

**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)

Hearing Date:

July 16, 2024, at 11:00 a.m. (ET)

Objection Deadline:

July 10, 2024, at 4:00 p.m. (ET)

**MOTION OF DEBTORS FOR ENTRY OF AN ORDER APPROVING PROCEDURES
FOR THE RETENTION AND COMPENSATION OF ORDINARY COURSE
PROFESSIONALS NUNC PRO TUNC TO THE PETITION DATE**

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 an Order Approving Procedures for the Retention and Compensation of Ordinary Course Professionals Nunc Pro Tunc to the Petition Date* (this “**Motion**”). In further support of this Motion, the Debtors respectfully state as follows:

Relief Requested

1. By this Motion, and pursuant to sections 105, 327, 328, and 330 of title 11 of the United States Code (the “**Bankruptcy Code**”), rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and rule 2014-1 of the Local Rules for the United States

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**.”



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 B** (the “**Proposed Order**”), approving procedures for the retention and compensation of certain professionals that the Debtors employ in the ordinary course of business (collectively, the “**Ordinary Course Professionals**”), *nunc pro tunc* to the Petition Date, without the submission of separate retention applications or the entry of separate retention orders for each such Ordinary Course Professional.

Jurisdiction, Venue, and Authority

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

3. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). In addition, the Debtors confirm their consent, pursuant to Local Rule 9013-1(f), 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 (collectively, the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors remain in possession of their property and continue to operate and manage their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been

made for the appointment of a trustee or examiner, and no official committee has been appointed in the Chapter 11 Cases.

6. 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.³

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 *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].

B. The Ordinary Course Professionals

9. The Debtors employ various Ordinary Course Professionals to provide services in matters unrelated to the Chapter 11 Cases. A non-exclusive list of Ordinary Course Professionals that the Debtors employ as of the Petition Date is attached hereto as **Exhibit A** (the “**Ordinary**

³ 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].

Course Professionals List”).⁴ The Debtors seek to continue employing such Ordinary Course Professionals in the same manner and for the same purposes as the Ordinary Course Professionals were retained before the Petition Date. The Debtors may also seek to employ additional Ordinary Course Professionals as necessary during these Chapter 11 Cases and will file supplemental lists as necessary. In the past, the Ordinary Course Professionals have rendered services relating to such diverse subjects as intellectual property, customer claims, litigation, regulatory, compensation, general corporate matters, tax, transactional work, international matters and consulting, as well as other services for the Debtors in relation to issues that have a direct and significant impact on the Debtors’ day-to-day operations.

10. The Debtors submit that the proposed employment of the Ordinary Course Professionals and the payment of monthly compensation on the basis set forth in the OCP Compensation Procedures (as defined below) are in the best interests of their estates and their creditors. The Ordinary Course Professionals have a great deal of background knowledge, expertise, and familiarity with the Debtors and their operations. Thus, the Debtors believe that the continued employment of the Ordinary Course Professionals, many of whom are already familiar with the Debtors’ business and affairs, is necessary to avoid disruption of the Debtors’ normal business operations.

11. Furthermore, the relief requested would save the estates the substantial expense associated with applying for separate court approval for the employment of each professional. The requested relief also would avoid the incurrence of substantial additional fees relating to the

⁴ Although **Exhibit A** is substantially complete, due to the breadth of issues confronting the Debtors in the normal operation of their business, the Debtors may have inadvertently omitted one or more Ordinary Course Professionals. Further, the Debtors may require the services of additional Ordinary Course Professionals while the Chapter 11 Cases are active. As the Debtors retain additional Ordinary Course Professionals during the Chapter 11 Cases, such professionals would comply with the practices and requirements set forth herein and the Debtors shall file a notice listing those Ordinary Course Professionals to be added to the Ordinary Course Professionals List.

preparation and prosecution of fee applications. Likewise, the OCP Compensation Procedures (as defined below) will relieve the Court and the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) of the burden of reviewing numerous fee applications involving relatively small amounts of fees and expenses.

12. Accordingly, the Debtors propose that the payment of compensation and reimbursement of expenses of the Ordinary Course Professionals be structured in accordance with the terms and conditions set forth in Exhibit 1 to the Proposed Order (the “**OCP Compensation Procedures**”), incorporated herein by reference.

