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 ANKITA SANGWAN IN SUPPORT OF DEFENDANTS' BRIEF IN RESPONSE AND OPPOSITION TO DEBTORS' MOTION TO EXTEND THE AUTOMATIC STAY AND FOR INJUNCTIVE RELIEF PURSUANT TO 11 U.S.C. § 105

I, Ankita Sangwan, declare:

1. I am an associate at the law firm Pomerantz LLP, 600 Third Avenue, New York, New York 10016, co-counsel for Defendants (*i.e.*, the Delaware Class Plaintiffs[2]) in the above-captioned cases. I respectfully submit this declaration in support of Defendants' Opposition to the Debtors' Motion.

[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.

[2] Capitalized terms used in this Declaration but not defined herein shall have the meaning ascribed to such terms in the Opposition.

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2. Unless indicated otherwise, the facts set forth herein are based upon my personal knowledge, my review of relevant documents and my discussions with the Delaware Class Plaintiffs and their counsel.

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

4. The Delaware Class Plaintiffs, *i.e.*, Benjamin Hebert and Atri Amin, held shares of DiamondPeak on October 23, 2020—the date DiamondPeak consummated a merger (the "SPAC Merger") with Lordstown Motor Corp. ("LMC" or "Company")—and did not redeem their shares when they had the right to do so.

5. On December 8, 2021, and December 13, 2021, Hebert and Amin, respectively, filed their Verified Class Action Complaints in the Delaware Court of Chancery. These actions were consolidated, and Hebert and Amin filed their Verified Amended Class Action Complaint (the "Complaint") on July 22, 2022. The DiamondPeak Directors initially filed motions to dismiss, which they later withdrew on January 5, 2023, and subsequently answered the Complaint on March 2, 2023.

6. The Delaware Class Action asserts breach of fiduciary duty claims against the five former DiamondPeak directors (the "DiamondPeak Directors"), each of whom is a non-debtor. The Complaint alleges that the DiamondPeak Directors breached their fiduciary duties by inducing Delaware Class Plaintiffs and the Class to approve the SPAC Merger and to forego exercising their redemption rights. Of those five DiamondPeak Directors, only one—David Hamamoto ("Hamamoto")—served as an LMC director after the SPAC Merger.

7. Delaware Class Plaintiffs are scheduled to file their motion for class certification on July 21, 2023. Delaware Class Plaintiffs will seek certification of a class of stockholders who held shares in DiamondPeak on the day of the SPAC Merger and did not exercise their redemption

rights, thus becoming LMC stockholders. Over 99% of DiamondPeak's investors voted for the deal while rejecting the redemption payment that was available to any dissenting investors.

8. Fact discovery is continuing apace. The deadline for substantial completion of document production was June 16, 2023. All fact discovery, including depositions, shall be completed by September 29, 2023. A five-day trial is scheduled for March 11 through March 15, 2024.

9. Although discovery is underway in the Delaware Class Action, the Company's sole obligation to date is responding to a third-party subpoena. Delaware Class Plaintiffs served a third-party subpoena on LMC on February 9, 2023. On June 9, 2023, the Delaware Court granted in substantial part Delaware Class Plaintiffs' Motion to Compel Directed at Non-Party LMC. Although the Company has refused to cooperate in discovery or comply with a Court order in the Delaware Class Action, the Delaware Class Plaintiffs understand that the majority of documents responsive to their subpoena have already been collected, reviewed, and produced by the Company to the SEC and the DOJ. To date, LMC has still not produced any of the required documents. To comply with the Court's order and the majority of its document production obligations under the subpoena, the Company primarily needs to reproduce to the Delaware Class Plaintiffs the documents that it has already collected and produced to governmental authorities.

10. On June 27, 2023, LMC filed a Suggestion of Bankruptcy and Notice of the Automatic Stay which incorrectly stated that the Delaware Class Action was subject to the automatic stay. On June 29, 2023, LMC filed a Corrected Suggestion of Bankruptcy and Notice of the Automatic Stay, which clarified that the Delaware Class Action was not subject to the automatic stay, but that "Debtors … intend to promptly file an action in the Bankruptcy Court seeking to extend the automatic stay to the claims asserted in this action."

11. Attached hereto as Exhibit A is a true and correct copy of Raymond DiCamillo's letter dated January 5, 2023 to the Delaware Court of Chancery, filed in the Delaware Class Action, withdrawing the DiamondPeak Directors' motion to dismiss.

12. Attached hereto as Exhibit B is a true and correct copy of the DiamondPeak Directors' Answer to the Delaware Class Plaintiffs' Complaint. **[CONFIDENTIAL FILING]**

13. Attached hereto as Exhibit C is a true and correct copy of the Stipulation and Order Governing Case Schedule granted on February 2, 2023 in the Delaware Class Action.

14. Attached hereto as Exhibit D is a true and correct copy of the Delaware Class Plaintiffs' *Subpoena Duces Tecum* and *Ad Testificandum* directed to LMC in connection with the Delaware Class Action.

15. Attached hereto as Exhibit E is a true and correct copy of the Transcript of the Telephonic Oral Argument and Rulings of the Court on the Delaware Class Plaintiffs' Motion to Compel for the hearing held on June 9, 2023 in the Delaware Class Action.

16. Attached hereto as Exhibit F is a true and correct copy of the Order Granting In-Part the Delaware Class Plaintiffs' Motion to Compel Directed at Non-Party Lordstown Motors Corp. entered in the Delaware Class Action on June 9, 2023.

17. Attached hereto as Exhibit G is a true and correct copy of the email chain among the Delaware Class Plaintiffs' counsel and LMC's counsel regarding LMC's obligations under the Delaware Class Plaintiffs' subpoena directed to LMC in connection in the Delaware Class Action. **[CONFIDENTIAL FILING]**

18. Attached hereto as Exhibit H is a true and correct copy of LMC's Suggestion of Bankruptcy and Notice of the Automatic Stay filed in the Delaware Class Action on June 27, 2023.

19. Attached hereto as Exhibit I is a true and correct copy of LMC's Corrected Suggestion of Bankruptcy and Notice of the Automatic Stay filed in the Delaware Class Action on June 29, 2023.

20. Attached hereto as Exhibit J is a true and correct copy of the Greenwich Policy, as produced to the Delaware Class Plaintiffs during discovery in the Delaware Class Action, bates numbered DP-DIR 0000001. **[CONFIDENTIAL FILING]**

21. Attached hereto as Exhibit K is a true and correct copy of the March 9, 2022 coverage position letter sent by the Greenwich Policy's Claims Manager, as produced to the Delaware Class Plaintiffs during discovery in the Delaware Class Action, bates numbered DP-DIR 0065484. **[CONFIDENTIAL FILING]**

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

Executed: July 19, 2023
New York, New York

/s/ Ankita Sangwan
Ankita Sangwan

EXHIBIT A

RICHARDS LAYTON & FINGER

Raymond J. DiCamillo
302-651-7786
DiCamillo@rlf.com

January 5, 2023

VIA HAND DELIVERY AND E-FILE

The Honorable Lori W. Will
Court of Chancery
Leonard L. Williams Justice Center
500 North King Street, Suite 11400
Wilmington, Delaware 19801

Re: *In re Lordstown Motors Corp. Stockholders Litigation*, Consolidated C.A. No. 2021-1066-LWW

Dear Vice Chancellor Will:

I write on behalf of defendants David Hamamoto, Mark Walsh, Andrew Richardson, Steven Hash and Judith Hannaway ("Defendants"). In light of the Court's opinion issued on January 4, 2023 in *Delman v. GigAcquisitions3, LLC*, C.A. No. 2021-0679-LWW, Defendants hereby withdraw their motion to dismiss in this matter (D.I. 72).[1] As a result, Defendants believe that the hearing currently scheduled for January 6, 2023 is no longer necessary.

If Your Honor has any questions regarding this matter, counsel are available at the Court's convenience.

[1] Defendants reserve all rights in the event that the issues in *GigAcquisitions3* are appealed or otherwise addressed by the Delaware Supreme Court.

Respectfully,

/s/ Raymond J. DiCamillo

Raymond J. DiCamillo (#3188)
Words: 105

cc: Gregory V. Varallo, Esq.
Michael A. Pittenger, Esq.
Derrick Farrell, Esq.

EXHIBIT B

DOCUMENT FILED UNDER SEAL

EXHIBIT C

GRANTED WITH MODIFICATIONS

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE LORDSTOWN MOTORS CORP. STOCKHOLDERS LITIGATION	Consolidated C.A. No. 2021-1066-LWW

STIPULATION AND [PROPOSED] ORDER
GOVERNING CASE SCHEDULE

WHEREAS, the parties have discussed and agreed upon the proposed schedule and ancillary issues as set forth below;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the parties (the "Parties," and each a "Party") hereto, through their undersigned counsel, and subject to the approval of the Court, that:

1. The following schedule shall govern further proceedings in the above-captioned matter (the "Action"):

(a) Defendants shall substantially complete the production of the "Core Documents."[1]	January 31, 2023
(b) Defendants shall file their Answer to the Complaint.	February 3, 2023

[1] "Core Documents" include: (i) all minutes of all meetings of the Board including, but not limited to, any subcommittee thereof; (ii) all documents and materials provided to the Board and any subcommittee thereof in connection to any meeting of the Board and/or any subcommittee thereof; (iii) all materials and presentations provided by any advisor to the Board and/or DiamondPeak; (iv) all engagement letters of any advisor engaged by the Board and/or DiamondPeak; (v) all director and officer questionnaires; (vi) all document retention policies and litigation hold memoranda; and (vii) all insurance policies that may provide coverage in connection to this Action.

(c) The Parties shall file a discovery plan to govern the Parties' discovery efforts.	March 24, 2023
(d) The Parties shall produce documents on a rolling basis and shall substantially complete document productions.	June 16, 2023
(e) Defendants shall inform Plaintiffs whether they intend to contest class certification. If contesting, Defendants shall provide Plaintiffs with their legal and factual bases for contesting class certification.	July 7, 2023
(f) The Parties shall exchange privilege and redaction logs.	July 11, 2023
(g) Plaintiffs shall file a motion for class certification, if contested, and an opening brief in support thereof.	July 21, 2023
(h) Defendants shall file their brief (if any) in opposition to Plaintiffs' motion for class certification.	August 21, 2023
(i) Plaintiffs shall file their reply (if any) in further support of their motion for class certification.	September 15, 2023
(j) All fact discovery shall be completed, including any party and third-party depositions, but excluding any fact discovery subject to a motion to compel or motion for protective order pending on that date.	September 29, 2023
(k) Each Party shall identify any expert witness the party intends to rely on in its case in chief, in accordance with the requirements of the Stipulation and Order Governing Expert Discovery in this matter.	October 2, 2023

(l) The Parties may submit letters to the Court requesting permission to file motions for summary judgment, with any oppositions to any such letters submitted to be filed within 7 days.	October 6, 2023
(m) The Parties shall exchange their respective opening expert reports and other materials, in accordance with the requirements of the Stipulation and Order Governing Expert Discovery in this matter.	October 20, 2023
(n) Each Party shall identify all rebuttal expert witnesses, in accordance with the requirements of the Stipulation and Order Governing Expert Discovery in this matter.	November 3, 2023
(o) The Parties shall exchange their respective rebuttal expert reports and other materials, if any, in accordance with the requirements of the Stipulation and Order Governing Expert Discovery in this matter.	November 21, 2023
(p) The Parties shall complete expert discovery, except for discovery subject to a motion to compel or for protective order pending on that date.	December 20, 2023
(q) The Parties shall identify their respective trial witnesses (including adverse and third-party witnesses, expert witnesses, and rebuttal witnesses).[2]	January 4, 2024
(r) The Parties shall file any motions *in limine*.	January 16, 2024
(s) The Parties shall file responses to any motions *in limine*.	January 23, 2024

[2] If any Party designates a trial witness who has not yet been deposed, any Party shall have the right to depose such witness and the Party designating the trial witness shall make that witness available for deposition.

