

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

In re

Lordstown Motors Corp., *et al.*,<sup>1</sup>

Debtors.

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.

Chapter 11

Case No. 23-10831 (MFW)

(Jointly Administered)

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<sup>2</sup>) in the above-captioned cases. I respectfully submit this declaration in support of Defendants' Opposition to the Debtors' Motion.

<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used in this Declaration but not defined herein shall have the meaning ascribed to such terms in the Opposition.



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**



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).<sup>1</sup> 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.

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<sup>1</sup> Defendants reserve all rights in the event that the issues in *GigAcquisitions3* are appealed or otherwise addressed by the Delaware Supreme Court.



The Honorable Lori W. Will  
January 5, 2023  
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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**



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

IN RE LORDSTOWN MOTORS  
CORP. STOCKHOLDERS  
LITIGATION

CONSOLIDATED  
C.A. No. 2021-1066-LWW  
**REDACTED PUBLIC VERSION**  
**FILED: February 10, 2023**

**DAVID HAMAMOTO’S, MARK WALSH’S, ANDREW RICHARDSON’S,  
STEVEN HASH’S AND JUDITH HANNAWAY’S ANSWER TO THE  
VERIFIED AMENDED CLASS ACTION COMPLAINT**

Defendants David Hamamoto, Mark Walsh, Andrew Richardson, Steven Hash and Judith Hannaway (the “Director Defendants”) hereby respond to the Verified Amended Class Action Complaint (the “Complaint”) as follows:

The Director Defendants deny each and every allegation set forth in the Complaint except for those allegations expressly and specifically admitted below. To the extent that the headings, non-numbered statements and footnotes in the Complaint contain any allegations, they are repeated here only for convenience, and the Director Defendants deny each and every allegation contained therein. Capitalized terms not defined herein shall take the meaning ascribed to such terms in the Complaint. The use of such defined terms is for ease of reference and is not an acknowledgment or admission of any characterization Plaintiffs seek to associate with any such defined term.

## **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.

**ANSWER:** The first two sentences of this paragraph contain a purported description of SPACs to which no response is required. The third sentence in this paragraph contains a description of this action to which no response is required. To the extent a response is required, the Director Defendants deny any allegations contained in this paragraph.

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.”

**ANSWER:** This paragraph contains a purported description of SPACs to which no response is required. To the extent a response is required, the Director Defendants deny any allegations contained in this paragraph.

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.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

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.

**ANSWER:** The Director Defendants admit that DiamondPeak acquired Legacy LMC in a transaction that closed on October 23, 2020 and was approved by DiamondPeak stockholders, with the holders of 99.9% of the stock voting in favor, and that Legacy LMC was an automotive company founded for the purpose of developing and manufacturing light duty electric trucks targeted or sale to fleet customers. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** The Director Defendants lack knowledge or information sufficient to form a belief as to the allegations in the first sentence of this paragraph. The Director Defendants deny the remaining allegations in this paragraph.

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.

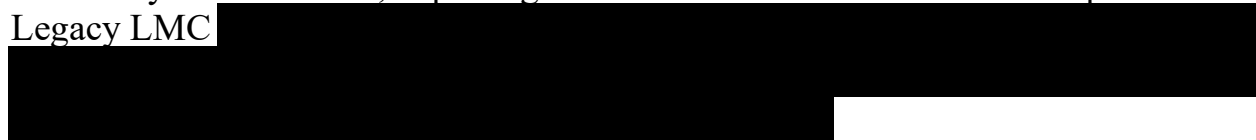


**ANSWER:** To the extent this paragraph purports to characterize the contents of the Proxy or any other public securities filings by DiamondPeak, the Director Defendants respectfully refer the Court to those documents for a full and accurate description of their contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the Proxy or any other public securities filings referenced by this paragraph.

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.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

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



**ANSWER:** The Director Defendants admit that DiamondPeak hired McKinsey to assist in the evaluation of Legacy LMC. To the extent this paragraph purports to characterize the contents of any report prepared by McKinsey, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations

in this paragraph inconsistent with the contents of any such report. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** To the extent this paragraph purports to characterize the contents of any report prepared by McKinsey, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of any such report. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

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").

**ANSWER:** The Director Defendants admit that on October 8, 2020, DiamondPeak filed the Proxy in advance of a special meeting of its stockholders.

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."

**ANSWER:** To the extent this paragraph purports to characterize the contents of the Proxy, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the Proxy. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** The Director Defendants admit the first sentence of this paragraph. The Director Defendants lack knowledge or information sufficient to form a belief as to the allegations in the second sentence of this paragraph. To the extent a response is required, the Director Defendants deny any allegations in the second sentence of this paragraph.

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.

**ANSWER:** To the extent this paragraph purports to characterize the contents of the Hindenburg Report, the Director Defendants respectfully refer the Court to

that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the Hindenburg Report. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

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.

**ANSWER:** The Director Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph. To the extent a response is required, the Director Defendants deny the allegations in this paragraph.

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.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

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.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

## **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.

**ANSWER:** The Director Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

20. Plaintiff Benjamin Hebert has consistently held and has been the beneficial owner of DiamondPeak stock at all relevant times.

**ANSWER:** The Director Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

### **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."

**ANSWER:** The Director Defendants admit the allegations in this paragraph.

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.<sup>1</sup>

**ANSWER:** The Director Defendants admit the allegations in this paragraph. By way of further response, the Director Defendants state that Sponsor was dissolved and a certificate of cancellation was filed with the Delaware Secretary of State on April 12, 2021.

23. Defendant David Hamamoto (“Hamamoto”) served as Chairman and CEO of DiamondPeak from the time of DiamondPeak’s inception until the de-SPAC Acquisition. He currently serves as a member on the board of directors of Lordstown.

**ANSWER:** The Director Defendants admit the allegations in this paragraph.

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.

**ANSWER:** The Director Defendants admit the allegations in this paragraph.

25. Defendant Andrew Richardson (“Richardson”) served as a member of the DiamondPeak Board from DiamondPeak’s IPO until the de-SPAC Acquisition.

**ANSWER:** The Director Defendants admit the allegations in this paragraph.

26. Defendant Steven Hash (“Hash”) served as a member of the DiamondPeak Board from DiamondPeak’s IPO until the de-SPAC Acquisition.

**ANSWER:** The Director Defendants admit the allegations in this paragraph.

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<sup>1</sup> “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.

27. Defendant Judith Hannaway (“Hannaway”) served as a member of the DiamondPeak Board from DiamondPeak’s IPO until the de-SPAC Acquisition.

**ANSWER:** The Director Defendants admit the allegations in this paragraph.

28. Defendants Hamamoto, Walsh, Richardson, Hannaway, and Hash are referred to herein as the “Director Defendants.”

**ANSWER:** This paragraph contains a definition to which no response is required.

29. Defendants Hamamoto, Walsh, and Sponsor are herein referred to as the “Controller Defendants.”

**ANSWER:** This paragraph contains a definition to which no response is required.

### **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.

**ANSWER:** The first four sentences of this paragraph contain a purported description of SPACs to which no response is required. The Director Defendants admit the fifth sentence of this paragraph.

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.

**ANSWER:** This paragraph contains a purported description of SPACs to which no response is required.

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.

**ANSWER:** This paragraph contains a purported description of SPACs to which no response is required.

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”).

**ANSWER:** This paragraph contains a purported description of SPACs and the IPO process to which no response is required.

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).

**ANSWER:** This paragraph contains a purported description of SPACs to which no response is required.



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.

**ANSWER:** This paragraph contains a purported description of SPACs to which no response is required.

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.

**ANSWER:** This paragraph contains a purported description of SPACs to which no response is required.

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.<sup>2</sup> 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.

**ANSWER:** This paragraph contains a purported description of SPACs and unnamed litigation to which no response is required. To the extent a response is required, the Director Defendants deny the allegations in this paragraph.

38. Once the SPAC is initially funded, officers and directors ("SPAC Insiders") are selected by the sponsor. The SPAC Insiders are often compensated in

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<sup>2</sup> 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.

sponsor shares or other shares contingent upon the completion of the de-SPAC transaction.

**ANSWER:** This paragraph contains a purported description of SPACs to which no response is required.

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.<sup>3</sup>

**ANSWER:** This paragraph contains a purported description of SPACs to which no response is required.

40. After completing its IPO (and receiving investors' money and placing it in a trust account typically investing in government securities), SPAC Insiders begin searching for a target (nearly always a private company). When such a target is identified, SPAC Insiders negotiate a merger agreement.

**ANSWER:** This paragraph contains a purported description of SPACs to which no response is required.

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.

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<sup>3</sup> 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.

**ANSWER:** This paragraph contains a purported description of SPACs to which no response is required. To the extent a response is required, the Director Defendants deny the allegations in this paragraph.

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.

**ANSWER:** This paragraph contains a purported description of SPACs to which no response is required. To the extent a response is required, the Director Defendants deny the allegations in this paragraph.

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.

**ANSWER:** This paragraph contains a purported description of SPACs to which no response is required. To the extent a response is required, the Director Defendants deny the allegations in this paragraph.

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.

**ANSWER:** This paragraph contains a purported description of SPACs to which no response is required. To the extent a response is required, the Director Defendants deny the allegations in this paragraph.

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).

**ANSWER:** This paragraph contains a purported description of SPACs to which no response is required. To the extent a response is required, the Director Defendants deny the allegations in this paragraph.

**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”).

**ANSWER:** The Director Defendants admit the allegations in this paragraph.

47. Shortly after DiamondPeak was formed, the Sponsor acquired 7,187,500 founder shares (“Founder Shares”),<sup>4</sup> for the nominal price of \$25,000. The Founder Shares provided the Sponsor complete control over DiamondPeak, as

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<sup>4</sup> Founder Shares were also referred to as Class B Common Stock.

well as the opportunity to convert into 20% of the SPAC's shares outstanding immediately before any de-SPAC Acquisition.

**ANSWER:** To the extent this paragraph purports to characterize the contents of the Prospectus or the Proxy, the Director Defendants respectfully refer the Court to those documents for a full and accurate description of their contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the Prospectus or the Proxy. The Director Defendants admit the allegations in the first sentence of this paragraph. The second sentence of this paragraph states legal conclusions to which no response is required.

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 in full.<sup>5</sup> Each unit would include one share of Class A Common Stock and one-third of a warrant.<sup>6</sup>

**ANSWER:** To the extent this paragraph purports to characterize the contents of the Prospectus, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the

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<sup>5</sup> 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.

<sup>6</sup> Each whole warrant would entitle the holder to purchase one share of Class A Common Stock at a price of \$11.50 per share.

Prospectus. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** To the extent this paragraph purports to characterize the contents of the Prospectus, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the Prospectus. The third sentence of this paragraph states legal conclusions to which no response is required. The Director Defendants deny the remaining allegations in this paragraph.

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 placement warrants (the "Private Placement Warrants")<sup>7</sup> for \$1.50 per Private Placement Warrant.

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<sup>7</sup> With limited exceptions, the Private Placement Warrants were identical to the warrants sold to the public in DiamondPeak's IPO.

**ANSWER:** The Director Defendants admit the allegations in the first sentence of this paragraph. To the extent the remaining allegations in this paragraph purport to characterize the contents of the Proxy or any other public securities filings by DiamondPeak, the Director Defendants respectfully refer the Court to those documents for a full and accurate description of their contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the Proxy or any other public securities filings referenced by this paragraph.

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.

**ANSWER:** The Director Defendants admit the allegations in this paragraph.

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.

**ANSWER:** The Director Defendants admit the allegations in the first sentence of this paragraph. To the extent the remaining allegations in this paragraph purport to characterize the contents of the Proxy or any other public securities filings by DiamondPeak, the Director Defendants respectfully refer the Court to those documents for a full and accurate description of their contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the Proxy or any other public securities filings referenced by this paragraph.

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.

**ANSWER:** To the extent this paragraph purports to characterize the contents of the Prospectus, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the Prospectus. The Director Defendants deny the remaining allegations in this paragraph.

**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, primarily for fleet customers. Its flagship vehicle was the Endurance, a full-size electric pickup truck.

**ANSWER:** The Director Defendants admit the allegations in this paragraph.

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.

**ANSWER:** The Director Defendants admit that DiamondPeak conducted due diligence on Legacy LMC's operations and proposed business model throughout June and July 2020, including a June 3, 2020 introductory teleconference between



Mr. Hamamoto and Mr. Burns, who was then Legacy LMC's chief executive officer.

The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** The Director Defendants admit that on June 16, 2020, DiamondPeak and Legacy LMC executed a letter of intent setting forth terms for a potential business combination. To the extent this paragraph purports to characterize the contents of the letter of intent, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the letter of intent.

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.

**ANSWER:** To the extent this paragraph purports to characterize the contents of the Proxy, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the Proxy. The

Director Defendants admit that DiamondPeak hired McKinsey to assist in the evaluation of Legacy LMC.

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.

**ANSWER:** To the extent this paragraph purports to characterize the contents of the Proxy, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the Proxy.

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.

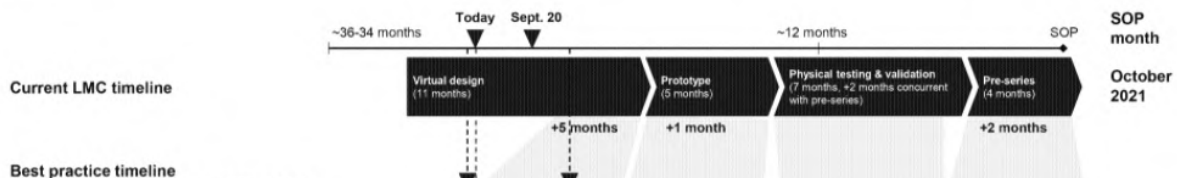
**ANSWER:** The Director Defendants admit that McKinsey provided a report to DiamondPeak on July 30, 2020. To the extent this paragraph purports to characterize the contents of the McKinsey report, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the report. The Director Defendants deny the remaining allegations in this paragraph.

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]

[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

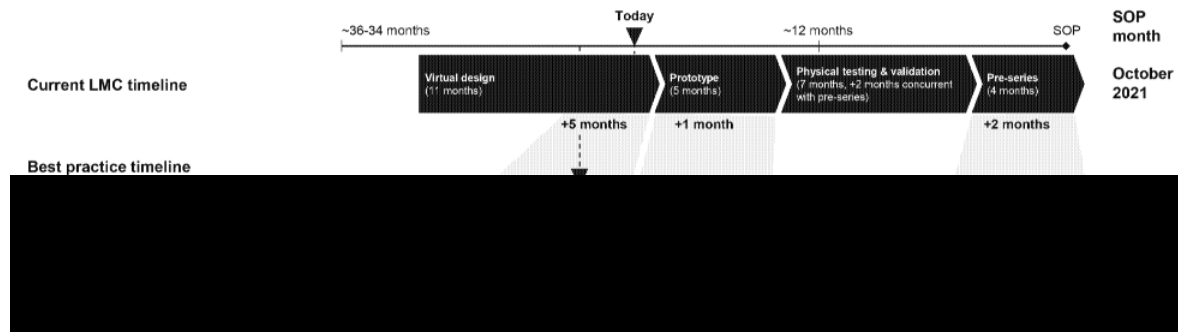


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**The LMC Endurance could have an [REDACTED] risk to its Oct 2021 SOP when compared to industry best practice timeline**

Preliminary



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

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**ANSWER:** To the extent this paragraph purports to characterize the contents of the McKinsey report, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the report. The Director Defendants deny the remaining allegations in this paragraph.

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.”

**ANSWER:** To the extent this paragraph purports to characterize the contents of the McKinsey report or the Proxy, the Director Defendants respectfully refer the

Court to those documents for a full and accurate description of their contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the McKinsey report or the Proxy. The Director Defendants lack knowledge or information sufficient to form a belief as to the allegations in the second sentence of this paragraph. To the extent a response is required, the Director Defendants deny the allegations in the second sentence of this paragraph. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** To the extent this paragraph purports to characterize the contents of the Proxy, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the Proxy. The Director Defendants deny the remaining allegations in this paragraph.

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.

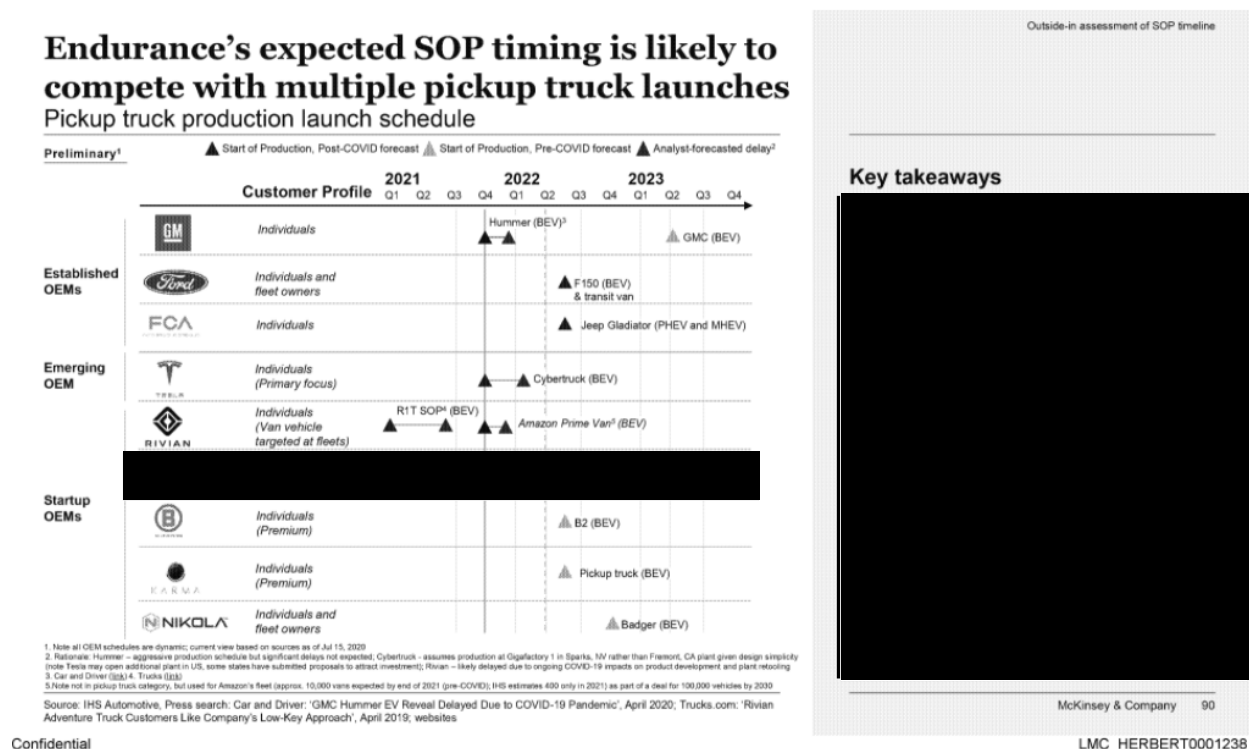
**ANSWER:** To the extent this paragraph purports to characterize the contents of the McKinsey report or the Proxy, the Director Defendants respectfully refer the Court to those documents for a full and accurate description of their contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the McKinsey report or the Proxy. The Director Defendants deny the remaining allegations in this paragraph.

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]

**ANSWER:** To the extent this paragraph purports to characterize the contents of the McKinsey report, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the report. The Director Defendants deny the remaining allegations in this paragraph.

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:



**ANSWER:** To the extent this paragraph purports to characterize the contents of the McKinsey report, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the report. The Director Defendants deny the remaining allegations in this paragraph.

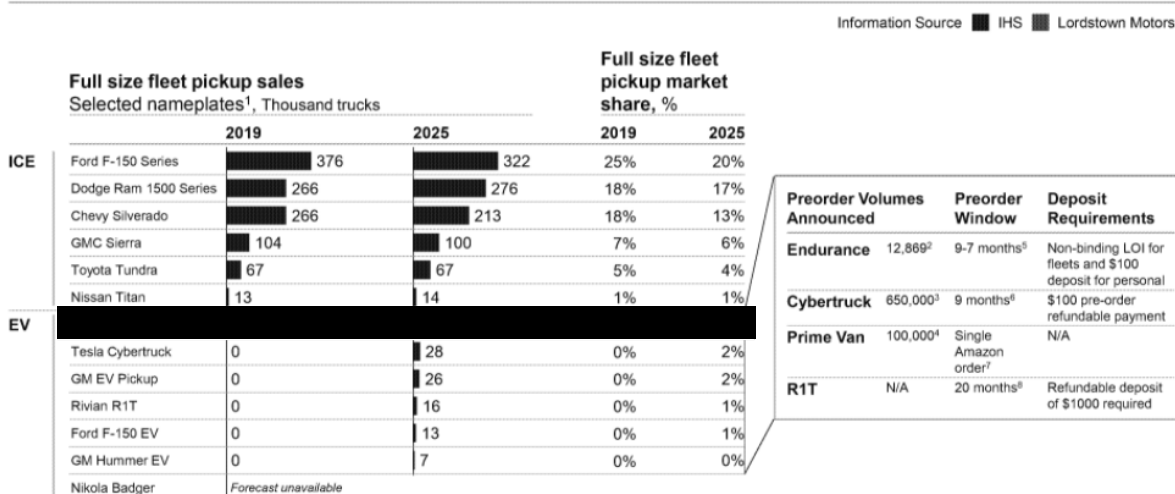
66. Second, DiamondPeak knew of problems with Legacy LMC's projections. These projections were as follows based on the Proxy:

	2020E	2021E	2022E	2023E	2024E
<b>Total Units Sold</b>	0	2,200	31,600	65,000	107,000
<b>Revenue (in millions)</b>	\$0	\$118	\$1,690	\$3,476	\$5,776

**ANSWER:** To the extent this paragraph purports to characterize the contents of the Proxy, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the Proxy. The Director Defendants deny the remaining allegations in this paragraph.

67. McKinsey had highlighted that Legacy LMC's numbers were [REDACTED] McKinsey noted that to achieve the projected sales volume, Legacy LMC had to go from [REDACTED]

### LMC Endurance



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. *Electra*. 4. *The Verde*. 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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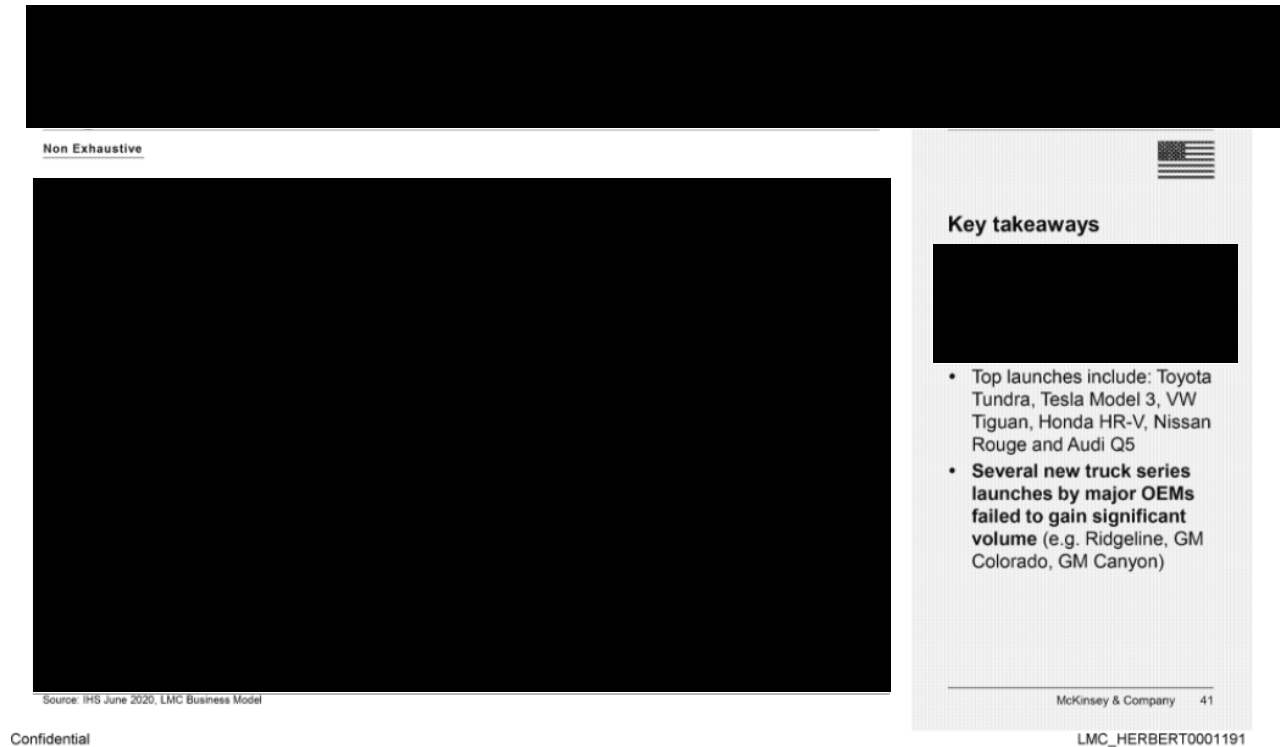
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**ANSWER:** To the extent this paragraph purports to characterize the contents of the McKinsey report, the Director Defendants respectfully refer the Court to that



document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the report. The Director Defendants deny the remaining allegations in this paragraph.

68. [REDACTED]



**ANSWER:** To the extent this paragraph purports to characterize the contents of the McKinsey report, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the report. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

- 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.”

**ANSWER:** The Director Defendants lack knowledge or information sufficient to form a belief as to the allegations in the first sentence of this paragraph. To the extent this paragraph purports to characterize the contents of the Proxy, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the Proxy. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

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.

### 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 <sup>1</sup>	<ul style="list-style-type: none"> <li>12,041 fleet vehicles committed in non-binding LOI</li> <li>828 personal vehicles committed with \$100/vehicle deposit via LMC website</li> </ul>
	Purchase price	Intended terms, non-binding basis: \$52,500 per vehicle, \$7,500 federal tax credit per vehicle, 2-year installment option available
	Timelines	Not specified in LOI; in dialogue with potential buyers: <ul style="list-style-type: none"> <li>Earliest test vehicles to be available Q1-Q2 2021, with delay to 2022 possible</li> <li>SOP in Oct 2021 as planned</li> </ul>
Sales & marketing	Expected conversion	Team aiming for 100% conversion; pre-order marketing focused on fleet leadership team members and key industry influencers
	Customer engagement	<ul style="list-style-type: none"> <li>Leading with personal networks across industries</li> <li>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</li> </ul>
	Resourcing	<ul style="list-style-type: none"> <li>Currently 2 individuals, with Climbi2Glory augmentation (+3)</li> <li>Ramp-up to 14 salespeople by July 2021</li> </ul>

1. LMC effort kickstarted Jan 2019

Source: Press search, OEM websites, fleet manager and OEM interviews

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**ANSWER:** To the extent this paragraph purports to characterize the contents of the McKinsey report, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the report. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** The Director Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph. To the extent this paragraph purports to characterize the contents of the McKinsey report, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the report.

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.

**ANSWER:** To the extent this paragraph purports to characterize the contents of the Proxy or certain Section 220 Documents, the Director Defendants respectfully refer the Court to those documents for a full and accurate description of their contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of those documents. The Director Defendants deny the remaining allegations in this paragraph.

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<sup>2</sup> Energy Advisors. According to a simple Lexis search, E<sup>2</sup> Energy Advisors has revenues of about \$4.4 million and a total of 18 employees. A second suspicious order for [REDACTED] (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.”<sup>8</sup>

**ANSWER:** To the extent this paragraph purports to characterize the contents of the Proxy or certain Section 220 Documents, the Director Defendants respectfully refer the Court to those documents for a full and accurate description of their contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of those documents. The Director Defendants lack knowledge or information sufficient to form a belief as to the allegations in the second and fourth sentences of this paragraph. To the extent a response is required, the Director Defendants deny those allegations. The Director Defendants deny the remaining allegations in this paragraph.

76. Besides appearing facially impossible, each of these orders have another thing in common – the same individual, Tim D. Grosse (“Grosse”), signed for all three companies. While Plaintiffs can identify a relationship between Grosse and E2 Energy Advisors, Plaintiffs found no connection between [REDACTED] and Grosse.

**ANSWER:** To the extent this paragraph purports to characterize the contents of the Proxy or certain Section 220 Documents, the Director Defendants respectfully refer the Court to those documents for a full and accurate description of their contents. The Director Defendants deny any allegations in this paragraph

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<sup>8</sup> The Plaintiffs have not identified any other specific companies called [REDACTED]

inconsistent with the contents of those documents. The Director Defendants lack knowledge or information sufficient to form a belief as to the allegations in the second sentence of this paragraph. To the extent a response is required, the Director Defendants deny those allegations. The Director Defendants deny the remaining allegations in this paragraph.

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]

**ANSWER:** To the extent this paragraph purports to characterize the contents of the McKinsey report or the Proxy, the Director Defendants respectfully refer the Court to those documents for a full and accurate description of their contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the McKinsey report or the Proxy. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

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.

**ANSWER:** The Director Defendants admit the allegations in this paragraph.

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:

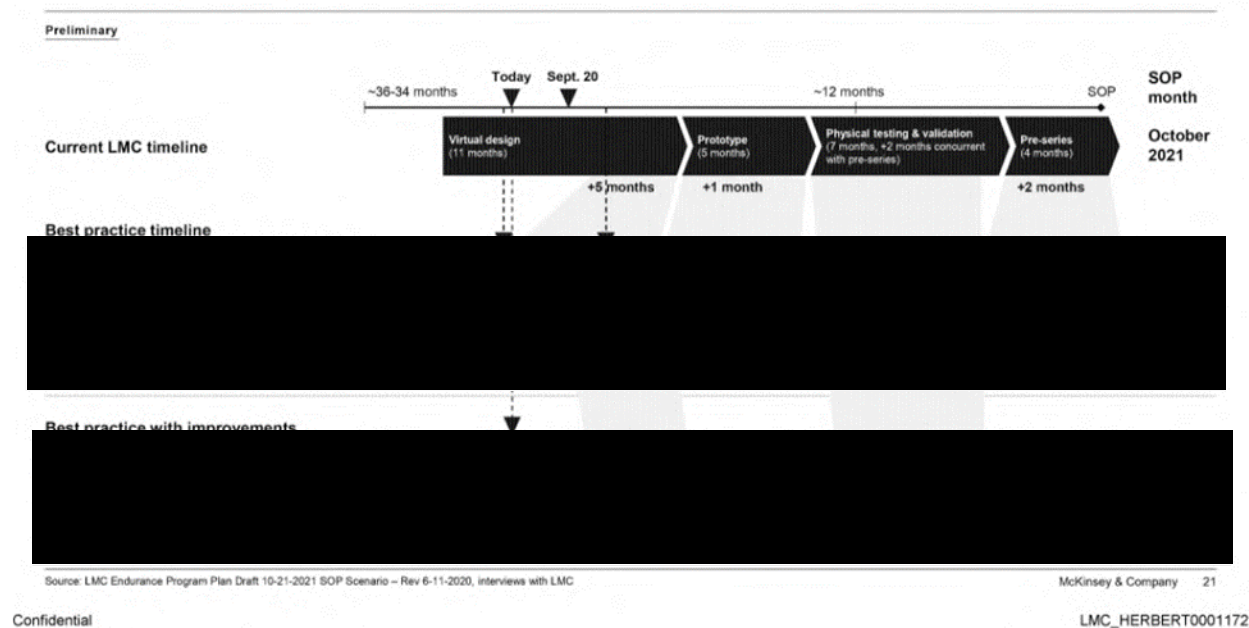
[Legacy LMC’s] future business depends in large part on its ability to execute on its plans to develop, manufacture, market and sell or lease the Endurance. Any delay in the . . . design, manufacture and launch of Endurance, including in the retooling of the Lordstown Complex, could materially damage [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.

**ANSWER:** To the extent this paragraph purports to characterize the contents of the Proxy, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any

allegations in this paragraph inconsistent with the contents of the Proxy. The Director Defendants deny the remaining allegations in this paragraph.

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:

**8. The Endurance could have an [REDACTED] SOP delay; compared to industry best practice timeline that could be reduced to [REDACTED]**

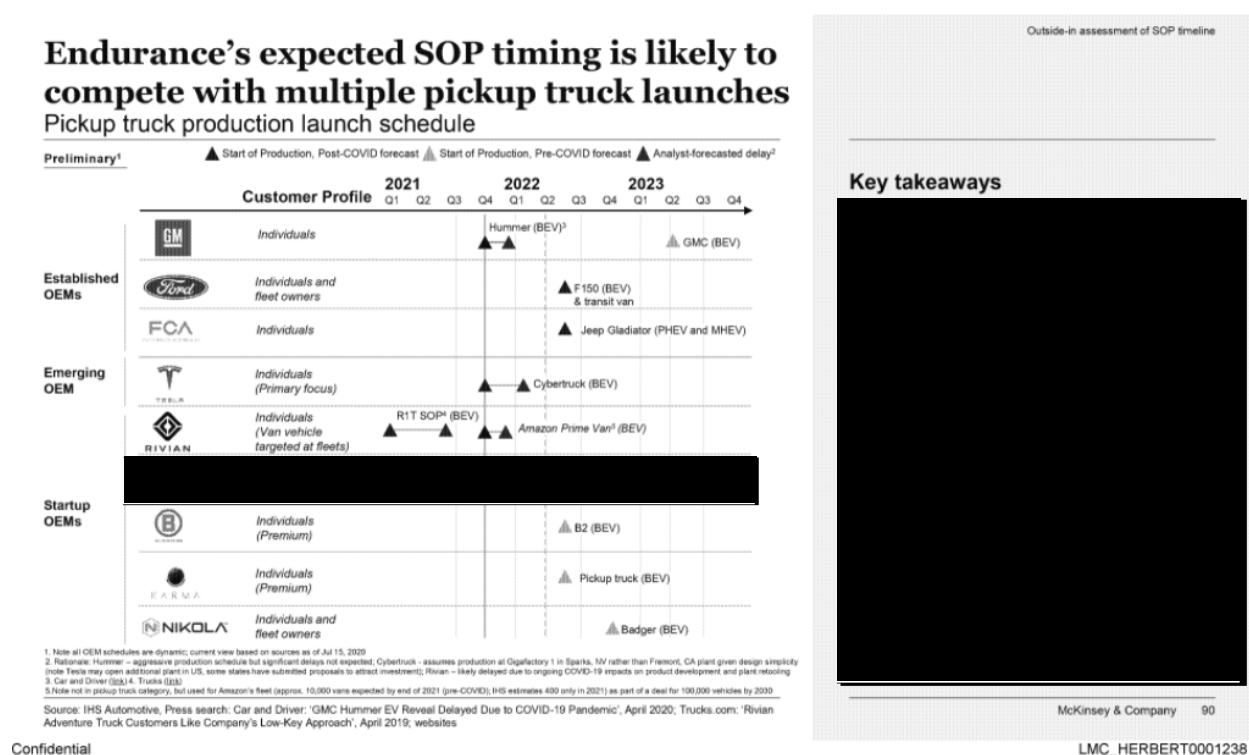


**ANSWER:** To the extent this paragraph purports to characterize the contents of the McKinsey report or the Proxy, the Director Defendants respectfully refer the Court to those documents for a full and accurate description of their contents. The



Director Defendants deny any allegations in this paragraph inconsistent with the contents of the McKinsey report or the Proxy. The Director Defendants deny the remaining allegations in this paragraph.

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:



**ANSWER:** To the extent this paragraph purports to characterize the contents of the McKinsey report or the Proxy, the Director Defendants respectfully refer the Court to those documents for a full and accurate description of their contents. The

Director Defendants deny any allegations in this paragraph inconsistent with the contents of the McKinsey report or the Proxy. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** To the extent this paragraph purports to characterize the contents of the Proxy, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the Proxy. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** To the extent this paragraph purports to characterize the contents of the Proxy, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the Proxy. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** To the extent this paragraph purports to characterize the contents of the McKinsey report or the Proxy, the Director Defendants respectfully refer the Court to those documents for a full and accurate description of their contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the McKinsey report or the Proxy. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** To the extent this paragraph purports to characterize the contents of the McKinsey report, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the report. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

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.

**ANSWER:** To the extent this paragraph purports to characterize the contents of the Proxy, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the Proxy. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** To the extent this paragraph purports to characterize the contents of certain Section 220 Documents, the Director Defendants respectfully refer the Court to those documents for a full and accurate description of their contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of those documents. The Director Defendants deny the remaining allegations in this paragraph.

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.”

**ANSWER:** The Director Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

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.

**ANSWER:** The Director Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph. To the extent a response is required, the Director Defendants deny the allegations in this paragraph.

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.

**ANSWER:** The Director Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph. To the extent a response is required, the Director Defendants deny the allegations in this paragraph.

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.”

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

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.

**ANSWER:** The Director Defendants admit that holders of 99.9% of DiamondPeak’s stock voted in favor of the de-SPAC Acquisition. To the extent the remaining allegations in this paragraph purport to characterize the contents of the Proxy, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the Proxy. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** The Director Defendants admit that the de-SPAC Acquisition closed on October 23, 2020, and that DiamondPeak stockholders approved the merger with the holders of 99.9% of the stock voting in favor. The Director Defendants deny the remaining allegations in this paragraph.

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%.

**ANSWER:** The Director Defendants admit the first sentence of this paragraph. The Director Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.

97. Following the de-SPAC Acquisition, Legacy LMC became a wholly owned subsidiary of DiamondPeak, which changed its name to Lordstown Motors Corp.

**ANSWER:** The Director Defendants admit the allegations in this paragraph.

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.

**ANSWER:** To the extent this paragraph purports to characterize the contents of the Proxy, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any

allegations in this paragraph inconsistent with the contents of the Proxy. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** To the extent this paragraph purports to characterize the contents of the Proxy or the Registration Rights and Lockup Agreement, dated August 1, 2020, the Director Defendants respectfully refer the Court to those documents for a full and accurate description of their contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of those documents. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** The Director Defendants admit that on the date of closing, DiamondPeak's stock closed at \$18.21 per share. The Director Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.



**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<sup>2</sup> Energy Advisors.

**ANSWER:** The Director Defendants admit that Lordstown's stock performed well following the de-SPAC Acquisition. The Director Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.

102. In February, Lordstown stock peaked at above \$30 per share. On February 23, 2021, Burns bragged about having sold over 100,000 vehicles.

**ANSWER:** The Director Defendants admit that Lordstown stock traded at or above \$30 per share for certain portions of February of 2021. The Director Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.

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").

**ANSWER:** The Director Defendants admit that Hindenburg Research published a report titled "The Lordstown Motors Mirage: Fake Orders, Undisclosed Production Hurdles, And A Prototype Inferno" on March 12, 2021.

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.

**ANSWER:** To the extent this paragraph purports to characterize the contents of the Hindenburg Report, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the report. The Director Defendants deny the remaining allegations in this paragraph.

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<sup>2</sup> Energy Advisors, which had no ability to complete that purported \$735 million purchase. The Hindenburg Report further alleged the address for E<sup>2</sup> Energy Advisors was the address for the apartment of its principal, Grosse.

**ANSWER:** To the extent this paragraph purports to characterize the contents of the Hindenburg Report, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the report. The Director Defendants deny the remaining allegations in this paragraph.

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<sup>2</sup> 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<sup>2</sup> Energy Advisors is the same as alleged in the Hindenburg report, which is associated with Grosse (perhaps even his apartment).

**ANSWER:** The Director Defendants lack knowledge or information sufficient to form a belief as to Plaintiffs' conclusions in this paragraph. To the extent a response is required, the Director Defendants deny those allegations. To the extent this paragraph purports to characterize the contents of the Hindenburg Report or certain Section 220 Documents, the Director Defendants respectfully refer the Court to those documents for a full and accurate description of their contents. The Director Defendants deny any allegations in this paragraph inconsistent with those documents. The Director Defendants deny the remaining allegations in this paragraph.

