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)

DEFENDANTS' MOTION TO FILE UNDER SEAL CERTAIN EXHIBITS TO THE DECLARATION OF ANKITA SANGWAN IN SUPPORT OF DEFENDANTS' BRIEF IN RESPONSE AND OPPOSITION TO DEBTORS' MOTION TO EXTEND THE AUTOMATIC AND INJUNCTIVE RELIEF

The above-captioned defendants Benjamin Hebert ("Hebert") and Atri Amin ("Amin" and together with Hebert, the "Defendants" or the "Delaware Class Plaintiffs"), by and through their undersigned counsel, hereby file this motion (the "Motion") for entry of an order substantially in the form attached hereto as **Exhibit A** (the "Proposed Order") granting the relief described below. In support of this Motion, the Defendants respectfully represent as follows:

RELIEF REQUESTED

1. By this Motion, the Defendants request, pursuant to sections 105 and 107

[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., F

2310831230725000000000005

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

JURISDICTION AND VENUE

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

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

BACKGROUND

4. On June 27, 2023, Lordstown Motors Corp. ("LMC") and its affiliated debtors (collectively with LMC, the "Debtors") each filed a voluntary petition in this Court commencing their chapter 11 cases. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in the chapter 11 cases, and no committees have yet been appointed.

5. On July 5, 2023, the Debtors filed the *Complaint for Injunctive Relief* (the "Complaint") [Adv. Proc. D.I. 1] in the above-captioned adversary proceeding.

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

7. On July 19, 2023, Defendants filed *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* [Adv. Proc. D.I. 14] and *The 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* (the "Sangwan Declaration") [Adv. Proc. 15].

8. Certain of the Exhibits attached to the Sangwan Declaration include confidential information that, absent the relief requested herein, the Defendants would otherwise be required to make publicly available. Specifically, the Exhibits include (i) the DiamondPeak Directors' Answer to the Delaware Class Plaintiffs' Complaint (the "Confidential Answer"); (ii) an 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 with the Delaware Class Action (the "Confidential Email Chain"); (iii) copy of the Greenwich Policy, as produced to the Delaware Class Plaintiffs during discovery in the Delaware Class Action, bates numbered DP-DIR 0000001 (the "Confidential Insurance Policy"); and (iv) 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 (the "Confidential Position Letter" and, together with the Confidential Complaint, the Confidential Email Chain, and Confidential Insurance Policy, collectively the "Confidential

Information").

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

BASIS FOR RELIEF

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

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

11 U.S.C. § 107(b).[2]

11. Courts have held that protection under section 107(b) must be granted if the information sought to be protected is commercial information, and significantly, that commercial information need not rise to the level of a trade secret to be entitled to protection. *Video Software*

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

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

Fed. R. Bankr. P. 9018.

Dealers Ass'n v. Orion Pictures Corp. (In re Orion Pictures Corp.), 21 F.3d 24, 28 (2d Cir. 1994) (finding that the use of the disjunctive in section 107(b)(1) "neither equates 'trade secret' with 'commercial information' nor requires the latter to reflect the same level of confidentiality as the former"). Moreover, section 107(b) of the Bankruptcy Code neither requires an entity seeking such protection to demonstrate "good cause" nor an "extraordinary circumstance[] or compelling need" *Id.* at 27-28. Rather, a party seeking the protection of section 107(b) need only demonstrate that the information is "confidential" and "commercial" in nature. *Id.* at 27; *see also In re Global Crossing Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003) (recognizing that the purpose of Bankruptcy Rule 9018 is to "protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury"). Once established that the subject information qualifies as "commercial information" under section 107(b)(1), the Bankruptcy Code mandates that this information be protected from disclosure. *See Global Crossing Ltd.*, 295 B.R. at 725.