(t) Plaintiffs shall provide Defendants with a draft of the pretrial order, including a proposed joint exhibit list and citations to the record supporting each proposed stipulated fact.	February 2, 2024
(u) Defendants shall provide Plaintiffs with a markup of the draft pretrial order showing proposed changes to Plaintiffs' version, the addition of Defendants' sections (including Defendants' additions to Plaintiffs' proposed joint exhibit list), citations to the record supporting each additional proposed stipulated fact, and citations to the record supporting any deletion and/or modifications to Plaintiffs' proposed stipulated facts.	February 9, 2024
(v) The Parties shall jointly submit a pretrial order and shall attach as an exhibit to the pretrial order a current joint list of exhibits to be used at trial.	February 23, 2024
(w) The Parties shall file simultaneous pretrial briefs.	March 1, 2024
(x) The Court will conduct a pretrial telephone conference to be initiated by Plaintiffs' counsel.	_____, 2024 at _:__ _.m.
(y) Trial (5 days).	March 11 – March 15, 2024

2. The Parties shall meet and confer regarding arrangements for any discovery to be taken from the Parties' agents, advisors, and other third parties.

3. The Parties shall use reasonable efforts to arrange the depositions of the Parties' agents, advisors, and other third parties.

4. The Parties shall make a good faith effort to produce documents on a rolling basis and keep each other's counsel regularly informed as to progress and anticipated future categories of production.

5. The Parties shall meet and confer regarding the prioritization of documents and the precise timing of rolling productions of documents.

6. Prior to production of documents, the Parties shall use their best efforts to de-duplicate any electronic material collected in accordance with specifications agreed upon by the Parties. All documents that are stored or exist electronically shall be produced in electronic form, in accordance with specifications agreed upon by the Parties. To the extent practicable, all other documents produced shall be produced in electronic form, on a rolling basis, and in accordance with specifications agreed upon by the Parties.

7. Depositions shall be taken on reasonable notice, and the Parties shall work together in good faith on the scheduling of depositions.

8. The Parties will work together to create a single set of joint trial exhibits that shall appear in chronological order (to the extent practicable), without duplication of exhibits (to the extent practicable), with the inclusion of multiple near duplicates only where necessary, and shall cite the joint exhibits in the pretrial briefs.

9. Following the identification of trial witnesses, a Party may designate additional witnesses for trial only upon agreement of the Parties or motion to the Court.

10. The Parties may amend the terms set forth in this Order by written agreement, without Court approval, except for the dates for the pre-trial order, pre-trial briefs, pre-trial conference, and the trial, which may only be modified by order of the Court.

11. Any Party may move to modify the terms set forth in this Order for good cause.

12. This Order is without prejudice to the rights of any Party to raise any and all arguments, objections, or defenses, including motions to stay or compel discovery.

DATED: January 31, 2023

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) 364-3600

Attorneys for Plaintiffs

OF COUNSEL:

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Jeroen van Kwawegen
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Co-Lead Counsel for Plaintiffs

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18 Campus Blvd., Suite 100
Newtown Square, PA 19073
(484) 258-1585

Additional Counsel for Benjamin Hebert

RICHARDS, LAYTON & FINGER, P.A.

/s/ Raymond J. DiCamillo
Raymond J. DiCamillo (Bar No. 3188)
Kevin M. Gallagher (Bar No. 5337)
Alexander M. Krischik (Bar No. 6233)
Edmond S. Kim (Bar No. 6835)
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900 North King Street
Wilmington, DE 19801
(302) 651-7700

Counsel for Defendants David Hamamoto, Mark Walsh, Andrew Richardson, Steven Hash, Judith Hannaway, and DiamondPeak Sponsor LLC

OF COUNSEL:

Laura Kabler Oswell
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Palo Alto, CA 94303
(650) 461-5600

Jacob M. Croke
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004
(212) 558-4000

IT IS SO ORDERED this _____ day of _____, 2023.

_____
Vice Chancellor Lori W. Will

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: Lori W. Will

File & Serve Transaction ID: 69043668

Current Date: Feb 02, 2023

Case Number: 2021-1066-LWW

Case Name: CONS W/ 2021-1085-LWW - CONF ORD - IN RE LORDSTOWN MOTORS CORP. STOCKHOLDERS LITIGATION

Court Authorizer Comments:

Trial will begin at 9:15 a.m. each day.

The pretrial conference will be held on March 4, 2024 at 3:15 p.m.

/s/ Judge Lori W. Will

EXHIBIT D

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE LORDSTOWN MOTORS CORP. STOCKHOLDERS LITIGATION	Consolidated C.A. No. 2021-1066-LWW

NOTICE OF ISSUANCE OF SUBPOENA *DUCES TECUM* AND *AD TESTIFICANDUM* DIRECTED TO LORDSTOWN MOTORS CORP.

TO:

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

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

PLEASE TAKE NOTICE that, on February 7, 2023, pursuant to Court of Chancery Rules 45, Counsel for Plaintiffs will be serving their *Subpoena Duces Tecum* and *Ad Testificandum* Directed *to Lordstown Motors Corp*. upon the registered agent for the company:

Of Counsel:

Mark Lebovitch
Jeroen van Kwawegen
Christopher J. Orrico
Thomas G. James
Margaret Sanborn-Lowing
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

/s/ Daniel E. Meyer
Gregory V. Varallo (Bar No. 2242)
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Attorneys for Plaintiffs

1251 Avenue of the Americas
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(212) 661-1100

Co-Lead Counsel for Plaintiffs

D. Seamus Kaskela
KASKELA LAW LLC
18 Campus Blvd., Suite 100
Newtown Square, PA 19073
(484) 258-1585

Additional Counsel for Benjamin Hebert

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE LORDSTOWN MOTORS CORP. STOCKHOLDERS LITIGATION	Consolidated C.A. No. 2021-1066-LWW

SUBPOENA *DUCES TECUM* AND *AD TESTIFICANDUM*
DIRECTED TO LORDSTOWN MOTORS CORP.

To: Lordstown Motors Corp.
c/o Corporation Service Company
251 Little Falls Drive
Wilmington, Delaware 19808

This subpoena is issued pursuant to Court of Chancery Rules 26, 30, 34, and 45. Court of Chancery Rules 45 (c) and (d), attached hereto as Exhibit 1, set forth protections and duties with respect to this Subpoena.

YOU ARE HEREBY COMMANDED to produce the documents and tangible things requested in Schedule A attached hereto, pursuant to the Definitions, Instructions, and rules of construction set forth therein, at the offices of Bernstein Litowitz Berger & Grossman LLP, 500 Delaware Ave, Suite 901, Wilmington, DE 19801, on or before February 21, 2023, or at such other location or on such other date as may be mutually agreed upon by the parties or ordered by the Court. A copy of the public inspection version of the operative complaint is attached as Exhibit 2.

YOU ARE HEREBY FURTHER COMMANDED to appear and provide testimony in connection with the Topics set forth in Schedule B attached hereto, which will be held at the offices of Bernstein Litowitz Berger & Grossmann LLP,

500 Delaware Avenue, Suite 901, Wilmington, Delaware 19801, on March 7, 2023 at 9:30 a.m. ET, or on such other date and at such other location as counsel for the parties and deponent shall agree, for the taking of the deposition(s) of one or more persons designated by Lordstown Motors Corp. to be the most knowledgeable as to matters known or reasonably available to Lordstown Motors Corp. with respect to the Topics set forth in Schedule B attached hereto. The deposition will be conducted orally before a qualified notary public, court reporter, or other person authorized by law to administer oaths, will be recorded by stenographic, audio, video, and/or real-time transcription (*e.g.*, LiveNote) means and will continue day to day until completed.

DATED: February 7, 2023

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) 364-3600

Attorneys for Plaintiffs

Of Counsel:

Mark Lebovitch
Jeroen van Kwawegen
Christopher J. Orrico
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Co-Lead Counsel for Plaintiffs

D. Seamus Kaskela
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18 Campus Blvd., Suite 100
Newtown Square, PA 19073
(484) 258-1585

Additional Counsel for Benjamin Hebert

SCHEDULE A

DEFINITIONS

1. "Action" means the above-captioned action.

2. "Advisor" means any and all investment banks, bankers, accountants, accounting firms, auditors, auditing firms, law firms, lawyers, financial advisors, consulting firms, consultants, public relations firms, proxy solicitors, or other parties engaged or retained in connection with the Transactions.

3. "Alternative Transaction" means any proposed, contemplated, or actual transaction, merger, acquisition, or other combination involving DiamondPeak Holdings Corp. other than the Merger, including not entering into any transaction with Legacy LMC.

4. "Burns" means Stephen Burns, former Chief Executive Officer at Legacy LMC and Lordstown Motors Corp.

5. "Climb2Glory" means Climb2Glory LLC.

6. "Communication" means any exchange of information by any means of transmission, whether formal or informal, at any place or under any circumstance, including, without limitation, paper documents, email, text messages, instant messages, direct messages, phone calls, social media or message board posts, online messages in any form, facsimiles, video or audio recordings, or a person seeing or hearing any information by any means. The term "Communication" also includes

drafts, revisions, or copies of any such Communication if the draft, revision, or copy is in any way different from the original.

7. "Company" means Legacy LMC and Lordstown Motors Corp.

8. "Company Board" means the board of directors of Legacy LMC and Lordstown Motors Corp. and any committee thereof, collectively, and each member of the Legacy LMC and Lordstown Motors Corp. board of directors and any committee thereof, individually, as the context requires, as well as anyone acting or purporting to act on behalf of the board of directors of Legacy LMC and Lordstown Motors Corp.

9. "Complaint" means the Consolidated Verified Amended Class Action Complaint filed by Benjamin Hebert and Atri Amin on July 22, 2022 in *In re Lordstown Motors Corp. Stockholders Litigation*, C.A. No. 2021-1066-LWW (Del. Ch.).

10. "Defendants" or "Defendant" means, collectively or individually, respectively, the Individual Defendants and Sponsor.

11. "DiamondPeak" means the entity known as, prior to the Merger, DiamondPeak Holdings Corp.; any of its partners, predecessors, divisions, branches, subsidiaries, and affiliates; any of their respective past directors, board of directors, committees, officers, agents, employees, representatives, attorneys; and/or any other person or entity purporting to act on behalf of the foregoing.

12. "DiamondPeak Board" means the board of directors of DiamondPeak and any committee thereof, collectively, and each member of the DiamondPeak board of directors and any committee thereof, individually, as the context requires, as well as anyone acting or purporting to act on the board's behalf.

13. "Director Defendants" means Defendants David Hamamoto, Mark Walsh, Andrew Richardson, Judith Hannaway, and Steven Hash.

14. "Discovery Materials" means Documents, Communications, Phone Records and/or Videoconferencing Records as the context requires.

15. "Document" is to be interpreted in the broadest possible sense and includes all Communications and all recorded, renderable, stored, or retrievable writing, text, images, information, or data (including any producible metadata), on or in any print or electronic media or storage format, at any Location, including, without limitation: email; Microsoft Office or other spreadsheet, word processing, or presentation software files; Adobe or other PDF software files; materials edited on collaborative document-sharing platforms like Google Drive; materials generated through messaging or social media platforms, including text messages, SMS messages, instant messages, Bloomberg messages, I-messages, Blackberry messages, Skype messages, Reuters messages, Slack messages, Microsoft Teams messages, tweets, LinkedIn messages, Snapchats, Instagrams, Facebook status updates or messages, Vines, Vlogs, Tumblrs, WhatsApp messages, Viber messages,

Foursquare check-ins, or any other social media message or post; materials on web portals used for dissemination of, for example, board materials (*e.g.*, Director's Desk, Diligent Boards, OnBoard, BoardVantage, etc.); voice messages, telephone logs, and/or telephone records; electronic databases and any of their contents (*e.g.*, Microsoft Access databases), including data stored in tabular, structured, or unstructured format; the contents of any compact discs, CD-ROMs, DVD-ROMs, portable or external hard drives, magnetic tape, film, recordings, videotape, magnetic or optical disks, floppy disks, or other widely-used electronic or optical data repository; any other form of structured or nonstructured electronically stored information; video or audio recordings of meetings or calls, including via Zoom, and any notes or minutes of the same; materials created, stored, or maintained in hard copy format, including, without limitation, computer, facsimile, or telecopier printouts or transmissions, handwritten notes, typed documents, presentations, pitch books, or photographs; legal filings, including complaints and other pleadings, affidavits, interrogatories or interrogatory responses, requests for admission or request for admission responses, legal briefs, legal motions, depositions, and judgments; and any other producible Document or Communication including memoranda, books, records, accounts, ledgers, vouchers, invoices, drafts, bills, charge slips, letters, telegrams, mailgrams, correspondence, resolutions, work papers, reports, projects, tabulations, studies, surveys, designs, drawings,

schematics, maps, manuals, models, notebooks, contracts, agreements, diaries, telephone records, desk calendars, appointment books, circulars, charts, transcripts, news releases, trade releases, advertisements, press books, teletype messages, licenses, financial statements, stenographers' notebooks, punchcards, letters of credit, stock certificates, and securities. The term "Document" also includes drafts, revisions, or copies of any Document if the draft, revision, or copy differs in any way from the original.

