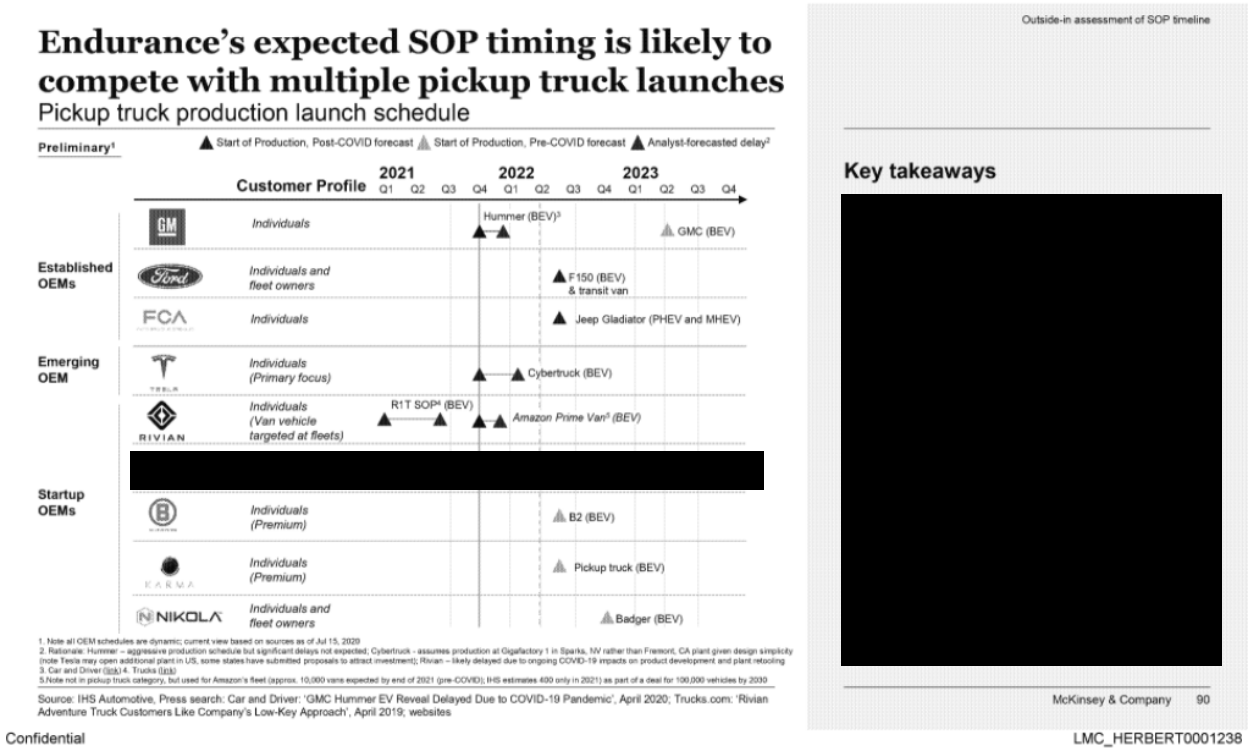
> [Legacy LMC] faces intense competition, including that Lordstown may not be the first to market with an electric pickup truck. Many of [Legacy LMC's] competitors have significantly greater financial or other resources, longer operating histories and greater name recognition than Lordstown does and one or more of these competitors could use their greater resources and/or name recognition to gain market share at [Legacy LMC's] expense or could make it very difficult for Lordstown to establish significant market share.

63. Because being early is crucial to achieving this advantage, the difference between production beginning in October 2021 (as the Proxy suggested) and [redacted], is critical. To be sure, according to McKinsey's report, even an [redacted] first production date [redacted] a high-risk

assumption considering that Legacy LMC had never mass-produced any type of truck before.

64. McKinsey's diligence showed exactly how important this timeline would be, going so far as to highlight Legacy LMC's planned launch compared to known competitors. If Legacy LMC began producing the Endurance in October of 2021, the launch was projected only to fall behind Rivian Automotive Inc. (which only began to produce trucks in September of 2021). [redacted]

65. [redacted] By delaying the launch, the Endurance would have to compete for market share with well-established automobile manufacturers, a difficult if not impossible task. The following timeline highlights McKinsey's work:



66. Second, DiamondPeak knew of problems with Legacy LMC's projections. These projections were as follows based on the Proxy:

	2020E	2021E	2022E	2023E	2024E
Total Units Sold	0	2,200	31,600	65,000	107,000
Revenue (in millions)	$0	$118	$1,690	$3,476	$5,776

67. McKinsey had highlighted that Legacy LMC's numbers were [redacted]

[redacted]

McKinsey noted that to achieve the projected sales volume, Legacy LMC had to go from [redacted]

[redacted]

Perspective on sales volumes

LMC Endurance [redacted]

Information Source IHS Lordstown Motors

Full size fleet pickup sales
Selected nameplates[1], Thousand trucks

Full size fleet pickup market share, %

		2019	2025	2019	2025
ICE	Ford F-150 Series	376	322	25%	20%
	Dodge Ram 1500 Series	266	276	18%	17%
	Chevy Silverado	266	213	18%	13%
	GMC Sierra	104	100	7%	6%
	Toyota Tundra	67	67	5%	4%
	Nissan Titan	13	14	1%	1%
EV	[redacted]				
	Tesla Cybertruck	0	28	0%	2%
	GM EV Pickup	0	26	0%	2%
	Rivian R1T	0	16	0%	1%
	Ford F-150 EV	0	13	0%	1%
	GM Hummer EV	0	7	0%	0%
	Nikola Badger	*Forecast unavailable*			

Preorder Volumes Announced		Preorder Window	Deposit Requirements
Endurance	12,869[2]	9-7 months[5]	Non-binding LOI for fleets and $100 deposit for personal
Cybertruck	650,000[3]	9 months[6]	$100 pre-order refundable payment
Prime Van	100,000[4]	Single Amazon order[7]	N/A
R1T	N/A	20 months[8]	Refundable deposit of $1000 required

1. Both light and heavy duty pickup truck segments included. Based on IHS sales forecasts adjusted to allocate overall volume to fleet vehicles.
2. LMC 3. Electrek 4. The Verge 5. LMC started taking preorders online for the Endurance in Nov. 2019 per Trucks.com and started scouting fleet orders in Jan. 2020. 6. Nov. 2019 to present 7. Sept. 2019 to present 8. Rivian marketing post indicates preorders for the R1T have been open since Dec. 2018

Source: IHS Automotive

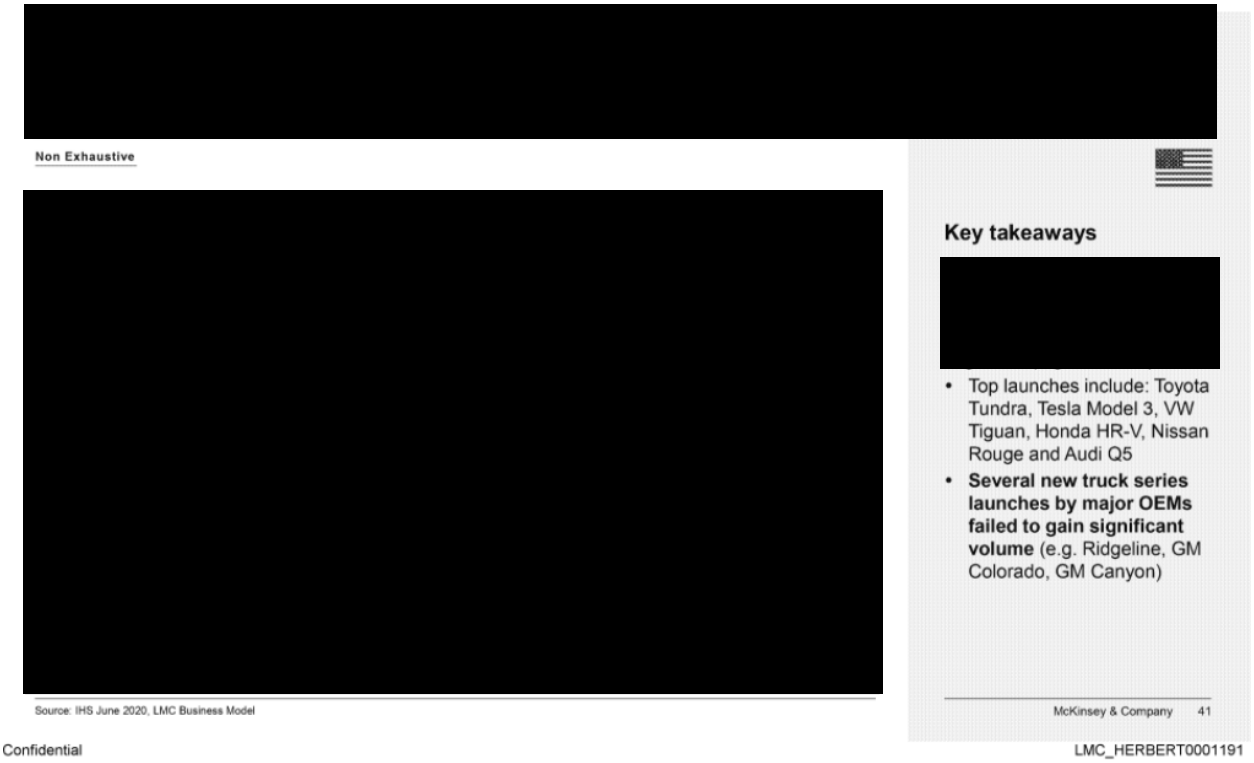
McKinsey & Company 40

Confidential

LMC_HERBERT0001190

68. [redacted]

[redacted]



69. The chart above shows that Legacy LMC was assuming a historic launch. However, there is little apparent justification for these numbers outside of dubious letters of intent, as discussed below in detail.

ii. *Legacy LMC Padded Its Supposed Order Backlog With Obviously Unreliable Letters of Intent*

70. Besides the anticipated time to production, potential investors also wanted to see a large backlog of pre-orders for the Endurance. While investors and the DiamondPeak Board alike were well-aware that letters of intent for fleet orders were not binding, the Proxy overstated the extent to which these orders were reliable. For example, the Proxy stated "[a]lthough these pre-orders are nonbinding and did not require any deposit, [Legacy LMC] believes they ***demonstrate clear demand***

that will lead to binding orders once the Endurance is complete and potential customers are able to see firsthand the value that it offers."

71. In reality, huge percentages of the Endurance pre-orders were facially unreliable, if not fraudulent. McKinsey's diligence showed that despite Legacy LMC "aiming for 100% conversion," in reality Legacy LMC's letters of intent were far less reliable than letters involving peers in the electric car industry.

72. As there was no required deposit for fleet orders, customers could write any number of cars down, with zero obligation. As shown below, this was not standard practice, as many competitors required a financial commitment to make a pre-order or sign a letter of intent.

Perspective on sales volumes

LMC's letter of intent & marketing approach provides a low level of commitment from potential customers in line with industry

LMC approach			Industry practices
Letter of Intent (LOI) elements	**Terms of customer commitment**[1]	• **12,041 fleet vehicles** committed in **non-binding LOI** • **828 personal vehicles** committed with **$100/vehicle deposit** via LMC website	• **Rivian:** refundable deposit of $1000 required, with class action waiver • **Tesla Cybertruck:** $100 pre-order payments are not deposit, but instead cover cost of vehicle configuration and final price sheet processing; upon delivery, payment is credit toward full price; may cancel prior to delivery • **Workhorse:** UPS pre-order of 950 vans contingent upon first 50 vans functioning properly, with ability for UPS to cancel if issues
	Purchase price	Intended terms, non-binding basis: $52,500 per vehicle, $7,500 federal tax credit per vehicle, 2-year installment option available	Where provided, prices are typically noted as subject to change
	Timelines	Not specified in LOI; in dialogue with potential buyers: • Earliest test vehicles to be available Q1-Q2 2021, with delay to 2022 possible • SOP in Oct 2021 as planned	• **Volkswagen ID3:** allows choice of delivery date – "First-movers" must visit dealership for bug fixes but receive three months leasing free, "second-movers" must wait another quarter for second wave production but receive full functionality • **Tesla Cybertruck:** does not guarantee vehicle will be delivered
Sales & marketing	**Expected conversion**	Team aiming for 100% conversion; pre-order marketing focused on fleet leadership team members and key industry influencers	• **Tesla Model 3:** saw an 88% conversion from pre-orders, with 63,000 total cancelled and 455,000 net reservations prior to launch
	Customer engagement	• Leading with personal networks across industries • Updates via email and social media; continued refinement of marketing materials based on customer feedback to date: emphasize early SOP, low TCO, wheel hub motor concept and benefits	• **General:** ongoing email marketing and outreach via social media reveals, launches, and other engagement • **Rivian:** Configuration (battery size, color) to be available ~1y to SOP • **Volkswagen ID3:** "Pre-booker" perks incl. performance upgrade, 1y free charging (WeCharge), 100 kW DC and 11 kW AC charging, welcome box
	Resourcing	• Currently 2 individuals, with Climb2Glory augmentation (+3) • Ramp-up to 14 salespeople by July 2021	• **Rivian:** team includes marketing & sales, content managers, digital customer engagement team, with additional adjacent roles such as utility & public program managers which may enable greater adoption

1. LMC effort kickstarted Jan 2019

Source: Press search, OEM websites, fleet manager and OEM interviews

McKinsey & Company 42

Confidential

LMC_HERBERT0001192

73. Demonstrating that a 100% conversion rate was fantasy, Tesla only had an 88% conversion rate from pre-orders to sales for the Model 3. The Tesla Model 3 required a $1,000 deposit and was produced by an established car company, both of which would likely increase the rate of conversion to sales.

74. Additionally, Plaintiffs' investigation of Section 220 Documents revealed numerous highly suspicious orders. For example, the orders cited in the Proxy included some for thousands of trucks (at a cost of $52,500 per truck) by individuals with no clear ties to any business with a need for trucks.

75. On August 14, 2020, several suspicious orders were placed. One such order, covering 14,000 trucks (which would cost $735 million, if filled), came from a company called E^2 Energy Advisors. According to a simple Lexis search, E^2 Energy Advisors has revenues of about $4.4 million and a total of 18 employees. A second suspicious order for [redacted] trucks (which would cost [redacted] if filled) was placed the same day by [redacted]. A search on LinkedIn shows a green energy company called [redacted] as having between "1-10 employees," with a search for [redacted] showing between "51-200 employees."[9]

76. Besides appearing facially impossible, each of these orders have another thing in common – the same individual, Tim D. Grosse ("Grosse"), signed

[9] The Plaintiffs have not identified any other specific companies called [redacted]

for all three companies. While Plaintiffs can identify a relationship between Grosse and E2 Energy Advisors, Plaintiffs found no connection between [redacted] and Grosse.

77. These facially suspicious purchases appear to have been material to the Company's projections. On July 30, 2021, McKinsey reported that letters of intent covered 12,041 Endurance orders and provided "a low level of commitment from potential customers in line with industry." The Proxy, however, notes 38,000 "pre-orders" on October 8, 2020. Accordingly, these [redacted] orders placed by Grosse (for multiple companies with neither the business nor personnel to ever need such a high volume of electric trucks) appear to represent a sufficient number of orders to unilaterally cause this change. The purchase price for all of these trucks would be [redacted]

78. Thanks to McKinsey's diligence, DiamondPeak thus knew of several critical flaws in Legacy LMC's business plan. ***First***, Legacy LMC's ability to produce the Endurance as scheduled was in serious doubt. ***Second***, despite these production delays (the consequence of which involved losing the first-mover advantage), meeting Legacy LMC's sales projections would require more Endurance trucks to be sold over the first two years than nearly any new vehicle launch in history. ***Third***, Legacy LMC knew or at least should have known that a majority of its letters of intent were not viable.

iii. *DiamondPeak Approves the de-SPAC Acquisition with Legacy LMC*

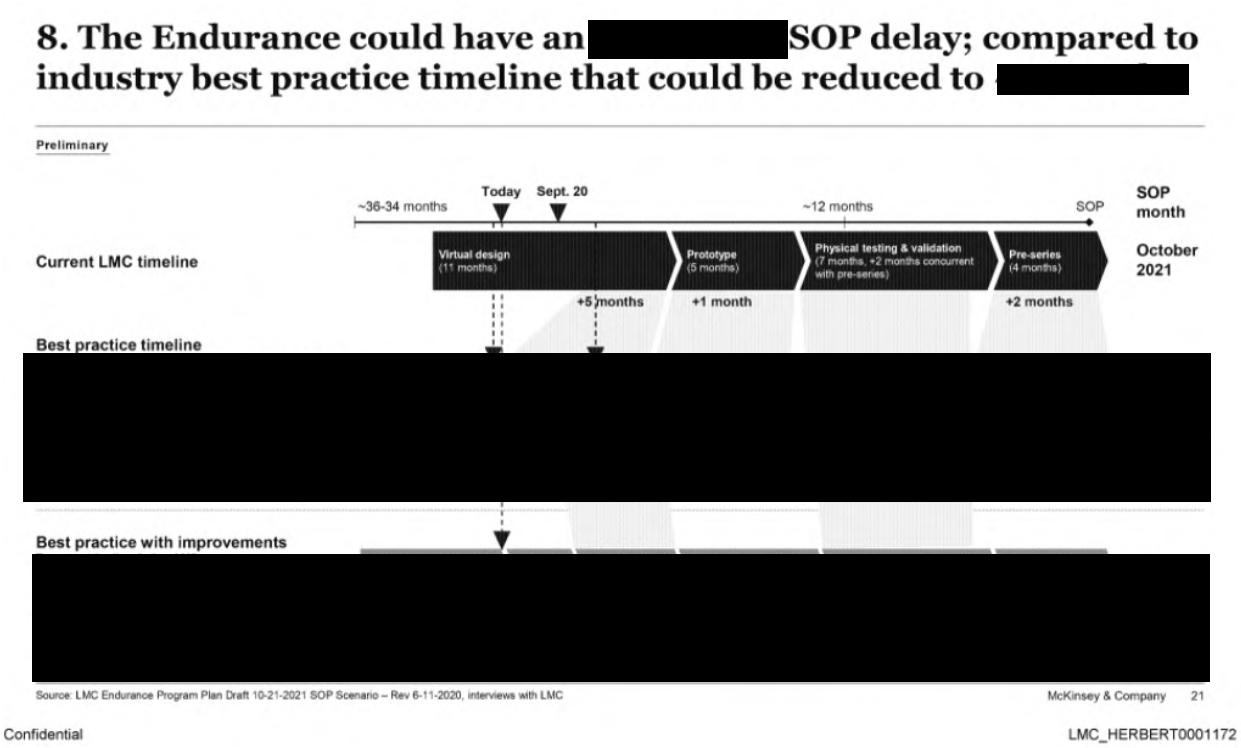
79. On August 1, 2020, DiamondPeak and Legacy LMC entered into a merger agreement (the "Merger Agreement"). The Merger Agreement would result in Legacy LMC becoming a fully owned subsidiary of DiamondPeak.

80. As noted above, on October 8, 2020, DiamondPeak filed the Proxy. By this time, the DiamondPeak Board had been given extensive diligence by McKinsey and would have had several months to assess Legacy LMC's projections, including letters of intent. Despite the DiamondPeak Board's knowledge of specific, concrete risks that had already materialized or were likely to come to pass, the Proxy vaguely and abstractly spoke of general risk. For example:

> [Legacy LMC's] future business depends in large part on its ability to execute on its plans to develop, manufacture, market and sell or lease the Endurance. Any delay in the . . . design, manufacture and launch of Endurance, including in the retooling of the Lordstown Complex, could materially damage [Legacy LMC's] brand, business, prospects, financial condition and operating results. Vehicle manufacturers often experience delays in the design, manufacture and commercial release of new products. To the extent [Legacy LMC] experiences delays in . . . the launch of the Endurance, [Legacy LMC's] growth prospects could be adversely affected. In addition, it could diminish the "first mover" advantage [Legacy LMC] aims to attain, prevent [Legacy LMC] from gaining the confidence of potential customers and open the door to increased competition.

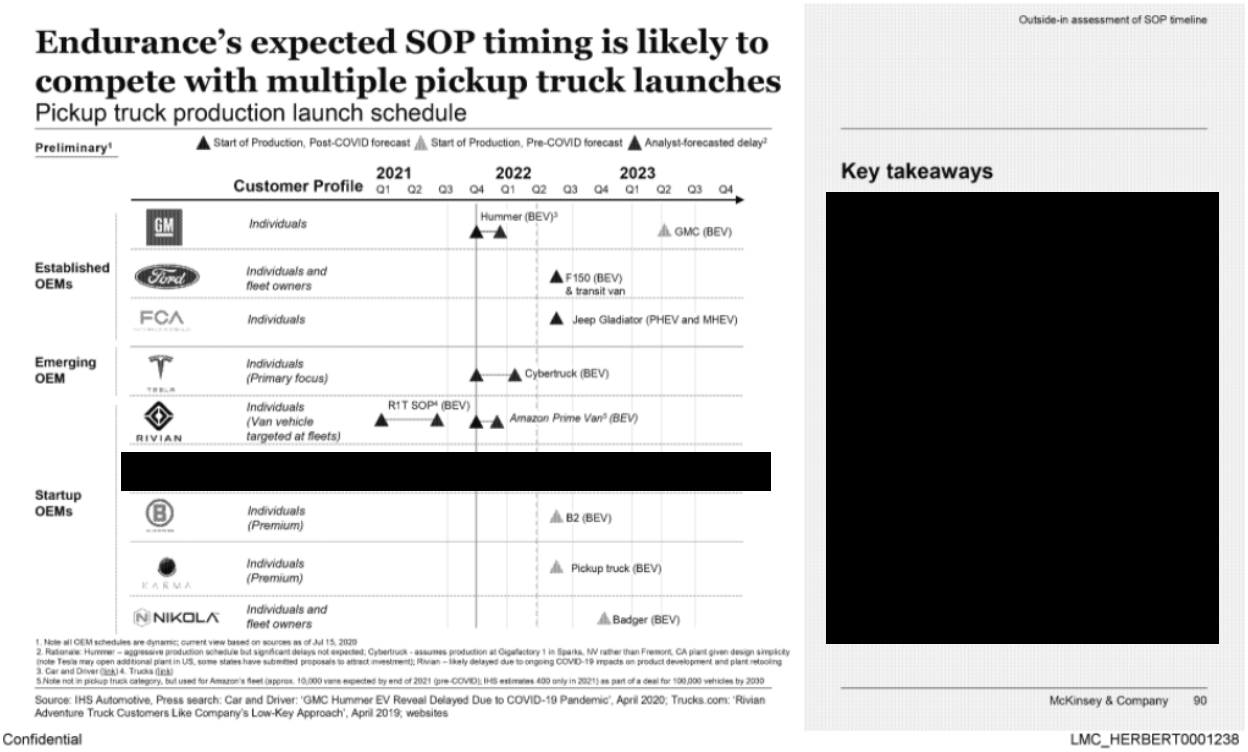
81. Based on the diligence by McKinsey, the risk in this case was far from general or abstract. The DiamondPeak Board had information showing these risks were real and specific to Legacy LMC. One example of such a situation is the

potential for delays. Instead of telling stockholders that Legacy LMC, a startup, [redacted], the DiamondPeak Board opted to focus on general market risk of delays. Even more, as discussed above, the DiamondPeak Board had ***actual knowledge*** that delay was likely and had an [redacted] risk to its production timeline:



82. The general risk disclosures about potential delay become more untenable when coupled with general risk disclosures about losing first mover advantage. While the DiamondPeak Board disclosed a truism in economics, that losing the first-mover advantage has a detrimental impact on a business, the Proxy

did not disclose what Defendants already knew about the likelihood that Legacy LMC was losing such an advantage. Indeed, McKinsey even prepared a visual aid:



83. Additionally, the Proxy generously highlights lofty numbers in its projections indicating a strong demand for the Endurance. For example, as shown above at ¶68, the Proxy projects massive growth in demand for the Endurance, projecting roughly 100,000 Endurance trucks would be sold in the first two years of production.

84. However, much like the generalized risks associated with production concerns, these risks regarding future sales remained generalized. The disclosures include concerns regarding the lack of historical data on the Endurance, the risk of

the manufacturer only having one model, incorrect estimations of demand, and other general concerns for any growing business.

85. However, what the Proxy did not give stockholders was a chance to see what the DiamondPeak Board, the Sponsor, and management saw, namely that the lofty projections would require an unprecedented new truck launch. McKinsey even provided a chart showing how such a launch would have to be one of the best ever.

86. McKinsey's slides demonstrated that the Endurance would have to dominate the fleet segment market, despite coming out later than many of the listed competitors and competing against more established brands, in order to attain its projected success, shown above at ¶¶64-67.

87. The Proxy's characterization of "pre-orders" similarly shows the DiamondPeak Board's strategy of disclosing promising facts specifically, while disclosing risks generally, even if they were specific and already anticipated.

88. The Proxy talks often about the "pre-orders," explaining the positives and negatives together, for example:

> [Legacy LMC] has received pre-orders primarily from fleet operators to purchase over 38,000 Endurance vehicles. These pre-orders are not binding and did not require any deposit, so there can be no assurance that [Legacy LMC] will successfully convert them into binding orders or sales.

89. In some cases, such a disclosure might be sufficient. However, in this case, it certainly was not. As discussed above at ¶¶75-77, [redacted] of those orders

were signed for by ***one individual***, Grosse, on behalf of companies with no plausible means to purchase those trucks (***totaling*** [redacted]). The fact that [redacted] out of 38,000 letters of intent appear to rely on one man, who does not have the means to pay for them, is highly material and completely omitted.

90. Other statements by Legacy LMC outside of the Proxy further touted future sales for investors. On September 28, 2021, Burns appeared with then-President Donald Trump ("Trump") on the South Lawn of the White House. When asked by Trump how many trucks a year would be sold when they get it going, Burns replied "we'll make north of 100,000 once we get going."

91. These high projections fueled investor excitement for the de-SPAC Acquisition, which was already at a fever pitch due to Tesla's meteoric rise. Indeed, between DiamondPeak's IPO on March 4, 2019, and the day the de-SPAC Acquisition was consummated on October 23, 2020, Tesla's stock price soared 637%. Such growth caused investors to look for the next Tesla, a company that could be the first to produce a novel electric vehicle.

92. From what investors could see, Lordstown had the inside track to do just that – beat all major auto manufacturers to produce an electric truck. Executing on this projection would allow Lordstown to capture market share when there were no competitors and the world looked for alternatives to fleets relying on internal combustion engines. The reality, however, was completely inconsistent.

93. Investors were not able to see this reality despite it being presented to the DiamondPeak Board by McKinsey, a world class consulting firm. Despite this diligence revealing fatal flaws in Legacy LMC's plans, these negatives were presented to DiamondPeak stockholders as a vague truism – "sometimes things don't work out."

94. On October 20, 2020, investors had the last opportunity to elect to redeem their shares. Stockholders could redeem their shares regardless of how they voted (including abstaining) at the October 22, 2020 special meeting (the "Special Meeting"), where stockholders voted on the de-SPAC Acquisition. At the Special Meeting, 99.9% of stockholders voted in favor of the de-SPAC Acquisition.

iv. *The de-SPAC Acquisition is Consummated*

95. On October 23, 2020, the de-SPAC Acquisition was consummated after being overwhelmingly approved. This constituted the Initial Business Combination DiamondPeak had to complete in order to avoid having to return stockholders' money, only a few months before their deadline of March 4, 2021.

96. Only 970 shares of Class A stock, out of 28 million, were redeemed in connection with the de-SPAC Acquisition. This redemption rate of .003% is unusual considering the mean rate of redemptions in SPACs is 58% and the median rate of redemption is 73%.

97. Following the de-SPAC Acquisition, Legacy LMC became a wholly owned subsidiary of DiamondPeak, which changed its name to Lordstown Motors Corp.

98. The de-SPAC Acquisition also provided a much-needed cash infusion to Lordstown, with the combined company gaining access to the assets held by the Trust, (roughly $284.4 million) as well as $500 million from PIPE investors. This capital was crucial to Lordstown, which was quickly burning cash. The Proxy made several of these costs clear, stating the following costs would be necessary over the next twelve months:

- approximately $120 million for retooling Lordstown's factory, completing the Endurance, and its supply chain;
- approximately $90 million for research and development for the Endurance; and
- approximately $130 million for operating and other expenses relating to hiring the necessary workforce.

99. At this point, the Sponsor's shares were subject to a lock-up provision. At the time of the closing of the de-SPAC Acquisition, the Sponsor's lock-up could terminate as early as six months later, as Lordstown stock would only have to remain above $12.00 per share for 20 out of 30 consecutive trading days at least 150 days after closing. The earliest such date would have been April 21, 2021 – still long before the first production date falsely projected in the Proxy.

100. Reflecting that investors and the market believed the Proxy and the insiders' other disclosures, Lordstown's stock soared to $18.21 per share on the day the de-SPAC Acquisition closed.

D. Lordstown's Stock Soars Until a Short Seller Defuses the Stamina of the Endurance Rally

101. Immediately following the de-SPAC Acquisition, Lordstown's stock performed well, with CEO Burns and other executives touting Lordstown's letters of intent, including a supposed order for 14,000 Endurance trucks from E^2 Energy Advisors.

102. In February, Lordstown stock peaked at above $30 per share. On February 23, 2021, Burns bragged about having sold over 100,000 vehicles.

i. *The Hindenburg Report Highlights an Inconvenient Truth - Lordstown's Projections are Fiction*

103. On March 12, 2021, buy-side stock research firm Hindenburg Research issued a report entitled "The Lordstown Motors Mirage: Fake Orders, Undisclosed Production Hurdles, And A Prototype Inferno" (the "Hindenburg Report").

104. The Hindenburg Report reported on a variety of problems facing Lordstown, including: (a) highly uncertain demand, including impossible orders and (b) the impossibility of Lordstown's production timeline for the Endurance.

105. ***First***, the Hindenburg Report highlighted how the non-binding letters of intent for the Endurance appear to have been made by individuals who had little

to no ability to purchase those vehicles. Having investigated Lordstown's December 2020 announcement of new orders for 14,000 Endurance trucks, the Hindenburg Report alleged that the order came from a company called E^2 Energy Advisors, which had no ability to complete that purported $735 million purchase. The Hindenburg Report further alleged the address for E^2 Energy Advisors was the address for the apartment of its principal, Grosse.

106. Plaintiffs independently identified several orders by Grosse during their investigation pursuant to 8 *Del. C.* § 220 (as discussed above at ¶¶75-77). This includes E^2 Energy Advisors order for 14,000 trucks, which appears to have been made on August 14, 2020. Additionally, Plaintiffs found that the address for E^2 Energy Advisors is the same as alleged in the Hindenburg report, which is associated with Grosse (perhaps even his apartment).

107. Plaintiffs also identified another order for [redacted] trucks that Grosse signed on August 14, 2020 (the same day as his orders for E^2 Energy Advisors), for [redacted] Plaintiffs have identified no connection between Grosse and [redacted]

108. The Section 220 Documents contain several other facially absurd orders.

109. On January 8, 2020, [redacted] signed a letter of intent for [redacted] trucks, which would cost [redacted] if filled. Plaintiffs have

found no record of such a company following a web search. However, the individual who appears to have signed the pre-order, [redacted] claims to be a PhD student at [redacted] and the co-founder of a company called [redacted] based on his LinkedIn profile. However, according to LinkedIn, [redacted] has fewer than ten employees.

110. On March 26, 2020, Innervations, LLC signed a letter of intent for 1,000 trucks, which would cost $52.5 million if filled. According to LinkedIn, this company has fewer than 10 employees and the address given on the company website is the address of a Regus co-working space.

111. On June 12, 2020, [redacted] ordered [redacted] trucks, which would cost [redacted] if filled. Based on a web search, the company built charging locations. News reports reveal that when the company was acquired in [redacted] it had [redacted] charging stations. While financial data is unavailable, such a large order of trucks seems impossible considering the scale of this company.

112. The Hindenburg Report also alleged that a company called Climb2Glory was paid $50 per pre-order to generate orders for the Endurance, which would incentivize the generation of pre-orders that would not materialize. While the Plaintiffs requested documents on this relationship, none were produced that would either confirm or rebut this claim. However, slides presented to the DiamondPeak

Board by McKinsey indicate that the DiamondPeak Board knew of Climb2Glory's involvement in selling the Endurance for Legacy Lordstown.

113. ***Second***, the Hindenburg Report claimed that the Company's purported plan to begin production in September 2021 made no sense, as employees reported the project as years behind. One former employee reported that such production was at least three to four years away. Additionally, the Hindenburg Report claimed that battery and motor production could not occur in-house, as claimed.

114. Sure enough, the presentations from McKinsey made clear that production in 2021 would not occur. The Section 220 Documents further show that unless Lordstown, a startup, [redacted]

ii. *The Gig is Up, After the World Sees What is Going on, Lordstown Goes From the Next Big Thing to a Potential Meltdown and Criminal Scene*

115. On March 15, 2021, Lordstown ***denied*** the allegations in the Hindenburg Report.

116. On March 17, 2021, Burns announced that there was an SEC inquiry into Lordstown. A special committee of Lordstown's Board (the "Special Committee") was also formed "[i]n response" to the Hindenburg Report.

117. On March 25, 2021, Lordstown's annual report disclosed this SEC inquiry began on February 17, 2021, before the Hindenburg Report was published.

118. On June 8, 2021, Lordstown announced that it did not have sufficient funds to begin commercial production. As a result, Lordstown risked no longer functioning as a going concern.

119. On June 14, 2021, Burns and Lordstown's Chief Financial Officer, Julio Rodriguez, resigned from their positions.

120. The same day, the Special Committee released the results of its investigation into the Hindenburg Report. In main, the Special Committee ***doubled down*** on the continued, fraudulent denials of the allegations in the Hindenburg Report, opining "that the Hindenburg Report is, in significant respects, false and misleading," and that "its challenges to the viability of Lordstown Motors' technology and ***timeline to start of production is not accurate***."

121. Moreover, making their own false statements in light of their own access to the McKinsey reports, "[t]he Special Committee concluded that while various factors could lead to delays in the start of production, ***the projected September 2021 start of production remains achievable with the expectation of delivery to customers in the first quarter of 2022***."

122. The Special Committee, however, did narrowly walk back some claims in the Proxy regarding pre-orders, conceding that certain disclosures "were, in certain respects, inaccurate." For instance, the Special Committee noted, without providing any meaningful detail: "One entity that provided a large number of pre-

orders ***does not appear to have the resources*** to complete large purchases of trucks. Other entities provided commitments that appear ***too vague or infirm*** to be appropriately included in the total number of pre-orders disclosed."

123. In July 2021, Lordstown confirmed that the United States Department of Justice was investigating its business. Thus, Lordstown faced potential criminal, as well as civil, consequences for its potential wrongdoing. The scope of this investigation included the de-SPAC Acquisition.

124. On September 30, 2021, Lordstown announced a deal with Hon Hai Technology Group ("Foxconn"), which would result in Foxconn purchasing Lordstown's factory for $230 million. The deal closed in May 2022. A key part of the deal is an agreement between the parties to manufacture the Endurance. However, even with the help of an experienced manufacturer, Lordstown has not provided a clear timeline for production. Indeed, according to Lordstown's May 9, 2022 Form 10-Q filed with the SEC, Lordstown's "current level of cash and cash equivalents are ***not*** sufficient to execute [its] 2022 business plan and achieve scaled production of the Endurance . . ." Thus, it is unclear whether the Endurance will ***ever*** reach production.

125. As of the day prior to the filing of this Amended Complaint, Lordstown's stock closed at $2.25 per share, a steep discount to the $10 per share

(plus interest) redemption price and implying value destruction of nearly $221 million.[10]

E. Defendants' Divergent Interests in the Initial Business Combination

126. Class A Common Stockholders, the holders of Founder Shares, and the DiamondPeak Board had divergent interests in the de-SPAC Acquisition. While DiamondPeak's public Class A Common Stockholders would only be better off if a de-SPAC created value above the redemption price, holders of Founders Shares received a windfall in the event of nearly any de-SPAC. Additionally, the DiamondPeak Board's compensation aligned their interests perfectly with the holders of Founder Shares.

i. *Insider Goal – Step One Do a Deal, Any Deal; Step Two Don't Implode*

127. After DiamondPeak's IPO, holders of Founder Shares represented 20% of the Company's total equity. Based on the Proxy, the Sponsor held 6,187,500 (88.4%) of the Founder Shares.

128. As the Founder Shares represented 20% of shares outstanding, Founder Shares had a material impact on any vote. Since 88.4% of those shares were beneficially owned by DiamondPeak Board member and CEO Hamamoto and DiamondPeak Board member Walsh, these insiders controlled a great deal of the

[10] 28,000,000 shares × ($10.14 - $2.25) = $220,920,000.

voting power of the Founder Shares. Hamamoto and Walsh would agree to vote all of their shares (including their Founder Shares and an additional 1 million shares of Class A Common Stock held by Hamamoto) in favor of the de-SPAC Acquisition.

129. Founder Shares had the potential to be immensely valuable, representing 20% of DiamondPeak's equity, provided an Initial Business Combination occurred. The Proxy notes that, upon the Initial Business Combination, the Founder Shares held by the Sponsor would be worth $133,711,875 as of October 7, 2020, a return of ***over 500,000%***.

130. If an Initial Business Combination did not occur, the Founder Shares had no redemption rights. Accordingly, those shares would be rendered worthless.

131. The Sponsor had additional incentives to vote in favor of the de-SPAC Acquisition regardless of its strength or merit. The Sponsor had purchased and held 4,460,000 Private Placement Warrants.[11] Absent an Initial Business Combination, those Private Placement Warrants (purchased for $6,690,000)[12] would expire worthless.

[11] Each Private Placement Warrant would entitle the holder to purchase one share of Class A Common Stock at a price of $11.50 per share.

[12] 4,460,000 Private Placement Warrants × $1.50 per Private Placement Warrant = $6,690,000.

132. Accordingly, owners of Founder Shares had a major incentive to approve an Initial Business Combination due to their potential upside, even if it destroyed value for the investing public. The chart below highlights this dynamic, showing the value of the shares as well as the return on investment for holders:[13]

	Class A Common Stock		Founder Shares	
Stock Price	**Value of Class**	**Return**	**Value of Class**	**Return**
$20	$560,000,000	100%	$140,000,000	559,900%
$18	$504,000,000	80%	$126,000,000	503,900%
$16	$448,000,000	60%	$112,000,000	447,900%
$14	$392,000,000	40%	$98,000,000	391,900%
$12	$336,000,000	20%	$84,000,000	335,900%
$10	$280,000,000	0%	$70,000,000	279,900%
$8	$224,000,000	-20%	$56,000,000	223,900%
$6	$168,000,000	-40%	$42,000,000	167,900%
$4	$112,000,000	-60%	$28,000,000	111,900%
$2	$56,000,000	-80%	$14,000,000	55,900%
$0.5	$14,000,000	-95%	$3,500,000	13,900%

133. Due to Hamamoto and Walsh's immense voting power (in large part by virtue of their Founder Shares) and leading roles in DiamondPeak, they were in an influential position to ensure an Initial Business Combination occurred.

134. The remaining members of the DiamondPeak Board (not including Hamamoto and Walsh), Hannaway, Hash, and Richardson, were similarly

[13] The Founder Shares were purchased by the Sponsor for $25,000. The 28 million shares of Class A Common Stock were purchased during the IPO in units for $280 million. While such units included warrants as well, Plaintiffs utilize this value considering the Redemption Right of roughly $10 per share ($10.14).

incentivized to complete an Initial Business Combination. Upon completion of the Initial Business Combination, each would receive 88,357 Founder Shares from the Sponsor. The Proxy valued these shares at roughly $1.9 million per director.

135. Suspiciously, it is unclear exactly when this award was determined, as it first appears in SEC filings on August 24, 2020, just months before the Proxy. Such timing raises questions about whether the compensation considered the need to ensure director support.

ii. *Public Stockholder Interests*

136. While insiders may celebrate any transaction, Class A Common Stockholders do not make lavish returns regardless of performance. Instead, they have to consider whether they are better off simply receiving their money back, rather than investing it in a new company. This involves a few considerations.

137. ***First***, the public stockholders must decide whether the company selected to go public is one they want to remain invested in.

138. ***Second***, the stockholders must decide if the deal is worth the dilution they will face. When Founder Shares account for 20% of the SPAC's equity but were issued for just $25,000, that value is syphoned from public investors, who put up nearly 100% of capital, but receive just 80% of the SPAC's equity. Thus, public

stockholders should only support an Initial Business Combination if that deal will create more enterprise value than they lose to the Founder Shares.[14]

F. The de-SPAC Acquisition Was Unfair to Unaffiliated Holders of Class A Stock

i. *Defendants Selfishly Expropriated Value to the Detriment of the Unaffiliated Holders of Class A Stock*

139. The DiamondPeak Board knew they selected a Company entirely unfit to create long-term value for Class A Common Stockholders. The DiamondPeak Board appears to have accepted this result in the hopes of realizing a windfall.

140. During DiamondPeak's time as a SPAC, the electric car craze was pushing valuations for electric car manufacturers to historic levels. Thus, ensuring the market did not see weakness in Lordstown was crucial. Legacy LMC was a startup with disclosed financing needs of nearly $350 million in a 12-month period. At the same time, Legacy LMC (and the combined company Lordstown) would receive no material revenue until the Endurance began production on a large scale. Such a scenario would only occur years after the de-SPAC Acquisition closed.

[14] To illustrate this point, if an investor buys a share for $10 a share to capitalize the SPAC, the Sponsor obtains 20% of the SPAC's equity via sponsor shares, so the investor only has $8 in equity. Accordingly, the value of the entity would have to increase by at least 25% for the investor to have equity equal to what the investor invested initially, as they would need the value of their $8 in equity to increase by $2 just to break even.

141. By creating hype around Lordstown, the DiamondPeak Board could ensure Lordstown had as much cash on hand as possible and delay the day of reckoning – Lordstown running out of money and having to take on debt or dilutive financing, both of which would harm Lordstown's stock price. Further, the DiamondPeak Board made it more likely the stock would stay above $12.00 a share and end the lock-up period after just six months.

142. The Sponsor nearly ended its lock-up period, narrowly missing the opportunity to sell its shares for a massive profit. After the de-SPAC Acquisition, Lordstown's stock did not drop below $12.00 per share until March 24, 2021, less than a month before the 180-day window ended, and nearly two weeks after the Hindenburg Report was published.

143. Had the Sponsor been able to keep the market unaware of Lordstown's misrepresentations for another few weeks, it would have realized, at a minimum, roughly $74.2 million in returns on their $25,000 investment.[15]

[15] As the total value of the Founder Shares would be worth $84 million if the value of the shares of Class A Common Stock was $12 a share, the Sponsor's ownership of 88.4% of Founder Shares would be worth $74.256 million. This is over $74.2 million more than the $25,000 that the Sponsor paid for the Founder Shares.

ii. *Stockholders Did Not Have a Fully Informed Opportunity to Elect Whether to Redeem their Stock*

144. By withholding specific details of the troubling path ahead for Lordstown, the DiamondPeak Board did not allow investors to properly assess one important question: is this investment worth more than $10.00 a share? The breaches of duty materially impacted investors' views of Lordstown's outlook and prevented investors from exercising their individual right to choose to redeem or not redeem.

145. First, the DiamondPeak Board chose to make statements suggesting Lordstown would begin production in 2021 despite knowing that production date was simply not feasible based on McKinsey's expert diligence. Investors should have been told that McKinsey reported that production would not occur until roughly [redacted] under ***ideal*** circumstances and ***supreme*** execution.

146. Such an omission is glaring based on the Proxy's own assertion that first-mover advantage would be crucial. However, the DiamondPeak Board chose not to reveal their own diligence that showed exactly which cars would beat the Endurance to the market based on expected delays.

147. Second, while the DiamondPeak Board shared lofty projections for future sales, they did not disclose that their own data revealed the launch of the Endurance would have to be historic to achieve such sales. Such a disclosure is

especially important given that Lordstown was a startup and not an established carmaker like GM, Ford, or Tesla. Moreover, the inability to achieve first-mover advantage would also hinder – if not destroy – any ability for Lordstown to achieve the high projections shown to investors by the DiamondPeak Board.

148. Third, while the DiamondPeak Board made clear that the large number of letters of intent may not materialize, they did not disclose that one man signing on behalf of two (or possibly three) companies, represented over two thirds of those letters of intent. They also did not disclose another important detail – that the purchasing entities facially had no viable way to pay for those trucks, amounting to [redacted] In all events, the Proxy should have disclosed that such a large percentage of orders is linked to one individual.

149. Fourth, the DiamondPeak Board touted Legacy LMC's bold claims of converting nearly all letters of intent to orders. The DiamondPeak Board, however, did not tell investors that, despite being an operating company and requiring financial commitment, even Tesla did not convert pre-orders to actual orders at such a rate.

150. Yet despite all the problems McKinsey flagged and which were obvious upon any review of the pre-order letters of intent, the DiamondPeak Board eagerly touted Legacy LMC's statements about converting all these letters of intent to orders at an unprecedented rate.

151. These omissions robbed investors of the opportunity to assess whether redeeming their shares at a price of $10 a share was in their best interest. Instead, they were deceived into leaving their money in a doomed Company.

CLASS ACTION ALLEGATIONS

152. Plaintiffs, stockholders in the Company, bring this action individually and as a class action pursuant to Rule 23 of the Rules of the Court of Chancery of the State of Delaware on behalf of themselves and all record and beneficial holders of Company common stock who held such stock as of the closing of the de-SPAC Acquisition on October 23, 2020 (except for the Defendants named herein, and any person, firm, trust, corporation or other entity related to or affiliated with any of the Defendants) to redress the Defendants' breaches of fiduciary duties and other violations of law.

153. This action is properly maintainable as a class action.

154. A class action is superior to other available methods of fair and efficient adjudication of this controversy.

155. The class (the "Class") is so numerous that joinder of all members is impracticable. Prior to the closing of the de-SPAC Acquisition, there were 28 million shares of Class A Common Stock. The number of Class members is believed to be in the thousands, and they are likely scattered across the United States.

156. Moreover, damages suffered by individual Class members may be small, making it overly expensive and burdensome for individual Class members to pursue redress on their own.

157. There are questions of law and fact which are common to all Class members and which predominate over any questions affecting only individuals, including, without limitation:

a. whether the Controller Defendants controlled the Company;

b. whether Defendants owed fiduciary duties to Plaintiffs and the Class;

c. whether "entire fairness" is the applicable standard of review;

d. which party or parties bear the burden of proof;

e. whether Defendants breached their fiduciary duties to Plaintiffs and the Class;

f. the existence and extent of any injury to the Class or Plaintiffs caused by any breach;

g. the proper measure of the Class's damages; and

h. the appropriateness of any equitable, injunctive, and /or declaratory relief.

158. Plaintiffs' claims and defenses are typical of the claims and defenses of other Class members and Plaintiffs have no interests antagonistic or adverse to the interests of other Class members. Plaintiffs will fairly and adequately protect the interest of the Class.

159. Plaintiffs are committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature.

160. Defendants have acted in a manner that affects Plaintiffs and all members of the Class alike, thereby making appropriate injunctive relief and / or corresponding declaratory relief with respect to the Class as a whole.

161. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants; or adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interest of other members or substantially impair or impede their ability to protect their interests.

COUNT I

(Direct Claim for Breach of Fiduciary Duty Against the Director Defendants)

162. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

163. As directors of DiamondPeak, the Director Defendants owed Plaintiffs and the Class the utmost fiduciary duties of care, loyalty, good faith, candor, and disclosure in their capacity as DiamondPeak directors.

164. These duties required them to place the interests of DiamondPeak stockholders above their personal interests and the interests of the DiamondPeak Defendants.

165. Through the events and actions described herein, the Director Defendants breached their fiduciary duties to Plaintiffs and the Class by agreeing to and entering into the de-SPAC Acquisition without ensuring that it was entirely fair to Plaintiffs and the Class. The de-SPAC Acquisition was unfair, reflecting an unfair price and unfair process.

166. The Director Defendants also breached their duty of candor by issuing the false and misleading Proxy.

167. As a result, Plaintiffs and the Class were harmed by not exercising their redemption rights prior to the de-SPAC Acquisition.

168. Plaintiffs and the Class do not have an adequate remedy at law.

COUNT II

(Direct Claim for Breach of Fiduciary Duty Against the Controller Defendants)

169. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

170. The Controller Defendants were DiamondPeak's controlling stockholders. Specifically, the Controller Defendants held 88.4% of the Founder

Shares at the time of the Proxy, held key positions in the Company and DiamondPeak Board, selected the DiamondPeak Board, and set compensation for other members of the DiamondPeak Board.

171. As such, the Controller Defendants owed Plaintiffs and the Class the utmost fiduciary duties of care, loyalty, good faith, candor, and disclosure.

172. At all relevant times, the Controller Defendants had the power to control, influence, and cause – and actually did control, influence, and cause – the Company to enter into the de-SPAC Acquisition.

173. The de-SPAC Acquisition was unfair, reflecting an unfair price and unfair process. With ultimate control over the disclosures made to all stockholders, the Controller Defendants knew that the disclosures were false and misleading yet purposefully allowed such disclosures to be promulgated to enhance the chance that the deal was voted through, with minimal redemptions.

174. Through the events and actions described herein, the Controller Defendants breached their fiduciary duties to Plaintiffs and the Class by agreeing to and entering into the de-SPAC Acquisition without ensuring that it was entirely fair to Plaintiffs and the Class.

175. As a result, Plaintiffs and the Class were harmed by not exercising their redemption rights prior to the de-SPAC Acquisition.

176. Plaintiffs and the Class do not have an adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment and relief in their favor and in favor of the Class, and against Defendants, as follows:

A. Declaring that this Action is properly maintainable as a class action;

B. Finding the Director Defendants liable for breaching their fiduciary duties, in their capacity as DiamondPeak Board members, owed to Plaintiffs and the Class;

C. Finding the Controller Defendants liable for breaching their fiduciary duties, in their capacity as DiamondPeak's controlling stockholders, owed to Plaintiffs and the Class;

D. Certifying the proposed Class;

E. Awarding Plaintiffs and the other members of the Class damages in an amount which may be proven at trial, together with interest thereon;

F. Awarding Plaintiffs and the members of the Class pre-judgment and post-judgment interest, as well as their reasonable attorneys' and experts' witness fees and other costs; and

G. Awarding Plaintiffs and the Class such other relief as this Court deems just and equitable.

Dated: July 22, 2022

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

/s/ Daniel E. Meyer
Gregory V. Varallo (Bar No. 2242)
Daniel E. Meyer (Bar No. 6876)
500 Delaware Avenue, Suite 901
Wilmington, DE 19801
(302) 364-3601

Counsel for Plaintiffs

OF COUNSEL:

Mark Lebovitch
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
1251 Avenue of the Americas
New York, NY 10020
(212) 554-1400

Co-Lead Counsel for Plaintiffs

-and-

D. Seamus Kaskela
KASKELA LAW LLC
18 Campus Blvd., Suite 100
Newton Square, PA 19073
(484) 258-1585

Counsel for Benjamin Hebert

Gustavo F. Bruckner
Daryoush Behbood
POMERANTZ LLP
600 Third Avenue
New York, NY 10016
(212) 661-1100

Co-Lead Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, Daniel E. Meyer, hereby certify that, on July 29, 2022, the foregoing *Public [redacted] version of Verified Amended Class Action Complaint* was filed and served electronically via File & Serve*Xpress* upon the following counsel:

Raymond J. DiCamillo, Esq.
Kevin M. Gallagher, Esq.
Alexander M. Krischik, Esq.
Alena V. Smith, Esq.
RICHARDS, LAYTON
& FINGER, P.A.
920 North King Street
Wilmington, DE 19801

Derrick Farrell, Esq.
LABATON SUCHAROW LLP
300 Delaware Ave., Suite 1340
Wilmington, DE 19801

Michael A. Pittenger, Esq.
Jonathan A. Choa, Esq.
Nicholas D. Mozal, Esq.
Justin T. Hymes, Esq.
POTTER ANDERSON
& CORROON LLP
1313 N. Market Street, 6th Floor
Hercules Plaza
Wilmington, DE 19899

/s/ Daniel E. Meyer
Daniel E. Meyer (Bar No. 6876)

General Information

Case Name	CONS W/ 2021-1085-LWW - CONF ORD - IN RE LORDSTOWN MOTORS CORP. STOCKHOLDERS LITIGATION
Court	Delaware Court of Chancery
Date Filed	Wed Dec 08 00:00:00 EST 2021
Judge(s)	Lori W. Will
Docket Number	2021-1066
Parties	Steven Hash; DiamondPeak Sponsor LLC; Atri Amin; New Castle County, Sheriff; Benjamin Hebert; Mark Walsh; Andrew Richardson; Lordstown Motors Corp.; David Hamamoto; George Troicky; Judith Hannaway

© 2023 Bloomberg Industry Group, Inc. All Rights Reserved. Terms of Service

EXHIBIT F

Exhibit 3.2

AMENDED AND RESTATED
BY LAWS
OF
LORDSTOWN MOTORS CORP.
(THE "CORPORATION")

ARTICLE I
OFFICES

Section 1.1. Registered Office. The registered office of the Corporation within the State of Delaware shall be located at either (a) the principal place of business of the Corporation in the State of Delaware or (b) the office of the corporation or individual acting as the Corporation's registered agent in Delaware.

Section 1.2. Additional Offices. The Corporation may, in addition to its registered office in the State of Delaware, have such other offices and places of business, both within and outside the State of Delaware, as the Board of Directors of the Corporation (the "***Board***") may from time to time determine or as the business and affairs of the Corporation may require.

ARTICLE II
STOCKHOLDERS MEETINGS

Section 2.1. Annual Meetings. The annual meeting of stockholders shall be held at such place, either within or without the State of Delaware, and time and on such date as shall be determined by the Board and stated in the notice of the meeting, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.5(a). At each annual meeting, the stockholders entitled to vote on such matters shall elect those directors of the Corporation to fill any term of a directorship that expires on the date of such annual meeting and may transact any other business as may properly be brought before the meeting.

Section 2.2. Special Meetings. Subject to the rights of the holders of any outstanding series of the preferred stock of the Corporation ("***Preferred Stock***"), and to the requirements of applicable law, special meetings of stockholders, for any purpose or purposes, may be called only by the Chairman of the Board, Chief Executive Officer, or the Board pursuant to a resolution adopted by a majority of the Board, and may not be called by any other person. Special meetings of stockholders shall be held at such place, either within or without the State of Delaware, and at such time and on such date as shall be determined by the Board and stated in the Corporation's notice of the meeting, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.5(a).

Section 2.3. Notices. Written notice of each stockholders meeting stating the place, if any, date, and time of the meeting, and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting and the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, shall be given in the manner permitted by Section 9.3 to each stockholder entitled to vote thereat as of the record date for determining the stockholders entitled to notice of the meeting, by the Corporation not less than 10 nor more than 60 days before the date of the meeting unless otherwise required by the General Corporation Law of the State of Delaware (the "***DGCL***"). If said notice is for a stockholders meeting other than an annual meeting, it shall in addition state the purpose or purposes for which the meeting is called, and the business transacted at such meeting shall be limited to the matters so stated in the Corporation's notice of meeting (or any supplement thereto). Any meeting of stockholders as to which notice has been given may be postponed, and any meeting of stockholders as to which notice has been given may be cancelled, by the Board upon public announcement (as defined in Section 2.7(c)) given before the date previously scheduled for such meeting.

Section 2.4. Quorum. Except as otherwise provided by applicable law, the Corporation's Certificate of Incorporation, as the same may be amended or restated from time to time (the "***Certificate of Incorporation***") or these By Laws, the presence, in person or by proxy, at a stockholders meeting of the holders of shares of outstanding capital stock of the Corporation representing a majority of the voting power of all outstanding shares of capital stock of the Corporation entitled to vote at such meeting shall constitute a quorum for the transaction of business at such meeting, except that when specified business is to be voted on by a class or series of stock voting as a class, the holders of shares representing a majority of the voting power of the outstanding shares of such class or series shall constitute a quorum of such class or series for the transaction of such business. If a quorum shall not be present or represented by proxy at any meeting of the stockholders of the Corporation, the chairman of the meeting may adjourn the meeting from time to time in the manner provided in Section 2.6 until a quorum shall attend. The stockholders present at a duly convened meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the voting power of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation or any such other corporation to vote shares held by it in a fiduciary capacity.

Section 2.5. Voting of Shares.

(a) Voting Lists. The Secretary of the Corporation (the "***Secretary***") shall prepare, or shall cause the officer or agent who has charge of the stock ledger of the Corporation to prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders of record entitled to vote at such meeting; provided, however, that if the record date for determining the stockholders entitled to vote is less than 10 days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date, arranged in alphabetical order and showing the address and the number and class of shares registered in the name of each stockholder. Nothing contained in this Section 2.5(a) shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If a meeting of stockholders is to be held solely by means of remote communication as permitted by Section 9.5(a), the list shall be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of meeting. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list required by this Section 2.5(a) or to vote in person or by proxy at any meeting of stockholders.

(b) Manner of Voting. At any stockholders meeting, every stockholder entitled to vote may vote in person or by proxy. If authorized by the Board, the voting by stockholders or proxy holders at any meeting conducted by remote communication may be effected by a ballot submitted by electronic transmission (as defined in Section 9.3), provided that any such electronic transmission must either set forth or be submitted with information from which the Corporation can determine that the electronic transmission was authorized by the stockholder or proxy holder. The Board, in its discretion, or the chairman of the meeting of stockholders, in such person's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

(c) Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. Proxies need not be filed with the Secretary until the meeting is called to order, but shall be filed with the Secretary before being voted. Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy, either of the following shall constitute a valid means by which a stockholder may grant such authority. No stockholder shall have cumulative voting rights.

(i) A stockholder may execute a writing authorizing another person or persons to act for such stockholder as proxy. Execution may be accomplished by the stockholder or such stockholder's authorized officer, director, employee or agent signing such writing or causing such person's signature to be affixed to such writing by any reasonable means, including, but not limited to, by facsimile signature.

(ii) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of an electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission authorizing another person or persons to act as proxy for a stockholder may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used; provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

(d) Required Vote. Subject to the rights of the holders of one or more series of Preferred Stock, voting separately by class or series, to elect directors pursuant to the terms of one or more series of Preferred Stock, at all meetings of stockholders at which a quorum is present, the election of directors shall be determined by a plurality of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon. All other matters presented to the stockholders at a meeting at which a quorum is present shall be determined by the vote of a majority of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon, unless the matter is one upon which, by applicable law, the Certificate of Incorporation, these By Laws or applicable stock exchange rules, a different vote is required, in which case such provision shall govern and control the decision of such matter.

(e) Inspectors of Election. The Board may, and shall if required by law, in advance of any meeting of stockholders, appoint one or more persons as inspectors of election, who may be employees of the Corporation or otherwise serve the Corporation in other capacities, to act at such meeting of stockholders or any adjournment thereof and to make a written report thereof. The Board may appoint one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspectors of election or alternates are appointed by the Board, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall ascertain and report the number of outstanding shares and the voting power of each; determine the number of shares present in person or represented by proxy at the meeting and the validity of proxies and ballots; count all votes and ballots and report the results; determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. No person who is a candidate for an office at an election may serve as an inspector at such election. Each report of an inspector shall be in writing and signed by the inspector or by a majority of them if there is more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors.

Section 2.6. Adjournments. Any meeting of stockholders, annual or special, may be adjourned by the chairman of the meeting, from time to time, whether or not there is a quorum, to reconvene at the same or some other place. Notice need not be given of any such adjourned meeting if the date, time, and place, if any, thereof, and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting the stockholders, or the holders of any class or series of stock entitled to vote separately as a class, as the case may be, may transact any business that might have been transacted at the original meeting. If the adjournment is for more than 30 days, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix a new record date for notice of such adjourned meeting in accordance with Section 9.2, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

Section 2.7. Advance Notice for Business.

(a) Annual Meetings of Stockholders. No business may be transacted at an annual meeting of stockholders, other than business that is either (i) specified in the Corporation's notice of meeting (or any supplement thereto) given by or at the direction of the Board, (ii) otherwise properly brought before the annual meeting by or at the direction of the Board or (iii) otherwise properly brought before the annual meeting by any stockholder of the Corporation (x) who is a stockholder of record entitled to vote at such annual meeting on the date of the giving of the notice provided for in this Section 2.7(a) and on the record date for the determination of stockholders entitled to vote at such annual meeting and (y) who complies with the notice procedures set forth in this Section 2.7(a). Notwithstanding anything in this Section 2.7(a) to the contrary, only persons nominated for election as a director to fill any term of a directorship that expires on the date of the annual meeting pursuant to Section 3.2 will be considered for election at such meeting.

(i) In addition to any other applicable requirements, for business (other than nominations) to be properly brought before an annual meeting by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary and such business must otherwise be a proper matter for stockholder action. Subject to Section 2.7(a)(iii), a stockholder's notice to the Secretary with respect to such business, to be timely, must be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the 90th day nor earlier than the close of business on the 120th day before the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting is more than 30 days before or more than 60 days after such anniversary date (or if there has been no prior annual meeting), notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120th day before the meeting and not later than the later of (x) the close of business on the 90th day before the meeting or (y) the close of business on the 10th day following the day on which public announcement of the date of the annual meeting is first made by the Corporation. The public announcement of an adjournment or postponement of an annual meeting shall not commence a new time period (or extend any time period) for the giving of a stockholder's notice as described in this Section 2.7(a).

