

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

FISKER INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-11390 (TMH)

(Joint Administration Requested)

**MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) WAIVING THE REQUIREMENT TO FILE A LIST OF EQUITY
SECURITY HOLDERS AND (II) AUTHORIZING DEBTORS TO
REDACT CERTAIN PERSONAL INFORMATION**

Fisker Inc. and certain of its affiliates (collectively, the “**Debtors**”),² each of which is a debtor and debtor in possession in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), hereby file this *Motion of Debtors for Entry of Interim and Final Orders (I) Waiving the Requirement to File a List of Equity Security Holders and (II) Authorizing Debtors To Redact Certain Personal Information* (this “**Motion**”). This Motion is supported by the *Declaration of John C. DiDonato as Chief Restructuring Officer of the Debtors in Support of Debtors’ Chapter 11 Proceedings and First Day Pleadings* (the “**DiDonato Declaration**”) filed contemporaneously herewith and incorporated herein by reference. In further support of this Motion, the Debtors respectfully state as follows:

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers or Delaware file numbers, are as follows: Fisker Inc. (0340); Fisker Group Inc. (3342); Fisker TN LLC (6212); Blue Current Holding LLC (6668); Platinum IPR LLC (4839); and Terra Energy Inc. (0739). The address of the debtors’ corporate headquarters is 14 Centerpointe Drive, La Palma, CA 90623.

² The Debtors and their direct and indirect non-Debtor subsidiaries are collectively referred to herein as “**Fisker.**”



Relief Requested

1. By this Motion, and pursuant to sections 105(a), 107(c), and 521 of title 11 of the United States Code (the “**Bankruptcy Code**”) and rules 1007 and 2002 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Debtors seek entry of orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the “**Proposed Orders**”), (a) waiving the requirement to file a list of equity security holders and (b) authorizing the Debtors to redact certain personal information from documents filed with the Court (as defined below) in the Chapter 11 Cases (including any Creditor Matrix, Schedule, or Statement (each as defined below)).

Jurisdiction, Venue, and Authority

2. The United States Bankruptcy Court for the District of Delaware (the “**Court**”) has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012.

3. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). In addition, the Debtors confirm their consent, pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter a final order or judgment in connection herewith consistent with Article III of the United States Constitution.

4. Venue of the Chapter 11 Cases and related proceedings is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

5. On June 17 and 19, 2024, (collectively, the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors remain in possession of their property and continue to operate and manage their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner, and no official committee has been appointed in the Chapter 11 Cases.

6. Contemporaneously herewith, the Debtors have filed a motion requesting the joint administration of the Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1.

7. Fisker is an American automotive company that designs, develops, markets, and sells electric vehicles. Passionately driven by a vision of a clean future for all, Fisker created the world’s most sustainable and emotional electric vehicles. Headquartered in California, Fisker operates in several countries (including the United States, Austria, Germany, China, and India) and conducts sales operations in North America and throughout Europe.

8. Additional information about the Debtors’ business and affairs, capital structure, and prepetition indebtedness, and the events leading up to the Petition Date, can be found in the DiDonato Declaration.

Basis for Relief

A. Waiver of the Requirements To File a List of, and To Provide Notice Directly to, the Equity Security Holders is Warranted

9. Bankruptcy Rule 1007(a)(3) requires a debtor to file, within 14 days of the petition date, a list of the debtor’s equity security holders (the “**Equity List**”). Fed. R. Bankr. P. 1007(a)(3). In addition, Bankruptcy Rule 2002(d) requires a debtor to give notice of the commencement of a

bankruptcy case to all equity security holders. Courts have authority to modify or waive the requirements under both Bankruptcy Rules. Fed. R. Bankr. P. 1007(a)(3) (“[U]nless the court orders otherwise, the debtor shall file . . . a list of the debtor’s equity security holders”); Fed. R. Bankr. P. 2002(d) (“[U]nless otherwise ordered by the court, the clerk . . . shall in the manner and form directed by the court give notice to all equity security holders”); *see also* 11 U.S.C. § 105(a) (“The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”); Fed. R. Bankr. P. 9007 (“When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, the entities to whom, and the form and manner in which the notice shall be given.”).

10. The Debtors respectfully request that the Court waive the requirements to file the Equity List and to provide notice directly to equity security holders. The common stock of Debtor Fisker Inc. was publicly traded on the New York Stock Exchange until March 25, 2024, with approximately 1,250,822,032 outstanding class A shares of common stock as of the Petition Date and cannot be readily traced to specific individual holders. Debtor Fisker Inc. only maintains a list of its registered equity security holders and, therefore, would need to obtain the names and addresses of its beneficial shareholders from a securities agent. The Debtors submit that preparing the Equity List with last known addresses for each equity security holder and sending notices to all parties thereon would create undue expense and administrative burden with limited corresponding benefit to the estates or parties in interest.

