

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) ESTABLISHING NOTIFICATION AND HEARING PROCEDURES FOR, AND
APPROVING RESTRICTIONS ON, CERTAIN TRANSFERS OF AND
DECLARATIONS OF WORTHLESSNESS WITH RESPECT TO INTERESTS IN
AND CERTAIN CLAIMS AGAINST THE DEBTORS’ ESTATES AND
(II) ESTABLISHING A RECORD DATE FOR NOTICE AND SELL-DOWN
PROCEDURES FOR TRADING IN CLAIMS AGAINST THE DEBTORS’ ESTATES**

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) Establishing Notification and Hearing Procedures for, and Approving Restrictions on, Certain Transfers of and Declarations of Worthlessness with Respect to Interests in and Certain Claims Against the Debtors’ Estates and (II) Establishing a Record Date for Notice and Sell-Down Procedures for Trading in Claims Against the Debtors’ Estates* (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

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.**”



herewith and incorporated herein by reference. In further support of this Motion, the Debtors respectfully state as follows:

Relief Requested

1. By this Motion, and pursuant to sections 105(a) and 362 of title 11 of the United States Code (the “**Bankruptcy Code**”) and rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit B** and **Exhibit C** (respectively, the “**Proposed Interim Order**” and the “**Proposed Final Order**” and, collectively, the “**Proposed Orders**” and, if entered, respectively, the “**Interim Order**” and the “**Final Order**” and, collectively, the “**Orders**”), enforcing the automatic stay by implementing court-ordered procedures, substantially in the form of **Exhibit A** hereto (the “**Securities Procedures**”) and incorporated herein by reference, intended to protect the Debtors’ estates against the possible loss of valuable tax assets that could flow from stay violations. The Proposed Orders would (a) establish and implement restrictions on, and notification requirements regarding the Beneficial

Ownership³ of, certain transfers of, and declarations of worthlessness with respect to, Debtor Fisker Inc.'s existing Class A common stock and Class B common stock or any Beneficial Ownership therein (collectively, the “**Securities**”), (b) prohibit the conversion of the Convertible Notes into Class A common stock, (c) direct that any purchase, sale or other transfer of, or declaration of worthlessness with respect to, Securities in violation of the Securities Procedures shall be null and void *ab initio*, (d) approve the form of notice notifying holders of Securities of the Securities Procedures, (e) establish the Petition Date as the record date (the “**Record Date**”) for notice and potential sell-down procedures (the “**Sell-Down Procedures**”) for trading in claims against the Debtors’ estates (the “**Claims**”) in order to preserve the Debtors’ ability to consummate a plan of reorganization that maximizes the use of their Tax Attributes (as defined below), and (f) grant related relief.

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*

³ “**Beneficial Ownership**” means ownership in accordance with the applicable rules of sections 382 and 383 of the I.R.C. and the Treasury regulations thereunder (other than section 1.382-2T(h)(2)(i)(A) of the Treasury regulations), and includes direct, indirect and constructive ownership of Securities (*e.g.*, including that (a) a holding company would be considered to beneficially own all Securities owned by its subsidiaries, (b) a partner in a partnership would be considered to beneficially own its proportionate share of any Securities owned by such partnership, (c) an individual and such individual’s family members may be treated as one individual, (d) Persons acting in concert to make a coordinated acquisition of Securities may be treated as a single entity, (e) a holder would be considered to beneficially own Securities that such holder has an Option to acquire.). An “**Option**” to acquire Securities includes all interests described in section 1.382-4(d)(9) of the Treasury regulations, including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock or similar interest, regardless of whether it is contingent or otherwise not currently exercisable. “**Beneficial Ownership**” and “**Beneficial Owner**” shall have correlative meanings. For the avoidance of doubt, Beneficial Ownership of Securities includes ownership of Debtor Fisker Inc.’s 0.00% Series A-1 Senior Convertible Notes due 2025 (the “**Series A-1 Prepetition 2025 Convertible Notes**”), 0.00% Series B-1 Senior Convertible Notes due 2025 (the “**Series B-1 Prepetition 2025 Convertible Notes**”) and, together with the Series A-1 Prepetition 2025 Convertible Notes, the “**Prepetition 2025 Convertible Notes**”), and 2.5% Senior Convertible Notes due 2026 (the “**Prepetition 2026 Convertible Notes**”) and, together with the Prepetition 2025 Convertible Notes, the “**Convertible Notes**”), which shall be treated for purposes of this Motion both as Beneficial Ownership of a separate class of Securities and as Beneficial Ownership of the Debtors’ Class A Common Stock, as applicable, into which such Convertible Notes may be converted.

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 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

A. General Background

5. On June 17 and 19, 2024 (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.

B. The Tax Attributes

9. The Debtors file a consolidated U.S. federal income tax return. The Debtors estimate based on current calculations that, as of December 31, 2023, they had a consolidated net operating loss (“NOL”) carryforward for U.S. federal income tax purposes of approximately \$1.1 billion, a consolidated NOL carryforward for state tax purposes of approximately \$900 million, approximately \$300,000 of federal research and development tax credits, approximately \$375,000 California state research and development tax credits, and certain other federal and state tax attributes (collectively, the “Tax Attributes”). The Debtors further expect that they may generate additional NOLs and other Tax Attributes for their 2024 tax year and during the pendency of the Chapter 11 Cases. Because the Internal Revenue Code permits corporations to carry forward NOLs and other Tax Attributes to offset future income, subject to certain limitations, the Debtors' NOL carryforwards and other Tax Attributes are valuable assets of their estates. *See, e.g.*, Internal Revenue Code of 1986 (as amended, the “I.R.C.”) §§ 39, 172. The above amounts are estimates and are subject to change. A portion of the Company's Tax Attributes may be subject to limitations on their utilization as a result of a prior “ownership change” under section 382 (as discussed below).

10. The Tax Attributes are potentially of significant value to the Debtors and their estates because the Debtors may be able to carry forward certain Tax Attributes to offset future

taxable income or directly offset federal tax liability in future years. Such Tax Attributes may also be utilized by the Debtors to offset taxable income, if any, generated by transactions consummated during the Chapter 11 Cases. Failure to preserve such assets could cause the Debtors' estates to suffer a significant tax liability to the detriment of stakeholder interests. Accordingly, the value of the Tax Attributes would inure to the benefit of all of the Debtors' stakeholders.

11. For the reasons discussed below, and consistent with the automatic stay, in order to protect their ability to utilize the Tax Attributes (and, additionally, to protect the ability to potentially rely on the favorable rule under section 382(l)(5) (as defined below) in connection with the Debtors' eventual emergence from Chapter 11 proceedings), the Debtors (a) need the ability to enforce the stay to preclude certain transfers and to monitor and possibly object to other changes in the ownership of Securities and (b) if the Debtors seek to qualify for the benefits of section 382(l)(5), may ultimately need to seek an order (a "**Sell-Down Order**") requiring certain persons or entities that have acquired Claims during these Chapter 11 Cases to sell-down their Claims to the amount held prior to the Record Date.

12. If the Debtors determine that a Sell-Down Order is necessary or desirable, the Debtors may file a separate motion requesting entry of a Sell-Down Order applicable to all Claims traded after the Record Date.

13. Trading of Securities and Claims could adversely affect the Debtors' future ability to utilize their Tax Attributes and other tax items if:

(a) too many blocks of Securities equal to 5% or greater of the Debtors' stock (as measured for tax purposes) are created through purchases, sales, or issuances, or too many shares are added to or sold from such blocks, such that, together with the previous trading by "5% shareholders" during the preceding three-year period, an Ownership Change (as defined below) is

triggered prior to the consummation of a confirmed chapter 11 plan (as discussed further below);
or

(b) the Beneficial Ownership of Claims against the Debtors that are currently held by “qualified creditors” is transferred, prior to consummation of the chapter 11 plan, such that (i) those Claims (either alone or when accumulated with other Claims currently held by a transferee) would be converted under a plan of reorganization into a 5% or greater block of the equity of the reorganized Debtors and (ii) the sum of all such 5% or greater blocks and the blocks of equity of the reorganized Debtors held by all nonqualified creditors would represent 50% or more of such equity.

An Ownership Change May Negatively Impact the Debtors’ Utilization of the Tax Attributes

14. The use of Tax Attributes is subject to certain statutory limitations. In particular, a corporation that experiences an Ownership Change is limited in its ability to offset future income with its NOL carryforwards and certain other Tax Attributes under section 382 of the I.R.C. (“**section 382**”) and with certain other credit carryforwards under section 383 of the I.R.C. (“**section 383**”). For purposes of section 382 and section 383, an “**Ownership Change**” generally occurs when the percentage of a company’s equity held by one or more “5% shareholders” (as defined in section 382 and the U.S. Treasury regulations promulgated thereunder) increases by more than 50 percentage points over the lowest percentage of stock owned by those shareholders at any time during a three-year rolling period. For example, if a 10% shareholder purchased additional stock and became a 61% shareholder, the percentage of stock owned by 5% shareholders would have increased by 51 percentage points, thereby causing an Ownership Change.