(ii) To be in proper written form, a stockholder's notice to the Secretary with respect to any business (other than nominations) must set forth as to each such matter such stockholder proposes to bring before the annual meeting (A) a brief description of the business desired to be brought before the annual meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event such business includes a proposal to amend these By Laws, the language of the proposed amendment) and the reasons for conducting such business at the annual meeting, (B) the name and record address of such stockholder and the name and address of the beneficial owner, if any, on whose behalf the proposal is made, (C) the class or series and number of shares of capital stock of the Corporation that are owned beneficially and of record by such stockholder and by the beneficial owner, if any, on whose behalf the proposal is made, (D) a description of all arrangements or understandings between such stockholder and the beneficial owner, if any, on whose behalf the proposal is made and any other person or persons (including their names) in connection with the proposal of such business by such stockholder, (E) any material interest of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made in such business and (F) a representation that such stockholder (or a qualified representative of such stockholder) intends to appear in person or by proxy at the annual meeting to bring such business before the meeting.

(iii) The foregoing notice requirements of this Section 2.7(a) shall be deemed satisfied by a stockholder as to any proposal (other than nominations) if the stockholder has notified the Corporation of such stockholder's intention to present such proposal at an annual meeting in compliance with Rule 14a-8 (or any successor thereof) of the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"), and such stockholder has complied with the requirements of such Rule for inclusion of such proposal in a proxy statement prepared by the Corporation to solicit proxies for such annual meeting. No business shall be conducted at the annual meeting of stockholders except business brought before the annual meeting in accordance with the procedures set forth in this Section 2.7(a), provided, however, that once business has been properly brought before the annual meeting in accordance with such procedures, nothing in this Section 2.7(a) shall be deemed to preclude discussion by any stockholder of any such business. If the Board or the chairman of the annual meeting determines that any stockholder proposal was not made in accordance with the provisions of this Section 2.7(a) or that the information provided in a stockholder's notice does not satisfy the information requirements of this Section 2.7(a), such proposal shall not be presented for action at the annual meeting. Notwithstanding the foregoing provisions of this Section 2.7(a), if the stockholder (or a qualified representative of the stockholder) does not appear at the annual meeting of stockholders of the Corporation to present the proposed business, such proposed business shall not be transacted, notwithstanding that proxies in respect of such matter may have been received by the Corporation.

(iv) In addition to the provisions of this Section 2.7(a), a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth herein. Nothing in this Section 2.7(a) shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting only pursuant to Section 3.2.

(c) Public Announcement. For purposes of these By Laws, "***public announcement***" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed or furnished by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act (or any successor thereto).

Section 2.8. Conduct of Meetings. The chairman of each annual and special meeting of stockholders shall be the Chairman of the Board or, in the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) or, in the absence (or inability or refusal to act of the Chief Executive Officer or if the Chief Executive Officer is not a director, the President (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the President or if the President is not a director, such other person as shall be appointed by the Board. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the chairman of the meeting. The Board may adopt such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with these By Laws or such rules and regulations as adopted by the Board, the chairman of any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the chairman of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. The secretary of each annual and special meeting of stockholders shall be the Secretary or, in the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary so appointed to act by the chairman of the meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 2.9. Consents in Lieu of Meeting. Unless otherwise provided by the Certificate of Incorporation, until the Corporation consummates an initial public offering ("***Offering***"), any action required to be taken at any annual or special meeting of stockholders, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock entitled to vote thereon having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted, and shall be delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

Every written consent shall bear the date of signature of each stockholder who signs the consent, and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated consent delivered in the manner required by this section and the DGCL to the Corporation, written consents signed by a sufficient number of holders entitled to vote to take action are delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

ARTICLE III
DIRECTORS

Section 3.1. Powers; Number. The business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By Laws required to be exercised or done by the stockholders. Directors need not be stockholders or residents of the State of Delaware. Subject to the Certificate of Incorporation, the number of directors shall be fixed exclusively by resolution of the Board.

Section 3.2. Advance Notice for Nomination of Directors.

(a) Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation, except as may be otherwise provided by the terms of one or more series of Preferred Stock with respect to the rights of holders of one or more series of Preferred Stock to elect directors. Nominations of persons for election to the Board at any annual meeting of stockholders, or at any special meeting of stockholders called for the purpose of electing directors as set forth in the Corporation's notice of such special meeting, may be made (i) by or at the direction of the Board or (ii) by any stockholder of the Corporation (x) who is a stockholder of record entitled to vote in the election of directors on the date of the giving of the notice provided for in this Section 3.2 and on the record date for the determination of stockholders entitled to vote at such meeting and (y) who complies with the notice procedures set forth in this Section 3.2.

(b) In addition to any other applicable requirements, for a nomination to be made by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary. To be timely, a stockholder's notice to the Secretary must be received by the Secretary at the principal executive offices of the Corporation (i) in the case of an annual meeting, not later than the close of business on the 90th day nor earlier than the close of business on the 120th day before the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting is more than 30 days before or more than 60 days after such anniversary date (or if there has been no prior annual meeting), notice by the stockholder to be timely must be so received not earlier than the close of business on the 120th day before the meeting and not later than the later of (x) the close of business on the 90th day before the meeting or (y) the close of business on the 10th day following the day on which public announcement of the date of the annual meeting was first made by the Corporation; and (ii) in the case of a special meeting of stockholders called for the purpose of electing directors, not later than the close of business on the 10th day following the day on which public announcement of the date of the special meeting is first made by the Corporation. In no event shall the public announcement of an adjournment or postponement of an annual meeting or special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described in this Section 3.2.

(c) Notwithstanding anything in paragraph (b) to the contrary, in the event that the number of directors to be elected to the Board at an annual meeting is greater than the number of directors whose terms expire on the date of the annual meeting and there is no public announcement by the Corporation naming all of the nominees for the additional directors to be elected or specifying the size of the increased Board before the close of business on the 90th day prior to the anniversary date of the immediately preceding annual meeting of stockholders, a stockholder's notice required by this Section 3.2 shall also be considered timely, but only with respect to nominees for the additional directorships created by such increase that are to be filled by election at such annual meeting, if it shall be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the date on which such public announcement was first made by the Corporation.

(d) To be in proper written form, a stockholder's notice to the Secretary must set forth (i) as to each person whom the stockholder proposes to nominate for election as a director (A) the name, age, business address and residence address of the person, (B) the principal occupation or employment of the person, (C) the class or series and number of shares of capital stock of the Corporation that are owned beneficially or of record by the person and (D) any other information relating to the person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder; and (ii) as to the stockholder giving the notice (A) the name and record address of such stockholder as they appear on the Corporation's books and the name and address of the beneficial owner, if any, on whose behalf the nomination is made, (B) the class or series and number of shares of capital stock of the Corporation that are owned beneficially and of record by such stockholder and the beneficial owner, if any, on whose behalf the nomination is made, (C) a description of all arrangements or understandings relating to the nomination to be made by such stockholder among such stockholder, the beneficial owner, if any, on whose behalf the nomination is made, each proposed nominee and any other person or persons (including their names), (D) a representation that such stockholder (or a qualified representative of such stockholder) intends to appear in person or by proxy at the meeting to nominate the persons named in its notice and (E) any other information relating to such stockholder and the beneficial owner, if any, on whose behalf the nomination is made that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder. Such notice must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected.

(e) If the Board or the chairman of the meeting of stockholders determines that any nomination was not made in accordance with the provisions of this Section 3.2, or that the information provided in a stockholder's notice does not satisfy the information requirements of this Section 3.2, then such nomination shall not be considered at the meeting in question. Notwithstanding the foregoing provisions of this Section 3.2, if the stockholder (or a qualified representative of the stockholder) does not appear at the meeting of stockholders of the Corporation to present the nomination, such nomination shall be disregarded, notwithstanding that proxies in respect of such nomination may have been received by the Corporation.

(f) In addition to the provisions of this Section 3.2, a stockholder shall also comply with all of the applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth herein. Nothing in this Section 3.2 shall be deemed to affect any rights of the holders of Preferred Stock to elect directors pursuant to the Certificate of Incorporation.

Section 3.3. Compensation. Unless otherwise restricted by the Certificate of Incorporation or these By Laws, the Board shall have the authority to fix the compensation of directors, including for service on a committee of the Board, and may be paid either a fixed sum for attendance at each meeting of the Board or other compensation as director. The directors may be reimbursed their expenses, if any, of attendance at each meeting of the Board. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of committees of the Board may be allowed like compensation and reimbursement of expenses for service on the committee.

ARTICLE IV
BOARD MEETINGS

Section 4.1. Annual Meetings. The Board shall meet as soon as practicable after the adjournment of each annual stockholders meeting at the place of the annual stockholders meeting unless the Board shall fix another time and place and give notice thereof in the manner required herein for special meetings of the Board. No notice to the directors shall be necessary to legally convene this meeting, except as provided in this Section 4.1.

Section 4.2. Regular Meetings. Regularly scheduled, periodic meetings of the Board may be held without notice at such times, dates and places (within or without the State of Delaware) as shall from time to time be determined by the Board.

Section 4.3. Special Meetings. Special meetings of the Board (a) may be called by the Chairman of the Board or President and (b) shall be called by the Chairman of the Board, President or Secretary on the written request of at least a majority of directors then in office, or the sole director, as the case may be, and shall be held at such time, date and place (within or without the State of Delaware) as may be determined by the person calling the meeting or, if called upon the request of directors or the sole director, as specified in such written request. Notice of each special meeting of the Board shall be given, as provided in Section 9.3, to each director (i) at least 24 hours before the meeting if such notice is oral notice given personally or by telephone or written notice given by hand delivery or by means of a form of electronic transmission and delivery; (ii) at least two days before the meeting if such notice is sent by a nationally recognized overnight delivery service; and (iii) at least five days before the meeting if such notice is sent through the United States mail. If the Secretary shall fail or refuse to give such notice, then the notice may be given by the officer who called the meeting or the directors who requested the meeting. Any and all business that may be transacted at a regular meeting of the Board may be transacted at a special meeting. Except as may be otherwise expressly provided by applicable law, the Certificate of Incorporation, or these By Laws, neither the business to be transacted at, nor the purpose of, any special meeting need be specified in the notice or waiver of notice of such meeting. A special meeting may be held at any time without notice if all the directors are present or if those not present waive notice of the meeting in accordance with Section 9.4.

Section 4.4. Quorum; Required Vote. A majority of the Board shall constitute a quorum for the transaction of business at any meeting of the Board, and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board, except as may be otherwise specifically provided by applicable law, the Certificate of Incorporation or these By Laws. If a quorum shall not be present at any meeting, a majority of the directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

Section 4.5. Consent In Lieu of Meeting. Unless otherwise restricted by the Certificate of Incorporation or these By Laws, any action required or permitted to be taken at any meeting of the Board or any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions (or paper reproductions thereof) are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 4.6. Organization. The chairman of each meeting of the Board shall be the Chairman of the Board or, in the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the Chief Executive Officer or if the Chief Executive Officer is not a director, the President (if he or she shall be a director) or in the absence (or inability or refusal to act) of the President or if the President is not a director, a chairman elected from the directors present. The Secretary shall act as secretary of all meetings of the Board. In the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary shall perform the duties of the Secretary at such meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting.

ARTICLE V
COMMITTEES OF DIRECTORS

Section 5.1. Establishment. The Board may by resolution of the Board designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Each committee shall keep regular minutes of its meetings and report the same to the Board when required by the resolution designating such committee. The Board shall have the power at any time to fill vacancies in, to change the membership of, or to dissolve any such committee.

Section 5.2. Available Powers. Any committee established pursuant to Section 5.1 hereof, to the extent permitted by applicable law and by resolution of the Board, shall have and may exercise all of the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it.

Section 5.3. Alternate Members. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in place of any such absent or disqualified member.

Section 5.4. Procedures. Unless the Board otherwise provides, the time, date, place, if any, and notice of meetings of a committee shall be determined by such committee. At meetings of a committee, a majority of the number of members of the committee (but not including any alternate member, unless such alternate member has replaced any absent or disqualified member at the time of, or in connection with, such meeting) shall constitute a quorum for the transaction of business. The act of a majority of the members present at any meeting at which a quorum is present shall be the act of the committee, except as otherwise specifically provided by applicable law, the Certificate of Incorporation, these By Laws or the Board. If a quorum is not present at a meeting of a committee, the members present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present. Unless the Board otherwise provides and except as provided in these By Laws, each committee designated by the Board may make, alter, amend and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board is authorized to conduct its business pursuant to Article III and Article IV of these By Laws.

ARTICLE VI
OFFICERS

Section 6.1. Officers. The officers of the Corporation elected by the Board shall be a Chief Executive Officer, a Chief Financial Officer, a Secretary and such other officers (including without limitation, a Chairman of the Board, Presidents, Vice Presidents, Assistant Secretaries and a Treasurer) as the Board from time to time may determine. Officers elected by the Board shall each have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article VI. Such officers shall also have such powers and duties as from time to time may be conferred by the Board. The Chief Executive Officer or President may also appoint such other officers (including without limitation one or more Vice Presidents and Controllers) as may be necessary or desirable for the conduct of the business of the Corporation. Such other officers shall have such powers and duties and shall hold their offices for such terms as may be provided in these By Laws or as may be prescribed by the Board or, if such officer has been appointed by the Chief Executive Officer or President, as may be prescribed by the appointing officer.

(a) Chairman of the Board. The Chairman of the Board shall preside when present at all meetings of the stockholders and the Board. The Chairman of the Board shall have general supervision and control of the acquisition activities of the Corporation subject to the ultimate authority of the Board, and shall be responsible for the execution of the policies of the Board with respect to such matters. In the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) shall preside when present at all meetings of the stockholders and the Board. The powers and duties of the Chairman of the Board shall not include supervision or control of the preparation of the financial statements of the Corporation (other than through participation as a member of the Board). The position of Chairman of the Board and Chief Executive Officer may be held by the same person.

(b) Chief Executive Officer. The Chief Executive Officer shall be the chief executive officer of the Corporation, shall have general supervision of the affairs of the Corporation and general control of all of its business subject to the ultimate authority of the Board, and shall be responsible for the execution of the policies of the Board with respect to such matters, except to the extent any such powers and duties have been prescribed to the Chairman of the Board pursuant to Section 6.1(a) above. In the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) shall preside when present at all meetings of the stockholders and the Board. The position of Chief Executive Officer and President may be held by the same person.

(c) President. The President shall make recommendations to the Chief Executive Officer on all operational matters that would normally be reserved for the final executive responsibility of the Chief Executive Officer. In the absence (or inability or refusal to act) of the Chairman of the Board and Chief Executive Officer, the President (if he or she shall be a director) shall preside when present at all meetings of the stockholders and the Board. The President shall also perform such duties and have such powers as shall be designated by the Board. The position of President and Chief Executive Officer may be held by the same person.

(d) Vice Presidents. In the absence (or inability or refusal to act) of the President, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated by the Board) shall perform the duties and have the powers of the President. Any one or more of the Vice Presidents may be given an additional designation of rank or function.

(e) Secretary.

(i) The Secretary shall attend all meetings of the stockholders, the Board and (as required) committees of the Board and shall record the proceedings of such meetings in books to be kept for that purpose. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board and shall perform such other duties as may be prescribed by the Board, the Chairman of the Board, Chief Executive Officer or President. The Secretary shall have custody of the corporate seal of the Corporation and the Secretary, or any Assistant Secretary, shall have authority to affix the same to any instrument requiring it, and when so affixed, it may be attested by his or her signature or by the signature of such Assistant Secretary. The Board may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing thereof by his or her signature.

(ii) The Secretary shall keep, or cause to be kept, at the principal executive office of the Corporation or at the office of the Corporation's transfer agent or registrar, if one has been appointed, a stock ledger, or duplicate stock ledger, showing the names of the stockholders and their addresses, the number and classes of shares held by each and, with respect to certificated shares, the number and date of certificates issued for the same and the number and date of certificates cancelled.

(f) Assistant Secretaries. The Assistant Secretary or, if there be more than one, the Assistant Secretaries in the order determined by the Board shall, in the absence (or inability or refusal to act) of the Secretary, perform the duties and have the powers of the Secretary.

(g) Chief Financial Officer. The Chief Financial Officer shall perform all duties commonly incident to that office (including, without limitation, the care and custody of the funds and securities of the Corporation, which from time to time may come into the Chief Financial Officer's hands and the deposit of the funds of the Corporation in such banks or trust companies as the Board, the Chief Executive Officer or the President may authorize).

(h) Treasurer. The Treasurer shall, in the absence (or inability or refusal to act) of the Chief Financial Officer, perform the duties and exercise the powers of the Chief Financial Officer.

Section 6.2. Term of Office; Removal; Vacancies. The elected officers of the Corporation shall be appointed by the Board and shall hold office until their successors are duly elected and qualified by the Board or until their earlier death, resignation, retirement, disqualification, or removal from office. Any officer may be removed, with or without cause, at any time by the Board. Any officer appointed by the Chief Executive Officer or President may also be removed, with or without cause, by the Chief Executive Officer or President, as the case may be, unless the Board otherwise provides. Any vacancy occurring in any elected office of the Corporation may be filled by the Board. Any vacancy occurring in any office appointed by the Chief Executive Officer or President may be filled by the Chief Executive Officer, or President, as the case may be, unless the Board then determines that such office shall thereupon be elected by the Board, in which case the Board shall elect such officer.

Section 6.3. Other Officers. The Board may delegate the power to appoint such other officers and agents, and may also remove such officers and agents or delegate the power to remove same, as it shall from time to time deem necessary or desirable.

Section 6.4. Multiple Officeholders; Stockholder and Director Officers. Any number of offices may be held by the same person unless the Certificate of Incorporation or these By Laws otherwise provide. Officers need not be stockholders or residents of the State of Delaware.

ARTICLE VII
SHARES

Section 7.1. Certificated and Uncertificated Shares. The shares of the Corporation may be certificated or uncertificated, subject to the sole discretion of the Board and the requirements of the DGCL.

Section 7.2. Multiple Classes of Stock. If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the Corporation shall (a) cause the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights to be set forth in full or summarized on the face or back of any certificate that the Corporation issues to represent shares of such class or series of stock or (b) in the case of uncertificated shares, within a reasonable time after the issuance or transfer of such shares, send to the registered owner thereof a written notice containing the information required to be set forth on certificates as specified in clause (a) above; provided, however, that, except as otherwise provided by applicable law, in lieu of the foregoing requirements, there may be set forth on the face or back of such certificate or, in the case of uncertificated shares, on such written notice a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights.

Section 7.3. Signatures. Each certificate representing capital stock of the Corporation shall be signed by or in the name of the Corporation by (a) the Chairman of the Board, Chief Executive Officer, the President or a Vice President and (b) the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of the Corporation. Any or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar on the date of issue.

Section 7.4. Consideration and Payment for Shares.

(a) Subject to applicable law and the Certificate of Incorporation, shares of stock may be issued for such consideration, having in the case of shares with par value a value not less than the par value thereof, and to such persons, as determined from time to time by the Board. The consideration may consist of any tangible or intangible property or any benefit to the Corporation including cash, promissory notes, services performed, contracts for services to be performed or other securities, or any combination thereof.

(b) Subject to applicable law and the Certificate of Incorporation, shares may not be issued until the full amount of the consideration has been paid, unless upon the face or back of each certificate issued to represent any partly paid shares of capital stock or upon the books and records of the Corporation in the case of partly paid uncertificated shares, there shall have been set forth the total amount of the consideration to be paid therefor and the amount paid thereon up to and including the time said certificate representing certificated shares or said uncertificated shares are issued.

Section 7.5. Lost, Destroyed or Wrongfully Taken Certificates.

(a) If an owner of a certificate representing shares claims that such certificate has been lost, destroyed or wrongfully taken, the Corporation shall issue a new certificate representing such shares or such shares in uncertificated form if the owner: (i) requests such a new certificate before the Corporation has notice that the certificate representing such shares has been acquired by a protected purchaser; (ii) if requested by the Corporation, delivers to the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, wrongful taking or destruction of such certificate or the issuance of such new certificate or uncertificated shares; and (iii) satisfies other reasonable requirements imposed by the Corporation.

(b) If a certificate representing shares has been lost, apparently destroyed or wrongfully taken, and the owner fails to notify the Corporation of that fact within a reasonable time after the owner has notice of such loss, apparent destruction or wrongful taking and the Corporation registers a transfer of such shares before receiving notification, the owner shall be precluded from asserting against the Corporation any claim for registering such transfer or a claim to a new certificate representing such shares or such shares in uncertificated form.

Section 7.6. Transfer of Stock.

(a) If a certificate representing shares of the Corporation is presented to the Corporation with an endorsement requesting the registration of transfer of such shares or an instruction is presented to the Corporation requesting the registration of transfer of uncertificated shares, the Corporation shall register the transfer as requested if:

(i) in the case of certificated shares, the certificate representing such shares has been surrendered;

(ii) (A) with respect to certificated shares, the endorsement is made by the person specified by the certificate as entitled to such shares; (B) with respect to uncertificated shares, an instruction is made by the registered owner of such uncertificated shares; or (C) with respect to certificated shares or uncertificated shares, the endorsement or instruction is made by any other appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(iii) the Corporation has received a guarantee of signature of the person signing such endorsement or instruction or such other reasonable assurance that the endorsement or instruction is genuine and authorized as the Corporation may request;

(iv) the transfer does not violate any restriction on transfer imposed by the Corporation that is enforceable in accordance with Section 7.8(a); and

(v) such other conditions for such transfer as shall be provided for under applicable law have been satisfied.

(b) Whenever any transfer of shares shall be made for collateral security and not absolutely, the Corporation shall so record such fact in the entry of transfer if, when the certificate for such shares is presented to the Corporation for transfer or, if such shares are uncertificated, when the instruction for registration of transfer thereof is presented to the Corporation, both the transferor and transferee request the Corporation to do so.

Section 7.7. Registered Stockholders. Before due presentment for registration of transfer of a certificate representing shares of the Corporation or of an instruction requesting registration of transfer of uncertificated shares, the Corporation may treat the registered owner as the person exclusively entitled to inspect for any proper purpose the stock ledger and the other books and records of the Corporation, vote such shares, receive dividends or notifications with respect to such shares and otherwise exercise all the rights and powers of the owner of such shares, except that a person who is the beneficial owner of such shares (if held in a voting trust or by a nominee on behalf of such person) may, upon providing documentary evidence of beneficial ownership of such shares and satisfying such other conditions as are provided under applicable law, may also so inspect the books and records of the Corporation.

Section 7.8. Effect of the Corporation's Restriction on Transfer.

(a) A written restriction on the transfer or registration of transfer of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, if permitted by the DGCL and noted conspicuously on the certificate representing such shares or, in the case of uncertificated shares, contained in a notice, offering circular or prospectus sent by the Corporation to the registered owner of such shares within a reasonable time prior to or after the issuance or transfer of such shares, may be enforced against the holder of such shares or any successor or transferee of the holder including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder.

(b) A restriction imposed by the Corporation on the transfer or the registration of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, even if otherwise lawful, is ineffective against a person without actual knowledge of such restriction unless: (i) the shares are certificated and such restriction is noted conspicuously on the certificate; or (ii) the shares are uncertificated and such restriction was contained in a notice, offering circular or prospectus sent by the Corporation to the registered owner of such shares within a reasonable time prior to or after the issuance or transfer of such shares.

Section 7.9. Regulations. The Board shall have power and authority to make such additional rules and regulations, subject to any applicable requirement of law, as the Board may deem necessary and appropriate with respect to the issue, transfer or registration of transfer of shares of stock or certificates representing shares. The Board may appoint one or more transfer agents or registrars and may require for the validity thereof that certificates representing shares bear the signature of any transfer agent or registrar so appointed.

ARTICLE VIII
INDEMNIFICATION

Section 8.1. Right to Indemnification. To the fullest extent permitted by applicable law, as the same exists or may hereafter be amended, the Corporation shall indemnify and hold harmless each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "***proceeding***"), by reason of the fact that he or she is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan (hereinafter an "***Indemnitee***"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, against all liability and loss suffered and expenses (including, without limitation, attorneys' fees, judgments, fines, ERISA excise taxes and penalties and amounts paid in settlement) reasonably incurred by such Indemnitee in connection with such proceeding; provided, however, that, except as provided in Section 8.3 with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify an Indemnitee in connection with a proceeding (or part thereof) initiated by such Indemnitee only if such proceeding (or part thereof) was authorized by the Board.

Section 8.2. Right to Advancement of Expenses. In addition to the right to indemnification conferred in Section 8.1, an Indemnitee shall also have the right to be paid by the Corporation to the fullest extent not prohibited by applicable law the expenses (including, without limitation, attorneys' fees) incurred in defending or otherwise participating in any such proceeding in advance of its final disposition (hereinafter an "***advancement of expenses***"); provided, however, that, if the DGCL requires, an advancement of expenses incurred by an Indemnitee in his or her capacity as a director or officer of the Corporation (and not in any other capacity in which service was or is rendered by such Indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon the Corporation's receipt of an undertaking (hereinafter an "***undertaking***"), by or on behalf of such Indemnitee, to repay all amounts so advanced if it shall ultimately be determined that such Indemnitee is not entitled to be indemnified under this Article VIII or otherwise.

Section 8.3. Right of Indemnitee to Bring Suit. If a claim under Section 8.1 or Section 8.2 is not paid in full by the Corporation within 60 days after a written claim therefor has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the Indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Indemnitee shall also be entitled to be paid the expense of prosecuting or defending such suit. In (a) any suit brought by the Indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by an Indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (b) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final judicial decision from which there is no further right to appeal (hereinafter a "***final adjudication***") that, the Indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the Indemnitee is proper in the circumstances because the Indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including a determination by its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the Indemnitee has not met such applicable standard of conduct, shall create a presumption that the Indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the Indemnitee, shall be a defense to such suit. In any suit brought by the Indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VIII or otherwise shall be on the Corporation.

Section 8.4. Non-Exclusivity of Rights. The rights provided to any Indemnitee pursuant to this Article VIII shall not be exclusive of any other right, which such Indemnitee may have or hereafter acquire under applicable law, the Certificate of Incorporation, these By Laws, an agreement, a vote of stockholders or disinterested directors, or otherwise.

Section 8.5. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and/or any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 8.6. Indemnification of Other Persons. This Article VIII shall not limit the right of the Corporation to the extent and in the manner authorized or permitted by law to indemnify and to advance expenses to persons other than Indemnitees. Without limiting the foregoing, the Corporation may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation and to any other person who is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan, to the fullest extent of the provisions of this Article VIII with respect to the indemnification and advancement of expenses of Indemnitees under this Article VIII.

Section 8.7. Amendments. Any repeal or amendment of this Article VIII by the Board or the stockholders of the Corporation or by changes in applicable law, or the adoption of any other provision of these By Laws inconsistent with this Article VIII, will, to the extent permitted by applicable law, be prospective only (except to the extent such amendment or change in applicable law permits the Corporation to provide broader indemnification rights to Indemnitees on a retroactive basis than permitted prior thereto), and will not in any way diminish or adversely affect any right or protection existing hereunder in respect of any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision; provided however, that amendments or repeals of this Article VIII shall require the affirmative vote of the stockholders holding at least 66.7% of the voting power of all outstanding shares of capital stock of the Corporation.

Section 8.8. Certain Definitions. For purposes of this Article VIII, (a) references to "***other enterprise***" shall include any employee benefit plan; (b) references to "***fines***" shall include any excise taxes assessed on a person with respect to an employee benefit plan; (c) references to "***serving at the request of the Corporation***" shall include any service that imposes duties on, or involves services by, a person with respect to any employee benefit plan, its participants, or beneficiaries; and (d) a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interest of the Corporation" for purposes of Section 145 of the DGCL.

Section 8.9. Contract Rights. The rights provided to Indemnitees pursuant to this Article VIII shall be contract rights and such rights shall continue as to an Indemnitee who has ceased to be a director, officer, agent or employee and shall inure to the benefit of the Indemnitee's heirs, executors and administrators.

Section 8.10. Severability. If any provision or provisions of this Article VIII shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Article VIII shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Article VIII (including, without limitation, each such portion of this Article VIII containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

ARTICLE IX
MISCELLANEOUS

Section 9.1. Place of Meetings. If the place of any meeting of stockholders, the Board or committee of the Board for which notice is required under these By Laws is not designated in the notice of such meeting, such meeting shall be held at the principal business office of the Corporation; provided, however, if the Board has, in its sole discretion, determined that a meeting shall not be held at any place, but instead shall be held by means of remote communication pursuant to Section 9.5 hereof, then such meeting shall not be held at any place.

Section 9.2. Fixing Record Dates.

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the business day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the foregoing provisions of this Section 9.2(a) at the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

Section 9.3. Means of Giving Notice.

(a) Notice to Directors. Whenever under applicable law, the Certificate of Incorporation or these By Laws notice is required to be given to any director, such notice shall be given either (i) in writing and sent by mail, or by a nationally recognized delivery service, (ii) by means of facsimile telecommunication or other form of electronic transmission, or (iii) by oral notice given personally or by telephone. A notice to a director will be deemed given as follows: (i) if given by hand delivery, orally, or by telephone, when actually received by the director, (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation, (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation, (iv) if sent by facsimile telecommunication, when sent to the facsimile transmission number for such director appearing on the records of the Corporation, (v) if sent by electronic mail, when sent to the electronic mail address for such director appearing on the records of the Corporation, or (vi) if sent by any other form of electronic transmission, when sent to the address, location or number (as applicable) for such director appearing on the records of the Corporation.

(b) Notice to Stockholders. Whenever under applicable law, the Certificate of Incorporation or these By Laws notice is required to be given to any stockholder, such notice may be given (i) in writing and sent either by hand delivery, through the United States mail, or by a nationally recognized overnight delivery service for next day delivery, or (ii) by means of a form of electronic transmission consented to by the stockholder, to the extent permitted by, and subject to the conditions set forth in Section 232 of the DGCL. A notice to a stockholder shall be deemed given as follows: (i) if given by hand delivery, when actually received by the stockholder, (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the stockholder at the stockholder's address appearing on the stock ledger of the Corporation, (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the stockholder at the stockholder's address appearing on the stock ledger of the Corporation, and (iv) if given by a form of electronic transmission consented to by the stockholder to whom the notice is given and otherwise meeting the requirements set forth above, (A) if by facsimile transmission, when directed to a number at which the stockholder has consented to receive notice, (B) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice, (C) if by a posting on an electronic network together with separate notice to the stockholder of such specified posting, upon the later of (1) such posting and (2) the giving of such separate notice, and (D) if by any other form of electronic transmission, when directed to the stockholder. A stockholder may revoke such stockholder's consent to receiving notice by means of electronic communication by giving written notice of such revocation to the Corporation. Any such consent shall be deemed revoked if (1) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and (2) such inability becomes known to the Secretary or an Assistant Secretary or to the Corporation's transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(c) Electronic Transmission. "***Electronic transmission***" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, including but not limited to transmission by telex, facsimile telecommunication, electronic mail, telegram and cablegram.

(d) Notice to Stockholders Sharing Same Address. Without limiting the manner by which notice otherwise may be given effectively by the Corporation to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these By Laws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. A stockholder may revoke such stockholder's consent by delivering written notice of such revocation to the Corporation. Any stockholder who fails to object in writing to the Corporation within 60 days of having been given written notice by the Corporation of its intention to send such a single written notice shall be deemed to have consented to receiving such single written notice.

(e) Exceptions to Notice Requirements. Whenever notice is required to be given, under the DGCL, the Certificate of Incorporation or these By Laws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting that shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

Whenever notice is required to be given by the Corporation, under any provision of the DGCL, the Certificate of Incorporation or these By Laws, to any stockholder to whom (1) notice of two consecutive annual meetings of stockholders and all notices of stockholder meetings or of the taking of action by written consent of stockholders without a meeting to such stockholder during the period between such two consecutive annual meetings, or (2) all, and at least two payments (if sent by first-class mail) of dividends or interest on securities during a 12-month period, have been mailed addressed to such stockholder at such stockholder's address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such stockholder shall not be required. Any action or meeting that shall be taken or held without notice to such stockholder shall have the same force and effect as if such notice had been duly given. If any such stockholder shall deliver to the Corporation a written notice setting forth such stockholder's then current address, the requirement that notice be given to such stockholder shall be reinstated. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to Section 230(b) of the DGCL. The exception in subsection (1) of the first sentence of this paragraph to the requirement that notice be given shall not be applicable to any notice returned as undeliverable if the notice was given by electronic transmission.

Section 9.4. Waiver of Notice. Whenever any notice is required to be given under applicable law, the Certificate of Incorporation, or these By Laws, a written waiver of such notice, signed by the person or persons entitled to said notice, or a waiver by electronic transmission by the person entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to such required notice. All such waivers shall be kept with the books of the Corporation. Attendance at a meeting shall constitute a waiver of notice of such meeting, except where a person attends for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

Section 9.5. Meeting Attendance via Remote Communication Equipment.

(a) Stockholder Meetings. If authorized by the Board in its sole discretion, and subject to such guidelines and procedures as the Board may adopt, stockholders entitled to vote at such meeting and proxy holders not physically present at a meeting of stockholders may, by means of remote communication:

(i) participate in a meeting of stockholders; and

(ii) be deemed present in person and vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (A) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxy holder, (B) the Corporation shall implement reasonable measures to provide such stockholders and proxy holders a reasonable opportunity to participate in the meeting and, if entitled to vote, to vote on matters submitted to the applicable stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (C) if any stockholder or proxy holder votes or takes other action at the meeting by means of remote communication, a record of such votes or other action shall be maintained by the Corporation.

(b) Board Meetings. Unless otherwise restricted by applicable law, the Certificate of Incorporation or these By Laws, members of the Board or any committee thereof may participate in a meeting of the Board or any committee thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Such participation in a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

Section 9.6. Dividends. The Board may from time to time declare, and the Corporation may pay, dividends (payable in cash, property or shares of the Corporation's capital stock) on the Corporation's outstanding shares of capital stock, subject to applicable law and the Certificate of Incorporation.

Section 9.7. Reserves. The Board may set apart out of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

Section 9.8. Contracts and Negotiable Instruments. Except as otherwise provided by applicable law, the Certificate of Incorporation or these By Laws, any contract, bond, deed, lease, mortgage or other instrument may be executed and delivered in the name and on behalf of the Corporation by such officer or officers or other employee or employees of the Corporation as the Board may from time to time authorize. Such authority may be general or confined to specific instances as the Board may determine. The Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, the Treasurer or any Vice President may execute and deliver any contract, bond, deed, lease, mortgage or other instrument in the name and on behalf of the Corporation. Subject to any restrictions imposed by the Board, the Chairman of the Board Chief Executive Officer, President, the Chief Financial Officer, the Treasurer or any Vice President may delegate powers to execute and deliver any contract, bond, deed, lease, mortgage or other instrument in the name and on behalf of the Corporation to other officers or employees of the Corporation under such person's supervision and authority, it being understood, however, that any such delegation of power shall not relieve such officer of responsibility with respect to the exercise of such delegated power.

Section 9.9. Fiscal Year. The fiscal year of the Corporation shall be fixed by the Board.

Section 9.10. Seal. The Board may adopt a corporate seal, which shall be in such form as the Board determines. The seal may be used by causing it or a facsimile thereof to be impressed, affixed or otherwise reproduced.

Section 9.11. Books and Records. The books and records of the Corporation may be kept within or outside the State of Delaware at such place or places as may from time to time be designated by the Board.

Section 9.12. Resignation. Any director, committee member or officer may resign by giving notice thereof in writing or by electronic transmission to the Chairman of the Board, the Chief Executive Officer, the President or the Secretary. The resignation shall take effect at the time it is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 9.13. Surety Bonds. Such officers, employees and agents of the Corporation (if any) as the Chairman of the Board, Chief Executive Officer, President or the Board may direct, from time to time, shall be bonded for the faithful performance of their duties and for the restoration to the Corporation, in case of their death, resignation, retirement, disqualification or removal from office, of all books, papers, vouchers, money and other property of whatever kind in their possession or under their control belonging to the Corporation, in such amounts and by such surety companies as the Chairman of the Board, Chief Executive Officer, President or the Board may determine. The premiums on such bonds shall be paid by the Corporation and the bonds so furnished shall be in the custody of the Secretary.

Section 9.14. Securities of Other Corporations. Powers of attorney, proxies, waivers of notice of meeting, consents in writing and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the Chairman of the Board, Chief Executive Officer, President, any Vice President or any officers authorized by the Board. Any such officer, may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities, or to consent in writing, in the name of the Corporation as such holder, to any action by such corporation, and at any such meeting or with respect to any such consent shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed. The Board may from time to time confer like powers upon any other person or persons.

Section 9.15. Amendments. The Board shall have the power to adopt, amend, alter or repeal the By Laws. The affirmative vote of a majority of the Board shall be required to adopt, amend, alter or repeal the By Laws. The By Laws also may be adopted, amended, altered or repealed by the stockholders; provided, however, that in addition to any vote of the holders of any class or series of capital stock of the Corporation required by applicable law or the Certificate of Incorporation, the affirmative vote of the holders of at least a majority of the voting power (except as otherwise provided in Section 8.7) of all outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required for the stockholders to adopt, amend, alter or repeal the By Laws.

EXHIBIT G

BYLAWS
OF
DPL MERGER SUB CORP.

ARTICLE I

Stockholders

Section 1.1. Annual Meetings. An annual meeting of stockholders of DPL Merger Sub Corp. (the "Corporation") for the election of directors and for the transaction of any other proper business shall be held at such date, time and place either within or without the State of Delaware, or may not be held at any place, but may instead be held solely by means of remote communication, as may be designated by the Corporation's board of directors (the "Board of Directors") from time to time.

Section 1.2. Special Meetings. Special meetings of stockholders of the Corporation may be called at any time by the chairperson of the Board of Directors (the "Chair"), if any, the vice chairperson of the Board of Directors (the "Vice Chair"), if any, the president of the Corporation (the "President"), or the Board of Directors, to be held at such date, time and place either within or without the State of Delaware, or may not be held at any place, but may instead be held solely by means of remote communication, as may be stated in the notice of the meeting. A special meeting of stockholders of the Corporation shall be called by the secretary of the Corporation (the "Secretary") upon the written request, stating the purpose of the meeting, of stockholders of the Corporation who together own of record a majority of the outstanding shares of each class of stock of the Corporation entitled to vote at such meeting.

Section 1.3. Notice of Meetings.

(a) Whenever stockholders of the Corporation are required or permitted to take any action at a meeting, a written notice of the meeting shall be given stating the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders of the Corporation and proxyholders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders of the Corporation entitled to vote at the meeting, if such date is different from the record date for determining stockholders of the Corporation entitled to notice of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by applicable law, the written notice of any meeting shall be given not less than ten nor more than sixty days before the date of the meeting to each stockholder of the Corporation entitled to vote at such meeting as of the record date for determining the stockholders of the Corporation entitled to notice of the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder of the Corporation at such stockholder's address as it appears on the records of the Corporation.

(b) In addition, if a stockholder of the Corporation has consented to receive notices by a form of electronic transmission, then, so long as such consent has not been properly revoked by such stockholder or deemed revoked pursuant to Section 232(a) of the

General Corporation Law of the State of Delaware, as may be amended from time to time (the "DGCL"), such notice, by (i) facsimile telecommunication, or by electronic mail, shall be deemed to be given when directed to a number or an electronic mail address, respectively, at which such stockholder has consented to receive notice, (ii) by a posting on an electronic network together with separate notice to such stockholder of such specific posting shall be deemed given, upon the later of (A) such posting, and (B) the giving of such separate notice, and (iii) any other form of electronic transmission, such notice shall be deemed to be given when directed to such stockholder.

(c) For purposes of these bylaws (these "Bylaws"), "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, including the use of, or participation in, one or more electronic networks or databases (including one or more distributed electronic networks or databases), that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

(d) Notice shall be deemed to have been given to all stockholders of the Corporation of record who share an address if notice is given in accordance with the "householding" rules set forth in the rules of the Securities and Exchange Commission under the Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder, in each case as may be amended from time to time, and Section 233 of the DGCL.

Section 1.4. Adjournments and Postponements.

(a) Subject to applicable law, any meeting of stockholders of the Corporation, annual or special, may be adjourned from time to time, to reconvene at the same or some other place, if any, thereof, and the means of remote communications, if any, and notice need not be given of any such adjourned meeting if the time and place and/or means of remote communication (as applicable) thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of the Corporation of record entitled to vote at such meeting.

(b) In addition, subject to applicable law, any meeting of stockholders of the Corporation, annual or special, may be postponed by the Board of Directors at any time before such meeting has been convened, and such postponement shall be considered a cancellation of the originally noticed meeting. Notice of the postponed meeting shall be given to each stockholder of the Corporation of record entitled to vote at the meeting.

Section 1.5. Quorum.

(a) At each meeting of stockholders of the Corporation, except where otherwise provided by applicable law or the certificate of incorporation, as may be amended,

restated, or amended and restated from time to time in accordance with its terms (the "Charter") or these Bylaws, the holders of a majority of the issued and outstanding shares of stock of the Corporation entitled to vote on a matter at the meeting, present in person or represented by proxy, shall constitute a quorum. In the absence of a quorum of the holders of any class of stock of the Corporation entitled to vote on a matter, either (i) the holders of such class so present or represented may, by majority vote, adjourn the meeting of such class from time to time in the manner provided by Section 1.4(b) of these Bylaws until a quorum of such class shall be so present or represented or (ii) the chairperson of the meeting may on his or her own motion adjourn the meeting from time to time in the manner provided by Section 1.4(b) of these Bylaws until a quorum of such class shall be so present and represented without the approval of the stockholders of the Corporation who are present in person or represented by proxy and entitled to vote, without notice other than announcement at the meeting.

(b) Shares of the Corporation's own capital stock belonging on the record date for determining stockholders of the Corporation entitled to vote at the meeting to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

Section 1.6. Organization. Meetings of stockholders of the Corporation shall be presided over by the Chair, if any, or, in the absence of the Chair or if the Chair is unable to act, by the Vice Chair, if any, or, in the absence of the Vice Chair or if the Vice Chair is unable to act, by the President or, in the absence of the President or if the President is unable to act, by a vice president of the Corporation or, in the absence of the foregoing persons or if the foregoing persons are unable to act, by a chairperson designated by the Board of Directors or, in the absence of such designation or if such designee is unable to act, by a chairperson chosen at the meeting. The Secretary or, in the absence of the Secretary or if the Secretary is unable to act, an assistant secretary of the Corporation, shall act as secretary of the meeting, but in the absence of the Secretary and any assistant secretary of the Corporation or if neither is able to act, the chairperson of the meeting may appoint any person to act as secretary of the meeting. The order of business at each such meeting shall be as determined by the chairperson of the meeting. The chairperson of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts and things as are necessary or desirable for the proper conduct of the meeting, including, without limitation, the establishment of procedures for the maintenance of order and safety, limitations on the time allotted to questions or comments on the affairs of the Corporation, restrictions on entry to such meeting after the time prescribed for the commencement thereof and the opening and closing of the voting polls.

Section 1.7. Voting; Proxies.

(a) Unless otherwise provided in the Charter, each stockholder of the Corporation entitled to vote at any meeting of stockholders of the Corporation shall be entitled to one vote for each share of capital stock of the Corporation held by such stockholder who has

voting power upon the matter in question.

(b) Each stockholder of the Corporation entitled to vote at a meeting of stockholders of the Corporation or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period.

(c) A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power, regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally; provided, however, that a stockholder of the Corporation may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or another duly executed proxy bearing a later date with the Secretary. Voting at meetings of stockholders of the Corporation need not be by written ballot and need not be conducted by inspectors unless the holders of a majority of the outstanding shares of all classes of stock of the Corporation entitled to vote thereon present in person or represented by proxy at such meeting shall so determine.

(d) Directors shall be elected by a plurality of the votes of the shares of the Corporation present in person or represented by proxy at the meeting and entitled to vote on the election of directors. In all other matters, unless otherwise provided by applicable law or by the Charter or these Bylaws, the affirmative vote of the holders of a majority of the shares of the Corporation present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders of the Corporation.

Section 1.8. Fixing Date for Determination of Stockholders of Record.

(a) In order that the Corporation may determine the stockholders of the Corporation entitled to notice of any meeting of stockholders of the Corporation or any adjournment thereof or, if necessary, any postponement thereof effected pursuant to Section 1.4(b) of these Bylaws, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty nor less than ten days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders of the Corporation entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders of the Corporation entitled to notice of and to vote at a meeting of stockholders of the Corporation shall be at the close of business in the State of Delaware on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business in the State of Delaware on the day next preceding the day on which the meeting is held. A determination of stockholders of the Corporation of record entitled to notice of or to vote at a meeting of stockholders of the Corporation shall apply to any adjournment of the meeting or, if necessary, any postponement of

the meeting effected pursuant to Section 1.4(b) of these Bylaws; provided, however, that the Board of Directors may fix a new record date for determination of stockholders of the Corporation entitled to vote at the adjourned or, if necessary, any postponed meeting, and in such case shall also fix as the record date for stockholders of the Corporation entitled to notice of such adjourned or postponed meeting the same or an earlier date as that fixed for determination of stockholders of the Corporation entitled to vote in accordance with the foregoing provisions of this Section 1.8 at the adjourned or postponed meeting.

(b) In order that the Corporation may determine the stockholders of the Corporation entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders of the Corporation entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders of the Corporation are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by applicable law, the record date for determining stockholders of the Corporation entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(c) In order that the Corporation may determine the stockholders of the Corporation entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty days prior to such action. If no record date is fixed, the record date for determining stockholders of the Corporation for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 1.9. List of Stockholders Entitled to Vote. The Secretary shall prepare and make, at least ten days before every meeting of stockholders of the Corporation, a complete list of the stockholders of the Corporation entitled to vote at the meeting; provided, however, if the record date for determining the stockholders of the Corporation entitled to vote is less than ten days before the meeting date, the list shall reflect the stockholders of the Corporation entitled to vote as of the tenth day before the meeting date, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Nothing in this Section 1.9 shall require the Corporation to include electronic mail

addresses or other electronic content information on such list. Such list shall be open to the examination of any stockholder of the Corporation for any purpose germane to the meeting for a period of at least ten days prior to the meeting: (a) on a reasonably accessible electronic network; provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then a list of stockholders of the Corporation entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder of the Corporation who is present. If the meeting is to be held solely by means of remote communication, then such list shall also be open to the examination of any stockholder of the Corporation during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

Section 1.10. Consent of Stockholders in Lieu of Meeting.

(a) Unless otherwise provided in the Charter, any action required by applicable law to be taken at any annual or special meeting of stockholders of the Corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock of the Corporation having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares of the Corporation entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to (i) its registered office in the State of Delaware by hand or by certified mail or registered mail, return receipt requested, (ii) its principal place of business or (iii) an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders of the Corporation are recorded.

(b) Every written consent shall bear the date of signature of each stockholder of the Corporation who signs the consent, and no written consent shall be effective to take the corporate action referred to therein unless, within sixty days of the earliest dated consent delivered in the manner required by this Section 1.10 to the Corporation, written consents signed by a sufficient number of holders to take action are delivered to the Corporation by delivery to (i) its registered office in the State of Delaware by hand or by certified or registered mail, return receipt requested, (ii) its principal place of business or (iii) an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded.

(c) A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder of the Corporation or proxyholder, or by a person or persons authorized to act for a stockholder or proxyholder, shall be deemed to be written and signed for the purposes of this Section 1.10; provided, that any such telegram,

cablegram or other electronic transmission sets forth or is delivered with information from which the Corporation can determine (i) that the telegram, cablegram or other electronic transmission was transmitted by the stockholder of the Corporation or proxyholder or by a person or persons authorized to act for the stockholder or proxyholder and (ii) the date on which such stockholder or proxyholder or authorized person or persons transmitted such telegram, cablegram or electronic transmission. The date on which such telegram, cablegram or other electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the Corporation by delivery to (A) its registered office in the State of Delaware by hand or by certified or registered mail, return receipt requested, (B) its principal place of business or (C) an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Notwithstanding the foregoing limitations on delivery, consents given by telegram, cablegram or other electronic transmission, may be otherwise delivered to the principal place of business of the Corporation or to an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded if, to the extent and in the manner provided by resolution of the Board of Directors, these Bylaws or the Charter. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used; provided, that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

(d) Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of stockholders to take the action were delivered to the Corporation as provided in this Section 1.10.

(e) Any person executing a consent may provide, whether through instruction to an agent or otherwise, that such a consent will be effective at a future time (including a time determined upon the happening of an event), no later than sixty days after such instruction is given or such provision is made, if evidence of such instruction or provision is provided to the Corporation. Unless otherwise provided, any such consent shall be revocable prior to its becoming effective.

ARTICLE II

Board of Directors

Section 2.1. Powers; Number; Qualifications. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, except as may be otherwise provided by applicable law or the Charter. The Board of Directors shall consist of one or more members, the number thereof to be determined from time to time by the Board of Directors. Directors need not be stockholders of the Corporation.

Section 2.2. Election; Term of Office; Death; Resignation; Removal; Vacancies.

(a) Each director shall hold office until his or her successor is elected and qualified or until his or her earlier death, resignation or removal. Any director may resign at any time upon written notice to the Board of Directors or to the President or the Secretary. Such resignation shall be effective when it is delivered unless the resignation specifies a later effective date or an effectiveness determined upon the happening of an event or events, in which case it shall be effective at such later date or upon the happening of such event or events, and unless otherwise specified therein no acceptance of such resignation shall be necessary to make it effective.

(b) Any director or the entire Board of Directors may be removed, with or without cause, by the holders of a majority of the shares of the Corporation then entitled to vote at an election of directors.

(c) Unless otherwise provided in the Charter or these Bylaws, vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders of the Corporation having the right to vote as a single class or from any other cause may be filled by a majority of the directors then in office, although less than a quorum, or by the sole remaining director. Any director elected or appointed to fill a vacancy shall hold office until the next annual meeting of the stockholders of the Corporation and his or her successor is elected and qualified or until his or her earlier death, resignation or removal.

Section 2.3. Regular Meetings. Subject to Section 2.5 of these Bylaws, regular meetings of the Board of Directors may be held at such places within or without the State of Delaware and at such times as the Board of Directors may from time to time determine, and if so determined notice thereof need not be given.

Section 2.4. Special Meetings. Subject to Section 2.5 of these Bylaws, special meetings of the Board of Directors may be held at any time or place within or without the State of Delaware whenever called by the Chair, if any, the Vice Chair, if any, the President or by any two directors. Reasonable notice thereof shall be given by the person or persons calling the meeting.

Section 2.5. Participation in Meetings by Conference Telephone Permitted. Unless otherwise restricted by the Charter or these Bylaws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors or of such committee, as the case may be, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 2.5 shall constitute presence in person at such meeting.

Section 2.6. Quorum; Vote Required for Action. Unless the Charter provides

otherwise, at all meetings of the Board of Directors, one-third of the entire Board of Directors shall constitute a quorum for the transaction of business. The vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors unless the Charter or these Bylaws shall require a vote of a greater number. In case at any meeting of the Board of Directors a quorum shall not be present, the members of the Board of Directors present may adjourn the meeting from time to time until a quorum shall be present.

Section 2.7. Organization. Meetings of the Board of Directors shall be presided over by the Chair, if any, or, in the absence of the Chair or if the Chair is unable to act, by the Vice Chair, if any, or, in the absence of the Vice Chair or if the Vice Chair is unable to act, by the President or, in the absence of the President or if the President is unable to act, by a vice president of the Corporation or, in the absence of the foregoing persons or if the foregoing persons are unable to act, by a chairperson designated by the Board of Directors at the meeting. The Secretary or, in the absence of the Secretary or if the Secretary is unable to act, an assistant secretary of the Corporation, shall act as secretary of the meeting, but in the absence of the Secretary and any assistant secretary of the Corporation, the chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 2.8. Action by Directors Without a Meeting. Unless otherwise restricted by the Charter or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all members of the Board of Directors or of such committee, as the case may be, consent thereto in writing, or by electronic transmission and the writing or writings or electronic transmission or electronic transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. Any person (whether or not then a director) may provide, whether through instruction to an agent or otherwise, that a consent to action will be effective at a future time (including a time determined upon the happening of an event), no later than sixty days after such instruction is given or such provision is made and such consent shall be deemed to have been given for purposes of this Section 2.8 at such effective time so long as such person is then a director and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective.

Section 2.9. Compensation of Directors. Unless otherwise restricted by the Charter or these Bylaws, the Board of Directors shall have the authority to fix the compensation of directors.

ARTICLE III

Committees

Section 3.1. Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee,

who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors or in these Bylaws, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation (if any) to be affixed to all papers that may require it, but no such committee shall have the power or authority in reference to the following matters: (a) approving or adopting, or recommending to the stockholders of the Corporation, any action or matter (other than the election or removal of directors) expressly required by applicable law to be submitted to stockholders of the Corporation for approval; (b) adopting, amending or repealing these Bylaws; or (c) removing or indemnifying directors.

Section 3.2. Committee Rules. Unless the Board of Directors otherwise provides, each committee designated by the Board of Directors may adopt, amend or repeal rules for the conduct of its business. In the absence of a provision by the Board of Directors or a provision in the rules of such committee to the contrary, a majority of the directors then serving on such committee shall constitute a quorum for the transaction of business, the vote of a majority of the members present at a meeting at the time of such vote if a quorum is then present shall be the act of such committee, and in other respects each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to Article II of these Bylaws.

ARTICLE IV

Officers

Section 4.1. Officers; Election. From time to time, the Board of Directors shall elect a President and a Secretary, and it may, if it so determines, elect from among its members a Chair and a Vice Chair. The Board of Directors may also elect one or more vice presidents, one or more assistant vice presidents, one or more assistant secretaries or such other officers of the Corporation as the Board of Directors may deem desirable or appropriate and may give any of them such further designations or alternate titles as it considers desirable. Any number of offices of the Corporation may be held by the same person unless the Charter or these Bylaws provide otherwise. The election of an officer of the Corporation shall not of itself create contractual rights.

Section 4.2. Term of Office; Death; Resignation; Removal; Vacancies. Unless otherwise provided in the resolution of the Board of Directors electing any officer of the Corporation, each officer of the Corporation shall hold office until his or her successor is elected and qualified or until his or her earlier death, resignation or removal. Any officer of the Corporation may resign at any time upon written notice to the Board of Directors or to the President or the Secretary of the Corporation. Such resignation shall be effective when it is delivered unless the resignation specifies a later effective date or an effectiveness determined

upon the happening of an event or events, in which case it shall be effective at such later date or upon the happening of such event or events, and unless otherwise specified therein, no acceptance of such resignation shall be necessary to make it effective. The Board of Directors may remove any officer of the Corporation with or without cause at any time. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise may be filled by the Board of Directors at any regular or special meeting.

Section 4.3. Powers and Duties. The officers of the Corporation shall have such powers and duties in the management of the Corporation as shall be stated in these Bylaws or in a resolution of the Board of Directors that is not inconsistent with these bylaws and, to the extent not so stated, as generally pertain to their respective offices, subject to the control of the Board of Directors. The Secretary shall have the duty to record the proceedings of the meetings of the stockholders of the Corporation, the Board of Directors and any committees in a book to be kept for that purpose. Unless otherwise required by applicable law, all contracts or other agreements, understandings, arrangements or instruments of the Corporation shall be executed on behalf of the Corporation by the President or any vice president of the Corporation, such other employee of the Corporation authorized in writing by the President or any vice president of the Corporation, with such limitations or restrictions as may be authorized by the Board of Directors. In case any officer is absent, or for any other reason that the Board of Directors may deem necessary or desirable, the President or the Board of Directors may delegate for the time being the powers or duties of such officer to any other officer or to any director. The Board of Directors may require any employee of the Corporation (including, without limitation, any officer of the Corporation) or any agent of the Corporation to give security for the faithful performance of his or her duties.

ARTICLE V

Stock

Section 5.1. Stock Certificates. The shares of stock in the Corporation shall be represented by certificates; provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of the Corporation's stock shall be uncertificated shares. Any such resolution shall not apply to shares of the Corporation represented by a certificate theretofore issued until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution or resolutions by the Board of Directors, every holder of stock of the Corporation represented by certificates shall be entitled to have a certificate signed by or in the name of the Corporation by any two authorized officers of the Corporation, representing the number of shares of stock in the Corporation owned by such holder. If such certificate is manually signed by one officer or manually countersigned by a transfer agent or by a registrar, any other signature on the certificate may be a facsimile or other reliable reproduction. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. Except as otherwise expressly provided by applicable law, the rights and obligations of

the holders of uncertificated shares of the Corporation and the rights and obligations of the holders of certificates representing stock of the same class and series of stock of the Corporation shall be identical.

Section 5.2. Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates. The Corporation may issue a new certificate of stock or uncertificated shares of the Corporation in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

ARTICLE VI

Miscellaneous

Section 6.1. Fiscal Year. The fiscal year of the Corporation shall be determined by the Board of Directors.

Section 6.2. Seal. The Corporation may have a corporate seal that shall have the name of the Corporation inscribed thereon and shall be in such form as may be approved from time to time by the Board of Directors. The corporate seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

Section 6.3. Waiver of Notice of Meetings of Stockholders, Directors and Committees. Whenever notice is required to be given under applicable law or any provision of the Charter or these Bylaws, a written waiver thereof, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders of the Corporation, directors or members of a committee of directors of the Corporation need be specified in any written waiver of notice unless so required by the Charter or these Bylaws.

Section 6.4. Indemnification and Insurance.

(a) Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit, or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she or a person of whom he or she is the legal representative is or was a director or officer of the Corporation or, while serving as a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee

benefit plans, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended, against all expense, liability and loss (including, without limitation, attorneys' fees, judgments, fines, penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that except as provided in paragraph (b) of this Section 6.4 with respect to proceedings seeking to enforce rights to indemnification, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized in the first instance by the Board of Directors of the Corporation.

(b) If a claim under paragraph (a) of this Section 6.4 is not paid in full by the Corporation within thirty days after a written claim has been received by the Corporation, or if a claim for any advancement of expenses under this Section 6.4 is not paid in full within thirty days after the Corporation has received a statement or statements requesting such amounts to be advanced, the claimant may at any time thereafter (but not before) bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim to the fullest extent permitted by law. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible under the General Corporation Law of the State of Delaware for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, any committee of the Board of Directors, independent legal counsel or stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the General Corporation Law of the State of Delaware, nor an actual determination by the Corporation (including its Board of Directors, any committee of the Board of Directors, independent legal counsel or stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

(c) The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Bylaw shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

(d) The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or

loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the General Corporation Law of the State of Delaware.

(e) The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and rights to be paid by the Corporation the expenses incurred in defending any proceeding in advance of its final disposition, to any employee or agent of the Corporation to the fullest extent of the provisions of this Bylaw with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

(f) The right to indemnification conferred in this Bylaw on the persons entitled thereto shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that if the General Corporation Law of the State of Delaware requires the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, such advancement shall be made only upon delivery to the Corporation of an undertaking by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Bylaw or otherwise.

(g) For the avoidance of doubt, claimant's right to indemnification and advancement of expenses provided under this Article VI shall (i) vest at the time that such claimant becomes a director or officer of the Corporation or at the time such claimant becomes a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, at the request of the Corporation and (ii) continue as to the claimant even though such claimant may have ceased to be a director or officer of the Corporation.

(h) Any amendment or modification of these Bylaws affecting a claimant's right to indemnification or the advancement of expenses provided under this Article VI shall not alter the claimant's right to indemnification or the advancement of expenses with respect to such claimant's conduct prior to the amendment or modification, without the express written consent of such claimant.

Section 6.5. Interested Directors; Quorum. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are directors or officers or equivalents, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof that authorizes the contract or transaction, or solely because his or her or their votes are counted for such purpose, if: (a) the material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board

of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; (b) the material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders of the Corporation entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders of the Corporation; or (c) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof or the stockholders of the Corporation. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee that authorizes the contract or transaction.

Section 6.6. Form of Records. Any records administered by or on behalf of the Corporation in the regular course of its business, including its stock ledger (as such term is defined in Section 219(c) of the DGCL), books of account, and minute books, may be kept on, or be in the form of, any information storage device or method, or one or more electronic networks or databases (including one or more distributed electronic networks or databases); provided that the records so kept can be converted into clearly legible form within a reasonable time, and with respect to the stock ledger, that the records so kept satisfy clauses (i) through (iii) of Section 224 of the DGCL. The Corporation shall so convert any records so kept upon the request of any person entitled by law to inspect such records in accordance with law.

Section 6.7. Conflict with Applicable Law or Certificate of Incorporation. These Bylaws are adopted subject to any applicable law and the Charter. Whenever these Bylaws may conflict with any applicable law or the Charter, such conflict shall be resolved in favor of such law or the Charter, as applicable.