16. "Document Request" means each of the specific document requests set forth herein, individually or collectively, as the context requires, along with the Definitions and Instructions.

17. "Fairness Opinion" means any opinion, written or oral (including any drafts and revisions thereto) rendered by any of Legacy LMC's Advisors or DiamondPeak's Advisors concerning the Merger.

18. "Founder Shares" means DiamondPeak Class B common stock.

19. "Foxconn Deal" means the agreement entered between Lordstown Motors Corp. and Hon Hai Technology Group (otherwise known as "Foxconn"), which closed in May 2022.

20. "Hindenburg Report" means the March 12, 2021 report issued by Hindenburg Research entitled "The Lordstown Motors Mirage: Fake Orders, Undisclosed Production Hurdles, And A Prototype Inferno."

21. "Immediate Family" means children, stepchildren, parents, stepparents, spouses, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law. As used in this paragraph, "spouse" shall mean a husband, a wife, or a partner in a state-recognized domestic relationship or civil union.

22. "Individual Defendants" means Defendants David Hamamoto, Mark Walsh, Andrew Richardson, Judith Hannaway, and Steven Hash.

23. "IPO" means DiamondPeak's initial public offering, which closed on March 4, 2019.

24. "Legacy LMC" means the entity known as, prior to the Merger, Lordstown EV Corporation; any of its partners, parents, predecessors, divisions, branches, subsidiaries, and affiliates; any of their respective past directors, boards of directors, committees, officers, agents, employees, representatives, and attorneys; and/or any other person or entity purporting to act on behalf of the foregoing.

25. "Location" means any place where Documents are stored. Locations can be physical (*e.g.*, file cabinets); discrete electronic data stores (*e.g.*, hard drives, thumb drives, or mobile devices); server-based (*e.g.*, certain email configurations, certain instant messaging configurations, shared drives, networked drives, data rooms, and the contents of any intranet site); or cloud-based (*e.g.*, Google Drive, Dropbox, certain email configurations, certain instant messaging configurations like

Bloomberg chat, text or social-media messaging applications like Facebook messaging, portals for board of directors materials like Director's Desk, and collaborative chat platforms like Slack).

26. "Lordstown" means Legacy LMC and Lordstown Motors Corp.; their partners, parents, predecessors, successors, divisions, branches, subsidiaries, and affiliates; any of their respective past or present directors, board of directors, committees, officers, agents, employees, representatives, attorneys; and/or any other person or entity purporting to act on behalf of the foregoing.

27. "McKinsey" means McKinsey & Company; its partners, parents, predecessors, successors, divisions, branches, subsidiaries, and affiliates; any of its respective past or present directors, board of directors, committees, officers, agents, employees, representatives, attorneys; and/or any other person or entity purporting to act on behalf of the foregoing.

28. "McKinsey Report" means the July 30, 2020 final summary report issued by McKinsey.

29. "Merger" means DiamondPeak's merger with Legacy LMC, which closed on October 23, 2020.

30. "Merger Agreement" means the Agreement and Plan of Merger by and among DiamondPeak Holdings Corp., DPL Merger Sub Corp., and Lordstown

Motors Corp., dated as of August 1, 2020 (including any subsequent amendment thereto).

31. "Merger Consideration" means the consideration that a Lordstown stockholder was entitled to receive pursuant to the Merger Agreement, as referenced on pages 18, 108, and A-3 of the Proxy.

32. "Ohio Factory" means the Lordstown Ohio factory as specified in the definitive Asset Purchase Agreement announced on November 10, 2021, and sold for $230 million to Hon Hai Technology Group (otherwise known as "Foxconn") in May 2022.

33. "Person" means any natural person or any entity or organization.

34. "Plaintiffs" means Benjamin Hebert and Atri Amin.

35. "PIPE Investment" means the private placements, effectuated in connection with the Merger, pursuant to which: (i) investors purchased DiamondPeak Class A common stock and warrants to purchase DiamondPeak Class A common stock; and (ii) investors purchased senior PIK notes issued by DiamondPeak.

36. "PIPE Investors" means the entities who entered into the agreements contemplated by the PIPE Investment.

37. "Proxy" means the definitive proxy statement DiamondPeak filed on Schedule 14A with the SEC on October 8, 2020, together with all drafts,

amendments, and supplements thereto, as well as all other solicitation materials regarding the Merger.

38. "Rodriguez" means Julio Rodriguez, former Chief Financial Officer at Lordstown.

39. "SEC" means the U.S. Securities and Exchange Commission.

40. "Silverpeak" means, as defined in the Proxy, the broader Silverpeak platform of entities, which includes SP SPAC Sponsor LLC; Silverpeak Real Estate Partners L.P.; Silverpeak Strategic Partners LLC; Silverpeak Credit Partners LP; Silverpeak Renewables Investment Partners LP; Silverpeak Principals including Kaushik Amin, Brett Bossung and Defendant Mark A. Walsh; and any of their partners, predecessors, divisions, branches, subsidiaries, and affiliates; any of their respective past directors, board of directors, committees, officers, agents, employees, representatives, attorneys; and/or any other person or entity purporting to act on behalf of the foregoing.

41. "SPAC" means special purpose acquisition company.

42. "Special Committee" means the three-person special committee established by the Company Board consisting of David Hamamoto, Dale Spencer, and Jane Reiss, which was formed in response to the Hindenburg Report.

43. "Sponsor" means DiamondPeak Sponsor LLC.

44. "Transactions" means the Merger and all related financing transactions, including the PIPE Investment.

45. "Warrant(s)" means any private placement warrant to purchase DiamondPeak stock.

46. "You" or "Your" means Legacy LMC and Lordstown.

INSTRUCTIONS

1. The terms "and" and "or" are to be read in both the conjunctive and disjunctive and shall serve as a request for Documents that would be responsive under a conjunctive reading in addition to all Documents that would be responsive to a disjunctive reading.

2. The singular form of any word shall be deemed to include the plural and vice versa.

3. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

4. "Any" and "all" shall include "each" and "every."

5. "Concerning" means relating to, referring to, describing, evidencing, or constituting. Requests for Documents concerning any subject matter include Documents concerning Communications regarding that subject matter.

6. "Herein," and words of similar import, shall refer to the Document Requests as a whole, and not to any particular portion of the Document Requests.

7. "Including" means including without limitation.

8. A Document Request for "all Documents" concerning a subject is made with the understanding that the scope of Your review and production of Documents will be in accordance with a stipulated or Court-ordered search protocol.

9. These Document Requests call for the production of all responsive Documents that are in Your possession, custody, or control, wherever located, regardless of whether they are possessed directly by You, or by Your current or former partners, employees, advisors, agents, representatives, attorneys, accountants, auditors, investigators, or other persons acting or purporting to act on Your behalf.

10. Your obligations pursuant to the Document Requests are not limited or affected by the availability of any Document or Communication through any other source. The fact that a Document or Communication is or could be produced by another person does not relieve You of Your obligation to produce Your version of that Document or Communication.

11. If any portion of any Document or Communication is responsive to any Document Request, the entire Document or Communication, including any attachments or disclosures, must be produced.

12. No attached Documents should be separated from each other.

13. For any responsive Documents stored in electronic format, including email, You will produce those Documents in searchable electronic format (*i.e.*, single-page .tiff format with corresponding OCR or full-text files) through a file transfer protocol website, on CD-ROMs, DVD-ROMs, or portable or external hard drives, or through some other widely used electronic or optical storage media. All Microsoft Excel Documents, PowerPoint Documents, video, audio, and databasetype files (*e.g.*, Microsoft Access) will be produced in native format, and Plaintiffs reserve the right to seek production of other Documents or categories of Documents in native format. Each native file should be named according to the Bates number it has been assigned and should be linked directly to its corresponding record in the load file using the NATIVELINK field. All responsive electronically stored Documents will be produced with a delimited database load file that contains all available metadata fields. An .opt image cross-reference file will also be provided for all .tiff images. Your production of electronically stored Documents must include, at a minimum, sufficient metadata to convey where items begin and end (including attachments), the original file name and location, and the original timestamps and attributes, including the following metadata fields: "BEGBATES," "ENDBATES," "BEGATTACH," "ENDATTACH," "to," "from," "cc," "bcc," "subject," "custodian," "date and time sent," "date and time received," "creation date

and time," "last modified," "location," "file path," and "MD5HASH." Timestamp metadata should reflect the time in the time zone of the custodian from whom the Document or Communication was collected. To the extent search terms are used to collect any portion of the Documents, You must, before collecting from any Location containing Documents with renderable text that may not be text-searchable (*e.g.*, non-OCR'ed PDF files), run an OCR protocol on that Location.

14. When converting electronically stored Documents from its native format into its production format: (i) all tracked changes shall be retained in the manner in which they existed when the file was collected; (ii) OLE Embedded files shall not be extracted as separate Documents; (iii) author comments shall be retained in the manner in which they existed when the file was collected; (iv) hidden columns and rows shall be retained in the manner in which they existed when the file was collected; (v) presenter notes shall be retained in the manner in which they existed when the file was collected; and (vi) auto-populated fields shall be replaced with descriptive text for the item.

15. To the extent Documents in a foreign language are produced, processing of such Documents shall be Unicode-compliant.

16. All Documents should be produced as they are maintained in the ordinary course of business, including in the sequence in which they are ordinarily maintained, or shall be organized and labeled to correspond to the specific Document

Request(s) to which they are responsive. All Documents shall be produced in their entirety, including with any attachments or enclosures. All electronically stored Documents shall be produced pursuant to Instructions 13-15 above and You should otherwise ensure that all data associated with those Documents—including metadata, sequence, original file location, and attached or embedded objects—are preserved and produced. All hard copy Documents shall be produced in the original file folders, boxes, or other containers or binders in which such items are found, including the title, labels, or other description of each such folder, box, or other container, or attach a copy of the Documents to copies of the file folders from which they came. The integrity and internal sequence of the requested Documents within each folder shall not be disturbed or commingled with the contents of another folder.

17. If a Document or Communication is responsive to more than one Document Request, You are not required to duplicate production.

18. Plaintiffs reserve the right to view the original of any copy of any Documents produced in response to these Document Requests.

19. You shall produce all Documents that cannot be legibly copied in their original form.

20. If any objection is made to any of these Document Requests, the response shall state with specificity the grounds for the objection, whether any Document or Communication is being withheld from inspection and production on

the basis for such objection, or whether inspection or production of the responsive items will occur notwithstanding such objection. If You object to any Document Request on grounds of overbreadth or similar bases, You are instructed to respond to the Document Request as narrowed. For the avoidance of doubt, You must make clear the extent to which You have narrowed Your response to any Document Request and inform Plaintiffs as to whether any requested Documents are being withheld because of that narrowing. Plaintiffs do not consent to any such narrowing and will meet and confer so You can articulate Your position if necessary.

