

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

FISKER INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 24-11390 (TMH)

(Jointly Administered)

Re: Docket No. 110

**MOTION OF DEBTORS TO SHORTEN NOTICE OF MOTION OF DEBTORS  
FOR ENTRY OF AN ORDER (I) AUTHORIZING AND APPROVING THE  
SALE OF CERTAIN OF THE DEBTORS' ASSETS FREE AND CLEAR OF  
LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS, (II) AUTHORIZING  
THE DEBTORS TO ENTER INTO AND PERFORM UNDER THE FLEET  
SALES AGREEMENT, AND (III) GRANTING RELATED RELIEF**

Fisker Inc. and certain of its affiliates (collectively, the “**Debtors**”),<sup>2</sup> 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 the Debtors to Shorten Notice of Motion of the Debtors for Entry of an Order (I) Authorizing and Approving the Sale of Certain of the Debtors' Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, (II) Authorizing the Debtors to Enter Into and Perform Under the Fleet Sales Agreement, and (III) Granting Related Relief* (this “**Motion to Shorten**”), and respectfully state as follows:

**Relief Requested**

1. By this Motion to Shorten, and pursuant to sections 102 and 105 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002 and 9006 of the Federal Rules of

<sup>1</sup> 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.

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



Bankruptcy Procedure (the “**Bankruptcy Rules**”), and 9006-1(e) of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**”), shortening notice of the *Motion of Debtors for Entry of an Order (I) Authorizing and Approving the Sale of Certain of the Debtors’ Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, (II) Authorizing the Debtors To Enter Into and Perform Under the Fleet Sales Agreement, and (III) Granting Related Relief* [D.I. 110] (the “**Fleet Sales Motion**”). The Debtors request that the Court hear the Fleet Sales Motion on **July 9, 2024, at 10:00 a.m. (Eastern Time)**, with any objections due on or before **July 8, 2024, at 4:00 p.m. (Eastern Time)**.

#### **Jurisdiction, Venue, and Authority**

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

3. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). In addition, the Debtors confirm their consent, pursuant to Local Rule 9013-1(f), to the entry of a final order by the Court in connection with this Motion to Shorten 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.

5. The statutory bases for the relief requested herein are sections 102(1) and 105(a) of the Bankruptcy Code, as supplemented by Bankruptcy Rules 2002 and 9006 and Local Rule 9006-1(e).

## Background

### A. General Background

6. On June 17 and 19, 2024 (collectively, the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”). 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 in the Chapter 11 Cases.

7. On July 2, 2024, the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) appointed an Official Committee of Unsecured Creditors pursuant to section 1102 of the Bankruptcy Code. *See Not. of Appointment of Comm. of Unsecured Creditors* [D.I. 106].

8. The Chapter 11 Cases are being jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015(b) and the *Order Directing Joint Administration of Chapter 11 Cases* entered by the Court on June 21, 2024, in each of the Chapter 11 Cases.<sup>3</sup>

9. 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.

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<sup>3</sup> *See In re Fisker Inc.*, No. 24-11390 (TMH) [D.I. 51]; *In re Fisker Group Inc.*, No. 24-11377 (TMH) [D.I. 10]; *In re Fisker TN LLC*, No. 24-11391 (TMH) [D.I. 3]; *In re Terra Energy Inc.*, No. 24-11392 (TMH) [D.I. 3]; *In re Blue Current Holding LLC*, No. 24-11393 (TMH) [D.I. 3]; *In re Platinum IPR LLC*, No. 24-11394 (TMH) [D.I. 3].

10. 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 *Declaration of John C. DiDonato as Chief Restructuring Officer of the Debtors in Support of Debtors' Chapter 11 Proceedings and First Day Pleadings* [D.I. 37] (the "**DiDonato First Day Declaration**"). Further, the DiDonato First Day Declaration details the significant prepetition marketing efforts undertaken to sell the Debtors' business as a going concern as well as the efforts undertaken to preserve the Debtors' enterprise value.