107. Plaintiffs also identified another order for [REDACTED] trucks that Grosse signed on August 14, 2020 (the same day as his orders for E<sup>2</sup> Energy Advisors), for [REDACTED] Plaintiffs have identified no connection between Grosse and [REDACTED]

**ANSWER:** The Director Defendants lack knowledge or information sufficient to form a belief as to Plaintiffs' conclusions in this paragraph. To the extent a response is required, the Director Defendants deny those allegations. To the extent this paragraph purports to characterize the contents of certain Section 220 Documents, the Director Defendants respectfully refer the Court to those documents for a full and accurate description of their contents. The Director Defendants deny

any allegations in this paragraph inconsistent with the contents of those documents.

The Director Defendants deny the remaining allegations in this paragraph.

108. The Section 220 Documents contain several other facially absurd orders.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

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.

**ANSWER:** The Director Defendants lack knowledge or information sufficient to form a belief as to the second, third and fourth sentences of this paragraph. To the extent a response is required, the Director Defendants deny those allegations. To the extent this paragraph purports to characterize the contents of certain Section 220 Documents, the Director Defendants respectfully refer the Court to those documents for a full and accurate description of their contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of those documents. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** The Director Defendants lack knowledge or information sufficient to form a belief as to the second sentence of this paragraph. To the extent a response is required, the Director Defendants deny the allegations in the second sentence of this paragraph. To the extent this paragraph purports to characterize the contents of certain Section 220 Documents, the Director Defendants respectfully refer the Court to those documents for a full and accurate description of their contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of those documents. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** The Director Defendants lack knowledge or information sufficient to form a belief as to the second, third and fourth sentences of this paragraph. To the extent a response is required, the Director Defendants deny those allegations. To the extent this paragraph purports to characterize the contents of certain Section 220 Documents, the Director Defendants respectfully refer the Court to those documents for a full and accurate description of their contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of

those documents. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** To the extent this paragraph purports to characterize the contents of the Hindenburg Report, Plaintiffs' Section 220 Documents or the McKinsey report, the Director Defendants respectfully refer the Court to those documents for a full and accurate description of their contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the Hindenburg Report, Plaintiffs' Section 220 Documents or the McKinsey report. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** To the extent this paragraph purports to characterize the contents of the Hindenburg Report, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of

the report. The Director Defendants deny the remaining allegations in this paragraph.

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]

**ANSWER:** To the extent this paragraph purports to characterize the contents of the McKinsey report or certain Section 220 Documents, the Director Defendants respectfully refer the Court to those documents for a full and accurate description of their contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the McKinsey report or the Section 220 Documents. The Director Defendants deny the remaining allegations in this paragraph.

- 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.

**ANSWER:** The Director Defendants deny the allegations in this paragraph and state by way of response that Lordstown issued a press release regarding the Hindenburg Report on March 15, 2021. The Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the press release.

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.

**ANSWER:** The Director Defendants admit the allegations in the first sentence of this paragraph. The Director Defendants lack knowledge or information sufficient to form a belief as to the second sentence of this paragraph.

117. On March 25, 2021, Lordstown's annual report disclosed this SEC inquiry began on February 17, 2021, before the Hindenburg Report was published.

**ANSWER:** To the extent this paragraph purports to characterize the contents of Lordstown's annual report, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the report. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** To the extent this paragraph purports to characterize the contents of Lordstown's Form 10-K/A, filed on June 8, 2021, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph



inconsistent with the contents of the Form 10-K/A. The Director Defendants deny the remaining allegations in this paragraph.

119. On June 14, 2021, Burns and Lordstown’s Chief Financial Officer, Julio Rodriguez, resigned from their positions.

**ANSWER:** The Director Defendants admit the allegations in this paragraph.

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.***”

**ANSWER:** The Director Defendants admit that Lordstown issued a press release on June 14, 2021, titled “Lordstown Motors Reports Results of Special Committee Investigation of Hindenburg Research Report” (the “Special Committee Report”). To the extent this paragraph purports to characterize the contents of the Special Committee Report, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the Special Committee Report. The Director Defendants deny the remaining allegations in this paragraph.

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.***”

**ANSWER:** To the extent this paragraph purports to characterize the contents of the Special Committee Report, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the Special Committee Report. The Director Defendants deny the remaining allegations in this paragraph.

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.”

**ANSWER:** To the extent this paragraph purports to characterize the contents of the Special Committee Report, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the Special Committee Report. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** To the extent this paragraph purports to characterize the contents of Lordstown’s Post-Effective Amendments No. 2 to Form S-1 Registration Statement, dated July 15, 2021, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the document. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** To the extent this paragraph purports to characterize the contents of Lordstown’s press release titled “Lordstown Motors and Hon Hai Technology Group Announce Agreement in Principle,” dated September 30, 2021, or Lordstown’s Form 10-Q, dated May 9, 2022, the Director Defendants respectfully refer the Court to those documents for a full and accurate description of their contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of those documents. The Director Defendants admit

that Lordstown and Foxconn closed on an Asset Purchase Agreement on May 11, 2022. The Director Defendants deny the remaining allegations in this paragraph.

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.<sup>9</sup>

**ANSWER:** The Director Defendants admit that Lordstown's stock closed at \$2.25 per share on July 21, 2022. The Director Defendants deny the remaining allegations in this paragraph.

## **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.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

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.

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<sup>9</sup> 28,000,000 shares  $\times$  (\$10.14 - \$2.25) = \$220,920,000.

**ANSWER:** The Director Defendants admit that, at the time of the Proxy, the Founder Shares represented 20% of DiamondPeak's total outstanding shares and that the Sponsor held 6,187,500 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 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.

**ANSWER:** The Director Defendants admit that, at the time of the Proxy, the Founder shares represented 20% of DiamondPeak's total outstanding shares. To the extent this paragraph purports to characterize the contents of the Proxy, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the Proxy.

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%*.

**ANSWER:** To the extent this paragraph purports to characterize the contents of the Proxy, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any

allegations in this paragraph inconsistent with the contents of the Proxy. The Director Defendants deny the remaining allegations in this paragraph.

130. If an Initial Business Combination did not occur, the Founder Shares had no redemption rights. Accordingly, those shares would be rendered worthless.

**ANSWER:** To the extent this paragraph purports to characterize the contents of the Proxy, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the Proxy. The Director Defendants deny the remaining allegations in this paragraph.

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.<sup>10</sup> Absent an Initial Business Combination, those Private Placement Warrants (purchased for \$6,690,000)<sup>11</sup> would expire worthless.

**ANSWER:** The Director Defendants admit that the Sponsor had purchased and held 4,460,000 Private Placement Warrants for an aggregate of approximately \$6,690,000, and that such warrants would expire worthless if an Initial Business Combination was not consummated by March 4, 2021. To the extent the remaining allegations in this paragraph purport to characterize the contents of the Proxy, the

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<sup>10</sup> 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.

<sup>11</sup> 4,460,000 Private Placement Warrants × \$1.50 per Private Placement Warrant = \$6,690,000.

Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the Proxy.

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:<sup>12</sup>

	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%

**ANSWER:** To the extent this paragraph purports to characterize the contents of the Proxy, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any

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<sup>12</sup> 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).

allegations in this paragraph inconsistent with the contents of the Proxy. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

134. The remaining members of the DiamondPeak Board (not including Hamamoto and Walsh), Hannaway, Hash, and Richardson, were similarly 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.

**ANSWER:** To the extent this paragraph purports to characterize the contents of the Proxy, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the Proxy. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** To the extent this paragraph purports to characterize the contents of Lordstown's filings with the SEC, the Director Defendants respectfully refer the Court to those document for a full and accurate description of their contents. The Director Defendants deny any allegations in this paragraph inconsistent with the



contents of those filings. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** The Director Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph. To the extent a response is required, the Director Defendants deny the allegations in this paragraph.

137. *First*, the public stockholders must decide whether the company selected to go public is one they want to remain invested in.

**ANSWER:** The Director Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph. To the extent a response is required, the Director Defendants deny the allegations in this paragraph.

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.<sup>13</sup>

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<sup>13</sup> 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

**ANSWER:** The Director Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph. To the extent a response is required, the Director Defendants deny the allegations in this paragraph.

**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.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

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.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

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.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

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the investor invested initially, as they would need the value of their \$8 in equity to increase by \$2 just to break even.

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.

**ANSWER:** The Director Defendants admit that Lordstown's stock closed at \$11.38 on March 24, 2021, and that Lordstown's stock had not previously closed below \$12.00 per share in the preceding months. The Director Defendants deny the remaining allegations in this paragraph.

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.<sup>14</sup>

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

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.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

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

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<sup>14</sup> 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.

have been told that McKinsey reported that production would not occur until roughly [REDACTED] under *ideal* circumstances and *supreme* execution.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

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.

**ANSWER:** To the extent this paragraph purports to characterize the contents of the Proxy, the Director Defendants respectfully refer the Court to that document for a full and accurate description of its contents. The Director Defendants deny any allegations in this paragraph inconsistent with the contents of the Proxy. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

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.

**ANSWER:** The Director Defendants admit that DiamondPeak disclosed that the non-binding pre-orders did not require customer deposits and may not have been converted into binding orders or sales. The Director Defendants deny the remaining allegations in this paragraph.

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.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

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.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

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.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

### **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.

**ANSWER:** This paragraph states legal conclusions to which no response is required. To the extent a response is required, the Director Defendants deny the allegations in this paragraph.

153. This action is properly maintainable as a class action.

**ANSWER:** This paragraph states legal conclusions to which no response is required.

154. A class action is superior to other available methods of fair and efficient adjudication of this controversy.

**ANSWER:** This paragraph states legal conclusions to which no response is required. To the extent a response is required, the Director Defendants deny the allegations in this paragraph.

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.

**ANSWER:** The Director Defendants admit that prior to the closing of the de-SPAC Acquisition, there were 28 million shares of Class A Common Stock outstanding. The remainder of this paragraph states legal conclusions to which no response is required.

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.

**ANSWER:** This paragraph states legal conclusions to which no response is required. To the extent a response is required, the Director Defendants deny the allegations in this paragraph.

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.

**ANSWER:** This paragraph states legal conclusions to which no response is required. To the extent a response is required, the Director Defendants deny the allegations in this paragraph.

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.

**ANSWER:** This paragraph states legal conclusions to which no response is required. To the extent a response is required, the Director Defendants deny the allegations in this paragraph.

159. Plaintiffs are committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature.

**ANSWER:** This paragraph states legal conclusions to which no response is required.

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.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

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.

**ANSWER:** This paragraph states legal conclusions to which no response is required.

## **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.

**ANSWER:** The Director Defendants repeat, reallege and incorporate by reference their responses to the preceding allegations as if fully set forth 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.

**ANSWER:** This paragraph states legal conclusions to which no response is required.

164. These duties required them to place the interests of DiamondPeak stockholders above their personal interests and the interests of the DiamondPeak Defendants.

**ANSWER:** This paragraph states legal conclusions to which no response is required.

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.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

166. The Director Defendants also breached their duty of candor by issuing the false and misleading Proxy.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

167. As a result, Plaintiffs and the Class were harmed by not exercising their redemption rights prior to the de-SPAC Acquisition.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

168. Plaintiffs and the Class do not have an adequate remedy at law.

**ANSWER:** This paragraph states legal conclusions to which no response is required.

**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.

**ANSWER:** The Director Defendants repeat, reallege and incorporate by reference their responses to the preceding allegations as if fully set forth 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.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

171. As such, the Controller Defendants owed Plaintiffs and the Class the utmost fiduciary duties of care, loyalty, good faith, candor, and disclosure.

**ANSWER:** This paragraph states legal conclusions to which no response is required.

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.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

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.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

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.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

175. As a result, Plaintiffs and the Class were harmed by not exercising their redemption rights prior to the de-SPAC Acquisition.

**ANSWER:** The Director Defendants deny the allegations in this paragraph.

176. Plaintiffs and the Class do not have an adequate remedy at law.

**ANSWER:** This paragraph states legal conclusions to which no response is required.

### **PRAYERS FOR RELIEF**

WHEREFORE, the Director Defendants respectfully request that the Court enter an order:

- A. Dismissing the Complaint with prejudice;
- B. Entering a judgment in favor of the Director Defendants and against Plaintiffs in this action;
- C. Awarding the Director Defendants their reasonable costs and expenses, including reasonable attorneys' fees, incurred in connection with this matter; and
- D. Granting such other and further relief as this Court deems just and proper.

## **AFFIRMATIVE AND OTHER DEFENSES**

By setting forth these affirmative defenses, the Director Defendants do not assume the burden of proving any fact, issue or element of a cause of action where such burden properly belongs to Plaintiffs. Nothing stated herein is intended or shall be construed as an admission that any particular issue or subject matter is relevant to Plaintiffs' allegations. The Director Defendants reserve the right to raise any other or additional defenses of which they become aware through discovery or other proceedings in this action.

### ***First Defense***

The Complaint fails to state a claim against the Director Defendants upon which relief can be granted.

### ***Second Defense***

Plaintiffs' claims, in whole or in part, fail based upon the application of the business judgment rule.

### ***Third Defense***

Plaintiffs' claims against the Director Defendants are barred in whole or in part by Section 8.1 of the Company's Amended and Restated Certificate of Incorporation of DiamondPeak Holdings Corporation, dated February 27, 2019, and by Delaware law, including 8 *Del. C.* § 102(b)(7).

***Fourth Defense***

Defendants' conduct did not cause any damages to Plaintiffs or the putative class.

***Fifth Defense***

Plaintiffs' claims, in whole or in part, fail under the doctrine of acquiescence, including because they voted in favor of the de-SPAC Acquisition and elected not to redeem their shares in the months thereafter for which their stock continued to trade at above the redemption value.

***Sixth Defense***

Plaintiffs' claims are barred or precluded, in whole or in part, by 8 *Del. C.* § 141(e) because the Director Defendants relied in good faith upon the records of DiamondPeak and upon information, opinions, reports or statements presented by DiamondPeak's officers or employees and by advisors that the Director Defendants reasonably believed were within such advisors' professional or expert competence and who had been selected with reasonable care by or on behalf of DiamondPeak.

***Seventh Defense***

To the extent any of Plaintiffs' claims are derivative, they are barred for failure to abide by the requirements of Delaware Court of Chancery Rule 23.1, including for failure to allege with particularity the efforts, if any, made by Plaintiffs to obtain

the action Plaintiffs desire from the directors or comparable authority and the reasons for Plaintiffs' failure to obtain the action or for not making the effort.

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Dated: February 3, 2023

/s/ Raymond J. DiCamillo

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*Attorneys for Defendants David  
Hamamoto, Mark Walsh, Andrew  
Richardson, Steven Hash, and Judith  
Hannaway*

**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.” <sup>1</sup>	January 31, 2023
(b) Defendants shall file their Answer to the Complaint.	February 3, 2023

<sup>1</sup> “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). <sup>2</sup>	January 4, 2024
(r) The Parties shall file any motions <i>in limine</i> .	January 16, 2024
(s) The Parties shall file responses to any motions <i>in limine</i> .	January 23, 2024

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<sup>2</sup> 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

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& GROSSMANN LLP**

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

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:**

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Alexander M. Krischik, Esq.  
Alena V. Smith, Esq.  
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& CORROON LLP  
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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  
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**BERNSTEIN LITOWITZ BERGER  
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*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**

*Of Counsel:*

Mark Lebovitch  
Jeroen van Kwawegen  
Christopher J. Orrico  
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Margaret Sanborn-Lowing  
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/s/ Daniel E. Meyer  
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*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**

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**IN RE LORDSTOWN MOTORS  
CORP. STOCKHOLDERS  
LITIGATIONCONSOLIDATED  
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”)<sup>1</sup> 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

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<sup>1</sup> 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]

[REDACTED]

[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.<sup>2</sup>

23. Defendant David Hamamoto (“Hamamoto”) served as Chairman and CEO of DiamondPeak from the time of DiamondPeak’s inception until the de-SPAC

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<sup>2</sup> “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.<sup>3</sup> 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.<sup>4</sup>

40. After completing its IPO (and receiving investors’ money and placing it in a trust account typically investing in government securities), SPAC Insiders

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<sup>3</sup> 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.

<sup>4</sup> 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”),<sup>5</sup> 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

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<sup>5</sup> Founder Shares were also referred to as Class B Common Stock.

in full.<sup>6</sup> Each unit would include one share of Class A Common Stock and one-third of a warrant.<sup>7</sup>

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

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<sup>6</sup> 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.

<sup>7</sup> 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”)<sup>8</sup> 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,

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<sup>8</sup> 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]

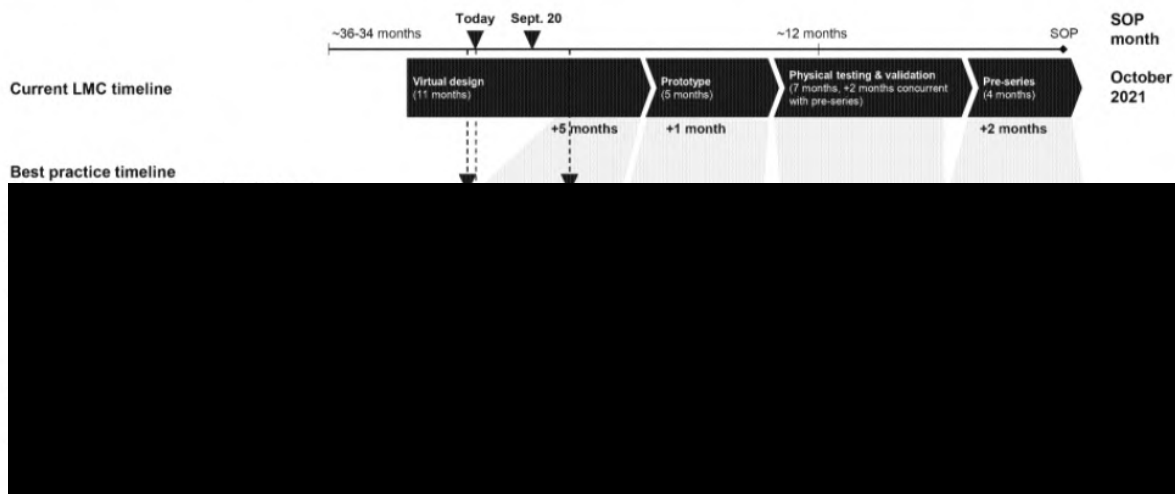
[REDACTED]

[REDACTED] McKinsey predicted that if the startup company somehow were able to improve [REDACTED]

[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



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

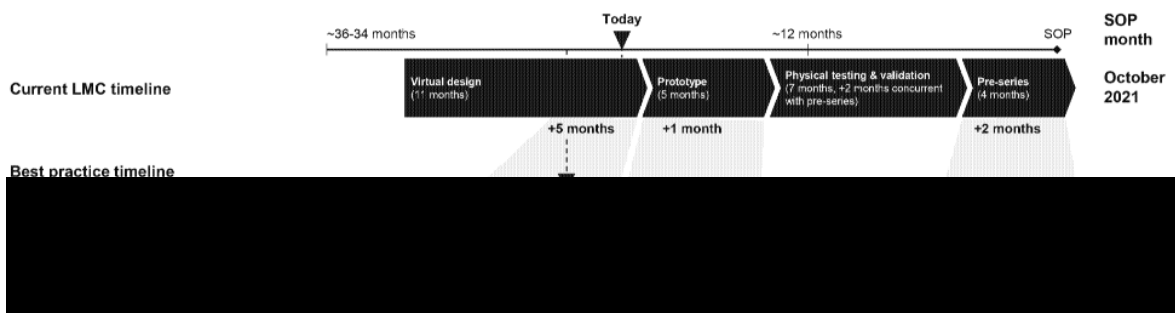
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## The LMC Endurance could have an [REDACTED] risk to its Oct 2021 SOP when compared to industry best practice timeline

Preliminary



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]

[REDACTED]

[REDACTED]

[REDACTED]

65. [REDACTED]

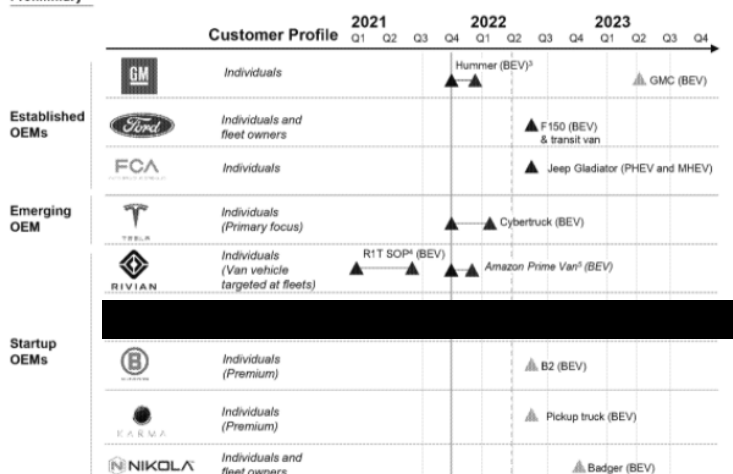
[REDACTED]

[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:

## Endurance's expected SOP timing is likely to compete with multiple pickup truck launches

### Pickup truck production launch schedule

Preliminary<sup>1</sup> ▲ Start of Production, Post-COVID forecast ▲ Start of Production, Pre-COVID forecast ▲ Analyst-forecasted delay<sup>2</sup>



1. Note all OEM schedules are dynamic; current view based on sources as of Jul 15, 2020.  
 2. Rationale: Hummer – aggressive production schedule but significant delays not expected; Cybertruck – assumes production at Gigafactory 1 in Sparks, NV rather than Fremont, CA plant given design simplicity (note Tesla may open additional plants in US, some states have submitted proposals to attract investment); Rivian – likely delayed due to ongoing COVID-19 impacts on product development and plant retrofit.  
 3. Car and Driver (2021), Trucks (2021).  
 4. Note not in pickup truck category, but used for Amazon's fleet (approx. 10,000 vans expected by end of 2021 (pre-COVID); IHS estimates 400 only in 2021) as part of a deal for 100,000 vehicles by 2030.  
 Source: IHS Automotive, Press search: Car and Driver: 'GMC Hummer EV Reveal Delayed Due to COVID-19 Pandemic', April 2020; Trucks.com: 'Rivian Adventure Truck Customers Like Company's Low-Key Approach', April 2019; websites

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### Key takeaways



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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
<b>Total Units Sold</b>	0	2,200	31,600	65,000	107,000
<b>Revenue (in millions)</b>	\$0	\$118	\$1,690	\$3,476	\$5,776

67. McKinsey had highlighted that Legacy LMC's numbers were [REDACTED]

McKinsey noted that to achieve the projected sales volume, Legacy LMC had to go from [REDACTED]

# LMC Endurance

Perspective on sales volumes

Information Source ■ IHS ■ Lordstown Motors

		Full size fleet pickup sales Selected nameplates <sup>1</sup> , 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					
	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	
<b>Endurance</b>	12,869 <sup>2</sup>	9-7 months <sup>5</sup>	Non-binding LOI for fleets and \$100 deposit for personal
<b>Cybertruck</b>	650,000 <sup>3</sup>	9 months <sup>6</sup>	\$100 pre-order refundable payment
<b>Prime Van</b>	100,000 <sup>4</sup>	Single Amazon order <sup>7</sup>	N/A
<b>R1T</b>	N/A	20 months <sup>8</sup>	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

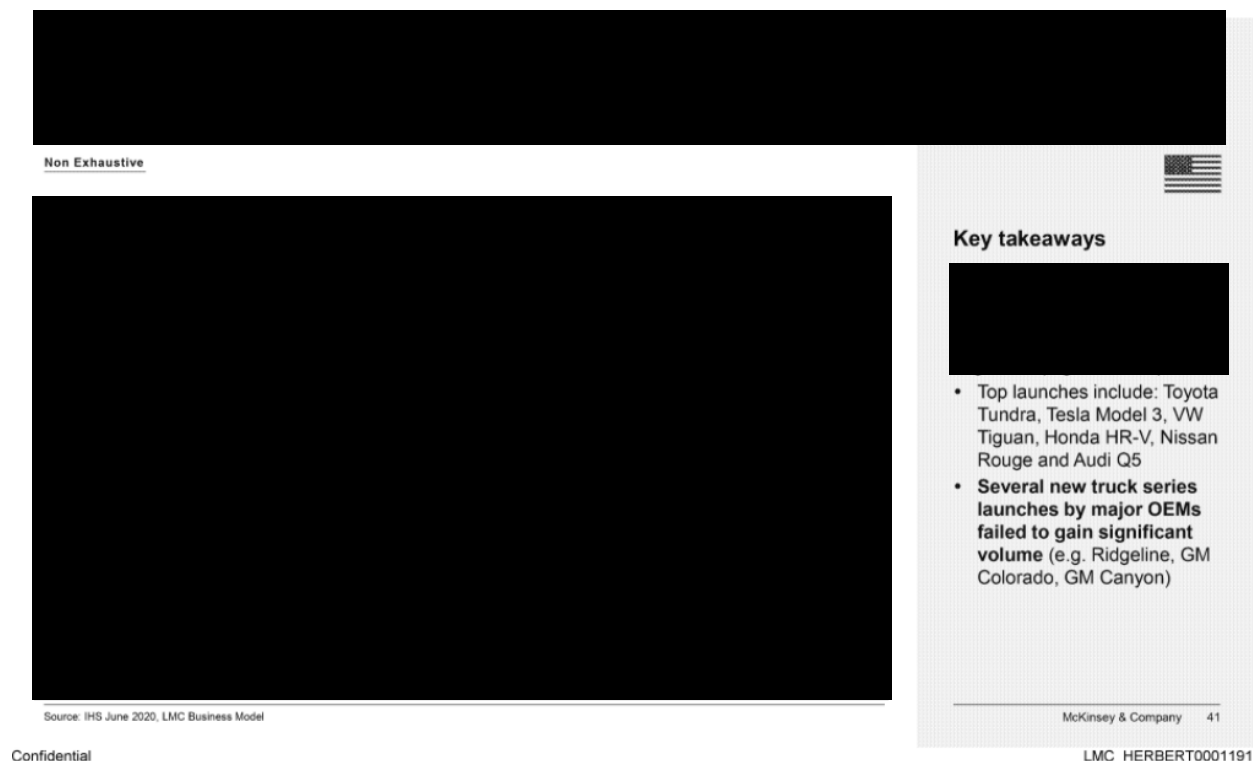
Source: IHS Automotive

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68.



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.

### LMC’s letter of intent & marketing approach provides a low level of commitment from potential customers in line with industry Perspective on sales volumes

LMC approach		Industry practices
Letter of Intent (LOI) elements	Terms of customer commitment <sup>1</sup>	<ul style="list-style-type: none"> <li>12,041 fleet vehicles committed in non-binding LOI</li> <li>828 personal vehicles committed with \$100/vehicle deposit via LMC website</li> </ul>
	Purchase price	Intended terms, non-binding basis: \$52,500 per vehicle, \$7,500 federal tax credit per vehicle, 2-year installment option available
	Timelines	Not specified in LOI; in dialogue with potential buyers: <ul style="list-style-type: none"> <li>Earliest test vehicles to be available Q1-Q2 2021, with delay to 2022 possible</li> <li>SOP in Oct 2021 as planned</li> </ul>
Sales & marketing	Expected conversion	Team aiming for 100% conversion; pre-order marketing focused on fleet leadership team members and key industry influencers
	Customer engagement	<ul style="list-style-type: none"> <li>Leading with personal networks across industries</li> <li>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</li> </ul>
	Resourcing	<ul style="list-style-type: none"> <li>Currently 2 individuals, with Climb2Glory augmentation (+3)</li> <li>Ramp-up to 14 salespeople by July 2021</li> </ul>

<sup>1</sup>. LMC effort kickstarted Jan 2019

Source: Press search, OEM websites, fleet manager and OEM interviews

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<sup>2</sup> Energy Advisors. According to a simple Lexis search, E<sup>2</sup> 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."<sup>9</sup>

76. Besides appearing facially impossible, each of these orders have another thing in common – the same individual, Tim D. Grosse ("Grosse"), signed

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<sup>9</sup> 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:

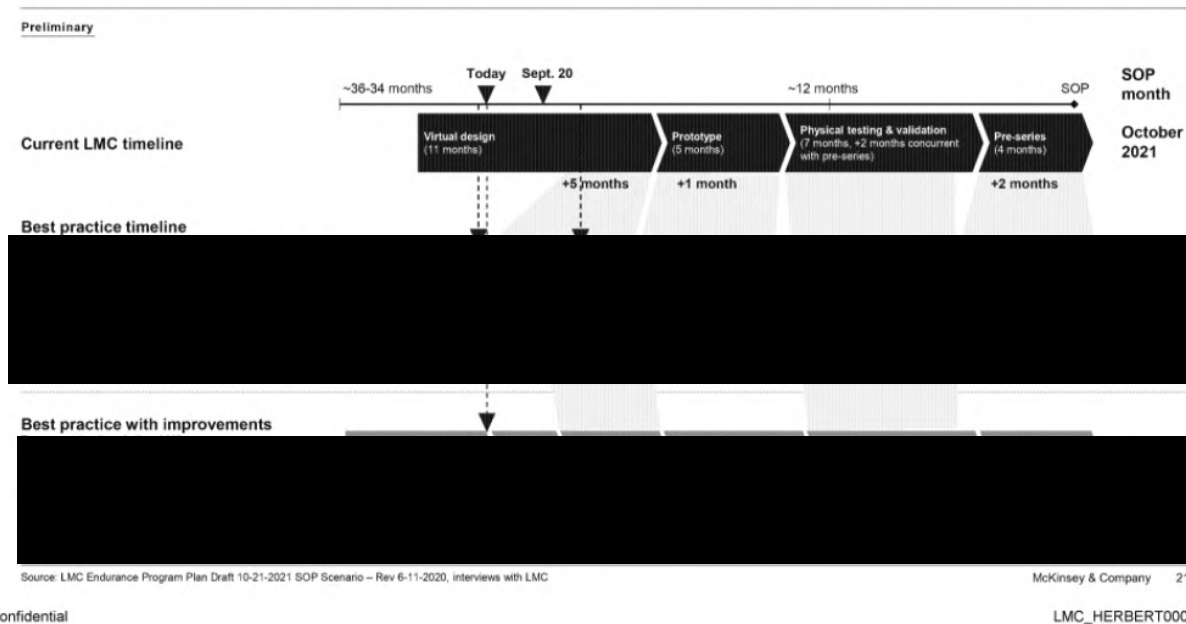
[Legacy LMC’s] future business depends in large part on its ability to execute on its plans to develop, manufacture, market and sell or lease the Endurance. Any delay in the . . . design, manufacture and launch of Endurance, including in the retooling of the Lordstown Complex, could materially damage [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,

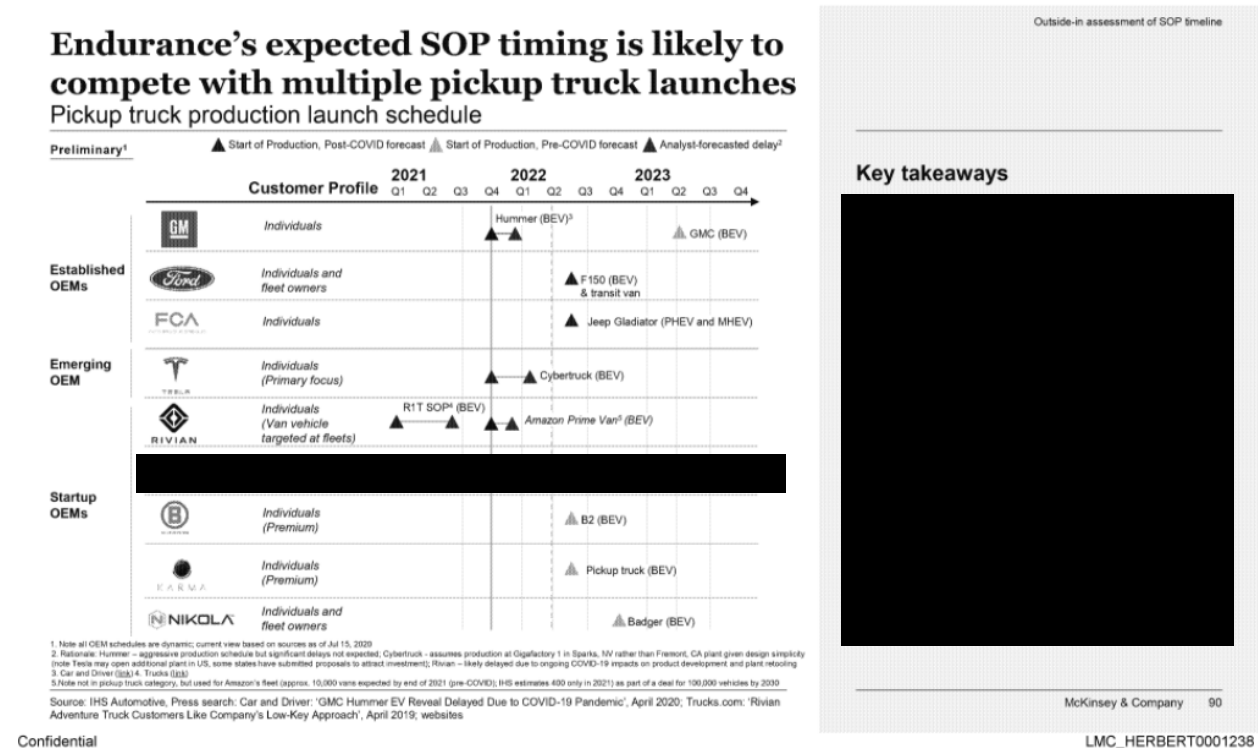
[REDACTED], the DiamondPeak Board opted to focus on general market risk of delays. Even more, as discussed above, the DiamondPeak Board had *actual knowledge* that delay was likely and had an [REDACTED] risk to its production timeline:

**8. The Endurance could have an [REDACTED] SOP delay; compared to industry best practice timeline that could be reduced to [REDACTED]**



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<sup>2</sup> 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<sup>2</sup> Energy Advisors, which had no ability to complete that purported \$735 million purchase. The Hindenburg Report further alleged the address for E<sup>2</sup> 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<sup>2</sup> 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<sup>2</sup> 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<sup>2</sup> 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] [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]

[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.<sup>10</sup>

## **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

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<sup>10</sup> 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.<sup>11</sup> Absent an Initial Business Combination, those Private Placement Warrants (purchased for \$6,690,000)<sup>12</sup> would expire worthless.

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<sup>11</sup> 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.

<sup>12</sup> 4,460,000 Private Placement Warrants  $\times$  \$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:<sup>13</sup>

	<b>Class A Common Stock</b>		<b>Founder Shares</b>	
<b>Stock Price</b>	<b>Value of Class</b>	<b>Return</b>	<b>Value of Class</b>	<b>Return</b>
\$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

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<sup>13</sup> 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.<sup>14</sup>

**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.

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<sup>14</sup> 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.<sup>15</sup>

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<sup>15</sup> 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**

OF COUNSEL:

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**BERNSTEIN LITOWITZ BERGER  
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*Co-Lead Counsel for Plaintiffs*

**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 & ServeXpress upon the following counsel:

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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

1 APPEARANCES:

2 GLENN MCGILLIVRAY, ESQ.  
3 GREGORY VARALLO, ESQ.  
4 Bernstein, Litowitz, Berger & Grossmann LLP  
5 -and-

6 JEROEN van KAWEGEN, ESQ.  
7 THOMAS JAMES, ESQ.  
8 MARGARET SANBORN-LOWING, ESQ.  
9 of the New York Bar  
10 Bernstein, Litowitz, Berger & Grossmann LLP  
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12 GUSTAVO F. BRUCKNER, ESQ.  
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18 RAYMOND J. DICAMILLO, ESQ.  
19 ALEXANDER M. KRISCHIK, ESQ.  
20 Richards, Layton & Finger, P.A.

21 -and-  
22 LAURA KABLER OSWELL, ESQ.  
23 of the California Bar  
24 Sullivan & Cromwell LLP

-and-  
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Sullivan & Cromwell LLP  
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Andrew Richardson, Steven Hash, Judith  
Hannaway, and DiamondPeak Sponsor LLC

NICHOLAS D. MOZAL, ESQ.  
JUSTIN T. HYMES, ESQ.  
Potter, Anderson & Corroon LLP  
-and-

ERICA BARROW, ESQ.  
of the New York Bar  
Baker & Hostetler LLP  
-and-

DOUGLAS L. SHIVELY, ESQ.  
of the Ohio & Illinois Bars  
Baker & Hostetler LLP  
for Defendant David Hamamoto and Non-Party  
Lordstown Motors Corp.



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

3 VARIOUS COUNSEL: Good afternoon,  
4 Your Honor.

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

7 THE COURT REPORTER: Good afternoon,  
8 Your Honor.

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

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

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

24 THE COURT: Thank you very much. I

1 appreciate it.

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

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

10 THE COURT: Thank you very much.

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

17 THE COURT: Great. Thank you very  
18 much.

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

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

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

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

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

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

16 THE COURT: Okay. Thank you very  
17 much.

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

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

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

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

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

24 ATTORNEY BARROW: Correct. We have

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

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

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

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

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

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

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

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

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

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

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

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

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

24 I understand that the special

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 Ms. Barrow, what are your thoughts on  
15 that?

16 ATTORNEY BARROW: Thank you,  
17 Your Honor.

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

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

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

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

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

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

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

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

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

17                  How soon do you think that can occur?

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

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



1 that would be appreciated.

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

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

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

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

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

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

6                   THE COURT: Ms. Sanborn-Lowing?

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

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

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

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

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

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

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

13                  THE COURT: Thank you very much.

14                  Ms. Barrow, anything from you?

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

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

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

20

21   - - -

22

23

24

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**



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**From:** Margaret Sanborn-Lowing  
**Sent:** Tuesday, July 18, 2023 8:27 PM  
**To:** Barrow, Erica; Thomas James  
**Cc:** Shively, Douglas; Pittenger, Michael A.; Hymes, Justin T.; Daniel Meyer; Choa, Jonathan A.; Mozal, Nicholas D.; Greene, Douglas W.; Gustavo F. Bruckner (gfbruckner@pomlaw.com); Samuel J. Adams (sjadams@pomlaw.com); skaskela@kaskelalaw.com; Jeroen van Kwawegen; Greg Varallo; Glenn McGillivray; Ronald Wittman; Ankita Sangwan  
**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW  
  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Erica,

Thank you for confirming that the hit report reflects the terms you agree to run against the full SEC production and that Lordstown is not unilaterally narrowing the universe of documents produced to the SEC against which you are applying the terms.

I will not be responding to your inaccurate representations regarding our prior discussions; the record and the fact that Lordstown was ordered to produce documents previously produced to the SEC *over a month ago* but *has yet to produce a single document to Plaintiffs* speak for themselves. The Court expressly ordered 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.” June 9, 2023 Motion to Compel Hearing Transcript at 11-12. You have not pointed to any material differences between the SEC Subpoenas and Plaintiffs’ subpoenas, only one process-related request (4/8/21 Subpoena Request No. 10, requesting all communications sent to or from certain custodians during particular time periods).

Thus, as the Court ordered, “documents that were produced to the SEC and DOJ that hit upon the parties’ agreed-upon search criteria [] should be produced to the plaintiffs.” June 9, 2023 Motion to Compel Hearing Transcript at 12. Any further delay in producing documents hitting upon the agreed-upon search terms constitutes willful violation of the Court’s order and an effort to improperly impose the automatic stay to this Action, which the Bankruptcy Court has already stated does not apply absent court order.

With respect to Lordstown’s proposal to re-review documents that were previously produced to the SEC hitting on search terms Lordstown agrees are also relevant to Plaintiffs’ subpoena, we again direct you to the fact that you have not pointed to any substantive requests from the SEC Subpoenas that are not relevant to Plaintiffs’ subpoena in this Action – only a process-related request. That means that any documents collected, reviewed, *and produced to the SEC* are presumptively relevant to the underlying events and therefore *relevant to this Action* and

should be produced to Plaintiffs. Lordstown's arbitrary reliance on the proposition that "search terms are not perfect" is not a logical reason to add significant expense and delay to the process of producing these documents to Plaintiffs, particularly given that any false positives presumably would have been weeded out in the process of reviewing and producing documents to the SEC. *See also* June 9, 2023 Motion to Compel Hearing Transcript at 21 ("see if you can narrow [the SEC production] using search terms").