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

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

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

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

18 U.S.C. § 1028(d)(7).

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

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

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

16. Second, the Defendants submit that the Confidential Information also falls squarely within the scope of "information" that must be protected pursuant to section 107(c) because it contains personal identifying information regarding certain of the Delaware Class

Plaintiffs. Specifically, the Confidential Information includes personal identifying information such as insurance policy numbers. The Delaware Class Plaintiffs understand that it is the Debtors' position that public disclosure of the Confidential Information, particularly the Confidential Position Letter and the Confidential Insurance Policy, would needlessly render the Debtors' current and former directors, officers, and employees more susceptible to identity theft and other potential privacy violations.

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

COMPLIANCE WITH LOCAL RULE 9018-1(d)

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

19. The Defendants have reached out to the Debtors and other parties that it believes may be the purported holders of Confidentiality Rights and have not received comments from all parties as of the time of filing of this Motion. In an abundance of caution and to ensure the protection of potentially confidential information, the Defendants have filed certain documents under seal in their entirety. Following the filing of this Motion, the Defendants will continue to reach out and attempt to resolve the scope of any claims of confidentiality by the purported holders of Confidentiality Rights and will, where appropriate, file revised Exhibits to the extent the holder(s) of the Confidentiality Rights agrees that further information contained in such document(s) may be unsealed.

20. The Defendants have filed or will file redacted versions of the Exhibits consistent with Local Rule 9018-1(d)(ii).

NOTICE

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

NO PRIOR REQUEST

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

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

Dated: July 24, 2023
Wilmington, Delaware

PASHMAN STEIN WALDER HAYDEN, P.C

/s/ Joseph C. Barsalona II

Henry J. Jaffe (No. 2987)
Joseph C. Barsalona II (No. 6102)
1007 North Orange Street, 4th Floor, #183
Wilmington, DE 19801
Telephone: (302) 592-6497
Facsimile: (201) 488-5556
Email: hjaffe@pashmanstein.com
jbarsalona@pashmanstein.com

-and-

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

Gregory V. Varallo (No. 2242)
Glenn R. McGillivray (No. 6057)
Daniel Meyer (No. 6876)
500 Delaware Avenue, Suite 901
Wilmington, DE 19801
Telephone: (302) 364-3600
Email: greg.varallo@blbglaw.com

glenn.mcgillivray@blbglaw.com
daniel.meyer@blbglaw.com

-and-
Jeroen van Kwawegen
Thomas G. James
Margaret Sanborn-Lowing
1251 Avenue of the Americas
New York, NY 10020
Telephone: (212) 554-1400
Email: jeroen@blbglaw.com
Thomas.James@blbglaw.com
Margaret.Lowing@blbglaw.com

-and-

POMERANTZ LLP
Gustavo F. Bruckner
Samuel J. Adams
Ankita Sangwan
600 3rd Avenue
New York, NY 10016
Telephone: (212) 661-1100
Email: gfbruckner@pomlaw.com
sjadams@pomlaw.com
asangwan@pomlaw.com

Counsel to Benjamin Hebert and Atri Amin on behalf of themselves and similarly situated stockholders of Lordstown Motors Corp. f/k/a DiamondPeak Holdings Corp.

Exhibit A

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re Lordstown Motors Corp., *et al*.,[3] 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) **Re: Adv. Proc. D.I. ___**

ORDER AUTHORIZING THE DEFENDANTS TO FILE UNDER SEAL CERTAIN CONFIDENTIAL COMMERCIAL INFORMATION IN THE EXHIBITS TO THE DECLARATION OF ANKITA SANGWAN IN SUPPORT OF THE DEFENDANTS' OPPOSTION TO DEBTORS' MOTION TO EXTEND THE AUTOMATIC AND INJUNCTIVE RELIEF

Upon the motion (the "Motion")[4] of the above-captioned defendants Benjamin Hebert ("Hebert") and Atri Amin (collectively, the "Defendants, for an order under sections 105(a) and 107 of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1, for an order authorizing the Defendants to file under seal the Sangwan Declaration; and the Court having

[3] 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.

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

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

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.

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

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

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

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

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