11. Debtor Fisker Inc. has taken or will take several actions to inform its equity security holders of the commencement of the Chapter 11 Cases. On or about the date hereof, the Debtors will issue a press release announcing the filing. To the extent persons or entities have significant holdings of Fisker Inc.’s outstanding common stock, Fisker Inc. disclosed any such persons or

entities on the *Consolidated Corporate Ownership Statement and List of Equity Interest Holders* filed with its petition. As soon as is practicable following the date hereof, the Debtors intend to publish the Notice of Commencement in *USA Today* (national edition) and file a Form 8-K with the SEC notifying their investors and other parties of the commencement of the Chapter 11 Cases. The Debtors are confident that such a publication, coupled with the press release and the international attention the Chapter 11 Cases will surely receive, would most likely reach the equity security holders. As such, the Debtors submit that publishing the Notice of Commencement in lieu of direct notice is warranted and would satisfy the aforementioned noticing requirements set forth in the Bankruptcy Rules.

12. Courts in this district routinely grant relief similar to that requested herein. *See, e.g., In re Yellow Corp.*, No. 23-11069 (CTG) (Bankr. D. Del. Sept. 13, 2023) [D.I. 528] (waiving the requirement under Bankruptcy Rule 1007(a)(3) to file a list of equity security holders and provide notice directly thereto); *In re Lannett Co., Inc.*, No. 23-10559 (JKS) (Bankr. D. Del. May 5, 2023) [D.I. 335] (same); *In re HyreCar Inc.*, No. 23-10259 (JTD) (Bankr. D. Del. Feb. 28, 2023) [D.I. 36] (same); *In re Am. Virtual Cloud Techs., Inc.*, No. 23-10020 (MFW) (Bankr. D. Del. Jan. 12, 2023) [D.I. 28] (same); *In re NewAge, Inc.*, No. 22-10819 (LSS) (Bankr. D. Del. Sept. 29, 2022) [D.I. 154] (same); *In re Southcross Energy Partners, L.P.*, No. 19-10702 (MFW) (Bankr. D. Del. Apr. 2, 2019) [D.I. 50] (same).

13. In light of the foregoing, the Debtors submit that ample cause exists for the Court to waive the requirement under Bankruptcy Rule 1007(a)(3) to file the Equity List and the requirement under Bankruptcy Rule 2002(d) to send notice of the order for relief to all equity security holders of Debtor Fisker Inc.

B. Redaction of Certain Personal Information is Warranted

14. The Debtors respectfully seek entry of an order authorizing the redaction of personal information from any document filed or to be filed with the Court in the Chapter 11 Cases, so as to protect individuals and to prevent the Debtors from potentially violating applicable data privacy and protection laws or regulations.

i. Disclosure of Confidential Information May Result in Harm to Individuals

15. Section 107(c) of the Bankruptcy Code enables the Court to issue orders that protect parties from the potential harm that could result from disclosing personal information:

(c)(1) The bankruptcy court, for cause, may protect an individual, with respect to the following types of information to the extent the court finds that disclosure of such information would create undue risk of identity theft or unlawful injury to the individual or the individual's property:

(A) Any means of identification (as defined in section 1028(d) of title 18) contained in a paper filed, or to be filed in a case under this title.

(B) Other information contained in a paper described in subparagraph (A).

11 U.S.C. § 107(c)(1). Title 18 of the United States Code defines “means of identification” as:

any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, *including any—*

(A) name, social security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number

18 U.S.C. § 1028(d)(7) (emphasis added).

16. While transparency is important to the judicial process, Congress recognized a counterbalancing interest in enacting section 107(c)(1) of the Bankruptcy Code: the need to protect

the identities and privacy of individuals who have dealings with debtors. The language of both statutes cited above demonstrates Congress’s desire for courts to have flexibility to protect individuals’ identities. Section 107(c)(1)(B) of the Bankruptcy Code allows a bankruptcy court to shield “[o]ther information” apart from “means of identification,” and the definition of “means of identification” is itself a non-exhaustive list of personal information. *See* 2 Collier on Bankruptcy P 107.04 (16th 2023). Accordingly, although an individual creditor’s home address is not explicitly enumerated as a “means of identification,” it is nevertheless within the broad scope of section 107(c)(1)(B) of the Bankruptcy Code and should be protected to avoid risks of, among other things, identity theft, domestic violence, harassment, stalking, or phishing scams.³ *See* Hr’g Tr. at 37:25–38:5, *In re THG Holdings LLC*, No. 19-11689 (JTD) (Bankr. D. Del. Aug. 22, 2019) [D.I. 180] (“I think [that the list in 18 U.S.C. § 1028(d) is] an inclusive list. It wouldn’t seem to make much sense that I could order the names [of individuals] not to be disclosed, but [their] addresses had to be; that wouldn’t make any sense to me.”).