Section 6.8. Amendment of Bylaws. These Bylaws may be amended or repealed, and new bylaws adopted, by the Board of Directors, but the stockholders of the Corporation entitled to vote may adopt additional bylaws and may amend or repeal any bylaw whether or not adopted by them.

SCHEDULE 1.6

DIRECTORS OF PARENT

Class I Directors (3 Total)	Class II Directors (3 Total)	Class III Directors (3 Total)
1. Individual nominated by Stephen S. Burns 2. Individual nominated by Stephen S. Burns 3. Individual nominated by Stephen S. Burns	4. Individual nominated by General Motors 5. Individual nominated by Stephen S. Burns 6. Individual nominated by Stephen S. Burns	7. Individual nominated by Stephen S. Burns 8. Individual nominated by DiamondPeak in consultation with Stephen S. Burns 9. Individual nominated by DiamondPeak

EXHIBIT H

EX-3.3 5 fs12019ex3-3_diamond.htm BYLAWS

Exhibit 3.3

BY LAWS
OF
DIAMONDPEAK HOLDINGS CORP.
(THE "CORPORATION")

ARTICLE I

OFFICES

Section 1.1. Registered Office. The registered office of the Corporation within the State of Delaware shall be located at either (a) the principal place of business of the Corporation in the State of Delaware or (b) the office of the corporation or individual acting as the Corporation's registered agent in Delaware.

Section 1.2. Additional Offices. The Corporation may, in addition to its registered office in the State of Delaware, have such other offices and places of business, both within and outside the State of Delaware, as the Board of Directors of the Corporation (the "***Board***") may from time to time determine or as the business and affairs of the Corporation may require.

ARTICLE II

STOCKHOLDERS MEETINGS

Section 2.1. Annual Meetings. The annual meeting of stockholders shall be held at such place, either within or without the State of Delaware, and time and on such date as shall be determined by the Board and stated in the notice of the meeting, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.5(a). At each annual meeting, the stockholders entitled to vote on such matters shall elect those directors of the Corporation to fill any term of a directorship that expires on the date of such annual meeting and may transact any other business as may properly be brought before the meeting.

Section 2.2. Special Meetings. Subject to the rights of the holders of any outstanding series of the preferred stock of the Corporation ("***Preferred Stock***"), and to the requirements of applicable law, special meetings of stockholders, for any purpose or purposes, may be called only by the Chairman of the Board, Chief Executive Officer, or the Board pursuant to a resolution adopted by a majority of the Board, and may not be called by any other person. Special meetings of stockholders shall be held at such place, either within or without the State of Delaware, and at such time and on such date as shall be determined by the Board and stated in the Corporation's notice of the meeting, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.5(a).

Section 2.3. Notices. Written notice of each stockholders meeting stating the place, if any, date, and time of the meeting, and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting and the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, shall be given in the manner permitted by Section 9.3 to each stockholder entitled to vote thereat as of the record date for determining the stockholders entitled to notice of the meeting, by the Corporation not less than 10 nor more than 60 days before the date of the meeting unless otherwise required by the General Corporation Law of the State of Delaware (the "***DGCL***"). If said notice is for a stockholders meeting other than an annual meeting, it shall in addition state the purpose or purposes for which the meeting is called, and the business transacted at such meeting shall be limited to the matters so stated in the Corporation's notice of meeting (or any supplement thereto). Any meeting of stockholders as to which notice has been given may be postponed, and any meeting of stockholders as to which notice has been given may be cancelled, by the Board upon public announcement (as defined in Section 2.7(c)) given before the date previously scheduled for such meeting.

Section 2.4. Quorum. Except as otherwise provided by applicable law, the Corporation's Certificate of Incorporation, as the same may be amended or restated from time to time (the "***Certificate of Incorporation***") or these By Laws, the presence, in person or by proxy, at a stockholders meeting of the holders of shares of outstanding capital stock of the Corporation representing a majority of the voting power of all outstanding shares of capital stock of the Corporation entitled to vote at such meeting shall constitute a quorum for the transaction of business at such meeting, except that when specified business is to be voted on by a class or series of stock voting as a class, the holders of shares representing a majority of the voting power of the outstanding shares of such class or series shall constitute a quorum of such class or series for the transaction of such business. If a quorum shall not be present or represented by proxy at any meeting of the stockholders of the Corporation, the chairman of the meeting may adjourn the meeting from time to time in the manner provided in Section 2.6 until a quorum shall attend. The stockholders present at a duly convened meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the voting power of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation or any such other corporation to vote shares held by it in a fiduciary capacity.

Section 2.5. Voting of Shares.

(a) Voting Lists. The Secretary of the Corporation (the "***Secretary***") shall prepare, or shall cause the officer or agent who has charge of the stock ledger of the Corporation to prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders of record entitled to vote at such meeting; provided, however, that if the record date for determining the stockholders entitled to vote is less than 10 days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date, arranged in alphabetical order and showing the address and the number and class of shares registered in the name of each stockholder. Nothing contained in this Section 2.5(a) shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If a meeting of stockholders is to be held solely by means of remote communication as permitted by Section 9.5(a), the list shall be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of meeting. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list required by this Section 2.5(a) or to vote in person or by proxy at any meeting of stockholders.

(b) Manner of Voting. At any stockholders meeting, every stockholder entitled to vote may vote in person or by proxy. If authorized by the Board, the voting by stockholders or proxy holders at any meeting conducted by remote communication may be effected by a ballot submitted by electronic transmission (as defined in Section 9.3), provided that any such electronic transmission must either set forth or be submitted with information from which the Corporation can determine that the electronic transmission was authorized by the stockholder or proxy holder. The Board, in its discretion, or the chairman of the meeting of stockholders, in such person's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

(c) Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. Proxies need not be filed with the Secretary until the meeting is called to order, but shall be filed with the Secretary before being voted. Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy, either of the following shall constitute a valid means by which a stockholder may grant such authority. No stockholder shall have cumulative voting rights.

(i) A stockholder may execute a writing authorizing another person or persons to act for such stockholder as proxy. Execution may be accomplished by the stockholder or such stockholder's authorized officer, director, employee or agent signing such writing or causing such person's signature to be affixed to such writing by any reasonable means, including, but not limited to, by facsimile signature.

(ii) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of an electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission authorizing another person or persons to act as proxy for a stockholder may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used; provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

(d) Required Vote. Subject to the rights of the holders of one or more series of Preferred Stock, voting separately by class or series, to elect directors pursuant to the terms of one or more series of Preferred Stock, at all meetings of stockholders at which a quorum is present, the election of directors shall be determined by a plurality of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon. All other matters presented to the stockholders at a meeting at which a quorum is present shall be determined by the vote of a majority of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon, unless the matter is one upon which, by applicable law, the Certificate of Incorporation, these By Laws or applicable stock exchange rules, a different vote is required, in which case such provision shall govern and control the decision of such matter.

(e) Inspectors of Election. The Board may, and shall if required by law, in advance of any meeting of stockholders, appoint one or more persons as inspectors of election, who may be employees of the Corporation or otherwise serve the Corporation in other capacities, to act at such meeting of stockholders or any adjournment thereof and to make a written report thereof. The Board may appoint one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspectors of election or alternates are appointed by the Board, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall ascertain and report the number of outstanding shares and the voting power of each; determine the number of shares present in person or represented by proxy at the meeting and the validity of proxies and ballots; count all votes and ballots and report the results; determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. No person who is a candidate for an office at an election may serve as an inspector at such election. Each report of an inspector shall be in writing and signed by the inspector or by a majority of them if there is more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors.

Section 2.6. Adjournments. Any meeting of stockholders, annual or special, may be adjourned by the chairman of the meeting, from time to time, whether or not there is a quorum, to reconvene at the same or some other place. Notice need not be given of any such adjourned meeting if the date, time, and place, if any, thereof, and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting the stockholders, or the holders of any class or series of stock entitled to vote separately as a class, as the case may be, may transact any business that might have been transacted at the original meeting. If the adjournment is for more than 30 days, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix a new record date for notice of such adjourned meeting in accordance with Section 9.2, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

Section 2.7. Advance Notice for Business.

(a) Annual Meetings of Stockholders. No business may be transacted at an annual meeting of stockholders, other than business that is either (i) specified in the Corporation's notice of meeting (or any supplement thereto) given by or at the direction of the Board, (ii) otherwise properly brought before the annual meeting by or at the direction of the Board or (iii) otherwise properly brought before the annual meeting by any stockholder of the Corporation (x) who is a stockholder of record entitled to vote at such annual meeting on the date of the giving of the notice provided for in this Section 2.7(a) and on the record date for the determination of stockholders entitled to vote at such annual meeting and (y) who complies with the notice procedures set forth in this Section 2.7(a). Notwithstanding anything in this Section 2.7(a) to the contrary, only persons nominated for election as a director to fill any term of a directorship that expires on the date of the annual meeting pursuant to Section 3.2 will be considered for election at such meeting.

(i) In addition to any other applicable requirements, for business (other than nominations) to be properly brought before an annual meeting by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary and such business must otherwise be a proper matter for stockholder action. Subject to Section 2.7(a)(iii), a stockholder's notice to the Secretary with respect to such business, to be timely, must be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the 90th day nor earlier than the close of business on the 120th day before the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting is more than 30 days before or more than 60 days after such anniversary date (or if there has been no prior annual meeting), notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120th day before the meeting and not later than the later of (x) the close of business on the 90th day before the meeting or (y) the close of business on the 10th day following the day on which public announcement of the date of the annual meeting is first made by the Corporation. The public announcement of an adjournment or postponement of an annual meeting shall not commence a new time period (or extend any time period) for the giving of a stockholder's notice as described in this Section 2.7(a).

(ii) To be in proper written form, a stockholder's notice to the Secretary with respect to any business (other than nominations) must set forth as to each such matter such stockholder proposes to bring before the annual meeting (A) a brief description of the business desired to be brought before the annual meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event such business includes a proposal to amend these By Laws, the language of the proposed amendment) and the reasons for conducting such business at the annual meeting, (B) the name and record address of such stockholder and the name and address of the beneficial owner, if any, on whose behalf the proposal is made, (C) the class or series and number of shares of capital stock of the Corporation that are owned beneficially and of record by such stockholder and by the beneficial owner, if any, on whose behalf the proposal is made, (D) a description of all arrangements or understandings between such stockholder and the beneficial owner, if any, on whose behalf the proposal is made and any other person or persons (including their names) in connection with the proposal of such business by such stockholder, (E) any material interest of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made in such business and (F) a representation that such stockholder (or a qualified representative of such stockholder) intends to appear in person or by proxy at the annual meeting to bring such business before the meeting.

(iii) The foregoing notice requirements of this Section 2.7(a) shall be deemed satisfied by a stockholder as to any proposal (other than nominations) if the stockholder has notified the Corporation of such stockholder's intention to present such proposal at an annual meeting in compliance with Rule 14a-8 (or any successor thereof) of the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"), and such stockholder has complied with the requirements of such Rule for inclusion of such proposal in a proxy statement prepared by the Corporation to solicit proxies for such annual meeting. No business shall be conducted at the annual meeting of stockholders except business brought before the annual meeting in accordance with the procedures set forth in this Section 2.7(a), provided, however, that once business has been properly brought before the annual meeting in accordance with such procedures, nothing in this Section 2.7(a) shall be deemed to preclude discussion by any stockholder of any such business. If the Board or the chairman of the annual meeting determines that any stockholder proposal was not made in accordance with the provisions of this Section 2.7(a) or that the information provided in a stockholder's notice does not satisfy the information requirements of this Section 2.7(a), such proposal shall not be presented for action at the annual meeting. Notwithstanding the foregoing provisions of this Section 2.7(a), if the stockholder (or a qualified representative of the stockholder) does not appear at the annual meeting of stockholders of the Corporation to present the proposed business, such proposed business shall not be transacted, notwithstanding that proxies in respect of such matter may have been received by the Corporation.

(iv) In addition to the provisions of this Section 2.7(a), a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth herein. Nothing in this Section 2.7(a) shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting only pursuant to Section 3.2.

(c) Public Announcement. For purposes of these By Laws, "***public announcement***" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed or furnished by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act (or any successor thereto).

Section 2.8. Conduct of Meetings. The chairman of each annual and special meeting of stockholders shall be the Chairman of the Board or, in the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) or, in the absence (or inability or refusal to act of the Chief Executive Officer or if the Chief Executive Officer is not a director, the President (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the President or if the President is not a director, such other person as shall be appointed by the Board. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the chairman of the meeting. The Board may adopt such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with these By Laws or such rules and regulations as adopted by the Board, the chairman of any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the chairman of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. The secretary of each annual and special meeting of stockholders shall be the Secretary or, in the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary so appointed to act by the chairman of the meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 2.9. Consents in Lieu of Meeting. Unless otherwise provided by the Certificate of Incorporation, until the Corporation consummates an initial public offering ("***Offering***"), any action required to be taken at any annual or special meeting of stockholders, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock entitled to vote thereon having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted, and shall be delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

Every written consent shall bear the date of signature of each stockholder who signs the consent, and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated consent delivered in the manner required by this section and the DGCL to the Corporation, written consents signed by a sufficient number of holders entitled to vote to take action are delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

ARTICLE III

DIRECTORS

Section 3.1. Powers; Number. The business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By Laws required to be exercised or done by the stockholders. Directors need not be stockholders or residents of the State of Delaware. Subject to the Certificate of Incorporation, the number of directors shall be fixed exclusively by resolution of the Board.

Section 3.2. Advance Notice for Nomination of Directors.

(a) Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation, except as may be otherwise provided by the terms of one or more series of Preferred Stock with respect to the rights of holders of one or more series of Preferred Stock to elect directors. Nominations of persons for election to the Board at any annual meeting of stockholders, or at any special meeting of stockholders called for the purpose of electing directors as set forth in the Corporation's notice of such special meeting, may be made (i) by or at the direction of the Board or (ii) by any stockholder of the Corporation (x) who is a stockholder of record entitled to vote in the election of directors on the date of the giving of the notice provided for in this Section 3.2 and on the record date for the determination of stockholders entitled to vote at such meeting and (y) who complies with the notice procedures set forth in this Section 3.2.

(b) In addition to any other applicable requirements, for a nomination to be made by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary. To be timely, a stockholder's notice to the Secretary must be received by the Secretary at the principal executive offices of the Corporation (i) in the case of an annual meeting, not later than the close of business on the 90th day nor earlier than the close of business on the 120th day before the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting is more than 30 days before or more than 60 days after such anniversary date (or if there has been no prior annual meeting), notice by the stockholder to be timely must be so received not earlier than the close of business on the 120th day before the meeting and not later than the later of (x) the close of business on the 90th day before the meeting or (y) the close of business on the 10th day following the day on which public announcement of the date of the annual meeting was first made by the Corporation; and (ii) in the case of a special meeting of stockholders called for the purpose of electing directors, not later than the close of business on the 10th day following the day on which public announcement of the date of the special meeting is first made by the Corporation. In no event shall the public announcement of an adjournment or postponement of an annual meeting or special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described in this Section 3.2.

(c) Notwithstanding anything in paragraph (b) to the contrary, in the event that the number of directors to be elected to the Board at an annual meeting is greater than the number of directors whose terms expire on the date of the annual meeting and there is no public announcement by the Corporation naming all of the nominees for the additional directors to be elected or specifying the size of the increased Board before the close of business on the 90th day prior to the anniversary date of the immediately preceding annual meeting of stockholders, a stockholder's notice required by this Section 3.2 shall also be considered timely, but only with respect to nominees for the additional directorships created by such increase that are to be filled by election at such annual meeting, if it shall be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the date on which such public announcement was first made by the Corporation.

(d) To be in proper written form, a stockholder's notice to the Secretary must set forth (i) as to each person whom the stockholder proposes to nominate for election as a director (A) the name, age, business address and residence address of the person, (B) the principal occupation or employment of the person, (C) the class or series and number of shares of capital stock of the Corporation that are owned beneficially or of record by the person and (D) any other information relating to the person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder; and (ii) as to the stockholder giving the notice (A) the name and record address of such stockholder as they appear on the Corporation's books and the name and address of the beneficial owner, if any, on whose behalf the nomination is made, (B) the class or series and number of shares of capital stock of the Corporation that are owned beneficially and of record by such stockholder and the beneficial owner, if any, on whose behalf the nomination is made, (C) a description of all arrangements or understandings relating to the nomination to be made by such stockholder among such stockholder, the beneficial owner, if any, on whose behalf the nomination is made, each proposed nominee and any other person or persons (including their names), (D) a representation that such stockholder (or a qualified representative of such stockholder) intends to appear in person or by proxy at the meeting to nominate the persons named in its notice and (E) any other information relating to such stockholder and the beneficial owner, if any, on whose behalf the nomination is made that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder. Such notice must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected.

(e) If the Board or the chairman of the meeting of stockholders determines that any nomination was not made in accordance with the provisions of this Section 3.2, or that the information provided in a stockholder's notice does not satisfy the information requirements of this Section 3.2, then such nomination shall not be considered at the meeting in question. Notwithstanding the foregoing provisions of this Section 3.2, if the stockholder (or a qualified representative of the stockholder) does not appear at the meeting of stockholders of the Corporation to present the nomination, such nomination shall be disregarded, notwithstanding that proxies in respect of such nomination may have been received by the Corporation.

(f) In addition to the provisions of this Section 3.2, a stockholder shall also comply with all of the applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth herein. Nothing in this Section 3.2 shall be deemed to affect any rights of the holders of Preferred Stock to elect directors pursuant to the Certificate of Incorporation.

Section 3.3. Compensation. Unless otherwise restricted by the Certificate of Incorporation or these By Laws, the Board shall have the authority to fix the compensation of directors, including for service on a committee of the Board, and may be paid either a fixed sum for attendance at each meeting of the Board or other compensation as director. The directors may be reimbursed their expenses, if any, of attendance at each meeting of the Board. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of committees of the Board may be allowed like compensation and reimbursement of expenses for service on the committee.

ARTICLE IV

BOARD MEETINGS

Section 4.1. Annual Meetings. The Board shall meet as soon as practicable after the adjournment of each annual stockholders meeting at the place of the annual stockholders meeting unless the Board shall fix another time and place and give notice thereof in the manner required herein for special meetings of the Board. No notice to the directors shall be necessary to legally convene this meeting, except as provided in this Section 4.1.

Section 4.2. Regular Meetings. Regularly scheduled, periodic meetings of the Board may be held without notice at such times, dates and places (within or without the State of Delaware) as shall from time to time be determined by the Board.

Section 4.3. Special Meetings. Special meetings of the Board (a) may be called by the Chairman of the Board or President and (b) shall be called by the Chairman of the Board, President or Secretary on the written request of at least a majority of directors then in office, or the sole director, as the case may be, and shall be held at such time, date and place (within or without the State of Delaware) as may be determined by the person calling the meeting or, if called upon the request of directors or the sole director, as specified in such written request. Notice of each special meeting of the Board shall be given, as provided in Section 9.3, to each director (i) at least 24 hours before the meeting if such notice is oral notice given personally or by telephone or written notice given by hand delivery or by means of a form of electronic transmission and delivery; (ii) at least two days before the meeting if such notice is sent by a nationally recognized overnight delivery service; and (iii) at least five days before the meeting if such notice is sent through the United States mail. If the Secretary shall fail or refuse to give such notice, then the notice may be given by the officer who called the meeting or the directors who requested the meeting. Any and all business that may be transacted at a regular meeting of the Board may be transacted at a special meeting. Except as may be otherwise expressly provided by applicable law, the Certificate of Incorporation, or these By Laws, neither the business to be transacted at, nor the purpose of, any special meeting need be specified in the notice or waiver of notice of such meeting. A special meeting may be held at any time without notice if all the directors are present or if those not present waive notice of the meeting in accordance with Section 9.4.

Section 4.4. Quorum; Required Vote. A majority of the Board shall constitute a quorum for the transaction of business at any meeting of the Board, and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board, except as may be otherwise specifically provided by applicable law, the Certificate of Incorporation or these By Laws. If a quorum shall not be present at any meeting, a majority of the directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

Section 4.5. Consent In Lieu of Meeting. Unless otherwise restricted by the Certificate of Incorporation or these By Laws, any action required or permitted to be taken at any meeting of the Board or any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions (or paper reproductions thereof) are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 4.6. Organization. The chairman of each meeting of the Board shall be the Chairman of the Board or, in the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the Chief Executive Officer or if the Chief Executive Officer is not a director, the President (if he or she shall be a director) or in the absence (or inability or refusal to act) of the President or if the President is not a director, a chairman elected from the directors present. The Secretary shall act as secretary of all meetings of the Board. In the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary shall perform the duties of the Secretary at such meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting.

ARTICLE V

COMMITTEES OF DIRECTORS

Section 5.1. Establishment. The Board may by resolution of the Board designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Each committee shall keep regular minutes of its meetings and report the same to the Board when required by the resolution designating such committee. The Board shall have the power at any time to fill vacancies in, to change the membership of, or to dissolve any such committee.

Section 5.2. Available Powers. Any committee established pursuant to Section 5.1 hereof, to the extent permitted by applicable law and by resolution of the Board, shall have and may exercise all of the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it.

Section 5.3. Alternate Members. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in place of any such absent or disqualified member.

Section 5.4. Procedures. Unless the Board otherwise provides, the time, date, place, if any, and notice of meetings of a committee shall be determined by such committee. At meetings of a committee, a majority of the number of members of the committee (but not including any alternate member, unless such alternate member has replaced any absent or disqualified member at the time of, or in connection with, such meeting) shall constitute a quorum for the transaction of business. The act of a majority of the members present at any meeting at which a quorum is present shall be the act of the committee, except as otherwise specifically provided by applicable law, the Certificate of Incorporation, these By Laws or the Board. If a quorum is not present at a meeting of a committee, the members present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present. Unless the Board otherwise provides and except as provided in these By Laws, each committee designated by the Board may make, alter, amend and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board is authorized to conduct its business pursuant to Article III and Article IV of these By Laws.

ARTICLE VI

OFFICERS

Section 6.1. Officers. The officers of the Corporation elected by the Board shall be a Chief Executive Officer, a Chief Financial Officer, a Secretary and such other officers (including without limitation, a Chairman of the Board, Presidents, Vice Presidents, Assistant Secretaries and a Treasurer) as the Board from time to time may determine. Officers elected by the Board shall each have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article VI. Such officers shall also have such powers and duties as from time to time may be conferred by the Board. The Chief Executive Officer or President may also appoint such other officers (including without limitation one or more Vice Presidents and Controllers) as may be necessary or desirable for the conduct of the business of the Corporation. Such other officers shall have such powers and duties and shall hold their offices for such terms as may be provided in these By Laws or as may be prescribed by the Board or, if such officer has been appointed by the Chief Executive Officer or President, as may be prescribed by the appointing officer.

(a) Chairman of the Board. The Chairman of the Board shall preside when present at all meetings of the stockholders and the Board. The Chairman of the Board shall have general supervision and control of the acquisition activities of the Corporation subject to the ultimate authority of the Board, and shall be responsible for the execution of the policies of the Board with respect to such matters. In the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) shall preside when present at all meetings of the stockholders and the Board. The powers and duties of the Chairman of the Board shall not include supervision or control of the preparation of the financial statements of the Corporation (other than through participation as a member of the Board). The position of Chairman of the Board and Chief Executive Officer may be held by the same person.

(b) Chief Executive Officer. The Chief Executive Officer shall be the chief executive officer of the Corporation, shall have general supervision of the affairs of the Corporation and general control of all of its business subject to the ultimate authority of the Board, and shall be responsible for the execution of the policies of the Board with respect to such matters, except to the extent any such powers and duties have been prescribed to the Chairman of the Board pursuant to Section 6.1(a) above. In the absence (or inability or

refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) shall preside when present at all meetings of the stockholders and the Board. The position of Chief Executive Officer and President may be held by the same person.

(c) President. The President shall make recommendations to the Chief Executive Officer on all operational matters that would normally be reserved for the final executive responsibility of the Chief Executive Officer. In the absence (or inability or refusal to act) of the Chairman of the Board and Chief Executive Officer, the President (if he or she shall be a director) shall preside when present at all meetings of the stockholders and the Board. The President shall also perform such duties and have such powers as shall be designated by the Board. The position of President and Chief Executive Officer may be held by the same person.

(d) Vice Presidents. In the absence (or inability or refusal to act) of the President, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated by the Board) shall perform the duties and have the powers of the President. Any one or more of the Vice Presidents may be given an additional designation of rank or function.

(e) Secretary.

(i) The Secretary shall attend all meetings of the stockholders, the Board and (as required) committees of the Board and shall record the proceedings of such meetings in books to be kept for that purpose. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board and shall perform such other duties as may be prescribed by the Board, the Chairman of the Board, Chief Executive Officer or President. The Secretary shall have custody of the corporate seal of the Corporation and the Secretary, or any Assistant Secretary, shall have authority to affix the same to any instrument requiring it, and when so affixed, it may be attested by his or her signature or by the signature of such Assistant Secretary. The Board may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing thereof by his or her signature.

(ii) The Secretary shall keep, or cause to be kept, at the principal executive office of the Corporation or at the office of the Corporation's transfer agent or registrar, if one has been appointed, a stock ledger, or duplicate stock ledger, showing the names of the stockholders and their addresses, the number and classes of shares held by each and, with respect to certificated shares, the number and date of certificates issued for the same and the number and date of certificates cancelled.

(f) Assistant Secretaries. The Assistant Secretary or, if there be more than one, the Assistant Secretaries in the order determined by the Board shall, in the absence (or inability or refusal to act) of the Secretary, perform the duties and have the powers of the Secretary.

(g) Chief Financial Officer. The Chief Financial Officer shall perform all duties commonly incident to that office (including, without limitation, the care and custody of the funds and securities of the Corporation, which from time to time may come into the Chief Financial Officer's hands and the deposit of the funds of the Corporation in such banks or trust companies as the Board, the Chief Executive Officer or the President may authorize).

(h) Treasurer. The Treasurer shall, in the absence (or inability or refusal to act) of the Chief Financial Officer, perform the duties and exercise the powers of the Chief Financial Officer.

Section 6.2. Term of Office; Removal; Vacancies. The elected officers of the Corporation shall be appointed by the Board and shall hold office until their successors are duly elected and qualified by the Board or until their earlier death, resignation, retirement, disqualification, or removal from office. Any officer may be removed, with or without cause, at any time by the Board. Any officer appointed by the Chief Executive Officer or President may also be removed, with or without cause, by the Chief Executive Officer or President, as the case may be, unless the Board otherwise provides. Any vacancy occurring in any elected office of the Corporation may be filled by the Board. Any vacancy occurring in any office appointed by the Chief Executive Officer or President may be filled by the Chief Executive Officer, or President, as the case may be, unless the Board then determines that such office shall thereupon be elected by the Board, in which case the Board shall elect such officer.

Section 6.3. Other Officers. The Board may delegate the power to appoint such other officers and agents, and may also remove such officers and agents or delegate the power to remove same, as it shall from time to time deem necessary or desirable.

Section 6.4. Multiple Officeholders; Stockholder and Director Officers. Any number of offices may be held by the same person unless the Certificate of Incorporation or these By Laws otherwise provide. Officers need not be stockholders or residents of the State of Delaware.

ARTICLE VII

SHARES

Section 7.1. Certificated and Uncertificated Shares. The shares of the Corporation may be certificated or uncertificated, subject to the sole discretion of the Board and the requirements of the DGCL.

Section 7.2. Multiple Classes of Stock. If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the Corporation shall (a) cause the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights to be set forth in full or summarized on the face or back of any certificate that the Corporation issues to represent shares of such class or series of stock or (b) in the case of uncertificated shares, within a reasonable time after the issuance or transfer of such shares, send to the registered owner thereof a written notice containing the information required to be set forth on certificates as specified in clause (a) above; provided, however, that, except as otherwise provided by applicable law, in lieu of the foregoing requirements, there may be set forth on the face or back of such certificate or, in the case of uncertificated shares, on such written notice a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights.

Section 7.3. Signatures. Each certificate representing capital stock of the Corporation shall be signed by or in the name of the Corporation by (a) the Chairman of the Board, Chief Executive Officer, the President or a Vice President and (b) the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of the Corporation. Any or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar on the date of issue.

Section 7.4. Consideration and Payment for Shares.

(a) Subject to applicable law and the Certificate of Incorporation, shares of stock may be issued for such consideration, having in the case of shares with par value a value not less than the par value thereof, and to such persons, as determined from time to time by the Board. The consideration may consist of any tangible or intangible property or any benefit to the Corporation including cash, promissory notes, services performed, contracts for services to be performed or other securities, or any combination thereof.

(b) Subject to applicable law and the Certificate of Incorporation, shares may not be issued until the full amount of the consideration has been paid, unless upon the face or back of each certificate issued to represent any partly paid shares of capital stock or upon the books and records of the Corporation in the case of partly paid uncertificated shares, there shall have been set forth the total amount of the consideration to be paid therefor and the amount paid thereon up to and including the time said certificate representing certificated shares or said uncertificated shares are issued.

Section 7.5. Lost, Destroyed or Wrongfully Taken Certificates.

(a) If an owner of a certificate representing shares claims that such certificate has been lost, destroyed or wrongfully taken, the Corporation shall issue a new certificate representing such shares or such shares in uncertificated form if the owner: (i) requests such a new certificate before the Corporation has notice that the certificate representing such shares has been acquired by a protected purchaser; (ii) if requested by the Corporation, delivers to the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, wrongful taking or destruction of such certificate or the issuance of such new certificate or uncertificated shares; and (iii) satisfies other reasonable requirements imposed by the Corporation.

(b) If a certificate representing shares has been lost, apparently destroyed or wrongfully taken, and the owner fails to notify the Corporation of that fact within a reasonable time after the owner has notice of such loss, apparent destruction or wrongful taking and the Corporation registers a transfer of such shares before receiving notification, the owner shall be precluded from asserting against the Corporation any claim for registering such transfer or a claim to a new certificate representing such shares or such shares in uncertificated form.

Section 7.6. Transfer of Stock.

(a) If a certificate representing shares of the Corporation is presented to the Corporation with an endorsement requesting the registration of transfer of such shares or an instruction is presented to the Corporation requesting the registration of transfer of uncertificated shares, the Corporation shall register the transfer as requested if:

(i) in the case of certificated shares, the certificate representing such shares has been surrendered;

(ii) (A) with respect to certificated shares, the endorsement is made by the person specified by the certificate as entitled to such shares; (B) with respect to uncertificated shares, an instruction is made by the registered owner of such uncertificated shares; or (C) with respect to certificated shares or uncertificated shares, the endorsement or instruction is made by any other appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(iii) the Corporation has received a guarantee of signature of the person signing such endorsement or instruction or such other reasonable assurance that the endorsement or instruction is genuine and authorized as the Corporation may request;

(iv) the transfer does not violate any restriction on transfer imposed by the Corporation that is enforceable in accordance with Section 7.8(a); and

(v) such other conditions for such transfer as shall be provided for under applicable law have been satisfied.

(b) Whenever any transfer of shares shall be made for collateral security and not absolutely, the Corporation shall so record such fact in the entry of transfer if, when the certificate for such shares is presented to the Corporation for transfer or, if such shares are uncertificated, when the instruction for registration of transfer thereof is presented to the Corporation, both the transferor and transferee request the Corporation to do so.

Section 7.7. Registered Stockholders. Before due presentment for registration of transfer of a certificate representing shares of the Corporation or of an instruction requesting registration of transfer of uncertificated shares, the Corporation may treat the registered owner as the person exclusively entitled to inspect for any proper purpose the stock ledger and the other books and records of the Corporation, vote such shares, receive dividends or notifications with respect to such shares and otherwise exercise all the rights and powers of the owner of such shares, except that a person who is the beneficial owner of such shares (if held in a voting trust or by a nominee on behalf of such person) may, upon providing documentary evidence of beneficial ownership of such shares and satisfying such other conditions as are provided under applicable law, may also so inspect the books and records of the Corporation.

Section 7.8. Effect of the Corporation's Restriction on Transfer.

(a) A written restriction on the transfer or registration of transfer of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, if permitted by the DGCL and noted conspicuously on the certificate representing such shares or, in the case of uncertificated shares, contained in a notice, offering circular or prospectus sent by the Corporation to the registered owner of such shares within a reasonable time prior to or after the issuance or transfer of such shares, may be enforced against the holder of such shares or any successor or transferee of the holder including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder.

(b) A restriction imposed by the Corporation on the transfer or the registration of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, even if otherwise lawful, is ineffective against a person without actual knowledge of such restriction unless: (i) the shares are certificated and such restriction is noted conspicuously on the certificate; or (ii) the shares are uncertificated and such restriction was contained in a notice, offering circular or prospectus sent by the Corporation to the registered owner of such shares within a reasonable time prior to or after the issuance or transfer of such shares.

Section 7.9. Regulations. The Board shall have power and authority to make such additional rules and regulations, subject to any applicable requirement of law, as the Board may deem necessary and appropriate with respect to the issue, transfer or registration of transfer of shares of stock or certificates representing shares. The Board may appoint one or more transfer agents or registrars and may require for the validity thereof that certificates representing shares bear the signature of any transfer agent or registrar so appointed.

ARTICLE VIII

INDEMNIFICATION

Section 8.1. Right to Indemnification. To the fullest extent permitted by applicable law, as the same exists or may hereafter be amended, the Corporation shall indemnify and hold harmless each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "***proceeding***"), by reason of the fact that he or she is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan (hereinafter an "***Indemnitee***"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, against all liability and loss suffered and expenses (including, without limitation, attorneys' fees, judgments, fines, ERISA excise taxes and penalties and amounts paid in settlement) reasonably incurred by such Indemnitee in connection with such proceeding; provided, however, that, except as provided in Section 8.3 with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify an Indemnitee in connection with a proceeding (or part thereof) initiated by such Indemnitee only if such proceeding (or part thereof) was authorized by the Board.

Section 8.2. Right to Advancement of Expenses. In addition to the right to indemnification conferred in Section 8.1, an Indemnitee shall also have the right to be paid by the Corporation to the fullest extent not prohibited by applicable law the expenses (including, without limitation, attorneys' fees) incurred in defending or otherwise participating in any such proceeding in advance of its final disposition (hereinafter an "***advancement of expenses***"); provided, however, that, if the DGCL requires, an advancement of expenses incurred by an Indemnitee in his or her capacity as a director or officer of the Corporation (and not in any other capacity in which service was or is rendered by such Indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon the Corporation's receipt of an undertaking (hereinafter an "***undertaking***"), by or on behalf of such Indemnitee, to repay all amounts so advanced if it shall ultimately be determined that such Indemnitee is not entitled to be indemnified under this Article VIII or otherwise.

Section 8.3. Right of Indemnitee to Bring Suit. If a claim under Section 8.1 or Section 8.2 is not paid in full by the Corporation within 60 days after a written claim therefor has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the Indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Indemnitee shall also be entitled to be paid the expense of prosecuting or defending such suit. In (a) any suit brought by the Indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by an Indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (b) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final judicial decision from which there is no further right to appeal (hereinafter a "***final adjudication***") that, the Indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the Indemnitee is proper in the circumstances because the Indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including a determination by its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the Indemnitee has not met such applicable standard of conduct, shall create a presumption that the Indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the Indemnitee, shall be a defense to such suit. In any suit brought by the Indemnitee to enforce a right to

indemnification or to an advancement of expenses hereunder, or by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VIII or otherwise shall be on the Corporation.

Section 8.4. Non-Exclusivity of Rights. The rights provided to any Indemnitee pursuant to this Article VIII shall not be exclusive of any other right, which such Indemnitee may have or hereafter acquire under applicable law, the Certificate of Incorporation, these By Laws, an agreement, a vote of stockholders or disinterested directors, or otherwise.

Section 8.5. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and/or any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 8.6. Indemnification of Other Persons. This Article VIII shall not limit the right of the Corporation to the extent and in the manner authorized or permitted by law to indemnify and to advance expenses to persons other than Indemnitees. Without limiting the foregoing, the Corporation may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation and to any other person who is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan, to the fullest extent of the provisions of this Article VIII with respect to the indemnification and advancement of expenses of Indemnitees under this Article VIII.

Section 8.7. Amendments. Any repeal or amendment of this Article VIII by the Board or the stockholders of the Corporation or by changes in applicable law, or the adoption of any other provision of these By Laws inconsistent with this Article VIII, will, to the extent permitted by applicable law, be prospective only (except to the extent such amendment or change in applicable law permits the Corporation to provide broader indemnification rights to Indemnitees on a retroactive basis than permitted prior thereto), and will not in any way diminish or adversely affect any right or protection existing hereunder in respect of any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision; provided however, that amendments or repeals of this Article VIII shall require the affirmative vote of the stockholders holding at least 66.7% of the voting power of all outstanding shares of capital stock of the Corporation.

Section 8.8. Certain Definitions. For purposes of this Article VIII, (a) references to "***other enterprise***" shall include any employee benefit plan; (b) references to "***fines***" shall include any excise taxes assessed on a person with respect to an employee benefit plan; (c) references to "***serving at the request of the Corporation***" shall include any service that imposes duties on, or involves services by, a person with respect to any employee benefit plan, its participants, or beneficiaries; and (d) a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interest of the Corporation" for purposes of Section 145 of the DGCL.

Section 8.9. Contract Rights. The rights provided to Indemnitees pursuant to this Article VIII shall be contract rights and such rights shall continue as to an Indemnitee who has ceased to be a director, officer, agent or employee and shall inure to the benefit of the Indemnitee's heirs, executors and administrators.

Section 8.10. Severability. If any provision or provisions of this Article VIII shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Article VIII shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Article VIII (including, without limitation, each such portion of this Article VIII containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

ARTICLE IX

MISCELLANEOUS

Section 9.1. Place of Meetings. If the place of any meeting of stockholders, the Board or committee of the Board for which notice is required under these By Laws is not designated in the notice of such meeting, such meeting shall be held at the principal business office of the Corporation; provided, however, if the Board has, in its sole discretion, determined that a meeting shall not be held at any place, but instead shall be held by means of remote communication pursuant to Section 9.5 hereof, then such meeting shall not be held at any place.

Section 9.2. Fixing Record Dates.

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the business day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the foregoing provisions of this Section 9.2(a) at the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

Section 9.3. Means of Giving Notice.

(a) Notice to Directors. Whenever under applicable law, the Certificate of Incorporation or these By Laws notice is required to be given to any director, such notice shall be given either (i) in writing and sent by mail, or by a nationally recognized delivery service, (ii) by means of facsimile telecommunication or other form of electronic transmission, or (iii) by oral notice given personally or by telephone. A notice to a director will be deemed given as follows: (i) if given by hand delivery, orally, or by telephone, when actually received by the director, (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation, (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation, (iv) if sent by facsimile telecommunication, when sent to the facsimile transmission number for such director appearing on the records of the Corporation, (v) if sent by electronic mail, when sent to the electronic mail address for such director appearing on the records of the Corporation, or (vi) if sent by any other form of electronic transmission, when sent to the address, location or number (as applicable) for such director appearing on the records of the Corporation.

(b) Notice to Stockholders. Whenever under applicable law, the Certificate of Incorporation or these By Laws notice is required to be given to any stockholder, such notice may be given (i) in writing and sent either by hand delivery, through the United States mail, or by a nationally recognized overnight delivery service for next day delivery, or (ii) by means of a form of electronic transmission consented to by the stockholder, to the extent permitted by, and subject to the conditions set forth in Section 232 of the DGCL. A notice to a stockholder shall be deemed given as follows: (i) if given by hand delivery, when actually received by the stockholder, (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the stockholder at the stockholder's address appearing on the stock ledger of the Corporation, (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the stockholder at the stockholder's address appearing on the stock ledger of the Corporation, and (iv) if given by a form of electronic transmission consented to by the stockholder to whom the notice is given and otherwise meeting the requirements set forth above, (A) if by facsimile transmission, when directed to a number at which the stockholder has consented to receive notice, (B) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice, (C) if by a posting on an electronic network together with separate notice to the stockholder of such specified posting, upon the later of (1) such posting and (2) the giving of such separate notice, and (D) if by any other form of electronic transmission, when directed to the stockholder. A stockholder may revoke such stockholder's consent to receiving notice by means of electronic communication by giving written notice of such revocation to the Corporation. Any such consent shall be deemed revoked if (1) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and (2) such inability becomes known to the Secretary or an Assistant Secretary or to the Corporation's transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(c) Electronic Transmission. "***Electronic transmission***" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, including but not limited to transmission by telex, facsimile telecommunication, electronic mail, telegram and cablegram.

(d) Notice to Stockholders Sharing Same Address. Without limiting the manner by which notice otherwise may be given effectively by the Corporation to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these By Laws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. A stockholder may revoke such stockholder's consent by delivering written notice of such revocation to the Corporation. Any stockholder who fails to object in writing to the Corporation within 60 days of having been given written notice by the Corporation of its intention to send such a single written notice shall be deemed to have consented to receiving such single written notice.

(e) Exceptions to Notice Requirements. Whenever notice is required to be given, under the DGCL, the Certificate of Incorporation or these By Laws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting that shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

Whenever notice is required to be given by the Corporation, under any provision of the DGCL, the Certificate of Incorporation or these By Laws, to any stockholder to whom (1) notice of two consecutive annual meetings of stockholders and all notices of stockholder meetings or of the taking of action by written consent of stockholders without a meeting to such stockholder during the period between such two consecutive annual meetings, or (2) all, and at least two payments (if sent by first-class mail) of dividends or interest on securities during a 12-month period, have been mailed addressed to such stockholder at such stockholder's address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such stockholder shall not be required. Any action or meeting that shall be taken or held without notice to such stockholder shall have the same force and effect as if such notice had been duly given. If any such stockholder shall deliver to the Corporation a written notice setting forth such stockholder's then current address, the requirement that notice be given to such stockholder shall be reinstated. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to Section 230(b) of the DGCL. The exception in subsection (1) of the first sentence of this paragraph to the requirement that notice be given shall not be applicable to any notice returned as undeliverable if the notice was given by electronic transmission.

Section 9.4. Waiver of Notice. Whenever any notice is required to be given under applicable law, the Certificate of Incorporation, or these By Laws, a written waiver of such notice, signed by the person or persons entitled to said notice, or a waiver by electronic transmission by the person entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to such required notice. All such waivers shall be kept with the books of the Corporation. Attendance at a meeting shall constitute a waiver of notice of such meeting, except where a person attends for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

Section 9.5. Meeting Attendance via Remote Communication Equipment.

(a) Stockholder Meetings. If authorized by the Board in its sole discretion, and subject to such guidelines and procedures as the Board may adopt, stockholders entitled to vote at such meeting and proxy holders not physically present at a meeting of stockholders may, by means of remote communication:

(i) participate in a meeting of stockholders; and

(ii) be deemed present in person and vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (A) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxy holder, (B) the Corporation shall implement reasonable measures to provide such stockholders and proxy holders a reasonable opportunity to participate in the meeting and, if entitled to vote, to vote on matters submitted to the applicable stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (C) if any stockholder or proxy holder votes or takes other action at the meeting by means of remote communication, a record of such votes or other action shall be maintained by the Corporation.

(b) Board Meetings. Unless otherwise restricted by applicable law, the Certificate of Incorporation or these By Laws, members of the Board or any committee thereof may participate in a meeting of the Board or any committee thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Such participation in a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

Section 9.6. Dividends. The Board may from time to time declare, and the Corporation may pay, dividends (payable in cash, property or shares of the Corporation's capital stock) on the Corporation's outstanding shares of capital stock, subject to applicable law and the Certificate of Incorporation.

Section 9.7. Reserves. The Board may set apart out of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

Section 9.8. Contracts and Negotiable Instruments. Except as otherwise provided by applicable law, the Certificate of Incorporation or these By Laws, any contract, bond, deed, lease, mortgage or other instrument may be executed and delivered in the name and on behalf of the Corporation by such officer or officers or other employee or employees of the Corporation as the Board may from time to time authorize. Such authority may be general or confined to specific instances as the Board may determine. The Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, the Treasurer or any Vice President may execute and deliver any contract, bond, deed, lease, mortgage or other instrument in the name and on behalf of the Corporation. Subject to any restrictions imposed by the Board, the Chairman of the Board Chief Executive Officer, President, the Chief Financial Officer, the Treasurer or any Vice President may delegate powers to execute and deliver any contract, bond, deed, lease, mortgage or other instrument in the name and on behalf of the Corporation to other officers or employees of the Corporation under such person's supervision and authority, it being understood, however, that any such delegation of power shall not relieve such officer of responsibility with respect to the exercise of such delegated power.

Section 9.9. Fiscal Year. The fiscal year of the Corporation shall be fixed by the Board.

Section 9.10. Seal. The Board may adopt a corporate seal, which shall be in such form as the Board determines. The seal may be used by causing it or a facsimile thereof to be impressed, affixed or otherwise reproduced.

Section 9.11. Books and Records. The books and records of the Corporation may be kept within or outside the State of Delaware at such place or places as may from time to time be designated by the Board.

Section 9.12. Resignation. Any director, committee member or officer may resign by giving notice thereof in writing or by electronic transmission to the Chairman of the Board, the Chief Executive Officer, the President or the Secretary. The resignation shall take effect at the time it is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 9.13. Surety Bonds. Such officers, employees and agents of the Corporation (if any) as the Chairman of the Board, Chief Executive Officer, President or the Board may direct, from time to time, shall be bonded for the faithful performance of their duties and for the restoration to the Corporation, in case of their death, resignation, retirement, disqualification or removal from office, of all books, papers, vouchers, money and other property of whatever kind in their possession or under their control belonging to the Corporation, in such amounts and by such surety companies as the Chairman of the Board, Chief Executive Officer, President or the Board may determine. The premiums on such bonds shall be paid by the Corporation and the bonds so furnished shall be in the custody of the Secretary.

Section 9.14. Securities of Other Corporations. Powers of attorney, proxies, waivers of notice of meeting, consents in writing and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the Chairman of the Board, Chief Executive Officer, President, any Vice President or any officers authorized by the Board. Any such officer, may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities, or to consent in writing, in the name of the Corporation as such holder, to any action by such corporation, and at any such meeting or with respect to any such consent shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed. The Board may from time to time confer like powers upon any other person or persons.

Section 9.15. Amendments. The Board shall have the power to adopt, amend, alter or repeal the By Laws. The affirmative vote of a majority of the Board shall be required to adopt, amend, alter or repeal the By Laws. The By Laws also may be adopted, amended, altered or repealed by the stockholders; provided, however, that in addition to any vote of the holders of any class or series of capital stock of the Corporation required by applicable law or the Certificate of Incorporation, the affirmative vote of the holders of at least a majority of the voting power (except as otherwise provided in Section 8.7) of all outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required for the stockholders to adopt, amend, alter or repeal the By Laws.

EXHIBIT I

INDEMNIFICATION AGREEMENT

This INDEMNIFICATION AGREEMENT is made this 23rd day of October, 2020 (the "Agreement") by and between Lordstown Motors Corp., a Delaware corporation (the "Company"), and David T. Hamamoto ("Indemnitee").

WHEREAS, the Company believes that in order to attract and retain highly competent persons to serve as directors or in other capacities, including as officers, it must provide such persons with adequate protection through indemnification against the risks of claims and actions against them arising out of their services to and activities on behalf of the Company;

WHEREAS, the Company desires and has requested Indemnitee to serve as a director or officer and may also desire and request the Indemnitee to serve in the future in another Position (as hereinafter defined) at an Affiliated Entity (as hereinafter defined);

WHEREAS, in order to induce the Indemnitee to serve as a director or officer of the Company or in another Position at an Affiliated Entity, the Company is willing to grant the Indemnitee the indemnification provided for herein. Indemnitee is willing to so serve on the basis that such indemnification be provided. The indemnification provided herein is a supplement to and in furtherance of any rights granted under the Company's and any applicable Affiliated Entity's certificate of incorporation and bylaws and shall not be deemed to be a substitute therefor nor to diminish or abrogate any rights of Indemnitee thereunder.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and Indemnitee do hereby covenant and agree as follows:

Section 1. Definitions. For purposes of this Agreement:

(a) "Change of Control" means, and shall be deemed to have occurred if, on or after the date of this Agreement, (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")), other than (A) a trustee or other fiduciary holding securities under an employee benefit plan of the Company or any of its subsidiaries acting in such capacity, or (B) a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company, is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing more than 20% of the total voting power represented by the Company's then outstanding Voting Securities (as hereinafter defined) , (ii) during any period of two consecutive years, individuals who at the beginning of such period constitute the board of directors of the Company (the "Board") and any new director whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds (⅔) of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof, (iii) the stockholders of the Company approve a merger or consolidation of the Company with any other corporation other than a merger or consolidation that would result in the Voting Securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into Voting Securities of the surviving entity) more than 50% of the total voting power represented by the Voting Securities of the Company or such surviving entity outstanding immediately after such merger or consolidation, (iv) the stockholders of the Company approve a plan of complete liquidation of the Company or an agreement for the sale or disposition by the Company of (in one transaction or a series of related transactions) all or substantially all of its assets, or (v) the Company shall file or have filed against it, and such filing shall not be dismissed, any bankruptcy, insolvency or dissolution proceedings, or a trustee, administrator or creditors committee shall be appointed to manage or supervise the affairs of the Company; provided that the beneficial ownership by Stephen Burns of those shares of common stock beneficially owned by him as of October 23, 2020 (as increased solely by any shares issued to Stephen Burns as part of a *bona fide* employee benefit plan) shall not be deemed a Change of Control hereunder.

(b) "Expenses" shall include all out of pocket fees, costs and expenses, including, without limitation, attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred if Indemnitee is involved in any manner (including, without limitation, as a party or a witness) in any Proceeding (as hereinafter defined) and the fees and costs incurred in seeking to enforce, interpret or construe an indemnification, reimbursement or payment right under this Agreement, the Company's or any Affiliated Entity's certificate of incorporation or bylaws, any other agreement to which Indemnitee and the Company or any Affiliated Entity is party, any vote of stockholders or directors of the Company or any of its Affiliated Entities, the Delaware General Corporation Law (the "DGCL"), any other applicable law or any liability insurance policy or in connection with a determination contemplated by Section 5 of this Agreement.

(c) "Position" is (i) service as a director, officer, partner, trustee, fiduciary, manager or employee of the Company or of any other corporation, limited liability company, public limited company, partnership, joint venture, trust, employee benefit plan, fund or other enterprise as to which the Company beneficially owns, directly or indirectly, at least a majority of the voting power of equity or membership interests, or in the case of employee benefit plans, is sponsored or maintained by the Company or one of the foregoing (any of the foregoing, an "Affiliated Entity") or (ii) service at the request of the Company as a director, officer, partner, trustee, fiduciary, manager or employee of a corporation, limited liability company, public limited company, partnership, joint venture, trust, employee benefit plan, fund or other enterprise which is not an Affiliated Entity (an "Unaffiliated Entity"), provided, however, that such request for service has been approved in writing by the Board or a committee thereof or by the Chairman of the Board or the Chief Executive Officer of the Company.

(d) "Proceeding" shall mean any civil, criminal, administrative or investigative action, suit, proceeding or procedure in which the Indemnitee is involved in any manner by reason of the fact of the Indemnitee's Position or Positions, including, without limitation, as a party or a witness.

(e) "Undertaking" shall mean an undertaking by Indemnitee to repay Expenses if it shall ultimately be determined by a court of competent jurisdiction from which no appeal can be taken that Indemnitee is not entitled to be indemnified by the Company.

(f) "Voting Securities" means any securities of the Company that vote generally in the election of directors.

Section 2. Indemnification — General. The Company shall indemnify, subject to the terms of this Agreement, Indemnitee against all judgments, awards, fines, ERISA excise taxes, penalties, amounts paid in settlement, liabilities and losses and shall pay or reimburse all Expenses incurred by Indemnitee, subject to the terms of this Agreement, to the fullest extent permitted by Delaware law in effect on the date hereof or as amended to increase the scope of permitted indemnification, if Indemnitee is involved in any manner (including, without limitation, as a party or a witness) in any Proceeding by reason of the fact of Indemnitee's Position or Positions, including, without limitation, any Proceeding by or in the right of the Company to procure a judgment in its favor, but excluding any Proceeding initiated by Indemnitee other than (a) Proceedings initiated by Indemnitee which are consented to in advance in writing by the majority vote of the directors of the Company (excluding any directors who are parties to the Proceeding, even though less than a quorum; or if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion) and (b) counterclaims made by Indemnitee in a Proceeding which directly respond to and negate the affirmative claim made against Indemnitee in such Proceeding. In the event Indemnitee incurs Expenses or settles a Proceeding under circumstances in which the Company would have an obligation to indemnify Indemnitee for the Expenses or settlement amount, the Company may discharge its indemnification obligation by making payments on behalf of Indemnitee directly to the parties to whom such Expenses or settlement amounts are owed by Indemnitee. Notwithstanding the foregoing, the Company will also, to the fullest extent permitted by Delaware law in effect on the date hereof or as amended to increase the scope of permitted indemnification, indemnify, reimburse and pay Indemnitee for Expenses incurred in seeking to enforce, interpret or construe an indemnification, reimbursement or payment right under this Agreement, the Company's certificate of incorporation or bylaws or similar organizational documents of any Affiliated Entity, any other agreement to which Indemnitee and the Company or any of its Affiliated Entities are party, any vote of stockholders or directors of the Company or any of its Affiliated Entities, the DGCL or other corporate or entity law governing any Affiliated Entities, any other applicable law relating to the Positions or any liability insurance policy.

Section 3. Expenses. Upon receipt by the Company of an Undertaking by Indemnitee, the Company shall pay or reimburse Expenses incurred by Indemnitee in connection with a Proceeding, any action or proceeding contemplated by the last sentence of Section 2 of this Agreement and any determination contemplated by Section 5 of this Agreement, in each case in advance of its final disposition. The Company shall not impose other conditions to advancement and shall not seek or agree to any order that would prohibit Indemnitee from enforcing such right to advancement. Such payment shall be made within thirty (30) days after the receipt by the Company of a written request from Indemnitee requesting reimbursement or payment of such Expenses. Such request shall reasonably evidence the Expenses incurred by Indemnitee. The burden of proving that the Company is not liable for reimbursement or payment of Expenses shall be on the Company.

Section 4. Limitations. The Company shall not indemnify Indemnitee (a) if such indemnification or payment would be prohibited under any applicable laws, rules or regulations, (b) for an accounting of profits arising from the purchase and sale by the Indemnitee of securities under Section 16(b) of the Exchange Act, or (c) for violations of federal or state insider trading laws, unless, in each such case, Indemnitee has been successful on the merits, received the Company's written consent prior to incurring an Expense or, after receiving the Company's written consent to incurring the cost of settlement, settled the Proceeding. This Section 4 shall not limit the Company's obligation to advance Expenses to Indemnitee pursuant to Section 3 of this Agreement.

Section 5. Standard of Conduct. No claim for indemnification shall be paid by the Company unless it has been determined that Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful, which is the standard of conduct set forth in Section 145 of the DGCL (as such, the "Standard of Conduct", with such Standard of Conduct to be automatically revised to conform to any successor provision of the DGCL that is more favorable to Indemnitee) except that no indemnification shall be made with respect to any Proceeding by or in right of the Company as to which the Indemnitee shall have been adjudged to be liable to the Company, except as determined by the court or other tribunal adjudicating the Proceeding. Unless (a) a Change of Control has occurred or (b) ordered by a court or other tribunal, such determinations of whether the Standard of Conduct has been satisfied shall be made by (i) a majority vote of the directors of the Company who are not parties to the Proceeding, even though less than a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (iv) by stockholders of the Company. If a Change of Control has occurred, such determination of whether the Standard of Conduct has been satisfied shall be made by independent legal counsel in a written opinion to the Company and Indemnitee. Such independent legal counsel shall be selected by Indemnitee and approved by the Company (which approval shall not be unreasonably conditioned, withheld or delayed). The Company shall pay the fees and expenses of the independent legal counsel and indemnify the independent legal counsel against any and all expenses (including attorneys' fees), claims, liabilities and damages arising out of or relating to its engagement and shall indemnify, reimburse and pay Indemnitee for Expenses incurred in connection with such determination. Indemnitee shall be deemed to have met the Standard of Conduct if the determination is not made by the Company within sixty days of receipt by the General Counsel of a written request by Indemnitee for indemnity. If the Indemnitee has been determined not to have met the Standard of Conduct, Indemnitee may commence litigation in any court in the State of Delaware having subject matter jurisdiction thereof and in which venue is proper seeking an initial de novo determination by the court or challenging any such determination or any aspect thereof, including the legal or factual bases therefor, and the Company hereby consents to service of process and agrees to appear in any such proceeding. Any determination under this Section 5 otherwise shall be conclusive and binding on the Company and Indemnitee. In no event shall a determination be a prerequisite to or affect the Company's obligation to advance Expenses to Indemnitee pursuant to Section 3 of this Agreement.

Section 6. Contribution. If the full indemnification and payment or reimbursement of Expenses provided by this Agreement may not be paid to Indemnitee because it has been finally adjudicated that such indemnification or payment or reimbursement of Expenses incurred by Indemnitee is prohibited by Delaware or other law, or if it has been determined as provided above that the Standard of Conduct has not been met, and if and to the extent that Indemnitee is not entitled to coverage under the Company's directors and officers liability insurance policy, then in respect of any such actual or threatened Proceeding in which the Company or an Affiliated Entity is jointly liable with Indemnitee (or would be if joined in such Proceeding), as determined:

(a) if no Change of Control has occurred, by (i) majority vote of the directors of the Company who are not parties to the Proceeding, even though less than a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (iv) by stockholders of the Company, or

(b) if a Change of Control has occurred, by independent legal counsel in a written opinion to the Company and Indemnitee (such independent legal counsel to be selected by Indemnitee and approved by the Company (which approval shall not be unreasonably withheld or delayed)), the Company shall contribute to the amount of loss, liability or Expenses incurred by Indemnitee in such proportion as appropriate to reflect (i) the relative benefits received by the Company and any Affiliated Entity on the one hand and Indemnitee on the other hand from the transaction from which such Proceeding arose and (ii) the relative fault of the Company, any Affiliated Entity or Unaffiliated Entity, including other persons indemnified by the Company, on the one hand, and Indemnitee, on the other hand, in connection with the events which resulted in such Proceeding, as well as any other relevant equitable considerations. The relative fault of the Company, any Affiliated Entity or Unaffiliated Entity, including other persons indemnified by the Company, on the one hand, and of Indemnitee, on the other hand, shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such Proceeding. The Company acknowledges that it would not be just and equitable if contribution pursuant to this Section 6 were determined by pro rata allocation or any other method of allocation which does not take into account the foregoing equitable considerations.

Section 7. Defense of Claim. If any Proceeding asserted or commenced against Indemnitee is also asserted or commenced against the Company or an Affiliated Entity, the Company or the Affiliated Entity shall be entitled, except as otherwise provided herein below, to assume the defense thereof. After notice from the Company or any Affiliated Entity to Indemnitee of its election to assume the defense of any such Proceeding, Indemnitee shall have the right to employ Indemnitee's own counsel in such Proceeding, but the Expenses of such counsel incurred after notice from the Company or any Affiliated Entity to Indemnitee of its assumption of the defense thereof shall be at the expense of Indemnitee and the Company shall not be obligated to Indemnitee under this Agreement for any Expenses subsequently incurred by Indemnitee in connection therewith other than reasonable costs of investigation and reasonable travel and lodging expenses arising out of Indemnitee's participation in the defense of such Proceeding, unless (a) otherwise notified by the Company, (b) Indemnitee's counsel shall have reasonably concluded and so notified the Company that there is a conflict of interest between the Company or any Affiliated Entity and Indemnitee in the conduct of defense of such Proceeding, or (c) the Company or any Affiliated Entity shall not in fact have employed counsel to assume the defense of such Proceeding, in any of which cases the Expenses of Indemnitee in such Proceeding shall be reimbursed or paid by the Company. The Company or any Affiliated Entity shall not be entitled to assume the defense of any Proceeding brought by or on behalf of the Company by its stockholders or as to which Indemnitee's counsel shall have made the conclusion set forth in clause (b) of the preceding sentence of this Section 7.

Section 8. Settlement. The Company will not, without the prior written consent of the Indemnitee, which may be provided or withheld in Indemnitee's sole discretion, effect any settlement of any Proceeding against Indemnitee unless such settlement solely involves the payment of money by persons other than Indemnitee and includes an unconditional release of Indemnitee from all liability arising from or relating to any matters that are the subject of such Proceeding. The Company shall not be obligated to indemnify Indemnitee against amounts paid in settlement of a Proceeding against Indemnitee if such settlement is effected by Indemnitee without the Company's prior written consent, which shall not be unreasonably withheld.

Section 9. Duration of Agreement. This Agreement will be considered to be in effect on the first day of the Indemnitee's Position or Positions, even if such date occurs prior to the date of this Agreement, and will continue for so long as Indemnitee may be subject to any possible Proceeding by reason of the fact of Indemnitee's Position or Positions, whether or not Indemnitee ceases to hold such Position or Positions.

Section 10. Confidentiality. Except as required by law or as otherwise becomes public (other than in violation of this Agreement) or as communicated to Indemnitee's counsel or to Indemnitee's or the Company's insurer, in seeking indemnification or reimbursement or payment of Expenses hereunder, Indemnitee agrees to keep

confidential any information that arises in connection with this Agreement, including but not limited to, claims for indemnification or payment or reimbursement of Expenses, amounts paid or payable under this Agreement and any communications between the Indemnitee and the Company.