15. An “Ownership Change” can also occur as a result of a “worthless stock deduction” claimed by any “50-percent shareholder.” I.R.C. § 382(g)(4)(D). A 50-percent shareholder is any Person (or group of people that is treated as a single entity under the applicable rules) with

Beneficial Ownership of 50% or more of a corporation's stock "at any time during the 3-year period ending on the last day of the taxable year" with respect to which the worthless stock deduction is claimed. *Id.* If the 50-percent shareholder still owns the corporation's stock at the end of the taxable year, section 382 and section 383 essentially treat such Person as newly purchasing the stock on the first day of the next taxable year. For example, if a Person with 50% of a corporation's stock claims a worthless stock deduction with respect to the 2023 tax year, but does not dispose of such stock in 2023, that Person is treated (a) as not having owned the stock at the end of 2023 and (b) as having purchased the stock on the first day of the 2024 tax year. That deemed purchase would cause an Ownership Change because the 50-percent shareholder would be deemed to have a 50-percentage point increase in its stock ownership.

16. If a corporation experiences an Ownership Change, section 382 and section 383 generally limit the amount of tax attributes and certain other tax items that can be utilized in each subsequent tax period to offset income. Subject to a number of potentially applicable adjustments, this annual limitation is generally equal to the product of the equity value of the corporation immediately before the Ownership Change multiplied by a long-term tax-exempt rate prescribed by the United States Department of the Treasury (the "U.S. Treasury") (3.37% for an Ownership Change occurring during the month of April 2024).⁴ If the Debtors were to undergo an Ownership Change at a time prior to the consummation of a chapter 11 plan, the resulting annual limitation would significantly reduce or eliminate the ability of the Debtors to reduce current or future income with the Tax Attributes and could result in the Debtors' inability to utilize a substantial portion of their Tax Attributes.

⁴ Rev. Rul. 2024-07, 2024-14 I.R.B. 749, Table 3.

17. By contrast, the rules relating to the calculation of the limitations on the use of tax attributes are more generous in the context of an Ownership Change that occurs pursuant to a confirmed chapter 11 plan, particularly where the plan involves the retention or receipt of at least 50% of the equity of the reorganized debtor by shareholders or “qualified creditors.” *See* I.R.C. §§ 382(l)(5), (6). In particular, a special rule under section 382(l)(5) of the I.R.C. (“**section 382(l)(5)**”) would apply if shareholders and “qualified creditors” of the Debtors receive stock pursuant to a chapter 11 plan of reorganization constituting at least 50% of the total value and voting power of the Debtors’ stock immediately after the ownership change. Alternatively, a special rule under section 382(l)(6) of the I.R.C. (“**section 382(l)(6)**”) would apply if the Debtors do not satisfy the eligibility requirements of section 382(l)(5) or elect out of that provision.

18. Under section 382(l)(5), the limitations imposed by section 382 do not apply to a debtor that undergoes an ownership change as a result of the consummation of a chapter 11 plan if the plan provides that the Persons who owned the debtor’s stock immediately before the relevant ownership change and/or “qualified creditors” emerge from the reorganization owning (as a result of their prior ownership of stock or claims that are “qualified indebtedness”) at least 50% of the total value and voting power of the debtor’s stock immediately after the ownership change. *See* I.R.C. § 382(l)(5)(A). “Qualified creditors” are, in general, creditors who (a) held their claims continuously for at least 18 months at the time the bankruptcy petition is filed or (b) hold claims incurred in the ordinary course of the debtor’s business and held those claims continuously since they were incurred. Claims described in the preceding sentence are “qualified indebtedness.” *See* I.R.C. § 382(l)(5)(E); Treas. Reg. § 1.382-9(d)(2). Importantly, a “de minimis” rule generally provides that a creditor that does not meet either of the foregoing requirements for the sole reason that its claim was not held continuously for a sufficient period may still be considered a qualified

creditor if that creditor will directly or indirectly own less than 5% of the reorganized debtor's equity immediately after the ownership change.⁵ See Treas. Reg. § 1.382-9(d)(3).

19. The Debtors seek to avoid an Ownership Change before the consummation of a chapter 11 plan. It has not yet been determined if the Debtors will attempt to avail themselves of the special relief afforded by section 382(l)(5) or section 382(l)(6) for any potential changes in ownership under a confirmed chapter 11 plan. However, if the relief requested herein is not granted, there is a significant risk that, as a result of trading in interests in the Debtors, the Debtors could undergo an Ownership Change before consummation of such a plan and that the use of the Tax Attributes could be permanently impaired. Even if the Debtors are ultimately unable to satisfy the requirements of section 382(l)(5), or if they were to determine that it is more advantageous to elect not to accept its benefits, it would still be in the best interest of the Debtors and their estates to restrict Securities trading that could result in an Ownership Change of the Debtors before the consummation of a chapter 11 plan.

20. If the transactions contemplated by a chapter 11 plan would cause an Ownership Change, the Debtors would qualify for the favorable valuation rule of section 382(l)(6) only if that Ownership Change occurs pursuant to the consummation of the plan. Under section 382(l)(6), if the Debtors experience an Ownership Change pursuant to a chapter 11 plan and section 382(l)(5) does not apply (either because the Debtors elect out of that provision or because certain requirements are not met), the value of the reorganized Debtors' equity for the purposes of calculating the limitation under section 382 would reflect the increase in value of the reorganized

⁵ This *de minimis* rule does not apply to claims beneficially owned by a person whose participation in formulating a chapter 11 plan makes evident to the debtor (whether or not the debtor had previous knowledge) that the person has not owned the claim for the requisite 18-month period. In that event, in order for the person to be treated as a qualified creditor, the debtor must establish that the claim was incurred in the ordinary course of the debtor's business and the creditor has held the claim continuously since it was incurred.

Debtors' equity resulting from the restructuring of creditor claims under such plan. Thus, to the extent that the value of the reorganized Debtors' equity is greater as a result of a chapter 11 plan (compared to the value of the Debtors' equity prior to the transactions contemplated by such plan), section 382(l)(6) would provide for a greater annual limitation than would otherwise be obtained under section 382 for an Ownership Change that occurs prior to the consummation of the plan.

The Proposed Orders, Including the Securities Procedures, Are Narrowly Tailored

21. The Securities Procedures are the mechanism by which the Debtors propose that they will monitor and, if necessary, object to certain transfers of Beneficial Ownership of Securities and declarations of worthlessness with respect to Securities to ensure preservation of the Tax Attributes. The Securities Procedures are attached hereto as **Exhibit A**.

22. The relief requested herein is tailored as narrowly as is reasonable to permit certain Securities and Claims trading to continue, subject only to Bankruptcy Rule 3001(e) and applicable securities, corporate, and other laws. Specifically, the Securities Procedures will affect only (a) holders of the equivalent of 4.5 percent or more of the shares in any class of issued and outstanding common stock or 4.5 percent or more of the outstanding principal amount of any series of Convertible Notes, (b) parties who are interested in purchasing sufficient Securities to result in such party becoming a holder of 4.5 percent or more of the shares in any class of issued and outstanding common stock or 4.5 percent or more of the outstanding principal amount of any series of Convertible Notes, (c) holders of any Convertible Notes who are interested in converting such notes to Class A common stock, and (d) any "50% shareholder" (which, under the proposed restrictions, could also include certain holders of the Convertible Notes) seeking to claim a worthless stock deduction. The proposed restrictions are crucial because, once Securities are transferred or accumulated (including by converting the Convertible Notes into Class A common stock) or a claim is made with respect to a worthless stock deduction, the transaction arguably

might not be reversible for tax purposes, though it should be null and void under section 362 of the Bankruptcy Code.

23. In addition, approval of the proposed Record Date does not constitute approval of the Sell-Down Procedures and does not restrict trading in Claims. Importantly, the Proposed Orders will not impose a burden on any person or entity because it is designed to provide notice to holders of Claims and Claims traders (a) of the Record Date (substantially in the form attached hereto as **Exhibit D**), (b) that the threshold amounts will be measured as of the Record Date, and (c) that their Claims may ultimately be subject to sell-down if the Debtors determine that a Sell-Down Order is necessary to preserve the value of their Tax Attributes. If the Debtors do later determine that a Sell-Down Order is necessary, the Debtors will file a separate motion requesting the entry of a Sell-Down Order applicable to certain Claims traded on or after the Record Date.

Basis for Relief

A. The Tax Attributes are Property of the Debtors' Estates.

24. It is well-established that a debtor's NOL carryforwards are property of its estate and are protected by section 362 of the Bankruptcy Code. The Court of Appeals for the Second Circuit, in its seminal decision of *Prudential Lines, Inc. v. PSS Steamship Co. (In re Prudential Lines Inc.)*, affirmed the application of the automatic stay and upheld a permanent injunction against a parent corporation that sought to take a worthless stock deduction relating to the stock of its subsidiary, which was the debtor in that case. 928 F.2d 565 (2d Cir. 1991), *cert. denied*, 502 U.S. 821 (1991). Observing that the worthless stock deduction would have adversely affected the subsidiary's ability to use its NOL carryforwards post-bankruptcy (in this context, the worthless stock deduction would result in a section 382 limitation of zero), the Second Circuit held that the subsidiary's NOL carryforwards were property of the estate under the broad language of section 541 of the Bankruptcy Code:

Including NOL carryforwards as property of a corporate debtor's estate is consistent with Congress' intention to "bring anything of value that the debtors have into the estate." Moreover, "[a] paramount and important goal of Chapter 11 is the rehabilitation of the debtor by offering breathing space and an opportunity to rehabilitate its business and eventually generate revenue." Including the right to a NOL carryforward as property of [the debtor's] bankruptcy estate furthers the purpose of facilitating the reorganization of [the debtor].