21. If You claim any form of privilege, immunity, or any other objection, whether based on statute, common law, or otherwise, as a ground for not producing any requested Documents, furnish a list at the time that Documents are produced identifying each Document or Communication for which the privilege, immunity, or other objection is claimed, together with the following information: a description of the type of Document or Communication (*e.g.*, email, letter, agreement, memorandum, etc.); date; sender; recipient(s); person(s) to whom the Document or Communication (or copies thereof) was provided (including their job titles and professional affiliation); author(s), including each Person who prepared or participated in the preparation of the Document or Communication (including their job titles and professional affiliation); subject matter; basis upon which a privilege, immunity, or other objection is claimed (including, as applicable, the identity of the

lawyer(s) or law firm(s) purportedly providing or being asked to provide legal advice); and the Document Request(s) to which such Document or Communication is responsive.

22. If You claim privilege, immunity, or any other objection regarding only part of a Document or Communication, produce the part to which there is no claim of privilege, immunity, or objection, and furnish a list identifying each item that is partially withheld together with the information listed in Instruction 21.

23. If You cannot satisfy any Document Request, either in full or in part, You shall produce Documents to the extent possible, specifying the reason for Your inability to produce further Documents.

24. If there are no Documents responsive to any particular Document Request or subpart thereof, You shall state so in writing.

25. If any Document or Communication requested herein was lost, discarded, destroyed, deleted, or otherwise is no longer in Your possession, custody, or control, state and specify in detail for each such Document or Communication: a description of the type of Document or Communication (*e.g.*, email, letter, agreement, memorandum, etc.); date; sender; recipient(s); person(s) to whom the Document or Communication (or copies thereof) was provided (including their job titles and professional affiliations); the information contained therein; the date upon which it ceased to be in Your possession, custody, or control; the manner of disposal;

the reasons for disposal; the person authorizing the disposal; the person effectuating the disposal; the Document Request(s) to which such Document or Communication is responsive; and the identity of all persons having knowledge of the contents, or circumstances around the disposition, thereof.

26. When instructed to produce Documents "sufficient to show" or "sufficient to identify," You must produce all materials that are necessary and sufficient to provide all the information requested. If no single Document or Communication contains all the information sought, produce a group of Documents that, together, contain and reveal the information sought. If tabulations, compilations, statistical accumulations, charts, reports, or other generated or summary material are necessary to provide the information requested, these should be furnished in addition to any responsive underlying Documents, and You should be prepared to discuss the methodology for preparing the foregoing.

27. Documents not otherwise responsive to these Document Requests should be produced if such materials mention, discuss, refer to, or explain the Documents that are called for by these Document Requests, or if such materials are attached to, enclosed with, or embedded in Documents that are responsive to these Document Requests.

28. These Document Requests are continuing in nature and must be supplemented as necessary up until the date of the conclusion of this Action and any

appeals. If, after producing materials in response hereto, You become aware of additional responsive Documents, notice thereof should be provided to Plaintiffs immediately and such Documents should be produced promptly thereafter.

29. Where a Document Request calls for the production of minutes (including draft minutes) from any meeting of the Board, or any committee thereof, the production or logging of such minutes pursuant to Instruction 21 shall be supplemented by the following information with respect to each set of minutes:

a. the date and time of its initial creation;

b. the date and time of any revision thereto; and

c. the persons involved in the creation of or any revision thereto.

RELEVANT TIME PERIOD

Unless otherwise indicated, the relevant time period for each of these requests shall be January 1, 2018 through the present (the "Relevant Time Period"). If a document prepared before this period is necessary for a correct or complete understanding of any documents covered by a Request, you must produce the earlier document as well. If any document is updated and the date of its preparation cannot

be determined, the document shall be produced if otherwise responsive to the production Request.

DOCUMENTS REQUESTED

1. All minutes, notes, or other record of the substance of any meeting of the Company Board and/or the Special Committee including, but not limited to, any committee thereof.

2. All Discovery Materials provided to, considered by, or reviewed by the Company Board (or any committee thereof), the Special Committee, and/or the DiamondPeak Board (or any committee thereof), or used during or prepared for any meeting of the Company Board (or any committee thereof) and/or the Special Committee.

3. All Documents concerning the:

a) Transactions;

b) The Special Committee

c) The Merger;

d) DiamondPeak and/or any of Defendants' Advisors;

e) Defendants and/or any of Defendants' Advisors;

f) The Founder Shares;

g) The Warrants;

h) The PIPE Investment;

i) The PIPE Investors;

j) The Proxy; and/or

k) The Merger Consideration

4. All Discovery Materials and Communications exchanged between You, on the one hand, and Defendants, Defendants' Advisors, DiamondPeak, DiamondPeak's Advisors, the PIPE Investors, DiamondPeak's Investors, and/or any Founder Shareholder, on the one hand, concerning Lordstown, the Transactions, the Merger, Defendants, DiamondPeak, the Founder Shares, the Warrants, the PIPE Investments, the PIPE Investors, the Proxy, and/or the Merger Consideration.

5. All Discovery Materials concerning the potential or actual retention or engagement of any Advisor of Lordstown in connection with the Transactions, the Merger, and/or the PIPE Investments, including all Discovery Materials concerning: (i) the commencement, terms, or authorized scope of any such engagement; (ii) any services provided or fees paid; (iii) any actual or potential conflicts of interest identified; and (iv) any Fairness Opinion.

6. All Discovery Materials concerning Lordstown's pre-orders, ability and timeline to produce its products, including but not limited to the Endurance.

7. All Discovery Materials concerning Lordstown's customers and entities who entered into letters of intent with Lordstown, including but not limited to, E2 Energy Advisors, Tim D. Grosse, Freschfield/Grid X, Advanced Robotics

Construction, Christopher Barrett Ames, BotBuilt, Innervations, LLC, and/or U-Go Stations Inc.

8. All Discovery Materials concerning Climb2Glory including, but not limited to, all engagement and/or retainer agreements with Climb2Glory, Climb2Glory's services to Lordstown, and/or Climb2Glory's involvement in selling the Endurance for Lordstown.

9. All Discovery Materials concerning Burns' meetings and conversations with President Donald Trump including, but not limited to, Burns' September 28, 2021 appearance with President Trump and statement that "we'll make north of 100,000 once we get going."

10. All Discovery Materials concerning the Special Committee, the Special Committee's formation, the Special Committee's investigation into the Hindenburg Report, and/or the result of the Special Committee's investigation into the Hindenburg Report.

11. All Discovery Materials concerning any presentation made by or to Lordstown, the Company Board, the Special Committee, DiamondPeak, the DiamondPeak Board, and/or any Advisor to the foregoing, concerning the topics identified in Request No. 3, including any drafts thereof or Discovery Materials underlying those presentations.

12. All Discovery Materials concerning the resignations of Burns and Rodriguez.

13. All Discovery Materials concerning the Foxconn Deal.

14. All forecasts, budgets, financial projections, models, valuations, analyses, appraisals, business plans, strategic plans, and/or any other forward looking statements concerning the future financial performance or value of DiamondPeak, Lordstown, the Merger and/or the Transactions regardless of whether any such Document was prepared by, at the direction of, and/or for the benefit of Lordstown.

15. Without regard to the Relevant Time Period, all Documents concerning the identification, selection, nomination, election, and compensation of the members of the Company Board.

16. All Discovery Materials concerning the allocation of record, beneficial, and/or economic ownership of or interests in Founder Shares.

17. All Discovery Materials concerning the allocation of record, beneficial, and/or economic ownership of or interests in the PIPE Investment.

18. All Discovery Materials concerning DiamondPeak's, Lordstown's, and/or any of their Advisors' diligence in relation to the Transactions, the Merger, and/or the PIPE Investments.

19. All Discovery Materials maintained or stored in any electronic Document folder, "deal file," "data room," or other segregated Location concerning the Transactions.

20. All Discovery Materials concerning any Alternative Transactions.

21. All Discovery Materials concerning, relating to, or forming the basis for any financial analysis or valuation prepared for or used in connection with the Transactions, Merger, PIPE Investment and/or any other Alternative Transactions, including projections or forecasts of Lordstown.

22. All Discovery Materials concerning Lordstown's historical revenues, forecasts, budgets, financial projections, business plans, strategic plans, and any forward-looking documents or statements concerning future performance.

23. All Discovery Materials concerning Due Diligence investigations of Lordstown as noted on page 98 of the Proxy.

24. All Discovery Materials relating to the value of Lordstown including, but not limited to Discovery Materials concerning the financial results, value, market value, fair value, or inherent value of Lordstown, its assets or its shares, including valuation analyses, appraisals, opinions, reviews, plans or statements concerning the above referred subjects.

25. All Documents concerning Lordstown's competitors, including those related to: forecasts, budgets, financial projections, business plans, strategic plans,

time to market for vehicles, any forward-looking documents or statements concerning future performance.

26. All Discovery Materials concerning any comparable company analysis, any comparable transaction analysis, or any discounted cash flow analysis including, but not limited to, the valuation analyses identified in the Proxy

27. All Discovery Materials concerning the Proxy and/or any preliminary draft versions thereof, including those related to the Proxy's preparation, drafting, contents, approval, or dissemination.

28. All Discovery Materials concerning estimated or actual exercise of redemption rights associated with DiamondPeak's Class A common stock prior to or in connection with the Merger.

29. All calendar entries (physical or electronic), notes, recordings, or other Documents evidencing the planning or documenting the occurrence of any interview, meeting, gathering, telephone call, or video call concerning the topics in Request No. 3.

30. All reports by financial or research analysts, ratings agencies, or proxy advisory firms concerning the Transactions, the Merger, and/or the PIPE Investments.

31. All Documents concerning the independence or disinterestedness (or lack thereof) of any members of the DiamondPeak Board.

32. All Discovery Materials concerning regulatory actions and investigations concerning Lordstown including, but not limited to, those reported by it on page 16 of its Post-Effective Amendment to the Registration Statement filed on July 15, 2021.

33. All Discovery Materials You provided the SEC and/or the DOJ in connection to the regulatory actions and investigations reported on page 16 of its Post-Effective Amendment to the Registration Statement filed on July 15, 2021.

34. All Discovery Materials sufficient to identify any business dealings or business relationship between or among You and any Defendants, or between or among You and another Defendant's Immediate Family. For the purpose of this Request, "Defendant" includes businesses or entities affiliated with the Defendant, and "Immediate Family" includes businesses or entities affiliated with Immediate Family.

35. All Discovery Materials sufficient to identify any social relationship between or among You and any Defendants, or between or among You and another Defendant's Immediate Family including attendance at social functions; political, charitable, or university fundraising; campaign, charitable, athletic, musical, cultural, or university events; visits to homes, boats, or aircrafts; vacations (including arranging for tours on vacations); or performance of personal favors.

36. Without regard to the Relevant Time Period, all Discovery Materials concerning the allegations in the Complaint.

37. Without regard to the Relevant Time Period, all Discovery Materials concerning the statements, denials, defenses, and affirmative defenses in the Answer.

38. All Documents concerning Your document retention or destruction policy during the Relevant Time Period, including, but not limited to, the destruction or retention of electronic mail and computer hard drives and disks.

39. All insurance policies or other agreements that may provide liability coverage, defense coverage, litigation costs, and/or indemnification to Defendants for any of the claims asserted in the Action, any related action, any other actual or possible related claims, and/or any proceeding related to the Merger.

40. All Discovery Materials concerning Your insurers relating to the liability coverage, defense coverage, litigation costs, and/or indemnification for any claims asserted in this Action, any related action, any other actual or possible related claims, and/or any proceeding related to the Merger including, but not limited to, the statements made by Lordstown in its Form 10-Q filed with the SEC on November 7, 2022 which stated that Lordstown's insurers have asserted a denial of coverage under the "main tower of our director and officer insurance program with respect to numerous ongoing matters, including the consolidated securities class action,

various shareholder derivative actions, the consolidated stockholder class action, various demands for inspection of books and records, the SEC investigation, and the investigation by the United States Attorney's Office for the Southern District of New York, and certain indemnification obligations."

41. Any organizational charts or working group lists identifying persons involved in or responsible for the Transactions, the Merger, the PIPE Investments or the Proxy.

42. All Documents that You intend to use or rely on at any deposition, hearing, or trial in connection with the Action, or any other actions or proceedings relating to the Transactions, including any appeals thereof.