11. Contemporaneously herewith, the Debtors filed the Fleet Sales Motion and the *Declaration of John C. DiDonato as Chief Restructuring Officer of the Debtors in Support of the Motion of Debtors for Entry of an Order (I) Authorizing and Approving the Sale of Certain of the Debtors' Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, (II) Authorizing the Debtors to Enter Into and Perform Under the Fleet Sales Agreement, and (III) Granting Related Relief* (the "**DiDonato Sale Declaration**" and, together with the DiDonato First Day Declaration, the "**DiDonato Declarations**").

12. The Debtors commenced the Chapter 11 Cases to facilitate an orderly, efficient, and value-maximizing (a) sale of the Fisker Inventory (as defined herein) and (b) liquidation of the Debtors' remaining assets.<sup>4</sup> Despite commencement of the Chapter 11 Cases, the Debtors' liquidity remains strained—the Debtors do not currently have access to post-petition financing and are solely reliant on the use of cash collateral. If approved, the Fleet Sales Agreement (as defined herein) will provide a critical gross capital infusion of up to \$46.25 million to the Debtors' estates, which the Debtors will use to fund the Chapter 11 Cases and facilitate an orderly liquidation. In

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<sup>4</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Fleet Sales Motion, Fleet Sales Agreement (as defined herein) and DiDonato Declarations.

addition, the Debtors will no longer incur certain expenses related to the Fisker Inventory once they sell these assets to American Lease LLC (the “**Buyer**”). Critically, if the relief requested in the Fleet Sales Motion is not timely granted such that the Debtors are in a position to commence, and receive payment for, delivery of Sale Vehicles on July 12, 2024 (at the latest)—as contemplated under the Fleet Sales Agreement—the Debtors will be unable to fund vital business expenses (e.g., payroll, taxes, software provider costs, etc.) necessary to effectuate an orderly liquidation. Given the Debtor’s liquidity position, their dependence solely on cash collateral, and the prepetition marketing process of the Debtors’ business and assets (as further described in the DiDonato Declarations), the Debtors believe that the expedited sale of the Fisker Inventory to the Buyer pursuant to the terms of the Fleet Sales Agreement is both appropriate and in the best interests of the Debtors, their estates, and their stakeholders.

**B. Fleet Sales Agreement Background**

13. The Fleet Sales Motion seeks entry of an order (a) authorizing and approving the sale of the Debtors’ existing fleet of vehicles that are configured for the United States and Canada and have completed production (the “**Fisker Inventory**”) to the Buyer, free and clear of liens, claims, encumbrances, and other interests, including Heights’ (as defined below) liens and security interests in the Fisker Inventory, pursuant to that certain Fleet Sales Agreement, dated June 30, 2024 (“**Fleet Sales Agreement**”), by and between Debtor Fisker Group Inc. and the Buyer, (b) authorizing Debtor Fisker Group Inc. to enter into and perform under the Fleet Sales Agreement, and (c) granting related relief.<sup>5</sup>

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<sup>5</sup> For the avoidance of doubt, no customer data is being sold pursuant to the Fleet Sales Motion and Fleet Sales Agreement.

14. Approval of the Fleet Sales Motion and Fleet Sales Agreement will enhance the Debtors' ability to preserve value for the benefit of all stakeholders. The Debtors' liquidity challenges are fully described in the DiDonato Declarations. Without the approval of the Fleet Sales Agreement, the Debtors may not be able to liquidate the Fisker Inventory and remain in chapter 11. Although the Debtors' secured creditor ("**Heights**") has consented to the Debtors' use of Heights' existing cash collateral, it is only willing to provide such consent on a short-term, interim basis. *See Approved Budgets* [D.I. 59, 98]. The Fleet Sales Agreement provides the Debtors with a much-needed cash infusion (potentially within days of entry of the order substantially in the form attached to the Fleet Sales Motion as Exhibit A (the "**Fleet Sales Proposed Order**")) to enable the Debtors to oversee the orderly liquidation of their assets for the benefit of the estates, creditors, and parties in interest. As noted above, it is critical to the Debtors' ability to meet essential obligations that the relief requested in the Fleet Sales Motion is timely granted such that the Debtors are in position to commence, and receive payment for, delivery of Sale Vehicles on July 12, 2024 (at the latest). Any delay in the Debtors' receipt of proceeds from the sale of the Sale Vehicles under the Fleet Sales Agreement will jeopardize the Debtors' ability to effectuate an orderly wind-down in the best interests of the Debtors' stakeholders. Further, shortening notice is the best way to maximize value because with each day that passes the estates incur costs related to maintaining and storing the Fisker Inventory.