Id. at 573 (citations omitted); *see also In re Fruehauf Trailer Corp.*, 444 F.3d 203, 211 (3d Cir. 2006) ("Property of the estate 'includes all interests, such as . . . contingent interests and future interests, whether or not transferable by the debtor.'") (quoting *Prudential Lines*, 928 F.2d at 572); *White Metal Rolling & Stamping Corp. v. Drew Indus., Inc. (In re White Metal Rolling & Stamping Corp.)*, 222 B.R. 417, 424 (Bankr. S.D.N.Y. 1998) ("It is beyond peradventure that NOL carrybacks and carryovers are property of the estate of the loss corporation that generated them."). The Second Circuit then held that the parent corporation's attempt to claim a worthless stock deduction for the stock of its debtor subsidiary would effectively eliminate the value of the debtor's NOL carryforwards and, thus, would be an act to exercise control over estate property in violation of the automatic stay under section 362 of the Bankruptcy Code. *See Prudential Lines*, 928 F.2d at 573–74. The Third Circuit has reaffirmed this principle that NOLs are property of the estate. *See In re Majestic Star Casino, LLC*, 716 F.3d 736, 754 (3d Cir. 2013) ("[The] right to carryforward [the] \$74 million NOL to offset future income is property of the [subsidiary's] estate within the meaning of § 541.") (quoting *Prudential Lines*, 928 F.2d at 574). In addition, shortly before the Second Circuit issued its decision in *Prudential Lines*, the Eighth Circuit adopted the reasoning of the lower court in *Prudential Lines* and also held that NOL carryforwards are property of the estate. *See Russell v. United States (In re Russell)*, 927 F.2d 413, 417-18 (8th Cir. 1991) (citing *In re Prudential Lines, Inc.*, 107 B.R. 832, 836 (Bankr. S.D.N.Y. 1989), *aff'd*, 119 B.R. 430 (S.D.N.Y. 1990), *aff'd*, 928 F.2d 565 (2d Cir. 1991)). The Eighth Circuit found that NOL

carryforwards were property of a debtor's estate for the purpose of determining whether an irrevocable election to carry forward NOLs was an unauthorized post-petition transfer. *See id.*

25. Section 362(a) of the Bankruptcy Code operates as a stay of, among other things, “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.” 11 U.S.C. § 362(a)(3). Accordingly, ““where a non-debtor’s action with respect to an interest that is intertwined with that of a bankrupt debtor would have the legal effect of diminishing or eliminating property of the bankrupt estate, such action is barred by the automatic stay.”” *In re Majestic Star Casino*, 716 F.3d at 754 (quoting *Prudential Lines*, 928 F.2d at 574). The Second Circuit in *Prudential Lines* held that, “despite the fact that the [parent corporation’s] action [of filing for a worthless stock deduction] is not directed specifically at [the debtor subsidiary], it is barred by the automatic stay as an attempt to exercise control over property of the estate.” *Prudential Lines*, 928 F.2d at 574.

26. The Second Circuit also held that the permanent injunction was supported by the court’s equitable powers pursuant to section 105(a) of the Bankruptcy Code, and refused to disturb the bankruptcy court’s finding that elimination of the debtor’s ability to apply its NOL to offset income on future tax returns would impede its reorganization. *Prudential Lines*, 928 F.2d at 574.

27. Similarly, in *In re Phar-Mor, Inc.*, chapter 11 debtors moved to prohibit any transfer of the debtors’ stock that could have triggered the section 382 limitation. 152 B.R. 924 (Bankr. N.D. Ohio 1993), *aff’d*, 101 F.3d 689 (3rd Cir. 1996). The court held that the NOL was property of the estate and it issued an injunctive order to protect the asset and enforce the automatic stay. *See id.* at 927. Significantly, the court granted the requested relief notwithstanding that the stockholders had not stated an intent to sell their stock and the debtors had not shown the existence of a pending sale that would trigger an Ownership Change. *See id.* The court observed that “[w]hat

is certain is that the *NOL has a potential value, as yet undetermined*, which will be of benefit to creditors and will assist [the debtors] in their reorganization process. This asset is entitled to protection while [the debtors] move forward toward reorganization.” *Id.* (emphasis added). The court also concluded that, because the debtors were seeking to enforce the stay, they did not have to meet the more stringent requirements for a grant of preliminary injunctive relief:

The requirements for enforcing an automatic stay under 11 U.S.C. § 362(a)(3) do not involve such factors as lack of an adequate remedy at law, or irreparable injury, or loss and a likelihood of success on the merits. The key elements for a stay . . . are the existence of property of the estate and the enjoining of all efforts by others to obtain possession or control of property of the estate.

Id. at 926 (quoting *Golden Distribs., Ltd. v. Reiss (In re Golden Distribs., Ltd.)*, 122 B.R. 15, 19 (Bankr. S.D.N.Y. 1990)).

28. Courts in this jurisdiction routinely (a) restrict transfers of a debtor’s stock and declarations of worthlessness with respect to a debtor’s stock and (b) institute notice procedures regarding proposed transfers to protect a debtor against the possible loss of its tax attributes. *See, e.g., In re Cano Health, Inc.*, No. 24-10164 (KBO) (Bankr. D. Del. Mar. 5, 2024) [D.I. 255]; *In re Sunlight Fin. Holdings Inc.*, No. 23-11794 (MFW) (Bankr. D. Del. Nov. 30, 2023) [D.I. 168]; *In re An Glob. LLC*, No. 23-11294 (JKS) (Bankr. D. Del. Oct. 3, 2023) [D.I. 174]; *In re Mallinckrodt, plc*, No. 23-11258 (JTD) (Bankr. D. Del. Sept. 15, 2023) [D.I. 263]; *In re MediaMath Holdings, Inc.*, No. 23-10882 (LSS) (Bankr. D. Del. Aug. 3, 2023) [D.I. 189]; *In re Starry Grp. Holdings, Inc.*, No. 23-10219 (KBO) (Bankr. D. Del. Mar. 20, 2023) [D.I. 167]; *In re Kabbage, Inc.*, No. 22-10951 (CTG) (Bankr. D. Del. Nov. 2, 2022) [D.I. 193]; *In re Carestream Health, Inc.*, No. 22-10778 (JKS) (Bankr. D. Del. Sept. 22, 2022) [D.I. 155]; *In re Hosp. Invs. Tr., Inc.*, No. 21-10831 (CTG) (Bankr. D. Del. June 9, 2021) [D.I. 86]; *In re Nine Point Energy Holdings, Inc.*, No. 21-10570 (MFW) (Bankr. D. Del. Apr. 6, 2021) [D.I. 193]; *In re 24 Hour Fitness Worldwide, Inc.*,

No. 20-11558 (KBO) (Bankr. D. Del. July 14, 2020) [D.I. 551]. In short, it is well-settled by courts in this and other circuits that section 362(a)(3) of the Bankruptcy Code stays actions that could adversely affect a debtor's NOL carryforwards.

29. Additionally, courts in this jurisdiction have granted relief similar to that requested herein with respect to the establishment of a record date for notice and sell-down procedures for trading in claims. *See, e.g., In re TPC Grp., Inc.*, No. 22-10493 (CTG) (Bankr. D. Del. June 30, 2022) [D.I. 348]; *In re Francesca's Holdings Corp.*, No. 20-13076 (BLS) (Bankr. D. Del. Jan. 4, 2021) [D.I. 253]; *In re Glob. Eagle Ent. Inc.*, No. 20-11835 (JTD) (Bankr. D. Del. Aug. 14, 2020) [D.I. 197]; *In re AAC Holdings, Inc.*, No. 20-11648 (JTD) (Bankr. D. Del. July 15, 2020) [D.I. 150]; *In re Longview Power, LLC*, No. 20-10951 (BLS) (Bankr. D. Del. May 11, 2020) [D.I. 104]; *In re Quorum Health Corp.*, No. 20-10766 (KBO) (Bankr. D. Del. May 1, 2020) [D.I. 243]; *In re Achaogen, Inc.*, No. 19-10844 (BLS) (Bankr. D. Del. May 7, 2019) [D.I. 154]; *In re Hexion Holdings LLC*, No. 19-10684 (KG) (Bankr. D. Del. May 1, 2019) [D.I. 278].

30. 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). As such, 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., L.P. (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))).

31. Here, the proposed Securities Procedures are necessary to protect the Debtors’ Tax Attributes, which are potentially valuable assets of the Debtors’ estates, while providing appropriate latitude for trading in Securities below specified levels. The Debtors’ ability to meet the requirements of the tax laws to preserve their Tax Attributes may be jeopardized unless procedures are established to ensure that the Debtors can monitor and, if necessary, object to certain transfers of Beneficial Ownership of Securities and declarations of worthlessness with respect to Securities and to prohibit the conversion of Convertible Notes into Class A common stock. However, the Debtors recognize that the trading in Securities below specified levels (subject to the Securities Procedures) does not pose a serious risk to the Tax Attributes. The relief requested herein is tailored as narrowly as is reasonable to permit certain Securities trading to continue, subject only to Bankruptcy Rule 3001(e) and applicable securities, corporate, and other laws. The proposed restrictions are crucial because, once Securities are transferred or accumulated (including by converting the Convertible Notes into Class A common stock) or a claim is made with respect to a worthless stock deduction, the transaction arguably might not be reversible for tax purposes, though it should be null and void under section 362 of the Bankruptcy Code. The relief requested herein is, therefore, critical to prevent what may be an irrevocable loss of the Debtors’ Tax Attributes.