Basis for Relief

13. Section 327 of the Bankruptcy Code requires court approval for the employment of “professional persons” retained to represent or perform services of the estate. 11 U.S.C. § 327. In determining whether an entity is a “professional” within the meaning of section 327 of the Bankruptcy Code and, therefore, whether the concluding that servicer falls within the definition of “professional,” where servicer “play[ed] a substantial role in the Debtor's estate and that maximizing recovery of the [] [r]eceivables is important to the Debtor's continued operations and reorganization be retained by express approval of the Court, courts generally consider whether such entity is involved in the debtor’s actual restructuring effort, rather than the debtor’s ongoing business operations. *See, e.g., In re First Merchs. Acceptance Corp.*, No. 97-1500, 1997 WL 873551, at *2–4 (D. Del. Dec. 15, 1997) (concluding that servicer falls within the definition of “professional,” where servicer “play[ed] a substantial role in the Debtor's estate and that maximizing recovery of the [] [r]eceivables is important to the Debtor's continued operations and reorganization); *In re Am. Tissue, Inc.*, 331 B.R. 169, 174 (Bankr. D. Del. 2005) (applying the *First Merchants* factors and holding that a litigation consulting firm was not a “professional” for purposes of section 327 of the Bankruptcy Code as the litigation consulting firm “did not play a

central or significant role in the overall administration of the [d]ebtors' estate"); *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 619 (Bankr. S.D.N.Y. 1986) ("[T]he phrase 'professional persons,' as used in § 327(a), is a term of art reserved for those persons who play an intimate role in the reorganization of a debtor's estate."); *In re SageCrest II, LLC*, No. 08-50754, 2010 Bankr. LEXIS 1645, at *23 (Bankr. D. Conn. May 18, 2010), *aff'd*, 2011 U.S. Dist. LEXIS 3517 (D. Conn. Jan. 14, 2011); *In re Cyrus II P'ship*, No. 05- 39857, 2008 WL 3003824, at *2-3 (Bankr. S.D. Tex. July 31, 2008); *see also* 11 U.S.C. § 363(c) (permitting the debtors to "enter into transactions . . . in the ordinary course of business, without notice or a hearing"). In making this determination, courts often consider the following factors:

- (a) whether the entity controls, manages, administers, invests, purchases or sells assets that are significant to the debtor's reorganization;
- (b) whether the entity is involved in negotiating the terms of a plan of reorganization;
- (c) whether the entity is directly related to the type of work carried out by the debtor or to the routine maintenance of the debtor's business operations;
- (d) whether the entity is given discretion or autonomy to exercise his or her own professional judgment in some part of the administration of the debtor's estate;
- (e) the extent of the entity's involvement in the administration of the debtor's estate;
- and
- (f) whether the entity's services involve some degree of special knowledge or skill, such that it can be considered a "professional" within the ordinary meaning of the term.

See, e.g., In re First Merchs., 1997 WL 873551, at *3 (D. Del. Dec. 15, 1997) (listing factors); *In re Am. Tissue, Inc.*, 331 B.R. at 174.

14. The foregoing factors must be considered in their totality when determining whether an entity is a “professional” within the meaning of section 327 of the Bankruptcy Code. *See First Merchs.*, 1997 WL 873551, at *3 (“In applying these factors, the Court stresses that no one factor is dispositive and that the factors should be weighed against each other and considered *in toto.*”).

15. 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))).

16. The Debtors submit that the Ordinary Course Professionals’ employment relates only indirectly to the Debtors’ restructuring efforts. In light of the fact that the Ordinary Course Professionals are only granted marginal discretion in performing their work, and that they will not be involved in administering the Chapter 11 Cases, the Debtors believe that the Ordinary Course

Professionals are not “professionals” whose retention must be approved by the Court under section 327 of the Bankruptcy Code. Specifically, the Ordinary Course Professionals would provide services in connection with the Debtors’ ongoing business operations, such services that are ordinarily provided by non-bankruptcy professionals. Nevertheless, out of an abundance of caution, the Debtors seek the relief requested herein to establish clear mechanisms for the retention and payment of the Ordinary Course Professionals and, thereby, avoid any subsequent controversy with respect thereto.