17. Courts in this jurisdiction have granted the relief requested herein in comparable chapter 11 cases. *See, e.g., In re MVK Farmco LLC*, No. 23-11721 (LSS) (Bankr. D. Del. Nov. 15, 2023) [D.I. 244] (authorizing the debtors to redact the home and email addresses of natural persons on the Creditor Matrix, Schedules and Statements, affidavits of service, and any other documents filed with the court); *In re Am. Physician Partners, LLC*, No. 23-11469 (BLS) (Bankr. D. Del. Oct. 27, 2023) [D.I. 295] (authorizing the debtors to anonymize or redact confidential

³ This risk in relation to section 107(c)(1) of the Bankruptcy Code is not speculative and has manifested in chapter 11 cases. For example, as described in the “creditor matrix motion” filed in *Charming Charlie Holdings Inc.*, No. 19-11534 (CSS) (Bankr. D. Del. Jul. 11, 2019) [D.I. 4], the abusive former partner of a debtor’s employee used the publicly accessible creditor and employee information filed in the case to track the employee at her new address, which had not been publicly available until then, forcing the employee to change addresses again. *See id.* In a more recent case, customers of a cryptocurrency company received phishing emails from purported legal advisors of the debtors. *See In re Celsius Network LLC*, No. 22-10964 (MG) (Bankr. S.D.N.Y. Nov. 30, 2022) [D.I. 1527].

information from the Creditor Matrix, equity holders list, Schedules and Statements, and any similar document); *In re Yellow Corp.*, No. 23-11069 (CTG) (Bankr. D. Del. Sept. 13, 2023) [D.I. 528] (same); *In re MD Helicopters, Inc.*, No. 22-10263 (KBO) (Bankr. D. Del. Apr. 1, 2022) [D.I. 97] (authorizing the debtors to redact personal information, including home address information, of individual creditors and interest holders listed on the Creditor Matrix, Schedules and Statements, or similar document filed with the court); *In re Alpha Latam Mgmt., LLC*, No. 21-11109 (JKS) (Bankr. D. Del. Sept. 2, 2021) [D.I. 159] (authorizing the debtors to redact personal information, including names and home addresses, of the debtors' borrowers and current or former employees that are protected by the Colombian Data Protection Law and other foreign laws on the Creditor Matrix or other documents filed with the court).

18. Courts in this district have not only granted the requested relief, but have also expounded on the importance of authorizing debtors to redact individual creditors' personal information, including home addresses. In *Art Van Furniture*, Judge Sontchi overruled the objection of the U.S. Trustee to similar redaction relief proposed here, noting that the proposed redaction is not a "burden of proof" issue so "much as a common sense issue." Hr'g Tr. at 25:6–7, *In re Art Van Furniture, LLC*, No. 20-10533 (CSS) (Bankr. D. Del. Mar. 11, 2020) [D.I. 82].⁴ Judge Sontchi found that, "at this point and given the risks associated with having any kind of private information out on the internet, [redaction] has really become routine [and] I think obvious relief." *Id.* at 25:13–16. Similarly, in *Clover*, Judge Owens overruled the U.S. Trustee's objection,

⁴ Judge Sontchi previously overruled the U.S. Trustee's objection to the redaction of individuals' information and found that "it's just plain common sense in 2019—soon-to-be 2020—to put as little information out as possible about people's personal lives to present [sic] scams. . . . [Identity theft] is a real-life issue, and, of course, the issue of domestic violence is extremely important." Hr'g Tr. at 48:20–22, 49:3–5, *In re Anna Holdings*, No. 19-12551 (CSS) (Bankr. D. Del. Dec. 4, 2019) [D.I. 112]. Judge Sontchi emphasized that "the world is very different from [the 1980s] when you and I started practice with the problems of identity theft." *Id.* at 45:25-46:2. The Debtors reserve the right to supplement the record with respect to such risks insofar as they are not self-evident at this time.

finding that “[t]he court can completely avoid contributing to the risk [of identity theft] by redacting” addresses. Hr’g Tr. at 25:9–10, *In re Clover Techs. Grp., LLC*, No. 19-12680 (KBO) (Bankr. D. Del. Jan. 24, 2020) [D.I. 146]. Judge Owens maintained that “it is common sense” that “names and/or addresses are a means of identification.” *Id.* 24:15–16. When it comes to such information, Judge Owens noted that “there is, at best, a risk of identity theft and worse a risk if personal injury from listing someone’s name and address on the internet by way of the court’s electronic case filing system and . . . the claims agent’s website.” *Id.* at 25:22–25. Recognizing that “there is, of course, an important right of access” to information, Judge Owens acknowledged that courts “routinely redact sensitive and confidential information for corporate entities and redact individual’s home addresses.” *Id.* at 25:10–13.