32. In addition, unless the Record Date is established immediately, it is uncertain whether the Debtors would be able to implement the Sell-Down Procedures in any effective

fashion to enable them to maximize the value of their Tax Attributes. Whether or not the Debtors seek, and the Court ultimately enters, a Sell-Down Order, setting the Record Date now is essential to adequately protect the Debtors' option to choose to preserve the value of their Tax Attributes without affecting any parties in interest.

33. 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. Absent this relief, the value of the Debtors' estates could suffer. Consequently, the Debtors and all their stakeholders would benefit if the requested relief were granted.

Debtors' Reservation of Rights

34. 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 related to the Securities and Claims under applicable bankruptcy and non-bankruptcy law. Likewise, if the Court grants the relief sought herein, any payment or transfer made pursuant to the Court's order is not intended, and should not be construed, as an admission as to the amount, priority, character, or validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

Emergency Consideration

35. 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. Simply put, failure to implement the Securities Procedures immediately during the first 21 days of the Chapter 11 Cases would allow for trading activity or conversions of Convertible Notes that could imperil the Debtors’ valuable Tax Attributes, thereby causing the Debtors and their estates to suffer serious and irreversible tax liabilities, to the detriment of their stakeholders’ interests. Accordingly, the Debtors submit that the relief requested herein satisfies Bankruptcy Rule 6003.

Compliance with Bankruptcy Rule 6004(a) and Waiver of Bankruptcy Rule 6004(h)

36. To implement successfully the relief sought herein, the Debtors request that the Court find that notice of the Motion is adequate under Bankruptcy Rule 6004(a) under the circumstances. The Debtors also request that, to the extent applicable to the relief requested in this Motion, the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate their business without interruption and to preserve value for their estates and economic stakeholders. Accordingly, the Debtors respectfully submit that ample cause exists to justify the (a) finding that the notice requirements under Bankruptcy Rule 6004(a) have been satisfied and (b) waiving of the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

Notice

35. Notice of this Motion will be provided to the following parties: (a) office of the United States Trustee for the District of Delaware; (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**").

36. 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.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Orders, substantially in the forms attached hereto as **Exhibit B** and **Exhibit C**, 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

Robert J. Dehney, Sr. (No. 3578)
Andrew R. Remming (No. 5120)
Brenna A. Dolphin (No. 5604)
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-and-

DAVIS POLK & WARDWELL LLP

Brian M. Resnick (*pro hac vice* pending)
Darren S. Klein (*pro hac vice* pending)
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Proposed Counsel to the Debtors and Debtors in Possession

Exhibit A

Securities Procedures

Procedures for Restrictions on Certain Transfers of and Declarations of Worthlessness with Respect to Interests in and Certain Claims Against the Debtors' Estates

These Procedures for Restrictions on Certain Transfers of and Declarations of Worthlessness with Respect to Interests in and Certain Claims Against the Debtors' Estates (the "**Securities Procedures**") are the mechanism by which the Debtors propose that they will monitor and, if necessary, object to certain transfers of Beneficial Ownership of Securities and declarations of worthlessness with respect to Securities to ensure preservation of the Tax Attributes. The Securities Procedures are set forth below:

1. Notice of Substantial Securityholder Status. Any Person who is or becomes a Substantial Securityholder, must, on or before the later of (a) 15 days after service of a notice substantially in the form attached hereto as **Exhibit A-1** or (b) 10 days after that Person becomes a Substantial Securityholder, serve a notice, substantially in the form attached hereto as **Exhibit A-1** (the "**Substantial Securityholder Notice**"), containing the Beneficial Ownership information upon the following: (i) Debtors, c/o Fisker Inc., 14 Centerpointe Drive, La Palma, CA 90623; (ii) proposed counsel to the Debtors, (A) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, Attn: Brian M. Resnick, Esq., Darren S. Klein, Esq., Steven Z. Szanzer, Esq., and Richard J. Steinberg, Esq.; and (B) Morris, Nichols, Arsht & Tunnell, LLP, 1201 N. Market Street, 16th Floor, Wilmington, DE 19801, Attn: Robert J. Dehney, Sr., Esq., Sophie Rogers Churchill, Esq., and Evanthea Hammer, Esq.; (iii) counsel to CVI Investments, Inc. (c/o Heights Capital Management, Inc.), White & Case LLP, 1221 Avenue of the Americas, New York, NY 10036, Attn: Scott Greissman; and (iv) counsel to any official committee appointed in the Chapter 11 Cases (collectively, the "**Notice Parties**").

2. Restrictions and Procedures for Trading in Securities. Any Person that, after the Effective Time:

(a.) is not a Substantial Securityholder and wishes to purchase or otherwise acquire Beneficial Ownership of an amount of Securities that would cause the Person to become a Substantial Securityholder;

(b.) is a Substantial Securityholder and wishes to purchase or otherwise acquire Beneficial Ownership of any additional Securities; or

(c.) is a Substantial Securityholder and wishes to sell or otherwise dispose of Beneficial Ownership of any Securities,

must file with the Court and serve upon the Notice Parties an advance written declaration of the intended transfer of Securities, substantially in the form attached hereto as **Exhibit A-2** (a "**Declaration of Intent To Accumulate Securities**") or **Exhibit A-3** (a "**Declaration of Intent To Transfer Securities**") and, together with a Declaration of Intent To Accumulate Securities, each a "**Declaration of Proposed Transfer**"), as applicable.

The Debtors shall have 20 calendar days after receipt of a Declaration of Proposed Transfer to file with the Court and serve on the applicable Person an objection to any proposed transfer of Beneficial Ownership of Securities described in the Declaration of Proposed Transfer on the grounds that such transfer might adversely affect the Debtors' ability to utilize their Tax Attributes.

If the Debtors file an objection, such transaction would remain ineffective unless such objection is withdrawn by the Debtors, or such transaction is approved by a final and non-appealable order of the Court.

If the Debtors do not object within such 20-day period, such transaction can proceed solely as set forth in the Declaration of Proposed Transfer. Further transactions within the scope of the Securities Procedures must be the subject of additional notices in accordance with the procedures set forth herein, with an additional 20-day waiting period for each Declaration of Proposed Transfer.

3. Procedures for Declarations of Worthlessness of Securities. Prior to filing any federal or state tax return, or any amendment to any such return, or taking any other action that claims any deduction for worthlessness with respect to Securities for a taxable year ending before the Debtors' emergence from chapter 11, the applicable 50% Shareholder must file with the Court and serve upon the Notice Parties a declaration of intent to claim a worthless stock deduction, substantially in the form attached hereto as **Exhibit A-4** (a "**Declaration of Intent To Claim a Worthless Stock Deduction**"). The same procedures applicable to a Declaration of Proposed Transfer (described in Paragraph 2 hereof) will apply with respect to a Declaration of Intent To Claim a Worthless Stock Deduction.

4. Conversion of the Convertible Note. As of the date hereof, the holders of the Convertible Notes shall not convert any of the Convertible Notes into Class A common stock.

5. Confidentiality. The Debtors and the Debtors' counsel shall keep all information provided in all notices delivered pursuant to the Interim Order and Final Order strictly confidential and shall not disclose the contents thereof to any Person (including any lender), except (a) to the extent necessary to respond to a petition or objection filed with the Court, (b) to the extent otherwise required by law, or (c) to the extent that the information contained therein is already public; *provided, however*, that the Debtors may disclose the contents thereof to their professional advisors, who shall keep all such notices strictly confidential and shall not disclose the contents thereof to any other Person, subject to further Court order. To the extent that confidential information is necessary to respond to a petition or objection filed with the Court, such confidential information shall be filed under seal or in redacted form.

6. Sanctions for Noncompliance Relating to Securities. Acquisitions and dispositions of Beneficial Ownership of Securities, conversions of Convertible Notes or claims of deductions of worthlessness with respect to Securities in violation of the Securities Procedures set forth in Paragraphs 2, 3 and 4 of these Securities Procedures shall be void *ab initio* as an act in violation of the automatic stay prescribed by section 362 of the Bankruptcy Code and pursuant to the Court's equitable power prescribed in section 105(a) of the Bankruptcy Code. The sanction for violating Paragraph 2 or 4 of these Securities Procedures shall be reversal of the noncompliant transaction, or such other (or additional) measures as the Court may consider appropriate. The sanction for violating Paragraph 3 of these Securities Procedures shall be the requirement to file an amended tax return revoking the declaration of worthlessness, or such other (or additional) measures as the Court may consider appropriate.

7. Discretionary Waiver by Debtors. The Debtors may, in their sole discretion, waive, in writing (including via email), any sanctions, remedies or notification procedures imposed by the Interim Order or the Final Order, as applicable.

8. Continued Compliance with Other Applicable Laws and Rules. The requirements set forth in the Interim Order or Final Order, as applicable, are in addition to the requirements of Bankruptcy Rule 3001(e) and applicable securities, corporate and other laws, and do not excuse compliance therewith.

9. Special Rules. A Person acquiring or disposing of Beneficial Ownership of Securities in the capacity of Agent of another Person shall not be treated as a Substantial Securityholder solely to the extent acting in the capacity of Agent, and shall not have an affirmative duty to inquire whether the account, customer, investment fund, principal, trust or beneficiary is subject to any restrictions or requirements under the Interim Order or the Final Order, as applicable; *provided, however*, that the account, customer, investment fund, principal, trust or beneficiary shall not be excluded from the Interim Order or the Final Order, as applicable, by reason of this Paragraph 8.