43. All Documents produced to You by any party or third party in connection with the Action or any related litigation proceedings.

44. To the extent not covered by the other Document Requests, all Discovery Materials known to You as having any tendency to make the existence of any fact that is of consequence to the determination of the Action more probable or less probable than it would be without the evidence.

45. All Discovery Materials that You referenced, reviewed, or relied upon in drafting Your responses to these Document Requests, or any subsequent document requests directed towards You.

SCHEDULE B

All applicable instructions and definitions set forth in Schedule A are incorporated herein.

DEPOSITION TOPICS

1. Any information contained in the Discovery Materials produced in response to the Requests set forth in Schedule A.

2. The topics that are the subject matter of the Requests set forth in Schedule A.

3. The authenticity of any Discovery Materials produced in response to the Requests set forth in Schedule A, and whether such Discovery Materials are records of regularly conducted activity.

EXHIBIT 1

Rule 45. Subpoena.

(c) *Protection of persons subject to subpoenas.*

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and may impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. (B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On a timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) Fails to allow reasonable time for compliance;

(ii) Requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iii) Subjects a person to undue burden.

(B) If a subpoena

(i) Requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) Requires disclosure of a retained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the Court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise be obtained without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the Court may order appearance or production only upon specified conditions.

(d) *Duty in responding to subpoena.*

(1) If a subpoena does not specify a form for producing documents or electronically stored information, the person responding shall produce it in a form or forms in which ordinarily maintained, or in which it is reasonably usable. Absent a showing of good cause, the person responding need not produce the same documents or electronically stored information in more than one form. The person responding need not proceed discovery of documents or electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. If the showing is made, the Court nevertheless may order discovery from such other sources if the requesting party shows good cause. The Court may specify the conditions for the discovery.

(2) When information subject to a subpoena is withheld on a claim that is privileged or subject to protection in trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

EXHIBIT 2

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

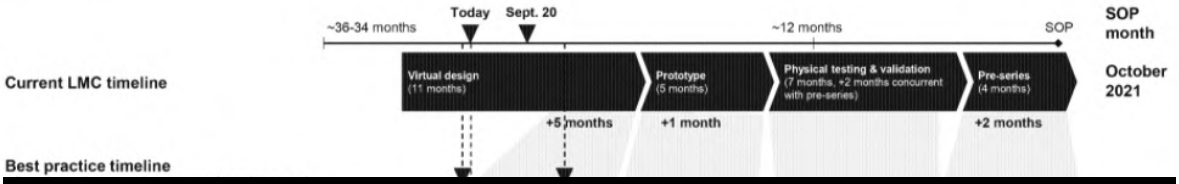
investigations, and presented its assessments to DiamondPeak in a series of presentations and teleconferences over the following month." These assessments appear to have occurred on a weekly basis, starting on July 3, 2020. Over the next four weeks, McKinsey provided a series of reports on Legacy LMC.

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



[redacted]

Source: LMC Endurance Program Plan Draft 10-21-2021 SOP Scenario – Rev 6-11-2020, interviews with LMC

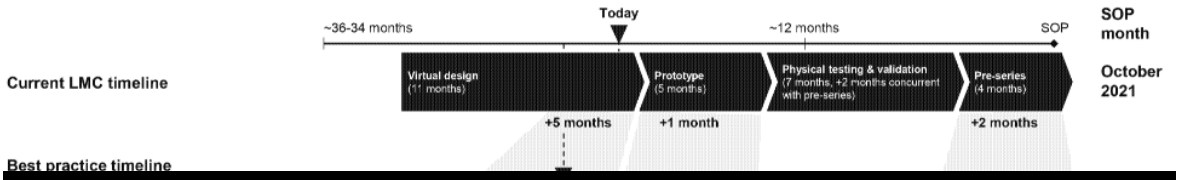
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The LMC Endurance could have an [redacted] risk to its Oct 2021 SOP when compared to industry best practice timeline

Preliminary



[redacted]

Source: LMC Endurance Program Plan Draft 10-21-2021 SOP Scenario – Rev 6-11-2020, interviews with LMC

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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:

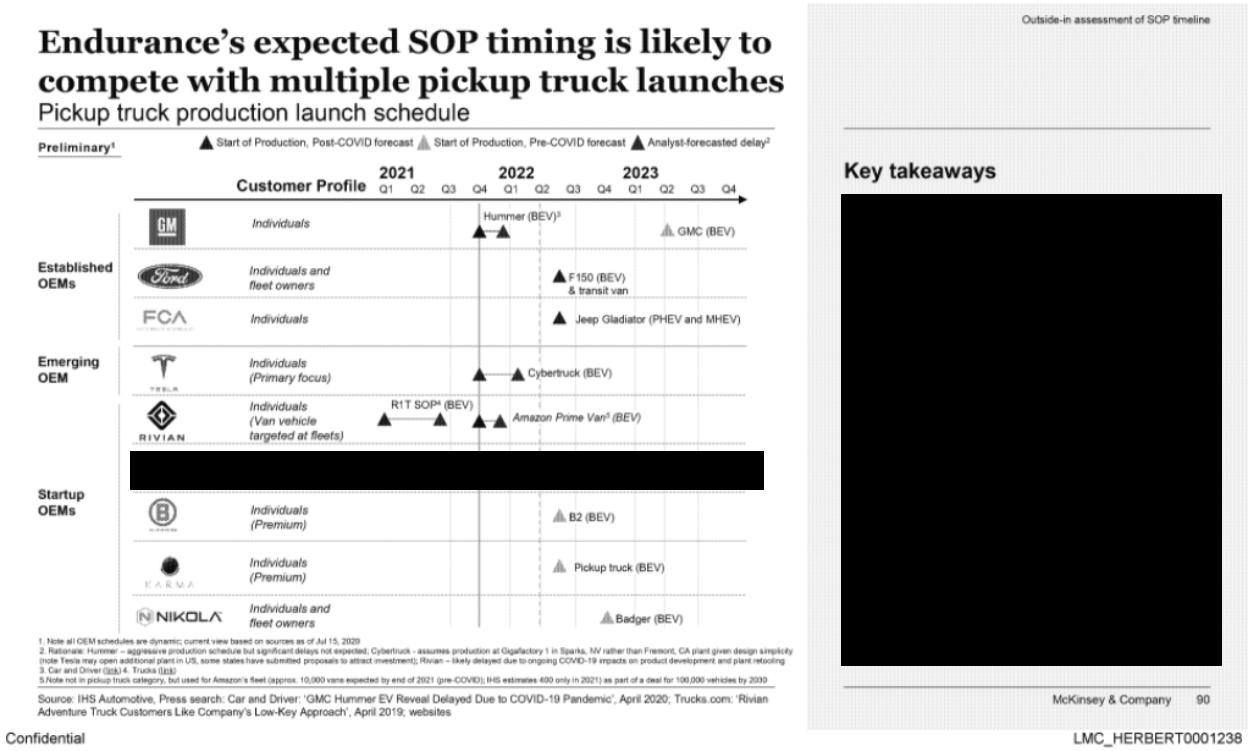
> [Legacy LMC] faces intense competition, including that Lordstown may not be the first to market with an electric pickup truck. Many of [Legacy LMC's] competitors have significantly greater financial or other resources, longer operating histories and greater name recognition than Lordstown does and 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]

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

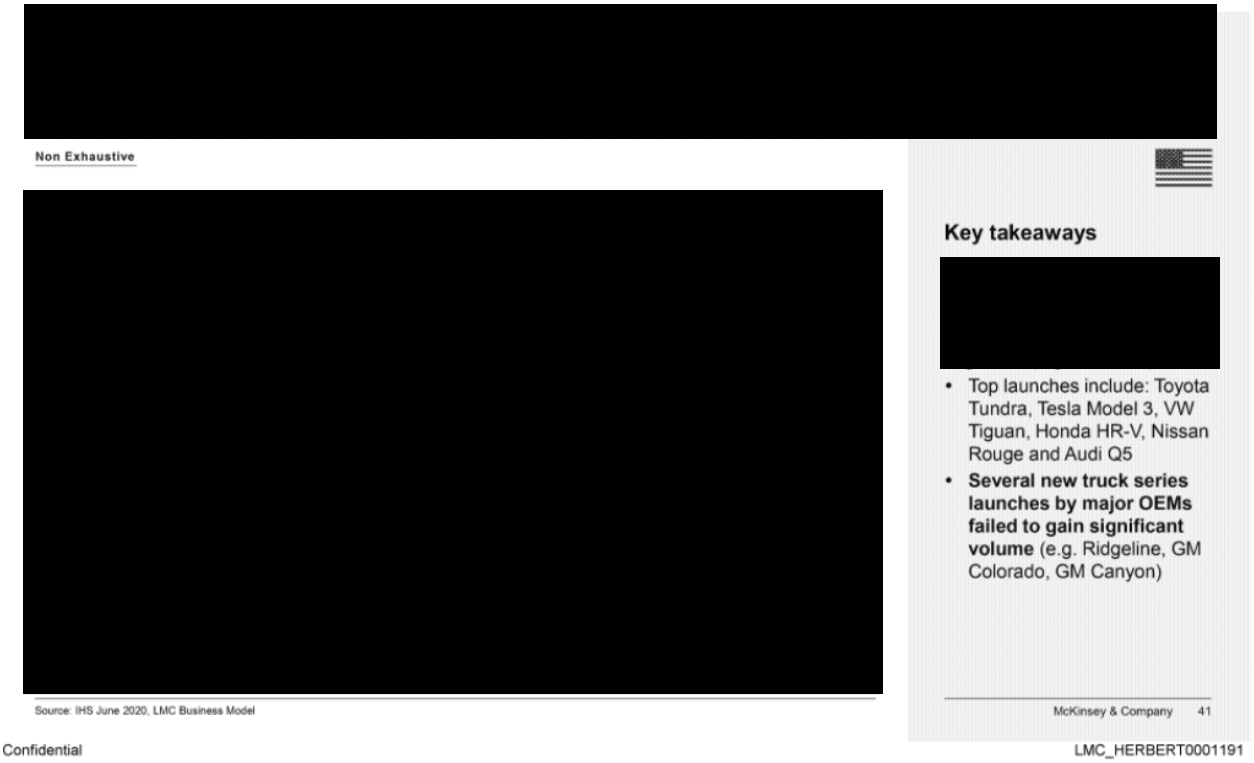
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68. [redacted]

[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

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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*

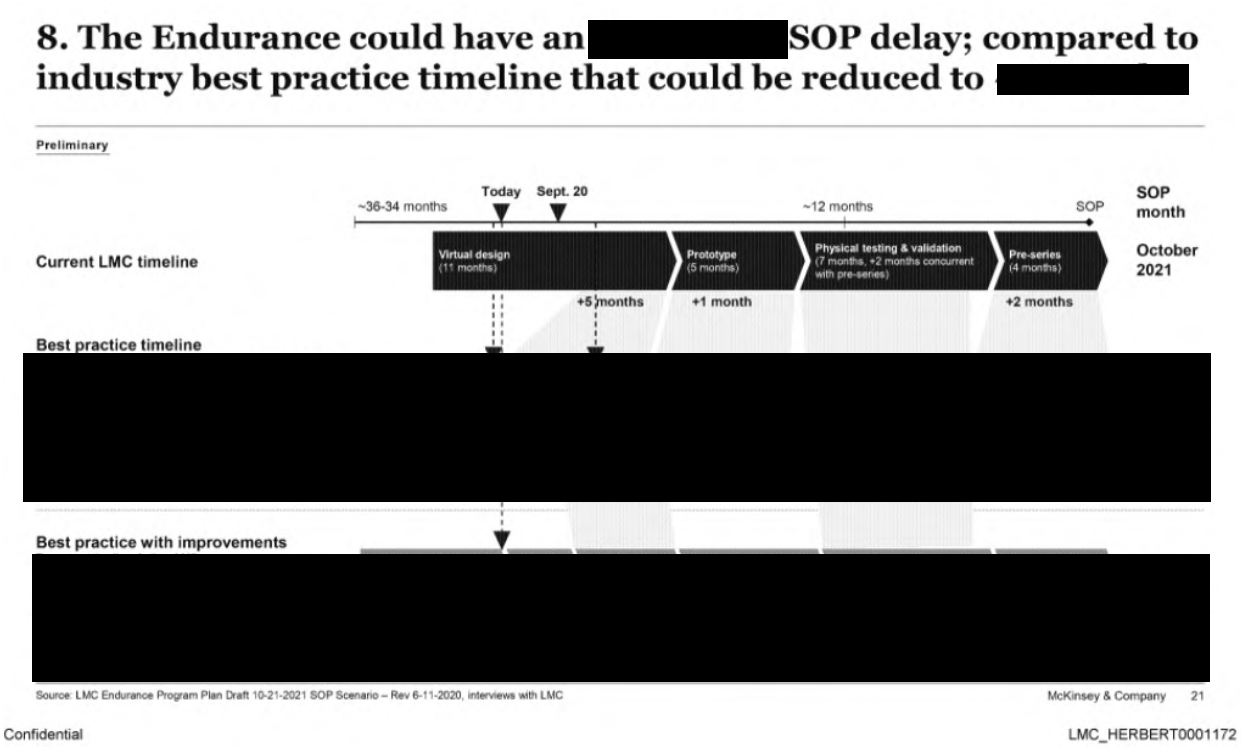
79. On August 1, 2020, DiamondPeak and Legacy LMC entered into a merger agreement (the "Merger Agreement"). The Merger Agreement would result in Legacy LMC becoming a fully owned subsidiary of DiamondPeak.