19. Finally, in *Forever 21*, Judge Gross overruled the U.S. Trustee’s objection, finding that “[w]e live in a new age in which the theft of personal identification is a real risk, as is injury to persons who, for personal reasons, seek to have their addresses withheld.” Hr’g Tr. at 60:22–25, *In re Forever 21, Inc.*, No. 19-12122 (KG) (Bankr. D. Del. Dec. 19, 2019) [D.I. 605]. Judge Gross also found that it was not necessary to the effective administration of the debtors’ estates to disclose the personal information of their stakeholders who are European Union member citizens due to the risk that debtors could be fined under the EU GDPR (as defined below) for unnecessary disclosures of personal information. *See id.* at 62:16–22; *Balance Point LLC*, No. 21-11279 (JKS) (Bankr. D. Del. Nov. 2, 2021) (redacting both the names and addresses of current and former employees); *Secure Home Holdings LLC*, No. 21-10745 (JKS) (Bankr. D. Del. Apr. 27, 2021) [D.I. Nos. 6, 54] (redacting both the names and addresses of customers and employees); *WB Supply LLC*, No. 21-10729 (BLS) (Bankr. D. Del. Apr. 22, 2021) [D.I. Nos. 5, 28] (same); *PBS Brand*

Co., LLC, No. 20-13157 (JTD) (Bankr. D. Del. Jan. 26, 2021) [D.I. 183] (redacting both the names and addresses of individual creditors and employees).

20. In this case, the interest in public access to judicial records and papers is outweighed by the risk of identity theft to individuals and other natural persons, including individuals who are employees, directors, officers, or individual equity holders of the Debtors, whose personal information would otherwise be disclosed absent the relief sought herein. *See In re Motions Seeking Access to 2019 Statements*, 585 B.R. 733 (D. Del. 2018) (denying disclosure of personal information where “the risks of misuse and harm to individuals would greatly outweigh any value [such personal information] could possibly have”), *aff’d sub nom. In re A C & S Inc*, 775 F. App’x 78 (3d Cir. 2019). There is minimal, if any, benefit to the public of publishing personal information of such individuals. The public disclosure of such information would create an undue risk of identity theft for the affected individuals, as well as open the door to other potential risks to such individuals’ safety and welfare.

21. Recognizing the need for transparency, the Debtors propose to provide an unredacted version of any document filed or to be filed with the Court in the Chapter 11 Cases (including the creditor matrix (the “**Creditor Matrix**”) and any schedule of assets or liabilities (the “**Schedules**”) or statement of financial affairs (the “**Statements**”)) to (a) the Court, the U.S. Trustee, and counsel to any official committee appointed in the Chapter 11 Cases and (b) any party in interest upon a request to the Debtors (email being sufficient) or to the Court that sets forth a reasonable basis for the request that is reasonably related to the Chapter 11 Cases. Furthermore, to the extent notice and/or service by mail (as opposed to email) is required or requested, the Debtors will instruct the proposed claims and noticing agent, Kurtzman Carson Consultants, LLC dba Verita Global (together with its affiliates and subcontractors, “**Verita**”), to serve individuals

at their personal home addresses, ensuring that each individual will receive the same notices in the Chapter 11 Cases as all other creditors without the unnecessary public disclosure of their home address. Finally, nothing in the Proposed Orders should (x) preclude a party in interest's right to file a motion requesting that the Court unseal information redacted in accordance with the Proposed Orders or (y) waive or otherwise limit the service of any document upon, or the provision of any notice to, any individual whose personal information was sealed or redacted in accordance with the Proposed Orders. Accordingly, the privacy concerns at issue here outweigh the interest in public access to judicial proceedings and support entry of the Proposed Orders.

22. The Debtors, therefore, respectfully request that the Court permit the Debtors to redact personal information of any individual or other natural person from any document filed or to be filed with the Court in the Chapter 11 Cases (including any Creditor Matrix, Schedule, or Statement), as described herein, with unredacted copies to be provided in accordance with the Proposed Orders.

ii. Disclosure of Personal Information May Violate Data Privacy and Protection Laws and Regulations

23. Data privacy and protection laws and regulations have been or are being enacted both in the United States and in several key international jurisdictions. In the United States, various state legislatures have enacted, and a number of other states are considering enacting, comprehensive data privacy and protection laws, including California – the locale of Fisker's corporate headquarters and the majority of the Debtors' employees. For example, the California Consumer Privacy Act, as amended by the California Privacy Rights Act (collectively, the "CCPA"), provides data privacy rights for California residents, imposes operational requirements on covered companies, and levies civil penalties for violations. The CCPA may apply to the Debtors given that certain of the Debtors' operations and employees are located in California, and

certain of the Debtors may process personal information of creditors, including non-Debtor employees, as well as individual equity holders that are California residents.

24. The CCPA includes an affirmative obligation on covered companies to process personal information only as reasonably necessary and proportionate to achieve the purposes for which the personal information was collected or processed or for another disclosed purpose compatible with the context of the original collection. The Debtors respectfully submit that the disclosure of personal information of individuals (including individual creditors) is unnecessary for the purpose of the relevant parties reviewing amounts owed to those individuals as part of the Chapter 11 Cases. Indeed, redaction would be a significantly less intrusive way to achieve this purpose and, consequently, disclosure of this information would risk violating the CCPA.