10. Definitions. For purposes of these Securities Procedures:

“**50% Shareholder**” means any person or entity that currently is or becomes a “50-percent shareholder” within the meaning of section 382(g)(4)(D) of the I.R.C. and the Treasury regulations thereunder, provided that ownership shall be measured using the definition of Beneficial Ownership described below, and applied to each of the Debtors’ Stock or Convertible Notes, with 50% measured on a series-by-series basis.

“**Agent**” means a broker, account manager, agent, custodian, nominee, prime broker, clearinghouse or trustee (but not including a trustee qualified under section 401(a) of the I.R.C.).

“**Applicable Number**” has the meaning given in the definition of Substantial Securityholder.

“**Bankruptcy Code**” has the meaning given in the Motion.

“**Bankruptcy Rules**” has the meaning given in the Motion.

“**Beneficial Ownership**” means ownership in accordance with the applicable rules of sections 382 and 383 of the I.R.C. and the Treasury regulations thereunder (other than section 1.382-2T(h)(2)(i)(A) of the Treasury regulations), and includes direct, indirect and constructive ownership of Securities (*e.g.*, including that (a) a holding company would be considered to beneficially own all Securities owned by its subsidiaries, (b) a partner in a partnership would be considered to beneficially own its proportionate share of any Securities owned by such partnership, (c) an individual and such individual’s family members may be treated as one individual, (d) Persons acting in concert to make a coordinated acquisition of Securities may be treated as a single entity, (e) a holder would be considered to beneficially own Securities that such holder has an Option to acquire.). An “**Option**” to acquire Securities includes all interests described in section 1.382-4(d)(9) of the Treasury regulations, including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock or similar

interest, regardless of whether it is contingent or otherwise not currently exercisable. “**Beneficial Ownership**” and “**Beneficial Owner**” shall have correlative meanings. For the avoidance of doubt, Beneficial Ownership of Securities includes ownership of Convertible Notes, which shall be treated under these Securities Procedures both as Beneficial Ownership of a separate class of Securities and as Beneficial Ownership of the Debtors’ Class A Common Stock, as applicable, into which such Convertible Notes may be converted.

“**Chapter 11 Cases**” has the meaning given in the Motion.

“**Convertible Note**” has the meaning given in the Motion.

“**Court**” has the meaning given in the Motion.

“**Debtors**” has the meaning given in the Motion.

“**Declaration of Proposed Transfer**” has the meaning given in Paragraph 2 hereof.

“**Effective Time**” means the time of effectiveness of the Interim Order or the Final Order, as applicable.

“**Final Order**” has the meaning given in the Motion.

“**DiDonato Declaration**” has the meaning given in the Motion.

“**Interim Order**” has the meaning given in the Motion.

“**I.R.C.**” has the meaning given in the Motion.

“**Motion**” means the *Motion of Debtors for Entry of Interim and Final Orders (I) Establishing Notification and Hearing Procedures for, and Approving Restrictions on, Certain Transfers of and Declarations of Worthlessness with Respect to Interests in and Certain Claims Against the Debtors’ Estates and (II) Establishing a Record Date for Notice and Sell-Down Procedures for Trading in Claims Against the Debtors’ Estates* filed in the Chapter 11 Cases.

“**Person**” means a person or Entity (as such term is defined in section 1.382-3(a) of the Treasury regulations).

“**Petition Date**” has the meaning given in the Motion.

“**Securities**” has the meaning given in the Motion.

“**Securities Procedures**” has the meaning given in the preamble hereof.

“**Substantial Securityholder**” means a Beneficial Owner of at least (a) [5,286,500] shares of Class A common stock (representing approximately 4.5% of all shares of Class A common stock issued and outstanding as of the Petition Date), (b) [5,955,500] shares of Class B common stock (representing approximately 4.5% of all shares of Class B common stock issued and outstanding as of the Petition Date), (c) \$[8,273,000] in principal amount of the Series A-1 and/or Series B-1 Convertible Notes due 2025 (representing approximately 4.5% of the total principal

amount of both series of Convertible Notes due 2025 outstanding as of the Petition Date) and/or (d) \$[30,037,500] in principal amount of the Convertible Notes due 2026 (representing approximately 4.5% of the total principal amount of Convertible Notes due 2026 outstanding as of the Petition Date) (any such number of shares or principal amount in each of clause (i) to (iv), as applicable, the “**Applicable Number**”).

“**Substantial Securityholder Notice**” has the meaning given in Paragraph 1 hereof.

“**Tax Attribute(s)**” has the meaning given in the Motion.

11. Notice Procedures.

(a.) Within five business days after the Court’s entry of the Interim Order, the Debtors propose to provide a notice describing the authorized trading restrictions and notification requirements, substantially in the form attached as Exhibit E to the Motion, to any identified Substantial Securityholders (or their respective counsels).

(b.) Within five business days of the Effective Time, and at least once every three months during the pendency of the Chapter 11 Cases, all indenture trustees and transfer agents shall also send such notice to all holders of at least the Applicable Number of Securities, as applicable. The Debtors shall also send such notice to all holders of Securities registered directly with any transfer agent.

(c.) Within five business days after receipt of such notice, any holder registered directly with any transfer agent who is a broker, bank, dealer or other agent or nominee (each a “**Nominee**”) shall, in turn, provide the notice to any holder for whose account the Nominee holds at least an Applicable Number of Securities. Any such holder shall, in turn, provide the notice to any Person for whom the holder holds at least an Applicable Number of Securities, and, in the holder’s discretion, may provide the notice to additional Persons for whom the holder holds any Security. Any Person, or Agent acting on such Person’s behalf, that sells an aggregate amount of at least an Applicable Number of Securities (or an Option with respect thereto) to another Person shall provide a copy of the notice to such purchaser or to any Agent acting on such purchaser’s behalf.

Exhibit A-1

Substantial Securityholder Notice

**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. __

SUBSTANTIAL SECURITYHOLDER NOTICE

PLEASE TAKE NOTICE that the undersigned party hereby provides notice of its Beneficial Ownership² of Securities in an amount at least equal to [5,286,500] shares of Class A common stock (representing approximately 4.5% of all shares of Class A common stock issued and outstanding as of the Petition Date), (ii) [5,955,500] shares of Class B common stock (representing approximately 4.5% of all shares of Class B common stock issued and outstanding as of the Petition Date), (iii) \$[8,273,000] in principal amount of the Series A-1 and/or Series B-1 Convertible Notes due 2025 (representing approximately 4.5% of the total principal amount of both series of Convertible Notes due 2025 outstanding as of the Petition Date) and/or (iv) \$[30,037,500] in principal amount of the Convertible Notes due 2026 (representing approximately 4.5% of the total principal amount of Convertible Notes due 2026 outstanding as of the Petition Date).

PLEASE TAKE FURTHER NOTICE that, as of _____, 2024, the undersigned has Beneficial Ownership of the following Securities:

<u>Debtor</u>	<u>Class/Series of Securities</u>	<u>Description of Securities</u>	<u>Amount/Principal Amount of Securities</u>	<u>Directly Owned (✓)</u>

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 *Interim Order Establishing Notification and Hearing Procedures for, and Approving Restrictions on, Certain Transfers of and Declarations of Worthlessness with Respect to Interests in and Certain Claims Against the Debtors’ Estates* [D.I. ____] or *Final Order (I) Establishing Notification and Hearing Procedures For, and Approving Restrictions on, Certain Transfers of and Declarations of Worthlessness with Respect to Interests in and Certain Claims Against the Debtors’ Estates and (II) Establishing a Record Date for Notice and Sell-Down Procedures for Trading in Claims Against the Debtors’ Estates* [D.I. ____], as applicable (the “**Order**”).

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PLEASE TAKE FURTHER NOTICE that the last four digits of the taxpayer identification number of the undersigned party are _____.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order, this declaration (this “**Declaration**”) is being filed with the Court and served upon the Notice Parties.

PLEASE TAKE FURTHER NOTICE that, pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any), and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct and complete.

This notice is given in addition to, and not as a substitute for, any requisite notice under Bankruptcy Rule 3001(e).

[Signature page follows]

Respectfully submitted,

(Name of Declarant)

By:

Name:

Address:

Telephone:

Facsimile:

Dated: _____, 20__

,

(City)

(State)

Exhibit A-2

Declaration of Intent To Accumulate Securities

**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. ____

DECLARATION OF INTENT TO ACCUMULATE SECURITIES

PLEASE TAKE NOTICE that the undersigned party hereby provides notice of its intention to purchase, acquire or otherwise accumulate (the “**Proposed Transfer**”) one or more shares of Debtors’ Securities.² The Debtors are debtors and debtors in possession in Case No. 24-11390 pending in the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

PLEASE TAKE FURTHER NOTICE that, pursuant to the Proposed Transfer, the undersigned party proposes to purchase, acquire or otherwise accumulate Beneficial Ownership of _____ shares of Class ____ common stock, or \$ _____ principal amount of _____ Convertible Notes due 202__, or an Option with respect to _____ shares of Class ____ common stock. If the Proposed Transfer is permitted to occur, the undersigned party would have Beneficial Ownership as set forth below:

<u>Debtor</u>	<u>Class/Series of Securities</u>	<u>Description of Securities</u>	<u>Amount/Principal Amount of Securities</u>	<u>Directly Acquired (✓)</u>

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 *Interim Order Establishing Notification and Hearing Procedures for, and Approving Restrictions on, Certain Transfers of and Declarations of Worthlessness with Respect to Interests in and Certain Claims Against the Debtors’ Estates* [D.I. [•]] or *Final Order (I) Establishing Notification and Hearing Procedures For, and Approving Restrictions on, Certain Transfers of and Declarations of Worthlessness with Respect to Interests in and Certain Claims Against the Debtors’ Estates and (II) Establishing a Record Date for Notice and Sell-Down Procedures for Trading in Claims Against the Debtors’ Estates* [D.I. [•]], as applicable (the “**Order**”).

