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 ADAM KROLL IN SUPPORT OF THE DEBTORS' MOTION FOR PRELIMINARY INJUNCTIVE RELIEF

I, ADAM KROLL, declare:

1. I am Executive Vice President and Chief Financial Officer of Lordstown Motors Corp. ("**LMC**") and have served in this capacity since October 25, 2021. I submit this declaration in support of the Debtors' *Motion to Extend the Automatic Stay and for Preliminary Injunctive Relief Pursuant to 11 U.S.C. § 105* (the "**Motion**").[2]

2. As part of my responsibilities as Executive Vice President and Chief Financial Officer, I am familiar with the Debtors' day-to-day operations, books and records, and business

[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 Dr., Farmington Hills, MI 48331.

[2] Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Debtors' brief in support of the Motion.

and financial affairs, including applicable indemnification and insurance policies. Unless indicated otherwise, the facts set forth herein are based upon my personal knowledge, my review of relevant documents, my discussions with other members of senior management, information provided to me by employees working under my supervision, or my knowledge, and information concerning the Company's operations. If requested, I am able to testify competently to the facts set forth in this Declaration. I am authorized to submit this Declaration on behalf of the Debtors.

3. Beginning in 2021, the Debtors and their current and former officers and directors have faced an onslaught of shareholder litigation in connection with the Debtors' SPAC Merger that closed in October 2020. Fifteen separate derivative and putative class action lawsuits were subsequently consolidated into five litigation proceedings. Upon filing their petitions in these chapter 11 cases, all derivative litigation was automatically stayed, leaving only the two consolidated putative class actions actively pending against the D&O Defendants before the U.S. District Court for the Northern District of Ohio and the Court of Chancery of the State of Delaware (the "**Putative Class Actions**").

4. From their inception, the Putative Class Actions have required the Debtors to expend significant time and resources in defense of both themselves and the D&O Defendants named in those actions. The litigation costs and expenses resulting from the Putative Class Actions have been substantial, totaling over $5.76 million to date, which is just a fraction of the total amount spent on shareholder-litigation related issues.

5. The Debtors anticipate that, should the Delaware Class Action proceed, legal spend will increase substantially because of significant activity expected to occur in the near term, including fact and expert discovery, motion practice, trial preparation, and trial. On June 21, 2023, the Chancery Court compelled LMC to participate directly in discovery, and the Debtors anticipate

the action will require their continued involvement throughout the course of litigation and trial. This is especially true given that the Debtors will bear the primary burden for responding to discovery demands to the D&O Defendants named in the Delaware Class Action (the "**Delaware D&O Defendants**"),[3] including ESI and document production, because documents or information sought by the plaintiffs are likely to be maintained by the Debtors. The attorneys' fees, costs, and other expenses associated with these efforts could exceed $2 million.

6. To date, the Debtors have paid all such expenses on behalf of the Delaware D&O Defendants and, absent a stay, will remain responsible for further attorneys' fees, costs, and other litigation expenses. The Debtors are contractually obligated to indemnify the Delaware D&O Defendants in the Delaware Class Action. While the Debtors' have director and officer liability insurance policies with shared coverage limits with the Debtors, as of the date hereof, certain of LCM's insurers have refused to provide coverage with respect to any of the Actions, including for defense costs. The Debtors are engaged in ongoing discussions with the insurers regarding coverage under those policies.

7. If the Delaware Class Action is allowed to proceed, continued discovery and litigation directed against the Delaware D&O Defendants will require the Debtors to allocate significant time and attention and incur substantial costs and expenses. The Chancery Court has already compelled LMC to participate in discovery, and the Debtors anticipate the action will require their involvement throughout the course of litigation and trial.

8. Moreover, the claims asserted against the Delaware D&O Defendants directly

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

implicate claims against the Debtors in the remaining Actions. Because of the overlap between these claims, the threat that any adverse finding against the Delaware D&O Defendants could subsequently be used against the Debtors will compel the Debtors, with the assistance of outside counsel, to remain actively involved in the Delaware Class Action to protect the Debtors' interests. In addition to draining much needed resources from the Debtors' estates, these tasks will distract the Debtors and their executive management from the still young restructuring efforts.

9. It is vital that members of the Debtors' executive leadership team remain focused on our ultimate goal of working with counsel and other advisors to complete a successful restructuring. Ongoing litigation against the Delaware D&O Defendants will continue to demand time and attention from such personnel, including myself and my team, to the detriment of the bankruptcy process. The Debtors' ability to focus on the restructuring is especially crucial at this juncture, when key objectives such as the Debtors' prospective sale process and negotiations leading to a chapter 11 plan still lie ahead.

10. Waiting for the Delaware Class Action to be resolved through litigation will impede the Debtors' ability to formulate, confirm, and implement a restructuring plan, and ultimately reduce the value of recoveries to creditors and other stakeholders. The Debtors therefore seek to stay the Delaware Class Action.

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

Executed: July 5, 2023
Farmington Hills, Michigan

/s/ Adam Kroll
Adam Kroll