To comply with the Court order, we expect prompt production of the documents hitting on search terms to which Lordstown has already agreed **by 5 p.m. ET tomorrow, Wednesday, July 19**, or we will need to consider our options.

With respect to your accusations that we have not engaged constructively concerning custodians, we direct you to our various requests for a hit report with terms broken out by custodian. As we have previously mentioned numerous times, a complete, Delaware-compliant hit report showing the hits for each term broken out by custodians provides Plaintiffs with transparency into each custodian's role in the underlying events at issue in this Action. You have that information readily available; we do not. *See Harris v. Harris FRC Corp.*, C.A. No. 2019-0736-JTL, at 63-65 (Del. Ch. June 2, 2020) (TRANSCRIPT) ("The party seeking the documents can't pick up the phone and call these people or call the defendants to ask. They have to shoot broadly because they don't know who you guys use. You guys know.").

Furthermore, Lordstown's request to meet and confer for the purpose of narrowing the search parameters applied to the SEC production by custodians is in direct contradiction with your prior representations to the Court. *See* June 9, 2023 Motion to Compel Hearing Transcript at ("ATTORNEY BARROW: .... **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."). Your request to narrow the SEC production by custodian is inconsistent with your approach proposed to the Court and is a thinly veiled attempt to strategically add time, resources, and expenses to what should otherwise be a straightforward process.

Please produce the documents hitting on the search terms on which we already agree and substantively respond to our proposal from last Friday morning regarding the remaining search terms **by 5 p.m. ET tomorrow, Wednesday July 19**.

Best,  
Meg

Meg Sanborn-Lowing  
**BLB&G**  
Bernstein Litowitz Berger & Grossmann LLP  
1251 Avenue of the Americas  
New York, NY 10020

Direct: (212) 554-1938  
Cell: (203) 644-5392  
[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)

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**From:** Barrow, Erica <ebarrow@bakerlaw.com>

**Sent:** Monday, July 17, 2023 8:26 PM

**To:** Margaret Sanborn-Lowing <Margaret.Lowing@blbglaw.com>; Thomas James <Thomas.James@blbglaw.com>

**Cc:** Shively, Douglas <dshively@bakerlaw.com>; Pittenger, Michael A. <mpittenger@potteranderson.com>; Hymes, Justin T. <jhymes@potteranderson.com>; Daniel Meyer <Daniel.Meyer@blbglaw.com>; Choa, Jonathan A. <jchoa@potteranderson.com>; Mozal, Nicholas D. <nmozal@potteranderson.com>; Greene, Douglas W. <dgreene@bakerlaw.com>; Gustavo F. Bruckner <gbruckner@pomlaw.com> <gbruckner@pomlaw.com>; Samuel J. Adams <sjadams@pomlaw.com> <sjadams@pomlaw.com>; skaskela@kaskelalaw.com; Jeroen van Kwawegen <jeroen@blbglaw.com>; Greg Varallo <Greg.Varallo@blbglaw.com>; Glenn McGillivray <Glenn.McGillivray@blbglaw.com>; Ronald Wittman <Ronald.Wittman@blbglaw.com>; Ankita Sangwan <asangwan@pomlaw.com>

**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

[External]

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Meg,

To confirm, we used the full SEC production to run search terms against, and that is what is reflected in the most recent hit report. We ran the relevant search terms and corresponding date ranges from the search parameters that we understand to have been used to create the SEC production. These included the McKinsey and Climb2Glory terms that you specifically requested that we include. We excluded, i.e., did not use, search terms from the SEC production parameters that are not relevant to plaintiffs' subpoena.

We have provided you with both the full set of search terms utilized in generating the SEC production and our narrowed list. The hit report shows which search terms were used to generate the hit report. In addition, the ESI protocol for discussion that we previously sent shows both the search terms and corresponding date ranges.

As you know, on Saturday July 1, 2023, we also proposed excluding certain non-relevant custodians, and we await your constructive engagement on that issue, but no such exclusions are reflected in the hit report that we provided.

We have been painstakingly transparent about the discovery process. The repeated accusations to the contrary are baseless and not productive. As we have explained, we had to collect and process 54 separate volumes of productions, totaling 195,425 documents and 981,272 pages of discovery. We provided information on a rolling basis as we worked through that collection/processing, provided multiple hit reports, and then we provided a consolidated report when we were able to do so.

We have consistently represented that we would engage in a standard discovery process that is industry practice by reviewing documents that hit upon the agreed upon search terms. Your comment regarding re-reviewing documents misrepresents what was discussed at the hearing and, moreover, is contrary to what is clearly reasonable and necessary under the circumstances. At the hearing, Vice Chancellor Will ruled that Lordstown was required to produce relevant documents from the SEC production, but not required to produce non-relevant documents simply because they were previously produced to the SEC. Complying with this ruling requires us to separate out the relevant from the non-relevant documents in the SEC production, and we are attempting to work with you to create a protocol for doing so. As I'm sure you understand from your experience with ESI discovery, the fact that a document hits on search terms does not mean the document is responsive. Search terms are used to narrow the review universe, but they are not perfect, and the purpose of document reviews is to separate false positives from truly responsive documents. It would be highly unusual to simply run search terms and produce the resulting document set without reviewing them for responsiveness. As to the statement you quote, we discussed the common sense proposition that we did not intend to review

documents from the SEC production, and then undertake a fresh collection, consisting of the same documents, and review them again. *See e.g.* my June 23, 2023 email (“In light of this, we are not re-collecting the material from the original custodians again but producing from the SEC production.”)

For the reasons already discussed, it is not possible to simply produce the documents in the manner you suggest. We also note that your demand for a same-day production (which is not possible in any event) and/or meet and confer upon threat of a motion to compel is not reasonable or realistic, and does not demonstrate professional courtesy to counsel.

We have provided examples of non-relevant SEC subpoena requests in prior correspondence. More to the point, we have provided you, multiple times, with the search terms that we believe are relevant and the search terms that we believe are not relevant. We have invited you to propose additional terms. You previously proposed two additional terms, and we agreed to include both of them.

We understand from your email on Friday that you are requesting that we include all of the search terms that were utilized in the SEC production (which would yield 100% of the production) with the exception of the string searches on policies and notice. We can consider whether we can agree to adding any of the additional terms and respond this week. We also once again ask for you to engage in our attempt to meet and confer with you about the exclusion of custodians. We provided you examples of custodians that should be excluded over two weeks ago. We await your response in order to have a productive discussion.

Best,  
Erica

Erica Barrow  
**BakerHostetler**  
T +1.212.589.4273

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**From:** Margaret Sanborn-Lowing <[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)>  
**Sent:** Friday, July 14, 2023 10:00 AM  
**To:** Barrow, Erica <[ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com)>; Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>  
**Cc:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>; Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; Choa, Jonathan A. <[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)>; Mozal, Nicholas D. <[nmozal@potteranderson.com](mailto:nmozal@potteranderson.com)>; Greene, Douglas W. <[dgreene@bakerlaw.com](mailto:dgreene@bakerlaw.com)>; Gustavo F. Bruckner <[gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)> <[gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)>; Samuel J. Adams <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)> <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)>; <[skaskela@kaskelalaw.com](mailto:skaskela@kaskelalaw.com)>; Jeroen van Kwawegen <[jeroen@blbglaw.com](mailto:jeroen@blbglaw.com)>; Greg Varallo <[Greg.Varallo@blbglaw.com](mailto:Greg.Varallo@blbglaw.com)>; Glenn McGillivray <[Glenn.McGillivray@blbglaw.com](mailto:Glenn.McGillivray@blbglaw.com)>; Ronald Wittman <[Ronald.Wittman@blbglaw.com](mailto:Ronald.Wittman@blbglaw.com)>; Ankita Sangwan <[asangwan@pomlaw.com](mailto:asangwan@pomlaw.com)>  
**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

Erica,

Thank you for your email and the hit report. Further, thank you for providing the total number of documents in the SEC production. Please confirm that the process you described for purposes of generating this hit report does not in any way narrow the universe of documents (by, for example, custodian or time period) in a more limited way than the SEC search parameters you previously provided to us. That is the kind of information that a hit report generally needs to provide in order to give us some transparency into this process, which is what we’ve been seeking.

That said, we remain totally perplexed by your iterative, hide-the-ball approach to this process. We don't understand why you are now indicating for the first time that you intend to undertake additional review of the documents hitting on terms that you *agree are within the scope of Plaintiffs' subpoena* and that you have already been collected, reviewed, and produced to the SEC. Indeed, you represented to the Court that you did not intend to "review[] the same exact documents twice, because that would only increase [y]our burden." June 9, 2023 Motion to Compel Hearing Transcript at 18. It seems far more efficient from our perspective for you to simply produce those documents than undertake the self-imposed burden of re-reviewing patently relevant documents. Further, you have not pointed to any substantive requests from the SEC subpoenas that do not fall within the scope of Plaintiffs' subpoena, only requests for all communications for certain custodians. Because the search terms are targeted to hit on documents that "[you] do not dispute are responsive," we expect them to be produced promptly, and by no later than Friday July 14 at 5 p.m. ET.

We have identified in blue highlighting in the attached the terms that we think fall outside the scope of Plaintiffs' subpoena. Please produce documents from the SEC production hitting on the other search terms promptly and by no later than Friday July 14 at 5 p.m. ET, or provide your availability to meet and confer today, during which you can explain your basis for disagreeing that those terms do not fall within the scope of Plaintiffs' subpoena. If we remain at an impasse, we will need to consider our options, including promptly seeking further relief from the Court, as Vice Chancellor Will invited. *See* June 9, 2023 Motion to Compel Hearing Transcript at 15 ("[I]f 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.").

Best,  
Meg

Meg Sanborn-Lowing  
**BLB&G**  
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New York, NY 10020  
Direct: (212) 554-1938  
Cell: (203) 644-5392  
[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)

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**From:** Barrow, Erica <[ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com)>  
**Sent:** Thursday, July 13, 2023 2:48 PM  
**To:** Margaret Sanborn-Lowing <[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)>; Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>  
**Cc:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>; Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; Choa, Jonathan A. <[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)>; Mozal, Nicholas D. <[nmozal@potteranderson.com](mailto:nmozal@potteranderson.com)>; Greene, Douglas W. <[dgreene@bakerlaw.com](mailto:dgreene@bakerlaw.com)>; Gustavo F. Bruckner <[gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)> <[gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)>; Samuel J. Adams <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)> <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)>; <[skaskela@kaskelalaw.com](mailto:skaskela@kaskelalaw.com)>; Jeroen van Kwawegen <[jeroen@blbglaw.com](mailto:jeroen@blbglaw.com)>; Greg Varallo <[Greg.Varallo@blbglaw.com](mailto:Greg.Varallo@blbglaw.com)>; Glenn McGillivray <[Glenn.McGillivray@blbglaw.com](mailto:Glenn.McGillivray@blbglaw.com)>; Ronald Wittman <[Ronald.Wittman@blbglaw.com](mailto:Ronald.Wittman@blbglaw.com)>; Ankita Sangwan

<[asangwan@pomlaw.com](mailto:asangwan@pomlaw.com)>

**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

[External]

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Meg,

We have worked with our litigation support team to create the attached consolidated hit report, which we think will be easier to interpret. This report reflects the hits for our proposed search terms across the entire SEC production. There was a total of 195,425 documents in the SEC production (across 54 production volumes). The proposed search terms yield 61,101 hits (91,404 including families). As indicated in the hit report, we used the search terms we originally proposed, plus the terms you requested regarding McKinsey and Climb2glory. If there are additional terms that you would like us to consider, please let us know.

For additional context, we were unable to generate this consolidated hit report until we had gathered and processed all 54 volumes of the SEC production. The fact that the proposed search terms relate to different date ranges, as reflected in the ESI protocol for discussion, presented additional logistical challenges. In order to create the consolidated hit report, we ran individual searches across the entire SEC production for the various proposed terms and corresponding time frames, created a combined document set with all of the hits from the individual searches, and then re-ran the proposed search terms over the combined document set to generate the consolidated hit report.

Consistent with Vice Chancellor Will's directive, we have endeavored to limit the search terms to target only material within the SEC production that is responsive to Plaintiffs' subpoena. As indicated above, however, we have added the search terms you requested, and we are willing to consider additional requests.

Regarding custodians, we continue to believe that creating a custodian-by-custodian hit report would not be informative and would likely be misleading. Because we are searching a production set that we believe to have been de-duped, as opposed to raw collection data, a custodian-by-custodian report would not accurately reflect the volume of hits for each custodian, most likely because duplicate versions of documents originally within multiple custodians' files would not appear in the production set. However, that is an analytically and technologically separate issue from whether certain custodians' documents can and should be excluded from the ultimate review set on the ground that, given their roles (and reasons for inclusion in the original SEC production to begin with), they are unlikely to have possessed information responsive to Plaintiffs' subpoena. As a starting point, we previously identified examples of custodians who we believe it would be reasonable to exclude. If you disagree with the exclusion of any of those custodians, please explain why you believe they should be included.

Finally, it is incorrect to suggest that we could immediately produce any materials from the SEC production that we do not dispute are responsive. Any such materials are comingled within the SEC production with a substantial volume of presumably non-responsive material. The purpose of working out a search protocol is so that we can undertake the review necessary to identify any responsive materials within the SEC production for production in response to Plaintiffs' subpoena.

Best,

Erica

Erica Barrow

**BakerHostetler**

T +1.212.589.4273

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**From:** Margaret Sanborn-Lowing [Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)

**Sent:** Thursday, July 06, 2023 1:50 PM

**To:** Barrow, Erica [ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com); Thomas James [Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)



**Cc:** Shively, Douglas [dshively@bakerlaw.com](mailto:dshively@bakerlaw.com); Pittenger, Michael A. [mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com); Hymes, Justin T. [jhymes@potteranderson.com](mailto:jhymes@potteranderson.com); Daniel Meyer [Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com); Choa, Jonathan A. [jchoa@potteranderson.com](mailto:jchoa@potteranderson.com); Mozal, Nicholas D. [nmozal@potteranderson.com](mailto:nmozal@potteranderson.com); Greene, Douglas W. [dgreene@bakerlaw.com](mailto:dgreene@bakerlaw.com); Gustavo F. Bruckner ([gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)) [gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com); Samuel J. Adams ([sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)) [sjadams@pomlaw.com](mailto:sjadams@pomlaw.com); [skaskela@kaskelaw.com](mailto:skaskela@kaskelaw.com); Jeroen van Kwawegen [jeroen@blbglaw.com](mailto:jeroen@blbglaw.com); Greg Varallo [Greg.Varallo@blbglaw.com](mailto:Greg.Varallo@blbglaw.com); Glenn McGillivray [Glenn.McGillivray@blbglaw.com](mailto:Glenn.McGillivray@blbglaw.com); Ronald Wittman [Ronald.Wittman@blbglaw.com](mailto:Ronald.Wittman@blbglaw.com); Ankita Sangwan [asangwan@pomlaw.com](mailto:asangwan@pomlaw.com)  
**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

Erica,

Thank you for your email. Plaintiffs intend to oppose Lordstown's adversary proceeding to extend an automatic stay to this Action.

Also, thank you for providing the search parameters that Lordstown used to create the SEC productions. With respect to the hit report you provided, please produce the Discovery Materials from the SEC productions that Lordstown agrees are responsive to Plaintiffs' Subpoena by 5pm ET on Friday, July 7. There is no burden in doing so given that the Discovery Materials have already been collected, reviewed, and previously produced.

In order to understand the deficient hit report you provided, please explain what the "Documents in searchable set" number represents for each of the seven "Search Terms Reports" contained in the hit report. That is to say, does that number represent the full universe of documents collected and reviewed for purposes of Lordstown's production to the SEC, or are you narrowing the "searchable set" for purposes of responding to Plaintiffs' Subpoena? If the latter, please provide the parameters you are using to narrow the universe.

In addition, in order to understand the piecemeal information Lordstown has been providing intermittently, please provide to Plaintiffs a complete hit report by 5pm ET on Friday, July 7 for each search term reflected in the SEC search parameters run over the complete universe of Discovery Materials produced to the SEC. Please also provide the total number of documents (not pages) produced to the SEC, along with the specific email addresses and other sources of Discovery Materials that were collected and reviewed for each of the 36 custodians reflected in the search parameters. We understand that Lordstown has refused to provide hit reports broken down by custodian, taking the position that the hit reports are being run over existing document productions that do not yield custodian by custodian breakdowns and have been de-duped across custodians. Given this reasoning, it would be more difficult for Lordstown to exclude certain custodians from the SEC productions than to produce them to Plaintiffs, and there is no way for Plaintiffs to determine the universe of documents being excluded without hit reports broken down by custodian. Accordingly, Lordstown should produce documents from all thirty-six custodians reflected in the SEC search parameters.

With respect to the terms that Lordstown used to create the SEC productions and excluded from the hit report provided, please explain the basis for Lordstown's exclusion of these terms. For example, Lordstown did not include the terms listed under the June 26, 2020 – August 3, 2020

heading, such as “McKinsey” or “@mckinsey.com”, but Plaintiffs’ Subpoena specifically requests “All Discovery Materials and Communications exchanged between You, on the one hand, and Defendants, Defendants’ Advisors, DiamondPeak, [and] **DiamondPeak’s Advisors...**” (emphasis added). The Amended Complaint expressly alleges that McKinsey was one of DiamondPeak’s Advisors, was retained to conduct diligence into Lordstown’s anticipated timing to market and order backlog, and raised serious concerns about both issues. Thus, Discovery Materials concerning McKinsey that Lordstown produced to the SEC are clearly relevant and should also be produced to Plaintiffs. Similarly, you excluded terms concerning “Climb2glory” when Plaintiffs’ Subpoena specifically requests “All Discovery Materials concerning Climb2Glory...” The Amended Complaint expressly alleges that Climb2Glory was paid \$50 per pre-order to generate orders for the Endurance, incentivizing the generation of pre-orders that would not materialize, and that a McKinsey presentation to the Board shows that the Board was aware of Climb2Glory’s involvement in selling the Endurance. Thus, Discovery Materials concerning Climb2Glory that Lordstown produced to the SEC are clearly relevant and should also be produced to Plaintiffs.

By 5pm ET on Friday, July 7, please confirm that you will agree to include the same terms used to develop the SEC production that you previously excluded or provide Lordstown’s reasoning for excluding any terms.

Best,  
Meg

Meg Sanborn-Lowing  
**BLB&G**  
Bernstein Litowitz Berger & Grossmann LLP  
1251 Avenue of the Americas  
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Direct: (212) 554-1938  
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[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)

---

**From:** Barrow, Erica <[ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com)>  
**Sent:** Saturday, July 1, 2023 2:26 PM  
**To:** Margaret Sanborn-Lowing <[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)>; Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>  
**Cc:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>; Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; Choa, Jonathan A. <[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)>; Mozal, Nicholas D. <[nmozal@potteranderson.com](mailto:nmozal@potteranderson.com)>; Greene, Douglas W. <[dgreene@bakerlaw.com](mailto:dgreene@bakerlaw.com)>; Gustavo F. Bruckner <[gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)> <[gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)>; Samuel J. Adams <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)> <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)>; <[skaskela@kaskelalaw.com](mailto:skaskela@kaskelalaw.com)>; Jeroen van Kwawegen <[jeroen@blbglaw.com](mailto:jeroen@blbglaw.com)>; Greg Varallo <[Greg.Varallo@blbglaw.com](mailto:Greg.Varallo@blbglaw.com)>; Glenn McGillivray <[Glenn.McGillivray@blbglaw.com](mailto:Glenn.McGillivray@blbglaw.com)>; Ronald Wittman <[Ronald.Wittman@blbglaw.com](mailto:Ronald.Wittman@blbglaw.com)>; Ankita Sangwan <[asangwan@pomlaw.com](mailto:asangwan@pomlaw.com)>  
**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

[External]

Meg,



As you know, Lordstown has informed the Court that it intends to promptly file an action in the Bankruptcy Court seeking to extend the automatic stay to the claims asserted in this action.

Nevertheless, without waiving any of its rights, Lordstown is providing the attached copy of the updated hit report, which runs the proposed search terms over the entirety of the SEC productions. The SEC productions total about a million pages of documents across 54 productions, which we have collected and processed in response to the Court's ruling on the motion to compel.

We can also represent to you that Lordstown re-produced the SEC production to the DOJ without receiving any formal document requests from the DOJ.

We disagree that the entirety of the SEC productions are relevant to this action or that they otherwise should be produced in their entirety. The SEC subpoenas sought categories of documents that are not requested in plaintiffs' subpoena and that are not relevant to the claims and defenses in this case. As an example, the April 8, 2021 subpoena, request 10, seeks ALL communication regarding the company for nine custodians during certain time frames. Plaintiffs have not sought all communications for any custodians, nor would they be entitled to such discovery.

Relatedly, we understood the Court to direct the parties to meet and confer over an appropriate review protocol aimed at identifying a reasonable subset of relevant documents from the SEC productions, which would include excluding categories of documents that are not relevant. For example, the Court directed the parties "to exclude[e] certain categories of documents from [LMC's] review" while "remaining mindful that Lordstown is a non-party" as it pertains to "scope and burden." Thus, for example, we submit that it would be appropriate to exclude documents from the following custodians, who were involved in external marketing, human resources, or special projects: Mike Betts, Amy Bryson, Brittney Burns, Jacob Capezzuto, Jaimie Green, and Jim Pope. To the extent this case goes forward or non-party discovery against the debtor Lordstown can proceed, we are willing to meet and confer on these issues.

Regarding search terms, we have used the same search terms that we understand to have been used for the SEC Productions, but we have excluded terms targeted at SEC requests that are not relevant to this action. The attached hit report reflects the search terms that we used. To the extent the hit reports can be modified, we are willing to work with you. For your further reference, we are also attaching the search parameters that we understand to have been used to create the SEC Productions, which we are hereby designating as confidential under the applicable protective order.

Lordstown reserves all rights and waives none.

Erica

Erica Barrow

**BakerHostetler**

T +1.212.589.4273

---

**From:** Margaret Sanborn-Lowing <[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)>

**Sent:** Monday, June 26, 2023 10:14 PM

**To:** Barrow, Erica <[ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com)>; Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>

**Cc:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>; Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; Choa, Jonathan A. <[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)>; Mozal, Nicholas D. <[nmozal@potteranderson.com](mailto:nmozal@potteranderson.com)>; Greene, Douglas W. <[dgreene@bakerlaw.com](mailto:dgreene@bakerlaw.com)>; Gustavo F. Bruckner <[gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)> <[gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)>; Samuel J. Adams <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)> <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)>; skaskela@kaskelalaw.com; Jeroen van Kwawegen <[jeroen@blbglaw.com](mailto:jeroen@blbglaw.com)>; Greg Varallo <[Greg.Varallo@blbglaw.com](mailto:Greg.Varallo@blbglaw.com)>; Glenn McGillivray <[Glenn.McGillivray@blbglaw.com](mailto:Glenn.McGillivray@blbglaw.com)>; Ronald Wittman <[Ronald.Wittman@blbglaw.com](mailto:Ronald.Wittman@blbglaw.com)>; Ankita Sangwan

<[asangwan@pomlaw.com](mailto:asangwan@pomlaw.com)>

**Subject: RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW**

Erica,

Thank you for your email. We address the various outstanding issues below.

### **DOJ Investigation**

Thank you for informing us that the DOJ did not serve a subpoena on Lordstown. By **5pm ET tomorrow, June 27**, please produce to Plaintiffs any document requests the DOJ sent to Lordstown that prompted Lordstown to re-produce to the DOJ the documents Lordstown produced to the SEC. If your position is that Lordstown re-produced the SEC production to the DOJ without receiving any written document requests from the DOJ, please confirm that position in writing. Please also confirm whether Lordstown produced any documents to the DOJ that were not included in the SEC production and, if so, explain the discrepancy.

### **SEC Subpoenas**

We have reviewed the SEC subpoenas and do not see any requests that are not relevant to Plaintiffs' claims and the subpoena we served on Lordstown. By **5pm ET tomorrow, June 27**, please provide in writing: 1) which requests Lordstown purports are not relevant to Plaintiffs' claims and the subpoena directed to Lordstown in this Action; and 2) the basis on which Lordstown purports any requests in the SEC subpoenas are not relevant.

### **Search Parameters**

Your email does not address our request that Lordstown provide the complete search parameters it used to determine the universe of documents it collected, reviewed, and produced to the SEC, including the date ranges and search terms applied. This information is necessary for us to understand the reasonableness of the date ranges and search terms you propose applying to narrow the SEC production for purposes of this case. For example, Plaintiffs would propose replacing "due diligence" in the third sub-report with "(DD OR diligence OR "due diligence")", but we cannot know if this is an effective adjustment without understanding the underlying search parameters used to arrive at the universe of documents collected, reviewed, and produced to the SEC. And we have no way of knowing which search terms Lordstown is unilaterally excluding and its reasoning for doing so, which information we are entitled to.

Furthermore, we do not know from which specific locations Lordstown searched and collected documents to produce to the SEC. For example, did Lordstown collect and review documents from centralized or non-custodial locations to which it did not apply search terms, and if so, what were those sources? Did Lordstown collect and review text messages or messages from other messaging applications, and if so, what messaging applications were collected and reviewed? Search parameters for messaging applications are inherently different from those for

emails, and we need to know whether and how Lordstown accounted for those considerations in its SEC production.

By **5pm ET tomorrow, June 27**, please provide the complete search parameters Lordstown used to determine the universe of documents it collected, reviewed, and produced to the SEC, including locations, date ranges, and search terms.

### **Hit Report**

Your email also failed to address the deficiencies Plaintiffs identified in the hit report Lordstown provided, including that the hit report does not show unique hits for the terms you unilaterally selected to be run against the SEC production. Again, this is crucial information for evaluating the search terms you are proposing to be run against the SEC Productions. For instance, what is the difference between the various sub-reports you sent on Friday, June 23, named “SEC 01 1-3-4-5-10”, “SEC 02 Req 4”, “SEC 03 Req 6, 11”, “SEC 04 Req 9”, “SEC 05 Req 8”, “SEC 06 Req 10”, and “SEC 07 Req 11”? How do those reports interrelate with each other and the broader SEC production? Are the results de-duplicated amongst these sub-reports? Are the date ranges shown in Lordstown’s proposed search protocol the same date ranges that Lordstown applied to its SEC production, or is it further narrowing the date ranges in its proposal for this case?

Lastly, we don’t understand your comment about providing updated reports “once [you’ve] collected the remaining productions.” What productions remain to be collected and why does Lordstown not have access to them already? Presumably Lordstown already has the SEC production in its possession and ready to be produced. What remains outstanding and what steps are you taking to provide Plaintiffs with a **complete** hit report, as requested?

\*\*\*

As noted above, please provide **by no later than 5pm ET tomorrow, June 27**:

- 1) the search parameters Lordstown used to determine the universe of documents it collected, reviewed, and produced to the SEC;
- 2) a complete, de-duplicated hit report showing unique hits for each term and the date ranges applied to each term;
- 3) any document requests the DOJ sent to Lordstown which prompted Lordstown to re-produce to the DOJ the documents Lordstown produced to the SEC; and
- 4) explain which requests in the SEC subpoenas Lordstown purports are not relevant to Plaintiffs’ claims and the subpoena directed to Lordstown in this Action, and the basis on which Lordstown purports any requests in the SEC subpoenas are not relevant to this Action.

Best,  
Meg

Meg Sanborn-Lowing

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[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)

---

**From:** Barrow, Erica <[ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com)>

**Sent:** Monday, June 26, 2023 5:15 PM

**To:** Margaret Sanborn-Lowing <[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)>; Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>

**Cc:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>; Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; Choa, Jonathan A. <[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)>; Mozal, Nicholas D. <[nmozal@potteranderson.com](mailto:nmozal@potteranderson.com)>; Greene, Douglas W. <[dgreene@bakerlaw.com](mailto:dgreene@bakerlaw.com)>; Gustavo F. Bruckner <[gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)> <[gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)>; Samuel J. Adams <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)> <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)>; skaskela@kaskelalaw.com; Jeroen van Kwawegen <[jeroen@blbglaw.com](mailto:jeroen@blbglaw.com)>; Greg Varallo <[Greg.Varallo@blbglaw.com](mailto:Greg.Varallo@blbglaw.com)>; Glenn McGillivray <[Glenn.McGillivray@blbglaw.com](mailto:Glenn.McGillivray@blbglaw.com)>; Ronald Wittman <[Ronald.Wittman@blbglaw.com](mailto:Ronald.Wittman@blbglaw.com)>; Ankita Sangwan <[asangwan@pomlaw.com](mailto:asangwan@pomlaw.com)>

**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

[External]

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Meg,

The DOJ did not serve a subpoena on Lordstown. Lordstown provided the DOJ with the documents it produced to the SEC.

We have provided two sets of standard hit reports to you that were run over the document review platform, Relativity. We've also provided the complete list of custodians utilized in the SEC productions. As we've mentioned, because the hit report was run over existing document productions, it wouldn't yield a custodian by custodian breakdown, especially where, as in this case, the custodial documents have been de-duped across custodians. If you have any specific questions we are happy to provide the relevant information.

As discussed, we will continue to provide updated reports once we've collected the remaining productions.

Best,

Erica

Erica

Erica Barrow

**BakerHostetler**

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---

**From:** Margaret Sanborn-Lowing <[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)>

**Sent:** Friday, June 23, 2023 7:24 PM

**To:** Barrow, Erica <[ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com)>; Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>

**Cc:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>; Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; Choa, Jonathan A.

<jchoa@potteranderson.com>; Mozal, Nicholas D. <nmozal@potteranderson.com>; Greene, Douglas W. <dgreene@bakerlaw.com>; Gustavo F. Bruckner (gfbruckner@pomlaw.com) <gfbruckner@pomlaw.com>; Samuel J. Adams (sjadams@pomlaw.com) <sjadams@pomlaw.com>; skaskela@kaskelalaw.com; Jeroen van Kwawegen <jeroen@blbglaw.com>; Greg Varallo <Greg.Varallo@blbglaw.com>; Glenn McGillivray <Glenn.McGillivray@blbglaw.com>; Ronald Wittman <Ronald.Wittman@blbglaw.com>; Ankita Sangwan <asangwan@pomlaw.com>

**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

Erica,

Thank you for your email and for providing the SEC Subpoenas.

I don't believe we have received the DOJ Subpoena(s). Please provide them immediately and by **no later than 5pm ET Monday**. We don't understand why you are holding up productive discussions concerning the documents that were produced to the SEC and DOJ by providing us piecemeal and unilaterally-selected information.

The court also ordered "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." June 9, 2023 Motion to Compel Hearing Transcript at 12. To have a productive meet and confer, we need the full search parameters of the production Lordstown made to the SEC and DOJ to understand any delta that may exist.

The hit report you provided is not Delaware compliant and is, indeed, nonsensical. As mentioned, in order to understand the scope of what Lordstown produced to the SEC and DOJ, we need a hit report showing (i) the custodians; (ii) the date ranges; (iii) hits for each term divided out for each custodian; and (iv) unique hits for each term. You have failed to provide a hit report with this information, which is crucial to understanding any burden Lordstown purports exists with respect to the SEC and DOJ productions and to verifying Lordstown's interpretation of how "those subpoenas overlap with the scope of discovery in this case." June 9, 2023 Motion to Compel Hearing Transcript at 12; *see id.* at 11 ("Lordstown is continuing to evaluate the search terms and parameters, as [the Court] heard this morning, but I have no idea how that translates in terms of burdens imposed by the number of documents to be reviewed."); *see also BTG Int'l v. Wellstat Therapeutics Corp.*, C.A. No. 12562-VCL, at 42 (Del. Ch. Oct. 4, 2016) (TRANSCRIPT) ("If somebody asks you for a hit report, you give it to them. You give it to them because discovery is supposed to be a cooperative enterprise where there's a degree of transparency between the two sides about what people are giving and what people are getting, and therefore, an understanding about what the likely burden is to be, so that people can make judgments about what to seek."); *Virtus Capital, L.P. v. Eastman Chem. Co.*, C.A. No. 9808-VCL, at 24 (Del. Ch. July 23, 2015) (TRANSCRIPT) ("People are going to be transparent regarding what they've done in discovery and what they're going to do. That means if somebody asks you for a hit report, you're going to give it to them. It means if somebody asks you "From whom did you collect custodians?," you're going to tell them. If somebody asks

you “How did you go about collecting documents? What did you ask for? Where did you look?,” you’re going to tell them.”).

In addition to the DOJ Subpoena(s), please provide the search parameters Lordstown applied to the SEC and DOJ productions and provide the complete hit reports described above. Please do so **by 5pm ET on Monday**.

Lastly, the court-ordered version of the Confidentiality Stipulation is—as I have now stated *four times*—publicly available on the docket at Docket Number 150 with Trans. ID 68856862. I have also attached it here for your convenience. Lordstown is the “Producing Party” to which protections of the Confidentiality Stipulation apply.

Best,  
Meg

Meg Sanborn-Lowing  
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---

**From:** Barrow, Erica <[ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com)>  
**Sent:** Friday, June 23, 2023 5:12 PM  
**To:** Margaret Sanborn-Lowing <[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)>; Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>  
**Cc:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>; Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; Choa, Jonathan A. <[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)>; Mozal, Nicholas D. <[nmozal@potteranderson.com](mailto:nmozal@potteranderson.com)>; Greene, Douglas W. <[dgreene@bakerlaw.com](mailto:dgreene@bakerlaw.com)>; Gustavo F. Bruckner <[gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)> <[gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)>; Samuel J. Adams <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)> <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)>; <[skaskela@kaskelalaw.com](mailto:skaskela@kaskelalaw.com)>; Jeroen van Kwawegen <[jeroen@blbglaw.com](mailto:jeroen@blbglaw.com)>; Glenn McGillivray <[Glenn.McGillivray@blbglaw.com](mailto:Glenn.McGillivray@blbglaw.com)>; Ronald Wittman <[Ronald.Wittman@blbglaw.com](mailto:Ronald.Wittman@blbglaw.com)>  
**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

[External]

Meg,

Attached please find the SEC Subpoenas which Lordstown as a non-party is producing to Plaintiffs in the above captioned action as CONFIDENTIAL pursuant to paragraph 28 of the Stipulation And [Proposed] Order For The Production And Exchange Of Confidential Information, Dated January 9, 2023. The confidentiality agreement you sent was signed by the parties only. Please send the so-ordered version by the court to the extent it exists. The stipulation binds Plaintiffs, who have already signed the stipulation, to treat the material as confidential. Lordstown as a non-party is not receiving any confidential material therefore Exhibit A which dictates Lordstown’s treatment of material is inapplicable.



Attached is also an updated version of the hit report which runs the search terms we previously provided to you over additional SEC productions constituting approximately 59K more documents. As I mentioned, the SEC productions consist of 55 individual document productions with approximately a million pages of documents. When the court granted the motion to compel in part, we began the process of collecting the 55 volumes and 340 Gigabytes of compressed data in order to apply search terms that are responsive to Plaintiffs' subpoena requests and are consistent with the court order. We provided the hit report to you within five business days in compliance with the court order with the caveat that we would be supplying you with additional data once we had completed the time-consuming procedure of gathering, processing, and assessing the almost million pages of documents. The court ordered Lordstown to "endeavor to share [the] search term hit reports with the plaintiffs" which it timely did.

The hit report is a Delaware-compliant hit report. You mentioned that that the hit report is non-sensical but it's unclear what you don't understand. We are happy to walk through the report with you or we can answer any of your specific questions with our litigation support team. In our experience, it is unusual to break out hit reports by custodian under these circumstances because that usually makes the reports confusing by disaggregating information that had been deduplicated when processed. As I mentioned, the court ordered Lordstown to run the search terms over an already existing document production not a custodial collection. The documents are segregated by individual document production not custodians.

As it pertains the ESI search protocol, it is unclear what information you are seeking that you haven't already received or that we haven't already offered to provide. The original proposed custodial ESI protocol that plaintiffs provided to Lordstown had contemplated a more targeted custodial collection. The SEC productions pulled documents from a much larger custodial set than plaintiffs and Lordstown had originally contemplated. As you can see, the substance of the SEC subpoena is also much broader than what Plaintiffs are seeking in order to prosecute its case against the defendants, meaning (among other things) that the SEC production contains data that is not relevant/responsive to your subpoena. We had agreed upon 8 custodians and the SEC productions utilized 36 custodians. In light of this, we are not re-collecting the material from the original custodians again but producing from the SEC production. Therefore, the custodial collection and locations are not applicable. To the extent you're looking for all the information concerning the SEC production and our search in one word document, then it has been compiled in the attached. This information is being provided to you for discussion purposes only and does not constitute an offer by Lordstown.

As indicated above, we are processing the rest of the SEC productions and will provide you an updated hit report as soon as practicable. We are available to discuss these issues if you would like to schedule a time. We remain committed to working through these issues with you.

Lordstown reserves all rights and waives none.

Have a great weekend.

Erica

Erica Barrow

**BakerHostetler**

T +1.212.589.4273

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**From:** Margaret Sanborn-Lowing [Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)

**Sent:** Friday, June 23, 2023 9:16 AM

**To:** Barrow, Erica [ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com); Thomas James [Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)

**Cc:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>; Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; Choa, Jonathan A. <[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)>; Mozal, Nicholas D. <[nmozal@potteranderson.com](mailto:nmozal@potteranderson.com)>; Greene, Douglas W. <[dgreene@bakerlaw.com](mailto:dgreene@bakerlaw.com)>; Gustavo F. Bruckner ([gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)) <[gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)>; Samuel J. Adams ([sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)) <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)>; [skaskela@kaskelalaw.com](mailto:skaskela@kaskelalaw.com); Jeroen van Kwawegen

<[jeroen@blbglaw.com](mailto:jeroen@blbglaw.com)>; Glenn McGillivray <[Glenn.McGillivray@blbglaw.com](mailto:Glenn.McGillivray@blbglaw.com)>; Ronald Wittman  
<[Ronald.Wittman@blbglaw.com](mailto:Ronald.Wittman@blbglaw.com)>

**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

Erica,

Your pattern of obstruction and delay continues, now in direct violation of a Court order. As previously stated, the Court ordered Lordstown to “***begin*** by sharing the [SEC and DOJ] subpoenas with the plaintiffs,” and to produce “a ***hit report*** and ***search protocol within five business days***” of the June 9, 2023 Motion to Compel Hearing. The Court’s deadline was ***June 16, 2023***—a week ago—and Lordstown ***still has not produced***: 1) the SEC and DOJ subpoenas, 2) a search protocol, or 3) a complete, Delaware-compliant hit report. If Lordstown does not comply with the Court’s Order by **5pm ET today**, we will be forced to raise Lordstown’s non-compliance with the Court.

Paragraph 5 of the Confidentiality Stipulation—which, as I have noted three times now, is publicly available on the docket—provides that “Confidential Discovery Material may be disclosed, summarized, described, characterized, or otherwise communicated or made available in whole or in part only to the following persons for use in accordance with this Stipulation: . . . g. Any other person only upon (i) order of the Court entered upon notice to the Parties, or (ii) **written stipulation of, or statement on the record by, the Producing Party who provided the Confidential Discovery Material being disclosed, provided that such person signs an undertaking in the form attached as Exhibit A hereto.**”

I provided you the version of the Confidentiality Stipulation that includes Exhibit A for you to undertake. By signing Exhibit A, any documents Lordstown produces in connection with this Action will receive the full protection of the Confidentiality Order. Until we receive an executed Exhibit A, Plaintiff will review any documents Lordstown produces on an attorneys’ eyes only basis.