PLEASE TAKE FURTHER NOTICE that the undersigned party currently has Beneficial Ownership of _____ shares of common stock or _____ principal amount of Convertible Notes, and/or an Option with respect to _____ shares of common stock, each as set forth below.

<u>Debtor</u>	<u>Class/Series of Securities</u>	<u>Description of Securities</u>	<u>Amount/Principal Amount of Securities</u>	<u>Directly Owned (✓)</u>

PLEASE TAKE FURTHER NOTICE that the last four digits of the taxpayer identification number of the undersigned party are _____.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order, this declaration (this “**Declaration**”) is being filed with the Court and served upon the Notice Parties.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order, the undersigned party acknowledges that it is prohibited from consummating the Proposed Transfer unless and until the undersigned party complies with the Securities Procedures set forth therein.

PLEASE TAKE FURTHER NOTICE that the Debtors have 20 calendar days after receipt of this Declaration to object to the Proposed Transfer described herein. If the Debtors file an objection, such Proposed Transfer will remain ineffective unless such objection is withdrawn by the Debtors or such transaction is approved by a final and non-appealable order of the Court. If the Debtors do not object within such 20-day period, then after expiration of such period the Proposed Transfer may proceed solely as set forth in this Declaration.

PLEASE TAKE FURTHER NOTICE that any further transactions contemplated by the undersigned party that may result in the undersigned party purchasing, acquiring or otherwise accumulating Beneficial Ownership of additional shares of or amounts of Securities would each require an additional notice filed with the Court to be served in the same manner as this Declaration.

PLEASE TAKE FURTHER NOTICE that, pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any), and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct and complete.

This notice is given in addition to, and not as a substitute for, any requisite notice under Bankruptcy Rule 3001(e).

[Signature page follows]

Respectfully submitted,

(Name of Declarant)

By:

Name:

Address:

Telephone:

Facsimile:

Dated: _____, 20__

,

(City)

(State)

Exhibit A-3

Declaration of Intent To Transfer Securities

**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. ____

DECLARATION OF INTENT TO TRANSFER SECURITIES

PLEASE TAKE NOTICE that the undersigned party hereby provides notice of its intention to sell, trade or otherwise transfer (the “**Proposed Transfer**”) one or more shares of Debtors’ Securities.² The Debtors are debtors and debtors in possession in Case No. 24-11390 pending in the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

PLEASE TAKE FURTHER NOTICE that, pursuant to the Proposed Transfer, the undersigned party proposes to sell, trade, or otherwise transfer Beneficial Ownership of _____ shares of Class ____ common stock, \$_____ principal amount of _____ Convertible Notes due 202__, or an Option with respect to _____ shares of Class ____ common stock. If the Proposed Transfer is permitted to occur, the undersigned party would have Beneficial Ownership as set forth below:

<u>Debtor</u>	<u>Class/Series of Securities</u>	<u>Description of Securities</u>	<u>Amount/Principal Amount of Securities</u>	<u>Directly Owned (✓)</u>

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 *Interim Order Establishing Notification and Hearing Procedures for, and Approving Restrictions on, Certain Transfers of and Declarations of Worthlessness with Respect to Interests in and Certain Claims Against the Debtors’ Estates* [D.I. [•]] or *Final Order (I) Establishing Notification and Hearing Procedures For, and Approving Restrictions on, Certain Transfers of and Declarations of Worthlessness with Respect to Interests in and Certain Claims Against the Debtors’ Estates and (II) Establishing a Record Date for Notice and Sell-Down Procedures for Trading in Claims Against the Debtors’ Estates* [D.I. [•]], as applicable (the “**Order**”).

PLEASE TAKE FURTHER NOTICE that the undersigned party currently has Beneficial Ownership of _____ shares of common stock, \$_____ principal amount of Convertible Notes, and/or an Option with respect to _____ shares of common stock, as set forth below:

<u>Debtor</u>	<u>Class/Series of Securities</u>	<u>Description of Securities</u>	<u>Amount/Principal Amount of Securities</u>	<u>Directly Owned (✓)</u>

PLEASE TAKE FURTHER NOTICE that the last four digits of the taxpayer identification number of the undersigned party are _____.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order, this declaration (this “**Declaration**”) is being filed with the Court and served upon the Notice Parties.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order, the undersigned party acknowledges that it is prohibited from consummating the Proposed Transfer unless and until the undersigned party complies with the Securities Procedures set forth therein.

PLEASE TAKE FURTHER NOTICE that the Debtors have 20 calendar days after receipt of this Declaration to object to the Proposed Transfer described herein. If the Debtors file an objection, such Proposed Transfer will remain ineffective unless such objection is withdrawn by the Debtors or such transaction is approved by a final and non-appealable order of the Court. If the Debtors do not object within such 20-day period, then after expiration of such period the Proposed Transfer may proceed solely as set forth in this Declaration.

PLEASE TAKE FURTHER NOTICE that any further transactions contemplated by the undersigned party that may result in the undersigned party selling, trading or otherwise transferring Beneficial Ownership of additional Securities would each require an additional notice filed with the Court to be served in the same manner as this Declaration.

PLEASE TAKE FURTHER NOTICE that, pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any), and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct and complete.

This notice is given in addition to, and not as a substitute for, any requisite notice under Bankruptcy Rule 3001(e).

[Signature page follows]

Respectfully submitted,

(Name of Declarant)

By:

Name:

Address:

Telephone:

Facsimile:

Dated: _____, 20__

,

(City)

(State)

Exhibit A-4

Declaration of Intent To Claim a Worthless Stock Deduction

**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. ____

DECLARATION OF INTENT TO CLAIM A WORTHLESS STOCK DEDUCTION

PLEASE TAKE NOTICE that the undersigned party hereby provides notice of its intention to claim a worthless stock deduction (the “**Proposed Worthlessness Claim**”) with respect to the Debtors’ Securities.² The Debtors are debtors and debtors in possession in Case No. 24-11390 pending in the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

PLEASE TAKE FURTHER NOTICE that the undersigned party currently has Beneficial Ownership of _____ shares of Class ____ common stock, \$ _____ principal amount of _____ Convertible Notes due 202 __, or an Option with respect to _____ shares of Class ____ common stock.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Proposed Worthlessness Claim, the undersigned party proposes to declare that _____ shares of Class ____ common stock, \$ _____ principal amount of _____ Convertible Notes due 202 __, or an Option with respect to _____ shares of Class ____ common stock became worthless during the tax year ending _____.

PLEASE TAKE FURTHER NOTICE that the last four digits of the taxpayer identification number of the undersigned party are _____.

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 *Interim Order Establishing Notification and Hearing Procedures for, and Approving Restrictions on, Certain Transfers of and Declarations of Worthlessness with Respect to Interests in and Certain Claims Against the Debtors’ Estates* [D.I. ____] or *Final Order (I) Establishing Notification and Hearing Procedures For, and Approving Restrictions on, Certain Transfers of and Declarations of Worthlessness with Respect to Interests in and Certain Claims Against the Debtors’ Estates and (II) Establishing a Record Date for Notice and Sell-Down Procedures for Trading in Claims Against the Debtors’ Estates* [D.I. ____], as applicable (the “**Order**”).

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order, this declaration (this “**Declaration**”) is being filed with the Court and served upon the Debtors and Davis Polk & Wardwell LLP and Morris, Nichols, Arsht & Tunnell LLP, proposed counsel to the Debtors, and the other Notice Parties.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order, the undersigned party acknowledges that the Debtors have 20 calendar days after receipt of this Declaration to object to the Proposed Worthlessness Claim described herein. If the Debtors file an objection, such Proposed Worthlessness Claim will not be effective unless such objection is withdrawn by the Debtors or such action is approved by a final and non-appealable order of the Bankruptcy Court. If the Debtors do not object within such 20-day period, then after expiration of such period the Proposed Worthlessness Claim may proceed solely as set forth in this Declaration.

PLEASE TAKE FURTHER NOTICE that any further claims of worthlessness contemplated by the undersigned party would each require an additional notice filed with the Court to be served in the same manner as this Declaration and are subject to an additional 20-day waiting period.

PLEASE TAKE FURTHER NOTICE that, pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any), and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct and complete.

This notice is given in addition to, and not as a substitute for, any requisite notice under Bankruptcy Rule 3001(e).

[Signature page follows]

Respectfully submitted,

(Name of Declarant)

By:

Name:

Address:

Telephone:

Facsimile:

Dated: _____, 20__

,

(City)

(State)

Exhibit B

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)

(Joint Administration Requested)

Re: Docket No. ____

**INTERIM ORDER ESTABLISHING NOTIFICATION AND HEARING
PROCEDURES FOR, AND APPROVING RESTRICTIONS ON, CERTAIN
TRANSFERS OF AND DECLARATIONS OF WORTHLESSNESS WITH RESPECT
TO INTERESTS IN AND CERTAIN CLAIMS AGAINST THE DEBTORS' ESTATES**

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 interim and final orders, pursuant to sections 105 and 362 of title 11 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (a) enforcing the automatic stay by implementing the Securities Procedures, (b) establishing and implementing restrictions on, and notification requirements regarding the Beneficial Ownership of, certain transfers of, and declarations of worthlessness with respect to, Securities, (c) prohibiting conversions of the Convertible Notes into Class A common stock, (d) directing that any purchase, sale or other transfer of, or declaration of worthlessness with respect to, Securities in violation of the Securities Procedures shall be null and void *ab initio*, (e) approving the form of notice notifying holders of Securities of the Securities Procedures, and (f) granting related relief, as more fully described in the Motion; and the Court

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 or the Securities Procedures.