Section 11. Applicability to Other Indemnification Provisions. This Agreement is entered into pursuant to Section 145(f) of the DGCL and to the fullest extent permitted by law shall be in addition to indemnification and reimbursement or payment of Expenses provided by the DGCL. To the fullest extent permitted by law, the Company shall apply this Agreement in considering requests for indemnification or reimbursement or payment of Expenses under its certificate of incorporation, bylaws, or any other agreement or undertaking of the Company or similar constituent documents of an Affiliated Entity that provides rights to indemnification or reimbursement or payment of Expenses.

Section 12. No Duplication of Payments. The Company shall indemnify and pay or reimburse Expenses of the Indemnitee in accordance with the provisions of this Agreement, provided, however, that the Company shall not be liable under this Agreement to make any payment under this Agreement to the extent that Indemnitee (a) is otherwise entitled to receive reimbursement or payment of amounts otherwise payable hereunder from an Unaffiliated Entity (including insurance maintained by an Unaffiliated Entity) as a result of Indemnitee's Position or Positions at or with respect to an Unaffiliated Entity, (b) receives payment or reimbursement under an insurance policy maintained by the Company or by or out of a fund created by the Company and under the control of a trustee or otherwise, or (c) receives payment from other sources provided by the Company. If Indemnitee has a right of recovery from an Unaffiliated Entity (including insurance maintained by an Unaffiliated Entity), Indemnitee shall take all actions reasonably necessary to recover payment (or insurance) from such Unaffiliated Entity before seeking payment from the Company under this Agreement, including initiating a civil, criminal, administrative or investigation action, suit, proceeding or procedure; provided, however, that to the extent recovery of such payment requires meeting a prior deductible or other financial outlay, such payment or financial outlay shall be deemed to be an Expense hereunder.

Section 13. Insurance. The Company shall purchase and maintain a policy or policies of insurance with reputable insurance companies with A.M. Best ratings of "A" or better, providing Indemnitee with coverage for any liability asserted against, and incurred by, Indemnitee or on Indemnitee's behalf by reason of the fact of Indemnitee's Position or Positions, whether or not the Company would have the power to indemnify Indemnitee against such liability under the provisions of this Agreement. Such insurance policies shall have coverage terms and policy limits that are reasonable in scope and amount, as determined by the Company in its reasonable discretion. Notwithstanding the foregoing, the Company shall have no obligation to obtain or maintain such insurance if the Company determines in good faith that such insurance is not reasonably available, if the premium costs for such insurance are disproportionate to the amount of the coverage provided, if the coverage provided by such insurance is limited by exclusions so as to provide an insufficient benefit, or if the Company otherwise determines in good faith that obtaining or maintaining such insurance is not in the best interests of the Company. At the time the Company receives from Indemnitee any notice of the commencement of an action, suit or proceeding, the Company shall give prompt notice of the commencement of such action, suit or proceeding to the insurers in accordance with the procedures set forth in the policy. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policy. The Company agrees that if there is a change in control of the Company, the Company shall maintain (or cause to be maintained) for the benefit of Indemnitee, the same policy or policies of insurance maintained in accordance with this Section 13 immediately prior to such change in control for a period of six years after the change in control or the termination of this Agreement in accordance with Section 9, whichever is later.

Section 14. Subrogation. In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee under any insurance policy held by the Company or an Affiliated Entity or otherwise. Indemnitee shall execute all documents reasonably required and shall do everything reasonably necessary to secure such rights, including the execution of such documents necessary to enable the Company to effectively bring suit to enforce such rights.

Section 15. Notice by Indemnitee. Indemnitee shall promptly notify the Company in writing in accordance with Section 21 of this Agreement upon the earlier of (a) becoming aware of a Proceeding where indemnity or reimbursement or payment of Expenses may be sought or (b) receiving or being served with any summons, citation,

subpoena, complaint, indictment, information, inquiry or other document relating to any Proceeding which may be subject to indemnification or reimbursement or payment of Expenses covered hereunder. As a condition to indemnification or reimbursement or payment of Expenses, any demand for payment by Indemnitee hereunder shall be in writing. The failure to promptly notify the Company of the commencement of the action, suit or proceeding, or of Indemnitee's request for indemnification, will not relieve the Company from any liability that it may have to Indemnitee hereunder, except to the extent the Company is actually and materially prejudiced in its defense of such action, suit or proceeding as a result of such failure.

Section 16. Severability. If any provision of this Agreement shall be held to be invalid, inoperative or unenforceable as applied to any particular Proceeding or in any particular jurisdiction, for any reason, such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other distinguishable Proceeding or jurisdiction, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever. The invalidity, inoperability or unenforceability of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect any other remaining part of this Agreement.

Section 17. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, Indemnitee and Indemnitee's heirs, personal representatives, executors and administrators and upon the Company and its successors and assigns.

Section 18. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement.

Section 19. Headings. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

Section 20. Modification and Waiver. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

Section 21. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if (a) delivered by hand, on the date delivered, (b) mailed by certified or registered mail, with postage prepaid, on the third business day after the date on which it is mailed or (c) sent by guaranteed overnight courier service, with postage prepaid, on the business day after the date on which it is sent:

(i) If to Indemnitee, to the address set forth on the signature page of this Agreement;

(ii) If to the Company, to:
Lordstown Motors Corp.
2300 Hallock Young Road
Lordstown, OH 44481
Attention: General Counsel

or to such other address as may have been furnished to Indemnitee by the Company or to the Company by Indemnitee, as the case may be.

Section 22. Governing Law. The parties agree that this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware. If a court of competent jurisdiction shall make a final determination that the provisions of the law of any state other than Delaware govern indemnification by the Company of Indemnitee, then the indemnification provided under this Agreement shall in all instances be enforceable to the fullest extent permitted under such law, notwithstanding any provision of this Agreement to the contrary.

Section 23. Venue. Any Proceeding relating to or arising from this Agreement, including without limitation, any Proceeding regarding indemnification or reimbursement or payment of Expenses arising out of this Agreement,

shall only be brought and heard in the Chancery Court in and for the State of Delaware (the "Delaware Court"), and may not be brought in any other judicial forum. The Company hereby irrevocably and unconditionally (a) agrees that any action or proceeding arising out of or in connection with this Agreement may brought in the Delaware Court, (b) consents to submit to the non-exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (c) consents to service of process at the Company's address set forth in Section 21 of this Agreement with the same legal force and validity as if served upon the Company personally within the State of Delaware, (d) waives any objection to the laying of venue of any such action or proceeding in the Delaware Court and (e) waives, and agrees not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

LORDSTOWN MOTORS CORP.

By: _____
Name: Stephen S. Burns
Title: Chief Executive Officer

AGREED TO AND ACCEPTED BY:

_____
Name: David Hamamoto
Address:

shall only be brought and heard in the Chancery Court in and for the State of Delaware (the "Delaware Court"), and may not be brought in any other judicial forum. The Company hereby irrevocably and unconditionally (a) agrees that any action or proceeding arising out of or in connection with this Agreement may brought in the Delaware Court, (b) consents to submit to the non-exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (c) consents to service of process at the Company's address set forth in Section 21 of this Agreement with the same legal force and validity as if served upon the Company personally within the State of Delaware, (d) waives any objection to the laying of venue of any such action or proceeding in the Delaware Court and (e) waives, and agrees not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

LORDSTOWN MOTORS CORP.

By: _____
Name:
Title:

AGREED TO AND ACCEPTED BY:

_____
Name: David T. Hamamoto
Address: [redacted]

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT (this "***Agreement***") is made as of February ___, 2019, by and between DiamondPeak Holdings Corp., a Delaware corporation (the "***Company***"), and Steve Hash ("***Indemnitee***").

RECITALS

WHEREAS, highly competent persons have become more reluctant to serve publicly-held corporations as directors, officers or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of such corporations;

WHEREAS, the Board of Directors of the Company (the "***Board***") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. The Amended and Restated Certificate of Incorporation (the "***Charter***") and the Bylaws (the "***Bylaws***") of the Company require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to applicable provisions of the Delaware General Corporation Law ("***DGCL***"). The Charter, Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the Board, officers and other persons with respect to indemnification, hold harmless, exoneration, advancement and reimbursement rights;

WHEREAS, the uncertainties relating to such insurance and to indemnification have increased the difficulty of attracting and retaining such persons;

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company's stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, hold harmless, exonerate and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so protected against liabilities;

WHEREAS, this Agreement is a supplement to and in furtherance of the Charter and Bylaws of the Company and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder;

WHEREAS, Indemnitee may not be willing to serve as an officer or director, advisor or in another capacity without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that Indemnitee be so indemnified; and

NOW, THEREFORE, in consideration of the premises and the covenants contained herein and subject to the provisions of the letter agreement dated as of February ___, 2019, the Company and Indemnitee do hereby covenant and agree as follows:

TERMS AND CONDITIONS

1. **SERVICES TO THE COMPANY**. In consideration of the Company's covenants and obligations hereunder, Indemnitee will serve or continue to serve as an officer, director, advisor, key employee or any other capacity of the Company, as applicable, for so long as Indemnitee is duly elected or appointed or retained or until Indemnitee tenders Indemnitee's resignation or until Indemnitee is removed. The foregoing notwithstanding, this Agreement shall continue in full force and effect after Indemnitee has ceased to serve as a director, officer, advisor, key employee or in any other capacity of the Company, as provided in Section 17. This Agreement, however, shall not impose any obligation on Indemnitee or the Company to continue Indemnitee's service to the Company beyond any period otherwise required by law or by other agreements or commitments of the parties, if any.

2. **DEFINITIONS**. As used in this Agreement:

(a) References to "***agent***" shall mean any person who is or was a director, officer or employee of the Company or a subsidiary of the Company or other person authorized by the Company to act for the Company, to include such person serving in such capacity as a director, officer, employee, fiduciary or other official of another corporation, partnership, limited liability company, joint venture, trust or other enterprise at the request of, for the convenience of, or to represent the interests of the Company or a subsidiary of the Company.

(b) The terms "***Beneficial Owner***" and "***Beneficial Ownership***" shall have the meanings set forth in Rule 13d-3 promulgated under the Exchange Act (as defined below) as in effect on the date hereof.

(c) A "***Change in Control***" shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:

(i) Acquisition of Stock by Third Party. Other than an affiliate of DiamondPeak Sponsor LLC ("***DiamondPeak Sponsor***"), any Person (as defined below) is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing fifteen percent (15%) or more of the combined voting power of the Company's then outstanding securities entitled to vote generally in the election of directors, unless (1) the change in the relative Beneficial Ownership of the Company's securities by any Person results solely from a reduction in the aggregate number of outstanding shares of securities entitled to vote generally in the election of directors, or (2) such acquisition was approved in advance by the Continuing Directors (as defined below) and such acquisition would not constitute a Change in Control under part (iii) of this definition;

(ii) Change in Board of Directors. Individuals who, as of the date hereof, constitute the Board, and any new director whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two thirds of the directors then still in office who were directors on the date hereof or whose election for nomination for election was previously so approved (collectively, the "***Continuing Directors***"), cease for any reason to constitute at least a majority of the members of the Board;

(iii) Corporate Transactions. The effective date of a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination, involving the Company and one or more businesses (a "***Business Combination***"), in each case, unless, following such Business Combination: (1) all or substantially all of the individuals and entities who were the Beneficial Owners of securities entitled to vote generally in the election of directors immediately prior to such Business Combination beneficially own, directly or indirectly, more than 51% of the combined voting power of the then outstanding securities of the Company entitled to vote generally in the election of directors resulting from such Business Combination (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more Subsidiaries (as defined below)) in substantially the same proportions as their ownership immediately prior to such Business Combination, of the securities entitled to vote generally in the election of directors; (2) other than an affiliate of DiamondPeak Sponsor, no Person (excluding any corporation resulting from such Business Combination) is the Beneficial Owner, directly or indirectly, of 15% or more of the combined voting power of the then outstanding securities entitled to vote generally in the election of directors of the surviving corporation except to the extent that such ownership existed prior to the Business

Combination; and (3) at least a majority of the Board of Directors of the corporation resulting from such Business Combination were Continuing Directors at the time of the execution of the initial agreement, or of the action of the Board of Directors, providing for such Business Combination;

(iv) Liquidation. The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement or series of agreements for the sale or disposition by the Company of all or substantially all of the Company's assets, other than factoring the Company's current receivables or escrows due (or, if such stockholder approval is not required, the decision by the Board to proceed with such a liquidation, sale, or disposition in one transaction or a series of related transactions); or

(v) Other Events. There occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or any successor rule) (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

(d) "***Corporate Status***" describes the status of a person who is or was a director, officer, trustee, general partner, manager, managing member, fiduciary, employee or agent of the Company or of any other Enterprise (as defined below) which such person is or was serving at the request of the Company.

(e) "***Delaware Court***" shall mean the Court of Chancery of the State of Delaware.

(f) "***Disinterested Director***" shall mean a director of the Company who is not and was not a party to the Proceeding (as defined below) in respect of which indemnification is sought by Indemnitee.

(g) "***Enterprise***" shall mean the Company and any other corporation, constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger to which the Company (or any of its wholly owned subsidiaries) is a party, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent.

(h) "***Exchange Act***" shall mean the Securities Exchange Act of 1934, as amended.

(i) "***Expenses***" shall include all direct and indirect costs, fees and expenses of any type or nature whatsoever, including, without limitation, all reasonable attorneys' fees and costs, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, fees of private investigators and professional advisors, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, fax transmission charges, secretarial services and all other disbursements, obligations or expenses in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, settlement or appeal of, or otherwise participating in, a Proceeding (as defined below), including reasonable compensation for time spent by Indemnitee for which he or she is not otherwise compensated by the Company or any third party. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding (as defined below), including without limitation the principal, premium, security for, and other costs relating to any cost bond, supersede as bond, or other appeal bond or its equivalent. "Expenses," however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(j) References to "***fines***" shall include any excise tax assessed on Indemnitee with respect to any employee benefit plan; references to "**serving at the request of the Company**" shall include any service as a director, officer, employee, agent or fiduciary of the Company which imposes duties on, or involves services by, such director, officer, employee, agent or fiduciary with respect to an employee benefit plan, its participants or beneficiaries; and if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan, Indemnitee shall be deemed to have acted in a manner "**not opposed to the best interests of the Company**" as referred to in this Agreement.

(k) "***Independent Counsel***" shall mean a law firm or a member of a law firm with significant experience in matters of corporation law and that neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to

matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements); or (ii) any other party to the Proceeding (as defined below) giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

(l) The term "***Person***" shall have the meaning as set forth in Sections 13(d) and 14(d) of the Exchange Act as in effect on the date hereof; provided, however, that "Person" shall exclude: (i) the Company; (ii) any Subsidiaries (as defined below) of the Company; (iii) any employment benefit plan of the Company or of a Subsidiary (as defined below) of the Company or of any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company; and (iv) any trustee or other fiduciary holding securities under an employee benefit plan of the Company or of a Subsidiary (as defined below) of the Company or of a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

(m) The term "***Proceeding***" shall include any threatened, pending or completed action, suit, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil (including intentional or unintentional tort claims), criminal, administrative or investigative or related nature, in which Indemnitee was, is, will or might be involved as a party or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Company, by reason of any action (or failure to act) taken by Indemnitee or of any action (or failure to act) on Indemnitee's part while acting as a director or officer of the Company, or by reason of the fact that Indemnitee is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Agreement.

(n) The term "***Subsidiary***," with respect to any Person, shall mean any corporation, limited liability company, partnership, joint venture, trust or other entity of which a majority of the voting power of the voting equity securities or equity interest is owned, directly or indirectly, by that Person.

3. **INDEMNITY IN THIRD-PARTY PROCEEDINGS**. To the fullest extent permitted by applicable law, the Company shall indemnify, hold harmless and exonerate Indemnitee in accordance with the provisions of this Section 3 if Indemnitee was, is, or is threatened to be made, a party to or a participant (as a witness, deponent or otherwise) in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor by reason of Indemnitee's Corporate Status. Pursuant to this Section 3, Indemnitee shall be indemnified, held harmless and exonerated against all Expenses, judgments, liabilities, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties and amounts paid in settlement) actually, and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal Proceeding, had no reasonable cause to believe that Indemnitee's conduct was unlawful.

4. **INDEMNITY IN PROCEEDINGS BY OR IN THE RIGHT OF THE COMPANY**. To the fullest extent permitted by applicable law, the Company shall indemnify, hold harmless and exonerate Indemnitee in accordance with the provisions of this Section 4 if Indemnitee was, is, or is threatened to be made, a party to or a participant (as a witness, deponent or otherwise) in any Proceeding by or in the right of the Company to procure a judgment in its favor by reason of Indemnitee's Corporate Status. Pursuant to this Section 4, Indemnitee shall be indemnified, held harmless and exonerated against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company. No indemnification, hold harmless or exoneration for Expenses shall be made under this Section 4 in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court to be liable to the Company, unless and only to the extent that any court in which the Proceeding was brought or the Delaware

Court shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification, to be held harmless or to exoneration.

5. **INDEMNIFICATION FOR EXPENSES OF A PARTY WHO IS WHOLLY OR PARTLY SUCCESSFUL**. Notwithstanding any other provisions of this Agreement except for Section 27, to the extent that Indemnitee was or is, by reason of Indemnitee's Corporate Status, a party to (or a participant in) and is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee against all Expenses actually and reasonably incurred by Indemnitee in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with each successfully resolved claim, issue or matter. If Indemnitee is not wholly successful in such Proceeding, the Company also shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee against all Expenses reasonably incurred in connection with a claim, issue or matter related to any claim, issue, or matter on which Indemnitee was successful. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

6. **INDEMNIFICATION FOR EXPENSES OF A WITNESS**. Notwithstanding any other provision of this Agreement except for Section 27, to the extent that Indemnitee is, by reason of Indemnitee's Corporate Status, a witness or deponent in any Proceeding to which Indemnitee was or is not a party or threatened to be made a party, Indemnitee shall, to the fullest extent permitted by applicable law, be indemnified, held harmless and exonerated against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith.

7. **ADDITIONAL INDEMNIFICATION, HOLD HARMLESS AND EXONERATION RIGHTS.**

(a) Notwithstanding any limitation in Sections 3, 4, or 5, except for Section 27, the Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties and amounts paid in settlement) actually and reasonably incurred by Indemnitee in connection with the Proceeding. No indemnification, hold harmless or exoneration rights shall be available under this Section 7(a) on account of Indemnitee's conduct which constitutes a breach of Indemnitee's duty of loyalty to the Company or its stockholders or is an act or omission not in good faith or which involves intentional misconduct or a knowing violation of the law.

(b) Notwithstanding any limitation in Sections 3, 4, 5 or 7(a), except for Section 27, the Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties and amounts paid in settlement) actually and reasonably incurred by Indemnitee in connection with the Proceeding.

8. **CONTRIBUTION IN THE EVENT OF JOINT LIABILITY**.

(a) To the fullest extent permissible under applicable law, if the indemnification, hold harmless and/or exoneration rights provided for in this Agreement are unavailable to Indemnitee in whole or in part for any reason whatsoever, the Company, in lieu of indemnifying, holding harmless or exonerating Indemnitee, shall pay, in the first instance, the entire amount incurred by Indemnitee, whether for judgments, liabilities, fines, penalties, amounts paid or to be paid in settlement and/or for Expenses, in connection with any Proceeding without requiring

Indemnitee to contribute to such payment, and the Company hereby waives and relinquishes any right of contribution it may have at any time against Indemnitee.

(b) The Company shall not enter into any settlement of any Proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such Proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnitee.

(c) The Company hereby agrees to fully indemnify, hold harmless and exonerate Indemnitee from any claims for contribution which may be brought by officers, directors or employees of the Company other than Indemnitee who may be jointly liable with Indemnitee.

9. **EXCLUSIONS**. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnification, advance expenses, hold harmless or exoneration payment in connection with any claim made against Indemnitee:

(a) for which payment has actually been received by or on behalf of Indemnitee under any insurance policy or other indemnity or advancement provision, except with respect to any excess beyond the amount actually received under any insurance policy, contract, agreement, other indemnity or advancement provision or otherwise;

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act (or any successor rule) or similar provisions of state statutory law or common law; or

(c) except as otherwise provided in Sections 14(f)-(g) hereof, prior to a Change in Control, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, hold harmless or exoneration payment, in its sole discretion, pursuant to the powers vested in the Company under applicable law. Indemnitee shall seek payments or Advances from the Company only to the extent that such payments or Advances are unavailable from any insurance policy of the Company covering Indemnitee.

10. **ADVANCES OF EXPENSES; DEFENSE OF CLAIM**.

(a) Notwithstanding any provision of this Agreement to the contrary, except for Section 27, and to the fullest extent not prohibited by applicable law, the Company shall pay the Expenses incurred by Indemnitee (or reasonably expected by Indemnitee to be incurred by Indemnitee within three months) in connection with any Proceeding within ten (10) days after the receipt by the Company of a statement or statements requesting such advances from time to time, prior to the final disposition of any Proceeding. Advances shall, to the fullest extent permitted by law, be unsecured and interest free. Advances shall, to the fullest extent permitted by law, be made without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to be indemnified, held harmless or exonerated under the other provisions of this Agreement. Advances shall include any and all reasonable Expenses incurred pursuing a Proceeding to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Company to support the advances claimed. To the fullest extent required by applicable law, such payments of Expenses in advance of the final disposition of the Proceeding shall be made only upon the Company's receipt of an undertaking, by or on behalf of Indemnitee, to repay the advanced amounts to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified, held harmless or exonerated by the Company under the provisions of this Agreement, the Charter, the Bylaws of the Company, applicable law or otherwise. This Section 10(a) shall not apply to any claim made by Indemnitee for which an indemnification, hold harmless or exoneration payment is excluded pursuant to Section 9.

(b) The Company will be entitled to participate in the Proceeding at its own expense.

(c) The Company shall not settle any action, claim or Proceeding (in whole or in part) which would impose any Expense, judgment, fine, penalty or limitation on Indemnitee without Indemnitee's prior written consent.

11. **PROCEDURE FOR NOTIFICATION AND APPLICATION FOR INDEMNIFICATION**.

(a) Indemnitee agrees to notify promptly the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding, claim, issue or matter therein which may be subject to indemnification, hold harmless or exoneration rights, or advancement of Expenses covered hereunder. The failure of Indemnitee to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement, or otherwise.

(b) Indemnitee may deliver to the Company a written application to indemnify, hold harmless or exonerate Indemnitee in accordance with this Agreement. Such application(s) may be delivered from time to time and at such time(s) as Indemnitee deems appropriate in his sole discretion. Following such a written application for indemnification by Indemnitee, Indemnitee's entitlement to indemnification shall be determined according to Section 12(a) of this Agreement.

12. **PROCEDURE UPON APPLICATION FOR INDEMNIFICATION**.

(a) A determination, if required by applicable law, with respect to Indemnitee's entitlement to indemnification shall be made in the specific case by one of the following methods, which shall be at the election of Indemnitee: (i) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (ii) by a committee of such directors designated by majority vote of such directors, (iii) if there are no Disinterested Directors or if such directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee, or (iv) by vote of the stockholders. The Company promptly will advise Indemnitee in writing with respect to any determination that Indemnitee is or is not entitled to indemnification, including a description of any reason or basis for which indemnification has been denied. If it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten (10) days after such determination. Indemnitee shall reasonably cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or Expenses (including reasonable attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby agrees to indemnify and to hold Indemnitee harmless therefrom.

(b) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 12(a) hereof, the Independent Counsel shall be selected as provided in this Section 12(b). The Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected and certifying that the Independent Counsel so selected meets the requirements of "Independent Counsel" as defined in Section 2 of this Agreement. If the Independent Counsel is selected by the Board, the Company shall give written notice to Indemnitee advising Indemnitee of the identity of the Independent Counsel so selected and certifying that the Independent Counsel so selected meets the requirements of "Independent Counsel" as defined in Section 2 of this Agreement. In either event, Indemnitee or the Company, as the case may be, may, within ten (10) days after such written notice of selection shall have been received, deliver to the Company or to Indemnitee, as the case may be, a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 2 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court of competent jurisdiction has determined that such objection is without merit. If, within twenty (20) days after submission by Indemnitee of a written request for indemnification pursuant to Section 11(b) hereof, no Independent Counsel shall

have been selected and not objected to, either the Company or Indemnitee may petition the Delaware Court for resolution of any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the Delaware Court, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 12(a) hereof. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 14(a) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

(c) The Company agrees to pay the reasonable fees and expenses of Independent Counsel and to fully indemnify and hold harmless such Independent Counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

13. **PRESUMPTIONS AND EFFECT OF CERTAIN PROCEEDINGS**.

(a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 11(b) of this Agreement, and the Company shall have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by the Disinterested Directors or Independent Counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by the Disinterested Directors or Independent Counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) If the person, persons or entity empowered or selected under Section 12 of this Agreement to determine whether Indemnitee is entitled to indemnification shall not have made a determination within thirty (30) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall, to the fullest extent permitted by law, be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a final judicial determination that any or all such indemnification is expressly prohibited under applicable law; provided, however, that such 30-day period may be extended for a reasonable time, not to exceed an additional fifteen (15) days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining or evaluating of documentation and/or information relating thereto.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(d) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the directors, manager, or officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member, or on information or records given or reports made to the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member, by an independent certified public accountant or by an appraiser or other expert selected by the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member. The provisions of this Section 13(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed or found to have met the applicable standard of conduct set forth in this Agreement.

(e) The knowledge and/or actions, or failure to act, of any other director, officer, trustee, partner, manager, managing member, fiduciary, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

14. **REMEDIES OF INDEMNITEE**.

(a) In the event that (i) a determination is made pursuant to Section 12 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses, to the fullest extent permitted by applicable law, is not timely made pursuant to Section 10 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 12(a) of this Agreement within thirty (30) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to Section 5, 6, 7 or the last sentence of Section 12(a) of this Agreement within ten (10) days after receipt by the Company of a written request therefor, (v) a contribution payment is not made in a timely manner pursuant to Section 8 of this Agreement, (vi) payment of indemnification pursuant to Section 3 or 4 of this Agreement is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification, or (vii) payment to Indemnitee pursuant to any hold harmless or exoneration rights under this Agreement or otherwise is not made in accordance with this Agreement, Indemnitee shall be entitled to an adjudication by the Delaware Court to such indemnification, hold harmless, exoneration, contribution or advancement rights. Alternatively, Indemnitee, at Indemnitee's option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Except as set forth herein, the provisions of Delaware law (without regard to its conflict of laws rules) shall apply to any such arbitration. The Company shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) In the event that a determination shall have been made pursuant to Section 12(a) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 14 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination.

(c) In any judicial proceeding or arbitration commenced pursuant to this Section 14, Indemnitee shall be presumed to be entitled to be indemnified, held harmless, exonerated and to receive advancement of Expenses under this Agreement and the Company shall have the burden of proving Indemnitee is not entitled to be indemnified, held harmless, exonerated and to receive advancement of Expenses, as the case may be, and the Company may not refer to or introduce into evidence any determination pursuant to Section 12(a) of this Agreement adverse to Indemnitee for any purpose. If Indemnitee commences a judicial proceeding or arbitration pursuant to this Section 14, Indemnitee shall not be required to reimburse the Company for any advances pursuant to Section 10 until a final determination is made with respect to Indemnitee's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed).

(d) If a determination shall have been made pursuant to Section 12(a) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 14, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(e) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 14 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

(f) The Company shall indemnify and hold harmless Indemnitee to the fullest extent permitted by law against all Expenses and, if requested by Indemnitee, shall (within ten (10) days after the Company's receipt of such written request) pay to Indemnitee, to the fullest extent permitted by applicable law, such Expenses which are

incurred by Indemnitee in connection with any judicial proceeding or arbitration brought by Indemnitee: (i) to enforce his rights under, or to recover damages for breach of, this Agreement or any other indemnification, hold harmless, exoneration, advancement or contribution agreement or provision of the Charter, or the Bylaws now or hereafter in effect; or (ii) for recovery or advances under any insurance policy maintained by any person for the benefit of Indemnitee, regardless of the outcome and whether Indemnitee ultimately is determined to be entitled to such indemnification, hold harmless or exoneration right, advancement, contribution or insurance recovery, as the case may be (unless such judicial proceeding or arbitration was not brought by Indemnitee in good faith).

(g) Interest shall be paid by the Company to Indemnitee at the legal rate under Delaware law for amounts which the Company indemnifies, holds harmless or exonerates, or advances, or is obliged to indemnify, hold harmless or exonerate or advance for the period commencing with the date on which Indemnitee requests indemnification, to be held harmless, exonerated, contribution, reimbursement or advancement of any Expenses and ending with the date on which such payment is made to Indemnitee by the Company.

15. **SECURITY**. Notwithstanding anything herein to the contrary, except for Section 27, to the extent requested by Indemnitee and approved by the Board, the Company may at any time and from time to time provide security to Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of Indemnitee.

16. **NON-EXCLUSIVITY; SURVIVAL OF RIGHTS; INSURANCE; SUBROGATION**.

(a) The rights of Indemnitee as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Charter, the Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any Proceeding (regardless of when such Proceeding is first threatened, commenced or completed) or claim, issue or matter therein arising out of, or related to, any action taken or omitted by such Indemnitee in Indemnitee's Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in applicable law, whether by statute or judicial decision, permits greater indemnification, hold harmless or exoneration rights or advancement of Expenses than would be afforded currently under the Charter, the Bylaws or this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) The DGCL, the Charter and the Bylaws permit the Company to purchase and maintain insurance or furnish similar protection or make other arrangements including, but not limited to, providing a trust fund, letter of credit, or surety bond ("***Indemnification Arrangements***") on behalf of Indemnitee against any liability asserted against Indemnitee or incurred by or on behalf of Indemnitee or in such capacity as a director, officer, employee or agent of the Company, or arising out of Indemnitee's status as such, whether or not the Company would have the power to indemnify Indemnitee against such liability under the provisions of this Agreement or under the DGCL, as it may then be in effect. The purchase, establishment, and maintenance of any such Indemnification Arrangement shall not in any way limit or affect the rights and obligations of the Company or of Indemnitee under this Agreement except as expressly provided herein, and the execution and delivery of this Agreement by the Company and Indemnitee shall not in any way limit or affect the rights and obligations of the Company or the other party or parties thereto under any such Indemnification Arrangement.

(c) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, trustees, partners, managers, managing members, fiduciaries, employees, or agents of the Company or of any other Enterprise which such person serves at the request of the Company, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, trustee, partner, managers, managing member, fiduciary, employee or agent under such policy or policies. If, at the time the Company receives notice from any source of a Proceeding

as to which Indemnitee is a party or a participant (as a witness, deponent or otherwise), the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(d) In the event of any payment under this Agreement, the Company, to the fullest extent permitted by law, shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(e) The Company's obligation to indemnify, hold harmless, exonerate or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, trustee, partner, manager, managing member, fiduciary, employee or agent of any other Enterprise shall be reduced by any amount Indemnitee has actually received as indemnification, hold harmless or exoneration payments or advancement of expenses from such Enterprise. Notwithstanding any other provision of this Agreement to the contrary except for Section 27, (i) Indemnitee shall have no obligation to reduce, offset, allocate, pursue or apportion any indemnification, hold harmless, exoneration, advancement, contribution or insurance coverage among multiple parties possessing such duties to Indemnitee prior to the Company's satisfaction and performance of all its obligations under this Agreement, and (ii) the Company shall perform fully its obligations under this Agreement without regard to whether Indemnitee holds, may pursue or has pursued any indemnification, advancement, hold harmless, exoneration, contribution or insurance coverage rights against any person or entity other than the Company.

17. **DURATION OF AGREEMENT**. All agreements and obligations of the Company contained herein shall continue during the period Indemnitee serves as a director or officer of the Company or as a director, officer, trustee, partner, manager, managing member, fiduciary, employee or agent of any other corporation, partnership, joint venture, trust, employee benefit plan or other Enterprise which Indemnitee serves at the request of the Company and shall continue thereafter so long as Indemnitee shall be subject to any possible Proceeding (including any rights of appeal thereto and any Proceeding commenced by Indemnitee pursuant to Section 14 of this Agreement) by reason of Indemnitee's Corporate Status, whether or not Indemnitee is acting in any such capacity at the time any liability or expense is incurred for which indemnification or advancement can be provided under this Agreement.

18. **SEVERABILITY**. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, each portion of any Section, paragraph or sentence of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section, paragraph or sentence of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

19. **ENFORCEMENT AND BINDING EFFECT**.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director, officer or key employee of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director, officer or key employee of the Company.

(b) Without limiting any of the rights of Indemnitee under the Charter or Bylaws of the Company as they may be amended from time to time, this Agreement constitutes the entire agreement between the parties

hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

(c) The indemnification, hold harmless, exoneration and advancement of expenses rights provided by or granted pursuant to this Agreement shall be binding upon and be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company), shall continue as to an Indemnitee who has ceased to be a director, officer, employee or agent of the Company or a director, officer, trustee, general partner, manager, managing member, fiduciary, employee or agent of any other Enterprise at the Company's request, and shall inure to the benefit of Indemnitee and Indemnitee's spouse, assigns, heirs, devisees, executors and administrators and other legal representatives.

(d) The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(e) The Company and Indemnitee agree herein that a monetary remedy for breach of this Agreement, at some later date, may be inadequate, impracticable and difficult of proof, and further agree that such breach may cause Indemnitee irreparable harm. Accordingly, the parties hereto agree that Indemnitee may, to the fullest extent permitted by law, enforce this Agreement by seeking, among other things, injunctive relief and/or specific performance hereof, without any necessity of showing actual damage or irreparable harm and that by seeking injunctive relief and/or specific performance, Indemnitee shall not be precluded from seeking or obtaining any other relief to which Indemnitee may be entitled. The Company and Indemnitee further agree that Indemnitee shall, to the fullest extent permitted by law, be entitled to such specific performance and injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, without the necessity of posting bonds or other undertaking in connection therewith. The Company acknowledges that in the absence of a waiver, a bond or undertaking may be required of Indemnitee by a court of competent jurisdiction. The Company hereby waives any such requirement of such a bond or undertaking to the fullest extent permitted by law.

20. **MODIFICATION AND WAIVER**. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the Company and Indemnitee. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions of this Agreement nor shall any waiver constitute a continuing waiver.

21. **NOTICES**. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) if delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, or (ii) mailed by certified or registered mail with postage prepaid, on the third (3rd) business day after the date on which it is so mailed:

(a) If to Indemnitee, at the address indicated on the signature page of this Agreement, or such other address as Indemnitee shall provide in writing to the Company.

(b) If to the Company, to:

DiamondPeak Holdings Corp.
40 W 57th Street
29th Floor
New York, New York 10019
Attention: David T. Hamamoto

With a copy, which shall not constitute notice, to

Ellenoff Grossman & Schole LLP
1345 Avenue of the Americas

New York, New York 10105
Attn: Stuart Neuhauser, Esq.
Fax No.: (212) 370-7889

or to any other address as may have been furnished to Indemnitee in writing by the Company.

22. **APPLICABLE LAW AND CONSENT TO JURISDICTION**. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 14(a) of this Agreement, to the fullest extent permitted by law, the Company and Indemnitee hereby irrevocably and unconditionally: (a) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Court and not in any other state or federal court in the United States of America or any court in any other country; (b) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement; (c) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court; and (d) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum, or is subject (in whole or in part) to a jury trial. To the fullest extent permitted by law, the parties hereby agree that the mailing of process and other papers in connection with any such action or proceeding in the manner provided by Section 21 or in such other manner as may be permitted by law, shall be valid and sufficient service thereof.

23. **IDENTICAL COUNTERPARTS**. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

24. **MISCELLANEOUS**. Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

25. **PERIOD OF LIMITATIONS**. No legal action shall be brought and no cause of action shall be asserted by or in the right of the Company against Indemnitee, Indemnitee's spouse, heirs, executors or personal or legal representatives after the expiration of two years from the date of accrual of such cause of action, and any claim or cause of action of the Company shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such two-year period; provided, however, that if any shorter period of limitations is otherwise applicable to any such cause of action such shorter period shall govern.

26. **ADDITIONAL ACTS**. If for the validation of any of the provisions in this Agreement any act, resolution, approval or other procedure is required to the fullest extent permitted by law, the Company undertakes to cause such act, resolution, approval or other procedure to be affected or adopted in a manner that will enable the Company to fulfill its obligations under this Agreement.

27. **WAIVER OF CLAIMS TO TRUST ACCOUNT**. Indemnitee hereby agrees that it does not have any right, title, interest or claim of any kind (each, a "***Claim***") in or to any monies in the trust account established in connection with the Company's initial public offering for the benefit of the Company and holders of shares issued in such offering, and hereby waives any Claim it may have in the future as a result of, or arising out of, any services provided to the Company and will not seek recourse against such trust account for any reason whatsoever.

28. **MAINTENANCE OF INSURANCE**. The Company shall use commercially reasonable efforts to obtain and maintain in effect during the entire period for which the Company is obligated to indemnify the Indemnitee under this Agreement, one or more policies of insurance with reputable insurance companies to provide the officers/directors of the Company with coverage for losses from wrongful acts and omissions and to ensure the Company's performance of its indemnification obligations under this Agreement. The Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director or officer under such policy or policies. In all such insurance policies, the Indemnitee shall be

named as an insured in such a manner as to provide the Indemnitee with the same rights and benefits as are accorded to the most favorably insured of the Company's directors and officers.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Indemnity Agreement to be signed as of the day and year first above written.

DIAMONDPEAK HOLDINGS CORP.

By: _____
Name: David T. Hamamoto
Title: Chief Executive Officer

INDEMNITEE

By: _____
Name:
Address:

IN WITNESS WHEREOF, the parties hereto have caused this Indemnity Agreement to be signed as of the day and year first above written.

DIAMONDPEAK HOLDINGS CORP.

By: _____
Name:
Title:

INDEMNITEE

By: _____
Name:
Address: [redacted]

[Signature page to Indemnity Agreement]

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT (this "***Agreement***") is made as of February ___, 2019, by and between DiamondPeak Holdings Corp., a Delaware corporation (the "***Company***"), and Andrew Richardson ("***Indemnitee***").

RECITALS

WHEREAS, highly competent persons have become more reluctant to serve publicly-held corporations as directors, officers or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of such corporations;

WHEREAS, the Board of Directors of the Company (the "***Board***") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. The Amended and Restated Certificate of Incorporation (the "***Charter***") and the Bylaws (the "***Bylaws***") of the Company require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to applicable provisions of the Delaware General Corporation Law ("***DGCL***"). The Charter, Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the Board, officers and other persons with respect to indemnification, hold harmless, exoneration, advancement and reimbursement rights;

WHEREAS, the uncertainties relating to such insurance and to indemnification have increased the difficulty of attracting and retaining such persons;

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company's stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, hold harmless, exonerate and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so protected against liabilities;

WHEREAS, this Agreement is a supplement to and in furtherance of the Charter and Bylaws of the Company and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder;

WHEREAS, Indemnitee may not be willing to serve as an officer or director, advisor or in another capacity without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that Indemnitee be so indemnified; and

NOW, THEREFORE, in consideration of the premises and the covenants contained herein and subject to the provisions of the letter agreement dated as of February ___, 2019, the Company and Indemnitee do hereby covenant and agree as follows:

TERMS AND CONDITIONS

1. **SERVICES TO THE COMPANY**. In consideration of the Company's covenants and obligations hereunder, Indemnitee will serve or continue to serve as an officer, director, advisor, key employee or any other capacity of the Company, as applicable, for so long as Indemnitee is duly elected or appointed or retained or until Indemnitee tenders Indemnitee's resignation or until Indemnitee is removed. The foregoing notwithstanding, this Agreement shall continue in full force and effect after Indemnitee has ceased to serve as a director, officer, advisor, key employee or in any other capacity of the Company, as provided in Section 17. This Agreement, however, shall not impose any obligation on Indemnitee or the Company to continue Indemnitee's service to the Company beyond any period otherwise required by law or by other agreements or commitments of the parties, if any.

2. **DEFINITIONS**. As used in this Agreement:

(a) References to "***agent***" shall mean any person who is or was a director, officer or employee of the Company or a subsidiary of the Company or other person authorized by the Company to act for the Company, to include such person serving in such capacity as a director, officer, employee, fiduciary or other official of another corporation, partnership, limited liability company, joint venture, trust or other enterprise at the request of, for the convenience of, or to represent the interests of the Company or a subsidiary of the Company.

(b) The terms "***Beneficial Owner***" and "***Beneficial Ownership***" shall have the meanings set forth in Rule 13d-3 promulgated under the Exchange Act (as defined below) as in effect on the date hereof.

(c) A "***Change in Control***" shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:

(i) Acquisition of Stock by Third Party. Other than an affiliate of DiamondPeak Sponsor LLC ("***DiamondPeak Sponsor***"), any Person (as defined below) is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing fifteen percent (15%) or more of the combined voting power of the Company's then outstanding securities entitled to vote generally in the election of directors, unless (1) the change in the relative Beneficial Ownership of the Company's securities by any Person results solely from a reduction in the aggregate number of outstanding shares of securities entitled to vote generally in the election of directors, or (2) such acquisition was approved in advance by the Continuing Directors (as defined below) and such acquisition would not constitute a Change in Control under part (iii) of this definition;

(ii) Change in Board of Directors. Individuals who, as of the date hereof, constitute the Board, and any new director whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two thirds of the directors then still in office who were directors on the date hereof or whose election for nomination for election was previously so approved (collectively, the "***Continuing Directors***"), cease for any reason to constitute at least a majority of the members of the Board;

(iii) Corporate Transactions. The effective date of a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination, involving the Company and one or more businesses (a "***Business Combination***"), in each case, unless, following such Business Combination: (1) all or substantially all of the individuals and entities who were the Beneficial Owners of securities entitled to vote generally in the election of directors immediately prior to such Business Combination beneficially own, directly or indirectly, more than 51% of the combined voting power of the then outstanding securities of the Company entitled to vote generally in the election of directors resulting from such Business Combination (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more Subsidiaries (as defined below)) in substantially the same proportions as their ownership immediately prior to such Business Combination, of the securities entitled to vote generally in the election of directors; (2) other than an affiliate of DiamondPeak Sponsor, no Person (excluding any corporation resulting from such Business Combination) is the Beneficial Owner, directly or indirectly, of 15% or more of the combined voting power of the then outstanding securities entitled to vote generally in the election of directors of the surviving corporation except to the extent that such ownership existed prior to the Business

Combination; and (3) at least a majority of the Board of Directors of the corporation resulting from such Business Combination were Continuing Directors at the time of the execution of the initial agreement, or of the action of the Board of Directors, providing for such Business Combination;

(iv) Liquidation. The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement or series of agreements for the sale or disposition by the Company of all or substantially all of the Company's assets, other than factoring the Company's current receivables or escrows due (or, if such stockholder approval is not required, the decision by the Board to proceed with such a liquidation, sale, or disposition in one transaction or a series of related transactions); or

(v) Other Events. There occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or any successor rule) (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

(d) "***Corporate Status***" describes the status of a person who is or was a director, officer, trustee, general partner, manager, managing member, fiduciary, employee or agent of the Company or of any other Enterprise (as defined below) which such person is or was serving at the request of the Company.

(e) "***Delaware Court***" shall mean the Court of Chancery of the State of Delaware.

(f) "***Disinterested Director***" shall mean a director of the Company who is not and was not a party to the Proceeding (as defined below) in respect of which indemnification is sought by Indemnitee.

(g) "***Enterprise***" shall mean the Company and any other corporation, constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger to which the Company (or any of its wholly owned subsidiaries) is a party, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent.

(h) "***Exchange Act***" shall mean the Securities Exchange Act of 1934, as amended.

(i) "***Expenses***" shall include all direct and indirect costs, fees and expenses of any type or nature whatsoever, including, without limitation, all reasonable attorneys' fees and costs, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, fees of private investigators and professional advisors, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, fax transmission charges, secretarial services and all other disbursements, obligations or expenses in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, settlement or appeal of, or otherwise participating in, a Proceeding (as defined below), including reasonable compensation for time spent by Indemnitee for which he or she is not otherwise compensated by the Company or any third party. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding (as defined below), including without limitation the principal, premium, security for, and other costs relating to any cost bond, supersede as bond, or other appeal bond or its equivalent. "Expenses," however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(j) References to "***fines***" shall include any excise tax assessed on Indemnitee with respect to any employee benefit plan; references to "**serving at the request of the Company**" shall include any service as a director, officer, employee, agent or fiduciary of the Company which imposes duties on, or involves services by, such director, officer, employee, agent or fiduciary with respect to an employee benefit plan, its participants or beneficiaries; and if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan, Indemnitee shall be deemed to have acted in a manner "**not opposed to the best interests of the Company**" as referred to in this Agreement.

(k) "***Independent Counsel***" shall mean a law firm or a member of a law firm with significant experience in matters of corporation law and that neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to

matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements); or (ii) any other party to the Proceeding (as defined below) giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

(l) The term "***Person***" shall have the meaning as set forth in Sections 13(d) and 14(d) of the Exchange Act as in effect on the date hereof; provided, however, that "Person" shall exclude: (i) the Company; (ii) any Subsidiaries (as defined below) of the Company; (iii) any employment benefit plan of the Company or of a Subsidiary (as defined below) of the Company or of any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company; and (iv) any trustee or other fiduciary holding securities under an employee benefit plan of the Company or of a Subsidiary (as defined below) of the Company or of a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

(m) The term "***Proceeding***" shall include any threatened, pending or completed action, suit, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil (including intentional or unintentional tort claims), criminal, administrative or investigative or related nature, in which Indemnitee was, is, will or might be involved as a party or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Company, by reason of any action (or failure to act) taken by Indemnitee or of any action (or failure to act) on Indemnitee's part while acting as a director or officer of the Company, or by reason of the fact that Indemnitee is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Agreement.

(n) The term "***Subsidiary***," with respect to any Person, shall mean any corporation, limited liability company, partnership, joint venture, trust or other entity of which a majority of the voting power of the voting equity securities or equity interest is owned, directly or indirectly, by that Person.

3. **INDEMNITY IN THIRD-PARTY PROCEEDINGS**. To the fullest extent permitted by applicable law, the Company shall indemnify, hold harmless and exonerate Indemnitee in accordance with the provisions of this Section 3 if Indemnitee was, is, or is threatened to be made, a party to or a participant (as a witness, deponent or otherwise) in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor by reason of Indemnitee's Corporate Status. Pursuant to this Section 3, Indemnitee shall be indemnified, held harmless and exonerated against all Expenses, judgments, liabilities, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties and amounts paid in settlement) actually, and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal Proceeding, had no reasonable cause to believe that Indemnitee's conduct was unlawful.

4. **INDEMNITY IN PROCEEDINGS BY OR IN THE RIGHT OF THE COMPANY**. To the fullest extent permitted by applicable law, the Company shall indemnify, hold harmless and exonerate Indemnitee in accordance with the provisions of this Section 4 if Indemnitee was, is, or is threatened to be made, a party to or a participant (as a witness, deponent or otherwise) in any Proceeding by or in the right of the Company to procure a judgment in its favor by reason of Indemnitee's Corporate Status. Pursuant to this Section 4, Indemnitee shall be indemnified, held harmless and exonerated against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company. No indemnification, hold harmless or exoneration for Expenses shall be made under this Section 4 in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court to be liable to the Company, unless and only to the extent that any court in which the Proceeding was brought or the Delaware

Court shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification, to be held harmless or to exoneration.

5. **INDEMNIFICATION FOR EXPENSES OF A PARTY WHO IS WHOLLY OR PARTLY SUCCESSFUL**. Notwithstanding any other provisions of this Agreement except for Section 27, to the extent that Indemnitee was or is, by reason of Indemnitee's Corporate Status, a party to (or a participant in) and is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee against all Expenses actually and reasonably incurred by Indemnitee in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with each successfully resolved claim, issue or matter. If Indemnitee is not wholly successful in such Proceeding, the Company also shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee against all Expenses reasonably incurred in connection with a claim, issue or matter related to any claim, issue, or matter on which Indemnitee was successful. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

6. **INDEMNIFICATION FOR EXPENSES OF A WITNESS**. Notwithstanding any other provision of this Agreement except for Section 27, to the extent that Indemnitee is, by reason of Indemnitee's Corporate Status, a witness or deponent in any Proceeding to which Indemnitee was or is not a party or threatened to be made a party, Indemnitee shall, to the fullest extent permitted by applicable law, be indemnified, held harmless and exonerated against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith.

7. **ADDITIONAL INDEMNIFICATION, HOLD HARMLESS AND EXONERATION RIGHTS.**

(a) Notwithstanding any limitation in Sections 3, 4, or 5, except for Section 27, the Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties and amounts paid in settlement) actually and reasonably incurred by Indemnitee in connection with the Proceeding. No indemnification, hold harmless or exoneration rights shall be available under this Section 7(a) on account of Indemnitee's conduct which constitutes a breach of Indemnitee's duty of loyalty to the Company or its stockholders or is an act or omission not in good faith or which involves intentional misconduct or a knowing violation of the law.

(b) Notwithstanding any limitation in Sections 3, 4, 5 or 7(a), except for Section 27, the Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties and amounts paid in settlement) actually and reasonably incurred by Indemnitee in connection with the Proceeding.

8. **CONTRIBUTION IN THE EVENT OF JOINT LIABILITY**.

(a) To the fullest extent permissible under applicable law, if the indemnification, hold harmless and/or exoneration rights provided for in this Agreement are unavailable to Indemnitee in whole or in part for any reason whatsoever, the Company, in lieu of indemnifying, holding harmless or exonerating Indemnitee, shall pay, in the first instance, the entire amount incurred by Indemnitee, whether for judgments, liabilities, fines, penalties, amounts paid or to be paid in settlement and/or for Expenses, in connection with any Proceeding without requiring

Indemnitee to contribute to such payment, and the Company hereby waives and relinquishes any right of contribution it may have at any time against Indemnitee.

(b) The Company shall not enter into any settlement of any Proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such Proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnitee.

(c) The Company hereby agrees to fully indemnify, hold harmless and exonerate Indemnitee from any claims for contribution which may be brought by officers, directors or employees of the Company other than Indemnitee who may be jointly liable with Indemnitee.

9. **EXCLUSIONS**. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnification, advance expenses, hold harmless or exoneration payment in connection with any claim made against Indemnitee:

(a) for which payment has actually been received by or on behalf of Indemnitee under any insurance policy or other indemnity or advancement provision, except with respect to any excess beyond the amount actually received under any insurance policy, contract, agreement, other indemnity or advancement provision or otherwise;

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act (or any successor rule) or similar provisions of state statutory law or common law; or

(c) except as otherwise provided in Sections 14(f)-(g) hereof, prior to a Change in Control, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, hold harmless or exoneration payment, in its sole discretion, pursuant to the powers vested in the Company under applicable law. Indemnitee shall seek payments or Advances from the Company only to the extent that such payments or Advances are unavailable from any insurance policy of the Company covering Indemnitee.

10. **ADVANCES OF EXPENSES; DEFENSE OF CLAIM**.

(a) Notwithstanding any provision of this Agreement to the contrary, except for Section 27, and to the fullest extent not prohibited by applicable law, the Company shall pay the Expenses incurred by Indemnitee (or reasonably expected by Indemnitee to be incurred by Indemnitee within three months) in connection with any Proceeding within ten (10) days after the receipt by the Company of a statement or statements requesting such advances from time to time, prior to the final disposition of any Proceeding. Advances shall, to the fullest extent permitted by law, be unsecured and interest free. Advances shall, to the fullest extent permitted by law, be made without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to be indemnified, held harmless or exonerated under the other provisions of this Agreement. Advances shall include any and all reasonable Expenses incurred pursuing a Proceeding to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Company to support the advances claimed. To the fullest extent required by applicable law, such payments of Expenses in advance of the final disposition of the Proceeding shall be made only upon the Company's receipt of an undertaking, by or on behalf of Indemnitee, to repay the advanced amounts to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified, held harmless or exonerated by the Company under the provisions of this Agreement, the Charter, the Bylaws of the Company, applicable law or otherwise. This Section 10(a) shall not apply to any claim made by Indemnitee for which an indemnification, hold harmless or exoneration payment is excluded pursuant to Section 9.

(b) The Company will be entitled to participate in the Proceeding at its own expense.

(c) The Company shall not settle any action, claim or Proceeding (in whole or in part) which would impose any Expense, judgment, fine, penalty or limitation on Indemnitee without Indemnitee's prior written consent.

11. **PROCEDURE FOR NOTIFICATION AND APPLICATION FOR INDEMNIFICATION**.

(a) Indemnitee agrees to notify promptly the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding, claim, issue or matter therein which may be subject to indemnification, hold harmless or exoneration rights, or advancement of Expenses covered hereunder. The failure of Indemnitee to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement, or otherwise.

(b) Indemnitee may deliver to the Company a written application to indemnify, hold harmless or exonerate Indemnitee in accordance with this Agreement. Such application(s) may be delivered from time to time and at such time(s) as Indemnitee deems appropriate in his sole discretion. Following such a written application for indemnification by Indemnitee, Indemnitee's entitlement to indemnification shall be determined according to Section 12(a) of this Agreement.

12. **PROCEDURE UPON APPLICATION FOR INDEMNIFICATION**.

(a) A determination, if required by applicable law, with respect to Indemnitee's entitlement to indemnification shall be made in the specific case by one of the following methods, which shall be at the election of Indemnitee: (i) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (ii) by a committee of such directors designated by majority vote of such directors, (iii) if there are no Disinterested Directors or if such directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee, or (iv) by vote of the stockholders. The Company promptly will advise Indemnitee in writing with respect to any determination that Indemnitee is or is not entitled to indemnification, including a description of any reason or basis for which indemnification has been denied. If it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten (10) days after such determination. Indemnitee shall reasonably cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or Expenses (including reasonable attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby agrees to indemnify and to hold Indemnitee harmless therefrom.

(b) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 12(a) hereof, the Independent Counsel shall be selected as provided in this Section 12(b). The Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected and certifying that the Independent Counsel so selected meets the requirements of "Independent Counsel" as defined in Section 2 of this Agreement. If the Independent Counsel is selected by the Board, the Company shall give written notice to Indemnitee advising Indemnitee of the identity of the Independent Counsel so selected and certifying that the Independent Counsel so selected meets the requirements of "Independent Counsel" as defined in Section 2 of this Agreement. In either event, Indemnitee or the Company, as the case may be, may, within ten (10) days after such written notice of selection shall have been received, deliver to the Company or to Indemnitee, as the case may be, a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 2 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court of competent jurisdiction has determined that such objection is without merit. If, within twenty (20) days after submission by Indemnitee of a written request for indemnification pursuant to Section 11(b) hereof, no Independent Counsel shall

have been selected and not objected to, either the Company or Indemnitee may petition the Delaware Court for resolution of any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the Delaware Court, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 12(a) hereof. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 14(a) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

(c) The Company agrees to pay the reasonable fees and expenses of Independent Counsel and to fully indemnify and hold harmless such Independent Counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

13. **PRESUMPTIONS AND EFFECT OF CERTAIN PROCEEDINGS**.

(a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 11(b) of this Agreement, and the Company shall have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by the Disinterested Directors or Independent Counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by the Disinterested Directors or Independent Counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) If the person, persons or entity empowered or selected under Section 12 of this Agreement to determine whether Indemnitee is entitled to indemnification shall not have made a determination within thirty (30) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall, to the fullest extent permitted by law, be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a final judicial determination that any or all such indemnification is expressly prohibited under applicable law; provided, however, that such 30-day period may be extended for a reasonable time, not to exceed an additional fifteen (15) days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining or evaluating of documentation and/or information relating thereto.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(d) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the directors, manager, or officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member, or on information or records given or reports made to the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member, by an independent certified public accountant or by an appraiser or other expert selected by the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member. The provisions of this Section 13(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed or found to have met the applicable standard of conduct set forth in this Agreement.

(e) The knowledge and/or actions, or failure to act, of any other director, officer, trustee, partner, manager, managing member, fiduciary, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

14. **REMEDIES OF INDEMNITEE**.

(a) In the event that (i) a determination is made pursuant to Section 12 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses, to the fullest extent permitted by applicable law, is not timely made pursuant to Section 10 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 12(a) of this Agreement within thirty (30) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to Section 5, 6, 7 or the last sentence of Section 12(a) of this Agreement within ten (10) days after receipt by the Company of a written request therefor, (v) a contribution payment is not made in a timely manner pursuant to Section 8 of this Agreement, (vi) payment of indemnification pursuant to Section 3 or 4 of this Agreement is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification, or (vii) payment to Indemnitee pursuant to any hold harmless or exoneration rights under this Agreement or otherwise is not made in accordance with this Agreement, Indemnitee shall be entitled to an adjudication by the Delaware Court to such indemnification, hold harmless, exoneration, contribution or advancement rights. Alternatively, Indemnitee, at Indemnitee's option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Except as set forth herein, the provisions of Delaware law (without regard to its conflict of laws rules) shall apply to any such arbitration. The Company shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) In the event that a determination shall have been made pursuant to Section 12(a) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 14 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination.

(c) In any judicial proceeding or arbitration commenced pursuant to this Section 14, Indemnitee shall be presumed to be entitled to be indemnified, held harmless, exonerated and to receive advancement of Expenses under this Agreement and the Company shall have the burden of proving Indemnitee is not entitled to be indemnified, held harmless, exonerated and to receive advancement of Expenses, as the case may be, and the Company may not refer to or introduce into evidence any determination pursuant to Section 12(a) of this Agreement adverse to Indemnitee for any purpose. If Indemnitee commences a judicial proceeding or arbitration pursuant to this Section 14, Indemnitee shall not be required to reimburse the Company for any advances pursuant to Section 10 until a final determination is made with respect to Indemnitee's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed).

(d) If a determination shall have been made pursuant to Section 12(a) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 14, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(e) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 14 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

(f) The Company shall indemnify and hold harmless Indemnitee to the fullest extent permitted by law against all Expenses and, if requested by Indemnitee, shall (within ten (10) days after the Company's receipt of such written request) pay to Indemnitee, to the fullest extent permitted by applicable law, such Expenses which are

incurred by Indemnitee in connection with any judicial proceeding or arbitration brought by Indemnitee: (i) to enforce his rights under, or to recover damages for breach of, this Agreement or any other indemnification, hold harmless, exoneration, advancement or contribution agreement or provision of the Charter, or the Bylaws now or hereafter in effect; or (ii) for recovery or advances under any insurance policy maintained by any person for the benefit of Indemnitee, regardless of the outcome and whether Indemnitee ultimately is determined to be entitled to such indemnification, hold harmless or exoneration right, advancement, contribution or insurance recovery, as the case may be (unless such judicial proceeding or arbitration was not brought by Indemnitee in good faith).

(g) Interest shall be paid by the Company to Indemnitee at the legal rate under Delaware law for amounts which the Company indemnifies, holds harmless or exonerates, or advances, or is obliged to indemnify, hold harmless or exonerate or advance for the period commencing with the date on which Indemnitee requests indemnification, to be held harmless, exonerated, contribution, reimbursement or advancement of any Expenses and ending with the date on which such payment is made to Indemnitee by the Company.

15. **SECURITY**. Notwithstanding anything herein to the contrary, except for Section 27, to the extent requested by Indemnitee and approved by the Board, the Company may at any time and from time to time provide security to Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of Indemnitee.

16. **NON-EXCLUSIVITY; SURVIVAL OF RIGHTS; INSURANCE; SUBROGATION**.

(a) The rights of Indemnitee as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Charter, the Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any Proceeding (regardless of when such Proceeding is first threatened, commenced or completed) or claim, issue or matter therein arising out of, or related to, any action taken or omitted by such Indemnitee in Indemnitee's Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in applicable law, whether by statute or judicial decision, permits greater indemnification, hold harmless or exoneration rights or advancement of Expenses than would be afforded currently under the Charter, the Bylaws or this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) The DGCL, the Charter and the Bylaws permit the Company to purchase and maintain insurance or furnish similar protection or make other arrangements including, but not limited to, providing a trust fund, letter of credit, or surety bond ("***Indemnification Arrangements***") on behalf of Indemnitee against any liability asserted against Indemnitee or incurred by or on behalf of Indemnitee or in such capacity as a director, officer, employee or agent of the Company, or arising out of Indemnitee's status as such, whether or not the Company would have the power to indemnify Indemnitee against such liability under the provisions of this Agreement or under the DGCL, as it may then be in effect. The purchase, establishment, and maintenance of any such Indemnification Arrangement shall not in any way limit or affect the rights and obligations of the Company or of Indemnitee under this Agreement except as expressly provided herein, and the execution and delivery of this Agreement by the Company and Indemnitee shall not in any way limit or affect the rights and obligations of the Company or the other party or parties thereto under any such Indemnification Arrangement.