Because Lordstown has failed to comply with the Court-ordered information described above and in my prior emails, there is nothing to meet and confer about. If anything, the partial hit report and subsequent email you provided muddy the waters further. Has this hit report been run over multiple custodians? If so, which ones? To the extent the “date ranges utilized in the hit report var[y] based upon the search term and individual document production” as you represented, that is precisely the information we need broken out by term. It is impossible for us to analyze the nonsensical partial hit report without this information, and we would expect that future hit reports you send show this information. It is also futile to assess the hit report without the SEC and DOJ subpoenas, which the Court has ordered Lordstown to produce.

There is no excuse for Lordstown’s failure to comply with the Court’s Order. By **5pm ET this evening**, please produce: 1) the SEC and DOJ subpoenas, 2) a complete, Delaware-compliant hit report for the documents produced to the SEC and DOJ, 3) a proposed ESI protocol for this Action, and 4) a complete, Delaware-compliant hit report for your proposed search protocol.



Best,  
Meg

Meg Sanborn-Lowing

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[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)

---

**From:** Barrow, Erica <[ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com)>

**Sent:** Thursday, June 22, 2023 11:33 PM

**To:** Margaret Sanborn-Lowing <[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)>; Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>

**Cc:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>; Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; Choa, Jonathan A. <[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)>; Mozal, Nicholas D. <[nmozal@potteranderson.com](mailto:nmozal@potteranderson.com)>; Greene, Douglas W. <[dgreene@bakerlaw.com](mailto:dgreene@bakerlaw.com)>; Gustavo F. Bruckner <[gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)> <[gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)>; Samuel J. Adams <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)> <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)>; skaskela@kaskelalaw.com; Jeroen van Kwawegen <[jeroen@blbglaw.com](mailto:jeroen@blbglaw.com)>; Glenn McGillivray <[Glenn.McGillivray@blbglaw.com](mailto:Glenn.McGillivray@blbglaw.com)>; Ronald Wittman <[Ronald.Wittman@blbglaw.com](mailto:Ronald.Wittman@blbglaw.com)>

**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

[External]

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Meg,

You directed us to Exhibit A of the confidentiality agreement which does not provide any protections to documents non-parties would be producing to you. We can revert back to you regarding the subpoenas under appropriate protections which we required and the court endorsed for production tomorrow. As I mentioned in oral argument and in my June 16, 2023 email, the SEC production utilized 34 different custodians. I offered to meet and confer with you regarding those custodians. If you would like to discuss, we are available to do so on Monday. This hit report is run over a production not over a custodian collection therefore the information you are seeking would not be generated. The date ranges utilized in the hit report varies based upon the search term and individual document production but generally spans April 1, 2019 – February 17, 2021. Also, per my June 16, 2023 email, I communicated to you that we would be separately searching for and producing documents regarding the discoverable factual underpinnings communicated to the Special Committee regarding the investigation which was at issue in the motion to compel.

Lastly, Juneteenth is a federal holiday therefore your business day counts are incorrect. Enjoy the rest of your evening.

Erica

Erica Barrow

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**From:** Margaret Sanborn-Lowing <[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)>

**Sent:** Thursday, June 22, 2023 10:48 PM

**To:** Barrow, Erica <[ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com)>; Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>  
**Cc:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>; Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; Choa, Jonathan A. <[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)>; Mozal, Nicholas D. <[nmozal@potteranderson.com](mailto:nmozal@potteranderson.com)>; Greene, Douglas W. <[dgreene@bakerlaw.com](mailto:dgreene@bakerlaw.com)>; Gustavo F. Bruckner <[gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)> <[gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)>; Samuel J. Adams <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)> <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)>; <[skaskela@kaskelalaw.com](mailto:skaskela@kaskelalaw.com)>; Jeroen van Kwawegen <[jeroen@blbglaw.com](mailto:jeroen@blbglaw.com)>; Glenn McGillivray <[Glenn.McGillivray@blbglaw.com](mailto:Glenn.McGillivray@blbglaw.com)>; Ronald Wittman <[Ronald.Wittman@blbglaw.com](mailto:Ronald.Wittman@blbglaw.com)>

**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

Erica,

Following up on the below. We provided you the confidentiality order *almost a week ago* and have not received a response, let alone production of the SEC and DOJ subpoenas. The Court ordered Lordstown to produce the subpoenas to us promptly. *See* June 9, 2023 Motion to Compel Hearing Transcript at 12 (“Lordstown should produce copies of the subpoenas to the plaintiffs”); *id.* at 17 (“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.”); June 9, 2023 Order at 2 (“Lordstown shall provide a copy of the SEC and DOJ subpoenas to the plaintiffs”). Please provide the SEC and DOJ subpoenas **by no later than 5pm ET tomorrow**.

Thank you for the hit report you provided, however, it is inadequate. Not only is it merely “preliminary,” but it does not show (i) the custodians; (ii) the date ranges; and (iii) hits for each term divided out for each custodian. We have none of the information that is necessary to evaluate the partial hit report. Please provide a complete, Delaware-compliant hit report for the documents produced to the SEC and DOJ promptly and **by no later than 5pm ET tomorrow**.

Furthermore, you have not sent us a search protocol. We provided a proposed search protocol to you on *April 10* for you to populate with the search parameters you were developing internally. You never did so. The Court ordered you to “share *an ESI search protocol* and search term hit reports with the plaintiffs *within five business days*.” June 9, 2023 Order at 2 (emphasis added); *see also* June 9, 2023 Motion to Compel Hearing Transcript at 19 (“you will endeavor to exchange a hit report *and search protocol within five business days* unless the parties reach agreement otherwise”) (emphasis added). It has now been *nine* business days and we have not received an ESI search protocol. Please provide it immediately—by no later than tomorrow at 5pm ET—so that we may evaluate it and add our own additional search terms to incorporate the operative requests in Plaintiff’s subpoena and cover all the relevant topics and relevant time periods. We will expect hit reports immediately after adding our additional search terms.

Lastly, we remind you that the productions to the SEC and DOJ will serve as only “the starting point” of Lordstown’s production to Plaintiff. June 9, 2023 Motion to Compel Hearing Transcript at 17. Without the SEC and DOJ subpoenas, we cannot determine the scope of their investigation in comparison with Plaintiffs’ investigation and determine the delta, if any, that

exists. And based on the incomplete hit report you provided, the search terms are inadequate and do not cover the topics that the Court found relevant here during the June 9, 2023 hearing.

Please provide the information requested above by tomorrow at 5pm ET. Plaintiffs reserve all rights.

Best,  
Meg

Meg Sanborn-Lowing  
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**From:** Margaret Sanborn-Lowing  
**Sent:** Friday, June 16, 2023 5:47 PM  
**To:** Barrow, Erica <[ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com)>; Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>  
**Cc:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>; Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; Choa, Jonathan A. <[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)>; Mozal, Nicholas D. <[nmozal@potteranderson.com](mailto:nmozal@potteranderson.com)>; Greene, Douglas W. <[dgreene@bakerlaw.com](mailto:dgreene@bakerlaw.com)>; Gustavo F. Bruckner <[gfbuckner@pomlaw.com](mailto:gfbuckner@pomlaw.com)> <[gfbuckner@pomlaw.com](mailto:gfbuckner@pomlaw.com)>; Samuel J. Adams <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)> <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)>; <[skaskela@kaskelalaw.com](mailto:skaskela@kaskelalaw.com)>; Jeroen van Kwawegen <[jeroen@blbglaw.com](mailto:jeroen@blbglaw.com)>; Glenn McGillivray <[Glenn.McGillivray@blbglaw.com](mailto:Glenn.McGillivray@blbglaw.com)>; Ronald Wittman <[Ronald.Wittman@blbglaw.com](mailto:Ronald.Wittman@blbglaw.com)>  
**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

Erica,

Thank you for your email. We look forward to reviewing the hit report.

Attached for your reference is the confidentiality stipulation entered by the Court, which is publicly available on the docket. For your convenience, the attached as-filed version includes Exhibit A so that you may sign the undertaking. Please send us the SEC and DOJ subpoenas at your earliest convenience.

Best,  
Meg

Meg Sanborn-Lowing  
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**From:** Barrow, Erica <[ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com)>  
**Sent:** Friday, June 16, 2023 4:45 PM  
**To:** Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>  
**Cc:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>; Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; Choa, Jonathan A. <[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)>; Mozal, Nicholas D. <[nmozal@potteranderson.com](mailto:nmozal@potteranderson.com)>; Greene, Douglas W. <[dgreene@bakerlaw.com](mailto:dgreene@bakerlaw.com)>; Gustavo F. Bruckner <[gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)> <[gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)>; Samuel J. Adams <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)> <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)>; [skaskela@kaskelalaw.com](mailto:skaskela@kaskelalaw.com); Margaret Sanborn-Lowing <[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)>; Jeroen van Kwawegen <[jeroen@blbglaw.com](mailto:jeroen@blbglaw.com)>; Glenn McGillivray <[Glenn.McGillivray@blbglaw.com](mailto:Glenn.McGillivray@blbglaw.com)>; Ronald Wittman <[Ronald.Wittman@blbglaw.com](mailto:Ronald.Wittman@blbglaw.com)>  
**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

[External]

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Thomas,

Attached please find hit reports that were applied over a partial set of the SEC/DOJ productions. As I represented during oral argument on the motion to compel, there were 981,220 pages of documents that were produced to the SEC/DOJ by Lordstown. We have been in the process of collecting the 53 volumes of productions that comprise the entire SEC/DOJ production set. We anticipate collecting the remaining volumes next week and will apply the search terms over the full set which we will share with you.

These search terms constitute a preliminary set. Lordstown reserves the right to continue to revise the terms as we collect the remaining productions and assess for false positives. There were 34 custodians that were utilized in the SEC/DOJ production. Out of the additional 26 custodians that we had not originally agreed to utilize as custodians in our subpoena response, many of them have no relevance to the documents sought by Plaintiffs. We would like to meet and confer with you regarding excluding some custodians.

In addition to utilizing the agreed upon search terms to retrieve documents responsive to the agreed upon requests, we anticipate working with Lordstown to target and retrieve documents related to the below requests:

- RFP 31. All Documents concerning the independence or disinterestedness (or lack thereof) of any members of the DiamondPeak Board.
- RFP 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.
- RFP 39 and 40: Any Lordstown D&O policy that may provide coverage to Mr. Hamamoto in his capacity as a Lordstown director.
- RFP 42: Discovery materials concerning the pre-existing relationships of the Director Defendants.
- RFP 10: Discoverable factual underpinnings communicated to the Special Committee regarding the investigation.

Lastly, counsel for plaintiffs represented at the hearing that she would send us the protective order in order to share the SEC Subpoenas. Kindly, send us the protective order so that we can assess its protections. Lordstown reserves all rights and waive none.

We look forward to working cooperatively with you.

Best,  
Erica

Erica

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BakerHostetler  
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---

**From:** Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>

**Sent:** Monday, May 15, 2023 2:44 PM

**To:** Barrow, Erica <[ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com)>

**Cc:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>; Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; Choa, Jonathan A. <[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)>; Mozal, Nicholas D. <[nmozal@potteranderson.com](mailto:nmozal@potteranderson.com)>; Greene, Douglas W. <[dgreene@bakerlaw.com](mailto:dgreene@bakerlaw.com)>; Gustavo F. Bruckner ([gfbbruckner@pomlaw.com](mailto:gfbbruckner@pomlaw.com)) <[gfbbruckner@pomlaw.com](mailto:gfbbruckner@pomlaw.com)>; Samuel J. Adams ([sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)) <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)>; [skaskela@kaskelalaw.com](mailto:skaskela@kaskelalaw.com); Margaret Sanborn-Lowing <[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)>; Jeroen van Kwawegen <[jeroen@blbglaw.com](mailto:jeroen@blbglaw.com)>; Glenn McGillivray <[Glenn.McGillivray@blbglaw.com](mailto:Glenn.McGillivray@blbglaw.com)>; Ronald Wittman <[Ronald.Wittman@blbglaw.com](mailto:Ronald.Wittman@blbglaw.com)>

**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

Thank you, Erica.

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New York, NY 10020  
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---

**From:** Barrow, Erica <[ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com)>

**Sent:** Monday, May 15, 2023 2:43 PM

**To:** Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>

**Cc:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>; Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; Choa, Jonathan A. <[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)>; Mozal, Nicholas D. <[nmozal@potteranderson.com](mailto:nmozal@potteranderson.com)>; Greene, Douglas W. <[dgreene@bakerlaw.com](mailto:dgreene@bakerlaw.com)>; Gustavo F. Bruckner ([gfbbruckner@pomlaw.com](mailto:gfbbruckner@pomlaw.com)) <[gfbbruckner@pomlaw.com](mailto:gfbbruckner@pomlaw.com)>; Samuel J. Adams ([sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)) <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)>; [skaskela@kaskelalaw.com](mailto:skaskela@kaskelalaw.com); Margaret Sanborn-Lowing <[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)>; Jeroen van Kwawegen <[jeroen@blbglaw.com](mailto:jeroen@blbglaw.com)>; Glenn McGillivray <[Glenn.McGillivray@blbglaw.com](mailto:Glenn.McGillivray@blbglaw.com)>; Ronald Wittman <[Ronald.Wittman@blbglaw.com](mailto:Ronald.Wittman@blbglaw.com)>

**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

[External]

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Tom,

We do not have any proposed redactions.

Best,  
Erica

Erica Barrow  
BakerHostetler



T +1.212.589.4273

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**From:** Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>**Sent:** Monday, May 08, 2023 5:07 PM**To:** Barrow, Erica <[ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com)>**Cc:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>; Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; Choa, Jonathan A. <[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)>; Mozal, Nicholas D. <[nmozal@potteranderson.com](mailto:nmozal@potteranderson.com)>; Greene, Douglas W. <[dgreene@bakerlaw.com](mailto:dgreene@bakerlaw.com)>; Gustavo F. Bruckner ([gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)) <[gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)>; Samuel J. Adams ([sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)) <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)>; [skaskela@kaskelalaw.com](mailto:skaskela@kaskelalaw.com); Margaret Sanborn-Lowing <[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)>; Jeroen van Kwawegen <[jeroen@blbglaw.com](mailto:jeroen@blbglaw.com)>; Glenn McGillivray <[Glenn.McGillivray@blbglaw.com](mailto:Glenn.McGillivray@blbglaw.com)>; Ronald Wittman <[Ronald.Wittman@blbglaw.com](mailto:Ronald.Wittman@blbglaw.com)>**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

Erica

Further to my last note, and pursuant to Rule 5.1, I've attached a proposed public version of Plaintiffs' Motion to Compel Directed at Non-Party Lordstown Motors Corp. (the "Motion"), along with a copy of Rule 5.1. Please send us any redactions you may have to the Motion by 3:00 pm (ET) on May 15, 2023. Please note that, as required by Rule 5.1, the attached proposed public version of the Motion will be filed publicly on the docket in compliance with Rule 5.1 if no one designates any Confidential Information (as defined in Rule 5.1) in response to this notice by 3:00 pm (ET) on May 15, 2023.

Regards,  
Tom

Thomas James

**BIB&G LLP**

Bernstein Litowitz Berger &amp; Grossmann LLP

1251 Avenue of the Americas

New York, NY 10020

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**From:** Thomas James**Sent:** Monday, May 8, 2023 12:54 PM**To:** Barrow, Erica <[ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com)>**Cc:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>; Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; Choa, Jonathan A. <[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)>; Mozal, Nicholas D. <[nmozal@potteranderson.com](mailto:nmozal@potteranderson.com)>; Greene, Douglas W. <[dgreene@bakerlaw.com](mailto:dgreene@bakerlaw.com)>; Gustavo F. Bruckner ([gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)) <[gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)>; Samuel J. Adams ([sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)) <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)>; [skaskela@kaskelalaw.com](mailto:skaskela@kaskelalaw.com); Margaret Sanborn-Lowing <[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)>; Jeroen van Kwawegen <[jeroen@blbglaw.com](mailto:jeroen@blbglaw.com)>; Glenn McGillivray <[Glenn.McGillivray@blbglaw.com](mailto:Glenn.McGillivray@blbglaw.com)>; Ronald Wittman <[Ronald.Wittman@blbglaw.com](mailto:Ronald.Wittman@blbglaw.com)>**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

Please find attached a court-stamped version of Plaintiffs' Motion to Compel, filed this afternoon.

Thomas James

**BIB&G LLP**

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New York, NY 10020  
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**From:** Thomas James  
**Sent:** Monday, May 8, 2023 12:34 PM  
**To:** Barrow, Erica <[ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com)>  
**Cc:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>; Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; Choa, Jonathan A. <[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)>; Mozal, Nicholas D. <[nmozal@potteranderson.com](mailto:nmozal@potteranderson.com)>; Greene, Douglas W. <[dgreene@bakerlaw.com](mailto:dgreene@bakerlaw.com)>; Gustavo F. Bruckner <[gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)> <[gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)>; Samuel J. Adams <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)> <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)>; <[skaskela@kaskelalaw.com](mailto:skaskela@kaskelalaw.com)>; Margaret Sanborn-Lowing <[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)>; Jeroen van Kwawegen <[jeroen@blbglaw.com](mailto:jeroen@blbglaw.com)>  
**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

Thanks, Erica.

We have repeatedly made our positions clear regarding the handful of remaining requests in our emails and meet-and-confers. We asked for your final positions last Wednesday and noted that we would be at an impasse if we did not receive them. We have also repeatedly asked for your markup to a complete search protocol, which we have not received either. Given the significant time that has elapsed as well as the impending substantial completion deadline, we need to tee these issues up with the Court.

Tom

Thomas James  
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**From:** Barrow, Erica <[ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com)>  
**Sent:** Thursday, May 4, 2023 9:35 AM  
**To:** Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>  
**Cc:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>; Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; Choa, Jonathan A. <[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)>; Mozal, Nicholas D. <[nmozal@potteranderson.com](mailto:nmozal@potteranderson.com)>; Greene, Douglas W. <[dgreene@bakerlaw.com](mailto:dgreene@bakerlaw.com)>; Gustavo F. Bruckner <[gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)> <[gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)>; Samuel J. Adams <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)> <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)>; <[skaskela@kaskelalaw.com](mailto:skaskela@kaskelalaw.com)>; Margaret Sanborn-Lowing <[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)>; Jeroen van Kwawegen <[jeroen@blbglaw.com](mailto:jeroen@blbglaw.com)>  
**Subject:** Re: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

[External]

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Hi Thomas,

We are working on a response and will get back to you soon.

Best,  
Erica

Sent from my iPhone

On Apr 28, 2023, at 6:44 PM, Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)> wrote:

Erica

Thanks for the response. It looks like we have agreement on quite a bit, which is helpful. Nonetheless, we still have a few areas of disagreement, which I will elaborate on below.

That said, I'm slightly confused by your position that Lordstown "anticipate[s] moving forward with the ESI/review protocol **once we have reached agreement on any outstanding issues.**" (Emphasis added). To be clear, we do not think our disagreement on a handful of discrete requests should delay negotiation of the search protocol with respect to what we have agreed to already (which is quite a bit). We have already done substantial work towards preparing a protocol. If you're suggesting that negotiating a search protocol and otherwise producing discovery materials responsive to the agreed-upon requests cannot proceed until we have reached agreement on everything, we think differently. As Vice Chancellor Laster recently reiterated:

The obligation to gather and produce documents is an obligation of the party responding to the request. It is not an obligation that you get to shift to the requesting party. ... [W]hen you say to somebody who has comparatively minimal information, let's negotiate custodians, time periods and search terms, and we're not giving you anything until we've gotten agreement, you're not acting in good faith. You're not moving the discovery ball forward. What you're doing is effectively blocking discovery and forcing somebody to either essentially give in or come to the Court and burden me.

*Harris v. Harris FRC Corp.*, C.A. No. 2019-0736-JTL, at 63-65 (Del. Ch. June 2, 2020) (TRANSCRIPT). Please confirm you will send us a complete marked up search protocol and hit reports by May 3, 2023.

As for our outstanding areas of disagreement, they are as follows:

**1. The Hindenburg Report, the SEC/DOJ Investigations, and the Special Committee's formation work (Requests 1-3(b), 10, 32-33)**

We have explained why discovery materials related to these subject matters are relevant. To reiterate, the Hindenburg Report alleged that Lordstown's pre-orders were potentially fraudulent and that Lordstown couldn't meet the public production timeline for the Endurance. ¶¶103-105. Our allegations are co-terminus with those of the Hindenburg Report—we even examined many of the pre-orders and internal documents that tend to corroborate the Hindenburg Report. ¶¶106-114. The Hindenburg Report is patently relevant.

The SEC/DOJ investigations are also relevant. Lordstown disclosed in July 2021 that "we have received two subpoenas from the SEC for the production of documents and information, including relating to the Merger between DiamondPeak and Legacy Lordstown and pre-orders of vehicles, and we have been informed by the U.S. Attorney's Office for the Southern District of New York that it is investigating these matters." The subject matter of the SEC and DOJ investigations is co-terminus with the allegations in our Complaint. It is therefore relevant. Ct. Ch. R. 26(b)(1).

The Special Committee itself was formed to investigate the allegations in the Hindenburg Report and respond to the SEC/DOJ investigations. Given the relevance of the underlying subject matter the Special



Committee was investigating, its work and conclusions are relevant. The Special Committee's work and formation is also relevant because Defendant Hamamoto formed and led the Special Committee's investigation. See LMC\_RR DEMAND0000209. The Special Committee denied certain of the allegations in the Hindenburg Report, but functionally confirmed others. ¶¶120-122. This information is patently relevant for the same reason the Hindenburg Report is relevant. It also goes to the parties' claims and defenses. Ct. Ch. R. 26(b)(1).

Your email doesn't dispute this information is relevant. Instead, you take the position that this information is "not **sufficiently relevant** to the claims in this litigation." (Emphasis added). "Sufficiently relevant" is not the standard—the standard is "relevant." And, as this Court has recognized, "it bears emphasizing that the scope of discovery is 'broad and far-reaching.'" *In re Aerojet Rocketdyne Hldgs., Inc.*, 2022 WL 1446782, at \*4 (Del. Ch. May 5, 2022) (quoting *Cal. Pub. Emps. Ret. Sys. Coulter*, 2004 WL 1238443, at \*1 (Del. Ch. May 26, 2004)). The fact that the Hindenburg Report and the subsequent investigations occurred after the merger closed does not make them any less relevant. Your other positions do not move us either, for reasons already explained. To reiterate, relevant information does not become irrelevant by virtue of being privileged and any factual information that the Special Committee gathered in connection with its investigations is definitionally not privileged, as are any documents the Special Committee produced to the SEC/DOJ. That said, we are happy to work with you to address any legitimate burdens you may have in connection with logging relevant documents for privilege.

Please confirm you will produce or log discovery materials responsive to these request by May 3, 2023. If not, we will be at an impasse.

## 2. The resignation of Messrs. Burns and Rodriguez (Requests 1-2, 12)

We have explained why discovery materials related to these subject matters are relevant. To reiterate, Burns and Rodriguez left the Company on June 14, 2021—6 days after Lordstown announced that it had insufficient funding to begin commercial production of the Endurance and the same day the Special Committee released the results of the Special Committee's investigation into the Hindenburg Report. Moreover, Lordstown has asserted that "that Mr. Burns elected to resign as the Company begins to transition from the R&D and early production phase to the commercial production phase of its business, **and that Mr. Burns' decision was not the result of the work or findings of the Board's Special Committee.**" (Emphasis added). We are entitled to test the veracity of those claims as well as the suspicious timing of their departure. And we have narrowed the scope of this request, per your request.

Again, your email doesn't dispute this information is relevant. For the reasons stated above, your position that responsive documents "are **not sufficiently related** to the claims in this litigation" does not move us. (Emphasis added).

Please confirm you will produce or log discovery materials responsive to these requests by May 3, 2023. If not, we will be at an impasse.

Finally, a few additional housekeeping items.

## 3. The Relevant Time Period

We sent you a search protocol on 4/10, which includes our proposed relevant time periods broken out by request. We still have not seen your search terms or received a markup of our protocol. You nonetheless appear to have reverted to your prior proposed Relevant Time Period (April 1, 2020 –

December 31, 2020). We are happy to consider modifications to our proposed relevant time periods with the benefit of a complete search protocol—which you still have not supplied us with—as well as hit reports. We cannot agree to your limited Relevant Time Period in a vacuum.

#### **4. Redactions and Privilege Logs**

We do not understand your reservation of rights “to apply redactions to the extent permitted by law, including for privilege and proprietary information.” The only appropriate redactions are for privilege, for the reasons explained in my 3/2 letter to Jonathan Choa. The confidentiality stipulation should otherwise cover the waterfront. Please confirm.

We’re happy to have a discussion about privilege logs but we expect Lordstown to serve Delaware-compliant logs for documents withheld and redacted for privilege.

#### **5. Relationship/Independence Requests**

We expect we can identify any such documents via search terms in the search protocol, once you send it.

#### **6. Director Subpoenas**

As we previously explained, Spencer and Reiss were/are members of the Special Committee. You can refer to my explanation above as to why their discovery materials above are relevant. Feldman was the former Head of Finance at DiamondHead Partners LLC and Chief Financial Officer of United Homes Group, Inc., entities affiliated with David Hamamoto, and was identified by Defendants as someone who has knowledge of facts relevant to the subject matter of this Action and was involved in diligence for potential transactions.

Thank you for the additional color on your collection efforts for Burns and Rodriguez. Please let us know about the subpoenas.

Have a nice weekend.

Tom

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**From:** Barrow, Erica <[ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com)>  
**Sent:** Wednesday, April 26, 2023 8:51 PM  
**To:** Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>; Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>  
**Cc:** Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; DiCamillo, Raymond J. <[DiCamillo@rlf.com](mailto:DiCamillo@rlf.com)>; Gallagher, Kevin M. <[Gallagher@rlf.com](mailto:Gallagher@rlf.com)>; Krischik, Alexander M. <[Krischik@rlf.com](mailto:Krischik@rlf.com)>; Choa, Jonathan A. <[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)>; Mozal, Nicholas D. <[nmozal@potteranderson.com](mailto:nmozal@potteranderson.com)>; Greene, Douglas W. <[dgreene@bakerlaw.com](mailto:dgreene@bakerlaw.com)>; Gustavo F. Bruckner <[gfbbruckner@pomlaw.com](mailto:gfbbruckner@pomlaw.com)>

<[gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)>; Samuel J. Adams ([sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)) <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)>;  
[skaskela@kaskelalaw.com](mailto:skaskela@kaskelalaw.com); Margaret Sanborn-Lowing <[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)>; Jeroen van  
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**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

[External]

Tom—Please see our responses in red. We believe we have made substantial progress in reaching a resolution regarding the individual requests and anticipate moving forward with the ESI/review protocol once we have reached agreement on any outstanding issues. For the sake of clarity, to the extent we are agreeing to produce documents below, we are doing so without representing any such documents exist, without waiving our objections, and subject to an agreed ESI/review protocol.

**Requests 1-2:**

1. You noted that Lordstown had no fundamental disagreement with producing discovery materials responsive to Requests 1-2, which seek all minutes, notes and other records of any Board, Special Committee, or other subcommittee meeting and materials and any corresponding materials, but asked Plaintiffs to specify any relevant topics or limiting principles for those requests.
  1. We note that the allegations in the Complaint should be considered the touchstone of relevance (see Ct. Ch. R. 26(b)(1)) and we ask that you search for, review, and produce or log all minutes, notes, or records of any meeting of the Board, Special Committee, or other committee, concerning:
    1. The Merger and the Merger Consideration
    2. The Transactions
    3. DiamondPeak
    4. The Founder Shares and Warrants
    5. The PIPE Investment and the PIPE Investors
    6. The Proxy
    7. The production of the Endurance, including the timing thereof
    8. The Hindenburg Report and the SEC/DOJ investigations
    9. The resignation of Messrs. Burns and Rodriguez
  2. We are also of the view that the Special Committee minutes and materials are all relevant and should be produced and/or logged. See Requests 10, 32-33, *infra*.
  3. Finally, we note that Lordstown previously produced Board minutes that were redacted for responsiveness in connection with the Section 220 production. Those minutes should be reproduced without responsiveness redactions, which are inappropriate in the plenary litigation context given the confidentiality order.
1. We agree to produce responsive non-privileged board meeting and materials from the time period of April 1, 2020 through December 31, 2020 relating to all of the above topics, with the exception of the Hindenburg Report and the SEC/DOJ investigations and the resignation of Messrs. Burns and Rodriguez, which occurred later in time and which are not sufficiently related (in and of themselves) to the claims in this litigation.
2. To the extent this production includes documents previously produced in connection with the Section 220 productions, we agree not to redact solely for responsiveness; however, we reserve the right to apply redactions to the extent permitted by law, including for privilege and proprietary information.
3. Please see our response regarding Request 10 concerning the Special Committee.

**Request 3:**

1. You asked for clarification concerning subparts (a) (the Transactions), (b) (the Special Committee) and (d)-(e) (DiamondPeak and Defendants)
  1. For subpart (a), we ask that you produce or log all documents concerning the Transactions, defined to include the Merger as well as the PIPE Investment. The Merger is patently relevant. The PIPE Investment is similarly relevant as it bears on DiamondPeak's valuation of Lordstown, among other reasons.
  2. For subpart (b), please see Requests 10, 32-33, *infra*.
  3. For subparts (d) and (e), we ask that you produce or log all documents concerning DiamondPeak and Defendants as they relate to the Merger.
1. **We will agree to produce responsive non-privileged documents identified through the search protocol from the time period of April 1, 2020 through December 31, 2020 relating to the above subparts (a) and (d)-(e) as it pertains to the valuation and assessment of the merger.**
2. **Please see our response regarding Request 10 concerning subpart (b)/the Special Committee.**

Request 4:

1. You noted that Lordstown was generally willing to review and produce discovery materials responsive to Request 4, but asks for clarification concerning what you referred to as "tautological" sub-components of this Request (e.g., discovery materials exchanged between Lordstown on the one hand, and Defendants, DiamondPeak, and their Advisors on the other hand, concerning Lordstown).
  1. To be clear, we are seeking over-the-transom discovery materials between Lordstown on the one hand and other entities and individuals listed in Request 4 on the other concerning a discrete set of topics. We are not, for example, asking Lordstown to produce all discovery materials related to itself (except to the extent those discovery materials were exchanged with the parties listed in Request 4 in the context of the Merger, for example).
1. **We will agree to produce responsive non-privileged documents identified through the search protocol from the time period of April 1, 2020 through December 31, 2020; provided that we will construe the potentially "tautological" topics (e.g., "Lordstown," "Defendants," "DiamondPeak," "PIPE Investors") as relating to the valuation and assessment of the merger.**

Request 10:

1. Request 10 seeks discovery materials concerning the Special Committee, its formation, its investigation into the Hindenburg Report, and its conclusions. You expressed concern that the bulk of this information would be privileged and irrelevant to the extent it sought new information that came into existence post-Merger.
  1. We disagree and offer a few observations.
    1. *First*, information that is relevant does not become irrelevant by virtue of being privileged.
    2. *Second*, the Special Committee was formed in March 2021, only a few months after the Merger closed, to investigate allegations in the Hindenburg Report that are co-terminus with the allegations in the Complaint (i.e., whether and to what extent the previously disclosed pre-orders and production timeline for the Endurance were accurate). In our view, the factual information underlying the Special Committee's investigation and ultimate conclusion would have all existed before and in the immediate wake of the Merger. It is all relevant.
  2. Given the relevance of the Special Committee's investigation into the allegations in the Hindenburg Report, we ask that you produce or log all relevant discovery materials, particularly the factual record the Special Committee gathered in connection with its investigation

2. We stand on our objection that documents related to the Special Committee and its investigation (in and of themselves) are not sufficiently relevant to the claims in this litigation and highly likely to be privileged.
3. We reiterate that non-privileged documents that we otherwise have agreed (or may yet agree) to produce in response to other requests—e.g., because they relate to the merger, the timeline for producing the Endurance, etc.—will be produced irrespective of whether the Special Committee reviewed them.

Requests 11 and 29:

1. Requests 11 and 29 simply identify with precision the locations of discovery materials potentially responsive to Request 3. Agreement on the scope of Request 3 will resolve any issues respecting Requests 11 and 29.

1. OK, subject to final agreement on ESI/search protocol and reasonable accessibility of information.

Request 12:

1. Plaintiffs seek discovery materials concerning to the resignations of Messrs. Burns and Rodriguez to the extent related to the reasons for their departure.
1. We stand on our objection that documents relating to the later in time Resignation of Messrs. Burns are not sufficiently related to the claims in this litigation.

Request 13:

2. You asked—and we agreed—to articulate a limiting principle for this request.
  1. Because the Foxconn deal resulted in Foxconn purchasing the Ohio factory and manufacturing the Endurance trucks, we assume that as part of the deal, there would have been a due diligence of the Ohio Factory and its manufacturing capacities.
    1. Plaintiffs seek discovery materials concerning the Foxconn deal to the extent that it relates to financial projections, models, valuations, analyses, appraisals, business plans and/or any strategic plans concerning the Ohio Factory and/or the Endurance trucks whether conducted by or for the benefit of Lordstown.
3. We stand on our objection that documents relating to the later Foxconn deal are not sufficiently related to the claims in this litigation.

Request 19:

1. Request 19 seeks all discovery materials contained in any “data room” or other segregated location in connection with the Merger.
2. We will confirm the existence and access of any diligence “data room” or similar location for potential production.

Request 25:

1. Request 25 seeks discovery materials concerning Lordstown’s competitors. We are of the view that information regarding Lordstown’s competitors is relevant in that it bears on the feasibility and timing of the Endurance production. Discovery materials that are related to Lordstown’s ability to compete with other electric vehicle manufacturers and achieve a “first mover” advantage in the electric truck market vis a vis its competitors, particularly with respect to Ford, GM, and Tesla, or otherwise bear on the timing and feasibility of the Endurance production should be reviewed and produced or logged.
2. We will agree to produce responsive, non-privileged identified through the search protocol from the time period April 1, 2020 through December 31, 2020 that are related to Lordstown’s ability to compete with other electric vehicle manufacturers and achieve a “first mover” advantage in the electric truck market vis a vis its competitors.

Requests 32 and 33:

1. Requests 32 and 33 seek discovery materials concerning the regulatory actions and investigations into Lordstown by the SEC and DOJ. You took the position that that the bulk of this information would be privileged and irrelevant to the extent it seeks new information that came into existence post-Merger.
  1. We reiterate the same points in Request 10, *supra*. We also note that Lordstown disclosed that the investigations “relat[e] to the Merger between DiamondPeak and Legacy Lordstown and pre-orders of vehicles.” That appears to us to again be co-terminus with the allegations in our Complaint. To the extent the factual record compiled, reviewed, and produced in connection with these investigations consists of discovery materials created before or immediately after the Merger, that information is all contemporaneous to our allegations and relevant.
    1. We ask that you cross-produce whatever documents Lordstown has already produced to the SEC and/or DOJ. If you take the position that these production(s) are somehow broader or different in scope that the documents sought in our subpoena, please send us the subpoenas that you received from the SEC and/or DOJ and produce to us the documents that you believe fall within the scope of our subpoena. We will meet and confer regarding the delta.
4. We stand on our objection that documents related to the referenced regulatory actions and investigations (in and of themselves) are not sufficiently relevant to the claims in this litigation and highly likely to be privileged.
2. We reiterate that non-privileged documents that we otherwise have agreed (or may yet agree) to produce in response to other requests—e.g., because they relate to the merger, the timeline for producing the Endurance, etc.—will be produced irrespective of whether they also relate to the referenced regulatory actions and investigations.

Requests 36, 37, and 42:

1. We noted that these requests are designed to capture the broad ambit of relevant discovery materials under Rule 26(b)(1). We do not expect for you to run supplemental searches for discovery materials responsive to these requests. Instead, we ask that you produce discovery materials resulting from a mutually-agreed upon search protocol to the extent they are relevant to the claims or defenses in this action.
2. OK, though we reiterate for the sake of clarity that we are undertaking to produce documents that, based on a good faith determination, are responsive to your requests (to the extent agreed), and are not undertaking to independently assess whether documents may otherwise be relevant to the claims or defenses in this action.

Requests 39 and 40:

1. We note that Defendant David Hamamoto is a Lordstown director and we ask that you produce any Lordstown D&O policy that may potentially provide coverage to Mr. Hamamoto (Request 39). We are willing to table discussion regarding Request 40 until after we have had a chance to review those policies.
2. We will agree to produce any Lordstown D&O policy that may provide coverage to Mr. Hamamoto in his capacity as a Lordstown director.

Requests 42 and 43:

1. We are currently unaware of any discovery materials responsive to these requests and we are not pursuing these requests at this time.
2. OK



**Relationship/Independence Requests:**

1. Although you did not raise it previously, you asked about Requests seeking discovery materials concerning the independence of the Director Defendants. Those requests seek discovery materials concerning any pre-existing relationships between the Directors Defendants on the one hand and any Lordstown director or officer on the other that may have influenced the process leading to the Merger.
2. **We do not disagree with this request fundamentally but seek additional clarity regarding the scope of what you are seeking.**

**1. Custodians**

We are continuing to review your proposed custodians. Presently, we would like to add the following custodians:

1. Jane Reiss – Lordstown Director, served on the Special Committee  
**1. [jane.reiss.ext@lordstownmotors.com](mailto:jane.reiss.ext@lordstownmotors.com)**
2. Dale Spencer – Lordstown Director, served on the Special Committee  
**1. [dale.spencer.ext@lordstownmotors.com](mailto:dale.spencer.ext@lordstownmotors.com)**
3. Keith Feldman – Lordstown Director, former Head of Finance at DiamondHead Partners LLC  
**1. [feldman@diamondheadpartners.com](mailto:feldman@diamondheadpartners.com)**

**Could you please inform us why you believe the above directors would have relevant non privileged information that would not be available from the previously proffered Lordstown custodians or from your party discovery?**

Please let us know if you will agree to add these custodians by COB Tuesday (4/25). Please also let us know by 4/25 if you will accept service of a subpoena on their behalf—otherwise we will go the process server route.

**As for accepting subpoena service for Jane Reiss, Dale Spencer, Keith Feldman, Steve Burns and Julio Rodriguez, we will work with them to determine whether we can accept service or if we are unable to do so and will revert back to you.**

We also asked you to identify where you collected discovery materials from for Messrs. Burns and Rodriguez. Please let us know by COB Tuesday (4/25). Please also let us know by 4/25 if you will accept service of a subpoena on their behalf.

**We have collected both the email inbox and company phone for Steve Burns and Julio Rodriguez.**

We reserve all rights.

Tom

**Housekeeping: we will be providing privilege logs only consistent with Court of Chancery practice and procedure in cases of this nature. Lordstown reserves all rights and waive none.**

Erica

Erica Barrow  
**BakerHostetler**  
T +1.212.589.4273

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**From:** Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>  
**Sent:** Tuesday, April 25, 2023 6:09 PM  
**To:** Barrow, Erica <[ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com)>; Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>  
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**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

Thanks, Erica.

Thomas James  
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---

**From:** Barrow, Erica <[ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com)>  
**Sent:** Tuesday, April 25, 2023 5:56 PM  
**To:** Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>; Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>  
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**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

[External]

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Hi Thomas,

Thank you for your email. We expect to send you a fulsome response summarizing our position on the various requests and responding to you questions tomorrow.

Best,  
Erica

Erica Barrow  
**BakerHostetler**  
T +1.212.589.4273



**From:** Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>  
**Sent:** Friday, April 21, 2023 12:36 PM  
**To:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>  
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**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

Doug

Thanks for the call yesterday. We've memorialized our discussion and our proposals respecting the requests you wanted to meet and confer about. We assume these are the only "live" requests for which you have any issues. Please let us know if we have agreement, otherwise please offer a written counterproposal. We trust that resolution of the issues respecting these requests means we can move on to finalizing the search protocol and that you will not withhold or fail to log discovery materials hitting on the search protocol based on Lordstown's general or specific objections as well as objections to definitions and instructions contained in Lordstown's responses and objections to the subpoena.