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 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 on an interim basis (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 Securities Procedures set forth in Exhibit A to the Motion are hereby approved on an interim basis; *provided, however*, any party in interest may request relief from the Securities Procedures.

3. Any transfer of Beneficial Ownership of Securities, conversion of the Convertible Notes into Class A common stock or declaration of worthlessness with respect to Securities, in violation of the Securities Procedures, including the notice requirements, shall be null and void *ab initio*.

4. In the case of any such transfer of Beneficial Ownership of Securities or conversion of the Convertible Notes in violation of the Securities Procedures, including the notice requirements, the Person making such transfer or conversion shall be required to take remedial actions specified by the Debtors, which may include the actions specified in the United States Department of Treasury's Private Letter Ruling 201010009 (Dec. 4, 2009), to appropriately reflect that such transfer or conversion is null and void *ab initio*.

5. In the case of any such declaration of worthlessness with respect to Securities in violation of the Securities Procedures, including the notice requirements, the Beneficial Owner making such declaration shall be required to file an amended tax return revoking such declaration and any related deduction to appropriately reflect that such declaration is void *ab initio*.

6. All time periods set forth in this Order (including in the Securities Procedures) shall be calculated in accordance with Bankruptcy Rule 9006(a).

7. The Debtors may retroactively or prospectively waive, in writing, any and all restrictions, stays and notification procedures set forth in the Securities Procedures.

8. To the extent that this Order is inconsistent with any prior order or pleading with respect to the Motion in the Chapter 11 Cases, the terms of this Order shall govern.

9. The requirements set forth in this Order are in addition to the requirements of Bankruptcy Rule 3001(e) and applicable securities, corporate and other laws and do not excuse noncompliance therewith.

10. 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 4:00 p.m. (prevailing Eastern Time).

11. Nothing in this Order or any action taken by the Debtors in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtors' rights with respect to such matters are expressly reserved.

12. 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.

13. Nothing in this Order nor the Debtors' payment of claims pursuant to 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 non-bankruptcy 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.

14. Within five business days of the entry of this Order, the Debtors shall serve copies of this Order on the Notice Parties and this Order shall be made available on the Debtors' case information website located at <https://www.veritaglobal.net/fisker>, such notice being reasonably calculated to provide notice to all parties that may be affected by the Securities Procedures, whether known or unknown, and no further notice of the Securities Procedures shall be necessary.

15. 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.

16. The Debtors 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.

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

Exhibit C

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) ESTABLISHING NOTIFICATION AND HEARING PROCEDURES FOR, AND APPROVING RESTRICTIONS ON, CERTAIN TRANSFERS OF AND DECLARATIONS OF WORTHLESSNESS WITH RESPECT TO INTERESTS IN AND CERTAIN CLAIMS AGAINST THE DEBTORS' ESTATES AND (II) ESTABLISHING A RECORD DATE FOR NOTICE AND SELL-DOWN PROCEDURES FOR TRADING IN CLAIMS AGAINST THE DEBTORS' ESTATES

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 interim and final orders, pursuant to sections 105 and 362 of title 11 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (a) enforcing the automatic stay by implementing the Securities Procedures, (b) establishing and implementing restrictions on, and notification requirements regarding the Beneficial Ownership of, certain transfers of, and declarations of worthlessness with respect to, Securities, (c) prohibiting conversions of the Convertible Notes into Class A common stock, (d) directing that any purchase, sale or other transfer of, or declaration of worthlessness with respect to, Securities in violation of the Securities Procedures shall be null and void *ab initio*, (e) approving the form of notice notifying holders of Securities of the Securities

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 or the Securities Procedures.

Procedures, (f) establishing the Record Date for notice and sell-down procedures for trading in Claims, and (g) granting related relief, 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 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 on a final basis (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 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 a final basis to the extent set forth in this order (this “**Order**”).

2. The Securities Procedures set forth in Exhibit A to the Motion are hereby approved on a final basis.

3. Any transfer of Beneficial Ownership of Securities, conversion of the Convertible Notes into Class A common stock, or declaration of worthlessness with respect to Securities, in violation of the Securities Procedures, including, but not limited to, the notice requirements, shall be null and void *ab initio*.

4. In the case of any such transfer of Beneficial Ownership of Securities or conversion of the Convertible Notes in violation of the Securities Procedures, including the notice requirements, the Person making such transfer or conversion shall be required to take remedial actions specified by the Debtors, which may include the actions specified in the United States Department of Treasury's Private Letter Ruling 201010009 (Dec. 4, 2009), to appropriately reflect that such transfer or conversion is null and void *ab initio*.

5. In the case of any such declaration of worthlessness with respect to Securities in violation of the Securities Procedures, including the notice requirements, the Beneficial Owner making such declaration shall be required to file an amended tax return revoking such declaration and any related deduction to appropriately reflect that such declaration is void *ab initio*.

6. All time periods set forth in this Order (including the Securities Procedures) shall be calculated in accordance with Bankruptcy Rule 9006(a).

7. The Debtors may retroactively or prospectively waive, in writing, any and all restrictions, stays and notification procedures set forth in the Securities Procedures.

8. The Record Date is hereby established as June 19, 2024, which date is the Petition Date.

9. The Record Date Notice substantially in the form annexed as Exhibit D to the Motion is deemed adequate and sufficient so that, if the Court ultimately approves a Sell-Down Order, claimholders that acquire Claims after the Record Date, in an amount that would entitle them to receive more than 4.5% of the equity of the reorganized Debtors, may be subject to a required sell-down of any Claims purchased after the Record Date to the extent authorized by the Court after appropriate opportunity for notice and a hearing.

10. Entry of this Order shall in no way be deemed a determination of any kind that entry of a Sell-Down Order is necessary or warranted in the Chapter 11 Cases and this Court's review of any request for entry of a Sell-Down Order shall be without regard to entry of this Order.

11. The entry of this Order shall in no way prejudice the rights of any party to oppose the entry of a Sell-Down Order, on any grounds, and all parties' rights are expressly preserved hereby.

7. To the extent that this Order is inconsistent with any prior order or pleading with respect to the Motion in the Chapter 11 Cases, the terms of this Order shall govern.

8. The requirements set forth in this Order are in addition to the requirements of Bankruptcy Rule 3001(e) and applicable securities, corporate and other laws and do not excuse noncompliance therewith.

9. Nothing in this Order or any action taken by the Debtors in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtors' rights with respect to such matters are expressly reserved.

10. 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.

11. Nothing in this Order nor the Debtors' payment of claims pursuant to 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 non-bankruptcy 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.

12. Within five business days of the entry of this Order, the Debtors shall serve copies of this Order on the Notice Parties.

13. 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.

14. The Debtors 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.

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

Exhibit D

Record Date Notice

**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. ____

**NOTICE OF ENTRY OF AN ORDER ESTABLISHING
A RECORD DATE FOR NOTICE AND SELL-DOWN PROCEDURES
FOR TRADING IN CERTAIN CLAIMS AGAINST THE DEBTORS' ESTATES**

TO ALL PERSONS OR ENTITIES THAT HOLD CLAIMS AGAINST THE DEBTORS:

PLEASE TAKE NOTICE that, on June 17 and 19, 2024 (the “**Petition Date**”), Fisker Inc. and certain of its affiliates (collectively, the “**Debtors**”), each of which is a debtor and debtor in possession in the above-captioned chapter 11 cases, filed voluntary petitions for relief with the United States Bankruptcy Court for the District of Delaware (the “**Court**”) under chapter 11 of the Bankruptcy Code.² Subject to certain exceptions, section 362 of the Bankruptcy Code operates as a stay of any act to obtain possession of property of or from the Debtors’ estates or to exercise control over property of or from the Debtors’ estates.

PLEASE TAKE FURTHER NOTICE THAT on the Petition Date, the Debtors filed the *Motion of Debtors for Entry of Interim and Final Orders (I) Establishing Notification and Hearing Procedures for, and Approving Restrictions on, Certain Transfers of and Declarations of Worthlessness with Respect to Interests in and Certain Claims Against the Debtors’ Estates and (II) Establishing a Record Date for Notice and Sell-Down Procedures for Trading in Claims Against the Debtors’ Estates* [D.I. __] (the “**Motion**”).

PLEASE TAKE FURTHER NOTICE THAT on [__], 2024, the Court entered the *Final Order (I) Establishing Notification and Hearing Procedures For, and Approving Restrictions on, Transfers of and Declarations of Worthlessness with Respect to Interests in and Certain Claims Against the Debtors’ Estates and (II) Establishing a Record Date for Notice and Sell-Down Procedures for Trading in Claims Against the Debtors’ Estates* [D.I. __] (the “**Order**”) establishing an effective date for notice and the Sell-Down Procedures (as defined in the Motion)

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 have the meanings ascribed to them in the Motion, the Interim Order, or the Proposed Final Order (each as defined herein), as applicable.

for trading in claims against the Debtors' estates. The "Record Date" is the Petition Date, namely June 19, 2024.

