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. Proc. No. 23-50428 (MFW) **Re: Adv. Proc. D.I. 3**

DEBTORS' MOTION TO FILE UNDER SEAL CERTAIN EXHIBITS TO THE DECLARATION OF DAVID M. TURETSKY IN SUPPORT OF THE DEBTORS' MOTION FOR INJUNCTIVE RELIEF

Lordstown Motors Corp. ("**LMC**" or the "**Company**") and its affiliated debtors in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the "**Debtors**"), hereby file this motion (the "**Motion**") for entry of an order substantially in the form attached hereto as **Exhibit A** (the "**Proposed Order**") granting the relief described below. In support of this Motion, the Debtors respectfully represent as follows:

[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 38555 Hills Tech Dr., Farmington Hills, MI 48331.

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RELIEF REQUESTED

1. By this Motion, the Debtors request, pursuant to sections 105 and 107 of title 11 of the United States Code (the "**Bankruptcy Code**"), rule 9018 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and rule 9018-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the **"Local Rules**"), entry of the Proposed Order authorizing the Debtors to: (i) file under seal the Confidential Information (as defined below) contained in certain of the exhibits (the "**Exhibits**") attached to the Turetsky Declaration (as defined below), (ii) file redacted versions of the Exhibits on the docket in this case; and (iii) provide unredacted versions of the Exhibits to the Court, the Defendants, the Office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**"), and any other parties in interest as the Court may order.

JURISDICTION AND VENUE

2. The Court has jurisdiction to consider this matter under 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. Pursuant to Local Rule 9013–1(f), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

BACKGROUND

4. On June 27, 2023, the Debtors each filed a voluntary petition in this Court commencing their chapter 11 cases. The Debtors continue to manage and operate their businesses

as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in the chapter 11 cases, and no committees have yet been appointed.

5. On July 5, 2023, the Debtors filed the *Complaint for Injunctive Relief* (the "**Complaint**") [Adv. Proc. D.I. 1] in the above-captioned adversary proceeding. The relevant factual background is set forth in the Complaint. The Debtors hereby incorporate the facts set forth in the Complaint by reference herein.

6. On July 5, 2023, the Debtors also filed the *Debtors' Motion to Extend the Automatic Stay and for Injunctive Relief Pursuant to 11 U.S.C. § 105, and Request for Hearing Date* [Adv. Proc. D.I. 2] and the *Declaration of David M. Turetsky in Support of the Debtors' Motion for Injunctive Relief* (the "**Turetsky Declaration**") [Adv. Proc. D.I. 3].

7. Certain of the exhibits (the "**Exhibits**") attached to the Turetsky Declaration include confidential information that, absent the relief requested herein, the Debtors would otherwise be required to make publicly available. Specifically, the Exhibits include (i) the Company's insurance schedules and other directors' and officers' policy information, which contain policy numbers and premium amounts (the "**Confidential Commercial Information**"); and (ii) employee indemnification agreements, which contain personal identifying information such as home addresses (the "**Confidential Personal Information**" and, together with the Confidential Commercial Information, collectively the "**Confidential Information**").

8. By this Motion, the Debtors request that the Confidential Information not be disclosed publicly, but instead, that the Debtors only be required to provide unredacted versions of the Exhibits to the Court, the Defendants, the U.S. Trustee, and any other parties in interest as the Court may order.

BASIS FOR RELIEF

9. Sections 105(a) and 107 of the Bankruptcy Code allow the Court to authorize the parties to file the Confidential Information under seal. Pursuant to section 105(a) of the Bankruptcy Code, bankruptcy courts have the inherent equitable power to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). In addition, section 107(b) provides bankruptcy courts with the power to protect parties in interest from potentially harmful disclosures:

> On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may—
>
> (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information . . . .

11 U.S.C. § 107(b).[2]

10. Courts have held that protection under section 107(b) must be granted if the information sought to be protected is commercial information, and significantly, that commercial information need not rise to the level of a trade secret to be entitled to protection. *Video Software Dealers Ass'n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 28 (2d Cir. 1994) (finding that the use of the disjunctive in section 107(b)(1) "neither equates 'trade secret' with 'commercial information' nor requires the latter to reflect the same level of confidentiality as the former"). Moreover, section 107(b) of the Bankruptcy Code neither requires an entity seeking such protection to demonstrate "good cause" nor an "extraordinary circumstance[] or compelling

[2] Bankruptcy Rule 9018 sets forth the procedure by which a party in interest may obtain a protective order authorizing the filing of a document under seal. Bankruptcy Rule 9018 provides, in relevant part:

> On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information . . . .

Fed. R. Bankr. P. 9018.

need." *Id.* at 27-28. Rather, a party seeking the protection of section 107(b) need only demonstrate that the information is "confidential" and "commercial" in nature. *Id.* at 27; *see also In re Global Crossing Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003) (recognizing that the purpose of Bankruptcy Rule 9018 is to "protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury"). Once established that the subject information qualifies as "commercial information" under section 107(b)(1), the Bankruptcy Code mandates that this information be protected from disclosure. *See Global Crossing Ltd.*, 295 B.R. at 725.