## 1. Requests

### Requests 1-2:

2. You noted that Lordstown had no fundamental disagreement with producing discovery materials responsive to Requests 1-2, which seek all minutes, notes and other records of any Board, Special Committee, or other subcommittee meeting and materials and any corresponding materials, but asked Plaintiffs to specify any relevant topics or limiting principles for those requests.
  1. We note that the allegations in the Complaint should be considered the touchstone of relevance (see Ct. Ch. R. 26(b)(1)) and we ask that you search for, review, and produce or log all minutes, notes, or records of any meeting of the Board, Special Committee, or other committee, concerning:
    1. The Merger and the Merger Consideration
    2. The Transactions
    3. DiamondPeak
    4. The Founder Shares and Warrants
    5. The PIPE Investment and the PIPE Investors
    6. The Proxy
    7. The production of the Endurance, including the timing thereof
    8. The Hindenburg Report and the SEC/DOJ investigations
    9. The resignation of Messrs. Burns and Rodriguez
  2. We are also of the view that the Special Committee minutes and materials are all relevant and should be produced and/or logged. See Requests 10, 32-33, *infra*.
  3. Finally, we note that Lordstown previously produced Board minutes that were redacted for responsiveness in connection with the Section 220 production. Those minutes should be reproduced without responsiveness redactions, which are inappropriate in the plenary litigation context given the confidentiality order.

### Request 3:

2. You asked for clarification concerning subparts (a) (the Transactions), (b) (the Special Committee) and (d)-(e) (DiamondPeak and Defendants)
  1. For subpart (a), we ask that you produce or log all documents concerning the Transactions, defined to include the Merger as well as the PIPE Investment. The Merger is patently relevant. The PIPE Investment is similarly relevant as it bears on DiamondPeak's valuation of Lordstown, among other reasons.
  2. For subpart (b), please see Requests 10, 32-33, *infra*.
  3. For subparts (d) and (e), we ask that you produce or log all documents concerning DiamondPeak and Defendants as they relate to the Merger.

Request 4:

2. You noted that Lordstown was generally willing to review and produce discovery materials responsive to Request 4, but asks for clarification concerning what you referred to as "tautological" sub-components of this Request (e.g., discovery materials exchanged between Lordstown on the one hand, and Defendants, DiamondPeak, and their Advisors on the other hand, concerning Lordstown).
  1. To be clear, we are seeking over-the-transom discovery materials between Lordstown on the one hand and other entities and individuals listed in Request 4 on the other concerning a discrete set of topics. We are not, for example, asking Lordstown to produce all discovery materials related to itself (except to the extent those discovery materials were exchanged with the parties listed in Request 4 in the context of the Merger, for example).

Request 10:

5. Request 10 seeks discovery materials concerning the Special Committee, its formation, its investigation into the Hindenburg Report, and its conclusions. You expressed concern that the bulk of this information would be privileged and irrelevant to the extent it sought new information that came into existence post-Merger.
  1. We disagree and offer a few observations.
    1. *First*, information that is relevant does not become irrelevant by virtue of being privileged.
    2. *Second*, the Special Committee was formed in March 2021, only a few months after the Merger closed, to investigate allegations in the Hindenburg Report that are co-terminus with the allegations in the Complaint (*i.e.*, whether and to what extent the previously disclosed pre-orders and production timeline for the Endurance were accurate). In our view, the factual information underlying the Special Committee's investigation and ultimate conclusion would have all existed before and in the immediate wake of the Merger. It is all relevant.
  2. Given the relevance of the Special Committee's investigation into the allegations in the Hindenburg Report, we ask that you produce or log all relevant discovery materials, particularly the factual record the Special Committee gathered in connection with its investigation

Requests 11 and 29:

2. Requests 11 and 29 simply identify with precision the locations of discovery materials potentially responsive to Request 3. Agreement on the scope of Request 3 will resolve any issues respecting Requests 11 and 29.

Request 12:

2. Plaintiffs seek discovery materials concerning to the resignations of Messrs. Burns and Rodriguez to the extent related to the reasons for their departure.

**Request 13:**

4. You asked—and we agreed—to articulate a limiting principle for this request.
  1. Because the Foxconn deal resulted in Foxconn purchasing the Ohio factory and manufacturing the Endurance trucks, we assume that as part of the deal, there would have been a due diligence of the Ohio Factory and its manufacturing capacities.
    1. Plaintiffs seek discovery materials concerning the Foxconn deal to the extent that it relates to financial projections, models, valuations, analyses, appraisals, business plans and/or any strategic plans concerning the Ohio Factory and/or the Endurance trucks whether conducted by or for the benefit of Lordstown.

**Request 19:**

3. Request 19 seeks all discovery materials contained in any “data room” or other segregated location in connection with the Merger.

**Request 25:**

3. Request 25 seeks discovery materials concerning Lordstown’s competitors. We are of the view that information regarding Lordstown’s competitors is relevant in that it bears on the feasibility and timing of the Endurance production. Discovery materials that are related to Lordstown’s ability to compete with other electric vehicle manufacturers and achieve a “first mover” advantage in the electric truck market vis a vis its competitors, particularly with respect to Ford, GM, and Tesla, or otherwise bear on the timing and feasibility of the Endurance production should be reviewed and produced or logged.

**Requests 32 and 33:**

3. Requests 32 and 33 seek discovery materials concerning the regulatory actions and investigations into Lordstown by the SEC and DOJ. You took the position that that the bulk of this information would be privileged and irrelevant to the extent it seeks new information that came into existence post-Merger.
  1. We reiterate the same points in Request 10, *supra*. We also note that Lordstown disclosed that the investigations “relat[e] to the Merger between DiamondPeak and Legacy Lordstown and pre-orders of vehicles.” That appears to us to again be co-terminus with the allegations in our Complaint. To the extent the factual record compiled, reviewed, and produced in connection with these investigations consists of discovery materials created before or immediately after the Merger, that information is all contemporaneous to our allegations and relevant.
    1. We ask that you cross-produce whatever documents Lordstown has already produced to the SEC and/or DOJ. If you take the position that these production(s) are somehow broader or different in scope that the documents sought in our subpoena, please send us the subpoenas that you received from the SEC and/or DOJ and produce to us the documents that you believe fall within the scope of our subpoena. We will meet and confer regarding the delta.

**Requests 36, 37, and 42:**

3. We noted that these requests are designed to capture the broad ambit of relevant discovery materials under Rule 26(b)(1). We do not expect for you to run supplemental searches for discovery materials responsive to these requests. Instead, we ask that you produce discovery materials resulting from a mutually-agreed upon search protocol to the extent they are relevant to the claims or defenses in this action.

**Requests 39 and 40:**

3. We note that Defendant David Hamamoto is a Lordstown director and we ask that you produce any Lordstown D&O policy that may potentially provide coverage to Mr. Hamamoto (Request 39). We are willing to table discussion regarding Request 40 until after we have had a chance to review those policies.

Requests 42 and 43:

3. We are currently unaware of any discovery materials responsive to these requests and we are not pursuing these requests at this time.

Relationship/Independence Requests:

3. Although you did not raise it previously, you asked about Requests seeking discovery materials concerning the independence of the Director Defendants. Those requests seek discovery materials concerning any pre-existing relationships between the Directors Defendants on the one hand and any Lordstown director or officer on the other that may have influenced the process leading to the Merger.

**1. Custodians**

We are continuing to review your proposed custodians. Presently, we would like to add the following custodians:

4. Jane Reiss – Lordstown Director, served on the Special Committee
5. Dale Spencer – Lordstown Director, served on the Special Committee
6. Keith Feldman – Lordstown Director, former Head of Finance at DiamondHead Partners LLC

Please let us know if you will agree to add these custodians by COB Tuesday (4/25). Please also let us know by 4/25 if you will accept service of a subpoena on their behalf—otherwise we will go the process server route.

We also asked you to identify where you collected discovery materials from for Messrs. Burns and Rodriguez. Please let us know by COB Tuesday (4/25). Please also let us know by 4/25 if you will accept service of a subpoena on their behalf.

We reserve all rights.

Tom

Thomas James

**BIB&G LLP**

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**From:** Thomas James

**Sent:** Thursday, April 20, 2023 11:12 AM

**To:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Pittenger, Michael A.

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**Cc:** Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; DiCamillo, Raymond J. <[DiCamillo@rlf.com](mailto:DiCamillo@rlf.com)>;

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**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

Doug

I asked about search terms because we have been developing our own terms and—in the interests of efficiency—wanted to compare our terms and understand areas of common ground as well as where we needed to have discussions. But I'm happy to discuss live.

So we have a complete agenda, I would also like to discuss custodians. The list was helpful but we may have additions and follow up questions for you.

Look forward to speaking.

Tom

Thomas James

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---

**From:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>  
**Sent:** Thursday, April 20, 2023 11:00 AM  
**To:** Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>  
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**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

[External]

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Tom,

I thought we were on the same page. But to clarify, we have been testing search parameters, but we naturally (and necessarily) expect that our proposed search terms (and potentially other parameters) will be revised based on our discussion and agreement(s) as to the identified requests. In other words, we intend to tailor our ultimate proposed search parameters around what we agree to search for and produce, as we presume you'd expect us to do. We will, of course, share the hit report for the proposed search terms once we finalize our proposal so that you can assess the proposed search terms.

I suggest that we take this up further on our call this afternoon. I think that will be more productive than this recent email back and forth.

Doug

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**From:** Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>  
**Sent:** Wednesday, April 19, 2023 5:07 PM  
**To:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>  
**Cc:** Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; DiCamillo, Raymond J. <[DiCamillo@rlf.com](mailto:DiCamillo@rlf.com)>; Gallagher, Kevin M. <[Gallagher@rlf.com](mailto:Gallagher@rlf.com)>; Krischik, Alexander M. <[Krischik@rlf.com](mailto:Krischik@rlf.com)>; Choa, Jonathan A. <[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)>; Mozal, Nicholas D. <[nmozal@potteranderson.com](mailto:nmozal@potteranderson.com)>; Greene, Douglas W. <[dgreene@bakerlaw.com](mailto:dgreene@bakerlaw.com)>; Barrow, Erica <[ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com)>; Gustavo F. Bruckner <[gfbbruckner@pomlaw.com](mailto:gfbbruckner@pomlaw.com)> <[gfbbruckner@pomlaw.com](mailto:gfbbruckner@pomlaw.com)>; Samuel J. Adams <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)> <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)>; skaskela@kaskelalaw.com; Margaret Sanborn-Lowing <[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)>; Jeroen van Kwawegen <[jeroen@blbglaw.com](mailto:jeroen@blbglaw.com)>  
**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

Thanks Doug.

I think our correspondence speaks for itself, particularly with respect to timing. We've been asking for this information for some time now. But I'm confident we can work through most of the issues with respect to the requests themselves and I appreciate the list of custodians as well.

Mike mentioned on 3/27 that you were "evaluating search terms" and you noted on 4/6 that you would "react to" our proposed time period "via our proposed search protocol." Hence my requests for a complete search protocol. Can you please share that as well.

Thanks,  
Tom

Thomas James  
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**From:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>  
**Sent:** Wednesday, April 19, 2023 4:51 PM  
**To:** Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>  
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**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

[External]

Tom,

Below is the email I was preparing to send as we received your latest email. I won't delay sending the email by taking the time to respond to your specific accusations, except to note for the record that they're wrong. Lordstown continues to work in good faith toward responding appropriately to your clients' overbroad subpoena.

We believe it would be helpful to discuss the following requests on tomorrow afternoon's call: 1, 2, 3 (as to certain sub-parts), 4 (as to certain sub-parts), 10, 11, 12, 13, 19, 25, 29, 32, 33, 36, 37, 39, 40, 42, 43, 44.

While we do not waive our objections and responses as to the other requests, we believe that reaching agreement on a search/review protocol (including, e.g., search terms, custodians, and time frame(s)) would allow us to agree to produce responsive documents located pursuant to that search (if any).

We believe the final details of an ESI protocol (with agreed upon search terms, etc.) will necessarily depend on the outcome of our meet-and-confer process concerning the specific requests. As a starting point, however, we would propose the below custodians as the most likely to possess non-duplicative, responsive materials. We are also happy to continue discussing the relevant time period(s) on our call tomorrow, including in connection with our discussion of the individual requests (as applicable).

- Julio Rodriguez, former CFO
- Steve Burns, former CEO/Chairman
- Tom Canepa, former VP/Secretary/General Counsel
- Rachel Williams, former Paralegal
- Richard Schmidt, President
- Darren Post, Chief Engineer
- John LaFleur, Chief Operating Officer
- Caimin Flannery, former Vice President Business Development

Best,

Doug

---

**From:** Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>

**Sent:** Wednesday, April 19, 2023 4:34 PM

**To:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Pittenger, Michael A.

<[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>

**Cc:** Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; DiCamillo, Raymond J. <[DiCamillo@rlf.com](mailto:DiCamillo@rlf.com)>;

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**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

Doug

I asked for the list of outstanding requests you wanted to discuss as well as a complete search protocol and supporting hit reports 24 hours before our call tomorrow at 3PM eastern. I asked for that



information so I would have time to sufficiently digest it and ensure we have a productive conversation. I still don't have it. The delay is apparent and appears coordinated.

As this email correspondence demonstrates, I've been asking for this information for weeks if not months. You asked in your R&Os to meet and confer about the majority of our requests ***nearly two months*** ago but you have yet to explain what requests you actually have issues with. You claimed to be identifying custodians and preparing search terms ***three weeks ago*** but we still haven't seen them. I've repeatedly asked for this information and gotten nowhere. "[T]here just comes a point in the dialogue that necessarily occurs in the give-and-take of discovery where the response 'we're getting to it' is no longer adequate." *Cumming v. Edens*, C.A. No. 13007-VCS, at 47 (Del. Ch. July 12, 2018) (TRANSCRIPT). That time is now.

Please send the list of outstanding requests you wanted to discuss as well as a complete search protocol and supporting hit reports ASAP.

We reserve all rights.

Tom

Thomas James

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**From:** Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>

**Sent:** Monday, April 17, 2023 8:54 PM

**To:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Pittenger, Michael A.

<[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>

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**Subject:** Re: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

Thanks, Thursday at 3-4 ET is fine. Please circulate a dial-in.

In addition to whatever requests to discuss, please also send a complete protocol and hit reports. We ask that you do so at least 24 hours before our call so we have sufficient time to digest.

Tom

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**From:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>

**Sent:** Monday, April 17, 2023 8:49:31 PM

**To:** Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>; Pittenger, Michael A.



<[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>  
Cc: Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; DiCamillo, Raymond J. <[DiCamillo@rlf.com](mailto:DiCamillo@rlf.com)>;  
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Lowing <[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)>; Jeroen van Kwawegen <[jeroen@blbglaw.com](mailto:jeroen@blbglaw.com)>  
Subject: RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

[External]

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Tom,

We are finalizing our list of document requests to discuss, but wanted to send proposed times for the call so that we can get it on the calendar. The best window on our end is Thursday 3-4 ET. If that does not work for you, we can also make a time work Thursday 1-3 ET or Friday morning starting at 9:30 ET.

Best,

Doug

---

**From:** Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>  
**Sent:** Thursday, April 13, 2023 10:59 AM  
**To:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Pittenger, Michael A.  
<[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>  
**Cc:** Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; DiCamillo, Raymond J. <[DiCamillo@rlf.com](mailto:DiCamillo@rlf.com)>;  
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**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

Thanks, Doug.

In addition to whatever outstanding objections you have and requests you still want to meet and confer about (which I've been asking about since March 17) can you please send along a complete protocol that includes your proposed custodians and search terms so we can move forward with as many items as possible. If our mutual goal is to negotiate a comprehensive search protocol, then proceeding on the multiple fronts necessary towards meeting that goal makes more sense to me than proceeding in a piecemeal fashion.

Look forward to hearing back from you and speaking soon, preferably earlier next week so we can continue to make progress.

Thanks,  
Tom

Thomas James

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**From:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>  
**Sent:** Thursday, April 13, 2023 10:11 AM  
**To:** Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>  
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**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

[External]

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Thomas,

We are vetting our narrowed objections internally (assuming we come to an agreement on search/review protocol) and expect to get that to you tomorrow or Monday. We will also gather our availability for a meet and confer and send you proposed/available times at the same time.

Best,

Doug

---

**From:** Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>  
**Sent:** Wednesday, April 12, 2023 3:51 PM  
**To:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>  
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**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

Doug

Following up on my note. Please let us know when we can expect to see your proposed custodians and search terms. Please also let us know when you're available to meet and confer this week regarding what I understand are the remaining issues you have with the subpoena (*i.e.*, the requests you still have issues with and any remaining objections you have that you think a search protocol will not obviate). I'm confident we can address most if not all of the live issues in the context of a search

protocol but we need to actually understand what you're proposing in terms of custodians and search terms so we can meet in the middle. Likewise with respect to whatever remaining issues you may have with the requests themselves.

Thanks,  
Tom

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---

**From:** Thomas James  
**Sent:** Monday, April 10, 2023 6:35 PM  
**To:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>  
**Cc:** Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; DiCamillo, Raymond J. <[DiCamillo@rlf.com](mailto:DiCamillo@rlf.com)>; Gallagher, Kevin M. <[Gallagher@rlf.com](mailto:Gallagher@rlf.com)>; Krischik, Alexander M. <[Krischik@rlf.com](mailto:Krischik@rlf.com)>; Choa, Jonathan A. <[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)>; Mozal, Nicholas D. <[nmozal@potteranderson.com](mailto:nmozal@potteranderson.com)>; Greene, Douglas W. <[dgreene@bakerlaw.com](mailto:dgreene@bakerlaw.com)>; Barrow, Erica <[ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com)>; Gustavo F. Bruckner <[gfbbruckner@pomlaw.com](mailto:gfbbruckner@pomlaw.com)> <[gfbbruckner@pomlaw.com](mailto:gfbbruckner@pomlaw.com)>; Samuel J. Adams <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)> <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)>; skaskela@kaskelalaw.com; Margaret Sanborn-Lowing <[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)>; Jeroen van Kwawegen <[jeroen@blbglaw.com](mailto:jeroen@blbglaw.com)>  
**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

Thanks, Doug.

Please our proposed search protocol, attached. Ordinarily I would have populated with search terms and custodians but, since you have not shared those items with us, I have left them blank for now. We would appreciate your populating the custodial and search term fields for our review. We may have additional custodians and terms as well as modifications to your terms.

We would also appreciate if you could (1) promptly let us know what requests you still have issues with so we can meet and confer (Point #4, below) and (2) what other "objections on other grounds [you think] may need to be addressed separately." Please let us know of your availability to meet and confer this week and we will accommodate.

Tom

Thomas James  
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**From:** Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>  
**Sent:** Thursday, April 6, 2023 7:55 PM

**To:** Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>  
**Cc:** Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; DiCamillo, Raymond J. <[DiCamillo@rlf.com](mailto:DiCamillo@rlf.com)>; Gallagher, Kevin M. <[Gallagher@rlf.com](mailto:Gallagher@rlf.com)>; Krischik, Alexander M. <[Krischik@rlf.com](mailto:Krischik@rlf.com)>; Choa, Jonathan A. <[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)>; Mozal, Nicholas D. <[nmozal@potteranderson.com](mailto:nmozal@potteranderson.com)>; Greene, Douglas W. <[dgreene@bakerlaw.com](mailto:dgreene@bakerlaw.com)>; Barrow, Erica <[ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com)>; Gustavo F. Bruckner <[gfbbruckner@pomlaw.com](mailto:gfbbruckner@pomlaw.com)> <[gfbbruckner@pomlaw.com](mailto:gfbbruckner@pomlaw.com)>; Samuel J. Adams <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)> <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)>; skaskela@kaskelalaw.com; Christopher J. Orrico <[Christopher.Orrico@blbglaw.com](mailto:Christopher.Orrico@blbglaw.com)>; Margaret Sanborn-Lowing <[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)>  
**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

[External]

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Tom,

Thank you for the call, as well. Please see below in red for reactions/clarifications to your summary. We look forward to continued constructive dialogue.

Thanks,

Doug

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**From:** Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>  
**Sent:** Tuesday, April 4, 2023 4:46 PM  
**To:** Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>  
**Cc:** Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; DiCamillo, Raymond J. <[DiCamillo@rlf.com](mailto:DiCamillo@rlf.com)>; Gallagher, Kevin M. <[Gallagher@rlf.com](mailto:Gallagher@rlf.com)>; Krischik, Alexander M. <[Krischik@rlf.com](mailto:Krischik@rlf.com)>; Choa, Jonathan A. <[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)>; Mozal, Nicholas D. <[nmozal@potteranderson.com](mailto:nmozal@potteranderson.com)>; Greene, Douglas W. <[dgreene@bakerlaw.com](mailto:dgreene@bakerlaw.com)>; Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Barrow, Erica <[ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com)>; Gustavo F. Bruckner <[gfbbruckner@pomlaw.com](mailto:gfbbruckner@pomlaw.com)> <[gfbbruckner@pomlaw.com](mailto:gfbbruckner@pomlaw.com)>; Samuel J. Adams <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)> <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)>; skaskela@kaskelalaw.com; Christopher J. Orrico <[Christopher.Orrico@blbglaw.com](mailto:Christopher.Orrico@blbglaw.com)>; Margaret Sanborn-Lowing <[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)>  
**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

[External Email: Use caution when clicking on links or opening attachments.]

Thank you for the call earlier.

Our takeaways were as follows:

1. Lordstown is in the process of gathering custodians and preparing potential search terms to negotiate a mutually agreeable search protocol. Lordstown will send Plaintiffs that information as soon as practicable. Yes, we are evaluating potential search protocol parameters, including (without limitation) custodians and search terms, and we will share our proposal with you as soon as practicable. As discussed, our proposed timeframe is April 1, 2020 through December 31, 2020.
2. Lordstown will not will not withhold or redact documents or communications hitting on an agreed-upon search protocol based on Lordstown's general or specific objections as well as objections to definitions and instructions contained in Lordstown's responses and objections to the subpoena. We indicated that reaching agreement on a search protocol would likely obviate

many of our objections related to the burden of locating/reviewing documents, but that objections on other grounds may need to be addressed separately. This overlaps with #4 below; we are evaluating the requests with this in mind, and will provide you further information as to which requests/objections need to be addressed separately from the negotiation of a search protocol.

3. Plaintiffs will promptly send Lordstown information to populate a search protocol, including relevant time periods covering certain of the requests in Plaintiffs' subpoena. **Yes, and we will evaluate your proposed timeframes, etc. and react to them via our proposed search protocol.**
4. Lordstown will promptly identify which the requests in the subpoena that Lordstown had previously asked to meet and confer about that remain unclear to Lordstown and that Lordstown would like to meet and confer about further. **See #2, above.**

Please let me know if this tracks. We will endeavor to get you the information in point three by end-of-week at the latest. Please confirm you will do the same regarding point four so we can promptly meet-and-confer and resolve any such issues. We had previously asked to meet and confer over a month ago on March 2, so if there are any lingering issues, we would like to put those to bed promptly.

Have a nice evening,  
Tom

Thomas James  
**BIB&G LLP**  
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1251 Avenue of the Americas  
New York, NY 10020  
Direct: (212) 554-1399  
Mobile: (914) 552-7276

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**From:** Thomas James  
**Sent:** Wednesday, March 29, 2023 8:26 AM  
**To:** Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>  
**Cc:** Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; DiCamillo, Raymond J. <[DiCamillo@rlf.com](mailto:DiCamillo@rlf.com)>; Gallagher, Kevin M. <[Gallagher@rlf.com](mailto:Gallagher@rlf.com)>; Krischik, Alexander M. <[Krischik@rlf.com](mailto:Krischik@rlf.com)>; Choa, Jonathan A. <[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)>; Mozal, Nicholas D. <[nmozal@potteranderson.com](mailto:nmozal@potteranderson.com)>; Greene, Douglas W. <[dgreene@bakerlaw.com](mailto:dgreene@bakerlaw.com)>; Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Barrow, Erica <[ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com)>; Smith, Alena V. <[asmith@rlf.com](mailto:asmith@rlf.com)>; Gustavo F. Bruckner <[gfbbruckner@pomlaw.com](mailto:gfbbruckner@pomlaw.com)> <[gfbbruckner@pomlaw.com](mailto:gfbbruckner@pomlaw.com)>; Samuel J. Adams <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)> <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)>; skaskela@kaskelalaw.com; Christopher J. Orrico <[Christopher.Orrico@blbglaw.com](mailto:Christopher.Orrico@blbglaw.com)>; Margaret Sanborn-Lowing <[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)>  
**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

Confirming your availability for a meet and confer next Tuesday at 3PM eastern. If that works, please circulate a dial-in.

Thomas James  
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1251 Avenue of the Americas  
New York, NY 10020  
Direct: (212) 554-1399  
Mobile: (914) 552-7276



---

**From:** Thomas James  
**Sent:** Tuesday, March 28, 2023 9:18 AM  
**To:** Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>  
**Cc:** Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; DiCamillo, Raymond J. <[DiCamillo@rlf.com](mailto:DiCamillo@rlf.com)>; Gallagher, Kevin M. <[Gallagher@rlf.com](mailto:Gallagher@rlf.com)>; Krischik, Alexander M. <[Krischik@rlf.com](mailto:Krischik@rlf.com)>; Choa, Jonathan A. <[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)>; Mozal, Nicholas D. <[nmozal@potteranderson.com](mailto:nmozal@potteranderson.com)>; Greene, Douglas W. <[dgreene@bakerlaw.com](mailto:dgreene@bakerlaw.com)>; Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Barrow, Erica <[ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com)>; Smith, Alena V. <[asmith@rlf.com](mailto:asmith@rlf.com)>; Gustavo F. Bruckner <[gfbbruckner@pomlaw.com](mailto:gfbbruckner@pomlaw.com)> <[gfbbruckner@pomlaw.com](mailto:gfbbruckner@pomlaw.com)>; Samuel J. Adams <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)> <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)>; [skaskela@kaskelalaw.com](mailto:skaskela@kaskelalaw.com); Christopher J. Orrico <[Christopher.Orrico@blbglaw.com](mailto:Christopher.Orrico@blbglaw.com)>; Margaret Sanborn-Lowing <[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)>  
**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

Thanks, Mike.

I'm generally available on Tuesday, afternoon preferable. Let's pencil in 3PM eastern. If that works for you, would you mind circulating a dial-in?

Tom

Thomas James  
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**From:** Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>  
**Sent:** Monday, March 27, 2023 10:06 PM  
**To:** Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>; Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>  
**Cc:** Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; DiCamillo, Raymond J. <[DiCamillo@rlf.com](mailto:DiCamillo@rlf.com)>; Gallagher, Kevin M. <[Gallagher@rlf.com](mailto:Gallagher@rlf.com)>; Krischik, Alexander M. <[Krischik@rlf.com](mailto:Krischik@rlf.com)>; Choa, Jonathan A. <[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)>; Mozal, Nicholas D. <[nmozal@potteranderson.com](mailto:nmozal@potteranderson.com)>; Greene, Douglas W. <[dgreene@bakerlaw.com](mailto:dgreene@bakerlaw.com)>; Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Barrow, Erica <[ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com)>; Smith, Alena V. <[asmith@rlf.com](mailto:asmith@rlf.com)>; Gustavo F. Bruckner <[gfbbruckner@pomlaw.com](mailto:gfbbruckner@pomlaw.com)> <[gfbbruckner@pomlaw.com](mailto:gfbbruckner@pomlaw.com)>; Samuel J. Adams <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)> <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)>; [skaskela@kaskelalaw.com](mailto:skaskela@kaskelalaw.com); Christopher J. Orrico <[Christopher.Orrico@blbglaw.com](mailto:Christopher.Orrico@blbglaw.com)>; Margaret Sanborn-Lowing <[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)>  
**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

[External]

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Tom,

Are there times on Tuesday, April 4 that would work on your end for a meet-and-confer? We have identified custodians and are evaluating search terms/protocols for conducting searches/reviews on the undisputed requests. We are happy to discuss those with you during the meet-and-confer, as well as any categories to which Lordstown has objected that you would like to discuss.

Mike

**Michael A. Pittenger | Partner**Pronouns: *he / him / his*

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**From:** Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>**Sent:** Monday, March 27, 2023 10:30 AM**To:** Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>

**Cc:** Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; DiCamillo, Raymond J. <[DiCamillo@rfl.com](mailto:DiCamillo@rfl.com)>;  
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 Christopher J. Orrico <[Christopher.Orrico@blbglaw.com](mailto:Christopher.Orrico@blbglaw.com)>; Margaret Sanborn-Lowing  
 <[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)>

**Subject:** RE: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

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Justin

Thanks for the response, but it's now been a week since I last heard from you a nearly a month since I sent a deficiency letter. It was short, only six paged. I have yet to get a substantive response. Why haven't we heard back from you?

I appreciate that you are apparently "conducting the diligence in order to respond to [my] letter" and I assume that means you're doing things like (1) compiling a list of custodians, (2) conducting comprehensive custodial interviews to learn where the locations of responsive discovery materials are and actually collecting documents, and (3) preparing a search protocol—including search terms—for our review. I assure you, that's what we're doing on our end. Please confirm my understanding is correct.

I'm nonetheless confused and concerned why that information would take a month to compile and why that has prevented you from responding to my letter. As you'll recall, my letter asked you to confirm basic points like (1) that you wouldn't withhold or fail to log responsive discovery materials on the basis of your general and specific objections pending agreement on a search protocol and (2) that the confidentiality order entered in this action would alleviate any confidential concerns you ostensibly had. We still have no answers on those basic questions. Why not?

My letter also offered to meet and confer about the 25+ document requests that you asked to meet and confer about. I see no reason why we can't have that meet and confer while you compile the information necessary to craft a comprehensive discovery protocol. When are you available?

Thanks,  
Tom

Thomas James  
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New York, NY 10020  
Direct: (212) 554-1399  
Mobile: (914) 552-7276

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**From:** Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>  
**Sent:** Monday, March 20, 2023 6:48 PM  
**To:** Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>  
**Cc:** Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>; DiCamillo, Raymond J. <[DiCamillo@rlf.com](mailto:DiCamillo@rlf.com)>;  
Gallagher, Kevin M. <[Gallagher@rlf.com](mailto:Gallagher@rlf.com)>; Kriskich, Alexander M. <[Kriskich@rlf.com](mailto:Kriskich@rlf.com)>; Choa, Jonathan A.  
<[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)>; Mozal, Nicholas D. <[nmozal@potteranderson.com](mailto:nmozal@potteranderson.com)>; Pittenger, Michael  
A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Greene, Douglas W. <[dgreene@bakerlaw.com](mailto:dgreene@bakerlaw.com)>; Shively,  
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Samuel J. Adams ([sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)) <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)>; [skaskela@kaskelalaw.com](mailto:skaskela@kaskelalaw.com);  
Christopher J. Orrico <[Christopher.Orrico@blbglaw.com](mailto:Christopher.Orrico@blbglaw.com)>; Margaret Sanborn-Lowing  
<[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)>  
**Subject:** Re: [EXT] RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

Tom,

We are conducting the diligence in order to respond to your letter. We will be in touch.

Thanks,  
Justin



Justin T. Hymes | Associate

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On Mar 17, 2023, at 9:40 AM, Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)> wrote:



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Justin

It's been over two weeks since I sent the below letter and a week past the date I asked for a response. As my letter noted, the majority of your client's responses to our document requests were offers to meet and confer. We'd like to take you up on that offer, but the lack of any response from your side, substantive or otherwise, isn't doing much to advance the ball.

Please provide a substantive response to my letter by COB Monday (3/20).

If I don't hear from you before then, have a nice weekend.

Tom

Thomas James

**BLB&G LLP**

Bernstein Litowitz Berger & Grossmann LLP

1251 Avenue of the Americas

New York, NY 10020

Direct: (212) 554-1399

Mobile: (914) 552-7276

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**From:** Thomas James

**Sent:** Thursday, March 2, 2023 12:45 PM

**To:** Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>; Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>

**Cc:** DiCamillo, Raymond J. <[DiCamillo@RLF.com](mailto:DiCamillo@RLF.com)>; Gallagher, Kevin M. <[Gallagher@RLF.com](mailto:Gallagher@RLF.com)>; Krischik, Alexander M. <[Krischik@rlf.com](mailto:Krischik@rlf.com)>; Choa, Jonathan A. <[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)>; Mozal, Nicholas D. <[nmozal@potteranderson.com](mailto:nmozal@potteranderson.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Greene, Douglas W. <[dgreene@bakerlaw.com](mailto:dgreene@bakerlaw.com)>; Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Barrow, Erica <[ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com)>; Smith, Alena V. <[asmith@rlf.com](mailto:asmith@rlf.com)>; Gustavo F. Bruckner <[gfbbruckner@pomlaw.com](mailto:gfbbruckner@pomlaw.com)>; Samuel J. Adams <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)>; <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)>; <[skaskela@kaskelalaw.com](mailto:skaskela@kaskelalaw.com)>; Christopher J. Orrico <[Christopher.Orrico@blbglaw.com](mailto:Christopher.Orrico@blbglaw.com)>; Margaret Sanborn-Lowing <[Margaret.Lowing@blbglaw.com](mailto:Margaret.Lowing@blbglaw.com)>

**Subject:** RE: In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW

Justin et al.

Thank you for the responses and objections. Please see the attached correspondence. Once you've had a chance to review, please let us know of a good time to meet and confer.

If we don't connect before the weekend, I hope you have a good one.

Regards,  
Tom

Thomas James  
**BLB&G LLP**  
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New York, NY 10020  
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Mobile: (914) 552-7276

---

**From:** Hymes, Justin T. <[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com)>  
**Sent:** Tuesday, February 21, 2023 5:10 PM  
**To:** Daniel Meyer <[Daniel.Meyer@blbglaw.com](mailto:Daniel.Meyer@blbglaw.com)>  
**Cc:** Mark Lebovitch <[MarkL@blbglaw.com](mailto:MarkL@blbglaw.com)>; Thomas James <[Thomas.James@blbglaw.com](mailto:Thomas.James@blbglaw.com)>; DiCamillo, Raymond J. <[DiCamillo@RLF.com](mailto:DiCamillo@RLF.com)>; Gallagher, Kevin M. <[Gallagher@RLF.com](mailto:Gallagher@RLF.com)>; Krischik, Alexander M. <[Krischik@rlf.com](mailto:Krischik@rlf.com)>; Choa, Jonathan A. <[jchoa@potteranderson.com](mailto:jchoa@potteranderson.com)>; Mozal, Nicholas D. <[nmozal@potteranderson.com](mailto:nmozal@potteranderson.com)>; Pittenger, Michael A. <[mpittenger@potteranderson.com](mailto:mpittenger@potteranderson.com)>; Greene, Douglas W. <[dgreene@bakerlaw.com](mailto:dgreene@bakerlaw.com)>; Shively, Douglas <[dshively@bakerlaw.com](mailto:dshively@bakerlaw.com)>; Barrow, Erica <[ebarrow@bakerlaw.com](mailto:ebarrow@bakerlaw.com)>; Smith, Alena V. <[asmith@rlf.com](mailto:asmith@rlf.com)>; Gustavo F. Bruckner <[gbruckner@pomlaw.com](mailto:gbruckner@pomlaw.com)>; Samuel J. Adams <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)>; <[sjadams@pomlaw.com](mailto:sjadams@pomlaw.com)>; <[skaskela@kaskelalaw.com](mailto:skaskela@kaskelalaw.com)>  
**Subject:** In re Lordstown Motors Corp. Stockholders Litigation; Case No. 2021-1066-LWW


[External]

---

Counsel,

Attached please find Lordstown Motor Corp.'s Responses and Objections to Subpoena *Duces Tecum* and *Ad Testificandum*.

Thanks,  
Justin

 Justin T. Hymes | Associate  
<[image002.jpg](#)> Potter Anderson & Corroon LLP | 1313 N. Market Street, 6th Floor | Wilmington, DE 19801-6108  
T +1 302.984.6132 | F +1 302.658.1192  
[jhymes@potteranderson.com](mailto:jhymes@potteranderson.com) | [potteranderson.com](http://potteranderson.com)

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**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

OF COUNSEL:

Douglas W. Greene  
Erica Barrow  
BAKER & HOSTETLER LLP  
45 Rockefeller Plaza  
New York, NY 10111-0100  
(212) 847-7090

Douglas L. Shively  
BAKER & HOSTETLER LLP  
Key Tower, 127 Public Square,  
Suite 2000  
Cleveland, OH 44114  
(216) 621-0200

By: /s/ Justin T. Hymes  
Michael A. Pittenger (#3212)  
Jonathan A. Choa (#5319)  
Nicholas D. Mozal (#5838)  
Justin T. Hymes (#6671)  
1313 N. Market Street, 6<sup>th</sup> Fl.  
Hercules Plaza  
P.O. Box 951  
Wilmington, DE 19899  
(302) 984-6000

*Attorneys for Lordstown Motors Corp.*

Dated: June 27, 2023

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27<sup>th</sup> 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:

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

Raymond J. DiCamillo, Esquire  
Kevin M. Gallagher, Esquire  
Alexander M. Krischik, Esquire  
Nicholas F. Mastria, Esquire  
Alena V. Smith, 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](http://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			
<b>PACER Login:</b>	rjiszuba	<b>Client Code:</b>	1902563-0002
<b>Description:</b>	Notice of Filing	<b>Search Criteria:</b>	23-10831
<b>Billable Pages:</b>	1	<b>Cost:</b>	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

OF COUNSEL:

Douglas W. Greene  
Erica Barrow  
BAKER & HOSTETLER LLP  
45 Rockefeller Plaza  
New York, NY 10111-0100  
(212) 847-7090

Douglas L. Shively  
BAKER & HOSTETLER LLP  
Key Tower, 127 Public Square,  
Suite 2000  
Cleveland, OH 44114  
(216) 621-0200

By: /s/ Justin T. Hymes  
Michael A. Pittenger (#3212)  
Jonathan A. Choa (#5319)  
Nicholas D. Mozal (#5838)  
Justin T. Hymes (#6671)  
1313 N. Market Street, 6<sup>th</sup> Fl.  
Hercules Plaza  
P.O. Box 951  
Wilmington, DE 19899  
(302) 984-6000

*Attorneys for Lordstown Motors Corp.*

Dated: June 29, 2023

**CERTIFICATE OF SERVICE**

I hereby certify that on this 29<sup>th</sup> 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. DiCamillo, 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](http://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.