(c) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, trustees, partners, managers, managing members, fiduciaries, employees, or agents of the Company or of any other Enterprise which such person serves at the request of the Company, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, trustee, partner, managers, managing member, fiduciary, employee or agent under such policy or policies. If, at the time the Company receives notice from any source of a Proceeding

as to which Indemnitee is a party or a participant (as a witness, deponent or otherwise), the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(d) In the event of any payment under this Agreement, the Company, to the fullest extent permitted by law, shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(e) The Company's obligation to indemnify, hold harmless, exonerate or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, trustee, partner, manager, managing member, fiduciary, employee or agent of any other Enterprise shall be reduced by any amount Indemnitee has actually received as indemnification, hold harmless or exoneration payments or advancement of expenses from such Enterprise. Notwithstanding any other provision of this Agreement to the contrary except for Section 27, (i) Indemnitee shall have no obligation to reduce, offset, allocate, pursue or apportion any indemnification, hold harmless, exoneration, advancement, contribution or insurance coverage among multiple parties possessing such duties to Indemnitee prior to the Company's satisfaction and performance of all its obligations under this Agreement, and (ii) the Company shall perform fully its obligations under this Agreement without regard to whether Indemnitee holds, may pursue or has pursued any indemnification, advancement, hold harmless, exoneration, contribution or insurance coverage rights against any person or entity other than the Company.

17. **DURATION OF AGREEMENT**. All agreements and obligations of the Company contained herein shall continue during the period Indemnitee serves as a director or officer of the Company or as a director, officer, trustee, partner, manager, managing member, fiduciary, employee or agent of any other corporation, partnership, joint venture, trust, employee benefit plan or other Enterprise which Indemnitee serves at the request of the Company and shall continue thereafter so long as Indemnitee shall be subject to any possible Proceeding (including any rights of appeal thereto and any Proceeding commenced by Indemnitee pursuant to Section 14 of this Agreement) by reason of Indemnitee's Corporate Status, whether or not Indemnitee is acting in any such capacity at the time any liability or expense is incurred for which indemnification or advancement can be provided under this Agreement.

18. **SEVERABILITY**. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, each portion of any Section, paragraph or sentence of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section, paragraph or sentence of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

19. **ENFORCEMENT AND BINDING EFFECT**.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director, officer or key employee of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director, officer or key employee of the Company.

(b) Without limiting any of the rights of Indemnitee under the Charter or Bylaws of the Company as they may be amended from time to time, this Agreement constitutes the entire agreement between the parties

hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

(c) The indemnification, hold harmless, exoneration and advancement of expenses rights provided by or granted pursuant to this Agreement shall be binding upon and be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company), shall continue as to an Indemnitee who has ceased to be a director, officer, employee or agent of the Company or a director, officer, trustee, general partner, manager, managing member, fiduciary, employee or agent of any other Enterprise at the Company's request, and shall inure to the benefit of Indemnitee and Indemnitee's spouse, assigns, heirs, devisees, executors and administrators and other legal representatives.

(d) The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(e) The Company and Indemnitee agree herein that a monetary remedy for breach of this Agreement, at some later date, may be inadequate, impracticable and difficult of proof, and further agree that such breach may cause Indemnitee irreparable harm. Accordingly, the parties hereto agree that Indemnitee may, to the fullest extent permitted by law, enforce this Agreement by seeking, among other things, injunctive relief and/or specific performance hereof, without any necessity of showing actual damage or irreparable harm and that by seeking injunctive relief and/or specific performance, Indemnitee shall not be precluded from seeking or obtaining any other relief to which Indemnitee may be entitled. The Company and Indemnitee further agree that Indemnitee shall, to the fullest extent permitted by law, be entitled to such specific performance and injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, without the necessity of posting bonds or other undertaking in connection therewith. The Company acknowledges that in the absence of a waiver, a bond or undertaking may be required of Indemnitee by a court of competent jurisdiction. The Company hereby waives any such requirement of such a bond or undertaking to the fullest extent permitted by law.

20. **MODIFICATION AND WAIVER**. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the Company and Indemnitee. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions of this Agreement nor shall any waiver constitute a continuing waiver.

21. **NOTICES**. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) if delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, or (ii) mailed by certified or registered mail with postage prepaid, on the third (3rd) business day after the date on which it is so mailed:

(a) If to Indemnitee, at the address indicated on the signature page of this Agreement, or such other address as Indemnitee shall provide in writing to the Company.

(b) If to the Company, to:

DiamondPeak Holdings Corp.
40 W 57th Street
29th Floor
New York, New York 10019
Attention: David T. Hamamoto

With a copy, which shall not constitute notice, to

Ellenoff Grossman & Schole LLP
1345 Avenue of the Americas

New York, New York 10105
Attn: Stuart Neuhauser, Esq.
Fax No.: (212) 370-7889

or to any other address as may have been furnished to Indemnitee in writing by the Company.

22. **APPLICABLE LAW AND CONSENT TO JURISDICTION**. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 14(a) of this Agreement, to the fullest extent permitted by law, the Company and Indemnitee hereby irrevocably and unconditionally: (a) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Court and not in any other state or federal court in the United States of America or any court in any other country; (b) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement; (c) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court; and (d) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum, or is subject (in whole or in part) to a jury trial. To the fullest extent permitted by law, the parties hereby agree that the mailing of process and other papers in connection with any such action or proceeding in the manner provided by Section 21 or in such other manner as may be permitted by law, shall be valid and sufficient service thereof.

23. **IDENTICAL COUNTERPARTS**. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

24. **MISCELLANEOUS**. Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

25. **PERIOD OF LIMITATIONS**. No legal action shall be brought and no cause of action shall be asserted by or in the right of the Company against Indemnitee, Indemnitee's spouse, heirs, executors or personal or legal representatives after the expiration of two years from the date of accrual of such cause of action, and any claim or cause of action of the Company shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such two-year period; provided, however, that if any shorter period of limitations is otherwise applicable to any such cause of action such shorter period shall govern.

26. **ADDITIONAL ACTS**. If for the validation of any of the provisions in this Agreement any act, resolution, approval or other procedure is required to the fullest extent permitted by law, the Company undertakes to cause such act, resolution, approval or other procedure to be affected or adopted in a manner that will enable the Company to fulfill its obligations under this Agreement.

27. **WAIVER OF CLAIMS TO TRUST ACCOUNT**. Indemnitee hereby agrees that it does not have any right, title, interest or claim of any kind (each, a "***Claim***") in or to any monies in the trust account established in connection with the Company's initial public offering for the benefit of the Company and holders of shares issued in such offering, and hereby waives any Claim it may have in the future as a result of, or arising out of, any services provided to the Company and will not seek recourse against such trust account for any reason whatsoever.

28. **MAINTENANCE OF INSURANCE**. The Company shall use commercially reasonable efforts to obtain and maintain in effect during the entire period for which the Company is obligated to indemnify the Indemnitee under this Agreement, one or more policies of insurance with reputable insurance companies to provide the officers/directors of the Company with coverage for losses from wrongful acts and omissions and to ensure the Company's performance of its indemnification obligations under this Agreement. The Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director or officer under such policy or policies. In all such insurance policies, the Indemnitee shall be

named as an insured in such a manner as to provide the Indemnitee with the same rights and benefits as are accorded to the most favorably insured of the Company's directors and officers.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Indemnity Agreement to be signed as of the day and year first above written.

DIAMONDPEAK HOLDINGS CORP.

By: _____
Name: David T. Hamamoto
Title: Chief Executive Officer

INDEMNITEE

By: _____
Name:
Address:

IN WITNESS WHEREOF, the parties hereto have caused this Indemnity Agreement to be signed as of the day and year first above written.

DIAMONDPEAK HOLDINGS CORP.

By: _____
Name: David T. Hamamoto
Title: Chief Executive Officer

INDEMNITEE

By: _____
Name: Andrew Richardson
Address:

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT (this "***Agreement***") is made as of February ___, 2019, by and between DiamondPeak Holdings Corp., a Delaware corporation (the "***Company***"), and Judith A. Hannaway ("***Indemnitee***").

RECITALS

WHEREAS, highly competent persons have become more reluctant to serve publicly-held corporations as directors, officers or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of such corporations;

WHEREAS, the Board of Directors of the Company (the "***Board***") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. The Amended and Restated Certificate of Incorporation (the "***Charter***") and the Bylaws (the "***Bylaws***") of the Company require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to applicable provisions of the Delaware General Corporation Law ("***DGCL***"). The Charter, Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the Board, officers and other persons with respect to indemnification, hold harmless, exoneration, advancement and reimbursement rights;

WHEREAS, the uncertainties relating to such insurance and to indemnification have increased the difficulty of attracting and retaining such persons;

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company's stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, hold harmless, exonerate and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so protected against liabilities;

WHEREAS, this Agreement is a supplement to and in furtherance of the Charter and Bylaws of the Company and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder;

WHEREAS, Indemnitee may not be willing to serve as an officer or director, advisor or in another capacity without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that Indemnitee be so indemnified; and

NOW, THEREFORE, in consideration of the premises and the covenants contained herein and subject to the provisions of the letter agreement dated as of February ___, 2019, the Company and Indemnitee do hereby covenant and agree as follows:

TERMS AND CONDITIONS

1. **SERVICES TO THE COMPANY**. In consideration of the Company's covenants and obligations hereunder, Indemnitee will serve or continue to serve as an officer, director, advisor, key employee or any other capacity of the Company, as applicable, for so long as Indemnitee is duly elected or appointed or retained or until Indemnitee tenders Indemnitee's resignation or until Indemnitee is removed. The foregoing notwithstanding, this Agreement shall continue in full force and effect after Indemnitee has ceased to serve as a director, officer, advisor, key employee or in any other capacity of the Company, as provided in Section 17. This Agreement, however, shall not impose any obligation on Indemnitee or the Company to continue Indemnitee's service to the Company beyond any period otherwise required by law or by other agreements or commitments of the parties, if any.

2. **DEFINITIONS**. As used in this Agreement:

(a) References to "***agent***" shall mean any person who is or was a director, officer or employee of the Company or a subsidiary of the Company or other person authorized by the Company to act for the Company, to include such person serving in such capacity as a director, officer, employee, fiduciary or other official of another corporation, partnership, limited liability company, joint venture, trust or other enterprise at the request of, for the convenience of, or to represent the interests of the Company or a subsidiary of the Company.

(b) The terms "***Beneficial Owner***" and "***Beneficial Ownership***" shall have the meanings set forth in Rule 13d-3 promulgated under the Exchange Act (as defined below) as in effect on the date hereof.

(c) A "***Change in Control***" shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:

(i) Acquisition of Stock by Third Party. Other than an affiliate of DiamondPeak Sponsor LLC ("***DiamondPeak Sponsor***"), any Person (as defined below) is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing fifteen percent (15%) or more of the combined voting power of the Company's then outstanding securities entitled to vote generally in the election of directors, unless (1) the change in the relative Beneficial Ownership of the Company's securities by any Person results solely from a reduction in the aggregate number of outstanding shares of securities entitled to vote generally in the election of directors, or (2) such acquisition was approved in advance by the Continuing Directors (as defined below) and such acquisition would not constitute a Change in Control under part (iii) of this definition;

(ii) Change in Board of Directors. Individuals who, as of the date hereof, constitute the Board, and any new director whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two thirds of the directors then still in office who were directors on the date hereof or whose election for nomination for election was previously so approved (collectively, the "***Continuing Directors***"), cease for any reason to constitute at least a majority of the members of the Board;

(iii) Corporate Transactions. The effective date of a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination, involving the Company and one or more businesses (a "***Business Combination***"), in each case, unless, following such Business Combination: (1) all or substantially all of the individuals and entities who were the Beneficial Owners of securities entitled to vote generally in the election of directors immediately prior to such Business Combination beneficially own, directly or indirectly, more than 51% of the combined voting power of the then outstanding securities of the Company entitled to vote generally in the election of directors resulting from such Business Combination (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more Subsidiaries (as defined below)) in substantially the same proportions as their ownership immediately prior to such Business Combination, of the securities entitled to vote generally in the election of directors; (2) other than an affiliate of DiamondPeak Sponsor, no Person (excluding any corporation resulting from such Business Combination) is the Beneficial Owner, directly or indirectly, of 15% or more of the combined voting power of the then outstanding securities entitled to vote generally in the election of directors of the surviving corporation except to the extent that such ownership existed prior to the Business

Combination; and (3) at least a majority of the Board of Directors of the corporation resulting from such Business Combination were Continuing Directors at the time of the execution of the initial agreement, or of the action of the Board of Directors, providing for such Business Combination;

(iv) Liquidation. The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement or series of agreements for the sale or disposition by the Company of all or substantially all of the Company's assets, other than factoring the Company's current receivables or escrows due (or, if such stockholder approval is not required, the decision by the Board to proceed with such a liquidation, sale, or disposition in one transaction or a series of related transactions); or

(v) Other Events. There occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or any successor rule) (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

(d) "***Corporate Status***" describes the status of a person who is or was a director, officer, trustee, general partner, manager, managing member, fiduciary, employee or agent of the Company or of any other Enterprise (as defined below) which such person is or was serving at the request of the Company.

(e) "***Delaware Court***" shall mean the Court of Chancery of the State of Delaware.

(f) "***Disinterested Director***" shall mean a director of the Company who is not and was not a party to the Proceeding (as defined below) in respect of which indemnification is sought by Indemnitee.

(g) "***Enterprise***" shall mean the Company and any other corporation, constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger to which the Company (or any of its wholly owned subsidiaries) is a party, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent.

(h) "***Exchange Act***" shall mean the Securities Exchange Act of 1934, as amended.

(i) "***Expenses***" shall include all direct and indirect costs, fees and expenses of any type or nature whatsoever, including, without limitation, all reasonable attorneys' fees and costs, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, fees of private investigators and professional advisors, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, fax transmission charges, secretarial services and all other disbursements, obligations or expenses in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, settlement or appeal of, or otherwise participating in, a Proceeding (as defined below), including reasonable compensation for time spent by Indemnitee for which he or she is not otherwise compensated by the Company or any third party. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding (as defined below), including without limitation the principal, premium, security for, and other costs relating to any cost bond, supersede as bond, or other appeal bond or its equivalent. "Expenses," however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(j) References to "***fines***" shall include any excise tax assessed on Indemnitee with respect to any employee benefit plan; references to "**serving at the request of the Company**" shall include any service as a director, officer, employee, agent or fiduciary of the Company which imposes duties on, or involves services by, such director, officer, employee, agent or fiduciary with respect to an employee benefit plan, its participants or beneficiaries; and if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan, Indemnitee shall be deemed to have acted in a manner "**not opposed to the best interests of the Company**" as referred to in this Agreement.

(k) "***Independent Counsel***" shall mean a law firm or a member of a law firm with significant experience in matters of corporation law and that neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to

matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements); or (ii) any other party to the Proceeding (as defined below) giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

(l) The term "***Person***" shall have the meaning as set forth in Sections 13(d) and 14(d) of the Exchange Act as in effect on the date hereof; provided, however, that "Person" shall exclude: (i) the Company; (ii) any Subsidiaries (as defined below) of the Company; (iii) any employment benefit plan of the Company or of a Subsidiary (as defined below) of the Company or of any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company; and (iv) any trustee or other fiduciary holding securities under an employee benefit plan of the Company or of a Subsidiary (as defined below) of the Company or of a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

(m) The term "***Proceeding***" shall include any threatened, pending or completed action, suit, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil (including intentional or unintentional tort claims), criminal, administrative or investigative or related nature, in which Indemnitee was, is, will or might be involved as a party or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Company, by reason of any action (or failure to act) taken by Indemnitee or of any action (or failure to act) on Indemnitee's part while acting as a director or officer of the Company, or by reason of the fact that Indemnitee is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Agreement.

(n) The term "***Subsidiary***," with respect to any Person, shall mean any corporation, limited liability company, partnership, joint venture, trust or other entity of which a majority of the voting power of the voting equity securities or equity interest is owned, directly or indirectly, by that Person.

3. **INDEMNITY IN THIRD-PARTY PROCEEDINGS**. To the fullest extent permitted by applicable law, the Company shall indemnify, hold harmless and exonerate Indemnitee in accordance with the provisions of this Section 3 if Indemnitee was, is, or is threatened to be made, a party to or a participant (as a witness, deponent or otherwise) in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor by reason of Indemnitee's Corporate Status. Pursuant to this Section 3, Indemnitee shall be indemnified, held harmless and exonerated against all Expenses, judgments, liabilities, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties and amounts paid in settlement) actually, and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal Proceeding, had no reasonable cause to believe that Indemnitee's conduct was unlawful.

4. **INDEMNITY IN PROCEEDINGS BY OR IN THE RIGHT OF THE COMPANY**. To the fullest extent permitted by applicable law, the Company shall indemnify, hold harmless and exonerate Indemnitee in accordance with the provisions of this Section 4 if Indemnitee was, is, or is threatened to be made, a party to or a participant (as a witness, deponent or otherwise) in any Proceeding by or in the right of the Company to procure a judgment in its favor by reason of Indemnitee's Corporate Status. Pursuant to this Section 4, Indemnitee shall be indemnified, held harmless and exonerated against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company. No indemnification, hold harmless or exoneration for Expenses shall be made under this Section 4 in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court to be liable to the Company, unless and only to the extent that any court in which the Proceeding was brought or the Delaware

Court shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification, to be held harmless or to exoneration.

5. **INDEMNIFICATION FOR EXPENSES OF A PARTY WHO IS WHOLLY OR PARTLY SUCCESSFUL**. Notwithstanding any other provisions of this Agreement except for Section 27, to the extent that Indemnitee was or is, by reason of Indemnitee's Corporate Status, a party to (or a participant in) and is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee against all Expenses actually and reasonably incurred by Indemnitee in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with each successfully resolved claim, issue or matter. If Indemnitee is not wholly successful in such Proceeding, the Company also shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee against all Expenses reasonably incurred in connection with a claim, issue or matter related to any claim, issue, or matter on which Indemnitee was successful. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

6. **INDEMNIFICATION FOR EXPENSES OF A WITNESS**. Notwithstanding any other provision of this Agreement except for Section 27, to the extent that Indemnitee is, by reason of Indemnitee's Corporate Status, a witness or deponent in any Proceeding to which Indemnitee was or is not a party or threatened to be made a party, Indemnitee shall, to the fullest extent permitted by applicable law, be indemnified, held harmless and exonerated against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith.

7. **ADDITIONAL INDEMNIFICATION, HOLD HARMLESS AND EXONERATION RIGHTS.**

(a) Notwithstanding any limitation in Sections 3, 4, or 5, except for Section 27, the Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties and amounts paid in settlement) actually and reasonably incurred by Indemnitee in connection with the Proceeding. No indemnification, hold harmless or exoneration rights shall be available under this Section 7(a) on account of Indemnitee's conduct which constitutes a breach of Indemnitee's duty of loyalty to the Company or its stockholders or is an act or omission not in good faith or which involves intentional misconduct or a knowing violation of the law.

(b) Notwithstanding any limitation in Sections 3, 4, 5 or 7(a), except for Section 27, the Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties and amounts paid in settlement) actually and reasonably incurred by Indemnitee in connection with the Proceeding.

8. **CONTRIBUTION IN THE EVENT OF JOINT LIABILITY**.

(a) To the fullest extent permissible under applicable law, if the indemnification, hold harmless and/or exoneration rights provided for in this Agreement are unavailable to Indemnitee in whole or in part for any reason whatsoever, the Company, in lieu of indemnifying, holding harmless or exonerating Indemnitee, shall pay, in the first instance, the entire amount incurred by Indemnitee, whether for judgments, liabilities, fines, penalties, amounts paid or to be paid in settlement and/or for Expenses, in connection with any Proceeding without requiring

Indemnitee to contribute to such payment, and the Company hereby waives and relinquishes any right of contribution it may have at any time against Indemnitee.

(b) The Company shall not enter into any settlement of any Proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such Proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnitee.

(c) The Company hereby agrees to fully indemnify, hold harmless and exonerate Indemnitee from any claims for contribution which may be brought by officers, directors or employees of the Company other than Indemnitee who may be jointly liable with Indemnitee.

9. **EXCLUSIONS**. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnification, advance expenses, hold harmless or exoneration payment in connection with any claim made against Indemnitee:

(a) for which payment has actually been received by or on behalf of Indemnitee under any insurance policy or other indemnity or advancement provision, except with respect to any excess beyond the amount actually received under any insurance policy, contract, agreement, other indemnity or advancement provision or otherwise;

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act (or any successor rule) or similar provisions of state statutory law or common law; or

(c) except as otherwise provided in Sections 14(f)-(g) hereof, prior to a Change in Control, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, hold harmless or exoneration payment, in its sole discretion, pursuant to the powers vested in the Company under applicable law. Indemnitee shall seek payments or Advances from the Company only to the extent that such payments or Advances are unavailable from any insurance policy of the Company covering Indemnitee.

10. **ADVANCES OF EXPENSES; DEFENSE OF CLAIM**.

(a) Notwithstanding any provision of this Agreement to the contrary, except for Section 27, and to the fullest extent not prohibited by applicable law, the Company shall pay the Expenses incurred by Indemnitee (or reasonably expected by Indemnitee to be incurred by Indemnitee within three months) in connection with any Proceeding within ten (10) days after the receipt by the Company of a statement or statements requesting such advances from time to time, prior to the final disposition of any Proceeding. Advances shall, to the fullest extent permitted by law, be unsecured and interest free. Advances shall, to the fullest extent permitted by law, be made without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to be indemnified, held harmless or exonerated under the other provisions of this Agreement. Advances shall include any and all reasonable Expenses incurred pursuing a Proceeding to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Company to support the advances claimed. To the fullest extent required by applicable law, such payments of Expenses in advance of the final disposition of the Proceeding shall be made only upon the Company's receipt of an undertaking, by or on behalf of Indemnitee, to repay the advanced amounts to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified, held harmless or exonerated by the Company under the provisions of this Agreement, the Charter, the Bylaws of the Company, applicable law or otherwise. This Section 10(a) shall not apply to any claim made by Indemnitee for which an indemnification, hold harmless or exoneration payment is excluded pursuant to Section 9.

(b) The Company will be entitled to participate in the Proceeding at its own expense.

(c) The Company shall not settle any action, claim or Proceeding (in whole or in part) which would impose any Expense, judgment, fine, penalty or limitation on Indemnitee without Indemnitee's prior written consent.

11. **PROCEDURE FOR NOTIFICATION AND APPLICATION FOR INDEMNIFICATION**.

(a) Indemnitee agrees to notify promptly the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding, claim, issue or matter therein which may be subject to indemnification, hold harmless or exoneration rights, or advancement of Expenses covered hereunder. The failure of Indemnitee to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement, or otherwise.

(b) Indemnitee may deliver to the Company a written application to indemnify, hold harmless or exonerate Indemnitee in accordance with this Agreement. Such application(s) may be delivered from time to time and at such time(s) as Indemnitee deems appropriate in his sole discretion. Following such a written application for indemnification by Indemnitee, Indemnitee's entitlement to indemnification shall be determined according to Section 12(a) of this Agreement.

12. **PROCEDURE UPON APPLICATION FOR INDEMNIFICATION**.

(a) A determination, if required by applicable law, with respect to Indemnitee's entitlement to indemnification shall be made in the specific case by one of the following methods, which shall be at the election of Indemnitee: (i) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (ii) by a committee of such directors designated by majority vote of such directors, (iii) if there are no Disinterested Directors or if such directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee, or (iv) by vote of the stockholders. The Company promptly will advise Indemnitee in writing with respect to any determination that Indemnitee is or is not entitled to indemnification, including a description of any reason or basis for which indemnification has been denied. If it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten (10) days after such determination. Indemnitee shall reasonably cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or Expenses (including reasonable attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby agrees to indemnify and to hold Indemnitee harmless therefrom.

(b) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 12(a) hereof, the Independent Counsel shall be selected as provided in this Section 12(b). The Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected and certifying that the Independent Counsel so selected meets the requirements of "Independent Counsel" as defined in Section 2 of this Agreement. If the Independent Counsel is selected by the Board, the Company shall give written notice to Indemnitee advising Indemnitee of the identity of the Independent Counsel so selected and certifying that the Independent Counsel so selected meets the requirements of "Independent Counsel" as defined in Section 2 of this Agreement. In either event, Indemnitee or the Company, as the case may be, may, within ten (10) days after such written notice of selection shall have been received, deliver to the Company or to Indemnitee, as the case may be, a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 2 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court of competent jurisdiction has determined that such objection is without merit. If, within twenty (20) days after submission by Indemnitee of a written request for indemnification pursuant to Section 11(b) hereof, no Independent Counsel shall

have been selected and not objected to, either the Company or Indemnitee may petition the Delaware Court for resolution of any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the Delaware Court, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 12(a) hereof. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 14(a) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

(c) The Company agrees to pay the reasonable fees and expenses of Independent Counsel and to fully indemnify and hold harmless such Independent Counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

13. **PRESUMPTIONS AND EFFECT OF CERTAIN PROCEEDINGS**.

(a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 11(b) of this Agreement, and the Company shall have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by the Disinterested Directors or Independent Counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by the Disinterested Directors or Independent Counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) If the person, persons or entity empowered or selected under Section 12 of this Agreement to determine whether Indemnitee is entitled to indemnification shall not have made a determination within thirty (30) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall, to the fullest extent permitted by law, be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a final judicial determination that any or all such indemnification is expressly prohibited under applicable law; provided, however, that such 30-day period may be extended for a reasonable time, not to exceed an additional fifteen (15) days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining or evaluating of documentation and/or information relating thereto.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(d) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the directors, manager, or officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member, or on information or records given or reports made to the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member, by an independent certified public accountant or by an appraiser or other expert selected by the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member. The provisions of this Section 13(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed or found to have met the applicable standard of conduct set forth in this Agreement.

(e) The knowledge and/or actions, or failure to act, of any other director, officer, trustee, partner, manager, managing member, fiduciary, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

14. **REMEDIES OF INDEMNITEE**.

(a) In the event that (i) a determination is made pursuant to Section 12 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses, to the fullest extent permitted by applicable law, is not timely made pursuant to Section 10 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 12(a) of this Agreement within thirty (30) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to Section 5, 6, 7 or the last sentence of Section 12(a) of this Agreement within ten (10) days after receipt by the Company of a written request therefor, (v) a contribution payment is not made in a timely manner pursuant to Section 8 of this Agreement, (vi) payment of indemnification pursuant to Section 3 or 4 of this Agreement is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification, or (vii) payment to Indemnitee pursuant to any hold harmless or exoneration rights under this Agreement or otherwise is not made in accordance with this Agreement, Indemnitee shall be entitled to an adjudication by the Delaware Court to such indemnification, hold harmless, exoneration, contribution or advancement rights. Alternatively, Indemnitee, at Indemnitee's option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Except as set forth herein, the provisions of Delaware law (without regard to its conflict of laws rules) shall apply to any such arbitration. The Company shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) In the event that a determination shall have been made pursuant to Section 12(a) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 14 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination.

(c) In any judicial proceeding or arbitration commenced pursuant to this Section 14, Indemnitee shall be presumed to be entitled to be indemnified, held harmless, exonerated and to receive advancement of Expenses under this Agreement and the Company shall have the burden of proving Indemnitee is not entitled to be indemnified, held harmless, exonerated and to receive advancement of Expenses, as the case may be, and the Company may not refer to or introduce into evidence any determination pursuant to Section 12(a) of this Agreement adverse to Indemnitee for any purpose. If Indemnitee commences a judicial proceeding or arbitration pursuant to this Section 14, Indemnitee shall not be required to reimburse the Company for any advances pursuant to Section 10 until a final determination is made with respect to Indemnitee's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed).

(d) If a determination shall have been made pursuant to Section 12(a) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 14, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(e) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 14 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

(f) The Company shall indemnify and hold harmless Indemnitee to the fullest extent permitted by law against all Expenses and, if requested by Indemnitee, shall (within ten (10) days after the Company's receipt of such written request) pay to Indemnitee, to the fullest extent permitted by applicable law, such Expenses which are

incurred by Indemnitee in connection with any judicial proceeding or arbitration brought by Indemnitee: (i) to enforce his rights under, or to recover damages for breach of, this Agreement or any other indemnification, hold harmless, exoneration, advancement or contribution agreement or provision of the Charter, or the Bylaws now or hereafter in effect; or (ii) for recovery or advances under any insurance policy maintained by any person for the benefit of Indemnitee, regardless of the outcome and whether Indemnitee ultimately is determined to be entitled to such indemnification, hold harmless or exoneration right, advancement, contribution or insurance recovery, as the case may be (unless such judicial proceeding or arbitration was not brought by Indemnitee in good faith).

(g) Interest shall be paid by the Company to Indemnitee at the legal rate under Delaware law for amounts which the Company indemnifies, holds harmless or exonerates, or advances, or is obliged to indemnify, hold harmless or exonerate or advance for the period commencing with the date on which Indemnitee requests indemnification, to be held harmless, exonerated, contribution, reimbursement or advancement of any Expenses and ending with the date on which such payment is made to Indemnitee by the Company.

15. **SECURITY**. Notwithstanding anything herein to the contrary, except for Section 27, to the extent requested by Indemnitee and approved by the Board, the Company may at any time and from time to time provide security to Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of Indemnitee.

16. **NON-EXCLUSIVITY; SURVIVAL OF RIGHTS; INSURANCE; SUBROGATION**.

(a) The rights of Indemnitee as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Charter, the Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any Proceeding (regardless of when such Proceeding is first threatened, commenced or completed) or claim, issue or matter therein arising out of, or related to, any action taken or omitted by such Indemnitee in Indemnitee's Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in applicable law, whether by statute or judicial decision, permits greater indemnification, hold harmless or exoneration rights or advancement of Expenses than would be afforded currently under the Charter, the Bylaws or this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) The DGCL, the Charter and the Bylaws permit the Company to purchase and maintain insurance or furnish similar protection or make other arrangements including, but not limited to, providing a trust fund, letter of credit, or surety bond ("***Indemnification Arrangements***") on behalf of Indemnitee against any liability asserted against Indemnitee or incurred by or on behalf of Indemnitee or in such capacity as a director, officer, employee or agent of the Company, or arising out of Indemnitee's status as such, whether or not the Company would have the power to indemnify Indemnitee against such liability under the provisions of this Agreement or under the DGCL, as it may then be in effect. The purchase, establishment, and maintenance of any such Indemnification Arrangement shall not in any way limit or affect the rights and obligations of the Company or of Indemnitee under this Agreement except as expressly provided herein, and the execution and delivery of this Agreement by the Company and Indemnitee shall not in any way limit or affect the rights and obligations of the Company or the other party or parties thereto under any such Indemnification Arrangement.

(c) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, trustees, partners, managers, managing members, fiduciaries, employees, or agents of the Company or of any other Enterprise which such person serves at the request of the Company, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, trustee, partner, managers, managing member, fiduciary, employee or agent under such policy or policies. If, at the time the Company receives notice from any source of a Proceeding

as to which Indemnitee is a party or a participant (as a witness, deponent or otherwise), the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(d) In the event of any payment under this Agreement, the Company, to the fullest extent permitted by law, shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(e) The Company's obligation to indemnify, hold harmless, exonerate or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, trustee, partner, manager, managing member, fiduciary, employee or agent of any other Enterprise shall be reduced by any amount Indemnitee has actually received as indemnification, hold harmless or exoneration payments or advancement of expenses from such Enterprise. Notwithstanding any other provision of this Agreement to the contrary except for Section 27, (i) Indemnitee shall have no obligation to reduce, offset, allocate, pursue or apportion any indemnification, hold harmless, exoneration, advancement, contribution or insurance coverage among multiple parties possessing such duties to Indemnitee prior to the Company's satisfaction and performance of all its obligations under this Agreement, and (ii) the Company shall perform fully its obligations under this Agreement without regard to whether Indemnitee holds, may pursue or has pursued any indemnification, advancement, hold harmless, exoneration, contribution or insurance coverage rights against any person or entity other than the Company.

17. **DURATION OF AGREEMENT**. All agreements and obligations of the Company contained herein shall continue during the period Indemnitee serves as a director or officer of the Company or as a director, officer, trustee, partner, manager, managing member, fiduciary, employee or agent of any other corporation, partnership, joint venture, trust, employee benefit plan or other Enterprise which Indemnitee serves at the request of the Company and shall continue thereafter so long as Indemnitee shall be subject to any possible Proceeding (including any rights of appeal thereto and any Proceeding commenced by Indemnitee pursuant to Section 14 of this Agreement) by reason of Indemnitee's Corporate Status, whether or not Indemnitee is acting in any such capacity at the time any liability or expense is incurred for which indemnification or advancement can be provided under this Agreement.

18. **SEVERABILITY**. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, each portion of any Section, paragraph or sentence of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section, paragraph or sentence of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

19. **ENFORCEMENT AND BINDING EFFECT**.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director, officer or key employee of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director, officer or key employee of the Company.

(b) Without limiting any of the rights of Indemnitee under the Charter or Bylaws of the Company as they may be amended from time to time, this Agreement constitutes the entire agreement between the parties

hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

(c) The indemnification, hold harmless, exoneration and advancement of expenses rights provided by or granted pursuant to this Agreement shall be binding upon and be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company), shall continue as to an Indemnitee who has ceased to be a director, officer, employee or agent of the Company or a director, officer, trustee, general partner, manager, managing member, fiduciary, employee or agent of any other Enterprise at the Company's request, and shall inure to the benefit of Indemnitee and Indemnitee's spouse, assigns, heirs, devisees, executors and administrators and other legal representatives.

(d) The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(e) The Company and Indemnitee agree herein that a monetary remedy for breach of this Agreement, at some later date, may be inadequate, impracticable and difficult of proof, and further agree that such breach may cause Indemnitee irreparable harm. Accordingly, the parties hereto agree that Indemnitee may, to the fullest extent permitted by law, enforce this Agreement by seeking, among other things, injunctive relief and/or specific performance hereof, without any necessity of showing actual damage or irreparable harm and that by seeking injunctive relief and/or specific performance, Indemnitee shall not be precluded from seeking or obtaining any other relief to which Indemnitee may be entitled. The Company and Indemnitee further agree that Indemnitee shall, to the fullest extent permitted by law, be entitled to such specific performance and injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, without the necessity of posting bonds or other undertaking in connection therewith. The Company acknowledges that in the absence of a waiver, a bond or undertaking may be required of Indemnitee by a court of competent jurisdiction. The Company hereby waives any such requirement of such a bond or undertaking to the fullest extent permitted by law.

20. **MODIFICATION AND WAIVER**. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the Company and Indemnitee. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions of this Agreement nor shall any waiver constitute a continuing waiver.

21. **NOTICES**. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) if delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, or (ii) mailed by certified or registered mail with postage prepaid, on the third (3rd) business day after the date on which it is so mailed:

(a) If to Indemnitee, at the address indicated on the signature page of this Agreement, or such other address as Indemnitee shall provide in writing to the Company.

(b) If to the Company, to:

DiamondPeak Holdings Corp.
40 W 57th Street
29th Floor
New York, New York 10019
Attention: David T. Hamamoto

With a copy, which shall not constitute notice, to

Ellenoff Grossman & Schole LLP
1345 Avenue of the Americas

New York, New York 10105
Attn: Stuart Neuhauser, Esq.
Fax No.: (212) 370-7889

or to any other address as may have been furnished to Indemnitee in writing by the Company.

22. **APPLICABLE LAW AND CONSENT TO JURISDICTION**. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 14(a) of this Agreement, to the fullest extent permitted by law, the Company and Indemnitee hereby irrevocably and unconditionally: (a) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Court and not in any other state or federal court in the United States of America or any court in any other country; (b) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement; (c) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court; and (d) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum, or is subject (in whole or in part) to a jury trial. To the fullest extent permitted by law, the parties hereby agree that the mailing of process and other papers in connection with any such action or proceeding in the manner provided by Section 21 or in such other manner as may be permitted by law, shall be valid and sufficient service thereof.

23. **IDENTICAL COUNTERPARTS**. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

24. **MISCELLANEOUS**. Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

25. **PERIOD OF LIMITATIONS**. No legal action shall be brought and no cause of action shall be asserted by or in the right of the Company against Indemnitee, Indemnitee's spouse, heirs, executors or personal or legal representatives after the expiration of two years from the date of accrual of such cause of action, and any claim or cause of action of the Company shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such two-year period; provided, however, that if any shorter period of limitations is otherwise applicable to any such cause of action such shorter period shall govern.

26. **ADDITIONAL ACTS**. If for the validation of any of the provisions in this Agreement any act, resolution, approval or other procedure is required to the fullest extent permitted by law, the Company undertakes to cause such act, resolution, approval or other procedure to be affected or adopted in a manner that will enable the Company to fulfill its obligations under this Agreement.

27. **WAIVER OF CLAIMS TO TRUST ACCOUNT**. Indemnitee hereby agrees that it does not have any right, title, interest or claim of any kind (each, a "***Claim***") in or to any monies in the trust account established in connection with the Company's initial public offering for the benefit of the Company and holders of shares issued in such offering, and hereby waives any Claim it may have in the future as a result of, or arising out of, any services provided to the Company and will not seek recourse against such trust account for any reason whatsoever.

28. **MAINTENANCE OF INSURANCE**. The Company shall use commercially reasonable efforts to obtain and maintain in effect during the entire period for which the Company is obligated to indemnify the Indemnitee under this Agreement, one or more policies of insurance with reputable insurance companies to provide the officers/directors of the Company with coverage for losses from wrongful acts and omissions and to ensure the Company's performance of its indemnification obligations under this Agreement. The Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director or officer under such policy or policies. In all such insurance policies, the Indemnitee shall be

named as an insured in such a manner as to provide the Indemnitee with the same rights and benefits as are accorded to the most favorably insured of the Company's directors and officers.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Indemnity Agreement to be signed as of the day and year first above written.

DIAMONDPEAK HOLDINGS CORP.

By: _____
Name: David T. Hamamoto
Title: Chief Executive Officer

INDEMNITEE

By: _____
Name:
Address:

[Signature page to Indemnity Agreement]

IN WITNESS WHEREOF, the parties hereto have caused this Indemnity Agreement to be signed as of the day and year first above written.

DIAMONDPEAK HOLDINGS CORP.

By: _____
Name: David T. Hamamoto
Title: Chief Executive Officer

INDEMNITEE

By: _____
Name: Judith A. Hannaway
Address:

[Signature page to Indemnity Agreement]

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT (this "***Agreement***") is made as of February ___, 2019, by and between DiamondPeak Holdings Corp., a Delaware corporation (the "***Company***"), and Mark A. Walsh ("***Indemnitee***").

RECITALS

WHEREAS, highly competent persons have become more reluctant to serve publicly-held corporations as directors, officers or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of such corporations;

WHEREAS, the Board of Directors of the Company (the "***Board***") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. The Amended and Restated Certificate of Incorporation (the "***Charter***") and the Bylaws (the "***Bylaws***") of the Company require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to applicable provisions of the Delaware General Corporation Law ("***DGCL***"). The Charter, Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the Board, officers and other persons with respect to indemnification, hold harmless, exoneration, advancement and reimbursement rights;

WHEREAS, the uncertainties relating to such insurance and to indemnification have increased the difficulty of attracting and retaining such persons;

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company's stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, hold harmless, exonerate and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so protected against liabilities;

WHEREAS, this Agreement is a supplement to and in furtherance of the Charter and Bylaws of the Company and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder;

WHEREAS, Indemnitee may not be willing to serve as an officer or director, advisor or in another capacity without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that Indemnitee be so indemnified; and

NOW, THEREFORE, in consideration of the premises and the covenants contained herein and subject to the provisions of the letter agreement dated as of February ___, 2019, the Company and Indemnitee do hereby covenant and agree as follows:

TERMS AND CONDITIONS

1. **SERVICES TO THE COMPANY**. In consideration of the Company's covenants and obligations hereunder, Indemnitee will serve or continue to serve as an officer, director, advisor, key employee or any other capacity of the Company, as applicable, for so long as Indemnitee is duly elected or appointed or retained or until Indemnitee tenders Indemnitee's resignation or until Indemnitee is removed. The foregoing notwithstanding, this Agreement shall continue in full force and effect after Indemnitee has ceased to serve as a director, officer, advisor, key employee or in any other capacity of the Company, as provided in Section 17. This Agreement, however, shall not impose any obligation on Indemnitee or the Company to continue Indemnitee's service to the Company beyond any period otherwise required by law or by other agreements or commitments of the parties, if any.

2. **DEFINITIONS**. As used in this Agreement:

(a) References to "***agent***" shall mean any person who is or was a director, officer or employee of the Company or a subsidiary of the Company or other person authorized by the Company to act for the Company, to include such person serving in such capacity as a director, officer, employee, fiduciary or other official of another corporation, partnership, limited liability company, joint venture, trust or other enterprise at the request of, for the convenience of, or to represent the interests of the Company or a subsidiary of the Company.

(b) The terms "***Beneficial Owner***" and "***Beneficial Ownership***" shall have the meanings set forth in Rule 13d-3 promulgated under the Exchange Act (as defined below) as in effect on the date hereof.

(c) A "***Change in Control***" shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:

(i) Acquisition of Stock by Third Party. Other than an affiliate of DiamondPeak Sponsor LLC ("***DiamondPeak Sponsor***"), any Person (as defined below) is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing fifteen percent (15%) or more of the combined voting power of the Company's then outstanding securities entitled to vote generally in the election of directors, unless (1) the change in the relative Beneficial Ownership of the Company's securities by any Person results solely from a reduction in the aggregate number of outstanding shares of securities entitled to vote generally in the election of directors, or (2) such acquisition was approved in advance by the Continuing Directors (as defined below) and such acquisition would not constitute a Change in Control under part (iii) of this definition;

(ii) Change in Board of Directors. Individuals who, as of the date hereof, constitute the Board, and any new director whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two thirds of the directors then still in office who were directors on the date hereof or whose election for nomination for election was previously so approved (collectively, the "***Continuing Directors***"), cease for any reason to constitute at least a majority of the members of the Board;

(iii) Corporate Transactions. The effective date of a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination, involving the Company and one or more businesses (a "***Business Combination***"), in each case, unless, following such Business Combination: (1) all or substantially all of the individuals and entities who were the Beneficial Owners of securities entitled to vote generally in the election of directors immediately prior to such Business Combination beneficially own, directly or indirectly, more than 51% of the combined voting power of the then outstanding securities of the Company entitled to vote generally in the election of directors resulting from such Business Combination (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more Subsidiaries (as defined below)) in substantially the same proportions as their ownership immediately prior to such Business Combination, of the securities entitled to vote generally in the election of directors; (2) other than an affiliate of DiamondPeak Sponsor, no Person (excluding any corporation resulting from such Business Combination) is the Beneficial Owner, directly or indirectly, of 15% or more of the combined voting power of the then outstanding securities entitled to vote generally in the election of directors of the surviving corporation except to the extent that such ownership existed prior to the Business

Combination; and (3) at least a majority of the Board of Directors of the corporation resulting from such Business Combination were Continuing Directors at the time of the execution of the initial agreement, or of the action of the Board of Directors, providing for such Business Combination;

(iv) Liquidation. The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement or series of agreements for the sale or disposition by the Company of all or substantially all of the Company's assets, other than factoring the Company's current receivables or escrows due (or, if such stockholder approval is not required, the decision by the Board to proceed with such a liquidation, sale, or disposition in one transaction or a series of related transactions); or

(v) Other Events. There occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or any successor rule) (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

(d) "***Corporate Status***" describes the status of a person who is or was a director, officer, trustee, general partner, manager, managing member, fiduciary, employee or agent of the Company or of any other Enterprise (as defined below) which such person is or was serving at the request of the Company.

(e) "***Delaware Court***" shall mean the Court of Chancery of the State of Delaware.

(f) "***Disinterested Director***" shall mean a director of the Company who is not and was not a party to the Proceeding (as defined below) in respect of which indemnification is sought by Indemnitee.

(g) "***Enterprise***" shall mean the Company and any other corporation, constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger to which the Company (or any of its wholly owned subsidiaries) is a party, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent.

(h) "***Exchange Act***" shall mean the Securities Exchange Act of 1934, as amended.

(i) "***Expenses***" shall include all direct and indirect costs, fees and expenses of any type or nature whatsoever, including, without limitation, all reasonable attorneys' fees and costs, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, fees of private investigators and professional advisors, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, fax transmission charges, secretarial services and all other disbursements, obligations or expenses in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, settlement or appeal of, or otherwise participating in, a Proceeding (as defined below), including reasonable compensation for time spent by Indemnitee for which he or she is not otherwise compensated by the Company or any third party. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding (as defined below), including without limitation the principal, premium, security for, and other costs relating to any cost bond, supersede as bond, or other appeal bond or its equivalent. "Expenses," however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(j) References to "***fines***" shall include any excise tax assessed on Indemnitee with respect to any employee benefit plan; references to "**serving at the request of the Company**" shall include any service as a director, officer, employee, agent or fiduciary of the Company which imposes duties on, or involves services by, such director, officer, employee, agent or fiduciary with respect to an employee benefit plan, its participants or beneficiaries; and if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan, Indemnitee shall be deemed to have acted in a manner "**not opposed to the best interests of the Company**" as referred to in this Agreement.

(k) "***Independent Counsel***" shall mean a law firm or a member of a law firm with significant experience in matters of corporation law and that neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to

matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements); or (ii) any other party to the Proceeding (as defined below) giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

(l) The term "***Person***" shall have the meaning as set forth in Sections 13(d) and 14(d) of the Exchange Act as in effect on the date hereof; provided, however, that "Person" shall exclude: (i) the Company; (ii) any Subsidiaries (as defined below) of the Company; (iii) any employment benefit plan of the Company or of a Subsidiary (as defined below) of the Company or of any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company; and (iv) any trustee or other fiduciary holding securities under an employee benefit plan of the Company or of a Subsidiary (as defined below) of the Company or of a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

(m) The term "***Proceeding***" shall include any threatened, pending or completed action, suit, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil (including intentional or unintentional tort claims), criminal, administrative or investigative or related nature, in which Indemnitee was, is, will or might be involved as a party or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Company, by reason of any action (or failure to act) taken by Indemnitee or of any action (or failure to act) on Indemnitee's part while acting as a director or officer of the Company, or by reason of the fact that Indemnitee is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Agreement.

(n) The term "***Subsidiary***," with respect to any Person, shall mean any corporation, limited liability company, partnership, joint venture, trust or other entity of which a majority of the voting power of the voting equity securities or equity interest is owned, directly or indirectly, by that Person.

3. **INDEMNITY IN THIRD-PARTY PROCEEDINGS**. To the fullest extent permitted by applicable law, the Company shall indemnify, hold harmless and exonerate Indemnitee in accordance with the provisions of this Section 3 if Indemnitee was, is, or is threatened to be made, a party to or a participant (as a witness, deponent or otherwise) in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor by reason of Indemnitee's Corporate Status. Pursuant to this Section 3, Indemnitee shall be indemnified, held harmless and exonerated against all Expenses, judgments, liabilities, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties and amounts paid in settlement) actually, and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal Proceeding, had no reasonable cause to believe that Indemnitee's conduct was unlawful.

4. **INDEMNITY IN PROCEEDINGS BY OR IN THE RIGHT OF THE COMPANY**. To the fullest extent permitted by applicable law, the Company shall indemnify, hold harmless and exonerate Indemnitee in accordance with the provisions of this Section 4 if Indemnitee was, is, or is threatened to be made, a party to or a participant (as a witness, deponent or otherwise) in any Proceeding by or in the right of the Company to procure a judgment in its favor by reason of Indemnitee's Corporate Status. Pursuant to this Section 4, Indemnitee shall be indemnified, held harmless and exonerated against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company. No indemnification, hold harmless or exoneration for Expenses shall be made under this Section 4 in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court to be liable to the Company, unless and only to the extent that any court in which the Proceeding was brought or the Delaware

Court shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification, to be held harmless or to exoneration.

5. **INDEMNIFICATION FOR EXPENSES OF A PARTY WHO IS WHOLLY OR PARTLY SUCCESSFUL**. Notwithstanding any other provisions of this Agreement except for Section 27, to the extent that Indemnitee was or is, by reason of Indemnitee's Corporate Status, a party to (or a participant in) and is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee against all Expenses actually and reasonably incurred by Indemnitee in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with each successfully resolved claim, issue or matter. If Indemnitee is not wholly successful in such Proceeding, the Company also shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee against all Expenses reasonably incurred in connection with a claim, issue or matter related to any claim, issue, or matter on which Indemnitee was successful. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

6. **INDEMNIFICATION FOR EXPENSES OF A WITNESS**. Notwithstanding any other provision of this Agreement except for Section 27, to the extent that Indemnitee is, by reason of Indemnitee's Corporate Status, a witness or deponent in any Proceeding to which Indemnitee was or is not a party or threatened to be made a party, Indemnitee shall, to the fullest extent permitted by applicable law, be indemnified, held harmless and exonerated against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith.

7. **ADDITIONAL INDEMNIFICATION, HOLD HARMLESS AND EXONERATION RIGHTS.**

(a) Notwithstanding any limitation in Sections 3, 4, or 5, except for Section 27, the Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties and amounts paid in settlement) actually and reasonably incurred by Indemnitee in connection with the Proceeding. No indemnification, hold harmless or exoneration rights shall be available under this Section 7(a) on account of Indemnitee's conduct which constitutes a breach of Indemnitee's duty of loyalty to the Company or its stockholders or is an act or omission not in good faith or which involves intentional misconduct or a knowing violation of the law.

(b) Notwithstanding any limitation in Sections 3, 4, 5 or 7(a), except for Section 27, the Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties and amounts paid in settlement) actually and reasonably incurred by Indemnitee in connection with the Proceeding.

8. **CONTRIBUTION IN THE EVENT OF JOINT LIABILITY**.

(a) To the fullest extent permissible under applicable law, if the indemnification, hold harmless and/or exoneration rights provided for in this Agreement are unavailable to Indemnitee in whole or in part for any reason whatsoever, the Company, in lieu of indemnifying, holding harmless or exonerating Indemnitee, shall pay, in the first instance, the entire amount incurred by Indemnitee, whether for judgments, liabilities, fines, penalties, amounts paid or to be paid in settlement and/or for Expenses, in connection with any Proceeding without requiring

Indemnitee to contribute to such payment, and the Company hereby waives and relinquishes any right of contribution it may have at any time against Indemnitee.

(b) The Company shall not enter into any settlement of any Proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such Proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnitee.

(c) The Company hereby agrees to fully indemnify, hold harmless and exonerate Indemnitee from any claims for contribution which may be brought by officers, directors or employees of the Company other than Indemnitee who may be jointly liable with Indemnitee.

9. **EXCLUSIONS**. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnification, advance expenses, hold harmless or exoneration payment in connection with any claim made against Indemnitee:

(a) for which payment has actually been received by or on behalf of Indemnitee under any insurance policy or other indemnity or advancement provision, except with respect to any excess beyond the amount actually received under any insurance policy, contract, agreement, other indemnity or advancement provision or otherwise;

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act (or any successor rule) or similar provisions of state statutory law or common law; or

(c) except as otherwise provided in Sections 14(f)-(g) hereof, prior to a Change in Control, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, hold harmless or exoneration payment, in its sole discretion, pursuant to the powers vested in the Company under applicable law. Indemnitee shall seek payments or Advances from the Company only to the extent that such payments or Advances are unavailable from any insurance policy of the Company covering Indemnitee.

10. **ADVANCES OF EXPENSES; DEFENSE OF CLAIM**.

(a) Notwithstanding any provision of this Agreement to the contrary, except for Section 27, and to the fullest extent not prohibited by applicable law, the Company shall pay the Expenses incurred by Indemnitee (or reasonably expected by Indemnitee to be incurred by Indemnitee within three months) in connection with any Proceeding within ten (10) days after the receipt by the Company of a statement or statements requesting such advances from time to time, prior to the final disposition of any Proceeding. Advances shall, to the fullest extent permitted by law, be unsecured and interest free. Advances shall, to the fullest extent permitted by law, be made without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to be indemnified, held harmless or exonerated under the other provisions of this Agreement. Advances shall include any and all reasonable Expenses incurred pursuing a Proceeding to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Company to support the advances claimed. To the fullest extent required by applicable law, such payments of Expenses in advance of the final disposition of the Proceeding shall be made only upon the Company's receipt of an undertaking, by or on behalf of Indemnitee, to repay the advanced amounts to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified, held harmless or exonerated by the Company under the provisions of this Agreement, the Charter, the Bylaws of the Company, applicable law or otherwise. This Section 10(a) shall not apply to any claim made by Indemnitee for which an indemnification, hold harmless or exoneration payment is excluded pursuant to Section 9.

(b) The Company will be entitled to participate in the Proceeding at its own expense.

(c) The Company shall not settle any action, claim or Proceeding (in whole or in part) which would impose any Expense, judgment, fine, penalty or limitation on Indemnitee without Indemnitee's prior written consent.

11. **PROCEDURE FOR NOTIFICATION AND APPLICATION FOR INDEMNIFICATION**.

(a) Indemnitee agrees to notify promptly the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding, claim, issue or matter therein which may be subject to indemnification, hold harmless or exoneration rights, or advancement of Expenses covered hereunder. The failure of Indemnitee to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement, or otherwise.

(b) Indemnitee may deliver to the Company a written application to indemnify, hold harmless or exonerate Indemnitee in accordance with this Agreement. Such application(s) may be delivered from time to time and at such time(s) as Indemnitee deems appropriate in his sole discretion. Following such a written application for indemnification by Indemnitee, Indemnitee's entitlement to indemnification shall be determined according to Section 12(a) of this Agreement.

12. **PROCEDURE UPON APPLICATION FOR INDEMNIFICATION**.

(a) A determination, if required by applicable law, with respect to Indemnitee's entitlement to indemnification shall be made in the specific case by one of the following methods, which shall be at the election of Indemnitee: (i) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (ii) by a committee of such directors designated by majority vote of such directors, (iii) if there are no Disinterested Directors or if such directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee, or (iv) by vote of the stockholders. The Company promptly will advise Indemnitee in writing with respect to any determination that Indemnitee is or is not entitled to indemnification, including a description of any reason or basis for which indemnification has been denied. If it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten (10) days after such determination. Indemnitee shall reasonably cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or Expenses (including reasonable attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby agrees to indemnify and to hold Indemnitee harmless therefrom.

(b) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 12(a) hereof, the Independent Counsel shall be selected as provided in this Section 12(b). The Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected and certifying that the Independent Counsel so selected meets the requirements of "Independent Counsel" as defined in Section 2 of this Agreement. If the Independent Counsel is selected by the Board, the Company shall give written notice to Indemnitee advising Indemnitee of the identity of the Independent Counsel so selected and certifying that the Independent Counsel so selected meets the requirements of "Independent Counsel" as defined in Section 2 of this Agreement. In either event, Indemnitee or the Company, as the case may be, may, within ten (10) days after such written notice of selection shall have been received, deliver to the Company or to Indemnitee, as the case may be, a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 2 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court of competent jurisdiction has determined that such objection is without merit. If, within twenty (20) days after submission by Indemnitee of a written request for indemnification pursuant to Section 11(b) hereof, no Independent Counsel shall

have been selected and not objected to, either the Company or Indemnitee may petition the Delaware Court for resolution of any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the Delaware Court, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 12(a) hereof. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 14(a) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

(c) The Company agrees to pay the reasonable fees and expenses of Independent Counsel and to fully indemnify and hold harmless such Independent Counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

13. **PRESUMPTIONS AND EFFECT OF CERTAIN PROCEEDINGS**.

(a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 11(b) of this Agreement, and the Company shall have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by the Disinterested Directors or Independent Counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by the Disinterested Directors or Independent Counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) If the person, persons or entity empowered or selected under Section 12 of this Agreement to determine whether Indemnitee is entitled to indemnification shall not have made a determination within thirty (30) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall, to the fullest extent permitted by law, be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a final judicial determination that any or all such indemnification is expressly prohibited under applicable law; provided, however, that such 30-day period may be extended for a reasonable time, not to exceed an additional fifteen (15) days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining or evaluating of documentation and/or information relating thereto.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(d) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the directors, manager, or officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member, or on information or records given or reports made to the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member, by an independent certified public accountant or by an appraiser or other expert selected by the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member. The provisions of this Section 13(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed or found to have met the applicable standard of conduct set forth in this Agreement.

(e) The knowledge and/or actions, or failure to act, of any other director, officer, trustee, partner, manager, managing member, fiduciary, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

14. **REMEDIES OF INDEMNITEE**.

(a) In the event that (i) a determination is made pursuant to Section 12 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses, to the fullest extent permitted by applicable law, is not timely made pursuant to Section 10 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 12(a) of this Agreement within thirty (30) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to Section 5, 6, 7 or the last sentence of Section 12(a) of this Agreement within ten (10) days after receipt by the Company of a written request therefor, (v) a contribution payment is not made in a timely manner pursuant to Section 8 of this Agreement, (vi) payment of indemnification pursuant to Section 3 or 4 of this Agreement is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification, or (vii) payment to Indemnitee pursuant to any hold harmless or exoneration rights under this Agreement or otherwise is not made in accordance with this Agreement, Indemnitee shall be entitled to an adjudication by the Delaware Court to such indemnification, hold harmless, exoneration, contribution or advancement rights. Alternatively, Indemnitee, at Indemnitee's option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Except as set forth herein, the provisions of Delaware law (without regard to its conflict of laws rules) shall apply to any such arbitration. The Company shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) In the event that a determination shall have been made pursuant to Section 12(a) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 14 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination.

(c) In any judicial proceeding or arbitration commenced pursuant to this Section 14, Indemnitee shall be presumed to be entitled to be indemnified, held harmless, exonerated and to receive advancement of Expenses under this Agreement and the Company shall have the burden of proving Indemnitee is not entitled to be indemnified, held harmless, exonerated and to receive advancement of Expenses, as the case may be, and the Company may not refer to or introduce into evidence any determination pursuant to Section 12(a) of this Agreement adverse to Indemnitee for any purpose. If Indemnitee commences a judicial proceeding or arbitration pursuant to this Section 14, Indemnitee shall not be required to reimburse the Company for any advances pursuant to Section 10 until a final determination is made with respect to Indemnitee's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed).

(d) If a determination shall have been made pursuant to Section 12(a) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 14, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(e) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 14 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

(f) The Company shall indemnify and hold harmless Indemnitee to the fullest extent permitted by law against all Expenses and, if requested by Indemnitee, shall (within ten (10) days after the Company's receipt of such written request) pay to Indemnitee, to the fullest extent permitted by applicable law, such Expenses which are

incurred by Indemnitee in connection with any judicial proceeding or arbitration brought by Indemnitee: (i) to enforce his rights under, or to recover damages for breach of, this Agreement or any other indemnification, hold harmless, exoneration, advancement or contribution agreement or provision of the Charter, or the Bylaws now or hereafter in effect; or (ii) for recovery or advances under any insurance policy maintained by any person for the benefit of Indemnitee, regardless of the outcome and whether Indemnitee ultimately is determined to be entitled to such indemnification, hold harmless or exoneration right, advancement, contribution or insurance recovery, as the case may be (unless such judicial proceeding or arbitration was not brought by Indemnitee in good faith).

(g) Interest shall be paid by the Company to Indemnitee at the legal rate under Delaware law for amounts which the Company indemnifies, holds harmless or exonerates, or advances, or is obliged to indemnify, hold harmless or exonerate or advance for the period commencing with the date on which Indemnitee requests indemnification, to be held harmless, exonerated, contribution, reimbursement or advancement of any Expenses and ending with the date on which such payment is made to Indemnitee by the Company.

15. **SECURITY**. Notwithstanding anything herein to the contrary, except for Section 27, to the extent requested by Indemnitee and approved by the Board, the Company may at any time and from time to time provide security to Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of Indemnitee.

16. **NON-EXCLUSIVITY; SURVIVAL OF RIGHTS; INSURANCE; SUBROGATION**.

(a) The rights of Indemnitee as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Charter, the Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any Proceeding (regardless of when such Proceeding is first threatened, commenced or completed) or claim, issue or matter therein arising out of, or related to, any action taken or omitted by such Indemnitee in Indemnitee's Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in applicable law, whether by statute or judicial decision, permits greater indemnification, hold harmless or exoneration rights or advancement of Expenses than would be afforded currently under the Charter, the Bylaws or this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) The DGCL, the Charter and the Bylaws permit the Company to purchase and maintain insurance or furnish similar protection or make other arrangements including, but not limited to, providing a trust fund, letter of credit, or surety bond ("***Indemnification Arrangements***") on behalf of Indemnitee against any liability asserted against Indemnitee or incurred by or on behalf of Indemnitee or in such capacity as a director, officer, employee or agent of the Company, or arising out of Indemnitee's status as such, whether or not the Company would have the power to indemnify Indemnitee against such liability under the provisions of this Agreement or under the DGCL, as it may then be in effect. The purchase, establishment, and maintenance of any such Indemnification Arrangement shall not in any way limit or affect the rights and obligations of the Company or of Indemnitee under this Agreement except as expressly provided herein, and the execution and delivery of this Agreement by the Company and Indemnitee shall not in any way limit or affect the rights and obligations of the Company or the other party or parties thereto under any such Indemnification Arrangement.