25. Similar laws—and perhaps more protective ones—exist outside the United States as well.⁵ For example, the United Kingdom General Data Protection Regulation (the “**UK GDPR**”) and the European Union General Data Protection Regulation (the “**EU GDPR**”), along with similar laws and regulations in other international jurisdictions, significantly constrain the processing (including transferring or disclosing) of information relating to identified or identifiable natural persons (including individuals’ names and home addresses) (“**Personal Data**”). The UK GDPR and EU GDPR apply to all organizations processing Personal Data in the context of an establishment in the United Kingdom or member state of the European Economic Area (and even, in some circumstances, organizations established in other countries when processing Personal Data relating to individuals located in the United Kingdom or European Economic Area, respectively).

⁵ As detailed in the DiDonato Declaration, Fisker operates in several countries outside the United States, including India, China, Canada, Mexico, Austria, Belgium, Norway, Spain, Denmark, Sweden, France, Switzerland, Germany, Ireland, the United Kingdom, and the Netherlands, and its products are sold in North America and throughout Europe.

The UK GDPR and EU GDPR may apply to the Debtors, given that certain of the Debtors may (a) process Personal Data relating to creditors, including non-Debtor employees, in the context of an establishment in the United Kingdom or in a member state of the European Economic Area or (b) otherwise process Personal Data of individuals located in the United Kingdom or European Economic Area. Moreover, one of the Debtors has a wholly owned non-Debtor subsidiary domiciled in England and another in Ireland.

26. Among other requirements, limitations, and obligations in respect of the processing of Personal Data that limit or otherwise restrict the Debtors' ability to disclose or otherwise process Personal Data, the UK GDPR and EU GDPR require a legal basis for any processing (including disclosure) of Personal Data. The single possible legal basis that may apply for disclosing Personal Data in this instance would be the "legitimate interests" ground (Article 6(1)(f), UK GDPR and EU GDPR). However, this basis would not apply (a) if processing Personal Data is unnecessary for the relevant purpose, including when a less intrusive way of achieving that purpose exists, or (b) when the rights and freedoms of the relevant individuals outweigh the legitimate interest. Furthermore, processing (including disclosure) under the UK GDPR and EU GDPR must comply with the data minimization principle, which requires that any processing must be necessary to achieve the stated purpose. The Debtors respectfully submit that the disclosure of personal information of individuals (including individual creditors) is unnecessary for the purpose of the relevant parties reviewing amounts owed to those individuals as part of the Chapter 11 Cases. Indeed, redaction would be a significantly less intrusive way to achieve this purpose. Moreover, individual creditors' right to not have their unredacted names and home addresses disclosed outweighs the legitimate interest of disclosing their information to assist with the Chapter 11

Cases. As a result, disclosure of this information would risk violating the UK GDPR and EU GDPR (to the extent applicable).

27. Finally, violators of the UK GDPR and EU GDPR face severe penalties. If an organization is determined to have processed Personal Data in breach of the UK GDPR, it may be fined up to the greater of £17,500,000 or 4% of worldwide annual turnover (*i.e.*, total annual revenues) of the preceding year. *See* Data Protection Act 2018, section 157(5)(a) (as amended by Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019). Analogously, if an organization is determined to have processed information in breach of the EU GDPR, it may be fined up to the greater of €20,000,000 or 4% of worldwide annual turnover (*i.e.*, total annual revenues) of the preceding financial year. *See* General Data Protection Regulation (EU) 2016/679, art. 83(5). Accordingly, a violation of data privacy and protection laws and regulations would expose the Debtors to potential civil liability and significant financial penalties, to the detriment of their estates and all economic stakeholders.

28. For the foregoing reasons, the Debtors respectfully submit that cause exists to authorize the Debtors, pursuant to section 107(c)(1) of the Bankruptcy Code and in compliance with any applicable data privacy and protection laws and regulations, to redact from any document filed or to be filed with the Court in the Chapter 11 Cases (including any Creditor Matrix, Schedule, or Statement) the names, home and email addresses, and other personal information of (a) individual creditors, including the Debtors' employees, directors, and officers, as well as individual equity holders (if applicable), (b) individuals who are customers, vendors (to the extent such vendors have registered business information that constitutes personal information), or other commercial counterparties, (c) individuals where such information has been provided to, and is being processed by, an organization with an establishment located in any other jurisdiction that

has data privacy and protection laws and regulations (and with respect to such information processed by an organization with an establishment located in such jurisdictions), and (d) other individuals, with unredacted copies to be provided in accordance with the Proposed Orders.