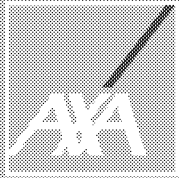
**Una O'Boyle**  
**Clerk, U.S. Bankruptcy Court**

**PACER Service Center**

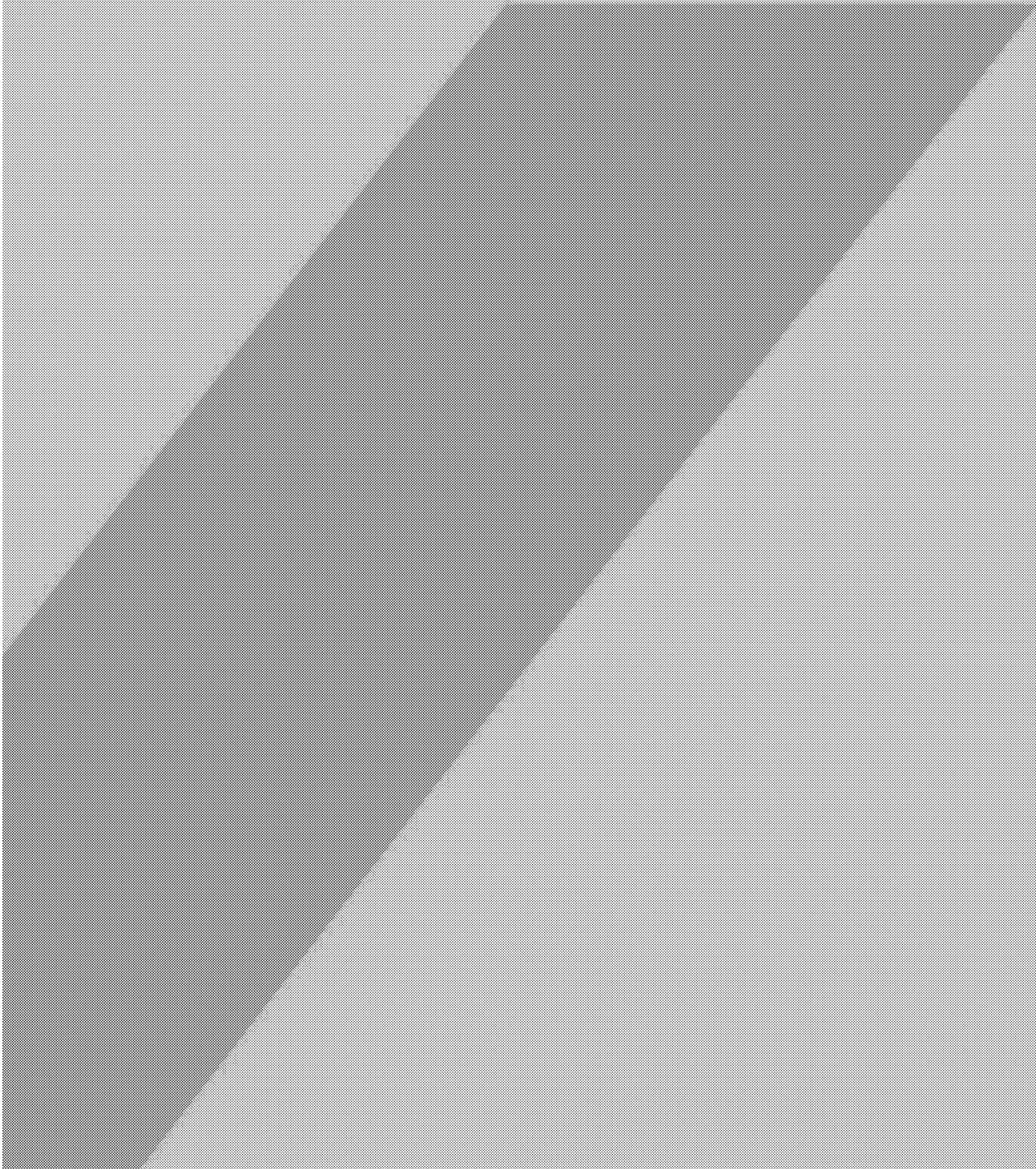
**Transaction Receipt**

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

**EXHIBIT J**



XL Insurance



Policy Number: [REDACTED] ☐  
 Renewal of Number: N/A ☒

**Greenwich Insurance Company**  
**XL Specialty Insurance Company**  
 Members of the XL America Companies

**MANAGEMENT LIABILITY AND  
 COMPANY REIMBURSEMENT  
 INSURANCE POLICY DECLARATIONS**

Executive Offices  
 70 Seaview Avenue  
 Stamford, CT 06902-6040  
 Telephone 877-953-2636

THIS IS A CLAIMS MADE POLICY. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS POLICY ONLY APPLIES TO CLAIMS FIRST MADE DURING THE POLICY PERIOD OR, IF APPLICABLE, THE OPTIONAL EXTENSION PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS SHALL BE REDUCED AND MAY BE EXHAUSTED BY THE PAYMENT OF DEFENSE EXPENSES. THIS POLICY DOES NOT PROVIDE FOR ANY DUTY BY THE INSURER TO DEFEND ANY INSURED. PLEASE READ AND REVIEW THE POLICY CAREFULLY.

**NOTICE: THESE POLICY FORMS AND THE APPLICABLE RATES ARE EXEMPT FROM THE FILING REQUIREMENTS OF THE NEW YORK STATE INSURANCE DEPARTMENT. HOWEVER, SUCH FORMS AND RATES MUST MEET THE MINIMUM STANDARDS OF THE NEW YORK INSURANCE LAW AND REGULATIONS.**

**Item 1. Name and Mailing Address of Parent Company:**

DiamondPeak Holdings Corp.  
 40 W 57<sup>th</sup> Street, 29<sup>th</sup> Floor  
 New York, New York, 10019

**Item 2. Policy Period:** From: February 27, 2019 To: February 27, 2021  
 At 12:01AM Standard Time at your Mailing Address Shown Above

**Item 3. Limit of Liability:**

(a) \$10,000,000 Aggregate each **Policy Period** (including **Defense Expenses**)  
 (b) \$500,000 Shareholder Derivative Investigation Costs Sublimit

**Item 4. Retentions:**

\$0 each **Insured Person** under INSURING AGREEMENT I (A)  
 \$500,000 each **Claim** under INSURING AGREEMENT I (B)  
 \$500,000 each **Claim** under INSURING AGREEMENT I (C)  
 \$0 each **Claim** under COVERAGE EXTENSION (A)

**Item 5. Optional Extension Period:**

Length of Optional Extension Period: One Year at 150% of the Annual Premium

Premium for Optional Extension Period: [REDACTED]

**Item 6. Pending and Prior Litigation Date:** February 27, 2019

**Item 7. Notices required to be given to the Insurer must be addressed to:**

XL Catlin Professional Insurance  
 100 Constitution Plaza, 13<sup>th</sup> Floor  
 Hartford, CT 06103  
 by electronic mail (email) to: [proclaimnewnotices@xlcattlin.com](mailto:proclaimnewnotices@xlcattlin.com).  
 Toll Free Telephone: 877-953-2636

**Item 8. Premium:**

Taxes, Surcharges or Fees \$0.00  
 Total Policy Premium [REDACTED]

2-14177  
 DiamondPeak Holdings Corp 01 04 19

**MANAGEMENT LIABILITY AND COMPANY REIMBURSEMENT POLICY DECLARATIONS**

**Item 9. Policy Form and Endorsements Attached at Issuance:**

DiamondPeak Holdings Corp 04 04 19 XL 80 24 03 03 DO 72 47 07 16 DO 72 46 03 07 DO 72 43 08 05  
DO 96 02 02 00 XL 80 64 04 09 DOX 80 09 07 17 DiamondPeak Holdings Corp 03 04 19

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Countersigned: \_\_\_\_\_ By: \_\_\_\_\_  
Date Authorized Representative

THESE **DECLARATIONS** AND THE POLICY, WITH THE ENDORSEMENTS, ATTACHMENTS, AND THE **APPLICATION** SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE INSURER AND THE **INSURED** RELATING TO THIS INSURANCE.

**In Witness Whereof, the Insurer has caused this Policy to be executed by its authorized officers, but this Policy will not be valid unless countersigned on the Declarations page, if required by law, by a duly authorized representative of the Insurer.**

*Nicholas M. Brown, Jr.*

Nicholas M. Brown Jr.  
President

*Theresa M. Morgan*

Theresa M. Morgan  
Secretary

**XL Specialty Insurance Company**

*Nicholas M. Brown, Jr.*

Nicholas M. Brown, Jr.  
President

*Theresa M. Morgan*

Theresa M. Morgan  
Secretary

**Greenwich Insurance Company**

---

**IN WITNESS**

**XL SPECIALTY INSURANCE COMPANY**

REGULATORY OFFICE  
505 EAGLEVIEW BOULEVARD, SUITE 100  
DEPARTMENT: REGULATORY  
EXTON, PA 19341-1120  
PHONE: 800-688-1840

It is hereby agreed and understood that the following In Witness Clause supercedes any and all other In Witness clauses in this policy.

All other provisions remain unchanged.

IN WITNESS WHEREOF, the Insurer has caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by a duly authorized representative of the Insurer.



---

Joseph Tocco  
President



---

Toni Ann Perkins  
Secretary

LAD 400 0915 XLS

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**POLICYHOLDER DISCLOSURE**  
**NOTICE OF TERRORISM**  
**INSURANCE COVERAGE**

Coverage for acts of terrorism is already included in your current policy. You are hereby notified that under the Terrorism Risk Insurance Act, as amended in 2015, the definition of act of terrorism has changed. As defined in Section 102(1) of the Act: The term "act of terrorism" means any act that is certified by the Secretary of the Treasury, in consultation with the Secretary of Homeland Security, and the Attorney General of the United States—to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. Under your existing coverage, any losses resulting from certified acts of terrorism may be partially reimbursed by the United States Government under a formula established by federal law. Under this formula, the United States Government generally reimburses 85% through 2015; 84% beginning on January 1, 2016; 83% beginning on January 1, 2017; 82% beginning on January 1, 2018; 81% beginning on January 1, 2019; and 80% beginning on January 1, 2020, of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. However, your policy may contain other exclusions that may affect your coverage. The Terrorism Risk Insurance Act, as amended, contains a \$100 billion cap that limits U.S. Government reimbursement as well as insurers' liability for losses resulting from certified acts of terrorism when the amount of such losses exceeds \$100 billion in any one calendar year. If the aggregate insured losses for all insurers exceed \$100 billion, your coverage may be reduced.

The portion of your annual premium that is attributable to coverage for acts of terrorism is:  
\$ waived. Any premium waiver is only valid for the current Policy Period.

I ACKNOWLEDGE THAT I HAVE BEEN NOTIFIED THAT UNDER THE TERRORISM RISK INSURANCE ACT, AS AMENDED, ANY LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM UNDER MY POLICY COVERAGE MAY BE PARTIALLY REIMBURSED BY THE UNITED STATES GOVERNMENT AND I HAVE BEEN NOTIFIED OF THE AMOUNT OF MY PREMIUM ATTRIBUTABLE TO SUCH COVERAGE.

Name of Insurer: **XL Specialty Insurance Company**

Policy Number: [REDACTED]

\_\_\_\_\_  
Signature of Insured

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Date

## NOTICE TO POLICYHOLDERS

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### **U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC")**

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Policyholder Notice provides information concerning possible impact on your insurance coverage due to the impact of U.S. Trade Sanctions<sup>1</sup>. Please read this Policyholder Notice carefully.

In accordance with the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") regulations, or any other U.S. Trade Sanctions applied by any regulatory body, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law, is a Specially Designated National and Blocked Person ("SDN"), or is owned or controlled by an SDN, this insurance will be considered a blocked or frozen contract. When an insurance policy is considered to be such a blocked or frozen contract, neither payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.

<sup>1</sup> "U.S Trade Sanctions" may be promulgated by Executive Order, act of Congress, regulations from the U.S. Departments of State, Treasury, or Commerce, regulations from the State Insurance Departments, etc.

PN CW 05 1017

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## NOTICE TO POLICYHOLDERS

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### PRIVACY POLICY

The XL Catlin insurance group (the “Companies”), believes personal information that we collect about our customers, potential customers, and proposed insureds (referred to collectively in this Privacy Policy as “customers”) must be treated with the highest degree of confidentiality. For this reason and in compliance with the Title V of the Gramm-Leach-Bliley Act (“GLBA”), we have developed a Privacy Policy that applies to all of our companies. For purposes of our Privacy Policy, the term “personal information” includes all information we obtain about a customer and maintain in a personally identifiable way. In order to assure the confidentiality of the personal information we collect and in order to comply with applicable laws, all individuals with access to personal information about our customers are required to follow this policy.

#### **Our Privacy Promise**

Your privacy and the confidentiality of your business records are important to us. Information and the analysis of information is essential to the business of insurance and critical to our ability to provide to you excellent, cost-effective service and products. We understand that gaining and keeping your trust depends upon the security and integrity of our records concerning you. Accordingly, we promise that:

1. We will follow strict standards of security and confidentiality to protect any information you share with us or information that we receive about you;
2. We will verify and exchange information regarding your credit and financial status only for the purposes of underwriting, policy administration, or risk management and only with reputable references and clearinghouse services;
3. We will not collect and use information about you and your business other than the minimum amount of information necessary to advise you about and deliver to you excellent service and products and to administer our business;
4. We will train our employees to handle information about you or your business in a secure and confidential manner and only permit employees authorized to use such information to have access to such information;
5. We will not disclose information about you or your business to any organization outside the XL Catlin insurance group of Companies or to third party service providers unless we disclose to you our intent to do so or we are required to do so by law;
6. We will not disclose medical information about you, your employees, or any claimants under any policy of insurance, unless you provide us with written authorization to do so, or unless the disclosure is for any specific business exception provided in the law;
7. We will attempt, with your help, to keep our records regarding you and your business complete and accurate, and will advise you how and where to access your account information (unless prohibited by law), and will advise you how to correct errors or make changes to that information; and
8. We will audit and assess our operations, personnel and third party service providers to assure that your privacy is respected.

#### **Collection and Sources of Information**

We collect from a customer or potential customer only the personal information that is necessary for (a) determining eligibility for the product or service sought by the customer, (b) administering the product or service obtained, and (c) advising the customer about our products and services. The information we collect generally comes from the following sources:

- Submission – During the submission process, you provide us with information about you and your business, such as your name, address, phone number, e-mail address, and other types of personal identification information;
- Quotes – We collect information to enable us to determine your eligibility for the particular insurance product and to determine the cost of such insurance to you. The information we collect will vary with the type of insurance you seek;

## NOTICE TO POLICYHOLDERS

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- Transactions – We will maintain records of all transactions with us, our affiliates, and our third party service providers, including your insurance coverage selections, premiums, billing and payment information, claims history, and other information related to your account;
- Claims – If you obtain insurance from us, we will maintain records related to any claims that may be made under your policies. The investigation of a claim necessarily involves collection of a broad range of information about many issues, some of which does not directly involve you. We will share with you any facts that we collect about your claim unless we are prohibited by law from doing so. The process of claim investigation, evaluation, and settlement also involves, however, the collection of advice, opinions, and comments from many people, including attorneys and experts, to aid the claim specialist in determining how best to handle your claim. In order to protect the legal and transactional confidentiality and privileges associated with such opinions, comments and advice, we will not disclose this information to you; and
- Credit and Financial Reports – We may receive information about you and your business regarding your credit. We use this information to verify information you provide during the submission and quote processes and to help underwrite and provide to you the most accurate and cost-effective insurance quote we can provide.

### Retention and Correction of Personal Information

We retain personal information only as long as required by our business practices and applicable law. If we become aware that an item of personal information may be materially inaccurate, we will make reasonable effort to re-verify its accuracy and correct any error as appropriate.

### Storage of Personal Information

We have in place safeguards to protect data and paper files containing personal information.

### Sharing/Disclosing of Personal Information

We maintain procedures to assure that we do not share personal information with an unaffiliated third party for marketing purposes unless such sharing is permitted by law. Personal information may be disclosed to an unaffiliated third party for necessary servicing of the product or service or for other normal business transactions as permitted by law.

We do not disclose personal information to an unaffiliated third party for servicing purposes or joint marketing purposes unless a contract containing a confidentiality/non-disclosure provision has been signed by us and the third party. Unless a consumer consents, we do not disclose “consumer credit report” type information obtained from an application or a credit report regarding a customer who applies for a financial product to any unaffiliated third party for the purpose of serving as a factor in establishing a consumer's eligibility for credit, insurance or employment. “Consumer credit report type information” means such things as net worth, credit worthiness, lifestyle information (piloting, skydiving, etc.) solvency, etc. We also do not disclose to any unaffiliated third party a policy or account number for use in marketing. We may share with our affiliated companies information that relates to our experience and transactions with the customer.

### Policy for Personal Information Relating to Nonpublic Personal Health Information

We do not disclose nonpublic personal health information about a customer unless an authorization is obtained from the customer whose nonpublic personal information is sought to be disclosed. However, an authorization shall not be prohibited, restricted or required for the disclosure of certain insurance functions, including, but not limited to, claims administration, claims adjustment and management, detection, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity, underwriting, policy placement or issuance, loss control and/or auditing.

## NOTICE TO POLICYHOLDERS

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### Access to Your Information

Our employees, employees of our affiliated companies, and third party service providers will have access to information we collect about you and your business as is necessary to effect transactions with you. We may also disclose information about you to the following categories of person or entities:

- Your independent insurance agent or broker;
- An independent claim adjuster or investigator, or an attorney or expert involved in the claim;
- Persons or organizations that conduct scientific studies, including actuaries and accountants;
- An insurance support organization;
- Another insurer if to prevent fraud or to properly underwrite a risk;
- A state insurance department or other governmental agency, if required by federal, state or local laws; or
- Any persons entitled to receive information as ordered by a summons, court order, search warrant, or subpoena.

### Violation of the Privacy Policy

Any person violating the Privacy Policy will be subject to discipline, up to and including termination.

For more information or to address questions regarding this privacy statement, please contact your broker.

## NOTICE TO POLICYHOLDERS

### FRAUD NOTICE

<b>Arkansas</b>	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
<b>Colorado</b>	<b>It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado Division of Insurance within the Department of Regulatory Agencies.</b>
<b>District of Columbia</b>	<b>WARNING:</b> It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.
<b>Florida</b>	Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.
<b>Kansas</b>	A "fraudulent insurance act" means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker or any agent thereof, any written, electronic, electronic impulse, facsimile, magnetic, oral, or telephonic communication or statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto.
<b>Kentucky</b>	Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime.
<b>Louisiana</b>	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
<b>Maine</b>	It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines, or denial of insurance benefits.
<b>Maryland</b>	Any person who knowingly or willfully presents a false or fraudulent claim for payment of a loss or benefit or who knowingly or willfully presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
<b>New Jersey</b>	Any person who includes any false or misleading information on an application for an insurance policy is subject to criminal and civil penalties.
<b>New Mexico</b>	<b>ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO CIVIL FINES AND CRIMINAL PENALTIES.</b>

## NOTICE TO POLICYHOLDERS

<b>New York</b>	<p><b>General: All applications for commercial insurance, other than automobile insurance:</b> Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.</p> <p><b>All applications for automobile insurance and all claim forms:</b> Any person who knowingly makes or knowingly assists, abets, solicits or conspires with another to make a false report of the theft, destruction, damage or conversion of any motor vehicle to a law enforcement agency, the department of motor vehicles or an insurance company, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the value of the subject motor vehicle or stated claim for each violation.</p> <p><b>Fire:</b> Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime.</p> <p>The proposed insured affirms that the foregoing information is true and agrees that these applications shall constitute a part of any policy issued whether attached or not and that any willful concealment or misrepresentation of a material fact or circumstances shall be grounds to rescind the insurance policy.</p>
<b>Ohio</b>	Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.
<b>Oklahoma</b>	<b>WARNING:</b> Any person who knowingly, and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony.
<b>Pennsylvania</b>	<p><b>All Commercial Insurance, Except As Provided for Automobile Insurance:</b> Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.</p> <p><b>Automobile Insurance:</b> Any person who knowingly and with intent to injure or defraud any insurer files an application or claim containing any false, incomplete or misleading information shall, upon conviction, be subject to imprisonment for up to seven years and the payment of a fine of up to \$15,000.</p>
<b>Puerto Rico</b>	<b>Any person who knowingly and with the intention of defrauding presents false information in an insurance application, or presents, helps, or causes the presentation of a fraudulent claim for the payment of a loss or any other benefit, or presents more than one claim for the same damage or loss, shall incur a felony and, upon conviction, shall be sanctioned for each violation by a fine of not less than five thousand dollars (\$5,000) and not more than ten thousand dollars (\$10,000), or a fixed term of imprisonment for three (3) years, or both penalties. Should aggravating circumstances [be] present, the penalty thus established may be increased to a maximum of five (5) years, if extenuating circumstances are present, it may be reduced to a minimum of two (2) years.</b>

## NOTICE TO POLICYHOLDERS

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<b>Rhode Island</b>	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
<b>Tennessee</b>	<p><b>All Commercial Insurance, Except As Provided for Workers' Compensation</b> It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.</p> <p><b>Workers' Compensation:</b> It is a crime to knowingly provide false, incomplete or misleading information to any party to a workers' compensation transaction for the purpose of committing fraud. Penalties include imprisonment, fines and denial of insurance benefits.</p>
<b>Utah</b>	<b>Workers' Compensation:</b> Any person who knowingly presents false or fraudulent underwriting information, files or causes to be filed a false or fraudulent claim for disability compensation or medical benefits, or submits a false or fraudulent report or billing for health care fees or other professional services is guilty of a crime and may be subject to fines and confinement in state prison.
<b>Virginia</b>	It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.
<b>Washington</b>	It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.
<b>West Virginia</b>	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
<b>All Other States</b>	Any person who knowingly and willfully presents false information in an application for insurance may be guilty of insurance fraud and subject to fines and confinement in prison. (In Oregon, the aforementioned actions may constitute a fraudulent insurance act which may be a crime and may subject the person to penalties).



Endorsement No.: 1  
Named Insured: DiamondPeak Holdings Corp  
Policy No.: [REDACTED]

Effective: February 27, 2019  
12:01 A.M. Standard Time  
Insurer: XL Specialty Insurance Company

## TERRORISM PREMIUM ENDORSEMENT

Please note: The portion of your annual premium set forth in Item 8. of the Declarations that is attributable to coverage for acts of terrorism is: \$ waived.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 2

Named Insured: DiamondPeak Holdings Corp

Policy No.: [REDACTED]

Policy Form: EXECUTIVE AND CORPORATE SECURITIES LIABILITY

Effective: February 27, 2019

12:01 A.M. Standard Time

Insurer: XL Specialty Insurance Company

## NEW YORK AMENDATORY ENDORSEMENT

**NOTICE: WHERE THERE IS A CONFLICT BETWEEN THIS NEW YORK AMENDATORY ENDORSEMENT AND ANY OTHER ENDORSEMENT, THE PROVISIONS OF THIS NEW YORK AMENDATORY ENDORSEMENT WILL PREVAIL.**

1. Clause II. DEFINITIONS (C) is amended by the addition of the following:

Provided, however, solely with respect to criminal proceedings as set forth in Clause II. (C)(3) and (4) above, this Policy shall not cover Loss other than Defense Expenses.

2. Clause II. DEFINITIONS (G)(2) is deleted and replaced by the following:

- (2) vicarious liability for employment discrimination of any kind including violation of any federal, state or local law involving employment or discrimination in employment which would deprive or potentially deprive any person of employment opportunities or otherwise adversely affect his or her status as an employee because of such person's race, color, religion, age, sex, national origin, disability, pregnancy, or other protected status; or disparate impact discrimination in employment;

3. Clause II. DEFINITIONS (G)(3) is deleted and replaced by the following:

- (3) vicarious liability for sexual or other harassment in the workplace; or

4. Clause II. DEFINITIONS (M) is deleted and replaced by the following:

- (M) "Loss" means damages, judgments, settlements, pre-judgment and post-judgment interest or other amounts that any Insured is legally obligated to pay and Defense Expenses, including that portion of any settlement which represents the claimant's attorneys' fees. Loss will not include that portion which constitutes:

- (1) fines, penalties or taxes imposed by law; provided that Loss will specifically include:
  - (a) civil penalties assessed against any Insured Person pursuant to Section 2(g)(2)(b) of the Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-2(g)(2)(b), the United Kingdom's Bribery Act 2010 (2010 chapter 23), and Section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(a)); and
  - (b) solely with respect to Loss to which Insuring Agreement (A) applies, fines, penalties or taxes that an Insured Person is obligated to pay if such fines, penalties or taxes are insurable by law and are imposed in connection with such Insured Person's service with an insolvent Company;
- (2) costs incurred by an Insured to comply with an order for non-monetary relief (including injunctive relief) or with any agreement to provide such relief;
- (3) any amount which is uninsurable under the law pursuant to which this Policy is construed; provided that the Insurer will not assert that the portion of any settlement or judgment in a Claim arising from an initial or subsequent public offering of the Company's securities constitutes uninsurable loss due to the alleged violations of Section 11 and/or 12 of the Securities Act of 1933 as amended (including alleged violations of Section 11

and/or 12 of the Securities Act of 1933 by a Controlling Person pursuant to Section 15 of the Securities Act of 1933);

- (4) any amount arising out of the cleanup, containing, treating, testing, removing, disposing, assessing, monitoring or similar costs relating to pollution, contaminants, waste of any kind, pollutants, product defects that result in the release of hazardous materials or pollutants, or any other hazardous materials;
- (5) any amount which represents or is substantially equivalent to an increase in the consideration paid, or proposed to be paid, by the Company in connection with its purchase of any securities or assets of any person, group of persons, or entity;
- (6) the return of any amounts required to be paid by an Insured Person pursuant to section 304 of the Sarbanes-Oxley Act of 2002 or promulgated under Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act;

5. Clause II. DEFINITIONS is amended by the addition of the following:

- (T) "Termination of Coverage" means (1) the cancellation or nonrenewal of this Policy by an insured or the Insurer, or (2) a decrease in limits, a reduction in coverage, increased deductible or self-insured retention, new exclusion, or any other change in coverage less favorable to the insured.

6. Clause IV. LIMIT OF LIABILITY, INDEMNIFICATION AND RETENTIONS is amended by the addition of the following:

In the event this Policy provides coverage solely for Defense Expenses arising from an administrative proceeding or other non-judicial dispute resolution forum or in litigation, where the only remedies or relief sought are non-pecuniary in nature, such Defense Expenses shall reduce no more than twenty-five percent (25%) of the Policy's Limit of Liability. Such Defense Expenses shall be applied against the applicable Retention(s) set forth in ITEM 4 of the Declarations and shall be subject to the Policy's maximum aggregate Limit of Liability. Provided, however, that such defense-only coverage may not be provided for a claim of legal liability that could be covered by a policy of liability insurance in New York.

7. Notwithstanding anything to the contrary in the Declarations and Clause VI. GENERAL CONDITIONS (A), notice of any Claim may also be provided to any authorized agent of the Insurer located within the state of New York.

8. Clause VI. GENERAL CONDITIONS (E) CANCELLATION AND RENEWAL OF COVERAGE (2) is deleted and replaced by the following:

- (2) The Insurer may only cancel this Policy for nonpayment of premium. The Insurer will mail or deliver not less than twenty (20) days written notice stating the reason for cancellation and when the Policy will be canceled. Notice of cancellation will be sent to the Parent Company and the agent of record or broker for the Insured, if applicable, at the mailing address shown in the Policy. The notice of cancellation shall state the amount due.

9. Clause VI. GENERAL CONDITIONS (E) CANCELLATION AND RENEWAL OF COVERAGE (3) is deleted and replaced by the following:

- (3) The Insurer is under no obligation to renew this Policy upon its expiration. Once the Insurer chooses to non-renew this Policy or conditions its renewal upon a change in the Limit of Liability, change in type of coverage, reduction of coverage, increased retention, the addition of any exclusion or an increase in premium in excess of 10% (exclusive of any premium increase generated as a result of increased exposure limits or as a result of experience rating, loss rating, retrospective rating or audit), then the Insurer shall mail or deliver written notice of the refusal to renew or the conditional renewal to the Parent Company at the mailing

address shown on the Policy and to the Insureds' authorized agent or broker at least sixty (60) days but not more than one hundred and twenty (120) days in advance of the expiration date of the Policy. Such notice shall contain the specific reasons for the refusal to renew or the conditional renewal and shall set forth the amount or a reasonable estimate of any premium increase and describe any additional proposed changes.

If the Insurer does not provide notice of nonrenewal or conditional renewal as provided in Clause VI.(E)(3), coverage will remain in effect at the same terms and conditions of this Policy at the lower of the current rates or the prior period's rates until 60 days after such notice is mailed or delivered, unless the Parent Company, during this 60-day period, has replaced the coverage or elects to cancel.

If the Insurer provides notice of nonrenewal or conditional renewal on or after the expiration date of this Policy, coverage will remain in effect at the same terms and conditions of this Policy for another Policy Period, at the lower of the current rates or the prior period's rates, unless the Parent Company, during the additional Policy Period, has replaced the coverage or elects to cancel. The Limit of Liability of the expiring Policy will be increased in proportion to the Policy extension provided for in this paragraph.

The Insurer will not send the Insureds notice of nonrenewal or conditional renewal if the Insureds, their authorized agent or broker or another insurer of the Insureds mail or deliver notice that the Policy has been replaced or is no longer desired.

If the Insureds elect to accept the terms, conditions and rates of the conditional renewal notice pursuant to Clause VI.(E)(3), a new aggregate Limit of Liability shall become effective as of the inception date of renewal, subject to regulations promulgated by the Superintendent of Insurance.

10. Clause VI. GENERAL CONDITIONS (F) OPTIONAL EXTENSION PERIOD is deleted and replaced by the following:

(F) OPTIONAL EXTENSION PERIOD

- (1) In the event of a Termination of Coverage, without any additional premium being required, there shall be an automatic extension of the coverage granted by this Policy with respect to any Claim first made during a period of sixty (60) days immediately following the Termination of Coverage, but only with respect to a Wrongful Act, Company Wrongful Act or Employment Practices Wrongful Act committed before the Termination of Coverage provided such Wrongful Act, Company Wrongful Act or Employment Practices Wrongful Act is otherwise covered by this Policy. This 60-day period shall be referred to as the 'Automatic Extension Period'.
- (2) In the event of a Termination of Coverage, the Parent Company shall have the right, upon payment of an additional premium set forth in Item 5 of the Declarations, to an extension of the coverage provided by this Policy with respect only to any Claim first made during the period of time set forth in Item 5 of the Declarations after the date upon which the Automatic Extension Period ends. However, the extension of coverage applies only to a Wrongful Act, Company Wrongful Act or Employment Practices Wrongful Act committed before the Termination of Coverage provided such Wrongful Act, Company Wrongful Act or Employment Practices Wrongful Act is otherwise covered by this Policy. This additional period of coverage shall be referred to as the "Optional Extension Period". Except in the Declarations to the Policy and this Clause VI., the Automatic Extension Period may also be referred to as the Optional Extension Period.
- (3) The Limit of Liability applicable to the Automatic Extension Period and the Optional Extension Period, if any, shall be at least equal to the amount of coverage remaining in the Policy's Limit of Liability set forth in Item 3. of the Declarations.

- (4) The Insurer shall provide written notice to the Parent Company of the Optional Extension Period and the availability of, the premium for, and the importance of purchasing, the Optional Extension Period within thirty (30) days after the Termination of Coverage.
- (5) The right to purchase the Optional Extension Period shall terminate unless written notice is given to the Insurer within sixty (60) days from the Termination of Coverage, or within thirty (30) days after the mailing or delivery of the notice provided by the Insurer under Clause VI.(4), above, whichever is greater, together with full payment of the premium for the Optional Extension Period. If such notice and premium payment are not so given to the Insurer, the Parent Company will not be able to exercise the right to purchase the Optional Extension Period.
- (6) If the claims-made relationship has continued for less than one year and the Policy was canceled for non-payment of premium, the two paragraphs immediately preceding this paragraph shall not apply and the Parent Company shall not have the right to purchase the Optional Extension Period.
- (7) If the Optional Extension Period is purchased, the entire premium shall be deemed earned at its commencement and if the Parent Company terminates the Optional Extension Period before its term, the Insurer shall not be liable to return any portion of the premium paid for the Optional Extension Period. The premium charged for the Optional Extension Period shall be based upon the rates in effect on the date this Policy was issued or last renewed.
- (8) In the event the Parent Company is in liquidation or bankruptcy, or permanently ceases operation, and if the Parent Company or its designated trustee, although entitled to, does not purchase the Optional Extension Period, any Insured Persons who request the Optional Extension Period within 120 days of the Termination of Coverage may purchase the Optional Extension Period, as provided in Clause VI.(2), above.
- (9) A person employed or otherwise affiliated with the Insured and covered by this Policy during such affiliation shall continue to be covered under this Policy and any Optional Extension Period after such affiliation has ceased for such person's covered acts or omissions during such affiliation.
- (10) Upon Termination of Coverage, any return premium due the Insured shall be applied to the premium for the Optional Extension Period if the Insured elects to purchase such coverage. Where the premium is due to the Insurer, any payment received by the Insurer from the Insured as payment for the Optional Extension Period shall be first applied to any premium due for the Policy.
- (11) In the event similar insurance to that provided by this Policy is in force during the Optional Extension Period, the coverage afforded during the Optional Extension Period shall be excess over any such valid and collectible insurance.

11. Clause VI. GENERAL CONDITIONS (I) REPRESENTATION CLAUSE is amended by the addition of the following:

However, no misrepresentation shall be deemed material unless knowledge by the Insured of the facts misrepresented would have led to a refusal by the Insurer to issue the Policy.

12. Clause VI. GENERAL CONDITIONS (J) ACTION AGAINST THE INSURER, ASSIGNMENT, AND CHANGES TO THE POLICY (1)(b) is deleted and replaced by the following:

- (b) the amount of the obligation of the Insured has been determined either by judgment against the Insured or by written agreement of the Insured, the claimant and the Insurer.

13. Clause VI. GENERAL CONDITIONS (J) ACTION AGAINST THE INSURER, ASSIGNMENT, AND CHANGES TO THE POLICY (1) is amended by the addition of the following:

- (c) If the Insurer does not pay any judgment covered by the terms of this Policy within thirty (30) days from the service of notice of the judgment upon the Insured or its attorney and the Insurer, then an action may be brought against the Insurer under the terms of the Policy for the amount of judgment not exceeding the amount of the applicable Limit of Liability under the Policy, except during a stay or limited stay of execution against the Insured on such judgment.

14. Clause VI. GENERAL CONDITIONS (J) ACTION AGAINST THE INSURER, ASSIGNMENT, AND CHANGES TO THE POLICY (4) is deleted and replaced by the following:

Notice given by or on behalf of the Insured or written notice by or on behalf of the injured person or any other claimant, to any licensed agent to the Insurer in this state shall be deemed notice to the Insurer.

Provided, however, that failure by the Insureds and the Parent Company to give such notice shall not invalidate any Claim under the Policy if the Insureds and the Parent Company show that it was not reasonably possible to do so and that notice was given as soon as was reasonably possible.

15. This Policy is amended by the addition of the following:

The insolvency or bankruptcy of the Insureds, or the insolvency of their estates, shall not release the Insurer from the payment of Loss not otherwise excluded under this Policy.

#### Loss Information

Upon written request by the Parent Company or the Parent Company's authorized agent or broker, the Insurer shall mail or deliver the following Loss information to the Parent Company for the time the Policy was in effect within ten (10) days of such request:

1. information on closed Claims, including the date and description of the Claim, and any payments,
2. information on open Claims, including the date and description of the Claim, and amounts of any payments; and
3. information on notice of any Wrongful Acts, including the date and description of such notice.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 3  
Named Insured: DiamondPeak Holdings Corp  
Policy No.: [REDACTED]

Effective: February 27, 2019  
12:01 A.M. Standard Time  
Insurer: XL Specialty Insurance Company

## NEW YORK ADDENDUM TO DECLARATIONS

1. The Declarations to the Management Liability and Company Reimbursement Insurance Policy is amended by the addition of the following:

**THIS IS A CLAIMS MADE POLICY. EXCEPT AS PROVIDED IN SECTION VI.(2), WHICH PERMITS INSUREDS TO GIVE NOTICE OF WRONGFUL ACTS, COMPANY WRONGFUL ACTS OR EMPLOYMENT PRACTICES WRONGFUL ACTS, THIS POLICY ONLY APPLIES TO CLAIMS FIRST MADE DURING THE POLICY PERIOD, THE AUTOMATIC EXTENSION PERIOD OR, IF APPLICABLE, THE OPTIONAL EXTENSION PERIOD. NO COVERAGE EXISTS FOR CLAIMS MADE AFTER THE END OF THE POLICY PERIOD OR THE AUTOMATIC EXTENSION PERIOD UNLESS, AND TO THE EXTENT, THE OPTIONAL EXTENSION PERIOD APPLIES. UPON TERMINATION OF COVERAGE FOR ANY REASON, A 60-DAY AUTOMATIC EXTENSION PERIOD WILL APPLY. FOR AN ADDITIONAL PREMIUM AN OPTIONAL EXTENSION PERIOD OF AT LEAST ONE YEAR CAN BE PURCHASED AS INDICATED IN ITEM 5 OF THE DECLARATIONS. NON-PROFIT ENTITIES ARE ENTITLED TO PURCHASE AN OPTIONAL EXTENSION PERIOD OF THREE YEARS. NO COVERAGE WILL EXIST AFTER THE EXPIRATION OF THE AUTOMATIC EXTENSION PERIOD OR, IF PURCHASED, THE OPTIONAL EXTENSION PERIOD, WHICH MAY RESULT IN A POTENTIAL COVERAGE GAP IF PRIOR ACTS COVERAGE IS NOT SUBSEQUENTLY PROVIDED BY ANOTHER INSURER. DURING THE FIRST SEVERAL YEARS OF A CLAIMS-MADE RELATIONSHIP, CLAIMS-MADE RATES ARE COMPARATIVELY LOWER THAN OCCURRENCE RATES, AND THE INSURED CAN EXPECT SUBSTANTIAL ANNUAL PREMIUM INCREASES, INDEPENDENT OF OVERALL RATE INCREASES, UNTIL THE CLAIMS-MADE RELATIONSHIP REACHES MATURITY.**

2. Item 5. is deleted in its entirety and amended to read as follows:

Item 5. Optional Extension Period and Premium (if purchased at the election of the Parent Company):

Length of Optional Extension Period	Optional Extension Premium
1 year	90% of policy premium
2 years	180% of policy premium
3 years	205% of policy premium

3. Item 7. is deleted and replaced by the following:

Item 7. Notices required to be given to the Insurer must be addressed to:

Notice to Claim Dept:	All other Notices:
XL Professional	XL Professional
One Hundred Constitution Plaza, 18th Floor	One Hundred Constitution Plaza, 17th Floor
Hartford, CT 06103	Hartford, CT 06103
Attn: Claim Dept.	Attn: Underwriting

Notice of claim may also be sent to the Insurer's authorized agent in the state of New York at the following address:

XL Specialty Insurance Company  
140 Broadway  
Suite 5101  
New York, NY 10005  
(212) 820 6100

Endorsement No.: 4

Named Insured: DiamondPeak Holdings Corp

Policy No.: [REDACTED]

Effective: February 27, 2019

12:01 A.M. Standard Time

Insurer: XL Specialty Insurance Company

## NEW YORK COINSURANCE ENDORSEMENT

Solely for the purpose of the coverage provided under Clause I. INSURING AGREEMENTS, paragraph (A), of the Management Liability and Company Reimbursement Insurance Coverage Form, in accordance with New York State Laws BCL section 726(a)(3):

1. the Insured Persons who are directors or officers of the Company are liable to coinsure 0.5% of Loss in excess of the applicable Retention for the first \$1,000,000 of coverage; and
2. the Retention under Clause I. INSURING AGREEMENTS, paragraph (A) shall be \$5,000 each Insured Person.

All other terms, conditions and exclusions remain unchanged.



Endorsement No.: 5

Named Insured: DiamondPeak Holdings Corp

Policy No.: [REDACTED]

Effective: February 27, 2019

12:01 A.M. Standard Time

Insurer: XL Specialty Insurance Company

## NEW YORK DEFENSE EXPENSES DISCLOSURE

Defense Expenses reduce and may completely exhaust the Limit of Liability. To the extent the Limit of Liability is exceeded, the Insurer shall not be liability for Defense Expenses or for the amount of any judgment or settlement. Defense Expenses are also applied to the Retention.

This form shall be attached to and made part of the Policy.

The below Officer of the Parent Company, on behalf of the Insureds, acknowledges that he/she read this form and understands the above provisions.

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Officer of Parent Company Signature

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Print Name

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Title

Endorsement No.: 6

Named Insured: DiamondPeak Holdings Corp

Policy No.: [REDACTED]

Effective: February 27, 2019

12:01 A.M. Standard Time

Insurer: XL Specialty Insurance Company

## NEW YORK DISCLOSURE STATEMENT

This Policy is a claims-made policy.

Coverage under this Policy or any subsequent renewal of this Policy, subject to the terms of the applicable policy, applies only to any "Claim" (as defined herein) made against the Insureds, or specific Wrongful Act, Employment Practices Wrongful Act or Company Wrongful Act reported during the Policy Period of this Policy or the applicable renewal policy. All coverage under this Policy ceases upon Termination of Coverage, except for the Automatic Extension Period unless the Optional Extension Period is purchased.

The below officer of the Parent Company, on behalf of the Insureds, acknowledges that he/she has received information from the Insurer or its agent explaining the limitations and potential gaps in coverage of a claims-made policy and that he/she understands these limitations and potential gaps in coverage.

This Policy includes a 60-day automatic extended reporting period, referred to as the Automatic Extension Period.