11. Section 107(c) further empowers the Court to protect parties from potentially harmful disclosures of personal identifying information:

> The bankruptcy court, for cause, may protect an individual, with respect to the following types of information to the extent the court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual's property:
>
> (A) Any means of identification (as defined in section 1028(d) of title 18) contained in a paper filed, or to be filed, in a case under this title.
>
> (B) Other information contained in a paper described in subparagraph (A).

11 U.S.C. § 107(c). Title 18 of the United States Code defines "means of identification" as:

> any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any—
>
> (A) name, social security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number

18 U.S.C. § 1028(d)(7).

12. Through the enactment of 11 U.S.C. § 107(c)(1), Congress has recognized the balancing of interests between disclosure and transparency in the bankruptcy process, and the need to protect the privacy and identity of certain individuals who have dealings with the Debtors.

Through section 107(c)(1)(A), Congress permits the Debtors to shield "means of identification," and through section 107(c)(1)(B), Congress permits the Debtors to shield "other information." Together, these sections demonstrate Congress' desire to protect a broad range of personal identifying information, a category that clearly includes the Confidential Information.

13. Sufficient cause exists here for the court to grant the relief requested herein. First, the Debtors submit that the Confidential Commercial Information falls squarely within the scope of "confidential information" that must be protected pursuant to section 107(b) of the Bankruptcy Code because it contains confidential commercial information regarding the Debtors' directors' and officers' insurance policies. Specifically, the Confidential Commercial Information includes insurance premium amounts which, if disclosed, would reveal sensitive information regarding the inner workings of the Company and risk assessments of the Debtors' directors and officers. The Debtors compete in a hyper-competitive industry and believe that if the Confidential Commercial Information became publicly available, then the Debtors' competitors would utilize this information to the detriment of the Debtors and their estates.

14. Second, the Debtors submit that the Confidential Personal Information falls squarely within the scope of "information" that must be protected pursuant to section 107(c) because it contains personal identifying information regarding certain of the Debtors' current and former directors, officers, and employees. Specifically, the Confidential Personal Information includes personal identifying information such as insurance policy numbers and home addresses. Public disclosure of the Confidential Personal Information would needlessly render the Debtors' current and former directors, officers, and employees more susceptible to harassment, identity theft, and other potential privacy violations.

15. As such, the Debtors respectfully request that the Court authorize the Debtors to redact the Confidential Information and file unredacted versions of the Exhibits under seal as described herein, and to provide unredacted copies to the Court, the U.S. Trustee, and any other parties in interest as the Court may order.

COMPLIANCE WITH LOCAL RULE 9018-1(d)

16. To the best of the knowledge, information, and belief of the undersigned proposed counsel to the Debtors, the Exhibits contain information that is confidential, as contemplated by Local Rule 9018-1(d)(iii).

17. To the best of the knowledge, information, and belief of the undersigned proposed counsel to the Debtors, the Exhibits do not contain information subject to confidentiality rights of another holder of confidentiality rights, as contemplated by Local Rule 9018-1(d)(iv).

18. The Debtors have filed a redacted version of the Exhibits consistent with Local Rule 9018-1(d)(ii).

NOTICE

19. Notice of this Motion will be provided to (i) the Defendants; (ii) the U.S. Trustee; and (iii) all parties that, as of the filing of this Motion, have requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

NO PRIOR REQUEST

20. No prior request for the relief sought herein has been made to this Court or any other court.

[*Remainder of the page intentionally left blank*]

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order substantially in the form attached hereto as **Exhibit A**, granting (i) the relief requested herein; and (ii) such other and further relief to the Debtors as the Court may deem proper.

Dated: July 10, 2023

Respectfully submitted,

/s/ Alexander R. Steiger

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Exhibit A

Proposed Order

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. Proc. No. 23-50428 (MFW) **Re: Adv. Proc. D. I. __**

ORDER AUTHORIZING THE DEBTORS TO FILE UNDER SEAL CERTAIN CONFIDENTIAL COMMERCIAL INFORMATION IN THE EXHIBITS TO THE DECLARATION OF DAVID M. TURETSKY IN SUPPORT OF THE DEBTORS' MOTION FOR INJUNCTIVE RELIEF

Upon the motion (the "**Motion**")[2] of Lordstown Motors Corp. and certain of its debtor-affiliates (collectively, the "**Debtors**") as Plaintiffs in the above-captioned adversary proceeding, for an order under sections 105(a) and 107 of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1, for an order authorizing the Debtors to file under seal the Turetsky Declaration;

[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 38555 Hills Tech Dr., Farmington Hills, MI 48331.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

and the Court having reviewed the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter an order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief granted in this order,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.

2. The Debtors are authorized to file under seal those portions of the Turetsky Declaration containing the Confidential Information.

3. The Confidential Information shall remain under seal, and shall not be made available to anyone, except the Debtors shall provide unredacted copies of the Turetsky Declaration to the Court, the Defendants, the U.S. Trustee, and any other parties in interest as may be ordered by the Court.

4. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

5. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

6. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.