C. The Relief Requested Herein May be Authorized Under Section 105(a) of the Bankruptcy Code

29. Finally, section 105(a) of the Bankruptcy Code confers the Court with broad equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Accordingly, the Court has expansive equitable powers to fashion any order or decree that is in the interest of preserving or protecting the value of the Debtors’ assets. *See In re Nixon*, 404 F. App’x 575, 578 (3d Cir. 2010) (“It is well settled that the court’s power under § 105(a) is broad.” (citation omitted)); *In re Nortel Networks, Inc.*, 532 B.R. 494, 554 (Bankr. D. Del. 2015) (“The Third Circuit has construed [section 105 of the Bankruptcy Code] to give bankruptcy courts ‘broad authority’ to provide appropriate equitable relief to assure the orderly conduct of reorganization proceedings, and to ‘craft flexible remedies that, while not expressly authorized by the Code, effect the result the Code was designed to obtain.’” (citations omitted)); *Patrick v. Dell Fin. Servs. (In re Patrick)*, 344 B.R. 56, 58 (Bankr. M.D. Pa. 2005) (“There is no doubt that § 105(a) is a ‘powerful [and] versatile tool’ designed to empower bankruptcy courts to fashion orders in furtherance of the Bankruptcy Code.” (quoting *Joubert v. ABN AMRO Mortg. Grp., Inc. (In re Joubert)*, 411 F.3d 452, 455 (3d Cir. 2005))).

30. Based upon the foregoing, the Debtors submit that the relief requested herein is essential, appropriate, and in the best interests of the Debtors’ estates and stakeholders. Denying this relief may cause (a) the Debtors to improperly or illegally disclose personal information, which may subject them to severe monetary penalties to the detriment of the Debtors’ estates and economic stakeholders, (b) individuals to be more easily susceptible to identity theft and

cybercrime, (c) individuals who are, unbeknownst to the Debtors, survivors of harassment, stalking, or other forms of violence—or who are being sought for any number of other nefarious reasons—to face danger to their and their family’s personal, physical, and mental safety, security, and wellbeing, and (d) a needless waste the Debtors’ time and resources to the detriment of the Debtors’ estates, creditors, and other stakeholders. Accordingly, the Debtors respectfully request that the Court enter the Proposed Orders granting the relief requested herein.

Compliance with Local Rule 9018-1(d)(iv)

31. Under the circumstances, and given the nature of the relief requested herein, the Debtors have not been able to confer with the individuals whose information is requested to be sealed and, accordingly, the Debtors submit that there is cause to excuse the Debtors from the meet and confer obligations under Local Rule 9018-1(d).

Debtors’ Reservation of Rights

32. Nothing contained herein is intended or should be construed as, or deemed to constitute, an agreement or admission as to the amount, priority, character, or validity of any claim against the Debtors on any grounds, a waiver or impairment of the Debtors’ rights to dispute any claim on any grounds, or an assumption or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest any claims under applicable bankruptcy and nonbankruptcy law.

Emergency Consideration

33. Pursuant to Local Rule 9013-1(m), the Debtors respectfully request emergency consideration of this Motion under Bankruptcy Rule 6003(b). Bankruptcy Rule 6003 provides that, “[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting . . . (b) a

motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” Fed. R. Bankr. P. 6003. As set forth in this Motion and the DiDonato Declaration, the Debtors believe that an orderly transition into chapter 11 is critical to preserve the value of the Debtors’ estates and that any delay in granting the relief requested herein could cause immediate and irreparable harm. Furthermore, the failure to receive the relief requested herein may severely impact the Debtors’ restructuring efforts at this critical juncture. Accordingly, the Debtors submit that the relief requested herein satisfies Bankruptcy Rule 6003.

Notice

34. Notice of this Motion will be provided to the following parties: (a) the office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”); (b) those creditors holding the 30 largest unsecured claims against the Debtors’ estates (on a consolidated basis); (c) the Securities and Exchange Commission; (d) the Internal Revenue Service; (e) the United States Attorney’s Office for the District of Delaware; (f) the state attorneys general for states in which the Debtors conduct business; (g) White & Case LLP, as counsel to CVI Investments, Inc. (c/o Heights Capital Management, Inc.); and (h) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the “**Notice Parties**”).

35. As this Motion is seeking “first-day” relief, the Debtors will serve copies of this Motion and any order entered in respect thereto as required by Local Rule 9013-1(m). A copy of this Motion and any order entered in respect thereto will also be made available on the Debtors’ case information website located at <https://www.veritaglobal.net/fisker>. Based on the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no other or further notice is required.