This Policy provides the Insured with the option to purchase for an additional premium at least a one-year Optional Extension Period from the termination of this Policy. The premium for the Optional Extension Period is indicated in Item 5. of the Policy's Declarations.

During the first several years of a claims-made relationship between the Insureds and the Insurer, claims-made rates are relatively lower than occurrence rates, and the Insured can expect substantial annual premium increases independent of overall rate level increases, until the claims-made relationships reaches maturity.

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Officer of Parent Company Signature

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Print Name

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Title

Endorsement No.: 7

Named Insured: DiamondPeak Holdings Corp

Policy No.: [REDACTED]

Effective: February 27, 2019

12:01 A.M. Standard Time

Insurer: XL Specialty Insurance Company

## INCONSISTENCY ENDORSEMENT

In consideration of the premium charged, it is understood and agreed that in the event there is an inconsistency between any term or condition of this Policy, which may be modified by an endorsement attached to this Policy, and a state amendatory endorsement attached to this Policy, then, where permitted by law, the Insurer shall apply the terms and conditions which are more favorable to the Insured.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 8

Named Insured: DiamondPeak Holdings Corp

Policy No.: [REDACTED]

Effective: February 27, 2019

12:01 A.M. Standard Time

Insurer: XL Specialty Insurance Company

## BOOKS & RECORDS REQUEST ENDORSEMENT

In consideration of the premium charged:

- (1) The Insurer shall pay on behalf of the Company Defense Expenses incurred by the Company resulting from any Books & Records Request first made during the Policy Period or, if applicable, the Optional Extension Period.
- (2) Solely for the purposes of this endorsement, the term "Books & Records Request" means a written request by or on behalf of a shareholder of the Company upon the Board of Directors of the Company seeking document production in connection with such shareholder's review of the Company's business activities.
- (3) The term "Defense Expenses," as defined in Section II Definitions, will include any reasonable and necessary legal fees, expenses and other costs (including experts' fees) incurred in the investigation of and response to any Books & Record Request, but will not include the Company's overhead expenses or any salaries, wages, fees, or benefits of its directors, officers or employees.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 9

Named Insured: DiamondPeak Holdings Corp

Policy No.: [REDACTED]

Policy Form: MANAGEMENT LIABILITY AND COMPANY REIMBURSEMENT

DiamondPeak Holdings Corp. 03 04 19

Effective: February 27, 2019

12:01 A.M. Standard Time

Insurer: XL Specialty Insurance Company

## DIAMONDPEAK HOLDINGS CORP. SPECIAL PURPOSE IPO ENDORSEMENT

In consideration of the premium charged:

(1) Solely in the event that:

- (a) the Company provides written notice to the Insurer of the name of the anticipated combined entity to result from the Combination, as defined below, as soon as practical but in no event less than thirty (30) days prior to the anticipated effective date of the Combination, together with such information as the Insurer may require;
- (b) the Combination: (1) is approved by at least 80% of the Public Stockholder Shares; and (2) Public Stockholders own at least 20% of the shares entitled to vote on the Combination;
- (c) the company or companies acquired ("Acquired Company") pursuant to the Combination are solely engaged in the business/industry/activities described in the Registration Statement and in the Preliminary Prospectus dated February 21, 2019 filed with the SEC;
- (d) the value of the consideration paid for the Acquired Company, whether cash, stock or otherwise, is less than 100% of the assets of the Company, as reflected in the Company's audited balance sheet upon receipt of the gross proceeds of the public offering ("IPO") described in the Registration Statement, and as filed in the Company's Form 8-K (anticipated to be filed three business days from the date of the Registration Statement); and
- (e) the Combined Entity is incorporated and has its principle place of business in the United States of America;

then:

- (a) the Insurer shall waive application of Section VI(D) Mergers and Acquisitions (Changes in Exposure or Control) of the Policy with respect to the Combination, and accordingly, the Combination shall not be deemed a "Change in Control" as defined in Section II Definitions (B) of the Policy; and
- (b) notwithstanding anything stated in Section VI(D) of the Policy or in the definition of "Subsidiary," the entity resulting from the Combination ("Combined Entity") shall be deemed a Subsidiary.

In clarification of the above, in the event the business/industry/activities identified in the Registration Statement or Preliminary Prospectus dated February 21, 2019 are amended or changed in any way, then Section VI(D) of the Policy shall not be waived and the Combined Entity shall not be deemed a Subsidiary unless and until the Insurer agrees, in writing, and the Parent Company agrees to any additional premium and amendments to this Policy required by the Insurer at the Insurer's sole discretion. The Insurer's silence shall not, under any circumstances, be deemed to have effected such an agreement, or to be a waiver any terms provided in this endorsement.

(2) For the purposes of this endorsement, the following terms shall have the meanings set forth below:

- (a) "Combination" means the first business combination consummated pursuant to the objectives set forth in the initial registration statement filed by the Company with the Securities and Exchange Commission ("SEC") on February 21, 2019 ("Registration Statement").
- (b) "Public Stockholder Shares" means the shares of stock that are: (a) entitled to vote on the Combination ("Voting Shares"); and (b) owned by Public Stockholders at the time of such vote.
- (c) "Public Stockholders" means any person or entity owning Voting Shares who/that is not an Insured; not a Family Member of any Insured Person; and not an Affiliate of the Company or any Insured Person.
- (d) "Family Member" means the spouse, parents, children, grandchildren, brothers, sisters, mother-in-law, father-in-law, brother-in-law, or sister-in-law of an Insured Person.
- (e) "Affiliate" means (i) any person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is in common control with, another person or entity; or (ii) any person or entity that directly, or indirectly through one or more intermediaries, is a successor in interest to another person or entity.

All other terms, conditions and limitations of this Policy shall remain unchanged.

**MANAGEMENT LIABILITY AND COMPANY REIMBURSEMENT INSURANCE COVERAGE FORM**

**THIS IS A CLAIMS MADE POLICY WITH DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY.  
PLEASE READ AND REVIEW THE POLICY CAREFULLY.**

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to XL Professional, the Underwriting Manager for the Insurer identified in the Declarations (hereinafter the Insurer) including the Application and subject to all of the terms, conditions and limitations of all of the provisions of this Policy, the Insurer, the Insured Persons and the Company agree as follows:

**I. INSURING AGREEMENTS**

- (A) The Insurer shall pay on behalf of the **Insured Person** all **Loss** for which the **Company** does not pay as indemnification to such **Insured Person** and which the **Insured Person** is obligated to pay on account of any **Claim** first made against such **Insured Person**, individually or otherwise, during the **Policy Period** or, if applicable, the Optional Extension Period, for **Wrongful Acts**.
- (B) The Insurer shall pay on behalf of the **Company** all **Loss** for which the **Company** pays as indemnification to each **Insured Person**, which the **Insured Person** is obligated to pay on account of any **Claim** first made against such **Insured Person**, individually or otherwise, during the **Policy Period** or, if applicable, the Optional Extension Period, for **Wrongful Acts**.
- (C) The Insurer shall pay on behalf of the **Company** all **Loss** for which the **Company** becomes obligated to pay on account of any **Securities Claim** first made against the **Company** during the **Policy Period** or, if applicable, the Optional Extension Period, for **Wrongful Acts**.
- (D) The Insurer shall pay on behalf of the **Company** all **Shareholder Derivative Investigation Costs** resulting from any **Shareholder Derivative Demand** first made during the **Policy Period** or, if applicable, the Optional Extension Period.

**II. DEFINITIONS**

- (A) **"Application"** means:
  - (1) the application attached to and forming part of this Policy; and
  - (2) any materials submitted therewith, which shall be retained on file by the Insurer and shall be deemed to be physically attached to this Policy.
- (B) **"Change In Control"** means:
  - (1) the merger or acquisition of the **Parent Company**, or of all or substantially all of its assets by another entity such that the **Parent Company** is not the surviving entity; or
  - (2) the acquisition by any person, entity or affiliated group of persons or entities of the right to vote, select or appoint more than fifty percent (50%) of the board of directors of the **Parent Company**.
- (C) **"Claim"** means:
  - (1) a written demand for monetary or non-monetary relief (including, but not limited to, injunctive) commenced by the receipt of such demand;
  - (2) any civil, administrative or regulatory proceeding including but not limited to, any proceeding by any domestic, federal, state, local or foreign governmental, administrative or regulatory authority (including without limitation an enforcement proceeding or other proceeding by the Securities and Exchange Commission, Consumer Financial Protection Bureau, Department of Labor, Pension Benefit Guarantee Corporation or state attorney general or any functional or foreign equivalent of the foregoing or a Grand Jury proceeding) commenced by the filing of a notice of charges, filing or service of a complaint or similar document or the foreign equivalent thereof on/against an **Insured**;

- (3) any criminal proceeding which is commenced by the return of an indictment or filing of an information or similar charging document or the foreign equivalent thereof against an **Insured**;
  - (4) any arbitration, mediation or other alternative dispute proceeding commenced by the service of a demand for arbitration or similar document or the foreign equivalent thereof on an **Insured**;
  - (5) any written demand to toll any applicable statute of limitations prior to the commencement of any judicial, administrative, regulatory or arbitration proceeding;
  - (6) any **Shareholder Derivative Demand**;
  - (7) any official request for **Extradition** of any **Insured Person** or the execution of a warrant for the arrest of an **Insured Person** where such execution is an element of **Extradition**; or
  - (8) any **Investigation**; and
  - (9) any **Corporate Manslaughter Charge**.
- (D) **"Class Certification Event Study Expenses"** means the reasonable fees, costs and expenses of an expert witness consented to by the Insurer, which consent shall not be unreasonably withheld, incurred by an **Insured** to conduct an admissible event study regarding any issue of fact relevant to the applicable Court's decision as to whether to grant or deny class certification in a **Securities Claim**.
- (E) **"Company"** means:
- (1) the **Parent Company** and any **Subsidiary** created or acquired on or before the Inception Date set forth in ITEM 2 of the Declarations or during the Policy Period, subject to GENERAL CONDITIONS VI (D);
  - (2) in the event a bankruptcy proceeding shall be instituted by or against the foregoing entities, the resulting debtor-in-possession (or equivalent status outside the United States), if any
- (F) **"Controlling Person"** means any **Insured** that:
- (1) holds a ten percent (10%) or more equity or debt ownership interest in the **Company**; and/or
  - (2) controls the **Company** within the meaning of Section 15 of the Securities Act of 1933, as amended, or Section 20 of the Securities Exchange Act of 1934, as amended.
- (G) **"Corporate Manslaughter Charge"** means a formal criminal proceeding commenced in the United Kingdom against an **Insured Person** of the **Company** domiciled or incorporated in the United Kingdom for involuntary manslaughter (including constructive manslaughter (including constructive manslaughter or gross negligence manslaughter) in his or her capacity as a director or officer of the **Company** and directly related to the business of the **Company**.
- (H) **"Defense Expenses"** means reasonable costs, charges, fees (including but not limited to legal fees and experts' fees and an **Insured's** portion of any arbitrator/mediator fees) and expenses incurred in the investigation, defense and/or appeal of any **Claim** including the premium for an appeal bond, attachment bond or similar bond, provided that the Insurer has no obligation to apply for or to furnish any such bond. **Defense Expenses** will not include the **Company's** overhead expenses or any salaries, wages, fees, or benefits of its directors, officers or employees.

In addition to the foregoing, in the event that:

- (1) the **Insured** gives notice to the Insurer pursuant to GENERAL CONDITIONS (A)(2);
- (2) the **Insured** complies with all other terms of the Policy including, but not limited to, DEFENSE, SETTLEMENT AND ALLOCATION OF LOSS (B); and



- (3) a **Claim** subsequently arises from any such circumstance within twenty-four (24) months of a notice given per paragraph (1) above;

then, **Defense Expenses** shall also mean all reasonable costs, charges, fees (including but not limited to legal fees and experts' fees) and expenses incurred in the investigation and/or defense of any specific circumstances that are incurred: (i) on or after the date such notice was first given by an **Insured** to the Insurer; and (ii) prior to the time such circumstances rise to the level of a **Claim**. Subject to all terms, conditions and exclusions of this Policy including, but not limited to, DEFENSE, SETTLEMENT AND ALLOCATION OF LOSS (E), this extension of coverage shall not be deemed to waive any of the Insurer's rights hereunder.

**Defense Expenses** also means reasonable fees, costs and expenses incurred through legal counsel and consented to by the Insurer, such consent not to be unreasonably withheld, resulting from an **Insured Person** lawfully:

- (1) opposing, challenging, resisting or defending against any request for or any effort to obtain the **Extradition** of that **Insured Person**;
- (2) opposing, challenging, resisting or defending the arrest and detainment or incarceration of any **Insured Person** in his or her capacity as a director or officer of the **Company** and directly related to the business of the **Company**
- (3) appealing any order or other grant of **Extradition** of that **Insured Person**.

**Defense Expenses** also means **Class Certification Event Study Expenses**.

- (I) **Dodd-Frank 954 Costs** means the reasonable fees, costs and expenses (including the premium or origination fee for a loan or bond) incurred by an **Insured Person** to facilitate the return of amounts required to be repaid by such **Insured Person** pursuant to Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. **Dodd-Frank 954 Costs** do not include the payment, return, reimbursement; disgorgement or restitution of any such amounts requested or required to be repaid by such **Insured Person** pursuant to Section 954.
- (J) "**Employed Lawyer**" means any employee of the **Company** if and to the extent such employee is, or during the course of such person's employment was,:
  - (1) admitted to practice law; and
  - (2) employed within the **Company's** office of general counsel or its functional equivalent for the purpose of providing legal services to or for the benefit of the **Company**.
- (K) "**Extradition**" means any formal process by which an **Insured Person** located in any country is surrendered to any other country for trial or otherwise to answer any criminal accusation.
- (L) "**Financial Insolvency**" means:
  - (1) the status of an **Insured** as a debtor-in-possession;
  - (2) the appointment by any government official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator, or similar official to control, supervise or manage the liquidation of the **Company** or substantially all of any such entity's assets; or
  - (3) the functional or foreign or offshore equivalent of any of subsections (1) and (2) of this definition.
- (M) "**Insured**" means the **Insured Persons** and the **Company**.

(N) **"Insured Person"** means:

- (1) any past, present or future director or officer, or member of the Board of Managers, of the **Company** and those persons serving in a functionally equivalent role for the **Parent Company** or any **Subsidiary** operating or incorporated outside the United States;
- (2) any past, present or future employee of the **Company**;
- (3) any advisor or consultant to the **Company**, but only if such advisor or consultant is both a natural person and is indemnified by the **Company**;
- (4) an individual identified in (N)(1) above who, at the specific written request of the **Company**, is serving as a director, officer, trustee, regent or governor of a **Non-Profit Entity**;
- (5) any individual identified in (N)(1) above who, at the specific request of the **Company** is serving in an elected or appointed position having fiduciary, supervisory or managerial duties and responsibilities comparable to those of an **Insured Person** of the **Company**, regardless of the name or title by which such position is designated, of a **Joint Venture**;
- (6) any **Employed Lawyer**; or
- (7) the lawful spouse or domestic partner of any person set forth in the above provisions of this definition, but only to the extent the spouse or domestic partner is a party to any **Claim** solely in their capacity as a spouse or domestic partner of such persons and only for the purposes of any **Claim** seeking damages recoverable from marital community property, property jointly held by any such person and spouse or domestic partner, or property transferred from any such person to the spouse or domestic partner.

In the event of the death, incapacity or bankruptcy of an individual identified in (N)(1) through (N)(7) above, any **Claim** against the estate, heirs, legal representatives or assigns of such individual for a **Wrongful Act** of such individual will be deemed to be a **Claim** against such individual.

(O) **"Interrelated Wrongful Acts"** means **Wrongful Acts** which are based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any of the same or related facts, series of related facts, circumstances, situations, transactions or events.(P) **"Investigation"** means:

- (1) any civil, criminal, administrative or regulatory investigation of an **Insured Person** by a federal, state, local, foreign or offshore law enforcement government, administrative or regulatory authority or agency, securities exchange or similar self-regulatory organization ("Enforcement Body") including without limitation an investigation by:
  - (a) the Equal Employment Opportunity Commission, Securities and Exchange Commission, Consumer Financial Protection Bureau, Department of Labor, Pension Benefit Guarantee Corporation or Grand Jury, but only after service of a subpoena, receipt of an order of investigation, receipt of a Wells Notice, receipt of a "target" letter (within the meaning of Title 9, §11.151 of the United States Attorney's Manual or its foreign equivalent), receipt of a SEC form 1662, or receipt of another notice of investigation, request to interview an **Insured Person** or similar document or the functional or foreign equivalent thereof; or
  - (b) any self-regulatory organization, whether based in the United States or any foreign country (including, without limitation, NYSE Regulation, the Financial Industry Regulatory Authority or any foreign equivalent self-regulatory organization); or
- (2) a request for an **Insured Person**:
  - (a) to appear at a meeting or interview; or
  - (b) produce documents,

that, in either case, concerns the business of the **Company** or that **Insured Person's** insured capacities, but only if the request come from: (i) an Enforcement Body; or (ii) any **Company**, arising out of an inquiry or investigation by an Enforcement Body or as part of a shareholder derivative investigation.

- (Q) **"Joint Venture"** means any corporation, partnership, joint venture, association or other entity, other than a **Subsidiary**, during any time in which the **Parent Company**, either directly or through one or more **Subsidiary(ies)**:
- (1) owns or controls at least thirty three percent (33%), but not more than fifty percent (50%), in the aggregate of the outstanding securities or other interests representing the right to vote for the election or appointment of those persons of such an entity occupying elected or appointed positions having fiduciary, supervisory or managerial duties and responsibilities comparable to those of an **Insured Person** of the **Company**, regardless of the name or title by which such position is designated, of a **Joint Venture**; or
  - (2) has the right, by contract, ownership of securities or otherwise, to elect, appoint or designate at least thirty three (33%) of those persons described in (Q)(1) above.
- (R) **"Loss"** means damages, judgments (including pre- and post-judgment interest), amounts paid in settlements (including any **Insured's** portion of mediator, arbitrator fees or claimant's attorneys' fees incurred in such settlement process), **Dodd-Frank 954 Costs**, **SOX 304 Costs** or other amounts (including punitive, exemplary and multiplied damages, where insurable by law) in excess of the Retention set forth in the Declarations that the **Insured** is obligated to pay, and **Defense Expenses**, whether incurred by the Insurer or the **Insured**, in excess of the Retention set forth in the Declarations. **Loss** (other than **Defense Expenses**) will not include:
- (1) fines, penalties or taxes imposed by law; provided that **Loss** will specifically include:
    - (a) civil penalties assessed against any **Insured Person** pursuant to Section 2(g)(2)(b) of the Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-2(g)(2)(b), the United Kingdom's Bribery Act 2010 (2010 chapter 23), Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Section 954"); and Section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(a)); and
    - (b) solely with respect to **Loss** to which Insuring Agreement (A) applies, fines, penalties or taxes that an **Insured Person** is obligated to pay if such fines, penalties or taxes are insurable by law and are imposed in connection with such **Insured Person's** service with an insolvent **Company**; civil penalties assessed against any **Insured Person** pursuant to Section 2(g)(2)(b) of the Foreign Corrupt Practices Act, 15 U.S.C.
  - (2) amounts which are uninsurable under the law pursuant to which this Policy is construed; provided that the Insurer will not assert that the portion of any settlement in a **Securities Claim** arising from an initial or subsequent public offering of the **Company's** securities, including any indemnification paid under II. COVERAGE EXTENSION (A), constitutes uninsurable loss due to the alleged violations of Sections 11, 12 and/or 15 of the Securities Act of 1933 (or the equivalent sections of other federal, state, local or foreign law) as amended or Sections 10(b) or 20 of the Securities Exchange Act of 1934, as amended, or Rule 10b-5.

Provided, however, that **Loss** shall include **Defense Expenses** for items specifically excluded from **Loss** pursuant to paragraphs (1) and (2) above, subject to the other terms, conditions and exclusions of this Policy.

**NOTE:** With respect to judgments in which punitive, exemplary or multiplied damages are awarded, the coverage provided by this Policy shall apply to the broadest extent permitted by law and the availability of such coverage shall be determined by the law of the jurisdiction most favorable to such coverage. If, based on the written opinion of counsel for the **Insured**, such punitive, exemplary and multiplied damages are insurable under applicable law the Insurer will not dispute the written opinion of counsel for the **Insured**.

- (S) **"Non-Profit Entity"** means any not-for-profit corporation.
- (T) **"Parent Company"** means the entity named in ITEM 1 of the Declarations.

- (U) **"Policy Period"** means the period from the Inception Date to the Expiration Date set forth in ITEM 2 of the Declarations or to any earlier cancellation date.
- (V) **"Securities Claim"** means:
- (1) a **Claim** made against any **Insured** for any actual or alleged violation of any federal, state or local common law or regulation, statute or rule regulating securities (the term "securities" as defined in the Securities Act of 1933 as amended), including but not limited to any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty arising from or in connection with the purchase or sale of , or offer or solicitation of an offer to purchase or sell, securities (the term "securities" as defined in the Securities Act of 1933 as amended);
  - (2) a **Claim** made against any **Insured** brought by any person or entity based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the purchase or sale of, or offer to purchase or sell, securities of the **Company**;
  - (3) a **Claim** made against any **Insured** brought by a security holder of a **Company** with respect to such security holder's interest in securities of such **Company**; or
  - (4) a **Claim** made against any **Insured** brought derivatively on behalf of the **Company** by a security holder of such **Company**;
- (W) **"Selling Securityholder"** means any **Insured** that is a securityholder of the **Company**.
- (X) **"Shareholder Derivative Demand"** means a written demand, made by one or more of the shareholders of the **Company** upon the **Company's** board of directors, for the **Company** to bring a civil proceeding in a court of law against one or more **Insured Persons**.
- (Y) **"Shareholder Derivative Investigation Costs"** mean reasonable costs, charges, fees and expenses of attorneys and experts retained by the **Company**, or by its board of directors or any committee thereof, that are incurred by the **Company** in the **Company's** investigation or evaluation of a **Shareholder Derivative Demand**, **Shareholder Derivative Investigation Costs** will not include the **Company's** overhead expenses or any salaries, wages, fees or benefits of its directors, officers or employees.
- (Z) **SOX 304 Costs** means the reasonable fees, costs and expenses (including the premium or origination fee for a loan or bond) and incurred by an **Insured Person** to facilitate the return of amounts required to be repaid by such **Insured Person** pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002. **SOX 304 Costs** do not include the payment, return, reimbursement, disgorgement or restitution of any such amounts requested or required to be repaid by such **Insured Person** pursuant to Section 304(a).
- (AA) **"Subsidiary"** means any entity during any time in which the **Parent Company** owns, directly or through one or more **Subsidiary(ies)**, more than fifty percent (50%) of the outstanding securities representing the right to vote for the election of such entity's directors.
- (BB) **"Wrongful Act"** means:
- (1) for purposes of INSURING AGREEMENTS (A) and (B):
    - (a) any actual or alleged act, error, omission, neglect, misconduct, recklessness, statement, misstatement, misleading statement or breach of fiduciary duty or other duty committed or attempted, or allegedly committed or attempted, by an **Insured Person** in his or her capacity as such; or
    - (b) any matter asserted against an **Insured Person** solely by reason of his or her status as such; or
    - (c) any actual or alleged act, error, omission, neglect, misconduct, recklessness, statement, misstatement, misleading statement or breach of fiduciary duty or other duty committed or attempted, or allegedly committed or attempted, by an **Insured Person** in his or her capacity as a **Controlling Person** or a **Selling Securityholder**, or any matter asserted against an

**Insured Person** solely by reason of his or her status as a **Controlling Person** or a **Selling Securityholder**; or

- (d) any actual or alleged act, error, omission, neglect, misconduct, recklessness, statement, misstatement, misleading statement or breach of fiduciary duty or other duty committed or attempted, or allegedly committed or attempted, by an **Insured Person** who at the request of the **Company** is serving as a director, officer, trustee, regent or governor of a **Non-Profit Entity**; or
- (e) any actual or alleged act, error, omission, neglect, misconduct, recklessness, statement, misstatement, misleading statement or breach of fiduciary duty or other duty committed or attempted, or allegedly committed or attempted, by an **Insured Person** who at the request of the **Company** is serving in an elected or appointed position having fiduciary, supervisory or managerial duties and responsibilities comparable to those of an **Insured Person** of the **Company**, regardless of the name or title by which such position is designated, of a **Joint Venture**; or
- (f) any actual or alleged act, error, omission, neglect, misconduct, recklessness, statement, misstatement, misleading statement or breach of fiduciary duty or other duty committed, or allegedly committed or attempted, by an **Employed Lawyer**, but only in connection with such **Employed Lawyer's** performance of, or actual or alleged failure to perform, legal services to or for the benefit of the Company within the scope of his or her employment; or
- (g) any **Investigation** of an **Insured Person** in his or her capacity as an **Insured Person**, a **Controlling Person**, or a **Selling Securityholder**.

(2) for purposes of INSURING AGREEMENT (C) only:

- (a) any actual or alleged act, error, omission, neglect, misconduct, recklessness, statement, misstatement, misleading statement or breach of fiduciary duty or other duty committed, or allegedly committed or attempted, by the **Company**, but solely as respects a **Securities Claim**.

### III. EXCLUSIONS

(A) The Insurer shall not be liable to make any payment for **Loss** in connection with that portion of a **Claim** made against an **Insured**:

- (1) for any bodily injury, sickness, mental anguish, emotional distress, libel, slander, oral or written publication of defamatory or disparaging material, disease or death of any person, or damage or destruction of any tangible property including loss of use thereof; however, this Exclusion (A)(1) will not apply to **Corporate Manslaughter Charges**; or any **Claim** to the extent coverage is provided under INSURING AGREEMENT (A) of the Policy;
- (2) for any actual, alleged or threatened discharge, dispersal, release, escape, seepage, transportation, emission, treatment, removal or disposal of pollutants, contaminants, or waste of any kind including but not limited to nuclear material or nuclear waste or any actual or alleged direction, request or voluntary decision to test for, abate, monitor, clean up, recycle, remove, recondition, reclaim, contain, treat, detoxify or neutralize pollutants, contaminants or waste of any kind including but not limited to nuclear material or nuclear waste. With respect to a Claim made under INSURING AGREEMENT (A) only, this EXCLUSION (A)(2) will not apply to a **Claim** unless a court of competent jurisdiction specifically determines the **Company** is not permitted to indemnify the **Insured Person**;

**NOTE:** EXCLUSIONS (A)(1) and (A)(2) above will not apply with respect to a **Securities Claim** brought by a security holder of the **Company**, or a derivative action brought by or on behalf of, or in the name or right of, the **Company**, and brought and maintained independently of, and without the solicitation, assistance, participation or intervention of, an **Insured**.

- (3) for any actual or alleged violation of the Employee Retirement Income Security Act of 1974 (ERISA) as

amended or any regulations promulgated thereunder or any similar federal, state or local law or regulation in connection with any pension, employee benefit or welfare plan sponsored by the **Company** for the benefit of the **Insured Persons**;

- (4) brought about or contributed to by any:
  - (a) intentionally dishonest, fraudulent or criminal act or omission or any willful violation of any statute, rule or law by such **Insured**; or
  - (b) profit or remuneration gained by such **Insured** to which such **Insured** is not legally entitled;

*provided however* that the foregoing EXCLUSIONS (A)(4)(a) and (A)(4)(b) shall not apply unless and until a final non-appealable adjudication adverse to the **Insureds** in the underlying action establishes that such **Insured(s)** has/have otherwise engaged in conduct described by one or both of the foregoing EXCLUSIONS (A)(4)(a) and (A)(4)(b);

Notwithstanding the foregoing, this EXCLUSION (A)(4) will not apply to II. COVERAGE EXTENSION (A) or allegations in any **Securities Claim** asserted against any **Insured** under Section 11, 12 and/or 15 of the Securities Act of 1933 (or the equivalent sections of any other federal, state, local or foreign law) as amended, or Sections 10(b) or 20 of the Securities Exchange Act of 1934, as amended, or Rule 10b-5, arising out of any initial offering or subsequent offering of securities of the **Company**; or **Defense Expenses** incurred in connection with a **Claim** alleging violations of section 304 of the Sarbanes-Oxley Act of 2002 or section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

- (5) brought by or on behalf of the **Company**, except and to the extent such **Claim** is brought or maintained:
  - (a) directly or derivatively by a security holder or creditor of the **Company** who, when such **Claim** is made, is acting independently of, and without the solicitation, active assistance, active participation or active intervention of any **Insured Person**;
  - (b) by or on behalf of any examiner, trustee (including but not limited to a litigation trustee), receiver, liquidator, debtor-in-possession, rehabilitator, conservator, creditors' committee, shareholders' committee or any comparable authority of the **Company**, or to **Claims** brought by any assignee of any of the foregoing;
  - (c) by an **Insured** with respect to which failure to make such **Claim** reasonably could result in liability to the **Insured** for failure to do so where such **Claim** is brought in order to satisfy a fiduciary duty owed by such **Insured**;
  - (d) any **Claim** brought by a **Controlling Person** or **Selling Securityholder**, if such **Claim** is instigated and continued totally independent of, and totally without the active solicitation, active assistance, or active participation of, any **Insured** other than such **Controlling Person** or **Selling Securityholder**;
  - (e) against any **Employed Lawyer**; or
  - (f) with the solicitation, assistance, participation or intervention of an **Insured Person** who is engaging in any protected activity specified in 18 U.S.C. 1514A(a) ("whistleblower" protection pursuant to the Sarbanes-Oxley Act of 2002) or any protected activity specified in any other "whistleblower" protection pursuant to any state, local or foreign laws.
  - (j) **Defense Expenses** covered under Insuring Agreement (A).
- (6) by, on behalf of, at the direction of or in the name or right of any **Non-Profit Entity** or **Joint Venture** against an **Insured Person** for a **Wrongful Act** while acting in his or her capacity as defined in CLAUSE II. DEFINITIONS (N)(4) and (N)(5);
- (7) for any **Wrongful Act(s)** which occurred prior to February 21, 2019;

- (8) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving an **Employed Lawyer's** performance of, or actual or alleged failure to perform, any legal services other than legal services to or for the benefit of the **Company** within the scope of the **Employed Lawyer's** employment; or
  - (9) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving an **Insured Person** acting in their capacity as a **Insured Person** of any entity other than the **Company, Non-Profit Entity** or **Joint Venture**.
- (B) The Insurer shall not be liable to make any payment for **Loss** in connection with any **Claim** made against an **Insured**:
- (1) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event, **Wrongful Act** which, before the Inception Date of this Policy, was the subject of any notice accepted under any other policy of insurance of which this Policy is a renewal or a replacement and provided that such prior policy affords coverage (or would afford coverage except for the exhaustion of its limits of liability) for such **Loss** in whole or in part, as a result of such notice; or
  - (2) based upon, arising out of, or in consequence of any fact, circumstance, situation, transaction, event or **Wrongful Act** underlying or alleged in any prior and/or pending litigation, civil, criminal, administrative or regulatory proceeding which incepted prior to the Pending and Prior Litigation Date set forth in ITEM 6 of the Declarations;
- No conduct or knowledge of any **Insured** will be imputed to any other **Insured** to determine the application of any of the above EXCLUSIONS.

#### IV. LIMIT OF LIABILITY, INDEMNIFICATION AND RETENTIONS

- (A) The Insurer shall pay the amount of **Loss** in excess of the applicable Retention(s) set forth in ITEM 4 of the Declarations up to the Limit of Liability set forth in ITEM 3 of the Declarations.
- (B) The amount set forth in ITEM 3(a) of the Declarations shall be the maximum aggregate Limit of Liability of the Insurer under this Policy. Payment of **Loss** by the Insurer shall reduce and may exhaust the Limit of Liability. **Defense Expenses** actually paid or reimbursed, as the case may be, by the Insurer in defense of a **Claim** will be part of and not in addition to the Insurer's Limits of Liability, and payment of **Defense Expenses** by the Insurer will reduce and may exhaust the Limits of Liability.
- (C) The Insurer's maximum aggregate limit of liability under this Policy for II. COVERAGE EXTENSION B, **Shareholder Derivative Investigation Costs** Coverage, shall be the amount set forth in Item 3(b) of the Declarations as the **Shareholder Derivative Investigation Costs** Coverage. The **Shareholder Derivative Investigations Costs** Coverage Sublimit amount set forth in Item 3(b) shall be part of, and not in addition to, the Insurer's maximum aggregate Limit of Liability under this Policy as set forth in ITEM 3(a) of the Declarations. Payment by the Insurer of **Shareholder Derivative Investigation Costs** shall reduce the Limit of Liability.
- (F) With respect to the **Company's** indemnification of its **Insured Persons**, the certificate of incorporation, charter, by-laws, articles of association, or other organizational documents of the **Parent Company**, each **Subsidiary** and each **Non-Profit Entity** or **Joint Venture**, will be deemed to provide indemnification to the **Insured Persons** to the fullest extent permitted by law.
- (G) The Retention applicable to INSURING AGREEMENT (B) shall apply to any **Loss** as to which indemnification by the **Company, Non-Profit Entity** or **Joint Venture** is legally permissible.
- (H) No Retention shall apply to INSURING AGREEMENT (D) or **Loss** incurred as **Class Certification Event Study Expenses**.
- (I) In the event the **Company** does not pay an applicable Retention due to its **Financial Insolvency**, then the Insurer shall commence advancing **Defense Expenses** and pay any other covered **Loss** within the Retention

and pursuant to the other terms, conditions and exclusions of this Policy; provided, however, that if a court of competent jurisdiction subsequently rules that the **Company** can indemnify an **Insured Person** for such **Loss**, the Insurer shall be entitled to recover the amount of **Loss** advanced within the Retention from the **Company** pursuant to GENERAL CONDITIONS (G)(2) of this Policy. Further, no Retention shall apply for **Loss** which the **Company** cannot indemnify by reason of such **Company** having been found to be "insolvent" pursuant to a final written insolvency opinion rendered by a firm, qualified to issue such an opinion and agreed upon by the Insurer and the **Insured Persons** seeking coverage for such **Loss** prior to the retention of such firm; provided, however, that:

- (1) such **Insured Persons** and the Insurer will agree, prior to the time that drafting of such opinion commences, to the definition of "insolvent" to be used for purposes of this paragraph (G); and
  - (2) the **Company** will not be deemed to be "insolvent" for purposes of this paragraph (G) as a result of any transfer, conveyance, concealment or payment of cash, property or assets in violation of law, including without limitation bankruptcy law; and
  - (3) the full costs of such insolvency opinion, including all fees and expenses associated therewith, are paid for by such **Insured Persons**.
- (J) If different retentions are applicable to different parts of any **Loss**, the applicable Retention(s) will be applied separately to each part of such **Loss**, and the sum of such Retention(s) will not exceed the largest applicable Retention set forth in ITEM 4 of the Declarations.
- (K) In the event the **Company** is obligated under the Policy to pay any **Retention**, the **Company** may satisfy such **Retention** from any source. As a precondition to such recognition of the erosion of the **Retention** from any source, other than by payment by the **Company**, the **Company** shall provide the Insurer with written proof, to the Insurer's satisfaction, that payment of such **Retention** has been made.

#### V. DEFENSE, SETTLEMENT AND ALLOCATION OF LOSS

- (A) It shall be the duty of the **Insureds** and not the duty of the Insurer to defend any **Claim** under this Policy. Further, it shall be the duty of the **Company** to investigate and evaluate any **Shareholder Derivative Demand**.
- (B) No **Insured** may incur any **Defense Expenses** in excess of \$1,000,000 or admit liability for, or settle any **Claim**, without the Insurer's consent, such consent not to be unreasonably delayed or withheld. Excess the \$1,000,000 **Defense Expenses** threshold noted in the previous sentence, the Insurer shall have the right and shall be given the opportunity to effectively associate in the investigation, defense and/or settlement, including but not limited to participating in the negotiation of a settlement, and, with the consent of the **Insured**, the settlement of any **Claim**.
- (C) Upon the written request of an **Insured**, the Insurer will advance **Defense Expenses** and **Shareholder Derivative Investigation Costs** no later than sixty (60) days after receipt of written notice of such costs by the **Insured**.
- (D) Notwithstanding the paragraph (B), the **Insured** may settle any **Claim** without the Insurer's prior written consent if the total **Loss**, including **Defense Expenses**, resulting from such **Claim** does not exceed the amount of the applicable Retention set forth in ITEM 4 of the Declarations; *provided, however*, the **Insured** must promptly advise the Insurer of any such settlement and provide any information in connection therewith that the Insurer may reasonably request. If the **Insured** reasonably expects that the total **Loss**, including **Defense Expenses**, resulting from any **Claim** will exceed the applicable Retention, the Insurer shall have the right to participate in any settlement negotiations, and the **Insured** agrees to obtain the consent of the Insurer prior to making any settlement offer or responding to any settlement demand, such consent not to be unreasonably withheld.
- (E) If both **Loss** covered by this Policy and **Loss** not covered by this Policy are incurred, either because a **Claim** made against the **Insured** contains both covered and uncovered matters, or because a **Claim** is made against both the **Insured** and others (including the **Company** for **Claims** other than **Securities Claims**) not insured under this Policy, the **Insured** and the Insurer will use their best efforts to determine a fair and appropriate



allocation of **Loss** between that portion of **Loss** that is covered under this Policy and that portion of **Loss** that is not covered under this Policy. Additionally, the **Insured** and the Insurer agree that in determining a fair and appropriate allocation of **Loss**, the parties will take into account the relative legal and financial exposures of, and relative benefits obtained in connection with the defense and/or settlement of the **Claim** by, the **Insured** and others.

- (F) In the event that an agreement cannot be reached between the Insurer and the **Insured** as to an allocation of **Loss**, as described in (E) above, then the Insurer shall advance 100% of **Defense Expenses** covered under INSURING AGREEMENT (A), and shall also advance that portion of such **Loss** which the **Insured** and the Insurer agree is not in dispute, until a final amount is agreed upon or determined pursuant to the provisions of this Policy and applicable law. Any **Defense Expenses** advanced by the Insurer shall be without prejudice of the Insurer's right to seek return of some or all of the **Defense Expenses** advanced in the event that it is determined, subject to all of the terms and conditions of this Policy, that the **Insured** is not entitled to payment of such **Defense Expenses**.

## VI. GENERAL CONDITIONS

### (A) NOTICE

- (1) As a condition precedent to any right to payment under this Policy, with respect to any **Claim**, the **Insured** shall give written notice to the Insurer of any **Claim** as soon as practicable after the General Counsel of the **Parent Company** first receives written notice of such **Claim**, but in no event later than ninety (90) days after the end of the Policy Period; provided, however, if the **Insured** fails to provide notice of a **Claim** to the Insurer as specified in the preceding sentence, the Insurer shall not be entitled to deny coverage for such **Claim** based solely upon late notice unless the Insurer can demonstrate that its interests were materially prejudiced by reason of such late notice.
- (2) If, during the **Policy Period**, any **Insured** becomes aware of circumstances which could give rise to a **Claim** and chooses to give written notice of such circumstances to the Insurer, then any **Claim** subsequently arising from such circumstances, and of which notice is subsequently provided to the Insurer as set forth in GENERAL CONDITIONS (A)(1) above, shall be deemed to have been first made during the Policy Period in which the written notice described above was first given by an **Insured** to the Insurer.
- (3) All notices under GENERAL CONDITIONS (A)(1) and (2) must be sent by electronic mail, certified mail, facsimile transmission or the equivalent to the address set forth in ITEM 7 of the Declarations; Attention: Claim Department.

NOTE: With respect to GENERAL CONDITION (A)(1), the coverage provided by this Policy shall apply to the broadest extent permitted by law and the availability of such coverage, and the adequacy and timeliness of notice pursuant to GENERAL CONDITION (A)(1) shall be determined by the law of the jurisdiction most favorable to such coverage.