(c) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, trustees, partners, managers, managing members, fiduciaries, employees, or agents of the Company or of any other Enterprise which such person serves at the request of the Company, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, trustee, partner, managers, managing member, fiduciary, employee or agent under such policy or policies. If, at the time the Company receives notice from any source of a Proceeding

as to which Indemnitee is a party or a participant (as a witness, deponent or otherwise), the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(d) In the event of any payment under this Agreement, the Company, to the fullest extent permitted by law, shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(e) The Company's obligation to indemnify, hold harmless, exonerate or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, trustee, partner, manager, managing member, fiduciary, employee or agent of any other Enterprise shall be reduced by any amount Indemnitee has actually received as indemnification, hold harmless or exoneration payments or advancement of expenses from such Enterprise. Notwithstanding any other provision of this Agreement to the contrary except for Section 27, (i) Indemnitee shall have no obligation to reduce, offset, allocate, pursue or apportion any indemnification, hold harmless, exoneration, advancement, contribution or insurance coverage among multiple parties possessing such duties to Indemnitee prior to the Company's satisfaction and performance of all its obligations under this Agreement, and (ii) the Company shall perform fully its obligations under this Agreement without regard to whether Indemnitee holds, may pursue or has pursued any indemnification, advancement, hold harmless, exoneration, contribution or insurance coverage rights against any person or entity other than the Company.

17. **DURATION OF AGREEMENT**. All agreements and obligations of the Company contained herein shall continue during the period Indemnitee serves as a director or officer of the Company or as a director, officer, trustee, partner, manager, managing member, fiduciary, employee or agent of any other corporation, partnership, joint venture, trust, employee benefit plan or other Enterprise which Indemnitee serves at the request of the Company and shall continue thereafter so long as Indemnitee shall be subject to any possible Proceeding (including any rights of appeal thereto and any Proceeding commenced by Indemnitee pursuant to Section 14 of this Agreement) by reason of Indemnitee's Corporate Status, whether or not Indemnitee is acting in any such capacity at the time any liability or expense is incurred for which indemnification or advancement can be provided under this Agreement.

18. **SEVERABILITY**. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, each portion of any Section, paragraph or sentence of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section, paragraph or sentence of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

19. **ENFORCEMENT AND BINDING EFFECT**.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director, officer or key employee of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director, officer or key employee of the Company.

(b) Without limiting any of the rights of Indemnitee under the Charter or Bylaws of the Company as they may be amended from time to time, this Agreement constitutes the entire agreement between the parties

hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

(c) The indemnification, hold harmless, exoneration and advancement of expenses rights provided by or granted pursuant to this Agreement shall be binding upon and be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company), shall continue as to an Indemnitee who has ceased to be a director, officer, employee or agent of the Company or a director, officer, trustee, general partner, manager, managing member, fiduciary, employee or agent of any other Enterprise at the Company's request, and shall inure to the benefit of Indemnitee and Indemnitee's spouse, assigns, heirs, devisees, executors and administrators and other legal representatives.

(d) The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(e) The Company and Indemnitee agree herein that a monetary remedy for breach of this Agreement, at some later date, may be inadequate, impracticable and difficult of proof, and further agree that such breach may cause Indemnitee irreparable harm. Accordingly, the parties hereto agree that Indemnitee may, to the fullest extent permitted by law, enforce this Agreement by seeking, among other things, injunctive relief and/or specific performance hereof, without any necessity of showing actual damage or irreparable harm and that by seeking injunctive relief and/or specific performance, Indemnitee shall not be precluded from seeking or obtaining any other relief to which Indemnitee may be entitled. The Company and Indemnitee further agree that Indemnitee shall, to the fullest extent permitted by law, be entitled to such specific performance and injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, without the necessity of posting bonds or other undertaking in connection therewith. The Company acknowledges that in the absence of a waiver, a bond or undertaking may be required of Indemnitee by a court of competent jurisdiction. The Company hereby waives any such requirement of such a bond or undertaking to the fullest extent permitted by law.

20. **MODIFICATION AND WAIVER**. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the Company and Indemnitee. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions of this Agreement nor shall any waiver constitute a continuing waiver.

21. **NOTICES**. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) if delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, or (ii) mailed by certified or registered mail with postage prepaid, on the third (3rd) business day after the date on which it is so mailed:

(a) If to Indemnitee, at the address indicated on the signature page of this Agreement, or such other address as Indemnitee shall provide in writing to the Company.

(b) If to the Company, to:

DiamondPeak Holdings Corp.
40 W 57th Street
29th Floor
New York, New York 10019
Attention: David T. Hamamoto

With a copy, which shall not constitute notice, to

Ellenoff Grossman & Schole LLP
1345 Avenue of the Americas

New York, New York 10105
Attn: Stuart Neuhauser, Esq.
Fax No.: (212) 370-7889

or to any other address as may have been furnished to Indemnitee in writing by the Company.

22. **APPLICABLE LAW AND CONSENT TO JURISDICTION**. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 14(a) of this Agreement, to the fullest extent permitted by law, the Company and Indemnitee hereby irrevocably and unconditionally: (a) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Court and not in any other state or federal court in the United States of America or any court in any other country; (b) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement; (c) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court; and (d) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum, or is subject (in whole or in part) to a jury trial. To the fullest extent permitted by law, the parties hereby agree that the mailing of process and other papers in connection with any such action or proceeding in the manner provided by Section 21 or in such other manner as may be permitted by law, shall be valid and sufficient service thereof.

23. **IDENTICAL COUNTERPARTS**. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

24. **MISCELLANEOUS**. Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

25. **PERIOD OF LIMITATIONS**. No legal action shall be brought and no cause of action shall be asserted by or in the right of the Company against Indemnitee, Indemnitee's spouse, heirs, executors or personal or legal representatives after the expiration of two years from the date of accrual of such cause of action, and any claim or cause of action of the Company shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such two-year period; provided, however, that if any shorter period of limitations is otherwise applicable to any such cause of action such shorter period shall govern.

26. **ADDITIONAL ACTS**. If for the validation of any of the provisions in this Agreement any act, resolution, approval or other procedure is required to the fullest extent permitted by law, the Company undertakes to cause such act, resolution, approval or other procedure to be affected or adopted in a manner that will enable the Company to fulfill its obligations under this Agreement.

27. **WAIVER OF CLAIMS TO TRUST ACCOUNT**. Indemnitee hereby agrees that it does not have any right, title, interest or claim of any kind (each, a "***Claim***") in or to any monies in the trust account established in connection with the Company's initial public offering for the benefit of the Company and holders of shares issued in such offering, and hereby waives any Claim it may have in the future as a result of, or arising out of, any services provided to the Company and will not seek recourse against such trust account for any reason whatsoever.

28. **MAINTENANCE OF INSURANCE**. The Company shall use commercially reasonable efforts to obtain and maintain in effect during the entire period for which the Company is obligated to indemnify the Indemnitee under this Agreement, one or more policies of insurance with reputable insurance companies to provide the officers/directors of the Company with coverage for losses from wrongful acts and omissions and to ensure the Company's performance of its indemnification obligations under this Agreement. The Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director or officer under such policy or policies. In all such insurance policies, the Indemnitee shall be

named as an insured in such a manner as to provide the Indemnitee with the same rights and benefits as are accorded to the most favorably insured of the Company's directors and officers.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Indemnity Agreement to be signed as of the day and year first above written.

DIAMONDPEAK HOLDINGS CORP.

By: _____
Name: David T. Hamamoto
Title: Chief Executive Officer

INDEMNITEE

By: _____
Name:
Address:

IN WITNESS WHEREOF, the parties hereto have caused this Indemnity Agreement to be signed as of the day and year first above written.

DIAMONDPEAK HOLDINGS CORP.

By: _____
Name: David T. Hamamoto
Title: Chief Executive Officer

INDEMNITEE

By: _____
Name: Mark A. Walsh
Address:

[Signature page to Indemnity Agreement]

EXHIBIT J

Lordstown Motors Corporation							
Director & Officer Insurance Type	**Policy Term**	**Policy Number**	**Description**	**Limit of Liability (Per Claim & Aggregate)**	**Deductible/Attachment Point**	**Insurance Carrier**	**Premium**
Lordstown's Policies from October 2022- October 2023							
Primary Side ABC	10-23-2022 - 10-23-2023	[redacted]	Coverage for wrongful acts by company directors and officers	$5,000,000	$10,000,000	Berkley Insurance Company	[redacted]
Excess Side ABC	10-23-2022 - 10-23-2023	[redacted]	Coverage for wrongful acts by company directors and officers	$5,000,000	$5,000,000	XL Specialty Insurance Company	[redacted]
Excess Side ABC	10-23-2022 - 10-23-2023	[redacted]	Coverage for wrongful acts by company directors and officers	$5,000,000	$10,000,000	National Union Fire Ins Co of Pittsburgh, PA	[redacted]
Excess Side ABC	10-23-2022 - 10-23-2023	[redacted]	Coverage for wrongful acts by company directors and officers	$5,000,000	$15,000,000	Allied World Specialty Insurance Company	[redacted]
Excess Side ABC	10-23-2022 - 10-23-2023	[redacted]	Coverage for wrongful acts by company directors and officers	$5,000,000	$20,000,000	Continental Casualty Company	[redacted]
Excess Side ABC	10-23-2022 - 10-23-2023	[redacted]	Coverage for wrongful acts by company directors and officers	$5,000,000	$25,000,000	SiriusPoint Bermuda Insurance Company	[redacted]
Excess Side ABC	10-23-2022 - 10-23-2023	[redacted]	Coverage for wrongful acts by company directors and officers	$5,000,000	$30,000,000	Associated Industries Insurance Co., Inc	[redacted]
Excess Side ABC	10-23-2022 - 10-23-2023	[redacted]	Coverage for wrongful acts by company directors and officers	$5,000,000	$35,000,000	Fair American Insurance & Reinsurance Co	[redacted]
Excess Side A DIC	10-23-2022 - 10-23-2023	[redacted]	Coverage for wrongful acts by company directors and officers	$5,000,000	$40,000,000	Endurance Assurance Corporation	[redacted]
Excess Side A DIC	10-23-2022 - 10-23-2023	[redacted]	Coverage for wrongful acts by company directors and officers	$5,000,000	$45,000,000	XL Specialty Insurance Co	[redacted]
Excess Side A DIC	10-23-2022 - 10-23-2023	[redacted]	Coverage for wrongful acts by company directors and officers	$5,000,000	$50,000,000	RSUI Indemnity Company	[redacted]
Excess Side A DIC	10-23-2022 - 10-23-2023	[redacted]	Coverage for wrongful acts by company directors and officers	$5,000,000	$55,000,000	National Union Fire Ins Co of Pittsburgh	[redacted]
Excess Side A DIC	10-23-2022 - 10-23-2023	[redacted]	Coverage for wrongful acts by company directors and officers	$5,000,000	$60,000,000	Underwriters At Lloyds London	[redacted]
Excess Side A DIC	10-23-2022 - 10-23-2023	[redacted]	Coverage for wrongful acts by company directors and officers	$5,000,000	$65,000,000	Samsung Fire & Marine Ins Co Ltd (US Br)	[redacted]
Excess Side A DIC	10-23-2022 - 10-23-2023	[redacted]	Coverage for wrongful acts by company directors and officers	$5,000,000	$70,000,000	Westfield Specialty Insurance Comp	[redacted]
Lordstown's Policies from October 2020 - October 2022							
Primary Side ABC	10-23-2020 - 10-23-2022	[redacted]	Coverage for wrongful acts by company directors and officers	$5,000,000	$10,000,000	Beazley Syndiacates AFB (Lloyd's America's Inc.)	[redacted]
Excess Side ABC	10-23-2020 - 10-23-2022	[redacted]	Coverage for wrongful acts by company directors and officers	$5,000,000	$5,000,000	XL Specialty Insurance Company	
Excess Side ABC	10-23-2020 - 10-23-2022	[redacted]	Coverage for wrongful acts by company directors and officers	$5,000,000	$10,000,000	Berkley Professional Liability	
Excess Side ABC	10-23-2020 - 10-23-2022	[redacted]	Coverage for wrongful acts by company directors and officers	$5,000,000	$15,000,000	Wesco Insurance Company	
Excess Side ABC	10-23-2020 - 10-23-2022	[redacted]	Coverage for wrongful acts by company directors and officers	$5,000,000	$20,000,000	Ascot Insurance Company (Admitted)	
Excess Side ABC	10-23-2020 - 10-23-2022	[redacted]	Coverage for wrongful acts by company directors and officers	$5,000,000	$25,000,000	Allied World Insurance Company	
Excess Side ABC	10-23-2020 - 10-23-2022	[redacted]	Coverage for wrongful acts by company directors and officers	$5,000,000	$30,000,000	Argonaut Insurance Company	
Excess Side ABC	10-23-2020 - 10-23-2022	[redacted]	Coverage for wrongful acts by company directors and officers	$5,000,000	$35,000,000	Capital Indemnity Corporation	
Excess Side ABC	10-23-2020 - 10-23-2022	[redacted]	Coverage for wrongful acts by company directors and officers	$5,000,000	$40,000,000	Associated Industries Insurance Co., Inc	
Excess Side ABC	10-23-2020 - 10-23-2022	[redacted]	Coverage for wrongful acts by company directors and officers	$5,000,000	$45,000,000	AXIS Insurance Company	
Excess Side A DIC	10-23-2020 - 10-23-2022	[redacted]	Coverage for wrongful acts by company directors and officers	$5,000,000	$50,000,000	Hudson Insurance Group	[redacted]
Excess Side A DIC	10-23-2020 - 10-23-2022	[redacted]	Coverage for wrongful acts by company directors and officers	$5,000,000	$55,000,000	XL Specialty Insurance Company	[redacted]
Excess Side A DIC	10-23-2020 - 10-23-2022	[redacted]	Coverage for wrongful acts by company directors and officers	$5,000,000	$60,000,000	RSUI Indemnity Company	[redacted]
Excess Side A DIC	10-23-2020 - 10-23-2022	[redacted]	Coverage for wrongful acts by company directors and officers	$5,000,000	$65,000,000	Endurance American Insurance Company	[redacted]
Excess Side A DIC	10-23-2020 - 10-23-2022	[redacted]	Coverage for wrongful acts by company directors and officers	$2,500,000	$67,500,000	Axis Excess Insurance	[redacted]
Excess Side A DIC	10-23-2020 - 10-23-2022	[redacted]	Coverage for wrongful acts by company directors and officers	$2,500,000	$70,000,000	Ironshore Specialty Insurance Company	[redacted]
DiamondPeak's Policies with Tail Coverage							
DiamondPeak Management Liability and Company PLUS Run-Off	02-27-2019 -02-27-2027	[redacted]	Coverage for wrongful acts by company directors and officers. No coverage available for any act on or after February 21, 2021.	$500,000	$10,000,000	Geenwich Insurance Company and XL Specialty Insurance Company	[redacted]

EXHIBIT K

Berkley PROFESSIONAL LIABILITY
a Berkley Company

757 Third Avenue, 10th Floor
New York, NY 10017
(212) 618-2900
Fax (212) 618-2940

Primary Directors, Officers and Corporate Liability Insurance

December 27, 2022

Sir / Madam
Lordstown Motors Corp.
2300 Hallock Young Road
Lordstown, OH 44481

Binder/Policy Number: [redacted]

Dear Sir / Madam,

Thank you for choosing Berkley Professional Liability and the W.R. Berkley Corporation for your professional liability insurance needs. We know that you have many choices for your insurance and we appreciate your choosing BerkleyPro.

BerkleyPro and all its employees are proud of our tradition of providing an exceptional insurance facility and making every effort to assure your satisfaction with our product and service. The people behind the promise to pay are critical to the value of any insurance policy. Like most services, you get what you pay for - the premium is only one part of the value of an insurance policy.

The most important service we provide and the greatest value you receive does not come from delivering the policy - it comes from handling your claims. While we help our policyholders with loss control and crisis avoidance, if the day comes when you face a claim, we will be there to help you navigate through the complexities of a professional liability claim.

Attached is a narrative outlining claims reporting guidelines in the event that a claim does occur, with many years of experience handling complex professional liability claims - I am confident you will be pleased to have BerkleyPro on your side.

Once again, thank you for choosing BerkleyPro and the W.R. Berkley Corporation. We hope that you will see the value in the people behind the promise and we hope to be your choice for your professional liability needs for years to come. Please call your professional liability insurance agent if you have any questions about BerkleyPro, or any comments about our service to you. Your satisfaction is important to us.

Regards,

John R. Benedetto
President

Berkley PROFESSIONAL LIABILITY
a Berkley Company

Claims Reporting Guidelines for the Insured

These guidelines should be followed to help Berkley Professional Liability provide efficient claims service.

Claim Notices

All claim notices shall be sent to Berkley Professional Liability, Claims Department. The notices must be reported as required by the policy to avoid problems regarding timely notice. The address of the Berkley Professional Liability Claims, c/o Claims Department is as follows:

Berkley Professional Liability
Berkley Professional Liability Claims, c/o Claims Department
757 Third Avenue ■ 10th Floor ■ New York, NY 10017
Phone: (212) 618-2920
Claim Dept. Fax: (212) 618-2948
E-mail: claims@berkleypro.com

Notice of claim requiring immediate action:

If immediate action on the notice is needed the Insured should express mail the notice to BerkleyPros Claims Department. Situations requiring immediate action may include:

1. The Insured being served with a summons and complaint.
2. The Insured needs to provide a response to the claimant immediately.

Correspondence from the Insured

The claim notice should include a written narrative of the circumstances surrounding the claim or potential claim. The narrative should include, but not be limited to:

1. Names of the insureds, policy number and effective dates.
2. Names and addresses of the claimant.
3. Details of the underlying claim, including its current status and the amount in controversy or relief demanded.
4. All pertinent letters or documents necessary to properly evaluate the claim.

Please provide carbon copies to your professional liability insurance agent
of all claim notices and correspondence sent to Berkley Professional Liability

Berkley Insurance Company

475 Steamboat Road Greenwich, CT 06830

Declarations Page

Directors' and Officers' and Corporate Liability Insurance

CLAIMS MADE WARNING FOR DECLARATION

NOTICE: THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE BASIS. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS POLICY APPLIES ONLY TO CLAIMS FIRST MADE, PRELIMINARY INQUIRIES FIRST RECEIVED AND COMPANY CRISES FIRST OCCURRING DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD (IF APPLICABLE) AND REPORTED TO THE INSURER PURSUANT TO THE TERMS OF THIS POLICY.

ALL LOSS, INCLUSIVE OF DEFENSE COSTS AND ALL COVERAGES SUBJECT TO A SUB LIMIT ARE INCLUDED WITHIN THE LIMIT OF LIABILITY, SHALL REDUCE THE LIMIT OF LIABILITY AVAILABLE TO PAY SETTLEMENTS OR JUDGMENTS, AND SHALL BE APPLIED AGAINST THE RETENTION AMOUNT THE INSURER DOES NOT ASSUME ANY DUTY TO DEFEND.

PLEASE READ AND REVIEW THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

Whenever printed in this Declarations Page, the boldface type terms shall have the same meanings as indicated in the Policy.

Policy Form: DO 31400 (09-14)

Policy Number: [redacted]

Replacement or Renewal of Policy Number: [redacted]

Item 1. Name and Address of **Parent Organization**:
Lordstown Motors Corp.
2300 Hallock Young Road
Lordstown, OH 44481

Person designated to receive all correspondence from the **Insurer**:
Sir / Madam

Item 2. **Policy Period**: From October 23, 2022 (inception date) to October 23, 2023 (expiration date)
*(Both dates at 12:01 a.m. Standard Time at the address of the **Parent Organization**)*

Item 3. **Limit of Liability** for the **Policy Period** under all Coverages combined for all **Loss** (inclusive of all **Defense Costs** and all coverages which are subject to a sub limit): $5,000,000

Item 4. Retentions:

Not applicable to: (i) Non-Indemnifiable Loss pursuant to Coverage A; (ii) **Crisis Loss** or (iii) **Derivative Demand Investigation Costs**

Securities Claim:	$10,000,000
Wrongful Employment Acts:	$10,000,000
Merger or Acquisition Claim:	$10,000,000
All other **Loss** to which a retention applies:	$10,000,000

Item 5. Premium: [redacted]

Item 6. **Prior and Pending Litigation Dates**:

a.Coverage A. Directors and Officers Liability and Coverage B. Corporate Indemnification:	October 23, 2020
b.Coverage C. Corporate Entity:	October 23, 2020
c.Coverage D. Outside Entity Directors and Officers Liability:	October 23, 2020
d.Coverage E. Company Crisis Coverage	October 23, 2020

Item 7. Endorsements attached:

1. 265 (01-15)	NOTICE OF TERRORISM INSURANCE COVERAGE.
2. DO 300943 (12-18)	Excludes coverage and claims when such coverage/claims would result in violation of trade or economic sanctions, laws or regulations.
3. DO OH SAE (09-14)	Modifies the Policy to include state amendatory provisions.
4. DO 000900 (09-14)	Sublimit of Liability Endorsement
5. DO 000900 (09-14)	Prior and Pending Litigation Exclusion
6. DO 000900 (09-14)	Lordstown Amendatory Endorsement
7. DO 000900 (09-14)	Addition of Outside Entity - MIH EV Design LLC

Berkley Insurance Company

Item 8. Notice to the **Insurer** as provided in sections VI. A. and VI. B. and any information furnished to the **Insurer** as provided in section VI. B. shall be sent to:

Claim Department, Berkley Professional Liability, 757 Third Avenue, 10th Floor, New York, NY 10017
Email: claims@berkleypro.com
Fax: (212) 618-2948
Please reference the Policy Number in all correspondence.

All other notices required to be given to the **Insurer** under this Policy shall be sent to:
Underwriting, Berkley Professional Liability, 757 Third Avenue, 10th Floor, New York, NY 10017
Fax: (212) 618-2940
Please reference the Policy Number in all correspondence.

These Declarations along with the completed and signed **Proposal** and the Directors, Officers and Corporate Liability Insurance Policy, shall constitute the contract between the **Insured Persons**, the **Company** and the **Insurer**.

Authorized Representative: _____ Date Issued: December 27, 2022

BERKLEY INSURANCE COMPANY

Directors, Officers and Corporate Liability Insurance Policy

The descriptions in the headings of this policy are solely for convenience, and form no part of the terms and conditions of coverage.

CLAIMS MADE WARNING FOR POLICY

NOTICE: THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE BASIS. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS POLICY APPLIES ONLY TO CLAIMS FIRST MADE, PRELIMINARY INQUIRIES FIRST RECEIVED, AND COMPANY CRISES FIRST OCCURRING DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD (IF APPLICABLE) AND REPORTED TO THE INSURER PURSUANT TO THE TERMS OF THIS POLICY.

ALL LOSS, INCLUSIVE OF DEFENSE COSTS AND ALL COVERAGES SUBJECT TO A SUB-LIMIT ARE INCLUDED WITHIN THE LIMIT OF LIABILITY, SHALL REDUCE THE LIMIT OF LIABILITY AVAILABLE TO PAY SETTLEMENTS OR JUDGMENTS, AND SHALL BE APPLIED AGAINST THE RETENTION AMOUNT. THE INSURER DOES NOT ASSUME ANY DUTY TO DEFEND.

PLEASE READ AND REVIEW THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

In consideration of the payment of the premium, in reliance on all statements in the **Application** and all other information provided to the **Insurer**, and subject to all provisions of this policy, the **Insurer** and **Insureds** agree as follows:

I. Insuring Agreements

Coverage A. Directors and Officers Liability Coverage

The **Insurer** shall pay on behalf of the **Insured Persons**, **Loss**:

(1) which the **Insured Persons** are legally obligated to pay resulting from any **Claim** first made against the **Insured Persons** during the **Policy Period** or the Extended Reporting Period (if applicable) and reported to the **Insurer** pursuant to the terms of this policy for any actual or alleged **Wrongful Act**; or

(2) incurred by the **Insured Persons** as **Preliminary Inquiry Costs** resulting from any **Preliminary Inquiry** first received by the **Insured Persons** during the **Policy Period** or the Extended Reporting Period (if applicable) and reported to the **Insurer** pursuant to the terms of this policy;

except and to the extent that the **Company** has indemnified the **Insured Persons** for such **Loss**.

Coverage B. Corporate Indemnification Coverage

The **Insurer** shall pay on behalf of the **Company**, **Loss**:

(1) which the **Company** is legally obligated to pay resulting from any **Claim** first made against the **Insured Persons** (including **Insured Persons** in their **Outside Entity Position** during the **Policy Period** or the Extended Reporting Period (if applicable) and reported to the **Insurer** pursuant to the terms of this policy for any actual or alleged **Wrongful Act**; or

(2) incurred by the **Insured Persons** as **Preliminary Inquiry Costs** resulting from any **Preliminary Inquiry** first received by the **Insured Persons** during the **Policy Period** or the Extended Reporting Period (if applicable) and reported to the **Insurer** pursuant to the terms of this policy;

but only to the extent that the **Company** has indemnified the **Insured Persons** for such **Loss**.

Coverage C. Corporate Entity Coverage

The **Insurer** shall pay on behalf of the **Company**, **Loss**:

(1) which the **Company** is legally obligated to pay resulting from any **Securities Claim** first made against the **Company** during the **Policy Period** or the Extended Reporting Period (if applicable) and reported to the **Insurer** pursuant to the terms of this policy for any actual or alleged **Wrongful Act**; or

(2) incurred as **Derivative Demand Investigation Costs** resulting from any **Shareholder Derivative Demand** first made against the **Company** during the **Policy Period** or the Extended Reporting Period (if applicable) and reported to the **Insurer** pursuant to the terms of this policy; or

(3) incurred by the **Company** as **Defense Costs** in seeking the dismissal of any **Shareholder Derivative Suit** first brought during the **Policy Period** or the Extended Reporting Period (if applicable) and reported to the **Insurer** pursuant to the terms of this policy.

Coverage D. Outside Entity Directors and Officers Liability

The descriptions in the headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

The **Insurer** shall pay on behalf of the **Insured Persons** all **Loss** for which the **Insured Persons** are legally obligated to pay resulting from any **Claim** first made against the **Insured Persons** in their **Outside Entity Position** during the **Policy Period** or the Extended Reporting Period (if applicable) and reported to the **Insurer** pursuant to the terms of this policy, for any actual or alleged **Wrongful Act**; except and to the extent that the **Company** has indemnified the **Insured Persons** for such **Loss**, or paid such **Loss** on behalf of the **Insured Persons**. Further, **Loss** paid under this Coverage D. shall be specifically excess to any indemnification from the **Outside Entity** and any insurance coverage afforded to the **Outside Entity**.

Coverage E. Company Crisis Coverage

The **Insurer** shall pay on behalf of the **Company**, subject to the sub-limit set forth in the endorsement attached to this policy, all **Company Crisis Loss** for a **Crisis** first occurring during the **Policy Period** or the Extended Reporting Period (if applicable) and reported to the **Insurer** pursuant to the terms of this policy.

II. Definitions

Whenever printed in boldface type, and whether in the singular or plural form in this policy, the following terms shall have the meanings indicated below.

A. "**Application**" means each and every signed application for this policy, or for any policy for which this policy is a renewal, replacement or for which it succeeds in time, together with any and all attachments to such applications, any warranties executed by an **Insured** and submitted with such applications and any documents submitted with or incorporated into such applications. "**Application**" shall also mean all public documents filed by any **Insured** with the Securities and Exchange Commission, Federal Deposit Insurance Corporation, or any similar federal, state, local or foreign regulatory body during the 12 months preceding the **Policy Period**.

B. "**Claim**" means:

(1) a written demand for monetary, non-monetary or injunctive relief, including any demand for mediation, arbitration, or any other alternative resolution process;

(2) a civil, criminal, administrative, regulatory or arbitration proceeding for monetary, non-monetary, or injunctive relief which is commenced by:

a. service of a complaint or similar pleading or equivalent document in a **Foreign Jurisdiction**;

b. return of an indictment, information or similar document or equivalent document in a **Foreign Jurisdiction** (in the case of a criminal proceeding); or

c. receipt or filing of a notice of charges;

(3) an **Insured Person Investigation**;

(4) an official request for **Extradition** of an **Insured Person**, including the execution of a warrant for the arrest of an **Insured Person** where the warrant execution is an element of **Extradition**;

(5) a **Shareholder Derivative Demand**;

(6) any **Merger or Acquisition Claim**;

(7) any **Securities Claim**; or

(8) a written request to toll or waive the statute of limitations relating to any of the above.

Further, a "**Claim**" shall be deemed to have been first made at the time notice of the **Claim** is first received by any **Insured**.

C. "**Company**" means the **Parent Organization**, any **Subsidiary**, and in the event a bankruptcy proceeding is instituted by or against the **Company**, the Debtor in Possession (or equivalent status outside the United States) or the bankruptcy estate of the **Company**, if any.

D. "**Company Crisis Loss**" means the reasonable and necessary fees and expenses incurred by the **Company** in connection with the retention of a **Crisis Consultant** to perform **Crisis Management Services** on behalf of the **Company**, fees and expenses incurred in the printing, advertising or mailing of materials and travel costs incurred by the **Company**, its employees or agents, arising from or in connection with a **Crisis**.

The descriptions in the headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

E. "**Corporate Manslaughter Act (UK) Costs**" means the **Defense Costs** incurred by an **Insured Person** solely in connection with the investigation, defense or appeal of a **Claim** against the **Company** for violation of the United Kingdom Corporate Manslaughter and Corporate Homicide Act of 2007 or any similar statute in any other jurisdiction.

F. "**Crisis**" means an event which, in the good faith opinion of the Chief Financial Officer of the **Company**, caused or is reasonably likely to cause, a material effect on the **Company's** common stock price. As used herein, "material effect on the **Company's** common stock price" shall mean a decrease by 15% in the price of the **Company's** common stock within a 24 hour period. **Crisis** shall include, but not be limited to: (i) notice to the **Company** that its stock will be or has been delisted from NASDAQ, the New York Stock Exchange, or the Toronto Stock Exchange; (ii) a negative earnings or sales announcement by the **Company** or by an outside securities analyst; (iii) a product recall; (iv) an announcement of the elimination or suspension of a scheduled dividend; (v) public announcement of a governmental or regulatory investigation of the **Company**; or (vi) announcement of an unsolicited takeover bid.

G. "**Crisis Consultant**" means any public relations firm, management firm or law firm retained by the **Company** with the consent of the **Insurer**, to provide **Crisis Management Services**.

H. "**Crisis Management Services**" means services provided by a **Crisis Consultant** in advising an **Insured** with respect to minimizing harm to the **Insured** from the **Crisis**.

I. **(1)** "**Defense Costs**" means":

A. the reasonable and necessary fees, costs and expenses (including costs of electronic discovery, the cost of an **Electronic Discovery Consultant**, and premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond) consented to by the **Insurer** and resulting solely from the investigation, adjustment, defense and appeal of a **Claim** against an **Insured**, but excluding wages, salaries, fees or any other compensation of officers or employees of the **Company**; or

B. the reasonable and necessary fees, costs and expenses consented to by the **Insurer** and resulting from an **Insured Person** lawfully opposing, challenging, resisting or defending against any request for, or any effort to obtain, the **Extradition** of that **Insured Person** or appealing any order or other grant of **Extradition** of that **Insured Person**, but excluding wages, salaries, fees or any other compensation of officers or employees of the **Company**.

(2) "**Defense Costs**" shall not include: (i) **Derivative Demand Investigation Costs**; (ii) **Preliminary Inquiry Costs**; or (iii) the compensation of any **Insured Person**.

J. "**Derivative Demand Investigation Costs**" means the reasonable costs, charges, fees and expenses consented to by the **Insurer** and incurred by the **Company** or by its board of directors (or an equivalent managing body or equivalent foreign body) or any committee thereof in connection with the investigation or evaluation of a **Shareholder Derivative Demand**. "**Derivative Demand Investigation Costs**" shall not include any wages, salary, fees or other compensation of any employee of the **Company** or of any **Insured Person**.

K. "**Electronic Discovery Consultant**" means any entity retained by an **Insured** with the consent of the **Insurer** to assist with respect to the organization, cataloging, preservation, collection, storage and production of electronically stored information in connection with the defense of a **Claim**.

L. "**Enforcement Body**" means:

(1) any federal, state, local or foreign law enforcement authority or other governmental investigative authority (including without limitation the U.S. Department of Justice, the U.S. Securities and Exchange Commission and the attorney general of any state); or

(2) the enforcement arm of any securities or commodities exchange or other self-regulatory agency.

M. "**Extradition**" means any formal process initiated by any local, state or national government against an **Insured Person** to compel the **Insured Person** to appear for trial or otherwise to answer any criminal accusation.

N. "**Financial Insolvency**" means the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official or any foreign equivalent, to take control of, supervise, manage or liquidate the **Company**, or the **Company** becoming a debtor in possession.

O. "**Foreign Jurisdiction**" means any jurisdiction outside the United States of America, its territories or possessions.

P. "**Insured**" means the **Insured Persons** and the **Company**.

Q. "**Insured Person**" means:

The descriptions in the headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

(1) any past, present or future duly elected or appointed director, officer, trustee or governor of the **Company**; or any past, present or future duly elected or appointed manager, member of the board of managers, or equivalent executive of a limited liability **Company**. In the event the **Company** operates in a **Foreign Jurisdiction**, then the term **Insured Person** also means those titles, positions or capacities in such foreign **Company** that are equivalent to the position of an **Insured Person** in an entity incorporated within the United States of America;

(2) solely with respect to any **Securities Claim**, any past, present or future employee of the **Company**;

(3) past, present and future General Counsel and Risk Manager (or equivalent position) of the **Company**;

(4) in the event of the death, incapacity or bankruptcy of an **Insured Person**, the estate, heirs, legal representatives or assigns of such **Insured Person**;

(5) an Employed Lawyer, but only with respect to a **Claim** made solely in connection with services rendered to the **Company** by the Employed Lawyer and continuously maintained against both such Employed Lawyer and an **Insured Person** who is not an Employed Lawyer. As used herein, "Employed Lawyer" means an employee of the **Company** who is admitted to practice law and is employed as a lawyer full time for and salaried by the **Company** at the time of the **Wrongful Act**; or

(6) the lawful spouse or domestic partner (whether such status is derived by reason of statutory law, common law or otherwise of any applicable domestic or **Foreign Jurisdiction**) of an **Insured Person** for a **Claim** arising solely out of his or her status as the spouse or domestic partner of an **Insured Person**, including a **Claim** that seeks damages recoverable from marital community property, property jointly held by the **Insured Person** and the spouse or domestic partner, or property transferred from the **Insured Person** to the spouse or domestic partner; provided, however, that this extension shall not afford coverage for any **Claim** for any act, error or omission of the spouse or domestic partner, but shall apply only to **Claims** arising out of any **Wrongful Act** of an **Insured Person**.

Coverage will automatically apply to all new **Insured Persons** after the policy inception date.

R. "**Insured Person Investigation**" means any civil, criminal, administrative or regulatory investigation of an **Insured Person**:

(1) once the **Insured Person** is identified in writing by a **Enforcement Body** as a target of an investigation that may lead to a criminal, civil, administrative, regulatory or other enforcement proceeding;

(2) in the case of an investigation by the SEC or any state, local or foreign body with similar regulation or enforcement authority, after the service of a subpoena (or in a **Foreign Jurisdiction**, the equivalent legal process) upon the **Insured Person**; or

(3) commenced by the arrest and detainment or incarceration for more than 24 hours of an **Insured Person** by any law enforcement authority in a **Foreign Jurisdiction**.

Writings which may identify an **Insured Person** as a target can include a target or "Wells" letter, whether or not labeled as such.

S. "**Insurer**" means the entity issuing this policy as listed on the Declarations Page.

T. "**Limit of Liability**" means the maximum aggregate liability of the **Insurer** for all **Loss** stated in Item 3. of the Declarations, including **Damages, Defense Costs**, **Preliminary Inquiry Costs** and all coverages that are subject to a sub-limit as set forth in any endorsement to this policy.

U. **(1)** "**Loss**" means:

a. damages, judgments (including any award of pre-judgment and post-judgment interest), settlements;

b. **Defense Costs**;

c. **Company Crisis Loss**;

d. **Derivative Demand Investigation Costs**;

e. **Preliminary Inquiry Costs**;

f. **Corporate Manslaughter Act (UK) Costs**, **SOX 304/Dodd-Frank 954 Costs** and **Personal Assets Costs**, provided such costs arise out of a **Claim**;

The descriptions in the headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

g. civil penalties assessed against any **Insured Person** pursuant to: Section 2(g)(2)(B) of the Foreign Corrupt Practices Act, 15 U.S.C., Section 78dd-2(g)(2)(B), or Section 308 of the Sarbanes-Oxley Act of 2002; or

h. punitive, exemplary or multiple damages; provided, however, such punitive, exemplary or multiple damages shall not be covered for **Claims** arising from **Wrongful Employment Acts**.

The law of the jurisdiction most favorable to the insurability of punitive, exemplary or multiple damages shall control, provided that such jurisdiction is where: (i) the damages were awarded or imposed; (ii) any **Wrongful Act** occurred for which such damages were awarded or imposed; (iii) the **Insured** resides, is incorporated or has its principal place of business; or (iv) the **Insurer** is incorporated or has its principal place of business.

(2) "**Loss**" (other than **Defense Costs**) shall not include:

a. taxes;

b. civil or criminal fines or penalties;

c. cleanup costs relating to hazardous materials, pollution, or product defects;

d. any amount for which an **Insured** is not financially liable or which are without legal recourse to an **Insured**; or

e. matters which are uninsurable under the law pursuant to which this policy is construed.

(3) The **Insurer** shall not assert that any portion of any settlement in a **Securities Claim** constitutes disgorgement or uninsurable **Loss** due to alleged violations of Sections 11, 12 or 15 of the Securities Act of 1933, including amendments thereto.

(4) In the event of a **Claim** alleging that the price or consideration paid or proposed to be paid for the acquisition or completion of the acquisition of all or substantially all the ownership interest or assets of any entity is inadequate, **Loss** with respect to such **Claim** shall not include any amount of any judgment or settlement representing the amount by which such price or consideration is effectively increased; provided, however this paragraph shall not apply to **Defense Costs** or to **Loss** under Coverage A.

V. "**Merger or Acquisition Claim**" means a **Claim** made against any **Insured**, including but not limited to a **Securities Claim**, based upon, arising from, or in consequence of any proposed or actual merger, acquisition, purchase, or sale of all or substantially all of the ownership interest of any entity or organization to which the **Company** is the target.

W. "**Outside Entity**" means any not-for-profit organization, or any other entity, partnership, joint venture or other organization listed by endorsement to this policy.

X. "**Outside Entity Position**" means the position of an **Insured Person** with an **Outside Entity**, but only if service in such position is at the direction or request of the **Company**. In the event of any dispute as to whether the **Insured Person** was acting at the "request or direction" of the **Company**, this policy shall abide by the determination of the **Company**.

Y. "**Parent Organization**" means the entity designated in Item 1 of the Declarations.

Z. "**Personal Assets Costs**" means the reasonable and necessary fees, costs and expenses arising from a **Claim**, consented to by the **Insurer** and incurred by an **Insured Person** to oppose any efforts by a **Enforcement Body** to seize, attach, or otherwise enjoin the use of the personal assets or real property of an **Insured Person** or to obtain the discharge or revocation of a court order entered during the **Policy Period** in any way impairing the use thereof.

AA. "**Policy Period**" means the period of time from the inception date shown in Item 2. of the Declarations to the earlier of the expiration date shown in Item 2. of the Declarations or the effective date of cancellation of this policy.

The descriptions in the headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

BB. "**Preliminary Inquiry**" means a pre-**Claim** request received by an **Insured Person** for a meeting, interview or for documents relating to the **Insured Person's** capacity with the **Company** by:

(1) an **Enforcement Body**;

(2) the **Company**, including the board of directors (or foreign equivalent) or any committee thereof, arising out of: (i) an inquiry or investigation by an **Enforcement Body** concerning the business of the **Company** or of the **Insured Person's** capacity with the **Company**; or (ii) the investigation or evaluation of a **Shareholder Derivative Demand**;

(3) a court-appointed examiner, trustee, receiver, liquidator, or rehabilitator of the **Company** in any bankruptcy proceeding by or against the **Company**; or

(4) arrest or confinement of an **Insured Person** to a: (i) specific residence or (ii) custodial premises operated by an **Enforcement Body** in connection with the business of the **Company** or the **Insured Person**'s capacity with the **Company**.

"**Preliminary Inquiry**" shall not include any routine or regularly scheduled regulatory inspection, compliance, review, examination, production or audit conducted in a enforcement body's or the **Company's** routine or ordinary review or compliance process.

CC. "**Preliminary Inquiry Costs**" means the reasonable and necessary fees, costs and expenses consented to by the **Insurer** and incurred by an **Insured Person** solely in connection with the **Insured Person's** preparation and response to a **Preliminary Inquiry**. **Preliminary Inquiry Costs** shall not include the costs of any routine or regularly scheduled regulatory inspection, compliance, review, examination, production or audit conducted in an **Enforcement Body's** routine or ordinary review or compliance process.

DD. "**Prior or Pending Litigation Date**" means the applicable date set forth in Item 6. of the Declarations or in any endorsement made part of this policy.

EE. "**Related Claim**" means a **Claim** alleging, arising out of, based upon or attributable to any facts or **Wrongful Acts** that are the same as, or related or continuous or that are logically or causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decision or that arise from a common nucleus of facts that were either: (i) alleged in another **Claim** made against an **Insured**; or (ii) the subject of another **Preliminary Inquiry** received by an **Insured Person**.

FF. "**Related Preliminary Inquiry**" means a **Preliminary Inquiry** involving, arising out of, based upon or attributable to any facts or **Wrongful Acts** that are the same, related or continuous or that are logically or causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decision or that arise from a common nucleus of facts that were either: (i) alleged in a **Claim** made against an **Insured**; or (ii) the subject of another **Preliminary Inquiry** received by an **Insured Person**.

GG. **(1)** "**Securities Claim**" means a **Claim**, other than an administrative or regulatory action against or investigation of the **Company**, made against any **Insured**:

a. alleging a violation of any federal, state, local or foreign regulation, rule, statute or common law regulating securities that is brought by:

(i) any person or entity alleging, arising out of, based upon or attributable to, in whole or in part, the purchase or sale, or offer or solicitation of an offer to purchase or sell, any securities or membership interests in the **Company**, or

(ii) a security holder of the **Company** with respect to such security holder's interest in the **Company**;

b. that is a **Shareholder Derivative Suit**.

(2) Notwithstanding the foregoing, the term "**Securities Claim**" shall: (i) include an administrative or regulatory proceeding against the **Company** that meets the requirements of section II. GG. (1) a. above, but only if and only during the time that such proceeding is also commenced and continuously maintained against an **Insured Person**; and (ii) not include any **Claim** brought by any **Insured Person** alleging, arising out of, based upon or attributable to the loss of, or failure to receive or obtain, the benefit of stock, stock warrants, stock options, or any other securities of the **Company**.

HH. "**Shareholder Derivative Demand**" means a written request by one or more shareholders of the **Company**, in their capacity as such, upon the board of directors of the **Company** (or an equivalent managing body) to investigate or evaluate any fact, circumstance or situation that may reasonably be expected to give rise to a **Claim** being made against an **Insured Person**. A **Shareholder Derivative Demand** shall be deemed to have been first made at the time an **Insured** receives such written request by a shareholder(s).

The descriptions in the headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

II. "**Shareholder Derivative Suit**" means a civil proceeding brought and maintained by one or more shareholders of the **Company** in their capacity as such, on behalf of, or in the name of or in the right of, the **Company**, for any actual or alleged **Wrongful Act**.

JJ. "**SOX 304/Dodd-Frank 954 Costs**" means the reasonable and necessary fees, costs and expenses (including the premium or origination fee for a bond or a loan) incurred by an **Insured Person** and consented to by the **Insurer** solely to facilitate the return of amounts required to be repaid by such persons pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002 or Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; provided; however, **SOX 304/Dodd-Frank 954 Costs** shall not include the payment, return, reimbursement, disgorgement or restitution of any amounts requested or required to be repaid by such persons pursuant to Section 304(a) or Section 954.

KK. "**Subsidiary**" means:

(1) a not-for-profit company that is sponsored exclusively by a **Company**;

(2) a corporation or limited liability company or limited partnership of which the **Parent Organization** owns, on or before the inception date of the policy, more than 50 percent of the issued and outstanding voting securities or membership interests either directly or indirectly through one or more of its **Subsidiaries**;

(3) a joint venture if: (i) the **Parent Organization** owns on or before the inception date of the policy, 50 percent or more of the issued and outstanding voting securities or membership interests either directly or indirectly through one or more of its **Subsidiaries**; and (ii) the **Parent Organization** solely controls the management and operation of such joint venture pursuant to a written agreement with the owner of the remaining issued and outstanding securities or interest in such joint venture;

(4) automatically an entity that becomes a **Subsidiary** or a **Subsidiary** which is acquired or created during the **Policy Period**, whose assets total less than 15 percent of the total consolidated assets of the **Parent Organization** as of the policy inception date of the policy; or

(5) an entity that becomes a **Subsidiary** or a **Subsidiary** that is acquired or created during the **Policy Period** (other than a **Subsidiary** described in paragraph (4) above) but only upon the condition that within 90 days of the creation or acquisition of such entity, the **Parent Organization** provides the **Insurer** with full particulars of the new **Subsidiary** and agrees to any additional premium and/or amendment of the provisions of this policy required by the **Insurer** relating to such new **Subsidiary**. Further, coverage as shall be afforded to the new **Subsidiary** is conditioned upon the **Parent Organization** paying when due any additional premium required by the **Insurer** relating to such new **Subsidiary**.

An entity becomes a **Subsidiary** when the **Parent Organization** owns more than 50 percent of the issued and outstanding voting securities or membership interests (and, in the case of a joint venture, the **Parent Organization** solely controls the management and operation of such joint venture pursuant to a written agreement with the owner of the remaining issued and outstanding securities or interest in such joint venture as described in sub-paragraph (2) above) either directly or indirectly through one or more of its **Subsidiaries**.

An entity ceases to be a **Subsidiary** when the **Parent Organization** ceases to own more than 50 percent of the issued and outstanding voting securities or membership interests either directly or indirectly through one or more of its **Subsidiaries** (or, in the case of a joint venture, the **Parent Organization** ceases to solely control the management and operation of such joint venture pursuant to a written agreement with the owner of the remaining issued and outstanding securities or interest in such joint venture).

In all events, coverage as is afforded with respect to a **Claim** made against a **Subsidiary** or **Insured Person** acting in their capacity in connection with a **Subsidiary**, shall only apply for **Wrongful Acts** committed or allegedly committed after the effective time that such **Subsidiary** became a **Subsidiary** and prior to the time that such **Subsidiary** ceased to be a **Subsidiary**.

LL. "**Wrongful Act**" means:

(1) with respect to any **Insured Person**, any actual or alleged breach of duty, neglect, error, act, omission, misstatement, misleading statement, or **Wrongful Employment Act** by any **Insured Person** in their capacity as such or in an **Outside Entity Position**, or any matter claimed against them by reason of their status as **Insured Person**; or

(2) with respect to the **Company**, any actual or alleged breach of duty, neglect, error, act, omission, misstatement, or misleading statement by the **Company**, but solely as respects a **Securities Claim**.

MM. "**Wrongful Employment Act**" means any actual or alleged act by an **Insured Person** arising from an actual or potential employment relationship with a claimant for:

The descriptions in the headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

(1) discrimination or harassment because of race, color, religion, age, sex, disability, pregnancy, or national origin, sexual orientation, marital status, or any other basis prohibited by law that results in termination of the employment relationship, or demotion or failure or refusal to hire or promote, or failure to accommodate an employee or potential employee, or denial of an employment privilege, or the taking of any adverse or differential employment action;

(2) sexual harassment including unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature that is made a condition of employment, is used as a basis for employment decisions, or creates an intimidating, hostile or offensive work environment that interferes with work performance; or

(3) termination, constructive discharge, wrongful failure to hire, wrongful demotion, wrongful discipline, negligent retention, negligent supervision, negligent hiring, retaliation, employment related misrepresentation to an employee of the **Company**, infliction of emotional distress, defamation, slander, invasion of privacy, humiliation, wrongful evaluation, failure to promote or breach of any implied contract or implied agreement relating to employment, whether arising out of any personnel manual, policy statement or oral representation.

III. Exclusions

The **Insurer** shall not be liable to make payment for that portion of **Loss**, other than **Company Crisis Loss**, in connection with any **Claim** made against any **Insured**:

A. based upon, arising out of, or attributable to any remuneration, profit or other advantage to which an **Insured** was not legally entitled if established by any final and non-appealable adjudication in the underlying action adverse to such **Insured**; provided, however, that in a **Securities Claim** alleging violations of Section 11, 12 or 15 of the Securities Act of 1933, including amendments thereto, this exclusion shall not apply to the portion of any **Loss** attributable to such violations;

B. based upon, arising out of, or attributable to any deliberate criminal or deliberate fraudulent act if established by any final and non-appealable adjudication in the underlying action adverse to an **Insured**. Imposition of criminal fines, penalties, or sanctions pursuant to the law of a **Foreign Jurisdiction** shall not constitute, by itself, proof that an **Insured** has committed a deliberate criminal act or deliberate fraudulent act;

C. for:

(1) physical injury to or destruction of any tangible property, including the loss of use thereof; or

(2) bodily injury, sickness, disease, and death; provided, however, this exclusion shall not apply to a **Securities Claim**, **Corporate Manslaughter Act (UK) Costs**, or to damages or causes of action for emotional distress, mental anguish, defamation, invasion of privacy or humiliation in connection with a **Claim** for a **Wrongful Employment Act**;

D. based upon, arising out of, or attributable to any **Wrongful Act** of an **Insured Person** serving in their capacity as director, officer, trustee or governor of any other entity other than the **Company** or an **Outside Entity**, or by reason of their status as director, officer, trustee or governor of such other entity;

E. for any actual or alleged violations of the Employee Retirement Income Security Act of 1974, as amended, or any similar provisions of any state, local or foreign statutory or common law;

F. based upon, arising out of, or attributable to, as of the applicable **Prior or Pending Litigation Date**:

(1) any prior or pending **Claim**, **Preliminary Inquiry**, litigation, administrative or arbitration proceeding, or investigation; or

(2) any **Wrongful Act**, fact, circumstance, situation, transaction or event underlying or alleged in such prior or pending **Claim**, **Preliminary Inquiry**, litigation, administrative or arbitration proceeding, or investigation;

G. alleging, based upon, arising out of, attributable to, or in any way involving:

(1) any **Wrongful Act** alleged in any matter which has been reported, or in any circumstance of which notice has been given, prior to the **Policy Period**, under any other management liability insurance, directors and officers liability insurance, employment practices liability insurance or similar insurance policy; or

(2) any other **Wrongful Act** whenever occurring, which together with a **Wrongful Act** which has been the subject of such claim or notice in exclusion G. (1) above, would constitute a **Related Claim**;

H. for:

The descriptions in the headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

(1) any actual or alleged violations of responsibilities, obligations or duties imposed by the Fair Labor Standards Act (except for Equal Pay Act), Worker's Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, the National Labor Relations Act, including amendments thereto, or any similar provisions of any federal, state, local or foreign statutory or common law; or

(2) any actual or alleged unpaid wages (including overtime pay), obligations under any workers' compensation, social security, disability benefits, or unemployment compensation law, including amendments thereto, or any similar provisions of any federal, state, local or foreign statutory or common law, improper payroll deductions, improper employee classification, failure to maintain accurate time records, or failure to grant meal and rest periods;

provided, however, that this exclusion shall only apply to the extent that a **Claim** is for a **Wrongful Employment Act**;

I. brought by, on behalf of, or in the right of, the **Company**, or by any **Outside Entity**; provided, however this exclusion shall not apply to:

(1) any **Shareholder Derivative Suit** that is not brought by, controlled by, or materially assisted by the **Company** or **Outside Entity** or **Insured Person**;

(2) any **Claim** in connection with a bankruptcy proceeding of the **Company**, any **Claim** brought on behalf of or in the right of the **Company** by the debtor in possession (or **Foreign Equivalent**) or by any trustee, receiver, liquidator, rehabilitator, examiner or creditors committee of the **Company**; or

(3) any **Defense Costs** incurred by an **Insured Person** under Coverage A.

For the purpose of determining the applicability of any Exclusion, the **Wrongful Acts** of, facts pertaining to, and knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**; only the **Wrongful Acts** of, facts pertaining to, and knowledge possessed by any past, present, or future Chief Executive Officer or Chief Financial Officer (or equivalent position) of the **Company** shall be imputed to the **Company**.

IV. Limit of Liability and Retentions

A. Limit of Liability

(1) The **Limit of Liability** stated in Item 3. of the Declarations is the maximum aggregate limit of the **Insurer's** liability for all **Loss**, under all Coverages combined (including **Defense Costs** and all coverages which are subject to a sub-limit) arising out of all **Claims** or **Shareholder Derivative Demands** first made, all **Preliminary Inquiries** first received, and all **Crises** first occurring, during the **Policy Period** and the Extended Reporting Period (if applicable) regardless of: (i) the time of payment; (ii) the number of **Claims**; (iii) the number of **Derivative Demands**; (iv) the number of **Preliminary Inquiries**; or (v) the number of claimants.

(2) Each and every sub-limit of liability set forth in any endorsement to this policy is the maximum limit of the **Insurer's** liability during the **Policy Period** and the Extended Reporting Period (if applicable).

(3) In the event the **Limit of Liability** stated in Item 3. of the Declarations is exhausted by payment of **Loss**, or tendered to or on behalf of an **Insured**, then any and all obligations of the **Insurer** hereunder shall be deemed to be completely fulfilled and extinguished.

(4) The limit of liability for the Extended Reporting Period shall be part of, and not in addition to, the **Limit of Liability** stated in Item 3. of the Declarations. Any sub-limit of liability applicable to the Extended Reporting Period shall be part of, and not in addition to, the aggregate sub-limit of liability. Further, all **Related Claims** and all **Related Preliminary Inquiries** that are considered made or received during the **Policy Period** or "Extended Reporting Period" pursuant to section VI. Notice of Claim or Preliminary Inquiry sub-paragraph B. shall also be subject to the applicable **Limits of Liability** stated in Item 3. of the Declarations.

(5) **Defense Costs** are not payable by the **Insurer** in addition to the **Limit of Liability** or any sub-limit of liability. **Defense Costs** are part of **Loss** and as such are subject to the applicable limit of liability for **Loss**.

B. Retention

The descriptions in the headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

(1) The **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** or **Preliminary Inquiry** which is in excess of the applicable Retention amount stated in Item 4. of the Declarations. Such Retention amount shall be borne by the **Insured** with regard to all **Loss**. For purposes of determining whether a Retention applies, the **Company** agrees to advance **Defense Costs** and/or indemnify the **Insured Persons** to the fullest extent permitted by law.

(2) A single Retention amount shall apply to **Loss** arising from all **Related Claims** and all **Related Preliminary Inquiries**. In the event a **Claim** or **Preliminary Inquiry** triggers more than one Retention, then, as to such **Claim** or **Preliminary Inquiry**, the highest of such Retentions shall be deemed the Retention applicable to **Loss** arising from such **Claim** or **Preliminary Inquiry** unless this policy expressly provides otherwise.

(3) For purposes of determining the applicable retention under Item 4. of the Declarations, a **Securities Claim** based upon, arising from, or in consequence of any proposed or actual merger, acquisition, purchase, or sale of all or substantially all of the ownership interest to which the **Company** is the target will be deemed to be a **Merger or Acquisition Claim**.

(4) No Retention amount shall apply to **Loss** in the event the **Company** is permitted or required to indemnify the **Insured Persons** but the **Company** is financially or legally unable to pay such **Loss** by reason of **Financial Insolvency**.

(5) If the **Company** fails or refuses in writing to advance, pay or indemnify **Loss** of an **Insured Person** within the applicable Retention for any reason (including but not limited to **Financial Insolvency**); or if an **Insured Person** submits a written request to the **Company** for advancement, payment or indemnification of **Loss** incurred; and the **Company** fails to provide, agree or acknowledge an obligation to provide such advancement, payment or indemnification within 60 days, then the **Insurer** shall advance such amounts on behalf of the **Insured Person** until such Retention is either satisfied or the **Company** provides such advancement, payment or indemnification.

(6) Advancement, payment or indemnification of an **Insured Person** by the **Company** is deemed "failed" if it has been requested by any **Insured Person** in writing and has not been provided by, agreed to be provided by or acknowledged as an obligation by such **Company** within 60 days of such request; and advancement, payment or indemnification by a **Company** is deemed "refused" if the **Company** gives a written notice of the refusal to the **Insured Person**. Advancement, payment or indemnification of an **Insured Person** by a **Company** shall only be deemed "failed" or "refused" to the extent such advancement, payment or indemnification is not provided, or agreed to be provided, or acknowledged by and collectible from a **Company**. Any payment or advancement by the **Insurer** within an applicable Retention shall apply towards the exhaustion of the **Limit of Liability**.

(7) If the **Insurer** pays any indemnification or advancement owed to an **Insured Person** by the **Company** within the applicable Retention, such amounts shall become due and owing as an obligation of the **Company** to the **Insurer** and the **Company** shall reimburse the **Insurer** for such amounts.

(8) Any advancement or payment by the **Insurer** within the applicable Retention shall apply toward exhaustion of the applicable sub-limit and/or the **Limit of Liability**.

(9) In the event the applicable Retention is paid in whole or in part by a "DIC Insurer", the **Insurer** shall recognize such payment as eroding the Retention to the extent of such payment. For purposes of this section, "DIC Insurer" shall mean an insurer providing coverage excess of this policy on a difference in conditions basis that requires such insurer to drop down and pay the Retention amount.

(10) No Retention shall apply to the following: (i) Non-Indemnifiable **Loss** pursuant to Coverage A.; (ii) **Derivative Demand Investigation Costs**; or (iii) **Company Crisis Loss**.

V. Defense, Cooperation, and Settlement

A. Under all Coverages of this policy, at the written request of the **Insured**, the **Insurer** shall advance, excess of any applicable Retention, covered **Defense Costs** or **Preliminary Inquiry Costs**, respectively, on a current basis prior to the final disposition of a **Claim**. Such advance payments by the **Insurer** shall be repaid to the **Insurer** by the **Insured**, severally according to their respective interests, in the event and to the extent that the **Insured** shall not be entitled under the terms and conditions of this policy to payment of such **Loss**.

The descriptions in the headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

B. The **Insurer** does not assume any duty to defend or investigate. The **Insureds** shall defend and contest any **Claim** made against them. The **Insured** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any **Defense Costs** or **Preliminary Inquiry Costs,** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. If all **Insured** defendants are able to dispose of all **Claims** and/or **Preliminary Inquiries** which are subject to one Retention, inclusive of **Defense Costs** and/or **Preliminary Inquiry Costs**, for an amount not exceeding the Retention, then the **Insurer's** consent shall not be required for such disposition.

C. Each **Company** and **Insured Person** shall provide the **Insurer** with full cooperation and such information as the **Insurer** may reasonably require. The **Insurer** shall have the right, but not the obligation, to effectively associate in the defense of any **Claim** or **Preliminary Inquiry** that involves or appears reasonably likely to involve the policy, including but not limited to the negotiating of any settlement. The failure of any **Insured Person** to give the **Insurer** cooperation and information as required herein shall not impair the rights of any other **Insured Person** under this policy.

D. With respect to **Defense Costs** jointly incurred by, any joint settlement made by, and/or any adjudicated judgment of joint and several liability against the **Company** and any **Insured Person**, in connection with any **Claim** other than a **Securities Claim**, the **Company**, the **Insured Persons** and the **Insurer** agree to use their best efforts to determine a fair and proper allocation of the amounts as between the **Company** and the **Insured Persons** and the **Insurer** taking into account the relative legal and financial exposures of the **Insured Persons** and the **Company**. In determining a fair and proper allocation, the **Insured Persons** and the **Company** expressly acknowledge that the **Insured Persons** and the **Company** each face independent exposure. In the event that a determination as to the amount of **Defense Costs** to be advanced under this policy cannot be agreed to, then the **Insurer** shall advance such **Defense Costs** which the **Insurer** states to be fair and proper until a different amount shall be agreed upon or determined pursuant to the provisions of this policy and applicable law.

E. In the event of **Loss** arising from any **Claim** and/or any **Preliminary Inquiry** for which payment is due under the provisions of this policy, then the **Insurer** shall:

(1) first, pay such **Loss** for which coverage is provided under Coverages A. and D.; and

(2) with respect to whatever remaining amount of the **Limit of Liability** stated in Item 3. of the Declarations is available after payment of such **Loss**, at the written request of the Chief Executive Officer of the **Parent Organization**, either pay or withhold payment of such other **Loss** for which coverage is provided under this policy.

In the event the **Insurer** withholds payment of such **Loss** pursuant to section V. E. (2) above, the **Insurer** shall remit such payment to the **Company** or directly to the **Insured Persons** at such time and in such manner as shall be set forth in written instructions of the Chief Executive Officer of the **Parent Organization**.

F. This section V. does not apply to **Company Crisis Loss**; nevertheless, the **Insurer** does not under this policy assume any duty to defend.