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: June 20, 2024
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Evanthea Hammer

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Proposed Counsel to the Debtors and Debtors in Possession

Exhibit A

Proposed Interim Order

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

In re:

FISKER INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-11390 (TMH)

(Jointly Administered)

Re: Docket No. __

**INTERIM ORDER (I) WAIVING THE REQUIREMENT TO FILE A LIST
OF EQUITY SECURITY HOLDERS AND (II) AUTHORIZING DEBTORS
TO REDACT CERTAIN PERSONAL INFORMATION**

Upon the motion (the “**Motion**”)² of Fisker Inc. and certain of its affiliates (collectively, the “**Debtors**”), each of which is a debtor and debtor in possession in the Chapter 11 Cases, for entry of an order, pursuant to sections 105(a) and 107(c) of the Bankruptcy Code and Bankruptcy Rules 1007 and 2002, (a) waiving the requirement to file a list of equity security holders and (b) authorizing the Debtors to redact certain personal information from documents filed with the Court in the Chapter 11 Cases (including any Creditor Matrix, Schedule, or Statement), each as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157; and the Court having found that it may enter a final order consistent with Article III of the United

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers or Delaware file numbers, are as follows: Fisker Inc. (0340); Fisker Group Inc. (3342); Fisker TN LLC (6212); Blue Current Holding LLC (6668); Platinum IPR LLC (4839); and Terra Energy Inc. (0739). The address of the debtors’ corporate headquarters is 14 Centerpointe Drive, La Palma, CA 90623.

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

States Constitution; and the Court having found that venue of the Chapter 11 Cases and related proceedings being proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties, such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion and the DiDonato Declaration; and the Court having held a hearing to consider the relief requested in the Motion (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the Motion and the DiDonato Declaration and at the Hearing establish just cause for the relief granted herein; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors, their creditors, their estates, and all other parties in interest; and the Court having determined that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003; and all objections and reservations of rights filed or asserted in respect of the Motion, if any, having been withdrawn, resolved, or overruled; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis to the extent set forth in this order (this “**Order**”).
2. The requirement under Bankruptcy Rule 1007(a)(3) to file an Equity List is waived.
3. Any requirement to provide notice directly to all equity security holders under Bankruptcy Rule 2002(d) is waived, and the Debtors are authorized to serve the notices required under Bankruptcy Rule 2002(d) on the registered holders of the Debtors’ equity securities.

4. The Debtors are authorized, but not directed, to redact the names, home and email addresses, and any other personal information of individuals listed from any document filed or to be filed with the Court in the Chapter 11 Cases (including any Creditor Matrix, Schedule, or Statement); *provided*, that the Debtors shall file under seal and provide unredacted versions of any Creditor Matrix, Schedule, Statement, or other document filed with the Court and redacted in accordance with this Order to (a) the Court, the U.S. Trustee, and counsel to any official committee appointed in the Chapter 11 Cases and (b) any party in interest upon a request to the Debtors (email being sufficient) or to the Court that sets forth a reasonable basis for the request that is reasonably related to the Chapter 11 Cases, in each case, subject to the restrictions and obligations under any applicable data privacy and protection laws and regulations; *provided, further*, that any receiving party shall not transfer or otherwise provide such unredacted document to any person or entity not party to the request; *provided, further*, that, to the extent notice and/or service by mail (as opposed to email) is required or requested, Verita may serve individuals at their personal home addresses, ensuring that each individual will receive the same notices in the Chapter 11 Cases as all other creditors without the unnecessary public disclosure of their home address.

5. Nothing in this Order (a) precludes a party in interest's right to file a motion requesting that the Court unseal information redacted in accordance with this Order or (b) shall waive or otherwise limit the service of any document upon, or the provision of any notice to, any individual whose personal information is sealed or redacted in accordance with this Order. The Debtors shall provide the personal information to any party in interest that files a motion indicating a reasonable basis for why such information is needed (such basis to be reasonably related to the Chapter 11 Cases) if, and to the extent, such motion is granted by the Court after notice and a hearing.

6. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall (a) create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by, any person or entity or (b) be deemed to convert the priority of any claim from a prepetition claim into an administrative expense claim.

7. A final hearing to consider the relief requested in the Motion shall be held on _____, 2024 at _____.m (prevailing Eastern Time) and any objections or responses to the Motion shall be filed and served on the Notice Parties so as to be actually received on or prior to _____, 2024 at _____.m (prevailing Eastern Time).

8. Nothing in this Order shall be construed as or deemed to constitute (a) an agreement or admission by the Debtors as to the amount, priority, character, or validity of any claim against the Debtors on any grounds, (b) a grant of third-party beneficiary status or bestowal of any additional rights on any third party, (c) a waiver or impairment of any rights, claims, or defenses of the Debtors' rights to dispute the amount, priority, character, or validity of any claim on any grounds, whether under bankruptcy or nonbankruptcy law, (d) a promise by the Debtors to pay any claim, or (e) an implication or admission by the Debtors that such claim is payable pursuant to this Order.

9. Any Bankruptcy Rule or Local Rule that might otherwise delay the effectiveness of this Order is hereby waived, and the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

10. The Debtors and Verita are authorized to take any action necessary or appropriate to implement and effectuate the terms of, and the relief granted in, this Order without seeking further order of the Court.

11. The Court shall retain jurisdiction over any matter arising from or related to the implementation, interpretation, and enforcement of this Order.