PLEASE TAKE FURTHER NOTICE THAT pursuant to the Order, claimholders and potential purchasers of Claims (as defined in the Motion) against the Debtors are hereby notified that, if the Court ultimately approves a Sell-Down Order, claimholders that acquire claims after the Record Date in an amount that would entitle them to receive more than 4.5 percent of the equity of the reorganized Debtors under the Debtors' plan of reorganization may be subject to a required sell-down of any claims purchased after the Record Date.

PLEASE TAKE FURTHER NOTICE THAT complete copies of the Motion and Order, with additional information about the Record Date and possible Sell-Down Order, are available via PACER on the Court's website at <https://ecf.deb.uscourts.gov> for a fee, or free of charge by accessing the Debtors' case information website located at <https://www.veritaglobal.net/fisker>.

PLEASE TAKE FURTHER NOTICE THAT, the entry of the Order shall in no way prejudice the rights of any party to oppose the entry of a Sell-Down Order, on any grounds, and that all parties' rights are expressly preserved hereby.

PLEASE TAKE FURTHER NOTICE THAT the requirements set forth in this notice are in addition to the requirements of applicable law and do not excuse compliance therewith.

[Signature page follows]

Dated: June __, 2024
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/

Robert J. Dehney, Sr. (No. 3578)
Andrew R. Remming (No. 5120)
Brenna A. Dolphin (No. 5604)
Sophie Rogers Churchill (No. 6905)
Evanthea Hammer (No. 7061)
1201 N. Market Street, 16th Floor
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rdehney@morrisnichols.com
aremming@morrisnichols.com
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srchurchill@morrisnichols.com
ehammer@morrisnichols.com

-and-

DAVIS POLK & WARDWELL LLP

Brian M. Resnick (*pro hac vice* pending)
Darren S. Klein (*pro hac vice* pending)
Steven Z. Szanzer (*pro hac vice* pending)
Richard J. Steinberg (*pro hac vice* pending)
450 Lexington Avenue
New York, New York 10017
Tel.: (212) 450-4000
brian.resnick@davispolk.com
darren.klein@davispolk.com
steven.szanzer@davispolk.com
richard.steinberg@davispolk.com

Proposed Counsel to the Debtors and Debtors in Possession

Exhibit E

Notice of 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)

(Joint Administration Requested)

Re: Docket No. ____

**NOTICE OF (I) DISCLOSURE PROCEDURES
APPLICABLE TO CERTAIN HOLDERS OF SECURITIES,
DISCLOSURE PROCEDURES FOR TRANSFERS OF SECURITIES, AND
DECLARATIONS OF WORTHLESSNESS WITH RESPECT TO INTERESTS
IN AND CERTAIN CLAIMS AGAINST THE DEBTORS' ESTATES,
AND (II) FINAL HEARING ON THE APPLICATION THEREOF**

**TO ALL PERSONS OR ENTITIES WITH INTERESTS OR CERTAIN CLAIMS IN ANY
OF THE DEBTOR ENTITIES:**

PLEASE TAKE NOTICE that, on June 17 and 19, 2024 (the "**Petition Date**"), Fisker Inc. and certain of its affiliates (collectively, the "**Debtors**"), each of which is a debtor and debtor in possession in the above-captioned chapter 11 cases, filed voluntary petitions for relief with the United States Bankruptcy Court for the District of Delaware (the "**Court**") under chapter 11 of the Bankruptcy Code.² Subject to certain exceptions, section 362 of the Bankruptcy Code operates as a stay of any act to obtain possession of property of or from the Debtors' estates or to exercise control over property of or from the Debtors' estates.

PLEASE TAKE FURTHER NOTICE that on the Petition Date, the Debtors filed the *Motion of Debtors for Entry of Interim and Final Orders (I) Establishing Notification and Hearing Procedures for, and Approving Restrictions on, Certain Transfers of and Declarations of Worthlessness with Respect to Interests in and Certain Claims Against the Debtors' Estates and (II) Establishing a Record Date for Notice and Sell-Down Procedures for Trading in Claims Against the Debtors' Estates* [D.I. ____] (the "**Motion**").

PLEASE TAKE FURTHER NOTICE that on [____], 2024, the Court entered the *Interim Order Establishing Notification and Hearing Procedures for, and Approving*

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 have the meanings ascribed to them in the Motion, Interim Order, or Proposed Final Order (each as defined herein), as applicable.

Restrictions on, Certain Transfers of and Declarations of Worthlessness with Respect to Interests in and Certain Claims Against the Debtors' Estates [D.I. ____] (the “**Interim Order**”).

PLEASE TAKE FURTHER NOTICE that, in addition to the Interim Order, the Motion requested that the Court enter the *Final Order (I) Establishing Notification and Hearing Procedures for, and Approving Restrictions on, Transfers of and Declarations of Worthlessness with Respect to Interests in and Certain Claims Against the Debtors' Estates and (II) Establishing a Record Date for Notice and Sell-Down Procedures for Trading in Claims Against the Debtors' Estates* (the “**Proposed Final Order**”).

PLEASE TAKE FURTHER NOTICE that, on [____], 2024, the Court entered the Interim Order [D.I. ____] approving the procedures for certain transfers of Securities and declarations of worthlessness with respect to Securities set forth in Exhibit A to the Motion (the “**Securities Procedures**”).

PLEASE TAKE FURTHER NOTICE that, pursuant to the Interim Order, a Beneficial Owner of Securities may not consummate any purchase, sale, or other transfer (including, with respect to the Convertible Notes, certain conversions) of Securities or Beneficial Ownership of Securities in violation of the Securities Procedures, and any such transaction in violation of the Securities Procedures shall be null and void *ab initio*.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Interim Order, the Securities Procedures shall apply to the holding and transfers of Securities or any Beneficial Ownership therein (including, for the avoidance of doubt, the filing of a Substantial Securityholder Notice, to the extent required therein).

PLEASE TAKE FURTHER NOTICE that, pursuant to the Interim Order, a Beneficial Owner may not claim a worthless stock deduction with respect to Securities, or Beneficial Ownership of Securities, in violation of the Securities Procedures, and any such deduction in violation of the Securities Procedures shall be null and void *ab initio*, and the Beneficial Owner shall be required to file an amended tax return revoking such deduction.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Proposed Final Order, a Beneficial Owner of Securities would not be able to consummate any purchase, sale, or other transfer (including, with respect to the Convertible Notes, certain conversions) of Securities or Beneficial Ownership therein in violation of the Securities Procedures, and any such transaction in violation of the Securities Procedures shall be null and void *ab initio*.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Proposed Final Order, the Securities Procedures would apply to the holding and transfers of Securities or any Beneficial Ownership therein (including, for the avoidance of doubt, the filing of a Substantial Securityholder Notice to the extent required therein).

PLEASE TAKE FURTHER NOTICE that, pursuant to the Proposed Final Order, a Beneficial Owner would not be able to claim a worthless stock deduction with respect to Securities, or Beneficial Ownership of Securities, in violation of the Securities Procedures, and any such deduction in violation of the Securities Procedures shall be null and void *ab initio*, and the Beneficial Owner shall be required to file an amended tax return revoking such deduction.

PLEASE TAKE FURTHER NOTICE that, upon the request of any Beneficial Owner of Securities, Kurtzman Carson Consultants LLC, the Debtors' claims and noticing agent, will provide a copy of the Interim Order or Proposed Final Order and a form of each of the declarations required to be filed by the Securities Procedures in a reasonable period of time. Such declarations are also available via PACER on the Court's website at <https://ecf.deb.uscourts.gov> for a fee, or free of charge by accessing the Debtors' case information website located at <https://www.veritaglobal.net/fisker>.

PLEASE TAKE FURTHER NOTICE that the final hearing to consider the relief requested in the Motion will 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 4:00 p.m. (prevailing Eastern Time).

PLEASE TAKE FURTHER NOTICE THAT FAILURE TO FOLLOW THE SECURITIES PROCEDURES SET FORTH IN THE INTERIM ORDER OR, ONCE ENTERED, THE PROPOSED FINAL ORDER SHALL CONSTITUTE A VIOLATION OF, AMONG OTHER THINGS, THE AUTOMATIC STAY PROVISIONS OF SECTION 362 OF THE BANKRUPTCY CODE.

PLEASE TAKE FURTHER NOTICE THAT ANY PROHIBITED PURCHASE, SALE, OTHER TRANSFER OF, OR DECLARATION OF WORTHLESSNESS WITH RESPECT TO, SECURITIES, OR BENEFICIAL OWNERSHIP THEREOF, OR CONVERSIONS OF CONVERTIBLE NOTES IN VIOLATION OF THE INTERIM ORDER OR, ONCE ENTERED, THE PROPOSED FINAL ORDER IS PROHIBITED, SHALL BE NULL AND VOID *AB INITIO*, AND MAY BE SUBJECT TO ADDITIONAL SANCTIONS AS THE COURT MAY DETERMINE.

PLEASE TAKE FURTHER NOTICE THAT THE REQUIREMENTS SET FORTH IN THE INTERIM ORDER OR, ONCE ENTERED, THE PROPOSED FINAL ORDER ARE IN ADDITION TO THE REQUIREMENTS OF APPLICABLE LAW AND DO NOT EXCUSE COMPLIANCE THEREWITH.

[Signature page follows]

Dated: June __, 2024
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/

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Proposed Counsel to the Debtors and Debtors in Possession