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.

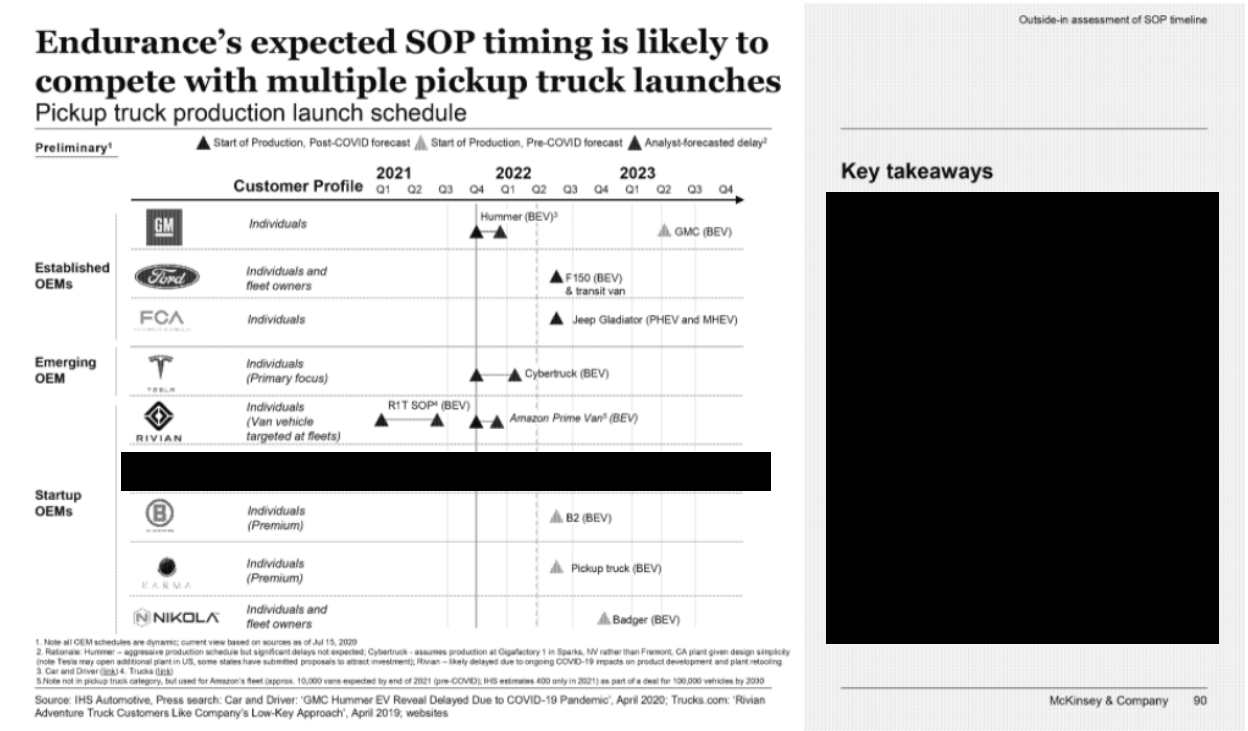
81. Based on the diligence by McKinsey, the risk in this case was far from general or abstract. The DiamondPeak Board had information showing these risks were real and specific to Legacy LMC. One example of such a situation is the

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
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-and-

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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.
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/s/ Daniel E. Meyer
Daniel E. Meyer (Bar No. 6876)

EXHIBIT E

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE LORDSTOWN MOTORS CORP. : CONSOLIDATED
STOCKHOLDER LITIGATION : C.A. No. 2021-1066-LWW

- - -

Chancery Court Chambers
Leonard L. Williams Justice Center
500 North King Street
Wilmington, Delaware
Friday, June 9, 2023
1:30 p.m.

- - -

BEFORE: HON. LORI WILL, Vice Chancellor

- - -

TELEPHONIC ORAL ARGUMENT AND RULINGS OF THE COURT ON PLAINTIFFS' MOTION TO COMPEL

CHANCERY COURT REPORTERS
Leonard L. Williams Justice Center
500 North King Street
Wilmington, Delaware 19801
(302) 255-0524

APPEARANCES:

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Baker & Hostetler LLP
for Defendant David Hamamoto and Non-Party Lordstown Motors Corp.

THE COURT: Good afternoon. This is Vice Chancellor Will on the line.

VARIOUS COUNSEL: Good afternoon, Your Honor.

THE COURT: Good afternoon. I believe we have a court reporter on the line with us.

THE COURT REPORTER: Good afternoon, Your Honor.

THE COURT: What I'd like to do is begin with appearances for the record, please, starting with counsel for the plaintiffs.

ATTORNEY McGILLIVRAY: Good afternoon, Your Honor. Glenn McGillivray from Bernstein Litowitz Berger & Grossmann on behalf of plaintiffs. Joining me on the call are my colleagues, Greg Varallo, Jeroen van Kwawegen, Thomas James, and Meg Sanborn-Lowing. Also on the call is co-counsel at Pomerantz, Gustavo Bruckner, Samuel Adams, and Ankita Sangwan.

With Your Honor's permission Ms. Sanborn-Lowing from my office, who has been admitted *pro hac vice*, will be making the presentation for plaintiffs today.

THE COURT: Thank you very much. I

appreciate it.

ATTORNEY MOZAL: Good afternoon, Your Honor. Nick Mozal from Potter Anderson & Corroon on behalf of nonparty, Lordstown Motor Corp. With me on the line from our office is Justin Hymes, as well as Erica Barrow and Doug Shively of Baker Hostetler.

And with Your Honor's permission, Ms. Barrow, who has been admitted *pro hac*, will be presenting this afternoon.

THE COURT: Thank you very much.

ATTORNEY DiCAMILLO: Good afternoon, Your Honor. Ray DiCamillo for the defendant. Also on the line with me this afternoon from my office is Alex Krischik. And from Sullivan & Cromwell, Laura Oswell and Esther Loh. And we expect that we will just be spectators this afternoon.

THE COURT: Great. Thank you very much.

Counsel, I've read all of your papers very carefully, and I don't know that I need much in the way of argument this afternoon, so I'm going to avoid putting you through it on a summer Friday.

What I'd like to do is hear from you on whether there have been any developments in your

negotiations since the reply was filed, which I believe was about a week ago, and then after that I think I'll be in a position that I can give you a bench ruling.

Why don't I hear first from the plaintiffs on that and then from Lordstown.

ATTORNEY SANBORN-LOWING: Thank you, Your Honor. This is Meg Sanborn-Lowing from Bernstein Litowitz for plaintiffs.

From our perspective -- and I don't think this is necessarily probably controversial -- but I don't believe that there have been any developments since the reply brief was submitted. And, quite frankly, I don't think there has been much progress made since we initially filed our motion.

THE COURT: Okay. Thank you very much.

ATTORNEY BARROW: Good afternoon, Your Honor. Erica Barrow from Baker Hostetler on behalf of Lordstown.

So there hasn't been progress insofar as us additionally having meet-and-confers with plaintiffs' counsel, but continuing with our representations, right before the motion to compel was

filed, we had promised plaintiffs that we would look into the three remaining categories of documents that were requested that were still sort of disputed that we would collect certain custodians that were members of the special committee, that we would look into the underlying facts regarding the resignation, and also concur with some search terms given that we had issued a hit report internally when we had agreed upon, like, a said amount of document requests, including the diligence for the premerger and also the time frame, and the letters of intent.

And so as we went back and forth, we added more and more search terms, more and more requests were agreed upon by the parties. And so much to our surprise, opposing counsel went ahead and filed the motion to compel. So we continued doing what we said we were going to do, but we haven't really had a chance to speak with opposing counsel after the motions.

THE COURT: Okay. I understand. So you've been working on search terms internally, and after the motion to compel was filed, the search term hit reports have not been provided to the plaintiffs.

ATTORNEY BARROW: Correct. We have

never opposed providing them. We were just trying to get a sense of which buckets we were going to apply those search terms. Like, for example, we had offered eight custodians, they requested three additional ones. We had to pull those documents.

And also, as you know, Your Honor, there's SEC production that was potentially up in the air, so we weren't sure if we were working from those documents. So it seems a little premature to handle, but we've always been amenable. We just wanted to make sure it was as accurate as possible.

THE COURT: Okay. I understand. Thank you, Ms. Barrow. I don't know if I need to hear anything else.

What I'd like to do is I'll give you a bench ruling now, and then I'll stop at the end in case you have any questions for me, or we can talk about anything that I might have missed.

This case involves a de-SPAC transaction in which nonparty DiamondPeak Holdings Corp. acquired Lordstown EV Corporation, which is referred to as "Legacy Lordstown," to create a publicly traded entity, which is nonparty Lordstown Motor Corp. The complaint alleges that DiamondPeak

and the director defendants learned during diligence that Legacy Lordstown's projected timeline to mass produce its flagship vehicle, which is called the Endurance, was unachievable.

The plaintiffs further allege that the proxy statement about the de-SPAC merger was materially false and misleading regarding Endurance's production timeline, demand, and preorders. The complaint cites to a report issued by Hindenburg Research on March 12 of 2021 which alleged that Lordstown's statements about its preorders and production timeline for the Endurance were inaccurate.

In terms of the procedural history, the defendants answered the complaint on February 3rd, and the case is now in discovery. The present motion to compel concerns a subpoena to Lordstown and objections to three categories of requests. I'm going to address each of the three categories. I'll start with the question of relevance, and then I'll touch on matters of privilege and burden, where appropriate.

First of all, I'll discuss the request about documents and communications concerning a special committee investigation. These are request Nos. 1, 2, 3(b), 10, and 11 of the subpoena to

Lordstown, which is Exhibit 2 to the plaintiffs' motion.

Lordstown formed this special committee in the summer of 2021 in response to investigations launched by the SEC and the DOJ. The special committee was chaired by Defendant Hamamoto, who beneficially owned about 88 percent of DiamondPeak's founder shares pre-de-SPAC.

The special committee investigation looked into allegations in the Hindenburg report. And the plaintiffs allege in the complaint that the special committee concluded the Hindenburg report was largely false and inaccurate, but that certain of the proxy's claims about preorders were subsequently walked back.

Given all of this, in my view, documents about the special committee's investigation are relevant under Rule 26. Relevance under that rule is viewed broadly, and it includes "any non-privileged matter that is relevant to any party's claim or defense and proportional to the needs of the case ...." I believe that the documents fall comfortably within that definition.

I understand that the special

committee investigation took place post-closing, but the committee was investigating earlier events that are coterminous with those at issue in the complaint.