Exhibit B

Proposed Final Order

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

In re:

FISKER INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-11390 (TMH)

(Jointly Administered)

Re: Docket No. ____

**FINAL ORDER (I) WAIVING THE REQUIREMENT TO FILE A LIST OF
EQUITY SECURITY HOLDERS AND (II) AUTHORIZING DEBTORS TO
REDACT CERTAIN PERSONAL INFORMATION**

Upon the motion (the “**Motion**”)² of Fisker Inc. and certain of its affiliates (collectively, the “**Debtors**”), each of which is a debtor and debtor in possession in the Chapter 11 Cases, for entry of an order, pursuant to sections 105(a) and 107(c) of the Bankruptcy Code and Bankruptcy Rules 1007 and 2002, (a) waiving the requirement to file a list of equity security holders and (b) authorizing the Debtors to redact certain personal information from documents filed with the Court in the Chapter 11 Cases (including any Creditor Matrix, Schedule, or Statement), each as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157; and the Court having found that it may enter a final order consistent with Article III of the United

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers or Delaware file numbers, are as follows: Fisker Inc. (0340); Fisker Group Inc. (3342); Fisker TN LLC (6212); Blue Current Holding LLC (6668); Platinum IPR LLC (4839); and Terra Energy Inc. (0739). The address of the debtors’ corporate headquarters is 14 Centerpointe Drive, La Palma, CA 90623.

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

States Constitution; and the Court having found that venue of the Chapter 11 Cases and related proceedings being proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties, such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion and the DiDonato Declaration; and the Court having held a hearing, if necessary, to consider the relief requested in the Motion (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the Motion and the DiDonato Declaration and at the Hearing, if any, establish just cause for the relief granted herein; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors, their creditors, their estates, and all other parties in interest; and the Court having determined that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003; and all objections and reservations of rights filed or asserted in respect of the Motion, if any, having been withdrawn, resolved, or overruled; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted to the extent set forth in this order (this “**Order**”).
2. The requirement under Bankruptcy Rule 1007(a)(3) to file an Equity List is waived.
3. Any requirement to provide notice directly to all equity security holders under Bankruptcy Rule 2002(d) is waived, and the Debtors are authorized to serve the notices required under Bankruptcy Rule 2002(d) on the registered holders of the Debtors’ equity securities.
4. The Debtors are authorized, but not directed, to redact the names, home and email addresses, and any other personal information of individuals listed from any document filed or to

be filed with the Court in the Chapter 11 Cases (including any Creditor Matrix, Schedule, or Statement); *provided*, that the Debtors shall file under seal and provide unredacted versions of any Creditor Matrix, Schedule, Statement, or other document filed with the Court and redacted in accordance with this Order to (a) the Court, the U.S. Trustee, and counsel to any statutory committee appointed in the Chapter 11 Cases and (b) any party in interest upon a request to the Debtors (email being sufficient) or to the Court that sets forth a reasonable basis for the request that is reasonably related to the Chapter 11 Cases, in each case, subject to the restrictions and obligations under any applicable data privacy and protection laws and regulations; *provided, further*, that any receiving party shall not transfer or otherwise provide such unredacted document to any person or entity not party to the request; *provided, further*, that, to the extent notice and/or service by mail (as opposed to email) is required or requested, Verita may serve individuals at their personal home addresses, ensuring that each individual will receive the same notices in the Chapter 11 Cases as all other creditors without the unnecessary public disclosure of his or her home address.

5. Nothing in this Order (a) precludes a party in interest's right to file a motion requesting that the Court unseal information redacted in accordance with this Order or (b) shall waive or otherwise limit the service of any document upon, or the provision of any notice to, any individual whose personal information is sealed or redacted in accordance with this Order. The Debtors shall provide the personal information to any party in interest that files a motion indicating a reasonable basis for why such information is needed (such basis to be reasonably related to the Chapter 11 Cases) if, and to the extent, such motion is granted by the Court after notice and a hearing.

6. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall (a) create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by, any person or entity or (b) be deemed to convert the priority of any claim from a prepetition claim into an administrative expense claim.

7. Nothing in this Order shall be construed as or deemed to constitute (a) an agreement or admission by the Debtors as to the amount, priority, character, or validity of any claim against the Debtors on any grounds, (b) a grant of third-party beneficiary status or bestowal of any additional rights on any third party, (c) a waiver or impairment of any rights, claims, or defenses of the Debtors' rights to dispute the amount, priority, character, or validity of any claim on any grounds, whether under bankruptcy or nonbankruptcy law, (d) a promise by the Debtors to pay any claim, or (e) an implication or admission by the Debtors that such claim is payable pursuant to this Order.

8. Any Bankruptcy Rule or Local Rule that might otherwise delay the effectiveness of this Order is hereby waived, and the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

9. The Debtors and Verita are authorized to take any action necessary or appropriate to implement and effectuate the terms of, and the relief granted in, this Order without seeking further order of the Court.

10. The Court shall retain jurisdiction over any matter arising from or related to the implementation, interpretation, and enforcement of this Order.