VI. Notice of Claim or Preliminary Inquiry

A. As a condition precedent to rights under this policy, an **Insured** shall provide the **Insurer**, as set forth in Item 8. of the Declarations, written notice of any **Claim** first made against or **Preliminary Inquiry** first received by an **Insured**, or any **Crisis** first occurring, during the **Policy Period**, as soon as practicable after the **Company's** Risk Manager or General Counsel (or equivalent position) becomes aware of the **Claim** or **Preliminary Inquiry**, or the **Crisis** begins, but in no event later than 60 days after the expiration of the **Policy Period** or Extended Reporting Period (if applicable). Failure to provide notice as soon as practicable shall not bar coverage under this policy unless the **Insurer** has been prejudiced by such failure.

B. If a **Claim** is first made and reported in accordance with section VI. A. above, then any **Related Claim** that is subsequently made against an **Insured** and that is reported in accordance with section VI. A. above shall be deemed to have been first made at the time that such previously reported **Claim** was first made.

C. If a **Preliminary Inquiry** is actually first received by an **Insured Person** and reported in accordance with section VI. A. above, then any **Related Preliminary Inquiry** or subsequent **Claim** or **Related Claim** that is reported in accordance with section VI. A. above shall be deemed to have been first received at the time that such previously reported **Preliminary Inquiry** was first received by an **Insured Person**.

The descriptions in the headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

D. With respect to any subsequent **Related Preliminary Inquiry**, this policy shall not cover **Loss** incurred before such subsequent **Related Preliminary Inquiry** is actually received by an **Insured Person**, and with respect to any subsequent **Related Claim**, this policy shall not cover **Loss** incurred before such subsequent **Related Claim** is actually made against an **Insured**. **Claims** actually first made or deemed first made prior to the inception date of this policy, **Preliminary Inquiries** first received or deemed first received by an **Insured Person** prior to the inception date of this policy, and **Claims** or **Preliminary Inquiries** arising out of any circumstances of which notice has been given under any directors and officers liability insurance policy in force prior to the inception date of this policy, are not covered under this policy.

E. If during the **Policy Period** or the "Extended Reporting Period" any **Insured** becomes aware of any act, error or omission, fact, circumstance or situation which may reasonably be expected to give rise to a **Claim** being made against any **Insured** and shall give written notice to the **Insurer** of the circumstance and the reasons for anticipating such a **Claim**, with full details as to dates, persons and entities involved, then any **Claim** subsequently made arising out of such act, error or omission, fact, circumstance or situation shall be deemed to have been made when notice was first given to the **Insurer**.

VII. General Conditions

A. Termination, Cancellation, and Non-Renewal

(1) This policy may be cancelled by the **Parent Organization** at any time by mailing written notice to the **Insurer** or by surrender of this policy to the **Insurer** or its authorized agent.

(2) This policy may be cancelled by or on behalf of the **Insurer** only in the event of non-payment of premium by the **Parent Organization**.

(3) The **Insurer** may cancel this policy by delivering to the **Parent Organization** or by mailing to the **Parent Organization**, by registered, certified, or other first class mail, at the last known principal address of the **Parent Organization**, and to the **Parent Organization's** insurance agent or broker, written notice stating when the cancellation shall be effective. The **Policy Period** terminates at the date and hour specified in such notice, or at the date and time of surrender of this policy by the **Parent Organization** to the **Insurer** or its authorized agent.

(4) The **Insurer** shall provide at least 20 days written notice to the **Parent Organization** prior to cancellation for non-payment of any premium.

(5) The mailing of such notice as described herein shall be sufficient proof of notice.

(6) The **Insurer** shall have the right to the premium amount for the portion of the **Policy Period** during which the policy was in effect. If the **Parent Organization** shall cancel the policy, the **Insurer** shall retain the pro rata proportion of the premium.

(7) If the **Insurer** decides not to renew this policy, the **Insurer** shall provide written notice to the **Parent Organization** at least 60 days prior to the end of the **Policy Period**. The notice shall include the reason for such non-renewal.

B. Change in Control

If during the **Policy Period**:

(1) the **Parent Organization** shall consolidate or merge with or into, or sell all or substantially all of its assets to any other person or entity or group of persons and/or entities acting in concert such that the **Parent Organization** is not the surviving entity; or

(2) any person or entity or group of persons and/or entities acting in concert shall acquire an amount of the outstanding securities or membership interests representing more than 50 percent of the voting power for the election of directors of the **Parent Organization**, or acquires the voting rights of such an amount of such securities or membership interests;

(either of the above events hereinafter referred to as the "Transaction")

then, this policy shall continue in full force and effect as to any **Wrongful Acts** occurring prior to the Transaction, but there shall be no coverage afforded by any provision of this policy for any **Wrongful Acts** occurring after the Transaction. This policy may not be cancelled following a Transaction and the entire premium for this policy shall be deemed fully earned as of the Transaction. The **Parent Organization** shall give the **Insurer** written notice of the Transaction as soon as practicable but not later than 30 days after the Transaction.

C. Extended Reporting Period

The descriptions in the headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

(1) If the **Parent Organization** shall cancel or if the **Insurer** or the **Parent Organization** refuses to renew this policy, then the **Parent Organization** shall have the right, upon payment of an additional premium as described below, to an extension of the coverage granted by this policy for a period of one to six years following the effective date of such cancellation or non-renewal. As used herein, this extension of coverage shall be referred to as the "Extended Reporting Period". Such "Extended Reporting Period" shall only apply to **Claims** first made against any **Insured** and/or **Preliminary Inquiries** first received by an **Insured Person** arising solely out of any **Wrongful Act** occurring prior to the end of the **Policy Period** and otherwise covered by this policy.

(2) The additional premium for a one year "Extended Reporting Period" shall be one hundred and twenty five percent (125%) of the "full annual premium" (or if the **Policy Period** is other than annual, one hundred and twenty five percent (125%) of the annualized premium). The additional premium for a two (2) to six (6) year "Extended Reporting Period" shall be the amount as determined by the **Insurer**. As a condition precedent to the right to purchase the "Extended Reporting Period", the total premium of this policy must have been paid. The rights contained in this paragraph shall terminate, however, unless written notice of such election together with the additional premium due is received by the **Insurer** within 30 days of the effective date of cancellation or non-renewal.

(3) In the event of a Transaction pursuant to section VII. B. of this policy, the **Parent Organization** shall have the right to request an offer from the **Insurer** for an "Extended Reporting Period" with respect to **Wrongful Acts** occurring prior to the effective time of the Transaction, and the **Insurer** shall offer such "Extended Reporting Period" pursuant to such terms, conditions, exclusions, and additional premium as the **Insurer** may reasonably decide. In the event of such Transaction, section VII. C. (2) above shall not apply.

(4) The additional premium for the "Extended Reporting Period" shall be fully earned at the inception of the Extended Reporting Period. The "Extended Reporting Period" is not cancelable.

D. Application, Severability, and Non Rescindability

(1) The **Insurer** has relied upon the accuracy and completeness of the statements, warranties, and representations contained in the **Application**. All such statements, warranties and representations are the basis for this policy and are incorporated in this policy, and all information forming part of the **Application** shall be deemed to be attached hereto as if physically attached.

(2) The **Application** shall be construed as a separate application for coverage by each **Insured Person**. With respect to the **Application**, no knowledge or information possessed by the **Company** or by any **Insured Person** shall be imputed to any other **Insured Person**.

(3) The **Insureds** agree that in the event the statements, warranties, and representations contained in the **Application** are not accurate and complete and materially affect either the acceptance of the risk or the hazard assumed by the **Insurer** under this policy, then this policy shall not afford coverage with respect to:

a. **Loss** under Coverage B. for the indemnification of any **Insured Person** who knew, as of the policy inception date, the facts that were not accurately and completely disclosed; and

b. **Loss** under Coverage C. if any **Insured Person** who is or was a Chief Executive Officer or Chief Financial Officer of the **Company** knew, as of the policy inception date, the facts that were not accurately and completely disclosed.

(4) The foregoing shall not apply as to any **Insured Person** who did not know as of the policy inception date that such inaccurate or incomplete disclosure had been provided to the **Insurer** or included in the **Application**.

(5) A written renewal application form shall not be required in order to receive a renewal quotation from the **Insurer**, although the **Insurer** shall have the right to require specific information upon renewal.

(6) Notwithstanding anything to the contrary in this policy, the **Insurer** shall not be entitled under any circumstances to rescind or void, in whole or in part, coverage provided under Coverage A. once the premium has been paid.

E. Action Against the Insurer

No action shall lie against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of any **Insured's** obligation to pay shall have been finally determined either by judgment against an **Insured** after actual trial or by written agreement of an **Insured**, the claimant and the **Insurer**.

The descriptions in the headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the **Insurer** as party to any action against an **Insured** or the **Company** to determine an **Insured's** liability, nor shall the **Insurer** be impleaded by the **Company** or any **Insured Person** or their legal representatives.

F. Bankruptcy

Bankruptcy or insolvency of any **Insured** shall not relieve the **Insurer** of its obligations under this policy.

In the event a liquidation or reorganization proceeding is commenced by or against the **Company** pursuant to the U.S. Bankruptcy Code or any similar state, local or foreign law, and there is a **Loss** for a covered **Claim** for which payment is due under this policy, the **Insured** shall make a request to waive and release any automatic stay or injunction that may apply to this policy or its proceeds in such proceeding, to the extent permitted under the applicable law; and shall agree not to oppose or object to any application or effort by the **Insurer** or any **Insured** to obtain relief from any such stay or injunction.

G. Subrogation

In the event of any payment under this policy, the **Insurer** shall be subrogated to the extent of such payment to all the **Insured's** rights of recovery thereof, and the **Insured** shall execute all papers required and shall do everything that may be necessary to secure such rights including the execution of such documents necessary to enable the **Insurer** to effectively bring suit in the name of the **Insured**. In no event, however, shall the **Insurer** exercise its rights of subrogation against an **Insured Person** under this policy unless a final and non-appealable adjudication in the underlying action adverse to such **Insured Person** establishes such **Insured Person** committed a deliberate criminal or deliberate fraudulent act or gained remuneration, profit or advantage to which such **Insured Person** was not legally entitled.

The **Insurer** assumes no duty to recover any amounts paid under this policy; however, any amounts as may be recovered pursuant to the exercise of the **Insurer's** rights of subrogation shall be applied as follows: (i) to the repayment of expenses incurred in exercising any rights of subrogation; (ii) to **Loss** in excess of the Limits of Liability hereunder; and (iii) to **Loss** paid by the **Insurer**.

H. Other Insurance

Insurance provided by this policy shall apply only as excess over any other valid and collectible insurance, unless such other insurance is expressly stated to be excess over the **Limit of Liability** provided under this policy. This policy shall be specifically excess to any other insurance which provides for a duty to defend a **Claim** for which this policy also provides coverage. Such insurance as is provided by this policy shall apply as primary to any personal umbrella excess liability insurance purchased by an **Insured Person**.

I. Conformance to Law

In the event there is an inconsistency between: (i) any period of limitation in this policy relating to the giving of notice of cancellation or Extended Reporting Period election; and (ii) the minimum or maximum period required by applicable law, where such law allows, the **Insurer** will resolve the inconsistency by applying the terms more favorable to the **Insured**; otherwise, the notice period is hereby amended to the extent necessary to conform to applicable law. Coverage under this policy shall not be provided to the extent prohibited by any law.

J. Assignment

This policy and any and all rights hereunder are not assignable without the written consent of the **Insurer**.

K. Entire Agreement

By acceptance of this policy, the **Insureds** and the **Insurer** agree that this policy (including the **Application**) and any written endorsements attached hereto constitute the entire agreement between the parties.

L. Notices and Authority

The descriptions in the headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

It is agreed that the **Parent Organization** shall act on behalf of the **Insureds** with respect to the giving and receiving of notices, the payment of premiums and the receiving of any return premiums that may become due under this policy, the receipt and acceptance of any endorsements issued to form a part of this policy and the exercising or declining to exercise any right to an Extended Reporting Period; provided, however, that the foregoing shall not limit the ability of the **Company** or an **Insured** to provide notice of a **Claim**, **Preliminary Inquiry**, **Crisis**, or circumstance as detailed in Section VI.B., or to elect the Extended Reporting Period pursuant to Section VII.C.

M. Currency

All **Loss**, premium, limits of liability, retention and any other amounts under this policy are expressed and payable in currency of the United States of America. If any settlement, judgment, **Defense Costs** or other **Loss** under the policy is incurred, stated, determined or adjudicated in a currency other than United States dollars, payment under this policy shall be made in United States dollars at the rate of exchange published in the Wall Street Journal on the date the obligation of the **Insurer** to pay such **Loss** is established.

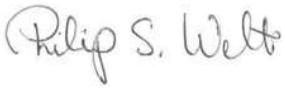
N. Coverage Territory

Coverage provided by this policy shall apply to **Wrongful Acts** occurring or **Claims** made worldwide.

In witness whereof, the **Insurer** has caused this policy to be signed by its President and Secretary, but this policy shall not be valid unless countersigned on the Declarations Page by a duly authorized representative of the **Insurer**.



President



Secretary

The descriptions in the headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

Berkley Insurance Company

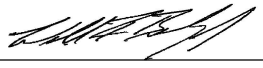
475 Steamboat Road Greenwich, CT 06830

POLICYHOLDER DISCLOSURE
NOTICE OF TERRORISM
INSURANCE COVERAGE

Coverage for acts of terrorism, as defined in the Terrorism Risk Insurance Act, as amended, (the "Act"), is included in your policy. You are hereby notified that under the Act the definition of act of terrorism has changed. As defined in Section 102(1) of the Act: The term "act of terrorism" means any act that is certified by the Secretary of the Treasury—in consultation with the Secretary of Homeland Security, and the Attorney General of the United States—to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. Under your coverage, any losses resulting from certified acts of terrorism may be partially reimbursed by the United States Government under a formula established by the Act. However, your policy may contain other exclusions which might affect your coverage, such as exclusion for nuclear events. Under the formula, the United States Government generally reimburses 85% through 2015; 84% beginning January 1, 2016; 83% beginning on January 1, 2017; 82% beginning on January 1, 2018; 81% beginning on January 1, 2019 and 80% beginning on January 1, 2020 of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. The Act contains a $100 billion cap that limits U.S. Government reimbursement as well as insurers' liability for losses resulting from certified acts of terrorism when the amount of such losses exceeds $100 billion in any one calendar year. If the aggregate insured losses for all insurers exceed $100 billion, your coverage may be reduced.

The portion of your annual premium that is attributable to coverage for acts of terrorism, as defined in the Act is $0.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

Insured Lordstown Motors Corp.	Policy Number [redacted]
Effective Date of This Endorsement 10/23/2022	Authorized Representative 

Berkley Insurance Company

475 Steamboat Road Greenwich, CT 06830

Office of Foreign Asset Control (OFAC) Exclusion Endorsement

In consideration of the premium paid for this Policy, it is understood and agreed that:

No insurer shall be deemed to provide cover and no insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions laws or regulations of the European Union, United Kingdom or the United States.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

Insured Lordstown Motors Corp.	Policy Number [redacted]
Effective Date of This Endorsement 10/23/2022	Authorized Representative

Berkley Insurance Company
475 Steamboat Road Greenwich, CT 06830

Ohio Amendatory Endorsement

In consideration of the premium paid for this policy, it is understood and agreed that:

1. Section II. Definitions U. (1) "**Loss**" sub-paragraph h. is amended by the addition of the following:

   It is further agreed that this policy shall not provide coverage for punitive, exemplary or multiple damages awarded by a court of competent jurisdiction when applying the substantive law of the State of Ohio.

2. Section VII. General Conditions A. Termination, Cancellation, and Non-Renewal is amended by the addition of the following:

   (8) If the **Insurer** offers to renew this policy with a decrease in limits or coverage, increase in retention, or an increase in premium greater than 25%, other than at the request of the **Parent Organization**, the **Insurer** shall provide written notice to the **Parent Organization** at least 45 days prior to the end of the **Policy Period**.

3. Section VII. C. Extended Reporting Period sub-paragraph (2) is amended as follows:

   As used herein, the phrase "30 days" is hereby deleted and replaced with "60 days".

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

Insured Lordstown Motors Corp.	Policy Number [redacted]
Effective Date of This Endorsement 10/23/2022	Authorized Representative 

Berkley Insurance Company
475 Steamboat Road Greenwich, CT 06830

SUB-LIMIT OF LIABILITY ENDORSEMENT

In consideration of the premium charged, it is hereby understood and agreed that this Policy is amended to include the following provision:

The following coverages shall each be subject to a sub-limit of liability as stated below. Each applicable sub-limit of liability shall be part of and not in addition to the **Limit of Liability** stated in the Declarations and in no way shall serve to increase the **Limit of Liability** stated therein:

(1)	Company Crisis Loss	$50,000
(2)	Derivative Demand Investigation Costs	$250,000
(3)	Books and Records Costs (included within #2 above)	$250,000
(4)	SOX 304/Dodd-Frank 954 Costs	$250,000
(5)	Personal Assets Costs	$250,000
(6)	Personal Reputation Costs	$250,000

ALL OTHER TERMS, CONDITION AND EXCLUSIONS REMAIN UNCHANGED

_____
Authorized Representative

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

Insured Lordstown Motors Corp.	Policy Number [redacted]
Effective Date of This Endorsement 10/23/2022	Authorized Representative

Berkley Insurance Company
475 Steamboat Road Greenwich, CT 06830

PENDING AND PRIOR LITIGATION ENDORSEMENT

In consideration of the premium charged, it is hereby understood and agreed that the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured** based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any **Claim**, **Preliminary Inquiry** or any civil, criminal, administrative or regulatory investigation, proceeding, litigation or arbitration pending or prior to 10/23/2020, or any **Wrongful Act** or **Related Wrongful Acts** or any fact circumstance or situation, underlying or alleged in such pending or prior proceeding.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED

_____
Authorized Representative

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

Insured Lordstown Motors Corp.	Policy Number [redacted]
Effective Date of This Endorsement 10/23/2022	Authorized Representative

Berkley Insurance Company
475 Steamboat Road Greenwich, CT 06830

Lordstown Motors Corp. Amendatory Endorsement

In consideration of the premium charged, the following amendments are hereby made to the policy:

Section I, Insuring Agreements, is deleted in its entirety and replaced by:

I. INSURING AGREEMENTS

COVERAGE A: DIRECTORS AND OFFICERS COVERAGE

This policy shall pay the **Loss** of any **Insured Person** arising from a:

i. **Claim** made against such **Insured Person**, individually or otherwise**,** for any **Wrongful Act** of such **Insured Person**; and

ii. **Pre-Claim Inquiry**, to the extent that such **Loss** is **Pre-Claim Inquiry Costs**;

except when and to the extent that the **Company** has indemnified such **Insured Person**.

COVERAGE B: CORPORATE INDEMNIFICATION COVERAGE

This policy shall pay the **Loss** of the **Company** arising from a:

i. **Claim** made against an **Insured Person** (including an **Outside Entity Executive**), individually or otherwise, for any **Wrongful Act** of such **Insured Person**; and

ii. **Pre-Claim Inquiry**, to the extent that such **Loss** is **Pre-Claim Inquiry Costs**;

but only to the extent that such **Company** has indemnified such **Insured Person**.

COVERAGE C: CORPORATE ENTITY COVERAGE

This policy shall pay the **Loss**:

i. of the **Company** arising from any **Securities Claim** made against such **Company** for any **Wrongful Act** of such **Company**; or

ii. incurred by the **Company** or on its behalf by any **Insured Person** of the **Company** (including through any special committee) as **Nominal Defendant Response Costs**.

COVERAGE D: OUTSIDE ENTITY DIRECTORS AND OFFICERS LIABILITY COVERAGE

This policy shall pay the **Loss** of any **Insured Person** arising from a **Claim** made against such **Insured Person** for any **Wrongful Act** in their **Outside Entity Position** but only excess of any indemnification provided by an **Outside Entity** and any insurance coverage afforded to an **Outside Entity** or its **Insured Persons** applicable to such **Claim**, except when and to the extent that the **Company** has indemnified such **Insured Person**.

Berkley Insurance Company

475 Steamboat Road Greenwich, CT 06830

COVERAGE E: COMPANY CRISIS COVERAGE

The **Insurer** shall pay on behalf of the **Company**, subject to the sub-limit set forth in the endorsement attached to this policy, all **Company Crisis Loss** for a **Crisis** first occurring during the Policy Period or the Extended Reporting Period (if applicable) and reported to the **Insurer** pursuant to the terms of this policy.

COVERAGE F: COSTS OF INVESTIGATION FOR SHAREHOLDER DERIVATIVE DEMANDS AND BOOKS & RECORDS COSTS COVERAGE

This policy shall pay the costs of the **Company** arising from: (i) a **Derivative Demand Investigation** in response to a **Shareholder Derivative Demand**, or (ii) a **Books & Records Demand,** subject to and included within the single sub-limit set forth in the endorsement attached to this policy.

B. Section II, Definitions, is amended as follows:

1. The definition of "**Application**" is deleted in its entirety and replaced by:

"**Application** shall mean any public documents filed by the **Company** with the Securities and Exchange Commission during the twelve-month period prior to the inception of this Policy."

2. Clauses (1) and (2) of the definition of "**Claim**" are deleted in their entirety and replaced by:

"(1) a written demand for monetary, non-monetary, injunctive, or equitable relief, including any demand for mediation, arbitration, or any other alternative dispute resolution process;

(2) a civil, criminal, administrative, regulatory or arbitration proceeding for monetary, non-monetary, injunctive, or equitable relief that is commenced by:

a. service of a complaint or similar pleading or equivalent document in a **Foreign Jurisdiction**;
b. return of an indictment, information or similar document or equivalent document in a **Foreign Jurisdiction** (in the case of a criminal proceeding); or
c. receipt or filing of a notice of charges;"

3. The following paragraph is added to the end of the definition of **Claim:**

"Solely with respect to Coverage A, and not applicable to any other Coverage Section, any formal demand or proceeding arising out of any statutory liability of the **Insured Persons** due to the failure of the **Company** to deduct, withhold or remit taxes (including non-resident withholding taxes, goods and services taxes, salary or withholding taxes and employee source deductions), unemployment insurance contributions, or pension plan contributions."

4. The following is added at the end of the definition of **Crisis:**

Berkley Insurance Company

475 Steamboat Road Greenwich, CT 06830

"**Crisis**" shall also include any negative statement about an **Insured Person** made by an **Enforcement Body** during the **Policy Period**, if such statement is made by an individual authorized to speak on behalf of such **Enforcement Body** and is included in any press release or published by any print or electronic media outlet."

5. The definition of **Crisis Consultant** is deleted in its entirety and replaced by:

"**G.** "**Crisis Consultant**" means any public relations firm, management firm or law firm retained by the **Company** with the consent of the **Insurer**, such consent not to be unreasonably withheld or delayed, to provide **Crisis Management Services**."

6. Clause 1of the definition of **Defense Costs** is deleted in its entirety and replaced by:

"**I.** **(1)** "**Defense Costs**" means:

A) the reasonable fees, costs and expenses (including costs of electronic discovery, the cost of an **Electronic Discovery Consultant**, and premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond) consented to by the **Insurer (**such consent not to be unreasonably withheld or delayed) and resulting ~~solely~~ from the investigation, adjustment, defense and appeal of a **Claim** against an **Insured**, but excluding wages, salaries, fees or any other compensation of officers or employees of the **Company**; or

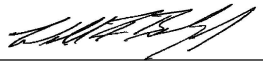
B) the reasonable fees, costs and expenses consented to by the **Insurer (**such consent not to be unreasonably withheld or delayed) and resulting from an **Insured Person** lawfully opposing, challenging, resisting or defending against any request for, or any effort to obtain, the **Extradition** of that **Insured Person** or appealing any order or other grant of **Extradition** of that **Insured Person**, but excluding wages, salaries, fees or any other compensation of officers or employees of the **Company**.

"**Corporate Manslaughter Act (UK) Costs"** shall be included in "**Defense Costs"**.

7. The definition of **Derivative Demand Investigation Costs** is deleted in its entirety and replaced by:

"J. "**Derivative Demand Investigation Costs**" means the reasonable costs, charges, fees and expenses consented to by the **Insurer** (such consent not to be unreasonably withheld or delayed) and incurred by the **Company** or by its board of directors (or an equivalent managing body or equivalent foreign body) or any committee thereof in connection with the investigation or evaluation of a **Shareholder Derivative Demand**. "**Derivative Demand Investigation Costs**" shall not include any wages, salary, fees or other compensation of any employee of the **Company** or of any **Insured Person**.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

Insured Lordstown Motors Corp.	Policy Number [redacted]
Effective Date of This Endorsement 10/23/2022	Authorized Representative 

Berkley Insurance Company

475 Steamboat Road Greenwich, CT 06830

Derivative Demand Investigation Costs shall also include "**Books and Records Costs**", which means reasonable costs, charges, fees and expenses consented to by the **Insurer** (such consent not to be unreasonably withheld or delayed) and incurred by the **Company** in response to a written demand by or on behalf of any shareholder of such **Company** to inspect the books and records of such **Company** pursuant to Section 220 of the Delaware General Corporation Law or any similar statute in any other jurisdiction anywhere in the world."

8. The definition of **Electronic Discovery Consultant** is deleted in its entirety and replaced by:

"**K.** "**Electronic Discovery Consultant**" means any entity retained by an **Insured** with the consent of the **Insurer** (such consent not to be unreasonably withheld or delayed) to assist with respect to the organization, cataloging, preservation, collection, storage and production of electronically stored information in connection with the defense of a **Claim**."

9. The definition of **Insured Person** is amended as follows:

The following is added to Clause Q. (3):
"And any Management Committee Member of the **Company**."

Q. (5) Is deleted and replaced by:

"an Employed Lawyer, but only with respect to a **Claim** made solely in connection with services rendered to or for the benefit of the **Company** by the Employed Lawyer and continuously maintained against both such Employed Lawyer and an **Insured Person** who is not an Employed Lawyer. As used herein, "Employed Lawyer" means an employee of the **Company** who is admitted to practice law and is employed as a lawyer full time for and salaried by the **Company** at the time of the **Wrongful Act**; or"

The following is added at the end of definition of **Insured Person**:
"**Insured Person**" shall also include any de facto or shadow director.

10. R.(2) of the definition of **Insured Person Investigation** is deleted in its entirety and replaced with:

"R. (2) in the case of an investigation by an **Enforcement Body** after the service of a subpoena (or in a **Foreign Jurisdiction**, the equivalent legal process) upon the **Insured Person**; or"

11. The definition of "**Loss**" is amended by:

Under Clause (1) thereof:

i) U.(1) h. is deleted in its entirety and replaced by:

"U.(1) h. punitive, exemplary or multiple damages; provided, however, such punitive, exemplary or multiple damages (including the multiplied part of such damages) shall not be covered for **Claims** arising from **Wrongful**

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

Insured Lordstown Motors Corp.	Policy Number [redacted]
Effective Date of This Endorsement 10/23/2022	Authorized Representative

Berkley Insurance Company

475 Steamboat Road Greenwich, CT 06830

Employment Acts."

ii) adding "plaintiff's fees for derivative suits";

iii) adding "**Event Study Expenses**, which means the reasonable fees, costs, and expenses of an expert witness consented to by the **Insurer**, such consent not to be unreasonably withheld or delayed, incurred to conduct an event study regarding price impact solely for the purpose of contesting a motion for class certification actually filed in a **Securities Claim**.";

iv) adding "unpaid wages or taxes alleged to be or actually owed by the **Company** that are also the personal responsibility of an **Insured Person** under any local, state, federal, or foreign law governing such wages or taxes, but only under Coverage A of this policy and not under any other Coverage Section."

Under Clause 2 thereof:

(i) U.2. "a. taxes" is deleted and replaced by:

"a. taxes, or the loss of benefits, except, solely with respect to Coverage A and not applicable to any other Coverage Section:

i. that portion of any tax assessment imposed on any **Insured Person** by a foreign jurisdiction based on the **Insurer's** payment of such damages, judgments, settlements, **Preliminary Inquiry Costs and Defense Costs** as a foreign or non-admitted carrier; or

ii. any statutory liability for such taxes owed by any **Insured Person** as described in the definition of **Claim**, as amended regarding tax matters;"

(ii) U.2. "b. civil or criminal fines or penalties;" is deleted and replaced by:

"b. civil or criminal fines or penalties; however, where permissible by law, this shall not apply to **Loss** under Coverage A."

(iii) U.2. "c. cleanup costs relating to hazardous materials, pollution, or product defects", solely for Coverage A and not applicable to any other Coverage Section, is deleted.

12. The definition of "**Personal Asset Costs**" is deleted in its entirety and replaced by:

Z. "**Personal Assets Costs**" means the reasonable fees, costs and expenses arising from a **Claim**, consented to by the **Insurer** (such consent not to be unreasonably withheld or delayed) and incurred by an **Insured Person** to oppose any efforts by a **Enforcement Body** to seize, attach, or otherwise enjoin the use of the personal assets or real property of an **Insured Person** or to obtain the discharge or revocation of a court order entered during the **Policy Period** in any way impairing the use thereof.

13. The definition of "**Preliminary Inquiry**" is amended as follows:

Berkley Insurance Company

475 Steamboat Road Greenwich, CT 06830

Definition BB. (1) is deleted in its entirety and replaced by:

"(1) an **Enforcement Body**, **,** including, but not limited to, when an **Enforcement Body** assumes the role of a trust, receiver, conservator, rehabilitator, liquidator, or similar official to take control of, supervise, or oversee the Insured, or to liquidate or sell all or substantially all of the asses of an **Insured**;"

14. The definition of "**Preliminary Inquiry Costs**" is deleted in its entirety and replaced by:

"**CC.** "**Preliminary Inquiry Costs**" means the reasonable fees, costs and expenses consented to by the **Insurer** (such consent not to be unreasonable withheld or delayed) and incurred by an **Insured Person** in connection with the **Insured Person's** preparation and response to a **Preliminary Inquiry**. **Preliminary Inquiry Costs** shall not include the costs of any routine or regularly scheduled regulatory inspection, compliance, review, examination, production or audit conducted in an **Enforcement Body's** routine or ordinary review or compliance process."

15, The definition of "**Securities Claim**" is amended by adding the following:

GG. (1)c. that is an **Aiding and Abetting Claim**, which means a **Claim** brought by any security holder of an **Acquisition Target**, in their capacity as such, alleging that the **Insured** aided and abetted any breach of fiduciary duty owed the **Acquisition Target's** shareholders, or violation of securities law by the **Acquisition Target** regarding the **Company's** acquisition or proposed acquisition of the **Acquisition Target**.

Coverage for **Aiding and Abetting Claims** shall be limited to **Defense Costs** only and shall not include coverage for any other type of **Loss**.

Acquisition Target means any entity that the **Company** has acquired, or proposed to acquire, in a transaction that results in, or would result in, such entity becoming a **Subsidiary**.

16. The definition of "**SOX 304 / Dodd-Frank 954 Costs**" is deleted in its entirety and replaced by:

"JJ. "**SOX 304/Dodd-Frank 954 Costs**" means the reasonable fees, costs and expenses (including the premium or origination fee for a bond or a loan) incurred by an **Insured Person** and consented to by the **Insurer** (such consent not to be unreasonably withheld or delayed) solely to facilitate the return of amounts required to be repaid by such persons pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002 or Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; provided; however, **SOX 304/Dodd-Frank 954 Costs** shall not include the payment, return, reimbursement, disgorgement or restitution of any amounts requested or required to be repaid by such persons pursuant to Section 304(a) or Section 954."

17. The definition of "**Subsidiary**" is amended by increasing the asset threshold described in Clause KK. (4) from 15% to 25%.

18. The following is added to the definition of **Wrongful Act**:

Berkley Insurance Company

475 Steamboat Road Greenwich, CT 06830

"Any act, error, omission, misstatement, misleading statement, neglect, or breach of duty of an **Insured Person** while acting in their capacity as a "Control Person" as defined under Securities Act of 1933 Section 15 and Securities Act of 1934 Section 20."

19. The following is added to Section II, **Definitions**:

""**Personal Reputation Costs**" means the reasonable fees, costs and expenses incurred by an **Insured Person** and consented to by the Insurer (such consent not to be unreasonably withheld or delayed) in connection with the retention of a **Crisis Consultant** to minimize effect of a **Personal Reputation Crisis** on such **Insured Person's** reputation.

"**Personal Reputation Crisis**" means negative statements made by an individual authorized to speak on behalf of any federal, state , local or foreign enforcement authority or government investigative authority or the enforcement arm of any securities or commodities exchange or other self-regulatory body, regarding an **Insured Person** and included in any press release or published by any print or electronic media.

Loss shall include **Personal Reputation Costs**."

C. Section III. Exclusions

1. Exclusion A is deleted in its entirety and replaced by:

"A. based upon, arising out of, or attributable to any remuneration, personal profit or other financial advantage to which an **Insured** was not legally entitled if established by any final and non-appealable adjudication in the underlying action adverse to such **Insured**; provided, however, that in a **Securities Claim** alleging violations of Section 11, 12 or 15 of the Securities Act of 1933, including amendments thereto, this exclusion shall not apply to the portion of any **Loss** attributable to such violations;"

2. Exclusion C. is deleted in its entirety and replaced by:

"**C.** for:

1) physical injury to or destruction of any tangible property, including the loss of use thereof; or

2) bodily injury, sickness, disease, and death;

provided, however, this exclusion shall not apply to a **Securities Claim**, **Corporate Manslaughter Act (UK) Costs**, to damages or causes of action for emotional distress, mental anguish, defamation, invasion of privacy or humiliation in connection with a **Claim** for a **Wrongful Employment Act**, or to **Loss** under Coverage A."

3. Exclusion E is deleted in its entirety and replaced by:

"**E**. solely with respect to any employee benefit plan sponsored by the **Company,** for any actual or alleged violations of the Employee Retirement Income Security Act of 1974, as amended, or any similar provisions of any state, local or foreign statutory or common law; further, this exclusion shall not apply to Loss under Coverage A;"

4. Exclusion G.(1) is deleted in its entirety and replaced by:

Berkley Insurance Company

475 Steamboat Road Greenwich, CT 06830

"G.(1) any **Wrongful Act** alleged in any matter which has been reported, or in any circumstance of which notice has been given and accepted, prior to the **Policy Period**, under any other directors and officers liability insurance policy; or"

5. The following is added to Exclusion I.:

"4) any **Claim** brought by the **Company** because applicable law requires the **Company** to do so."

6. The last paragraph of Section III is deleted in its entirety and replaced by the following:

"For the purposes of determining the applicability of any Exclusion, the **Wrongful Acts** of, facts pertaining to, and knowledge possessed by any **Insured** shall not be imputed to any other **Insured**."

7. The following provisions are added to Section II, Exclusions:

(i) Solely with respect to Coverage A and not applicable to any other Coverage Section, no exclusion in this policy shall apply to **Defense Costs**.

(ii) A final, non-appealable adjudication in any underlying action shall not, as used in this Section II. Exclusions, apply to any declaratory action or equivalent proceeding brought by or against the **Company**.

(iii) No conduct pertaining to any **Insured** shall be imputed to any **Insured Person** for the purposes of applying any exclusions.

D. Section VI. Notice of Claim or Preliminary Inquiry

Clause A is deleted in its entirety and replaced by:

"A. As a condition precedent to rights under this policy, an **Insured** shall provide the **Insurer**, as set forth in Item 8. of the Declarations, written notice of any **Claim** first made against an **Insured**, or any **Crisis** first occurring, during the **Policy Period**, as soon as practicable after the **Company's** Risk Manager or General Counsel (or equivalent position) becomes aware of the **Claim**, or the **Crisis** begins, but in no event later than 90 days after the expiration of the **Policy Period** or Extended Reporting Period (if applicable). Failure to provide notice as provided herein shall not bar coverage under this policy unless the **Insurer** has been materially prejudiced by such failure.

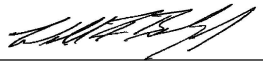
With respect to a **Preliminary Inquiry** first received by an **Insured**, the **Insured** shall have sole discretion whether to provide notice to the **Insurer** of such **Preliminary Inquiry**; however, no coverage shall be afforded for any **Loss** incurred in connection with any **Preliminary Inquiry** prior to the time written notice is given to the **Insurer** pursuant to this Section VI."

E. Section VII. General Conditions

1. Clause A, Termination, Cancellation, and Non-Renewal is amended as follows:

(i) Subpart (4) is amended by increasing 20 days to 30 days.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

Insured Lordstown Motors Corp.	Policy Number [redacted]
Effective Date of This Endorsement 10/23/2022	Authorized Representative 

Berkley Insurance Company

475 Steamboat Road Greenwich, CT 06830

(ii) Subpart (7) is amended by increasing 60 days to 90 days.

2. Clause D. Application, Severability, and Nonrescindability is deleted in its entirety and replaced by:

"D. The **Application** shall be construed as a separate application for coverage by each **Insured Person**. The knowledge or representations of an **Insured Person** shall not be imputed to any other **Insured Person**.

Under no circumstances shall the coverage provided by this Policy be deemed void, whether by rescission or otherwise.

A written renewal **Application** shall not be required in order to receive a renewal quotation from the **Insurer**, although the **Insurer** shall have the right to require specific information upon renewal."

3. Clause G., Subrogation

The second paragraph therein is deleted in its entirety and replaced by:

"The **Insurer** assumes no duty to recover any amounts paid under this policy; however, any amounts as may be recovered pursuant to the exercise of the **Insurer's** rights of subrogation shall be applied as follows: (i) to the repayment of expenses incurred in exercising any rights of subrogation; (ii) to **Loss** in excess of the Limits of Liability hereunder; and (iii) to **Loss** paid by the **Insurer**. Further, solely with respect to items (ii) and (iii) any recoveries by the **Insurer** pursuant to subrogation for payments made under this policy shall reinstate, in an amount equal to such recoveries, the Limits of Liability of this policy that were eroded or exhausted by such payments.

4. The last sentence of Clause H, Other Insurance, is deleted and replaced by:

"This policy shall be excess of and shall not contribute with any policy for bodily injury, property damage, or fiduciary liability. Such insurance as is provided by this policy shall apply as primary to any personal umbrella excess liability or personal director liability insurance purchased by an **Insured Person**."

5. Clause O to this Section VII. General Conditions, is added:

O. Payment of Loss to Insured Person of a Foreign Subsidiary

"If payment of **Loss** to an **Insured Person** of a foreign **Subsidiary** is not legally permitted by a foreign country, then such **Loss** shall be paid to such **Insured Persons** in a jurisdiction mutually acceptable to the **Insured Person** and the **Company**."

ALL OTHER TERMS AND CONDITIONS UNCHANGED.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

Insured Lordstown Motors Corp.	Policy Number [redacted]
Effective Date of This Endorsement 10/23/2022	Authorized Representative

Berkley Insurance Company

475 Steamboat Road Greenwich, CT 06830

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

Insured	Policy Number
Lordstown Motors Corp.	[redacted]
Effective Date of This Endorsement	Authorized Representative
10/23/2022	

Berkley Insurance Company

475 Steamboat Road Greenwich, CT 06830

Addition of Outside Entity

In consideration of the premium paid for this policy, it is understood and agreed that section II. Definitions W. **"Outside Entity"** is amended by the addition of the following:

"Outside Entity" shall include MIH EV Design LLC for any **Wrongful Acts** committed or allegedly committed by an **Insured Person** on or after 05/11/2022.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

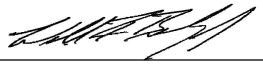
Insured Lordstown Motors Corp.	Policy Number [redacted]
Effective Date of This Endorsement 10/23/2022	Authorized Representative 

EXHIBIT L



Side A Difference In Conditions Insurance Policy

PLEASE READ YOUR POLICY CAREFULLY

100 William Street, 5th Floor
New York, NY 10038
(212) 978-2800

Hudson Insurance Company

100 William Street, 5th Floor, New York, NY 10038 hereinafter "Insurer"

The Defender (SM)

Directors and Officers Liability Insurance
Side A DIC Policy

THIS POLICY IS A CLAIMS MADE AND REPORTED POLICY AND COVERS ONLY CLAIMS FIRST MADE DURING THE POLICY PERIOD OR THE DISCOVERY PERIOD, IF EXERCISED, AND REPORTED TO THE INSURER AS PROVIDED HEREIN. PLEASE READ THIS POLICY CAREFULLY.

DECLARATIONS

ITEM 1. Company: **Lordstown Motors Corp.** Policy No. [redacted]
Principal Address: **2300 Hallock Young Road**
Lordstown, OH 44481

ITEM 2. Policy Period:
Inception Date: 12:01 A.M. on **October 23, 2020**
Expiration Date: 12:01 A.M. on **October 23, 2021**
Local time at the address shown in Item 1.

ITEM 3. Limit of Liability (inclusive of **Defense Expenses**):
$5,000,000 maximum aggregate limit of liability for all **Claims.**

ITEM 4. Discovery Period: **One year** for **200**% of the premium for the **Policy Period,** if exercised, in accordance with Section IV. (I) of this Policy.

ITEM 5. Premium:
[redacted] Total Prepaid Premium
$ [redacted] Other
[redacted] Total

ITEM 6. ALL NOTICES TO THE INSURER AND REPORTS OF **CLAIMS** AND MATTERS PURSUANT TO SECTION IV. (D) OF THE POLICY MUST BE ADDRESSED TO THE INSURER'S REPRESENTATIVE BELOW:

Hudson Insurance Company
Attn: D&O Claims
100 William Street
New York, NY 10038
Fax: 203-940-8652

Or

HFP-Claims@Hudsoninsgroup.com

ITEM 7. Follow Form Policy and other **Underlying Insurance:**

Insurer	Limits	Attachment	Policy Period	Policy Number	
Lloyds America Inc.	**$5,000,000 Primary**		**Oct. 23, 2020 to Oct. 23, 2021**	[redacted]	**Follow Form Policy**

Hudson Insurance Company
100 William Street, 5th Floor
New York, NY 10038
hereinafter "Insurer"

XL Specialty Insurance Company	**$5,000,000**	**$5,000,000**	**Oct. 23, 2020 to Oct. 23, 2021**	[redacted]	**Underlying Insurance**
Berkley Professional Liability	**$5,000,000**	**$10,000,000**	**Oct. 23, 2020 to Oct. 23, 2021**	[redacted]	**Underlying Insurance**
Wesco Insurance Company	**$5,000,000**	**$15,000,000**	**Oct. 23, 2020 to Oct. 23, 2021**	[redacted]	**Underlying Insurance**
Ascot Insurance Company (Admitted)	**$5,000,000**	**$20,000,000**	**Oct. 23, 2020 to Oct. 23, 2021**	[redacted]	**Underlying Insurance**
Allied World Insurance Company	**$5,000,000**	**$25,000,000**	**Oct. 23, 2020 to Oct. 23, 2021**	[redacted]	**Underlying Insurance**
Argonaut Insurance Company	**$5,000,000**	**$30,000,000**	**Oct. 23, 2020 to Oct. 23, 2021**	[redacted]	**Underlying Insurance**
Capitol Indemnity Corporation	**$5,000,000**	**$35,000,000**	**Oct. 23, 2020 to Oct. 23, 2021**	[redacted]	**Underlying Insurance**
Associated Industries Insurance	**$5,000,000**	**$40,000,000**	**Oct. 23, 2020 to Oct. 23, 2021**	[redacted]	**Underlying Insurance**
AXIS Insurance Company	**$5,000,000**	**$45,000,000**	**Oct. 23, 2020 to Oct. 23, 2021**	[redacted]	**Underlying Insurance**

ITEM 8. Form Number and Endorsements Attached at Issuance:
Form No.: **HFP-8675309 Ed. 07/08**
Endorsements:

1. **Ohio Changes Endorsement - HIC SIDE A DIC OH-AMEND Ed. 10/08**
2. **Cap on Losses from Certified Acts of Terrorism - X-19 (01/15)**
3. **Disclosure Pursuant to Terrorism Risk Insurance Act - IL 09 85 01 15**
4. **State Amendatory Inconsistency Endorsement - HFP Side A DIC A15 Ed. 07/08**
5. **Non Follow Form of Certain Specified Coverage Parts Endorsement - HFP Side A DIC A50 Ed. 04/10**
6. **Defender Plus Endorsement - HFP Side A DIC A90 Ed. 01/16**
7. **Prior Knowledge Exclusion - HFP Side A DIC E6 Ed. 07/08**
8. **Pending or Prior Litigation Exclusion - HFP Side A DIC E30 Ed. 07/08**

Hudson Insurance Company
100 William Street, 5th Floor
New York, NY 10038
hereinafter "Insurer"

ITEM 9. Producer Name and Address:
AmWINS
10 South LaSalle, Suite 2000
Chicago, IL 60603

These Declarations, the application, the higher limit warranty (if any) and the Policy, with endorsements, will constitute the entire agreement between the Insurer and the **Insured Executive(s).** In witness whereof, the Insurer has caused this Policy to be signed by its President and Secretary, but it shall not be valid unless also signed by a duly authorized representative of the Insurer.

Matthew J. Jensen

Authorized Representative

HUDSON INSURANCE GROUP®

The Defender (SM)

HUDSON INSURANCE COMPANY
SIDE A DIC POLICY

THIS IS A NON-RESCINDABLE, CLAIMS-MADE INSURANCE POLICY AND DEFENSE EXPENSES ARE INCLUDED WITHIN THE LIMIT OF LIABILITY. PLEASE CAREFULLY REVIEW THE ENTIRE POLICY.

In consideration of the payment of the premium stated in the Declarations and subject to those Declarations and all provisions of this Policy, the Insurer, the **Company** and the **Insured Executives** agree as follows:

I. INSURING AGREEMENTS

(A) The Insurer will pay on behalf of the **Insured Executives**, **Loss** to the extent that such **Loss** is

(i) not paid by any other insurer that provides Directors' and Officers' Liability Insurance or a similar type of insurance policy for the benefit of the **Insured Executives**; and

(ii) not paid from any source of indemnification or advancement to which the **Insured Executives** is entitled,

and which results from a **Claim** first made against such **Insured Executives** during the **Policy Period** or, if duly elected and paid, the Discovery Period, for a **Wrongful Act**, which is reported in writing to the Insurer as soon as practicable, but in no event later than ninety (90) days after the end of the **Policy Period** or Discovery Period, as applicable.

If **Loss** is paid under the **Underlying Insurance** or from any source of indemnification or advancement on behalf of any **Insured Executive** for his or her **Wrongful Act**, then this Policy shall only pay excess of the amounts paid under the **Underlying Insurance** or otherwise paid as indemnification or advancement from any source or party.

(B) Except as may otherwise be enhanced or broadened by a specific provision herein, this Policy shall follow form of all provisions in the **Follow Form Policy** as in effect at the time the **Follow Form Policy** incepts.

II. DEFINITIONS

All Definitions contained in this Section II, other than those contained in Section II (E), (I), (J), (K) and (M), shall follow form of the same definition in the **Follow Form Policy**, but only if that policy definition results in broader coverage than would be provided in this Policy. If a term is defined in the **Follow Form Policy** and there is no definition of such term in this Policy, the definition in the **Follow Form Policy** shall apply.

HUDSON INSURANCE GROUP®

(A) "**Claim**" means:

(1) a written demand for monetary or non-monetary relief;

(2) a civil or criminal judicial proceeding or alternative dispute resolution proceeding seeking monetary or non-monetary relief, including any appeal therefrom;

(3) a formal civil, criminal, administrative, **Extradition** or regulatory proceeding (including but not limited to a proceeding brought by, on behalf of or before the Equal Employment Opportunity Commission or similar federal, state or local governmental agency), subpoena, or a formal or informal investigation, including any appeal therefrom; or

(4) a written request or demand for an interview of an Insured Executive from any governmental entity or a self-regulatory authority, including by way of example but not limited to the Securities Exchange Commission, a state office of the attorney general, the Department of Justice or New York Stock Exchange.

A **Claim** shall be deemed to have been first made at the earliest date of receipt by an **Insured Executive** or agent on his or her behalf of a written demand, written notice or order of investigation, a target letter or similar document, criminal indictment or information, notice of charges or service of summons, subpoena or similar document commencing a proceeding or investigation against such **Insured Executive.**

(B) "**Company**" means the entity named in Item 1 of the Declarations or any **Subsidiary** created or acquired before or during the **Policy Period**, including such entity or **Subsidiary** when operating as a debtor in possession under Chapter 11 of the United States Bankruptcy Code.

(C) "**Defense Expenses**" means all reasonable and necessary legal fees and expenses incurred in the defense or investigation of any **Claim** after such **Claim** has been made, and shall also include the reasonable and necessary expenses in connection with any appeal of such **Claim** or in connection with an **Extradition** proceeding, but shall not include the **Company's** overhead expenses or any salaries, wages, fees, or benefits of any **Insured Executive** or agents or employees of the **Company**.

(D) "**Extradition**" means any formal and lawful process or proceeding commenced against an **Insured Executive** located in any jurisdiction in an attempt to obtain the voluntary or involuntary surrender of such **Insured Executive** to another jurisdiction in connection with a **Claim**.

(E) "**Follow Form Policy**" means that policy so identified in Item 7 of the Declarations.

(F) "**Insured Executive**" means any or all of the following:

(1) a past, present or future duly elected director, duly appointed officer or duly elected or appointed member of a board of managers of the **Company**, including any general counsel who is also an employee of the **Company** and other employed lawyers who are both employees and duly appointed officers of the **Company**;



(2) the functional equivalent of such director, officer or manager of the **Company** when serving in such capacity outside the United States of America;

(3) the lawful spouse or domestic partner of an **Insured Executive**, but solely for a **Wrongful Act** by such **Insured Executive**; or

(4) the estate, heirs, legal representatives or assigns of an **Insured Executive**, but solely in the event of his or her death, incapacity or bankruptcy and solely for a **Wrongful Act** by such **Insured Executive**.

(G) "**Interrelated Wrongful Acts**" means **Wrongful Acts** based upon, arising from, resulting from, or in consequence of the same or related facts, circumstances, situations, transactions, causes or events.

(H) "**Loss**" means judgment and settlement amounts (including pre- or post-judgment interest, punitive or exemplary damages, fines, penalties and the multiplied portion of any damages award, provided that such amounts are insurable pursuant to the law in any jurisdiction whose law may reasonably be applicable and which holds such amounts to be insurable) and **Defense Expenses** that the **Insured Executives** are legally liable to pay. In determining applicable law with respect to an award of punitive or exemplary damages, only the following factors shall be considered:

a) the state in which the **Company** is incorporated;

b) the state in which the **Company** has its principal place of business;

c) the state in which the litigation in which punitive or exemplary damages were awarded was filed and maintained; or

d) the state in which any **Wrongful Act** takes place on which the punitive or exemplary damages award is predicated.

The Insurer shall not challenge any written opinion of counsel retained by or on behalf of the **Insured Executives** asserting that the award of punitive or exemplary damages at issue is insurable, provided that such counsel is duly licensed to practice law in the jurisdiction whose law is opined to be applicable and such counsel agrees in writing that the Insurer is a party that may rely upon its opinion.

Loss shall also include taxes imposed by law upon any **Insured Executive** in his or her capacity as such and in connection with any bankruptcy, receivership, conservatorship or liquidation of the **Company**, provided always that such taxes are insurable under applicable law.

With regard to any settlement or judgment amount that an **Insured Executive** may become legally liable to pay in his or her capacity as such, the Insurer shall not contend that any portion of such settlement or judgment that is predicated on liability arising under Section 11 or 12 of the Securities Act of 1933 or any amendments thereto is uninsurable as a matter of law.

(I) "**Outside Wrongful Act**" means an actual or alleged act, error, omission, misstatement, misleading statement, neglect, or breach of duty by an **Insured Executive**, while serving in the capacity of a director, officer, trustee, regent, or governor of an **Outside Entity**, but only if serving in such capacity at the specific request or direction of the **Company**.

HUDSON INSURANCE GROUP®

(J) "**Outside Entity**" means any entity other than the **Company**.

(K) "**Policy Period**" means the period set forth in Item 2 of the Declarations, or any shorter period resulting from termination of this Policy pursuant to its terms and conditions.

(L) "**Subsidiary**" means any corporation or other entity, in which and solely during the time period when, the **Company** owns, directly or through one or more other **Subsidiaries**:

(1) more than fifty percent (50%) of the outstanding securities representing the right to vote for the election of the directors of such entity, or

(2) the right to elect, appoint or designate more than fifty percent (50%) of the

members of any board of managers of such entity.

(M) '**Underlying Insurance**" means the insurance provided by the policies listed in Item 7 of the Declarations, including but not limited to the primary policy and the **Follow Form Policy**.

(N) "**Wrongful Act**" means:

(1) an actual or alleged act, error, omission, misstatement, misleading statement, neglect, or breach of duty or **Wrongful Employment Practice** by an **Insured Executive** in his or her capacity as such;

(2) any matter asserted against an **Insured Executive** solely by reason of his or her status as such;

(3) an **Outside Wrongful Act**; or

(4) an actual or alleged act, error or omission, misstatement, misleading statement, neglect or breach of duty as a fiduciary of an employment benefit plan or other plan governed by the Employee Retirement Income Security Act of 1974, as amended, and sponsored by the **Company**, or any matter claimed against an **Insured Executive** by reason of his or her status as such a fiduciary.

(O) "**Wrongful Employment Practice**" means any of the following alleged by an employment applicant, employee, or former employee of the **Company** or an **Outside Entity**:

(1) violation of any federal, state or local law applicable to employment discrimination or sexual or other workplace harassment;

(2) retaliatory or other adverse employment action against an individual on account of such individual's exercise or attempted exercise of rights protected by law, refusal to violate any law, or on account of the individual having assisted or testified in or cooperated with a proceeding or investigation regarding alleged violations of law;

(3) wrongful termination of employment, including constructive or retaliatory discharge; or



(4) wrongful deprivation of career opportunity, refusal to hire in violation of any applicable federal, state or local law, employment-related misrepresentation, failure to promote, or wrongful discipline, demotion, or evaluation.

III. EXCLUSIONS

This Policy does not incorporate any of the exclusions contained in the Exclusions section of the **Follow Form Policy**. The following exclusions shall apply except to the extent that a substantively similar exclusion in the **Follow Form Policy** may be less restrictive in its application. In such case, the less restrictive wording shall be incorporated herein.

The Insurer shall not pay the portion of **Loss** in connection with any **Claim** that is:

(A) accepted as covered by any insurer providing similar type insurance as provided by this Policy to any **Insured Executive** under a policy in force prior to the inception date of the **Policy Period** and to which notice was given by or on behalf of such **Insured Executive**; or

(B) for:

(1) deliberately fraudulent, or deliberately criminal act or deliberately fraudulent or deliberately criminal omission or any deliberate violation of any statute, rule, or law by an **Insured Executive**; or

(2) profit or remuneration gained by any **Insured Executive** to which he or she is not legally entitled.

provided that the foregoing exclusions in this Section III. (B) are determined by a final adjudication, after exhaustion of all appeals (including petitions for rehearing), in the underlying **Claim** and shall not be applicable to that part of **Loss**, which is comprised of **Defense Expenses**.

Neither the intent, knowledge nor **Wrongful Act** of any **Insured Executive** or the **Company** shall be imputed to any other **Insured Executive** to determine the application of the exclusions set forth in this Section III (B).

IV. GENERAL CONDITIONS

(A) Limit of Liability

The Insurer's maximum aggregate liability for all **Loss**, on account of all **Claims** first made during the **Policy Period** shall be the Limit of Liability set forth in Item 3 of the Declarations. **Defense Expenses** shall be part of and not in addition to such Limit of Liability and shall reduce and may exhaust the Limit of Liability.

The Insurer shall have no obligation to pay **Loss**, including **Defense Expenses**, after the Limit of Liability has been exhausted.



(B) **Other Insurance, Indemnification and Advancement**

(1) This Policy shall only apply specifically excess of and in no event shall be contributory with:

(a) any indemnification and advancement which an **Insured Executive** received from the **Company**, an **Outside Entity** or any other source; and

(b) any valid and collectible policy of insurance providing coverage to an **Insured Executive**, regardless of whether such other insurance is stated to be primary, contributory, excess or otherwise.

However, if after a specific written request is made by or on behalf of the **Insured Executives**, such other insurance or source of indemnification or advancement responds in writing that it will not pay any amount that constitutes **Loss** under this Policy or fails to respond within 60 days from the date of such request, the Insurer, pursuant to this Policy, shall respond on behalf of the **Insured Executives** and, if the amount is otherwise covered, pay all reasonable and necessary amounts constituting **Loss** as soon as is practicable, but in no event later than ninety (90) days after the Insurer has received written and itemized documentation of such **Loss** by means of invoices or otherwise, and be subrogated to the rights of such **Insured Executives** pursuant to Section IV. (F) and otherwise subject to Section IV. (E) (2) of this Policy.

(2) This Policy shall not be subject to the terms or conditions of any indemnification or advancement agreements, policies, contracts, by-laws or charter provisions.

(C) **Transactions and Change in Control During the Policy Period**

(1) If, during the **Policy Period**, the **Company** consummates any of the following transactions:

(a) makes an asset acquisition;

(b) acquires any entity, including one that is a **Subsidiary**; or

(c) assumes the liability of another entity,

then, insurance under this Policy shall only apply to a **Claim** for a **Wrongful Act** made against an **Insured Executive**, provided that such **Wrongful Act** is committed or alleged to have been committed after the time such **Insured Executive** first became an **Insured Executive** of the **Company**.

(2) If, during the **Policy Period**, any entity ceases to be a **Subsidiary**, the **Insured Executives** of such **Subsidiary** shall only be covered under this Policy with respect to a **Claim** for a **Wrongful Act** that occurred or allegedly occurred prior to the time such entity ceased to be a **Subsidiary**.

(3) If, during the **Policy Period**, there is a “change in control” of the entity listed in Item 1 of the Declarations, the coverage provided under this Policy shall continue to apply but only with respect to a **Claim** for a **Wrongful Act** occurring prior to the time of the “change in control”. The entire premium for the Policy will be deemed to be fully earned immediately upon the consummation of the “change in control” transaction.



"Change in control" means:

(a) the merger or acquisition of the entity listed in Item 1 of the Declarations, or of all or substantially all of its assets, by any other entity such that another entity becomes the surviving entity; or

(b) the acquisition by any person, entity, or affiliated group or persons or entities of the right to vote for, select, or appoint more than fifty percent (50%) of the directors of the entity listed in Item 1 of the Declarations.

(D) **Awareness Provision**

If, during the **Policy Period** or Discovery Period, if purchased, any **Insured Executive** first becomes aware of a **Wrongful Act** or circumstances that take place during or prior to the **Policy Period** and that could reasonably give rise to a **Claim** for a **Wrongful Act** and if, during the **Policy Period** or Discovery Period, if purchased, the **Insured Executives**, or the **Company** on their behalf, provides the Insurer with written notice of the specific circumstances and actual, alleged or potential **Wrongful Act**, the consequences which have resulted or may result therefrom (including but not limited to actual or potential damages), the identities or descriptions of potential claimants, and the manner in which the **Insured Executives** first became aware of such circumstances or **Wrongful Act**, then, any **Claim** subsequently made arising from such **Wrongful Act** or circumstances will be treated as if it had been first made during the **Policy Period**.

(E) **No Duty to Defend by Insurer and Settlement and Payment Obligations**

(1) It shall be the duty of the **Insured Executives** and not the duty of the Insurer to defend **Claims**. No **Insured Person** may incur any **Defense Expenses** or admit liability for, make any settlement offer with respect to, or settle any **Claim** without the Insurer's consent, such consent not to be unreasonably withheld.

(2) the Insurer will pay on a current basis all reasonable, necessary and undisputed **Defense Expenses** before the disposition of the **Claim** for which this Policy provides coverage. In the event of such advancement, the **Insured Executives** agree that they shall repay the Insurer, severally according to their interests, any **Loss**, including **Defense Expenses** paid to or on behalf of the **Insured Executives** pursuant to a written reservation of the Insurer's rights, if it is finally determined in any judicial or alternative dispute resolution proceeding that the **Loss** incurred is not covered under this Policy.

(F) **Assistance and Cooperation of Insured Executives and Company and Subrogation Rights of Insurer**

(1) The **Insured Executives** and the **Company** agree to provide the Insurer with all information, assistance and cooperation that the Insurer may reasonably request, and agree that they will do nothing which in any way increases the Insurer's exposure under this Policy or in any way prejudices the Insurer's potential or actual rights of recovery against any party, including the **Company** or any **Outside Entity**, after a **Claim** is first made against the **Insured Executives**.

(2) In the event of any payment under this Policy, the Insurer shall be subrogated to all of the potential or actual rights of recovery of the **Insured Executives**. The **Insured Executives** shall execute all papers required and will do everything necessary to secure such rights including but not limited to the execution of such documents as are necessary



to enable the Insurer to effectively bring suit in their name, and will provide all other assistance and cooperation which the Insurer may reasonably require. The Insurer does not waive, compromise or release any of its rights to recover **Loss** paid under this Policy from the issuers of any other insurance under which coverage may be owed, or from any person or entity from which an **Insured Executive** is entitled to indemnification or advancement, including the **Company** and any **Outside Entity**.

(3) Unless prohibited by applicable law or as a result of financial insolvency, the **Company** shall satisfy all of its indemnification and advancement obligations to the **Insured Executives** upon their written request to do so.