### (B) INTERRELATED CLAIMS

All **Claims** arising from **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest of the time at which the earliest such **Claim** is made or deemed to have been made pursuant to GENERAL CONDITIONS (A)(1) above or GENERAL CONDITIONS (A)(2), if applicable.

### (C) OTHER INSURANCE AND SERVICE IN CONNECTION WITH NON-PROFIT ENTITIES AND JOINT VENTURES

- (1) Except in the case of personal liability insurance maintained by an **Insured Person**, all **Loss** payable under this Policy will be specifically excess of and will not contribute with any other valid and collectible insurance, including but not limited to any insurance under which there is a duty to defend, unless such other insurance is specifically excess of this Policy. This Policy will not be subject to the terms of any other insurance policy.

- (2) All coverage under this Policy for **Loss** from **Claims** made against the **Insured Persons** while acting in such capacity of a **Non-Profit Entity** or **Joint Venture** will be specifically excess of and will not contribute with, any other insurance or indemnification available to such **Insured Person** from such **Non-Profit Entity** or **Joint Venture** by reason of their service as such.
- (3) In the case of a **Claim** against any **Employed Lawyer**, the coverage provided under this Policy will be specifically excess of, and will not contribute with, any **Employed Lawyers** policies issued to the **Insured**, and no coverage will be available under this Policy for a **Claim** against any **Employed Lawyer** as to which such other insurance applies unless and until the limit of limits of liability of such other insurance shall have been completely exhausted by the payment of loss thereunder. Nothing herein shall be construed to limit, restrict or otherwise affect coverage under this Policy for **Loss**, including **Defense Expenses**, not covered under such other insurance. If no such other insurance exists, this Policy will act as primary insurance for a **Claim** against any **Employed Lawyer**, subject to the terms and conditions of this Policy.
- (4) Notwithstanding items (1) to (3) above, such insurance that is provided by this policy shall apply as primary and underlying insurance with respect to:
  - (1) any other valid and collectible insurance issued to any direct or indirect shareholder of the **Company**, or any affiliate or subsidiary thereof which covers similar exposures;
  - (2) any indemnification or indemnification agreements provided by any direct or indirect shareholder of the **Company**, or any affiliate or subsidiary thereof.

(D) **MERGERS AND ACQUISITIONS (CHANGES IN EXPOSURE OR CONTROL)**

- (1) If during the **Policy Period**, the **Company** acquires any entity by merger, consolidation or otherwise and as a result such entity becomes a **Subsidiary** under this Policy coverage shall be provided for any **Loss** involving a **Claim** for a **Wrongful Act** occurring after the consummation of the transaction.
- (2) If, however, by reason of the transaction (or series of transactions) described in (D)(1) above:
  - (i) the acquired entity is a **Public Company**; and
  - (ii) the total assets of such newly acquired, merged or consolidated **Subsidiary**, exceed thirty five percent (35%) of the total assets or liabilities of the **Company**, as represented in the **Company's** most recent audited consolidated financial statements,

then, coverage under this Policy shall be provided for a period of ninety (90) days for any **Loss** involving a **Claim** for a **Wrongful Act** that occurred after the transaction has been consummated. Coverage beyond the ninety (90) day period will be provided only if:

- (a) the Insurer receives written notice containing full details of the transaction(s); and
- (b) the Insurer at its sole discretion, agrees to provide such additional coverage upon such terms, conditions, limitations, and additional premium that it deems appropriate.

For purposes of this paragraph, **Public Company** shall mean any entity whose securities are traded on a national securities exchange or quoted in the NASDAQ system.

- (3) With respect to the acquisition, merger, consolidation or otherwise of any entity as described in (D)(1) and (2) above, there will be no coverage available under this Policy for **Claims** made against the acquired, merged, or consolidated entity, or its directors, officers or employees for a **Wrongful Act** committed any time during which such entity was not an **Insured**.
- (4) If during the **Policy Period** any entity ceases to be a **Subsidiary**, the coverage provided under this Policy shall continue to apply to the **Insured Persons** who, because of their service with such **Subsidiary**, were covered under this Policy but only with respect to a **Claim** for a **Wrongful Act** that occurred or allegedly occurred prior to the time such **Subsidiary** ceased to be a **Subsidiary** of the

**Company.**

- (5) If, during the **Policy Period**, there is a **Change In Control**, the coverage provided under this Policy shall continue to apply but only with respect to a **Claim** against an **Insured** for a **Wrongful Act** committed or allegedly committed up to the time of the **Change In Control**; and
- (a) coverage will cease with respect to any **Claim** for a **Wrongful Act** committed subsequent to the **Change In Control**; and
  - (b) the entire premium for the Policy will be deemed to be fully earned immediately upon the consummation of a **Change In Control**.

**(E) CANCELLATION AND RENEWAL OF COVERAGE**

- (1) Except for the nonpayment of premium, as set forth in (E)(2) below, the **Parent Company** has the exclusive right to cancel this Policy. Cancellation may be effected by mailing to the Insurer written notice when such cancellation shall be effective, provided the date of cancellation is not later than the Expiration Date set forth in ITEM 2 of the Declarations. In such event, the Insurer shall retain the customary short rate portion of the earned premium. Return or tender of the unearned premium is not a condition of cancellation.
- (2) The Insurer may only cancel this Policy for nonpayment of premium. The Insurer will provide not less than twenty (20) days written notice stating the reason for cancellation and when the Policy will be canceled; provided however that if the unpaid premium is paid in full before 12:01 a.m. on the 21<sup>st</sup> day following receipt by the **Parent Company** of the notice of cancellation, then, in that event, the Insurer shall not cancel this Policy. Notice of cancellation will be sent to the **Parent Company** and the agent of record for the **Insured**, if applicable.
- (3) The Insurer is under no obligation to renew this Policy upon its expiration. In the event that the Insurer decides not to renew this Policy, the Insurer will deliver or mail to the **Parent Company** written notice stating such at least sixty (60) days before the Expiration Date set forth in ITEM 2 of the Declarations.

**(F) OPTIONAL EXTENSION PERIOD**

- (1) If either the **Parent Company** or the Insurer does not renew this Policy, the **Parent Company** shall have the right, upon payment of an additional premium set forth in ITEM 5 of the Declarations, to a one-year extension of the coverage provided by this Policy with respect only to any **Claim** first made during the one-year period after the Policy Expiration Date, but only with respect to a **Wrongful Acts** committed or attempted or allegedly committed or attempted prior to the Policy Expiration Date.
- (2) As a condition precedent to the right to purchase the Optional Extension Period the total premium for this Policy must have been paid in full. The right of the **Parent Company** to purchase the Optional Extension Period will be immediately terminated if the Insurer does not receive written notice by the **Parent Company** advising it wishes to purchase the Optional Extension Period together with full payment of the premium for the Optional Extension Period within sixty (60) days after the Policy Expiration Date.
- (3) If the **Parent Company** elects to purchase the Optional Extension Period as set forth in (F)(1) and (2) above, the entire premium for the Optional Extension Period will be deemed to be fully earned at the Inception Date for the Optional Extension Period.
- (4) The purchase of the Optional Extension Period will not in any way increase the Limit of Liability set forth in ITEM 3 of the Declarations, and the Limit of Liability with respect to **Claims** made during the Optional Extension Period shall be part of and not in addition to the Limit of Liability for all **Claims** made during the **Policy Period**.

**(G) ASSISTANCE, COOPERATION AND SUBROGATION**

- (1) In the event of any notice of **Claim** or of circumstances that may reasonably be expected to give rise to a **Claim**, the **Insured** agrees to provide the Insurer with all information, assistance and cooperation

that the Insurer may reasonably request with respect to such **Claim** or of circumstances that may reasonably be expected to give rise to a **Claim**, and further agrees that they will do nothing intentionally which in any way increases the Insurer's exposure under this Policy with respect to such **Claim** or of circumstances that may reasonably be expected to give rise to a **Claim**, or in any way prejudices the Insurer's potential or actual rights of recovery, with respect to such **Claim** or of circumstances that may reasonably be expected to give rise to a **Claim** provided, however, that nothing in this GENERAL CONDITION (G)(1) will be construed to require any **Insured** to waive any attorney-client privilege, work-product protection or any other such privilege or protection.

- (2) In the event of any payment under this Policy, the Insurer shall be subrogated to all of the potential or actual rights of recovery of the **Insured**. The **Insured** shall execute all papers required and will do everything necessary to secure such rights including but not limited to the execution of such documents as are necessary to enable the Insurer to effectively bring suit in their name, and will provide all other assistance and cooperation which the Insurer may reasonably require; *provided however*, that under no circumstances will the Insurer exercise or pursue, directly or indirectly, any right(s) of recovery, right(s) of subrogation or other rights under this GENERAL CONDITION (G)(2) against any **Insured**; *provided further* that under no circumstance shall any **Insured Person** be required to subject himself or herself to the jurisdiction of any court.

Notwithstanding the foregoing, in the event the Insurer pays indemnifiable **Loss** on behalf of an **Insured Person** due to the **Company's Financial Insolvency**, the Insurer shall have the right to recover from the **Company** the amount of such **Loss** equal to the amount of the Retention not satisfied by the **Company** and shall be subrogated to the rights of the **Insured Persons** hereunder.

The failure of any **Insured** to comply with this GENERAL CONDITION (G) shall not impair the rights of any other **Insured** under this Policy.

(H) **EXHAUSTION**

If the Insurer's Limit of Liability as set forth in ITEM 3 of the Declarations is exhausted by the payment of **Loss**, the premium as set forth in ITEM 8 of the Declarations will be fully earned, all obligations of the Insurer under this Policy will be completely fulfilled and exhausted, and the Insurer will have no further obligations of any kind whatsoever under this Policy.

(I) **REPRESENTATION CLAUSE**

Each **Insured** represents that, to the best of his or her respective knowledge, as of the inception date of this Policy, the statements and particulars contained in the **Application** are true, accurate and complete in all material respects, and agree that this Policy is issued in reliance on the truth of that representation, and that such particulars and statements, which are deemed to be incorporated into and constitute a part of this Policy. No knowledge or information possessed by any **Insured** will be imputed to any other **Insured**. In the event that any of the particulars or statements in the **Application** is materially false as of the inception date of this Policy, and there is a **Claim** based upon, arising from or attributable to such particulars or statements, coverage shall not be afforded under this Policy for such **Claim** with respect to any **Insured Person** who had actual knowledge of such materially false statement was made in the application and only to the extent such statement was made with the intent to deceive the Insurer.

Under no circumstances shall coverage afforded under this Policy be rescinded for any reason.

(J) **PRIORITY OF PAYMENTS**

- (1) In the event of **Loss** arising from one or more covered **Claims** for which payment is due under the provisions of this Policy, then the Insurer shall in all events:
- (a) first, pay all **Loss** for which coverage is provided under INSURING AGREEMENT (A);
  - (b) second, pay all **Loss** for which coverage is provided under INSURING AGREEMENT (B);
  - (c) then, only after payments of all **Loss** have been made pursuant to INSURING AGREEMENT (A) and (B), then with respect to whatever remaining amount of the Limit of Liability is

available after such payment, at the written request of the Chief Executive Officer of the **Parent Company**, either pay or withhold payments of such other **Loss** for which coverage is provided or may be available under this Policy; and

- (d) after payments of all **Loss** have been made, first, pursuant to GENERAL CONDITIONS (J)(1)(a) and (J)(1)(b) and, then, made or withheld pursuant to GENERAL CONDITIONS (J)(1)(c), the remaining Limit of Liability shall thereupon become available for any covered **Claims** that may arise in the future.

- (2) The bankruptcy or insolvency of any **Insured** shall not relieve the Insurer of any of its obligations to prioritize payment of covered **Loss** under this coverage section and the **Company** hereby agrees to be bound by such prioritization of payments.

- (3) Nothing in this GENERAL CONDITIONS (J) shall be construed to increase the Limit of Liability of the Insurer, which Limit of Liability shall remain the maximum liability of the Insurer for all **Claims**.

#### (K) **BANKRUPTCY**

Coverage provided under this policy is intended to protect and benefit the **Insured Persons**. Further, if a liquidation or reorganization proceeding is commenced by a **Company** (whether voluntarily or involuntarily) under Title 11 of the United States Code (as amended), or any similar state, local or foreign law (collectively "Bankruptcy Law") then, in regard to a covered **Claim** under this policy, the **Insureds** hereby:

- (1) waive and release any automatic stay or injunction to the extent it may apply in such proceeding to the proceeds of this policy under such Bankruptcy Law; and
- (2) agree not to oppose or object to any efforts by the Insurer or any **Insured** to obtain relief from any stay or injunction to the extent applicable to the proceeds of this policy as a result of the commencement of such liquidation or reorganization proceeding.

#### (L) **ACTION AGAINST THE INSURER, ASSIGNMENT, AND CHANGES TO THE POLICY**

- (1) No action may be taken against the Insurer unless, as a condition precedent thereto there has been full compliance with all of the terms and conditions of this Policy.
- (2) Nothing contained herein shall give any person or entity any right to join the Insurer as a party to any **Claim** against the Insurer to determine their liability, nor may the **Insured** implead the Insurer in any **Claim**.
- (3) Assignment of interest under this Policy shall not bind the Insurer unless its consent is endorsed hereon.
- (4) The terms, conditions and limitations of this Policy may only be waived or changed by written endorsement signed by the Insurer and agreed to by the **Parent Company**.

#### (M) **AUTHORIZATION AND NOTICES**

It is understood and agreed that the **Parent Company** will act on behalf of the **Insureds** with respect to:

- (1) the payment of the premiums;
- (2) the receiving of any return premiums that may become due under this Policy;
- (3) the giving of all notices to the Insurer as provided herein; and
- (4) the receiving of all notices from the Insurer.

*provided however* that, notwithstanding anything in this GENERAL CONDITION (M), any **Insured** may submit notice to the Insurer pursuant to GENERAL CONDITION (A).

(N) **ENTIRE AGREEMENT**

The **Insured** agrees that the Declarations, Policy, including the endorsements, attachments and the **Application** shall constitute the entire agreement between the Insurer or any of its agents and the **Insureds** relating to this insurance. The coverage afforded by the Policy shall apply anywhere in the world.

(O) **CURRENCY**

All premiums, limits of liability, retentions, **Loss** and other amounts under this Policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or other elements of **Loss** are stated or incurred in a currency other than the United States of America, payment of covered **Loss** due under this Policy, subject to its terms, conditions and limitations, will be made either in such other currency (at the option of the Insurer and with the agreement of the **Parent Company**, or, in the United States of America dollars at the rate of exchange most recently published in The Wall Street Journal on the date of the Insurer's obligation to pay such **Loss** is established.

**EXHIBIT K**

Message

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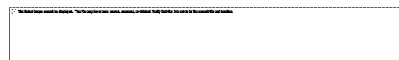
**From:** Yuen, Tammy [tyuen@skarzynski.com]  
**Sent:** 3/9/2022 10:45:49 PM  
**To:** hamamoto@diamondheadpartners.com; Keith Feldman [feldman@diamondheadpartners.com]  
**CC:** Sokop, Jeremy [Jeremy.Sokop@WillisTowersWatson.com]; Polistena, Stephanie Beretis [stephanie.polistena@axaxl.com]; Lupu, Mircea A. [mlupu@skarzynski.com]  
**Subject:** DiamondPeak Holdings Corporation: Amin v. Hamamoto et al.; Hebert v. Hamamoto et al.; Cormier v. Burns et al. (AXA XL Claims. No. [REDACTED])  
**Attachments:** Hamamoto and Feldman March 2022 4864-2837-5053 v.3.pdf; XL Billing Guidelines, 4832-6752-1713 v.pdf

Messrs. Hamamoto and Feldman,

Please see the attached correspondence on behalf of AXA XL, the Claims Manager for XL Specialty Insurance. Feel free to reach out to me should you have any questions.

Regards,  
Tammy

**Tammy Yuen**  
Partner  
Skarzynski Marick & Black LLP  
One Battery Park Plaza, 32nd Floor | New York, NY 10004



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March 9, 2022

**Tammy Yuen**  
Direct Line: 212.820.7757  
[tyuen@skarzynski.com](mailto:tyuen@skarzynski.com)

Via Email

David Hamamoto  
Keith Feldman  
DiamondHead Partners  
[hamamoto@diamondheadpartners.com](mailto:hamamoto@diamondheadpartners.com)  
[feldman@diamondheadpartners.com](mailto:feldman@diamondheadpartners.com)

Re: *Various Matters*  
Insured: DiamondPeak Holdings Corp.  
Insurer: XL Specialty Insurance Company  
Policy No: [REDACTED]  
Policy Period: February 27, 2019 to February 27, 2027  
Claim No.: [REDACTED]  
Our Ref. No.: [REDACTED]

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Dear Messrs. Hamamoto and Feldman:

As you know, this firm has been retained by AXA XL, which is the Claims Manager for XL Specialty Insurance Company (collectively, "XL"), in connection with the captioned policy (the "Policy") issued to DiamondPeak Holdings Corp. ("DiamondPeak"). XL acknowledges notice of the following matters:

- 1) a class action complaint filed in *Atri Amin v. David Hamamoto et al.* Case No. 2021-1085 (Del. Ch.) (the "Amin Complaint" and "Amin Action");
- 2) a class action complaint filed in *Benjamin Hebert v. David Hamamoto et al.* Case No. 2021-1066 (Del. Ch.) (the "Hebert Complaint" and "Hebert Action");<sup>1</sup> and
- 3) a shareholder derivative complaint filed in *David Cormier v. Stephen S. Burns et al.* Case No. 2021-1049 (Del. Ch.) (the "Cormier Complaint" and "Cormier Action").

We write to provide XL's position regarding coverage for these matters (collectively, the "Court of Chancery Matters"). As explained below, XL acknowledges that the Court of Chancery Matters appear to trigger coverage under the Policy, subject to a reservation of rights.

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<sup>1</sup> Because we have not yet received a copy of the unsealed copy of the Hebert Complaint, XL reserves all of its rights under the Policy, law and equity with respect to the Hebert Action.

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This letter supplements and incorporates by reference all prior communications and correspondence by or on behalf of XL, including XL's letters dated August 5, 2021 and November 9, 2021, which addressed coverage for previously noticed matters.

This letter is directed to you based on our understanding that you are authorized to accept correspondence on behalf of DiamondPeak and all other Insureds.<sup>2</sup> If this understanding is incorrect, we ask that you please forward this letter to the appropriate party(ies).

## I. SUMMARY OF SUBMITTED MATTERS

### A. The Amin and Hebert Complaints

The Amin and Hebert Complaints were filed by DiamondPeak shareholders, Atri Amin and Benjamin Hebert, respectively, in the Delaware Court of Chancery on or about December 13, 2021 and December 16, 2021. The Complaints name as defendants, DiamondPeak directors and officers, David Hamamoto, Mark Walsh, Andrew Richardson, Steven Hash, Judith Hannaway, and DiamondPeak Sponsor, LLC ("DiamondPeak Sponsor").

The Complaints allege breaches of fiduciary duties against all defendants, on behalf of a putative class of beneficial owners of DiamondPeak stock who continuously held such stock between the Record Date of September 21, 2020 and the closing of the de-SPAC Acquisition (*i.e.*, the Lordstown-DiamondPeak Merger) on October 23, 2020.

Plaintiffs allege that in soliciting approval of the merger of DiamondPeak with Lordstown EV Corporation ("Legacy LMC") (the "Merger"), defendants convinced investors not to redeem their stock based on public representations that Legacy LMC would begin production of its flagship, electric pick-up truck, the Endurance, by late 2021 thereby capitalizing on a "first-mover" advantage and that there was an increasing backlog of pre-orders for the Endurance. However, prior to the Merger, defendants allegedly learned that the "entire investment rationale for the Merger was built on a castle of sand."

As allegedly revealed in documents obtained through plaintiffs' Section 220 demands, the consulting firm retained by defendants to conduct pre-Merger diligence on Legacy LMC issued a series of reports evidencing that (i) Legacy LMC could not meet its publicly reported production timeline and therefore would not enjoy a "first-mover" advantage; and (ii) a huge swath of the purported order backlog was unreliable or fabricated.

Rather than reveal the truth, the Complaints allege that defendants issued the Proxy soliciting shareholder approval of the Merger on the basis of a business plan which conflicted with facts that they knew or should have known.

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<sup>2</sup> Unless otherwise noted, capitalized terms and phrases have the meanings ascribed to them in the Policy. This letter does not alter or amend the terms of the Policy.

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The Complaints allege that defendants were motivated to move forward with the Merger and hide the truth regarding Legacy LMC's prospects based on financial incentives, including that: (i) redemption of the "Founder Shares" would yield significant value benefitting Hamamoto and Walsh, who controlled DiamondPeak Sponsor, the entity which held 88.4% of the Founder Shares; (ii) DiamondPeak Sponsor held Private Placement Warrants which would expire if a business combination was not achieved; and (iii) DiamondPeak directors Hannaway, Hash, and Richardson would receive \$1.9 million worth of Founder Shares upon consummation of the Merger.

Following the Merger, Hindenburg Research published a March 12, 2021 report alleging that Lordstown's production timeline was unachievable and that the pre-orders for the Endurance were fake or nonbinding.

Plaintiffs allege that, as a result of defendants' omissions, the putative class did not have a fully informed opportunity to elect whether to redeem their stock and are now left holding stock trading below the \$10/per share redemption value.

The Complaints allege causes of action for (i) breach of fiduciary duty against the DiamondPeak directors; and (ii) breach of fiduciary duty against the "Controller Defendants" - i.e., DiamondPeak Sponsor, Hamamoto, and Walsh. As relief, the Complaints seek monetary damages, pre and post-judgment interest, attorneys' fees, and costs.

#### B. The Cormier Complaint

The Cormier Complaint was filed in the Delaware Court of Chancery on or about December 13, 2021 and is brought derivatively on behalf of Lordstown by Lordstown shareholder, David M. Cormier, against the following defendants: Stephen S. Burns, Shane Brown, Keith A. Feldman, Caimin Flannery, Michael D. Gates, David T. Hamamoto, Judith A. Hannaway, Steven R. Hash, Mickey W. Kowitz, Darren Post, Jane Reiss, Andrew C. Richardson, Julio C. Rodriguez, Martin J. Rucidlo, Phil Richard Schmidt, Dale G. Spencer, Angela Strand, Chuan D. Vo, and Mark A. Walsh.

The Cormier Complaint alleges that defendants breached their fiduciary duties to Lordstown by (i) making false and misleading statements relating to pre-orders for the Endurance and Lordstown's production capabilities; and (ii) selling Lordstown shares while in possession of material adverse non-public information regarding the pre-orders and production timeline for the Endurance. As a consequence of the foregoing breaches of fiduciary duty, plaintiff alleges that Lordstown has experienced a substantial loss of shareholder value and incurred and continues to incur costs due to the ongoing government investigations and the pending securities action.

The Cormier Complaint alleges causes of action for breach of fiduciary duty (against all defendants), derivative claim for breach of fiduciary duty and misappropriation of information under *Brophy* (against the selling defendants, Brown, Hamamoto, Post, Schmidt, Rodriguez, and

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Vo), and unjust enrichment (against all defendants). The Cormier Complaint seeks declaratory relief, damages, disgorgement, restitution, interest, attorneys' fees, and costs.

## II. COVERAGE ANALYSIS

XL issued Management Liability and Company Reimbursement Policy No. [REDACTED] to DiamondPeak for the Policy Period of February 27, 2019 to February 27, 2027, as amended by Endorsement No. 10. Subject to all of its terms, conditions, and exclusions, the Policy provides a \$10,000,000 Aggregate Limit of Liability (including Defense Expenses) subject to a \$500,000 each Claim Retention under Insuring Agreements I(B) and I(C).

### A. The Court of Chancery Matters

XL acknowledges that, pursuant to Section II(C) and (BB) of the Policy, the Court of Chancery Matters constitute a Claim, which includes allegations of Wrongful Acts against the following Insured Persons: David Hamamoto, Mark Walsh, Andrew Richardson, Steven Hash, and Judith Hannaway (the "DiamondPeak Individual Defendants"). We presume that indemnification is being provided to the DiamondPeak Individual Defendants, such that Insuring Agreement I(B) is implicated, but please advise us immediately if our understanding is incorrect.

Section VI(B) provides, in relevant part, that "[all] Claims arising from Interrelated Wrongful Acts<sup>3</sup> shall be deemed to constitute a single Claim." The Court of Chancery Matters and the previously noticed complaints asserting securities and derivative violations<sup>4</sup> (the "Previously Noticed Matters"), addressed in my letters dated August 5, 2021 and November 9, 2021, allege Interrelated Wrongful Acts. Specifically, the Court of Chancery Matters and the Previously Noticed Matters all seek to hold defendants, including the DiamondPeak Individual Defendants, liable for alleged misstatements and/or omissions relating to pre-orders for the

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<sup>3</sup> Section II(O) provides that: "'Interrelated Wrongful Acts' means Wrongful Acts which are based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any of the same or related facts, series of related facts, circumstances, situations, transactions or events."

<sup>4</sup> *Raymond Romano v. Lordstown Motors Corporation et al.* Case No. 4:21-cv-00994 (N.D. Ohio); *Daniel J. Cohen et al. v. Stephen S. Burns et al.* Case No. 1:21-cv-00604 (D. Del.); *Alicia Kelley et al. v. Stephen S. Burns et al.* Case No. 1:21-cv-00724 (D. Del.); *Claude L. Patterson v. Stephen S. Burns et al.* Case No. 1:21-cv-009190 (D. Del.); *An Thai v. Stephen S. Burns et al.* Case No. 4:21-cv-01267 (N.D. Ohio); *Evaristo Sarabia v. Stephen S. Burns et al.* Case No. 1:21-cv-01010 (D. Del.); *In re Lordstown Motors Corp. Securities Litigation*, Case No. 4:21-cv-00616 (N.D. Ohio); *In re Lordstown Motors Corp. Shareholder Derivative Litigation*, Lead Case No. 1:21-cv-00604 (D. Del.).

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Endurance truck and Lordstown's production capabilities. Thus, the Court of Chancery Matters and Previously Noticed Matters constitute a single Claim subject to a single \$500,000 Retention in accordance with Section VI(B) and Item 4. of the Declarations.

Accordingly, XL reiterates the reservation of rights set forth in my letters dated August 5, 2021 and November 9, 2021 as if fully incorporated herein. As set forth in XL's prior correspondence, XL reserved its rights pursuant to the following provisions: (i) the definition of Loss (Section II(M)) to the extent any loss arising from this matter is uninsurable under applicable law given allegations that the DiamondPeak Individual Defendants were unjustly enriched and committed intentional wrongdoing; (ii) the fraud and profit exclusion (Section III(A)(4)) in light of allegations that the DiamondPeak Individual Defendants knowingly made improper statements and were unjustly enriched; (iii) the definition of Wrongful Acts (Section II(BB)) to the extent the DiamondPeak Individual Defendants' actual or alleged conduct was not in their capacities as Insured Persons; (iv) the allocation provision (Section V(E)) in connection with uncovered Loss representing any amounts sought or awarded attributable to non-Insured defendants, the DiamondPeak Individual Defendants acting in a non-Insured capacity, or any other amounts that are not the subject of the Policy's coverage; and (v) the other insurance provision (Section VI(C)(1)). XL reserves its rights in this regard with respect to the Court of Chancery Matters

In addition, XL notes the following specific to the Court of Chancery Matters.

The Lordstown directors and officers<sup>5</sup> (the "Lordstown Individual Defendants") named as defendants in the Cormier Complaint do not qualify as Insureds pursuant to Section II(N) of the Policy. Additionally, DiamondPeak Sponsor, which is named as a defendant in the Amin and Hebert Complaints, does not appear to qualify as an Insured under Section II(M) of the Policy. As such, no coverage appears to be available for these parties under the Policy. Please advise if you believe that any of the foregoing parties qualify as Insureds. XL reserves its rights accordingly.

The Amin and Hebert Complaints allege that, in addition to alleged conduct undertaken in their capacities as directors of DiamondPeak, David Hamamoto and Mark Walsh also acted in capacities based on their control of DiamondPeak Sponsor, the entity which allegedly held 88.4% of DiamondPeak's Founder Shares at the time of the Proxy.<sup>6</sup> Specifically, the Complaints allege *inter alia* that, along with DiamondPeak Sponsor, Hamamoto and Walsh breached their fiduciary duties by controlling, influencing, and causing DiamondPeak to enter into the Merger via false and misleading statements in the Proxy. DiamondPeak Sponsor is allegedly a joint venture between an unidentified entity controlled by David Hamamoto and an entity controlled by "Silverpeak," which includes "SP SPAC Sponsor LLC, Silverpeak Real Estate Partners L.P.,

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<sup>5</sup> They are Stephen S. Burns, Shane Brown, Keith A. Feldman, Caimin Flannery, Michael D. Gates, Mickey W. Kowitz, Darren Post, Jane Reiss, Julio C. Rodriguez, Martin J. Rucidlo, Phil Richard Schmidt, Dale G. Spencer, Angela Strand, and Chuan D. Vo.

<sup>6</sup> The Founder Shares allegedly represented 20% of DiamondPeak's total equity.

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Silverpeak Strategic Partners LLC, Silverpeak Credit Partners LP, Silverpeak Renewables Investment Partners LP, and certain other affiliated entities.” Mark Walsh is alleged to be a partner and co-founder of Silverpeak.

Section II(BB) of the Policy defines Wrongful Acts, in pertinent part, as follows:

(1) for purposes of INSURING AGREEMENTS (A) and (B):

- (a) any actual or alleged act, error, omission, neglect, misconduct, recklessness, statement, misstatement, misleading statement or breach of fiduciary duty or other duty committed or attempted, or allegedly committed or attempted, by an **Insured Person** in his or her capacity as such; or
- (b) any matter asserted against an **Insured Person** solely by reason of his or her status as such; or
- (c) any actual or alleged act, error, omission, neglect, misconduct, recklessness, statement, misstatement, misleading statement or breach of fiduciary duty or other duty committed or attempted, or allegedly committed or attempted, by an **Insured Person** in his or her capacity as a **Controlling Person** or a **Selling Securityholder**, or any matter asserted against an **Insured Person** solely by reason of his or her status as a **Controlling Person** or a **Selling Securityholder** [.]

[...]

(emphasis added)

Section II(F) defines Controlling Person as any Insured that:

- (1) holds a ten percent (10%) or more equity or debt ownership interest in the **Company**; and/or
- (2) controls the **Company** within the meaning of Section 15 of the Securities Act of 1933, as amended, or Section 20 of the Securities Exchange Act of 1934, as amended.

Section II(W) defines Selling Securityholder as “any Insured that is a securityholder of the Company.”

David Hamamoto and Mark Walsh do not appear to qualify as Controlling Persons and/or Selling Securityholders as defined by Section II(F) and II(W). Insofar as Hamamoto and/or Walsh do not qualify as Controlling Persons or Selling Securityholders, alleged conduct

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undertaken in their capacities as “Controller Defendants” based on their interests in DiamondPeak via DiamondPeak Sponsor would not qualify as Wrongful Acts under Section II(BB)(c) above. Moreover, any such conduct does not qualify as Wrongful Acts under Section II(BB)(a) or (b). Thus, it does not appear that coverage is available to Messrs. Hamamoto and Walsh for conduct undertaken in their DiamondPeak Sponsor capacities because such conduct does not qualify as Wrongful Acts as defined by Section II(BB) of the Policy. XL reserves its rights accordingly.

Separately, coverage for Mr. Hamamoto, who is alleged in the Cormier Complaint, to have also acted in his non-Insured capacity as a Lordstown director is only available for his actual or alleged conduct in his capacity as an Insured Person.

B. Allocation and Defense Arrangements

With respect to the Cormier Action, we understand that BakerHostetler LLP and Potter Anderson Corroon LLP are defending David Hamamoto and the Lordstown Individual Defendants. Please be advised that no coverage available for defense fees incurred by BakerHostetler and Potter Anderson in connection with the Cormier Action as we understand these firms are representing non-Insureds, the Lordstown Individual Defendants and to the extent these firms are representing David Hamamoto in his non-Insured capacity as a Lordstown director.

Additionally, we understand that David Hamamoto, Mark Walsh, Andrew Richardson, Steven Hash, and Judith Hannaway are represented by Sullivan & Cromwell and Richards Layton & Finger P.A. in the Cormier Action. Please confirm that Sullivan & Cromwell and Richards Layton are solely engaged on behalf of the DiamondPeak Individual Defendants in their DiamondPeak capacities in the Cormier Action.

XL reserves all rights to allocate non-covered loss in the Cormier Action attributable to the non-Insured Lordstown Individual Defendants and/or Mr. Hamamoto in his capacity as a Lordstown director.

With respect to the Amin and Hebert Actions, we understand that Sullivan & Cromwell and Richards Layton are representing DiamondPeak Sponsor, Messrs. Hamamoto and Walsh in their DiamondPeak Sponsor capacities and the DiamondPeak Individual Defendants in their DiamondPeak capacities are represented by. Because DiamondPeak Sponsor does not appear to qualify as an Insured under the Policy and coverage does not appear to be available for Messrs. Hamamoto and Walsh in their DiamondPeak Sponsor capacities, XL reserves its rights to apply an allocation to non-covered loss, including defense fees incurred in connection with the Amin and Hebert Actions.

In addition to Sullivan & Cromwell and Richards Layton’s representation of David Hamamoto, we understand that Mr. Hamamoto is also represented by BakerHostetler and Potter Anderson in the Amin and Hebert Actions. As discussed above, Mr. Hamamoto is also

Messrs. Hamamoto and Feldman  
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represented by both sets of firms in the Cormier Action. XL requests clarification regarding the scope of each set of firms' representation of Mr. Hamamoto and the allocation of work between these firms. In the interim, XL reserves all rights with respect to fees incurred by both sets of firms in their defense of Mr. Hamamoto in the Court of Chancery Matters.

Please be advised that XL's payment of any Defense Expenses is subject to the reservation of rights herein and defense counsel's compliance with XL's Procedures for Reporting and Billing (enclosed).

XL renews its request that a discussion be held to address allocation of defense fees in connection with the Previously Noticed Matters. We look forward to discussing this issue with the Insureds in the near term.

XL also requests that defense counsel provide the following information for evaluation:

- 1) confirmation of the hourly billing rates of the attorneys and paralegals who are assigned to the matter;
- 2) a litigation budget which should include a breakdown of suggested strategy as well as costs associated with that strategy;
- 3) copies of all defense expense bills including those within the Retention. The billing statement(s) should identify each legal activity or task by date, provider, work description, time and hourly rate of the provider. A single time and total charge entry for multiple legal activities is not acceptable. We ask that you submit those bills to us on a monthly basis; and
- 4) an initial report, which will focus on the assessment of liability, damages, settlement value, potential verdict range, and estimated trial date, as well as periodic reports upon the occurrence of material events, but no less frequently than on a quarterly basis. Additionally, we would ask that you provide us with copies of all materials[.]

Finally, XL reminds the Insureds that pursuant to Section V(B), "[n]o Insured may incur any Defense Expenses in excess of \$1,000,000 or admit liability for, or settle any Claim, without the Insurer's consent, such consent not to be unreasonably delayed or withheld."

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The foregoing is based on the information currently available to XL and XL does not waive any Policy or coverage defense, which may be applicable now or in the future, nor may XL be estopped from asserting any other defenses available to XL under the terms of the Policy even if not specifically referenced herein. Neither the statements herein, nor further actions taken by XL or its counsel, may be construed as a waiver of any rights or defenses they may have pursuant to the terms, provisions, conditions, and exclusions of the Policy or any other



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ground. XL reserves the right to modify its coverage position if any information is developed or received that warrants the modification.

Should you believe that XL's position is incorrect or that additional information may impact XL's position, please provide any additional information to the attention of the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Tammy Yuen', with a long horizontal flourish extending to the right.

Tammy Yuen

cc: Via Email

Stephanie Beretis Polistena, Esq. (stephanie.polistena@axaxl.com)

Jeremy Sokop (Jeremy.Sokop@willistowerswatson.com) & (FXUS@WillisTowersWatson.com)

Mircea Lupu (mlupu@skarzynski.com)

4864-2837-5053, v. 3

## **XL PROFESSIONAL - HARTFORD**

### ***Procedures for Reporting and Billing***

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XL Professional – Hartford’s (“XL”) goal is to promote a professional, efficient and cost effective working relationship with our insureds and defense counsel. Because defense expenses will deplete the insurance policy’s limit of liability, it is in the best interests of the insured and XL to make certain that the insured receives superior legal services in a cost-effective manner. We believe a close working relationship between the insured, XL and defense counsel will lead to the best overall result.

- I. **Initial Report** – Within forty five days of their retention, defense counsel should forward to XL a report containing the following:
  - **Litigation Plan and Preliminary Budget** – this should set forth a strategy for the conduct of the defense. This report should advise of the proposed staffing of the case, including the name(s) of each attorney and paralegal that is to be assigned to the case and their billing rates. The report should include a description of the significant activity counsel proposes to initiate during the next three months (e.g., investigation, motions, discovery, legal research, etc.) and the estimated cost for each activity
  - **Summary and Assessment of Claim** – this should include a summary of the allegations in the complaint (if applicable), the factual basis of the claim, a summary of the information developed during the preliminary investigation, including an assessment of liability, nature of damages, current settlement value (if known), potential verdict range, estimated trial date/time (if applicable). Counsel should also advise of the potential, if any, for early disposition of the claim by settlement, arbitration, mediation or other forms of early resolution.
- II. **Future Reports** – should follow every three months thereafter or upon the occurrence of a significant development or change in status. The report should summarize the activities or tasks completed during the prior three months, revisions to counsel’s evaluation of the client’s liability and damage exposure, advise of any changes in strategy. Future reports should also include an updated litigation budget and copies of all significant court papers filed or received, relevant correspondence and legal research or memoranda prepared during the previous three months.
- III. **Billing** – XL’s billing guidelines apply equally to law firms on its approved list of defense counsel as well as law firms selected by the insured and approved by XL.
  - **Billing Rates** – Hourly rates (or alternative fee arrangements) must be pre-approved in writing. Any rate increase must be approved in advance.
  - **Billing Cycle** – Defense counsel bills for legal services should be submitted on a monthly basis. XL will pay covered costs and expenses on a quarterly basis (from the date defense counsel is retained).

- Billing Format – The initial page of each billing statement must include the law firm’s taxpayer ID number, name(s) of the insured(s) and our reference number. All billing statements must include:
  - Date on which each task was performed;
  - Identity of each attorney/paralegal performing a task;
  - Specific description of each task performed (no “Block Billings”);
  - Time billed per task (*actual time must be recorded in one-tenth of an hour increments*). When the actual time to perform multiple tasks is six minutes or less, such as reviewing routine correspondence, notices or other documents, such activities should be grouped under a single time charge of one-tenth of an hour;
  - Hourly rate charged by each attorney/paralegal; and
  - Total time and amount charged for each attorney/paralegal.
- Disbursements / Expenses / Overhead – The internal functions of the law firm should not be a profit center. Routine administrative work such as photocopying, typing, document retrieval, document filing, etc., does not qualify as billable activity. XL will pay the actual cost of photocopying, long distance telephone charges and computerized legal research charges (Lexis/Westlaw). Charges for services by outside vendors approved by XL will be reimbursed at their actual cost. Outside vendors’ invoices must specifically describe the nature of the expense, the date services were provided and the cost.

- IV. Travel – Charges for attorney time during travel are not reimbursable, unless such time is actually spent performing legal services in connection with the defense of the claim. Travel expenses must be specifically described and separately itemized for each date of travel, stating: a) the name of the traveler; b) the dates of travel; c) the purpose; and d) origin and destination. Only coach/economy fares for air travel are reimbursable. Personal auto travel will be reimbursed at the rate authorized by the IRS.
- V. File Audits – XL reserves the right to review and audit all charges for services and disbursements pertaining to the defense of a claim, including those charges that fall within the retention.

**XL reserves the right to disallow those charges for legal fees, disbursements, expenses, travel or otherwise which fail to comply with the guidelines set forth above as well as any charges which are excessive, unreasonable, unsupported or unauthorized.**