In terms of privilege, Lordstown also raises a privilege objection, and I suspect that Lordstown is right in expecting that a good number of communications responsive to these requests could be privileged, but I don't view that as a reason to block this category of discovery entirely. The factual aspects of the investigation, for example, are likely not privileged, and by that I mean the facts learned and gathered by the committee. Having counsel involved doesn't make the underlying facts privileged under Delaware law.

As another example, the committee's minutes or resolutions forming the committee are also probably not going to be privileged, at least not entirely. But if there are specific communications with counsel or work product that are privileged, those documents should be listed on Lordstown's privilege log.

On burden, I have no basis to assess how burdensome producing these documents would be. I understand that the three special committee members'

documents have been collected and that search criteria have been run, so that expense is already incurred.

Lordstown is continuing to evaluate the search terms and parameters, as I heard this morning, but I have no idea how that translates in terms of burdens imposed by the number of documents to be reviewed. So given all of that, the motion to compel is granted on this first category of information.

The next category of documents concerns those pertaining to certain regulatory actions or investigations and documents that were produced to the SEC and the DOJ, which are request Nos. 32 and 33. For these requests, Lordstown acknowledges that they seek some relevant documents, but it believes that other document requests adequately cover these responsive categories. But by virtue of search terms and deduping, I don't see how this will make a meaningful difference in terms of the documents to be reviewed. And, again, I have no information by which to assess whether the discovery sought in requests 32 and 33 would be cumulative.

More broadly, though, it seems appropriate to me for Lordstown to cross-produce the

documents it produced to the SEC and DOJ, so far as those subpoenas overlap with the scope of discovery in this case. I also accept Lordstown's representation that the subpoenas might be broader or sweep in documents that are not relevant here, but I don't have the subpoenas in front of me, and so it's difficult to make that call.

As I understand it, the plaintiffs have also not been given a copy of the subpoenas. And so if it hasn't already, Lordstown should produce copies of the subpoenas to the plaintiffs. And then I'm going to direct the parties to meet and confer about any differences in scope here versus in the SEC and DOJ investigations that could be addressed through search criteria or by excluding certain categories of documents from their review.

After that, if there are relevant documents that were produced to the SEC and DOJ that hit upon the parties' agreed-upon search criteria, those documents should be produced to the plaintiffs. So in that sense, the motion is granted on Category 2.

That leaves the third and final category of documents at issue, which concerns the resignation of Burns and Rodriguez, who are

Lordstown's former CEO and CFO, respectively. This request corresponds to document request No. 12. The plaintiffs have narrowed the request only to seek information about the reasons for their departures.

The plaintiffs argue that this information is relevant given that the resignations occurred about six days after Lordstown announced that it had insufficient funding to begin production of the Endurance, and on the same day that the special committee released its investigation report.

Lordstown, on the other hand, argues that the information is not relevant to the matters at issue in this lawsuit and that the plaintiffs are essentially embarking on a fishing expedition. Lordstown points out that Burns and Rodriguez are not defendants and that they resigned eight months after the de-SPAC merger closed.

Moreover, Lordstown publicly stated that the resignations were due to a transition across the management team and that Mr. Burns' resignation was not related to the special committee's work.

This is, I think, the closest call that I have to make on relevance today, but I believe that the request ultimately falls on the side of not

being relevant. The case hinges on what the SPAC's fiduciaries knew about the production of the Endurance at the time of the de-SPAC and the proxy statement being issued.

The two prior categories of information I discussed before this third category concern investigations into events during that key time period, which could potentially bear on the defendants' knowledge. The resignations, though, were much later. I don't see any connection between the resignations of these two nonparties and the matters that I'll need to consider in deciding the fiduciary duty claims in this case. The link that the plaintiffs are drawing seems fairly speculative to me.

So given that, coupled with the public disclosures that Lordstown made stating that the resignations were due to a transition to the commercial production phase -- and I note those disclosures are not challenged in this litigation -- I believe that Lordstown has shown the information is improperly requested and the motion is therefore denied on Category 3.

Before I break, I want to touch briefly on the matter of the search protocol. I heard

today from Ms. Barrow that there is a search protocol that's been prepared internally and there have been hit reports run.

Now that you have clarity on the open issues, Lordstown and the plaintiffs should promptly finalize negotiations on the search protocol, and Lordstown should provide the resulting hit reports to the plaintiffs.

If there are remaining issues of burden or scope at that point, the parties should meet and confer so that the search protocol can be finalized. And if you reach an impasse, of course you can let me know, and I'll do my best to get on the phone so that we can resolve it.

That concludes my ruling. I will enter an order to this effect shortly, barring any questions or clarifications that you'd like to raise.

Ms. Sanborn-Lowing, why don't I start with you.

ATTORNEY SANBORN-LOWING: Thank you, Your Honor. I think -- I appreciate Your Honor's ruling. I think the only thing that we would like some clarity on is for Lordstown to share this information with us, the hit reports, the search

parameters that they're developing internally. We still haven't seen anything. I learned new information on this call today, which was super-helpful.

And it just feels like they should be slightly more transparent and collaborative, but I appreciate Your Honor's ruling, and I think hopefully we'll be able to come to an agreement quickly on the search protocol.

THE COURT: Thank you. And I think that's a fair request. I see your proposed order asks for the search protocol to be shared within three days.

Ms. Barrow, what are your thoughts on that?

ATTORNEY BARROW: Thank you, Your Honor.

Just to obtain a little bit more clarity, so from my understanding of Your Honor's ruling, we have to produce the SEC production to the extent it seeks information or types of documents that the plaintiffs had previously requested.

So would it be fair to say that we would be applying the search terms -- just to back up

a little bit, the custodians that we had initially offered to produce documents from are also included in the custodians that were pulled for the SEC productions, so we had offered eight custodians. The production has 34 custodians. And also, the SEC production has, I think, 900,000 documents. It's rather large, and that was one of the reasons why we're a bit reluctant -- I'm sorry, it's 981,221 pages of documents.

Would it be fair to say that we can apply the search terms to the SEC production as the starting point, as opposed to going to those eight custodians? It just seems like -- since we have to produce on that production anyway, and that would likely have a larger group of -- rate of responsiveness.

THE COURT: I don't think that sounds like a bad place to start. I would begin by sharing the subpoenas with the plaintiffs so that you can talk about whether there are any tweaks that might need to be made to the search protocols given the difference in scope. But I think meeting and conferring with the plaintiffs about that starting point might also make a lot of sense.

ATTORNEY BARROW: Okay. Yeah, if that was Your Honor's ruling, then that would be our preference, rather than to be reviewing the same exact documents twice, because that would only increase our burden.

As it pertains to handing over the subpoenas, we're happy to do so if the party -- if the plaintiffs would enter into a confidentiality agreement.

THE COURT: That also sounds like a fair request to me.

In terms of when you can share the search criteria, I defer to you-all whether you'd like to meet and confer before you do that or you'd like to share the hit reports that you have at this point, Ms. Barrow.

How soon do you think that can occur?

ATTORNEY BARROW: Well, we were cautiously optimistic that the motion would be denied as it pertains to the SEC production, so I actually haven't ran any search terms on the SEC production.

So if Your Honor would give us a week to finalize the confidentiality agreement, apply those new search -- get our lit support team up and going,

that would be appreciated.

THE COURT: Ms. Sanborn-Lowing, how does that sound to you?

ATTORNEY SANBORN-LOWING: I think that's acceptable to us. It just seems like there's a couple of steps that need to happen here, so as expeditiously as possible. Given that substantial completion is in a week, we would just appreciate to kind of get the ball rolling and get as much information as quickly as we can.

I also just wanted to say, there is a confidentiality order already entered in this action, so surely we can work out with Lordstown sending that to them to the extent they can't pull it from the docket and having them sign it. And obviously we'll respect that with respect to the SEC and DOJ productions.

THE COURT: Great. Thank you. I appreciate that.

Why don't we say, then, that you will endeavor to exchange a hit report and search protocol within five business days unless the parties reach agreement otherwise, but obviously, the sooner the better, given the substantial completion deadline.

ATTORNEY BARROW: Your Honor, my understanding is, since we're not a party to the action, is it's not like we're subject to that substantial completion deadline. And I was not aware of any, like, nonparty deadlines in this case.

THE COURT: Ms. Sanborn-Lowing?

ATTORNEY SANBORN-LOWING: Yeah, just to respond to that, I guess I was going to mention this if we had had the opportunity to discuss, but defendants have been toeing the same line as Lordstown. And aside from an initial production of core documents, they also have yet to produce a single document to us.

And we served the subpoena on Lordstown back in February, so although I don't disagree, necessarily, that the substantial completion deadline does not apply to them, it's already been sufficient time for us to really try and get these documents produced. So we really just want to get documents so we can start reviewing and really meet our obligations under the scheduling order.

THE COURT: I think that's fair. The ball should be rolling now that we have some clarity on these gating issues.

Let's say five business days for the exchange of the hit reports. And I'm going to ask you to meet and confer, given the size of the SEC production and perhaps the overbreadth of certain of those issues, to see if you can narrow it using search terms.

I think that should cover everything that I had on my agenda today.

Is there anything else we should talk about while we're all together?

ATTORNEY SANBORN-LOWING: That's everything from plaintiffs. Thank you, Your Honor.

THE COURT: Thank you very much.

Ms. Barrow, anything from you?

ATTORNEY BARROW: Nothing further from Lordstown. Thank you, Your Honor.

THE COURT: Okay. Thank you so much. I hope you have a great weekend. We're adjourned.

(Proceedings concluded at 1:51 p.m.)

- - -

CERTIFICATE

I, DOUGLAS J. ZWEIZIG, Official Court Reporter for the Court of Chancery of the State of Delaware, Registered Diplomate Reporter, Certified Realtime Reporter, do hereby certify that the foregoing pages numbered 3 through 21 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Vice Chancellor of the State of Delaware, on the date therein indicated, except for the rulings, which were revised by the Vice Chancellor.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, this 20th day of June, 2023.

/s/ Douglas J. Zweizig

Douglas J. Zweizig
Official Court Reporter
Registered Diplomate Reporter
Certified Realtime Reporter

EXHIBIT F

GRANTED IN PART

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE LORDSTOWN MOTORS CORP. STOCKHOLDERS LITIGATION	CONSOLIDATED C.A. No. 2021-1066-LWW

[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION TO COMPEL DIRECTED AT NON-PARTY LORDSTOWN MOTORS CORP.

The Court having considered Plaintiffs' Motion to Compel Directed at Non-Party Lordstown (the "Motion"), and having found good cause therefor,

IT IS HEREBY ORDERED this ____ day of _____, 2023, that:

1. The Motion is GRANTED.

2. Lordstown is ordered to produce or log documents and communications responsive to Requests 1, 2, 3(b), 10, 11, 12, 32, 33.

3. Within three (3) days of entry of this Order, Lordstown is ordered to produce a complete draft search protocol to Plaintiffs as well as corresponding hit reports.

_____
Vice Chancellor Will

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: Lori W. Will

File & Serve Transaction ID: 69967711

Current Date: Jun 09, 2023

Case Number: 2021-1066-LWW

Case Name: CONS W/ 2021-1085-LWW - CONF ORD - IN RE LORDSTOWN MOTORS CORP. STOCKHOLDERS LITIGATION

Court Authorizer Comments:

The motion is granted as set forth in the court's June 9, 2023 bench ruling, except that it is denied as to document request 12. See transcript.

Lordstown shall provide a copy of the SEC and DOJ subpoenas to the plaintiffs pursuant to the confidentiality order in this case. Lordstown and the plaintiffs shall thereafter negotiate search criteria to address matters of scope and burden, remaining mindful that Lordstown is a non-party.

Lordstown shall endeavor to share an ESI search protocol and search term hit reports with the plaintiffs within five business days, unless the parties agree otherwise.

