Docket #0055 Date Filed: 9/5/2024

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

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| In re:<br><br>NU RIDE INC. (f/k/a LORDSTOWN MOTORS CORP.), *et al.*,[1]<br><br>Reorganized Debtors. | Chapter 11<br><br>Case No. 23-10831-MFW<br><br>(Jointly Administered) |
| LORDSTOWN MOTORS CORP. and LORDSTOWN EV CORPORATION,<br><br>Plaintiffs,<br><br>v.<br><br>HON HAI PRECISION INDUSTRY CO., LTD. (a/k/a HON HAI TECHNOLOGY GROUP), FOXCONN EV TECHNOLOGY, INC., FOXCONN VENTURES PTE LTD., FOXCONN (FAR EAST) LIMITED, and FOXCONN EV SYSTEM LLC,<br><br>Defendants. | Adv. Pro. No. 23-50414-MFW |

**PLAINTIFFS' REPLY BRIEF IN SUPPORT OF THEIR**
**MOTION FOR PARTIAL RECONSIDERATION**

[1] The Reorganized 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 Reorganized Debtors' service address is: Nu Ride Inc. c/o William Gallagher, CEO, M 3 Partners, 1700 Broadway, 19th Floor, New York, NY 10019.

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Nu Ride Inc. (f/k/a Lordstown Motors Corp.) and Lordstown EV Corporation (collectively, "**Plaintiffs**") respectfully submit this reply in support of their Motion for Partial Reconsideration of a discrete aspect of this Court's August 1, 2024 Memorandum Opinion (D.I. 31) and interlocutory Order (D.I. 32) granting in part and denying in part Defendants' motion to dismiss. D.I. 36, 37. This Motion is unopposed and ripe for decision. In their Response, Hon Hai Precision Industry Co., Ltd. (a/k/a Hon Hai Technology Group), Foxconn EV Technology, Inc., Foxconn Ventures Pte. Ltd., Foxconn (Far East) Limited, and Foxconn EV System LLC (collectively, "**Defendants**"), "take no position on whether the Court should reconsider its ruling." D.I. 51, at 2.

Plaintiffs stand on the arguments in their opening brief. D.I. 37. After finding Plaintiffs' claim for breach of the Joint Venture Agreement ("JVA") arbitrable, it was clear error to opine on the JVA claim's merits. *Id.* at 5–7. To the extent the Court finds it proper to revisit the merits of the JVA claim, the Court also clearly erred in finding that the Investment Agreement—a separate agreement between non-parties to the JVA—extinguished pre-existing claims for breach of the JVA. *Id.* at 7–16. Defendants concede these points by failing to oppose them.

While failing to oppose the motion, Defendants nevertheless felt it necessary to take a parting shot claiming that Plaintiffs had somehow "reversed their prior position," D.I. 51, at 2, on the arbitrability of the JVA claim. Plaintiffs have not reversed their position on anything. Plaintiffs stand on their original arguments in opposing dismissal, including their position that none of their claims are arbitrable. D.I. 15, at 15–22. Plaintiffs' opening brief made that clear.[2] But (as

[2] *E.g.*, D.I. 37, at 5 n.5 ("To the extent that the Court agrees with LEVC's original argument that sending a (live) JVA claim to arbitration would jeopardize the objectives of the Bankruptcy Code, the proper course would be to reverse the breach of the JVA contract ruling on the merits and keep all but the CMA claim (Count [9]) in front of this Court."). Plaintiffs maintain this argument and reserve the right to pursue it on appeal despite not moving to reconsider that aspect of the Court's decision. *See Peter Bay Homeowners Ass'n, Inc. v. Stillman*, 294 F.3d 524, n.12 (3d Cir. 2002) ("The Godinezes and Burgamy cite no authority—and we are aware of none—supporting the proposition that a failure to raise the same issue again in opposing a motion for reconsideration waives the ability to raise that issue on appeal."); *Neely-Bey*

sometimes happens in litigation) Plaintiffs lost that issue and have simply not moved to reconsider that aspect of the Court's decision. Instead, they sought narrow reconsideration of the dismissal of the JVA claim. Defendants do not oppose that narrow reconsideration, and that is the end of the matter.

Finally, Plaintiffs respectfully note an additional, minor clerical error in this Court's Opinion and Order. Plaintiffs' claim for breach of the Asset Purchase Agreement ("APA") appears in Count Seven of the Complaint, while the claim for breach of the Contract Manufacturing Agreement ("CMA") appears in Count Nine. D.I. 1 ¶¶ 131–39, 146–52. The Court's Opinion determined that Plaintiffs' APA claim (Count Seven) was not arbitrable:

> The Complaint alleges in Counts Two through Five breaches of specific provisions of the Investment Agreement and in ***Count Seven*** breaches of specific provisions of the APA. Those claims are not "related" to the allegations in Count Six which alleges breaches of specific provisions of the JVA or Count Nine which alleges breaches of specific provisions of the CMA. Therefore, the Court concludes that the arbitration provisions of the JVA and the CMA are not broad enough to cover the breach of contract claims related to the APA or the Investment Agreement which do not have arbitration provisions.

D.I. 31, at 19 (emphasis added); *see also id.* at 35–36 ("[T]he Court will grant the Motion to Dismiss the breach of contract claims in Count Six but will deny it respect to the breach of contract claims in Counts Two through Five and ***Count Seven***." (emphasis added)).

Unfortunately, the Opinion's conclusion and the Order transposed the numbering for the APA claim and the CMA claim, and erroneously stated that the Court was dismissing "Count Seven," rather than "Count Nine," as arbitrable. *Id.* at 59; D.I. 32. Plaintiffs' opening brief, tracking the Order, reiterated the same mistake. D.I. 37, at 5 n.5.

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*Tarik-El v. Conley*, 912 F.3d 989, 1001 (7th Cir. 2019) ("It is the general rule that a litigant does not abandon an argument by failing to raise it in a motion to reconsider.").

Plaintiffs sincerely apologize for not noticing this transposition earlier. In addition to the relief requested in Plaintiffs' Motion for Partial Reconsideration (D.I. 36) and accompanying brief (D.I. 37), therefore, Plaintiffs respectfully request that the Court: (1) clarify that Count Nine, rather than Count Seven, is dismissed in favor of arbitration; and (2) treat the references to "Count 7" on page 5, footnote 5 of Plaintiffs' opening brief as referring to Count Nine.

Dated: September 5, 2024
Wilmington, Delaware

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**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing instrument has been served via CM/ECF on the following counsel of record, this 5th day of September, 2024, as indicated below.

Dated: September 5, 2024
Wilmington, Delaware

*/s/ Ian J. Bambrick*
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*VIA CM/ECF*

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