(4) Neither the **Company** nor any **Insured Executive** shall cancel or modify the **Underlying Insurance** in any manner to the detriment of the Insurer. However, any such cancellation or modification that does not result in detriment to the Insurer, shall not otherwise affect the **Insured Executives'** rights under this Policy.

(G) **Claims Arising From Interrelated Wrongful Acts**

All **Claims** arising from **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the time at which the earliest such **Claim** is made or deemed to have been made, regardless of whether such time is during the **Policy Period** or prior thereto.

(H) **Cancellation or Non-Renewal of Policy**

(1) The Chief Executive Officer or Chief Financial Officer of the entity listed in Item 1 of the Declarations or any duly authorized party acting on their behalf (the "Notice Agent") shall have the exclusive right to cancel this Policy on behalf of any or all **Insured Executives**. Any insurance broker or agent for this Policy shall be presumed to be duly authorized as a Notice Agent. Such cancellation may be effected by mailing to the Insurer written notice stating when such cancellation shall be effective, provided the date of cancellation is not later than the Expiration Date set forth in Item 2 of the Declarations. In such event, the Insurer shall retain the customary short rate portion of the earned premium. Return or tender of the unearned premium is not a condition of cancellation.

(2) The Insurer may cancel this Policy only for nonpayment of premium. In the event that some portion of the premium has been paid, the Insurer will provide not less than twenty (20) days written notice stating the reason for cancellation and the effective date that this Policy is canceled. In the event that no portion of the premium has been paid, the Insurer shall have the right to cancel this Policy effective at its inception date without any advance notice. Notice of cancellation will be sent to any Notice Agent at the sole discretion of the Insurer.

(3) The Insurer is under no obligation to renew this Policy upon its expiration. Upon the Insurer's election to non-renew this Policy, the Insurer will deliver or mail to any Notice Agent, at its sole discretion, written notice stating such at least sixty (60) days before the Expiration Date set forth in Item 2 of the Declarations.

(I) **Discovery Period**

(1) If either the **Insured Executives** or the Insurer does not renew this Policy, the **Insured Executives** shall have the right, upon payment of the additional premium set forth in Item 4 of the Declarations, to an extension of the coverage provided by this Policy with respect only to any **Claim** first made during the Discovery Period set forth in Item 4 of the



Declarations, but only with respect to a **Wrongful Act** occurring prior to the Policy Expiration Date.

(2) As a condition precedent to the right to purchase the Discovery Period, the total premium for this Policy must have been paid in full. The right of the **Insured Executives** to purchase the Discovery Period will be immediately terminated if the Insurer does not receive written notice from the **Insured Executives** or their Notice Agent advising they wish to purchase the Discovery Period together with full payment of the premium for the Discovery Period on a non-refundable basis within thirty (30) days after the Policy Expiration Date.

(3) The purchase of the Discovery Period will not in any way increase the Limit of Liability set forth in Item 3 of the Declarations, and the Limit of Liability with respect to **Claims** made during the Discovery Period shall be part of and not in addition to the Limit of Liability for all **Claims** made during the **Policy Period**.

(J) **Representations of Insured Executives, Non-Rescindability and Full Severability**

This Policy shall not be rescindable as to any **Insured Executive** under any circumstances.

The application(s) for coverage shall be construed as a separate application(s) for each **Insured Executive**. Each **Insured Executive** represents that, to the best of his or her knowledge, the statements and particulars contained in the application(s) are true, accurate and complete, and each **Insured Executive** agrees that this Policy is issued in reliance on the truth of that representation and that such particulars and statements, which are deemed to be incorporated into and constitute a part of this Policy, are the basis of this Policy. No knowledge or information possessed by any **Insured Executive** will be imputed to any other **Insured Executive** for the purposes of determining the availability of coverage with respect to **Claims** made against such other **Insured Executive**.

(K) **No Action Against the Insurer and No Assignment**

(1) Except for an action undertaken by or on behalf of an **Insured Executive**, no action may be taken against the Insurer unless, as a condition precedent thereto:

(a) there has been full compliance with all of the terms and conditions of this Policy; and

(b) the amount of any liability of the **Insured Executive** has been finally determined either by judgment against such **Insured Executive** after actual trial, or by written agreement of the **Insured Executive**, the claimant and the Insurer.

(2) Nothing contained herein shall give any person or entity the right to join the Insurer as a party to any **Claim** against the **Insured Executives** to determine their liability, nor may the **Insured Executives** implead or join the Insurer in any such **Claim**.

(3) Assignment of the interest of any **Insured Executive** under this Policy shall not bind the Insurer unless its consent is endorsed hereon.

(L) **Authorization and Notices**

The entity set forth in Item 1 of the Declarations or any Notice Agent will act on behalf of the **Company** and the **Insured Executives** with respect to the giving and receiving of all notices



involving the Insurer and this Policy, as well as payment and any other action with regard to premiums.

(M) **Entire Agreement**

The **Insured Persons** agree that the Declarations, the Policy, including any endorsements and attachments, and the application(s) shall constitute the entire agreement between the Insurer or any of its agents and the **Insured Persons** in relation to the insurance.

Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Insurer will not cause a waiver or change in any part of this Policy or prevent the Insurer from asserting any right under the terms, conditions and limitations of this Policy. The terms, conditions and limitations of this Policy may only be waived or changed by written endorsement to the Policy signed by the Insurer.

(N) **Territory and Currency**

Insurance provided under this Policy shall apply to **Claims** that are made anywhere in the world.

The premiums, limits, **Loss** and other amounts set forth in this Policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Loss** under this Policy is stated in a currency other than United States of America dollars, payment under this Policy shall be made in such dollars at the rate of exchange published in *The Wall Street Journal* on the date the judgment becomes final or payment of the settlement or other element of **Loss** is due.

(O) **Insolvency of the Company and Waiver of Automatic Stay in Bankruptcy**

In the event that an insolvency or bankruptcy proceeding is commenced by or against the **Company**, the **Company** waives and releases any automatic stay or injunction which may apply to its benefit and advantage in such proceeding in connection with this Policy or its proceeds, and agrees not to oppose or object to any efforts by the Insurer or any **Insured Executive** to obtain relief from any such stay or injunction that may be applied against their interests.

However, the rights of an **Insured Executive** under this Policy shall not be affected by the bankruptcy or insolvency of the **Company**, any **Insured Executive** or any insurer within the **Underlying Insurance**.

(P) **Headings and Titles**

Any headings or titles used with respect to any section or sub-section in this Policy are solely for descriptive convenience and shall not be construed as substantive provisions for purposes of determining coverage.

HUDSON INSURANCE GROUP®

IN WITNESS WHEREOF, the **Insurer** has caused this Policy to be signed by its President and Secretary, and, if required by state law, this Policy shall not be valid unless countersigned on the Declarations by an authorized representative of the **Insurer**.

PRESIDENT

SECRETARY

Policy Number: [redacted] Endorsement Number: **1**
Effective at 12:01 a.m. Standard Time: **October 23, 2020**
Named Insured: **Lordstown Motors Corp.**

OHIO CHANGES ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

It is hereby agreed that Section **II DEFINITIONS**, **(H)** is amended by the addition of the following:

In applying the foregoing, punitive damages are not insurable in Ohio.

It is hereby further agreed that Section **IV. GENERAL CONDITIONS, (H) Cancellation or Non-Renewal of Policy** (2) and (3), are deleted and replaced by the following:

(2) The Insurer may cancel this Policy only for nonpayment of premium. In such event, the Insurer will deliver or mail written notice of cancellation to the **Company** listed in Item 1 of the Declarations, at the **Company's** last known address and, if applicable, the Notice Agent, stating the reason for cancellation and stating when, not less than twenty (20) days thereafter, the cancellation will be effective. The notice of cancellation will also state the Policy number, date of notice and the effective date of cancellation.

(3) The Insurer is under no obligation to renew this Policy upon its expiration. Upon the Insurer's election to non-renew this Policy, the Insurer will deliver or mail, by first class mail, written notice of non-renewal to the **Company** listed in Item 1 of the Declarations, at the **Company's** last known address and, if applicable, the Notice Agent stating such at least sixty (60) days before the Expiration Date set forth in Item 2 of the Declarations. The notice of non-renewal will include the Policy number, the date of notice and the Policy Expiration Date.

Notwithstanding anything stated to the contrary in this Policy, it is agreed that Section **IV. GENERAL CONDITIONS, (L) Authorization and Notices** is deleted and replaced by the following:

Except as set forth in Section **IV. GENERAL CONDITIONS (H) Cancellation or Non-Renewal of Policy**, the entity or individual set forth in Item 1 of the Declarations or any Notice Agent will act on behalf of the **Company** and the **Insured Executives** with respect to the giving and receiving of all notices involving the Insurer and this Policy, as well as payment and any other action with regard to premiums.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED. THE TITLE OR HEADING TO THIS ENDORSEMENT IS INCLUDED SOLELY FOR EASE OF REFERENCE AND DOES NOT IN ANY WAY LIMIT, EXPAND, INTERPRET OR OTHERWISE EFFECT THE PROVISIONS OF THIS ENDORSEMENT.

Policy Number: [redacted] Endorsement Number: **2**
Effective at 12:01 a.m. Standard Time: **October 23, 2020**
Named Insured: **Lordstown Motors Corp.**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ CAREFULLY

CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM

This endorsement modifies insurance provided under the following:

Excess Directors and Officers Liability Policy
Directors and Officers Liability Policy

With respect to any one or more "certified acts of terrorism", we will not pay any amounts for which we are not responsible under the terms of the federal Terrorism Risk Insurance Program Reauthorization Act of 2015- H.R. 26 (including subsequent acts of Congress pursuant to the Act) due to the application of any clause which results in a cap on our liability for payments for terrorism losses.

"Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

1. The act resulted in insured losses in excess of $5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and

2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for injury or damage that is otherwise excluded under this Policy.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED. THE TITLE OR HEADING TO THIS ENDORSEMENT IS INCLUDED SOLELY FOR EASE OF REFERENCE AND DOES NOT IN ANY WAY LIMIT, EXPAND, INTERPRET OR OTHERWISE AFFECT THE PROVISIONS OF THIS ENDORSEMENT.

 Includes material copyrighted by Insurance Services Office, Inc.

Policy Number: [redacted] Endorsement Number: **3**
Effective at 12:01 a.m. Standard Time: **October 23, 2020**
Named Insured: **Lordstown Motors Corp.**

THIS ENDORSEMENT IS ATTACHED TO AND MADE PART OF YOUR POLICY IN RESPONSE TO THE DISCLOSURE REQUIREMENTS OF THE TERRORISM RISK INSURANCE ACT. THIS ENDORSEMENT DOES NOT GRANT ANY COVERAGE OR CHANGE THE TERMS AND CONDITIONS OF ANY COVERAGE UNDER THE POLICY.

DISCLOSURE PURSUANT TO TERRORISM RISK INSURANCE ACT

SCHEDULE

SCHEDULE – PART I (Enter charge, even if -0-)
Terrorism Premium (Certified Acts) $0

This premium is the total Certified Acts premium attributable to the following Coverage Part(s), Coverage Form(s) and/or Policy(ies):

Directors, Officers and Company Liability Coverage Part
Fiduciary Liability Coverage Part

Additional information, if any, concerning the terrorism premium:
n/a

SCHEDULE – PART II
Federal share of terrorism losses 85% Year: 2015
Federal share of terrorism losses 84% Year: 2016
Federal share of terrorism losses 83% Year: 2017
Federal share of terrorism losses 82% Year: 2018
Federal share of terrorism losses 81% Year: 2019
Federal share of terrorism losses 80% Year: 2020
(Refer to Paragraph B. in this endorsement.)

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Disclosure Of Premium

In accordance with the federal Terrorism Risk Insurance Act, we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to coverage for terrorist acts certified under the Terrorism Risk Insurance Act. The portion of your premium attributable to such coverage is shown in the Schedule of this endorsement or in the policy Declarations.

B. Disclosure Of Federal Participation In Payment Of Terrorism Losses

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals a percentage (as shown in Part II of the Schedule of this endorsement or in the policy Declarations) of that portion of the amount of such insured losses that exceeds the applicable insurer retention. However, if aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed $100 billion in a calendar year, the Treasury shall not make any payment for any portion of the amount of such losses that exceeds $100 billion.

C. Cap On Insurer Participation In Payment Of Terrorism Losses

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed $100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds $100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

Includes material copyrighted by Insurance Services Office, Inc.

Policy Number: [redacted] Endorsement Number: **4**
Effective at 12:01 a.m. Standard Time: **October 23, 2020**
Named Insured: **Lordstown Motors Corp.**

STATE AMENDATORY INCONSISTENCY ENDORSEMENT

Notwithstanding anything stated in this Policy to the contrary and in consideration of the premium charged it is agreed that in the event that there is an inconsistency between a state amendatory attached to this Policy and any term or condition of this Policy, then it is understood and agreed that, where permitted by law, the Insurer shall apply those terms and conditions of either the amendatory or the Policy which are more favorable to the **Insured Executive**.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED. THE TITLE OR HEADING TO THIS ENDORSEMENT IS INCLUDED SOLELY FOR EASE OF REFERENCE AND DOES NOT IN ANY WAY LIMIT, EXPAND, INTERPRET OR OTHERWISE AFFECT THE PROVISIONS OF THIS ENDORSEMENT.

Policy Number: [redacted] Endorsement Number: **5**
Effective at 12:01 a.m. Standard Time: **October 23, 2020**
Named Insured: **Lordstown Motors Corp.**

HUDSON INSURANCE COMPANY
SIDE A DIC POLICY
THE DEFENDER

NON FOLLOW FORM OF CERTAIN SPECIFIED COVERAGE PARTS ENDORSEMENT (WITH RECOGNITION OF EROSION OF UNDERLYING LIMITS)

It is hereby agreed that **Section I. (B), INSURING AGREEMENTS**, of this Policy is deleted in its entirety and replaced by the following:

I. INSURING AGREEMENTS

(B) Except for the Coverage Parts identified below and as may otherwise be enhanced or broadened by a specific provision herein, this Policy is subject to the same terms, conditions, other provisions and endorsements (except as regards the premium, the amount and limits of liability, and duty to defend, and except as otherwise provided herein) as are contained in the **Follow Form Policy** as in effect at the time the **Follow Form Policy** incepts or as may be added at a later time to restrict coverage.

Coverage Parts not followed by this Policy:
1. Sub-limits

As respects the above Coverage Parts in no event shall this Policy be liable for payment of any **Claim** that is paid by the **Underlying Insurance** pursuant to the insuring agreements of any such policy(ies) providing such coverage. However, this Policy shall remain excess over the **Underlying Insurance** to the extent the limits of those policies are eroded or exhausted by the payment of any **Claim** under such Coverage Parts regardless of whether any such payments are in fact made by the **Underlying Insurance**.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED. THE TITLE OR HEADING TO THIS ENDORSEMENT IS INCLUDED SOLELY FOR EASE OF REFERENCE AND DOES NOT IN ANY WAY LIMIT, EXPAND, INTERPRET OR OTHERWISE AFFECT THE PROVISIONS OF THIS ENDORSEMENT.

Policy Number: [redacted] Endorsement Number: **6**
Effective at 12:01 a.m. Standard Time: **October 23, 2020**
Named Insured: **Lordstown Motors Corp.**

DEFENDER PLUS ENDORSEMENT

It is hereby agreed that the Policy is amended as follows:

A. CHANGES TO DECLARATIONS

Item 3 of the Declarations is deleted in its entirety and replaced as follows:

ITEM 3. LIMITS OF LIABILITY (inclusive of **Defense Expenses**):

A. $5,000,000 Maximum Aggregate Limit of Liability for all **Claims**

B. $5,000,000 First Aggregate Reinstated Limit of Liability

Check one of the following options:
( ) reinstatement for **Independent Directors** only
(x) reinstatement for all **Insured Executives**

C. $N/A Second Aggregate Reinstated Limit of Liability

Check one of the following options:
( ) reinstatement for **Independent Directors** only
( ) reinstatement for all **Insured Executives**

D. $10,000,000 Maximum Aggregate Limit of Liability under A through G of this Item 3, Combined

The limits of liability in A, B and C apply separately in accordance with Section IV (A) of this Policy.

E. $100,000 Policy Access and Director Liability Aggregate Limit of Liability

F. $100,000 **Extradition** and Prosecutorial Disparagement Aggregate Sublimit of Liability

G. $100,000 Enforcement Authority Aggregate Sublimit of Liability

The amount stated for the Policy Access and Other Independent Director Liability Limit is in addition to the Limit of Liability and any applicable reinstatements set forth in this Item 3, and is the maximum amount the Insurer shall pay for such additional limit, subject always to the Limit of Liability set forth in Item 3. D.

The **Extradition** and Prosecutorial Disparagement and Enforcement Authority Sublimit are part of, and not in addition to, the Limit of Liability and any applicable reinstatements set forth in this Item 3.

Item 4 of the Declarations is deleted in its entirety and replaced as follows.

ITEM 4. Discovery Periods

a. Standard Discovery Period: One (1) Year for an amount equal to the total premium indicated in the third line of Item 5 of the Declarations, if exercised, in accordance with Section IV. (I) (1) of this Policy.

b. Six (6) Year Discovery Period: Six (6) Years for no additional premium, if exercised, in accordance with Section IV. (I) (2) of this Policy.

c. Unlimited Discovery Period: Unlimited duration for no additional premium, if exercised, in accordance with Section IV. (I) (3) of this Policy.

Item 6 of the Declarations is deleted in its entirety and replaced as follows.

ITEM 6. ALL NOTICES TO THE INSURER AND REPORTS OF **CLAIMS** AND MATTERS PURSUANT TO SECTION IV. (D) OF THE POLICY MUST BE ADDRESSED TO THE INSURER'S REPRESENTATIVE BELOW:

Send Claims related notices to:	Send all other notices to:
Hudson Financial Products	Hudson Financial Products
ATTN: Claims Department	ATTN: Underwriting
100 William Street	176 Mineola Boulevard
New York, NY 10038	Mineola, NY 11501
or	or
HFP-Claims@HudsonInsgroup.com	HFP-Underwriting@HudsonInsGroup.com

E-MAIL NOTICE OF **CLAIMS** OR CIRCUMSTANCES WHICH MAY GIVE RISE TO A **CLAIM** SHALL BE VALID ONLY IF SENT TO THE E-MAIL ADDRESS LISTED ABOVE AND OTHERWISE PURSUANT TO SECTION IV. (Q) OF THE POLICY. **CLAIMS** INFORMATION AND DOCUMENTS SUBMITTED TO THE INSURER AND NOT PROPERLY ADDRESSED TO THE **CLAIMS** DEPARTMENT SHALL NOT CONSTITUTE A VALID FIRST NOTICE OF **CLAIM** OR SATISFY ANY SUBSEQUENT REPORTING REQUIREMENTS.

B. CHANGES TO SECTION I, INSURING AGREEMENTS

Section I, INSURING AGREEMENTS (A) and **(B),** are deleted in their entirety and replaced as follows:

I. INSURING AGREEMENTS

(A) Insured Executives Liability Insuring Agreement

The Insurer shall pay on behalf of an **Insured Executive,** all **Non-Indemnifiable Loss** that such **Insured Executive** become legally obligated to pay by reason of any **Claim** first made against him or her during the **Policy Period** or Discovery Period, as applicable, for a **Wrongful Act** that is actually or allegedly caused, committed, or attempted prior to the end of the **Policy Period** by such **Insured Executive,** but solely when and to the extent one or more of the following events takes place:

(1) any insurer(s) in the **Underlying Insurance**

(a) refuses to indemnify such **Insured Executive** as required under the terms of the **Underlying Insurance;**

(b) fails to indemnify such **Insured Executive** within 60 days after such **Insured Executive** requests such indemnification;

(c) is in receivership, liquidation, insolvent or financially unable to indemnify such **Insured Executive;**

(d) rescinds, voids or cancels, or attempts to rescind, void or cancel, its respective policy in the **Underlying Insurance;** or

(e) as a result of a liquidation or reorganization proceeding commenced by or against the **Company** pursuant to the U.S. Bankruptcy Code, as amended, or any similar federal, state, foreign or common law (collectively, "law"), fails or refuses to indemnify such **Insured Executive** because the proceeds of the **Underlying Insurance** are subject to the automatic stay or similar payment prohibition under law; or

(2) any insurer(s) in the **Underlying Insurance** is not liable for its portion of the **Loss** according to the terms and conditions of the **Underlying Insurance;** or

(3) the limit(s) of liability or any applicable sublimit(s) of liability of the **Underlying Insurance** has been exhausted by reason of:

(a) any insurer(s) in the **Underlying Insurance,** any **Insured Executive** or any other party paying thereunder the full amount of such underlying limit(s) of liability or applicable sublimit(s); or

(b) any provision(s) in the policy of an insurer in the Underlying Insurance which exhausts or reduces that policy's limit of liability by reason of any amount paid or payable under another policy issued by that insurer or any of its subsidiary, associated, affiliated or parent insurers.

If **Loss** is paid under the **Underlying Insurance** or from any source of indemnification or advancement on behalf of any **Insured Executive** for his or her **Wrongful Act,** then this Policy shall only pay excess of the amounts paid under the **Underlying Insurance** or otherwise paid as indemnification or advancement from any source or party.

(B) Difference in Conditions Agreement

In the event any policy in the **Underlying Insurance** affords broader coverage to an **Insured Executive** than is afforded under this Policy, then notwithstanding anything in this Policy to the contrary, this Policy is amended to follow and be subject to the terms and conditions of such policy in the **Underlying Insurance,** as it was issued at the time of the inception date of this Policy and only in respect of and to the extent of such broader coverage for the **Insured Executive,** provided always that:

(1) this Policy shall in no event cover any claim against the **Company** or any amounts indemnified, advanced or paid by the **Company** on behalf of an **Insured Executive;** and

(2) the provisions of this Section I (B) shall not apply to the following sections of this Policy.

(a) Section IV (A), Limits of Liability;

(b) Section IV (F) (1) and (2);

(c) Section IV (H), Cancellation of Policy;

(d) Clause IV (L) Authorization and Notice; and

(e) Any and all endorsements to this Policy, unless otherwise specified in such endorsements.

(C) Extradition And Prosecutorial Disparagement Sublimit Agreement

Solely in connection with a **Claim** first made against an **Insured Executive** during the **Policy Period** or Discovery Period, as applicable, and as part of and not in addition to the Limit of Liability and any applicable reinstatements(s) set forth in Item 3 of the Declarations, the Insurer shall pay as a maximum the aggregate amount set forth in Item 3 F. of the Declarations,

Extradition and Prosecutorial Disparagement Aggregate Sublimit of Liability, for reasonable costs, charges, fees and expenses incurred by an **Insured Executive** in connection with using a public relations firm to mitigate the adverse effects to the reputation of such **Insured Executive** from

(1) an **Extradition** against such **Insured Executive;** or

(2) any negative public statement regarding such **Insured Executive** by any criminal prosecutor or **Enforcement Authority** relating to or arising out of a **Claim** under this Policy; to the extent any insurer(s) in the **Underlying Insurance** or the **Company** fails, refuses or is financially unable to indemnify, advance or pay such costs, charges, fees and expenses.

(D) Enforcement Authority Sublimit Agreement

Solely in connection with a **Claim** first made against an **Insured Executive** during the **Policy Period** or Discovery Period, as applicable, and as part of and not in addition to the Limit of Liability and any applicable reinstatements(s) set forth in Item 3 of the Declarations, the Insurer shall pay as a maximum the aggregate amount set forth in Item 3 G. of the Declarations, **Enforcement Authority** Aggregate Sublimit of Liability, for **Defense Expenses** (including a premium for a bond) incurred by an **Insured Executive**

(1) to oppose efforts by an **Enforcement Authority** to seize or otherwise enjoin the personal assets or real property of such **Insured Executive** in connection with a **Claim** under this Policy, or to revoke, overturn or set aside a court order in or relating to a **Claim** under this Policy, which in any way impairs the use of such assets or real property; or

(2) to seek the release of such **Insured Executive** from any arrest, detainment or incarceration by an **Enforcement Authority** in or relating to a **Claim** under this Policy,

provided always that such **Defense Expenses** relate to a **Wrongful Act** by such **Insured Executive,** and the Insurer shall pay solely in the event that any insurer(s) in the **Underlying Insurance** or the **Company** fails, refuses or is financially unable to indemnify, advance or pay such **Defense Expenses.**

(E) Policy Access And Director Liability Limit Agreement

Solely in connection with a **Claim** first made against an **Insured Executive** during the **Policy Period** or Discovery Period, as applicable, and in addition to the Limit of Liability and any applicable reinstatement(s) set forth in Item 3 of the Declarations, the Insurer shall pay as a maximum the aggregate amount set forth in Item 3 E. of the Declarations, reasonable costs, charges, fees and expenses incurred by any **Insured Executive,** who is also a member of the Board of Directors of the **Company,** to defend against efforts by other **Insured Executives** or third parties to seize or attach this Policy, or otherwise enjoin such **Insured Executive** from gaining access to the limits of liability afforded under this Policy, provided and to the extent that any insurer(s) in the **Underlying Insurance** or the **Company** fails, refuses or is financially unable to indemnify, advance or pay such costs, charges, fees and expenses.

In the event of any other **Claim** against such **Insured Executive,** the following limitations shall apply:

The applicable additional limit of liability set forth in Item 3 E. of the Declarations shall only apply to **Loss** other than **Defense Expenses.**

Such additional limit of liability shall only apply excess of the original Limit of Liability set forth in Item 3 A. of the Declarations and all other valid and collectible insurance available to such **Insured Executive,** including but not limited to any and all other policies that may be issued as

being contractually excess over this Policy by reference to the Policy Number or other specific description of this Policy.

C. CHANGES TO SECTION II, DEFINITIONS

The following definitions are added to **Section II, DEFINITIONS.** Where the definition already exists in Section II, the original definition is deleted in its entirety and replaced accordingly.

All Definitions contained in this Section II, other than those contained in Section II (E), (I), (J), (K) and (M), all as they may be modified below, as well as the definition of **Non-Indemnifiable Loss** below, shall follow form of the same definition in the **Follow Form Policy,** but only if that policy definition results in broader coverage than would be provided in this Policy. If a term is defined in the **Follow Form Policy** and there is no definition of such term in this Policy, the definition in the **Follow Form Policy** shall apply.

"**Application**" means:

(a) All information and documents submitted by or on behalf of the **Company** or the **Insured Executives** to the Insurer's underwriters during the twelve (12) month period preceding inception of this Policy, including but not limited to any completed form of the Insurer or other insurer denominated as a proposal or application; and

(b) all publicly available documents filed by the **Company** with the Securities and Exchange Commission or similar state or foreign regulatory entity during the 12 months preceding inception of this Policy.

All such information and documents are deemed to be a part of this Policy and attached thereto, regardless of whether they are physically attached.

"**Claim**" means:

(a) a written demand for monetary or non-monetary relief;

(b) a civil or criminal judicial proceeding or alternative dispute resolution proceeding seeking monetary or non-monetary relief, including any appeal therefrom;

(c) a formal civil, criminal, administrative, **Extradition** or regulatory proceeding (including but not limited to a proceeding brought by, on behalf of or before the Equal Employment Opportunity Commission or similar federal, state or local governmental agency), subpoena, or Wells Notice, or a formal l investigation, including any appeal therefrom;

(d) an informal investigation or request or demand from any governmental entity or a self-regulatory authority, including by way of example but not limited to the Securities Exchange Commission, a state office of the attorney general, the Department of Justice or New York Stock Exchange;

(e) any **Preliminary Investigation** commenced against an **Insured Executive,** regardless of whether any **Wrongful Act** is at issue in such **Preliminary Investigation;** or

(f) any request to toll or waive the statute of limitations.

A **Claim** shall be deemed to have been first made at the earliest date of receipt by the Risk Manager or General Counsel (or equivalent position) in the **Company** of a written demand, written notice or order of investigation, a target letter or similar document, criminal indictment or information, notice of charges or service of summons, subpoena or similar document commencing a proceeding or investigation against an **Insured Executive** who is the subject of such **Claim.**

"**Company**" means:

(a) the entity named in Item I of the Declarations;

(b) any entity that, prior to the inception of the **Policy Period,** merged into or consolidated with the entity named in Item I of the Declarations and was not the surviving entity;

(c) any **Subsidiary** that was acquired before or during the **Policy Period;**

(d) any foundation, charitable trust or political action committee controlled or exclusively sponsored by one or more entities described in 1 through 3, above; or

(e) any organization described in 1 through 4, above, while operating as a debtor-in-possession under United States Bankruptcy Code or an equivalent status under the bankruptcy law of any other country.

"**Defense Expenses**" means:

that portion of **Loss** consisting of reasonable costs, charges, fees (including but not limited to legal fees and experts' fees) and expenses incurred in the defense, investigation or appeal of a **Claim,** whether or not such **Claim** is ultimately settled or adjudicated, including but not limited to:

(a) any **Extradition;** or

(b) any premium for appeal, attachment or similar bonds, including a bail bond if such is available in connection with any **Extradition,** but the Insurer shall be under no obligation to provide any bond;

In no event shall **Defense Expenses** include wages, salaries, fees, benefits or office expenses of any **Insured Executives** or employees of the **Company.**

"**Enforcement Authority**" means any law enforcement or other governmental enforcement official or authority, or the enforcement unit of any self-regulatory organization.

"**Independent Director**" means any **Insured Executive** who is solely a duly elected director of the **Company,** and is not an employee or duly appointed officer of the **Company,** and who otherwise qualifies as a Non-Employee Director as that term is defined in Rule 16b-3 ("the Rule") promulgated under the Securities Exchange Act of 1934, as either the Rule or statute may be amended. The term "issuer" used in the Rule shall mean for purposes of this Policy, the **Company.**

"**Insured Executive**" means:

(a) any past, present or future duly elected director, duly appointed officer, trustee, governor, comptroller, **Manager,** or duly elected or appointed member of a board of managers of the **Company,** including any general counsel who is also an employee of the **Company** and other employed lawyers who are both employees and duly appointed officers of the **Company;**

(b) any natural person who is an employee, whether seasonal, temporary, part-time or full-time, of the **Company,** but solely with respect to a **Claim** otherwise brought and continuously maintained by a securities holder of the **Company** against a natural person described in subsection (a), (d), (e), (f) or (g) of this Definition;

(c) any natural person while serving as a director, officer, trustee, governor, or functional equivalent in any **Outside Entity** but solely when:

i. such service is with the knowledge of the **Company** or part of their duties regularly

assigned by the **Company;**

ii. such service is with the knowledge of the **Company** or at the specific direction or request of the **Company;** or

iii. such person is a member of a class of persons so directed to serve by the **Company;**

(d) any natural person, who is the functional equivalent of such director, officer or manager of the **Company** when serving in such capacity outside the United States of America, including de facto or shadow directors, as defined in § 251 of the United Kingdom Companies Act 2006;

(e) any prospective director of the **Company** named as such in any listing particulars, prospectus or similar offering document;

(f) any natural person insured under the **Follow Form Policy** in the **Underlying Insurance;**

(g) any director of investor relations, director of human resources, risk manager or **Manager** serving in a functionally equivalent or comparable position within the **Company;**

(h) any lawful spouse or domestic partner of an **Insured Executive,** but solely for a **Wrongful Act** by such **Insured Executive;** or

(i) any estate, heirs, legal representatives or assigns of an **Insured Executive,** but solely in the event of his or her death, incapacity or bankruptcy, and solely for a **Wrongful Act** by such **Insured Executive.**

"**Loss**" means:

judgment and settlement amounts (including pre- or post-judgment interest, punitive or exemplary damages, fines, penalties and the multiplied portion of any damages award, provided that such amounts are insurable pursuant to the law in any jurisdiction whose law may reasonably be applicable and which holds such amounts to be insurable) and **Defense Expenses** that the **Insured Executives** are legally liable to pay. In determining applicable law with respect to an award of punitive or exemplary damages, only the following factors shall be considered:

(a) the state in which the **Company** is incorporated;

(b) the state in which the **Company** has its principal place of business;

(c) the state in which the litigation in which punitive or exemplary damages were awarded was filed and maintained; or

(d) the state in which any **Wrongful Act** takes place on which the punitive or exemplary damages award is predicated.

The Insurer shall not challenge any written opinion of counsel retained by or on behalf of the **Insured Executives** asserting that the award of fines, penalties or punitive or exemplary damages and the multiplied portion of such damages at issue is insurable, provided that such counsel is duly licensed to practice law in the jurisdiction whose law is opined to be applicable and such counsel agrees in writing that the Insurer is a party that may rely upon its opinion.

With regard to any settlement or judgment amount that an **Insured Executive** may become legally liable to pay in his or her capacity as such, the Insurer shall not contend that any portion of such settlement or judgment that is predicated on liability arising under Section 11, 12 or 15 of the Securities Act of 1933 or any amendments thereto or any other similar federal or state law applicable to the public offering or private placement of securities is uninsurable as a matter of law.

The determination of whether an Insured has incurred any **Loss** shall be made without regard to any insurance with exception of insurance purchased by the **Company** or indemnification that that an **Insured Executive** may have from any source other than from the **Company,** including without limitation from or as a result of any shareholder or investor in the **Company** or any affiliate thereof.

Loss shall also include the following:

(a) taxes, fines and penalties imposed by law upon any **Insured Executive** in his or her capacity as such and in connection with any bankruptcy, receivership, conservatorship or liquidation of the **Company,** provided always that such taxes, fines and penalties are insurable under applicable law.

(b) civil penalties assessed against an **Insured Executive** pursuant to Section 2(g)(2)(B) of the Foreign Corrupt Practices Act of 1977, as amended.

(c) civil penalties assessed against any **Insured Executive** pursuant to section 308 of the Sarbanes-Oxley Act of 2002, as amended.

(d) taxes, fines and penalties imposed on an **Insured Executive** by a foreign jurisdiction based on the Insurer's payment of damages, judgments or settlements that constitute **Loss,** as a foreign or admitted carrier.

(e) reasonable fees and expenses incurred with the prior written consent of the Insurer and by the Chief Executive Officer or Chief Financial Officer of the **Company** solely to facilitate the return of any amounts required to be repaid by such Chief Executive Officer or Chief Financial Officer pursuant to § 304 (a) of the Sarbanes-Oxley Act of 2002, exclusive of the actual amounts required to be repaid pursuant to § 304 (a) of the Sarbanes-Oxley Act of 2002.

In no event shall **Loss,** other than **Defense Expenses,** include the following:

(a) the cost of complying with any injunctive relief, including the cost of physical accommodations that may be required under the Americans with Disabilities Act (ADA);

(b) taxes, fines and penalties other than as described above in this definition of **Loss;**

(c) any matter uninsurable pursuant to law under which this Policy shall be construed, provided always that (i) the law in the jurisdiction most favorable to the insurability of such matters will be applied, and (ii) with respect to an award of taxes, punitive or exemplary damages, such insurability will be determined in the manner set forth above in this definition of **Loss;**

(d) any amount for which an **Insured Executive** is legally absolved from liability for payment, including but not limited to as a result of any non-recourse provision in a settlement agreement; or

(e) benefits due or to become due under the terms of any employee benefit plan.

"**Manager**" means any natural person who is, was or shall be:

(a) duly designated by the **Company** as a manager, member of the board of managers or functionally equivalent or comparable executive of a **Company** that is a limited liability company; or

(b) a general partner, managing partner or functionally equivalent or comparable executive of a **Company** that is a partnership;

including without limitation any such natural person serving in a management position in such limited liability company or partnership in accordance with such organization's operating agreement or partnership agreement.

"**Non-Indemnifiable Loss**" means **Loss** for which the **Company** or, as appropriate, the **Outside Entity,** (i) refuses to indemnify or advance **Defense Expenses** or other **Loss** as required or permitted by applicable law and applicable charter, by-law or other indemnification or advancement provision, (ii) is prohibited as a matter of applicable law from so indemnifying or advancing, or (iii) is financially unable to indemnify or advance, or fails to indemnify within 60 days after an **Insured Executive** requests in writing such indemnification.

"**Outside Wrongful Act**" means an actual or alleged act, error, omission, misstatement, misleading statement, neglect, or breach of duty by an **Insured Executive,** while serving in the capacity of a director, officer, trustee, regent, or governor, or functional equivalent of the foregoing, of an **Outside Entity,** or any matter asserted against an **Insured Executive** by reason of his or her status as such, but only if serving in such capacity with the knowledge of the **Company** or at the specific request or direction of the **Company.**

"**Preliminary Investigation**" means any request or demand for an **Insured Executive** to appear at a meeting, deposition or interview, or produce documents, relating to the business of the **Company,** regardless of whether a **Wrongful Act** is alleged in connection with such request or demand, and where such request or demand is asserted:

(a) by any **Enforcement Authority;** or

(b) by or on behalf of the **Company,** its board of directors (or similar management body), or any committee of its board of directors (or similar management body) arising from a request or demand set forth in 1 immediately above; or which is part of the **Company's** investigation and evaluation of a "Shareholder Derivative Demand", which term shall mean a written demand on the board of directors (or similar management body) by one or more shareholders of the **Company** to assert a **Claim** on behalf of the **Company** against an **Insured Executive** for a **Wrongful Act.**

Preliminary Investigation shall not include any routine or regularly scheduled internal or regulatory supervision, inspection, compliance, review, examination, production or audit, including any mandatory request for information conducted in the normal review or compliance process of and by the **Company** or by an **Enforcement Authority.**

"**Subsidiary**" means:

any corporation or other entity, in which and solely during the time period when, the **Company** owns, directly or through one or more other **Subsidiaries:**

(a) more than fifty percent (50%) of the outstanding securities representing the right to vote for the election of the directors of such entity,

(b) the right to elect, appoint or designate more than fifty percent (50%) of the members of any board of managers of such entity; or

(c) if the entity is a partnership, it shall be a **Subsidiary** only if specifically included as such by way of an endorsement to this Policy and such partnership agrees to indemnify its **Insured Executives** to the fullest extent permitted by applicable law.

"**Wrongful Act**" means:

(a) an actual or alleged act, error, omission, misstatement, misleading statement, neglect, or

breach of duty or **Wrongful Employment Practice** by an **Insured Executive** in his or her capacity as such, including while serving as a general or managing partner in a partnership which is deemed to be a **Subsidiary** per Section II. (L) (3) of under this Policy or as a fiduciary of an employee benefit plan sponsored by the **Company;**

(b) any matter asserted against an **Insured Executive** by reason of his or her status as such, except that this subsection (b) of this **Wrongful Act** definition shall not apply with respect to any **Insured Executive** serving in a partnership and the matter is asserted solely based upon or arising from such partnership status; or

(c) an **Outside Wrongful Act.**

D. CHANGES TO SECTION III, EXCLUSIONS

Section III, Exclusions, is deleted in its entirety and replaced as follows:

III. EXCLUSIONS

This Policy does not incorporate any of the exclusions contained in the Exclusions section of the **Follow Form Policy.** The following exclusions shall apply except to the extent that a substantively similar exclusion in the **Follow Form Policy** may be less restrictive in its application. In such case, the less restrictive wording shall be incorporated herein.

The Insurer shall not pay **Loss** in connection with that portion of any **Claim** made against an **Insured Executive** that is:

(A) for, based upon, arises from, or is any way related to any fact, circumstance or situation that, before the inception of the **Policy Period,** was the subject of notice given under any other policy providing Directors' and Officers' or similar type of insurance to the **Insured Executives.**

(B) for any:

(1) deliberate criminal or deliberate fraudulent act by such **Insured Executive;** or

(2) personal profit, financial advantage or remuneration gained by such **Insured Executive** to which he or she is not legally entitled.

provided that the applicability of the foregoing exclusions in this Section III. (B) are determined by a final and no longer appealable adjudication of the conduct at issue in the underlying **Claim** against such **Insured Executive,** other than an **Independent Director,** establishing that such **Insured Executive** committed such act or omission, or gained such profit, advantage or remuneration.

The exclusions in this Section III. (B) shall not apply to

(a) that part of **Loss,** which is comprised of **Defense Expenses;**

(b) any **Claim** against an **Independent Director;**

(c) any **Claim** in connection with a **Wrongful Employment Practice;** or

(d) with respect to Section III. (B) (2), any actual or alleged violation of Section 11, 12 or 15 of the Securities Act of 1933, as amended.

Neither the intent, knowledge, facts pertaining to, nor **Wrongful Act** of any **Insured Executive** or the **Company** shall be imputed to any other **Insured Executive** to determine the application

of the exclusions set forth in this Section III (B). For acts or omissions which are deemed to be a criminal violation in a jurisdiction outside of the United States and such acts or omissions would not be deemed to be a criminal violation if such acts or omissions took place in a jurisdiction inside of the United States, the imposition of a criminal sanction or fine in such jurisdiction outside the United States will not, by itself, be conclusive proof that a deliberate fraudulent or deliberate criminal act occurred for purposes of Section III. (B) (1).

E. CHANGES TO SECTION IV, GENERAL CONDITIONS

Except as modified or deleted below, all provisions in Section IV remain in place.

1. Section IV (A), **Limit of Liability,** is deleted in its entirety and replaced as follows:

(A) Limits of Liability

The Insurer's maximum aggregate liability for all **Loss,** on account of all **Claims** first made during the **Policy Period** and Discovery Period, if duly elected and paid for, shall be as set forth in the Limits of Liability in Item 3 D. of the Declarations.

More than one demand, suit or proceeding arising out of the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim,** first made during the **Policy Period** in which (i) the first of such demands, suits or proceedings is made against any **Insured Executive** or (ii) in which notice of circumstances relating thereto is first given in accordance with Section IV (D) of this Policy, whichever event first takes place.

Defense Expenses shall be part of and not in addition to any and all Limits of Liability set forth in Item 3 of the Declarations and shall reduce and may exhaust the applicable Limits of Liability. The Insurer shall have no obligation to pay **Loss,** including **Defense Expenses,** related to any **Claim** that is covered solely under a sublimit of liability under any other insurance policy, and not otherwise covered under this Policy. Notwithstanding the foregoing, the Insurer shall recognize erosion or exhaustion of such other insurance policy's limits by virtue of payments pursuant to such sublimit of liability. The Insurer shall have no obligation to pay **Loss,** including **Defense Expenses,** after the Limits of Liability have been exhausted, except as follows:

(a) In the event the aggregate Limit of Liability set forth in Item 3 A. of the Declarations is exhausted, this Limit of Liability shall be reinstated in the amounts set forth in Item 3 B., solely for **Loss** incurred by any **Insured Executives** or by **Independent Directors,** in accordance with the option elected pursuant to that Item 3 B. of the Declarations. Such amounts, however, shall not apply to any **Claim** for which there has been any payment of **Loss** under a Limit of Liability set forth in Item 3 A. of the Declarations and any other **Claim** based upon, arising from or related in any way to the same **Wrongful Act** or **Interrelated Wrongful Acts** at issue in such **Claim,** and such amounts shall be excess of amounts payable under all other insurance policies that are specifically excess of this Policy and all policies in the **Underlying Insurance** providing a similar reinstated limit of liability.

(b) In the event the aggregate Limit of Liability set forth in Item 3. B of the Declarations is exhausted, such Limit of Liability shall be reinstated a second time in the amounts set forth in Item 3 C. of the Declarations, solely for **Loss** incurred by any **Insured Executives** or by **Independent Directors,** in accordance with the option elected pursuant to that Item 3 C. of the Declarations. Such amounts, however, shall not apply to any **Claim** for which there has been any payment of **Loss** under the Limit of Liability set forth in Item 3 A. of the Declarations or the Limit of Liability set forth in Item 3. B. of the Declarations and any other **Claim** based upon, arising from or related in any way the same **Wrongful Act** or **Interrelated Wrongful Acts** at issue in such **Claim,** and such amounts shall be excess of amounts payable under all other insurance policies that are specifically excess of this Policy and all policies in the **Underlying Insurance** providing a similar reinstated limit of liability.

(c) Upon exhaustion of the aggregate Limit of Liability set forth in Item 3 A. of the Declarations and, if applicable, the aggregate Limits of Liability set forth in Items 3 B. through 3 G. of the Declarations, for the **Policy Period** by reason of payment of **Loss** by the Insurer, the Insurer shall have no further payment obligations or other liability under this Policy, other than pursuant to Item 3 E. of the Declarations and Insuring Agreement I. (E), and subject always to the maximum aggregate Limit of Liability set forth in Item 3 D. of the Declarations.

(d) With respect to exhaustion for purposes of applying the Limits of Liability set forth in Items 3. B. or 3. C. of the Declarations, the limits of liability under any policies in the **Underlying Insurance** and any insurance policies excess of this Policy shall be reduced or exhausted by payments by an insurer (including any insurer under a policy issued in a foreign jurisdiction), an **Insured Executive,** the **Company** and/or a third party in connection with the **Claim(s)** at issue.

2. Section IV (B), **Other Insurance, Indemnification and Advancement,** is deleted in its entirety and replaced as follows:

(B) Other Insurance, Indemnification and Advancement

(1) This Policy shall only apply specifically excess of and in no event shall be contributory with:

(a) any indemnification and advancement to which an **Insured Executive** may be entitled from the **Company,** an **Outside Entity** or any other source; and

(b) any valid and collectible policy of insurance that may provide coverage to an **Insured Executive,** regardless of whether such other insurance is stated to be primary, contributory, excess or otherwise, unless such other insurance is

(i) written as specific excess insurance over the Limits of Liability in this Policy by reference to the policy number for this Policy; or

(ii) a personal umbrella or personal director liability insurance policy issued to an **Insured Executive.**

However, if after a specific written request is made by or on behalf of the **Insured Executives,** such other insurance or source of indemnification or advancement responds in writing that it will not pay any amount that constitutes **Loss** under this Policy or otherwise fails to respond to such written request after sixty (60) days from the date of such request, the Insurer, pursuant to this Policy, shall respond on behalf of the **Insured Executives** and, if the amount is otherwise covered, pay all reasonable amounts constituting **Loss** as soon as is practicable, but in no event later than sixty (60) days after the Insurer has received written and itemized documentation of such **Loss** by means of invoices or otherwise, and be subrogated to the rights of such **Insured Executives** pursuant to Section IV. (F) and otherwise subject to Section IV. (E) (2) of this Policy.

Further, if after a specific written request is made by or on behalf of the **Insured Executives,** such other insurance or source of indemnification or advancement fails to respond to such written request after sixty (60) days from the date of such request, the Insurer shall make payment in conformance with this Section IV. (B) and all other applicable provisions of the Policy and be subrogated to all rights of any and all **Insured Executives** on whose behalf such payment is made.

(2) Other than the **Follow Form Policy,** this Policy shall neither follow form nor be subject to the terms or conditions of any indemnification or advancement agreements, insurance policies, contracts, by-laws or charter provisions.

3. Section IV. (C), **Transactions and Change in Control During the Policy Period,** subsections (1) and (2) are deleted and replaced as follows:

   (1) If, prior to or during the **Policy Period**, the **Company** consummates any of the following transactions:

   (a) makes an asset acquisition;

   (b) acquires any entity, including one that is a **Subsidiary;** or

   (c) assumes the liability of another entity,

   then, insurance under this Policy shall only apply to a **Claim** for a **Wrongful Act** made against an **Insured Executive** of such entity, provided that such **Wrongful Act** is committed or alleged to have been committed after the time such **Insured Executive** first became an **Insured Executive** of the **Company.**

   (2) If, prior to or during the **Policy Period,** any entity ceases to be a **Subsidiary,** the **Insured Executives** of such **Subsidiary** shall only be covered under this Policy with respect to a **Claim** for a **Wrongful Act** that occurred or allegedly occurred prior to the time such entity ceased to be a **Subsidiary.**

   The heading of Section IV. (C) is changed to **Transactions and Change in Control Prior to or During the Policy Period.**

4. Section IV. (D), Awareness Provision, is deleted in its entirety and replaced as follows.

   (D) AWARENESS PROVISION

   If, during the **Policy Period** or Discovery Period, if purchased, but in no event later than sixty (60) days after the termination of such period, as appropriate, any **Insured Executive** first becomes aware of a **Wrongful Act** or circumstances that take place during or prior to the **Policy Period** and that could reasonably give rise to a **Claim** for a **Wrongful Act** and if, during the **Policy Period** or Discovery Period, if purchased, the **Insured Executives,** or the **Company** on their behalf, provides the Insurer with written notice of the specific circumstances and actual, alleged or potential **Wrongful Act,** the consequences which have resulted or may result therefrom (including but not limited to actual or potential damages), the identities or descriptions of potential claimants, and the manner in which the **Insured Executives** first became aware of such circumstances or **Wrongful Act,** then, any **Claim** subsequently made arising from such **Wrongful Act** or circumstances will be treated as if it had been first made during the **Policy Period.**

5. Section IV. (E), **No Duty to Defend by Insurer and Settlement and Payment Obligations,** subsections (1) and (2) are deleted and replaced as follows:

   (1) It shall be the duty of the **Insured Executive** and not the duty of the Insurer to defend **Claims.** No **Insured Executive** may incur any **Defense Expenses** or admit liability for, make any settlement offer with respect to, or settle any **Claim** without the Insurer's consent, such consent not to be unreasonably withheld.

   (2) the Insurer will pay on a current basis all reasonable and necessary **Defense Expenses** before the disposition of any **Claim** for which this Policy provides coverage. In the event of such advancement, the **Insured Executives** agree that they shall repay the Insurer, any **Loss,** including **Defense Expenses** paid to or on behalf of the **Insured Executives** pursuant to a written reservation of the Insurer's rights, if it is finally determined in any judicial or alternative dispute resolution proceeding that the **Loss** incurred is not covered under this Policy.

6. Section IV. (F), **Assistance and Cooperation of Insured Executives and Company and Subrogation Rights of Insurer,** subsections (1) (2) and (3) are deleted in their entirety and replaced as follows:

   (1) The **Insured Executives** and the **Company** agree to provide the Insurer with all information, assistance and cooperation that the Insurer may reasonably request, and agree that they will knowingly do nothing which in any way increases the Insurer's exposure under this Policy or in any way prejudices the Insurer's potential or actual rights of recovery against any party, including the **Company** or any **Outside Entity,** after a **Claim** is first made against the **Insured Executives.** The failure of any **Insured Executive** or the **Company** to provide information, assistance and cooperation shall not impair the rights of any other **Insured Executive** under this Policy.

   (2) In the event of any payment under this Policy, the Insurer shall be subrogated to all of the **Insured Executives'** rights of recovery, and the **Company** and **Insured Executives** shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents as may be necessary to enable the Insurer to effectively bring suit in the name of any **Insured Executives** or the **Company**.

   In the event, the Insurer recovers amounts paid as **Loss** under this Policy through its subrogation efforts, such recovery shall restore to the extent of the recovery net of subrogation costs and expenses, the appropriate Limit(s) of Liability. To the extent such recovery exceeds the **Loss** paid amounts, payment from such recovery shall be made to the **Insured Executives** severally according to their interests.

   In no event, however, shall the insurer exercise its rights of subrogation against an **Insured Executive** unless there has been determined by a final and no longer appealable adjudication of the conduct at issue in the underlying **Claim** against such **Insured Executive** other than an **Independent Director,** establishing that such **Insured Executive** committed such act or omission, or gained such personal profit, advantage or remuneration.

   Section IV. (F) (4) is renumbered as Section IV. (F) (3) and shall read as follows.

   Neither the **Company** nor any **Insured Executive** shall, after the inception of this Policy, cancel or modify the **Underlying Insurance** in any manner to the detriment of the Insurer. However, any such cancellation or modification that does not result in detriment to the Insurer, shall not otherwise affect the **Insured Executives'** rights under this Policy.

7. Section IV., (H), **Cancellation or Non-Renewal of Policy,** is amended as follows:

   The heading is changed to **Cancellation of Policy** and subsection IV. (H) (3) is deleted in its entirety.

   Section IV. (H) (1) is deleted in its entirety and replaced as follows:

   (1) The Chief Executive Officer or Chief Financial Officer of the entity listed in Item 1 of the Declarations or any duly authorized party acting on their behalf (the "Notice Agent") shall have the exclusive right to cancel this Policy on behalf of any or all **Insured Executives.** Any insurance broker or agent for this Policy shall be presumed to be duly authorized as a Notice Agent. Such cancellation may be effected by mailing to the Insurer written notice stating when such cancellation shall be effective, provided the date of cancellation is not later than the Expiration Date set forth in Item 2 of the Declarations. In such event, the Insurer shall retain the pro-rata portion of the earned premium. Return or tender of the unearned premium is not a condition of cancellation.

8. Section IV. (I), **Discovery Period,** is deleted in its entirety and replaced as follows:

(I) Discovery Periods

(1) Standard Discovery Period

(a) If either the **Insured Executives** or the Insurer does not renew this Policy, the **Insured Executives** shall have the right, upon payment of the additional premium set forth in Item 4 of the Declarations, to an extension of the coverage provided by this Policy with respect only to any **Claim** first made during the Discovery Period set forth in Item 4 of the Declarations and duly reported in accordance with Section I. (A), but only with respect to a **Wrongful Act** occurring prior to the Policy Expiration Date.

(b) As a condition precedent to the right to purchase the Discovery Period, the total premium for this Policy must have been paid in full. The right of the **Insured Executives** to purchase the Discovery Period will be immediately terminated if the Insurer does not receive written notice from the **Insured Executives** or their Notice Agent advising they wish to purchase the Discovery Period together with full payment of the premium for the Discovery Period on a non-refundable basis within sixty (60) days after the Policy Expiration Date.

(c) The purchase of the Discovery Period will not in any way increase the Limits of Liability set forth in Item 3 of the Declarations, and the Limits of Liability with respect to **Claims** made during the Discovery Period duly reported in accordance with Section I. (A) shall be part of and not in addition to the Limits of Liability for the **Policy Period** with respect to all **Claims** made and duly reported in accordance with Section I. (A).

(d) If the Insurer offers to renew this Policy at a total premium amount different from the total premium amount for this Policy, such renewal on those premium terms shall not entitle the **Insured Executives** to elect any Discovery Period.

(e) The Limits of Liability applicable for any Discovery Period are part of and not in addition to the Limits of Liability for this Policy. In no event shall there be any separate or additional Limits of Liability applicable to **Claims** made during the Discovery Period.

(2) Six (6) Year Discovery Period

Solely if this Policy is non-renewed following the initiation of liquidation or reorganization proceedings under the United States Bankruptcy Code or functionally equivalent foreign law, the Discovery Period otherwise described in Section IV. (I) (1) shall be increased to duration of six (6) years. All terms and conditions in Section IV. (I) (1) shall apply, except that no additional premium shall be required for this extended Discovery Period.

(3) Unlimited Discovery Period

Solely with respect to any **Insured Executives** who have voluntarily resigned or retired from the **Company** or its Board of Directors, and if the Insurer does not renew this Policy, the Discovery Period otherwise described in Section IV. (I) (1) shall be increased to a period of unlimited duration. All terms and conditions in Section IV. (I) (1) shall apply, except that no additional premium shall be required for this extended Discovery Period and this unlimited Discovery Period shall not be available when such **Insured Executives** leave the **Company** as a result of a "change in control" as described in Section IV. (C) (3).

9. Section IV. (J), **Representations of Insured Executives, Non-Rescindability and Full Severability,** is deleted in its entirety and replaced as follows:

(J) **Representations of Insured Executives, Non-Rescindability and Full Severability**

This Policy shall not be rescindable or voidable, in whole or in part, as to any **Insured Executive** under any circumstances.

The application(s) for coverage shall be construed as a separate application(s) for each **Insured Executive.** Each **Insured Executive** represents that, to the best of his or her knowledge, the statements and particulars contained in the application(s) are true, accurate and complete, and each **Insured Executive** agrees that this Policy is issued in reliance on the truth of that representation and that such particulars and statements, which are deemed to be incorporated into and constitute a part of this Policy, are the basis of this Policy. No knowledge or information possessed by the **Company** or any **Insured Executive** will be imputed to any other **Insured Executive** for the purposes of determining the availability of coverage with respect to **Claims** made against such other **Insured Executive.**

10. Section IV. (O), **Insolvency of the Company and Waiver of Automatic Stay in Bankruptcy,** second paragraph only, is deleted in its entirety and replaced as follows:

    However, the rights of an **Insured Executive** under this Policy shall not be affected by the bankruptcy or insolvency of the **Company,** any other **Insured Executive** or any insurer within the **Underlying Insurance.**

The following subsections are added to **Section IV, GENERAL CONDITIONS.**

(Q) Notice of Claims and Matters under Awareness Provision

With respect to and provided always that when any **Claim** is first made against an **Insured Executive** per Section I and Section II. (B) of the Policy, the **Insured Executives,** or the **Company** on their behalf, shall give written notice to the Insurer of any **Claim** as soon as practicable after either the in-house general counsel, risk manager or functional equivalent of either of the foregoing (including where, in the absence of such positions, such functions are the responsibility of a higher level executive officer of the **Company**) within the entity named in Item I of the Declarations first becomes aware of it, but in no event later than one hundred eighty (180) days after the end of the **Policy Period.**

If the **Insured Executives** or the **Company** fails to provide notice of any such **Claim** to the Insurer as required under this Section IV (Q), the Insurer shall not be entitled to deny coverage for the **Claim** based solely upon late notice unless the Insurer can demonstrate that its interests were materially prejudiced by reason of such late notice.

It is the sole option of the **Insured Executive** or the **Company** on his or her behalf to report (i) any matter arising under Section IV (D), Awareness Provision, (ii) any arrest, detainment or incarceration as described in subsection 3 of the **Claim** definition, (iii) any request or demand to toll or waive a statute of limitation as described in subsection 6 of the **Claim** definition, or (iv) any **Preliminary Investigation.**

No coverage is afforded for any **Loss** incurred in connection with any of the matters described in the immediately preceding paragraph, prior to the time written notice of same is given to the Insurer. In the case of a matter arising under Section IV (D), Awareness Provision, the Insurer shall have no obligation to pay any **Defense Expenses** or other **Loss** amounts unless and until an actual **Claim** ensues, which is duly reported to the Insurer pursuant to this Section IV (Q).

(R) State Amendatory Inconsistency

If there is an inconsistency between a state amendatory endorsement attached to this Policy and any other term or condition of this Policy, the Insurer shall apply, where permitted by law, those terms and conditions either of such state amendatory endorsement or the Policy form, whichever are more favorable to coverage for the **Insured Executive.**

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED. THE TITLE OR HEADING TO THIS ENDORSEMENT IS INCLUDED SOLELY FOR EASE OF REFERENCE AND DOES NOT IN ANY WAY LIMIT, EXPAND, INTERPRET OR OTHERWISE AFFECT THE PROVISIONS OF THIS ENDORSEMENT.

Policy Number: [redacted] Endorsement Number: **7**
Effective at 12:01 a.m. Standard Time: **October 23, 2020**
Named Insured: **Lordstown Motors Corp.**

PRIOR KNOWLEDGE EXCLUSION

Notwithstanding anything stated to the contrary in this Policy, including but not limited to the preamble of Section III., "EXCLUSIONS", the following exclusion shall restrict coverage under this Policy in the manner set forth below. It is agreed that Section III. "EXCLUSIONS" shall be amended by adding the following:

If any **Insured Executive** knew or should have known (based on a "reasonable person" standard) as of 10/23/2020 of any fact or circumstance or of any actual or alleged act, error or omission which might give rise to a future **Claim** then any such future **Claim** or **Loss** based on such knowledge is hereby excluded from any coverage under this policy.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED. THE TITLE OR HEADING TO THIS ENDORSEMENT IS INCLUDED SOLELY FOR EASE OF REFERENCE AND DOES NOT IN ANY WAY LIMIT, EXPAND, INTERPRET OR OTHERWISE AFFECT THE PROVISIONS OF THIS ENDORSEMENT.

Policy Number: [redacted] Endorsement Number: **8**
Effective at 12:01 a.m. Standard Time: **October 23, 2020**
Named Insured: **Lordstown Motors Corp.**

PENDING OR PRIOR LITIGATION EXCLUSION
SAME AS FOLLOW FORM POLICY EXCEPT AS TO DATE

Notwithstanding anything stated to the contrary in this Policy, including but not limited to the preamble of Section III., "EXCLUSIONS", the following exclusion shall restrict coverage under this Policy in the manner set forth below. It is agreed that Section III. "EXCLUSIONS" shall be amended by adding the following:

The Insurer shall not be liable to make any payment under this policy for **Loss** resulting from any **Claim** made against an **Insured Executive** for, based upon, arising from, or in any way related to any demand, suit, administrative or regulatory proceeding against or involving the **Company** or **Insured Executive** which was pending on or existed prior to 10/23/2020, or any **Claim** arising from the same or substantially the same facts, circumstances or allegations which are the subject of or basis for such demand, suit or proceeding described in this paragraph.

Notwithstanding the preceding paragraph, which is provided solely for identification and reference purposes, the Insurer shall follow form of and incorporate into this Policy, the substantively similar exclusion or endorsement of the **Follow Form Policy** except that the operative date of such exclusion or endorsement shall remain as set forth in the preceding paragraph.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED. THE TITLE OR HEADING TO THIS ENDORSEMENT IS INCLUDED SOLELY FOR EASE OF REFERENCE AND DOES NOT IN ANY WAY LIMIT, EXPAND, INTERPRET OR OTHERWISE AFFECT THE PROVISIONS OF THIS ENDORSEMENT.



100 William Street, 5th Floor, New York, NY 10038