#### **Basis for Relief**

15. Section 102(1) of the Bankruptcy Code provides that the phrase "after notice and a hearing" requires only such notice and opportunity for a hearing as may be appropriate under the circumstances. 11 U.S.C. § 102(1). Section 105(a) of the Bankruptcy Code, in turn, provides that the Court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code. 11 U.S.C. § 105(a).

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

17. Pursuant to Bankruptcy Rule 9006(c), “the court for cause shown may in its discretion with or without motion or notice order the period reduced.” Fed. R. Bankr. P. 9006(c)(1). In exercising such discretion, the court should “consider prejudice to parties entitled to notice and weigh this against the reasons for hearing the motion on an expedited basis.” *In re Phila. Newspapers, LLC*, 690 F.3d 161, 172 (3d Cir. 2012) (noting the commonality of such motions “given the accelerated time frame of bankruptcy proceedings”). Local Rule 9006-1(e) likewise provides for shortened notice “by order of the Court, on written motion . . . specifying the exigencies justifying shortened notice.” Del. Bankr. L.R. 9006-1(e).

18. The Debtors respectfully submit that good cause exists to warrant expedited consideration of the Fleet Sales Motion, and that a prompt hearing is in the best interests of the Debtors, their estates, and their creditors. Absent the Court granting the relief requested in the Fleet Sales Motion in an expedited fashion and the Debtors' receipt of the payments contemplated under the Fleet Sales Agreement, the Debtors' ability to continue funding the Chapter 11 Cases is in peril which, in turn, jeopardizes the Debtors' ability to administer the estates for the benefit of creditors and parties in interest. Moreover, the Fleet Sales Agreement contemplates the sale of the Fisker Inventory at a time when selling EVs has proven challenging, as set forth in the DiDonato Declarations. Indeed, the Debtors have no alternative proposals to purchase a similar number of Sale Vehicles or pay a similar or higher purchase price. Finally, Heights consents to the sale of the Fisker Inventory to the Buyer pursuant to the terms of the Fleet Sales Agreement and the Fleet Sales Proposed Order as well as approval of the Fleet Sales Motion on an expedited basis. Accordingly, the Debtors have shown that good cause exists and have specified the exigencies justifying shortening the notice of the Fleet Sales Motion.

19. Parties will not be prejudiced by the shortened notice period. Creditors and parties in interest will have an opportunity to object to the Fleet Sales Motion. Under ordinary non-exigent circumstances, twenty-one (21) days' notice is required for a motion to sell property of a bankruptcy estate other than in the ordinary course of business, unless the Court for cause shown shortens the time of giving notice. Fed. R. Bankr. P. 2002(a)(2); Del. Bankr. L.R. 9006-1(c)(i). The Debtors request that all objections be filed and served no later than July 8, 2024, at 4:00 p.m. (Eastern Time).

20. The Fleet Sales Motion should be heard on shortened notice because its approval is in the best interests of the Debtors' estates and their creditors and is appropriate under the



circumstances. Additional detail regarding the necessity of an expedited sale is set forth in the DiDonato Declarations. The Debtors respectfully submit that good cause exists to warrant expedited consideration of the Fleet Sales Motion, and that a prompt hearing is in the best interests of the Debtors, their estates, and their creditors.