/s/ Judge Lori W. Will

EXHIBIT G

DOCUMENT FILED UNDER SEAL

EXHIBIT H

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE LORDSTOWN MOTORS CORP. STOCKHOLDERS LITIGATION	CONSOLIDATED C.A. No. 2021-1066-LWW

SUGGESTION OF BANKRUPTCY AND NOTICE OF THE AUTOMATIC STAY

PLEASE TAKE NOTICE that, on June 27, 2023 (the "Petition Date"), non-party Lordstown Motors Corp. and certain of its affiliates (collectively, the "Debtors"), each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), which chapter 11 cases are being jointly administered under case number 23-10831 (the "Chapter 11 Cases"). A true and correct copy of the Notice of Bankruptcy Case Filing is attached hereto as **Exhibit A**.

PLEASE TAKE FURTHER NOTICE that, pursuant to section 362(a) of the Bankruptcy Code, the commencement of the Chapter 11 Cases operates as a stay (the "Automatic Stay"), applicable to all of the Debtors, of "the commencement or continuation, including the issuance or employment of process, of a judicial, administrative or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title . . . ."

11 U.S.C. § 362(a)(1). The Automatic Stay also protects property of the Debtors' estates, as defined by section 541(a) of the Bankruptcy Code, by prohibiting "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." *Id.* § 362(a)(3); *A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 1001 (4th Cir. 1986) ("Subsection (a)(3) directs stays of any action, *whether against the debtor or third-parties*, to obtain possession or to exercise control over property of the debtor." (emphasis in original)).

As the successor organization to DiamondPeak Holdings Corp. ("DiamondPeak") following an SPAC merger on October 23, 2020, Lordstown Motors Corp. ("LMC") has an obligation to indemnify and defend its current and former directors and officers, including defendants David Hamamoto, Mark Walsh, Andrew Richardson, Steven Hash, and Judith Hannaway (together, the "Indemnified Defendants"), in any action or proceeding arising from their positions with DiamondPeak and/or LMC. Accordingly, any action against the Indemnified Defendants constitutes an "act to obtain" property of the Debtors' estates, including proceeds of the Debtors' shared liability insurance coverage, that is subject to the Automatic Stay. *See A.H. Robins*, 788 F.2d at 1001–02 ("[A]ctions 'related to' the bankruptcy proceedings against the insurer or against officers or employees of the debtor who may be entitled to indemnification . . . or who qualify as additional insureds under the policy are to be stayed under section 362(a)(3).").

PLEASE TAKE FURTHER NOTICE that actions taken in violation of the Automatic Stay are void and may subject the person or entity taking such action to the imposition of sanctions by the Bankruptcy Court.

If you have any questions regarding this notice, please contact the undersigned.

POTTER ANDERSON & CORROON LLP

By: */s/ Justin T. Hymes*
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Dated: June 27, 2023

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of June, 2023, a copy of the foregoing *Suggestion of Bankruptcy and Notice of the Automatic Stay* was served via File & ServeXpress on the following counsel of record:

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Glenn R. McGillivray, Esquire
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& GROSSMAN, LLP
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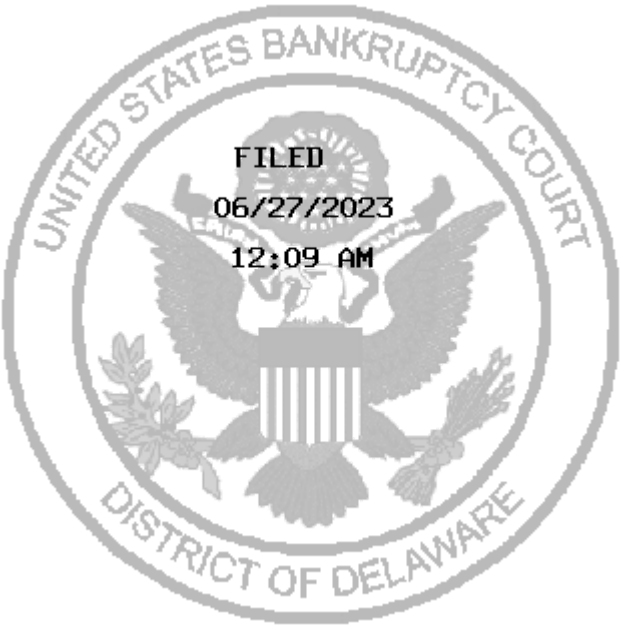
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Alexander M. Krischik, Esquire
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920 North King Street
Wilmington, DE 19801

/s/ Justin T. Hymes
Justin T. Hymes (#6671)

EXHIBIT A

United States Bankruptcy Court
District of Delaware

Notice of Bankruptcy Case Filing



A bankruptcy case concerning the debtor(s) listed below was filed under Chapter 11 of the United States Bankruptcy Code, entered on 06/27/2023 at 12:09 AM and filed on 06/26/2023.

Lordstown Motors Corp.
27000 Hills Tech Court
Farmington Hills, MI 48331
Tax ID / EIN: 83-2533239
aka **DiamondPeak Holdings Corp.**

The case was filed by the debtor's attorney:

Kevin Gross
Richards Layton & Finger
One Rodney Square
920 North King Street
Wilmington, DE 19801
302-651-7815

The case was assigned case number 23-10831.

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

If you would like to view the bankruptcy petition and other documents filed by the debtor, they are available at our *Internet* home page www.deb.uscourts.gov or at the Clerk's Office, 824 Market Street, 3rd Floor, Wilmington, DE 19801.

You may be a creditor of the debtor. If so, you will receive an additional notice from the court setting forth important deadlines.

Una O'Boyle
Clerk, U.S. Bankruptcy Court

PACER Service Center
Transaction Receipt

06/27/2023 00:28:04			
PACER Login:	rjiszuba	**Client Code:**	1902563-0002
Description:	Notice of Filing	**Search Criteria:**	23-10831
Billable Pages:	1	**Cost:**	0.10

EXHIBIT I

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE LORDSTOWN MOTORS CORP. STOCKHOLDERS LITIGATION	CONSOLIDATED C.A. No. 2021-1066-LWW

CORRECTED SUGGESTION OF BANKRUPTCY AND NOTICE OF THE AUTOMATIC STAY

PLEASE TAKE NOTICE that, on June 27, 2023 (the "Petition Date"), non-party Lordstown Motors Corp. and certain of its affiliates (collectively, the "Debtors"), each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), which chapter 11 cases are being jointly administered under case number 23-10831 (the "Chapter 11 Cases"). A true and correct copy of the Notice of Bankruptcy Case Filing is attached hereto as **Exhibit A**.

PLEASE TAKE FURTHER NOTICE that, pursuant to section 362(a) of the Bankruptcy Code, the commencement of the Chapter 11 Cases operates as a stay (the "Automatic Stay"), applicable to all of the Debtors, of "the commencement or continuation, including the issuance or employment of process, of a judicial, administrative or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title . . . ." 11 U.S.C. § 362(a)(1).

As the successor organization to DiamondPeak Holdings Corp. ("DiamondPeak") following a SPAC merger on October 23, 2020, Lordstown Motors Corp. ("LMC") has an obligation to indemnify and defend its current and former directors and officers, including defendants David Hamamoto, Mark Walsh, Andrew Richardson, Steven Hash, and Judith Hannaway (together, the "Indemnified Defendants"), in any action or proceeding arising from their positions with DiamondPeak and/or LMC. On June 28, 2023 the Bankruptcy Court clarified that the automatic stay does not automatically apply to actions against non-debtors, such as the Indemnified Defendants. The Debtors therefore withdraw their original Suggestion of Bankruptcy filed May 27, 2023 (Trans. ID 70272797) and file this Corrected Suggestion of Bankruptcy to inform this Court of that clarification. The Debtors also inform the Court that they intend to promptly file an action in the Bankruptcy Court seeking to extend the automatic stay to the claims asserted in this action. Plaintiffs have advised the Debtors that they intend to oppose this request. The Debtors will notify this Court of the resolution of their request.

POTTER ANDERSON & CORROON LLP

By: */s/ Justin T. Hymes*
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Cleveland, OH 44114
(216) 621-0200

Dated: June 29, 2023

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of June 2023, a copy of the foregoing *Corrected Suggestion of Bankruptcy and Notice of the Automatic Stay* was served via *File & ServeXpress* upon the following attorneys of record:

Gregory V. Varallo, Esquire
Glenn R. McGillivray, Esquire
BERNSTEIN LITOWITZ BERGER
& GROSSMAN, LLP
500 Delaware Avenue, Suite 901
Wilmington, DE 19801

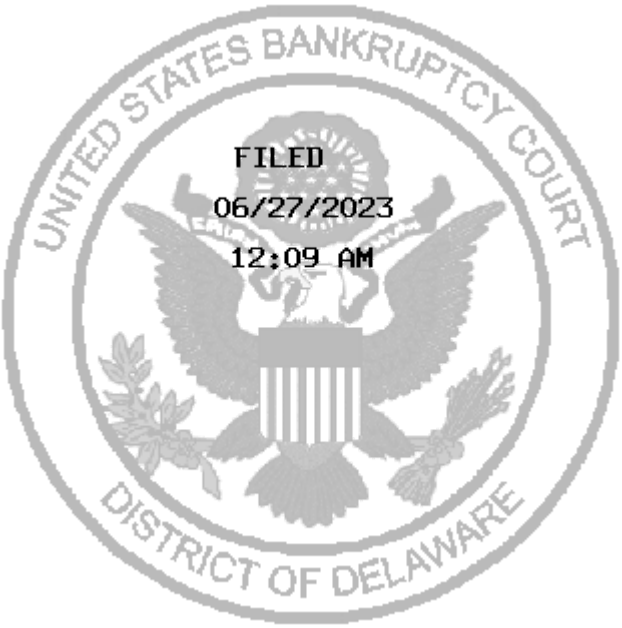
Raymond J. DiCamllo, Esquire
Kevin M. Gallagher, Esquire
Alexander M. Krischik, Esquire
Edmond S. Kim, Esquire
Nicholas F. Mastria, Esquire
RICHARDS LAYTON & FINGER, P.A.
920 North King Street
Wilmington, DE 19801

/s/ Justin T. Hymes
Justin T. Hymes (#6671)

EXHIBIT A

United States Bankruptcy Court
District of Delaware

Notice of Bankruptcy Case Filing



A bankruptcy case concerning the debtor(s) listed below was filed under Chapter 11 of the United States Bankruptcy Code, entered on 06/27/2023 at 12:09 AM and filed on 06/26/2023.

Lordstown Motors Corp.
27000 Hills Tech Court
Farmington Hills, MI 48331
Tax ID / EIN: 83-2533239
aka **DiamondPeak Holdings Corp.**

The case was filed by the debtor's attorney:

Kevin Gross
Richards Layton & Finger
One Rodney Square
920 North King Street
Wilmington, DE 19801
302-651-7815

The case was assigned case number 23-10831.

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

If you would like to view the bankruptcy petition and other documents filed by the debtor, they are available at our *Internet* home page www.deb.uscourts.gov or at the Clerk's Office, 824 Market Street, 3rd Floor, Wilmington, DE 19801.

You may be a creditor of the debtor. If so, you will receive an additional notice from the court setting forth important deadlines.

Una O'Boyle
Clerk, U.S. Bankruptcy Court

PACER Service Center
Transaction Receipt

06/27/2023 00:28:04			
PACER Login:	rjiszuba	**Client Code:**	1902563-0002
Description:	Notice of Filing	**Search Criteria:**	23-10831
Billable Pages:	1	**Cost:**	0.10

EXHIBIT J

DOCUMENT FILED UNDER SEAL

EXHIBIT K

DOCUMENT FILED UNDER SEAL

CERTIFICATE OF SERVICE

I, Joseph C. Barsalona II, hereby certify that on July 19, 2023, I caused a copy of the foregoing *DECLARATION OF ANKITA SANGWAN IN SUPPORT OF DEFENDANTS' BRIEF IN RESPONSE AND OPPOSITION TO DEBTORS' MOTION TO EXTEND THE AUTOMATIC STAY AND FOR INJUNCTIVE RELIEF PURSUANT TO 11 U.S.C. § 105* to be served on all parties who are scheduled to receive notice through the Court's ECF system.

PASHMAN STEIN WALDER HAYDEN, P.C.

/s/ Joseph C. Barsalona II

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