**Averment Pursuant to Local Rule 9006-1(e)**

21. Pursuant to Local Rule 9006-1(e), the Debtors hereby state that they have contacted the U.S. Trustee prior to filing the Fleet Sales Motion and this Motion to Shorten regarding the respective relief sought therein. The U.S. Trustee informed counsel for the Debtors that it intends to object to the Debtors' request for shortened notice of the Fleet Sales Motion.

**Notice**

22. Notice of this Motion to Shorten will be provided to the following parties: (a) the U.S. Trustee; (b) those creditors holding the 30 largest unsecured claims against the Debtors' estates (on a consolidated basis); (c) White & Case LLP, as counsel to Heights; (d) Riemer & Braunstein LLP, as counsel to the Buyer; (e) National Highway Traffic Safety Administration, and (f) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "**Notice Parties**").

23. A copy of this Motion to Shorten 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 circumstances surrounding this Motion to Shorten and the nature of the relief requested herein, the Debtors respectfully submit that no other or further notice is required.

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

Dated: July 2, 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)  
Sophie Rogers Churchill (No. 6905)  
Evanthea Hammer (No. 7061)  
1201 N. Market Street, 16th Floor  
Wilmington, Delaware 19801  
Tel: (302) 658-9200  
rdehney@morrисnichols.com  
aremming@morrисnichols.com  
bdolphin@morrисnichols.com  
srchurchill@morrисnichols.com  
ehammer@morrисnichols.com

-and-

DAVIS POLK & WARDWELL LLP  
Brian M. Resnick (admitted *pro hac vice*)  
Darren S. Klein (admitted *pro hac vice*)  
Steven Z. Szanzer (admitted *pro hac vice*)  
Richard J. Steinberg (admitted *pro hac vice*)  
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 A**

**Proposed Order**

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

In re:

FISKER INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 24-11390 (TMH)

(Jointly Administered)

Re: Docket No. \_\_

**ORDER SHORTENING NOTICE OF MOTION OF DEBTORS FOR ENTRY  
OF AN ORDER (I) AUTHORIZING AND APPROVING THE SALE OF  
CERTAIN OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS,  
CLAIMS, ENCUMBRANCES, AND INTERESTS, (II) AUTHORIZING THE  
DEBTORS TO ENTER INTO AND PERFORM UNDER THE FLEET SALES  
AGREEMENT, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion to Shorten**”)<sup>2</sup> of Fisker Inc. and certain of its affiliates (collectively, the “**Debtors**”), each of which is a debtor and debtor in possession in the Chapter 11 Cases, for entry of an order, pursuant to sections 102 and 105 of the Bankruptcy Code, Bankruptcy Rules 2002 and 9006, and Local Rule 9006-1(e), shortening notice of the *Motion of Debtors for Entry of an Order (I) Authorizing and Approving the Sale of Certain of the Debtors' Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, (II) Authorizing the Debtors to Enter Into and Perform Under the Fleet Sales Agreement, and (III) Granting Related Relief* [D.I. 110] (the “**Fleet Sales Motion**”); and the Court having jurisdiction to consider the Motion to Shorten 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,

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<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion to Shorten.

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 the Court having reviewed and considered the Motion to Shorten and the DiDonato Declarations and having found that the relief requested in the Motion to Shorten is justified under the circumstances; and the Court having held a hearing, if necessary, to consider the relief requested in the Motion to Shorten (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the Motion to Shorten, DiDonato Declarations, and at the Hearing establish just cause for the relief granted herein; and the Court having found that the relief requested in the Motion to Shorten 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 to Shorten, 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 to Shorten is GRANTED.
2. The Fleet Sales Motion will be considered at the hearing scheduled for **July 9, 2024, at 10:00 a.m. (Eastern Time)**.
3. Objections, if any, to the requested relief in the Fleet Sales Motion, shall be filed and served on or before **July 8, 2024, at 4:00 p.m. (Eastern Time)**.
4. The Court shall retain jurisdiction over any matter arising from or related to the implementation, interpretation, and enforcement of this Order.