17. The Debtors represent that (a) the retention of the Ordinary Course Professionals is necessary for the day-to-day operations of the Debtors’ businesses, (b) the expenses for the Ordinary Course Professionals will be monitored, and (c) the Ordinary Course Professionals will not perform substantial bankruptcy-related services without filing an application with the Court for separate retention as a non-Ordinary Course Professional.

18. Moreover, the Debtors submit that, in light of the additional cost associated with the preparation of retention applications for professionals who would receive relatively small fees, it is impractical and inefficient for the Debtors to submit individual applications and proposed retention orders for each Ordinary Course Professional. Accordingly, the Debtors request that the Court dispense with any requirement of individual employment applications and retention orders for each Ordinary Course Professional.

19. Although certain of the Ordinary Course Professionals may hold unsecured claims against the Debtors for prepetition services rendered to the Debtors, the Debtors do not believe that any Ordinary Course Professional has an interest adverse to the Debtors or their estates with respect to the matters for which they are to be employed, and thus, all of the Ordinary Course Professionals that the Debtors propose to retain meet the applicable retention requirements under

section 327(e) of the Bankruptcy Code. By this Motion, the Debtors are not requesting authority to pay prepetition amounts owed to Ordinary Course Professionals.

20. Other than the Ordinary Course Professionals, all attorneys employed by the Debtors during the Chapter 11 Cases will be retained by the Debtors pursuant to separate retention applications. Such professionals shall be compensated in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and other orders of the Court.

21. Finally, courts in this jurisdiction routinely grant relief similar to that requested herein. *See, e.g., In re Yellow Corp.*, No. 23-11069 (CTG) (Bankr. D. Del. Sept. 20, 2023) [D.I. 617]; *In re Lannett Co., Inc.*, No. 23-10559 (JKS) (Bankr. D. Del. June 30, 2023) [D.I. 298]; *In re ExpressJet Airlines LLC*, No. 22-10787 (MFW) (Bankr. D. Del. Sep. 30, 2022) [D.I. 163]; *In re MD Helicopters, Inc.*, No. 22-10263 (KBO) (Bankr. D. Del. Apr. 20, 2022) [D.I. 181]; *In re BHCosmetics Holdings, LLC*, No. 22-10050 (CSS) (Bankr. D. Del. Feb. 7, 2022) [D.I. 131]; *In re Alto Maipo Del. LLC*, No. 21-11507 (KBO) (Bankr. D. Del. Dec. 17, 2021) [D.I. 171]. The Debtors submit that the circumstances described herein warrant similar relief.

Debtors' Reservation of Rights

22. 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 any Ordinary Course Professional or compensation thereof 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.

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

23. 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) given 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).

Notice

24. Notice of this Motion will be provided to the following parties: (a) the 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.); (h) each of the Ordinary Course Professionals listed on **Exhibit A** attached hereto; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the “**Notice Parties**”).

25. 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://veritaglobal.net/Fisker>. Based on 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 Order, substantially in the form attached hereto as **Exhibit B**, granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: June 26, 2024
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Brenna A. Dolphin

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Proposed Counsel to the Debtors and Debtors in Possession

**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)

Hearing Date:

July 16, 2024, at 11:00 a.m. (ET)

Objection Deadline:

July 10, 2024, at 4:00 p.m. (ET)

**NOTICE OF MOTION OF DEBTORS FOR ENTRY OF AN ORDER APPROVING
PROCEDURES FOR THE RETENTION AND COMPENSATION OF ORDINARY
COURSE PROFESSIONALS NUNC PRO TUNC TO THE PETITION DATE**

PLEASE TAKE NOTICE that on June 25, 2024, the above-captioned debtors and debtors in possession (the “**Debtors**”) filed the *Motion of Debtors for Entry of an Order Approving Procedures for the Retention and Compensation of Ordinary Course Professionals Nunc Pro Tunc to the Petition Date* (the “**Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

PLEASE TAKE FURTHER NOTICE that any responses or objections to approval of the relief requested in the Motion must be (a) in writing; (b) filed with the Clerk of the Bankruptcy Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, on or before **July 10, 2024, at 4:00 p.m. (ET)** (the “**Objection Deadline**”); and (c) served so as to be received on or before the Objection Deadline by the undersigned proposed counsel to the Debtors.

PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE MOTION WILL BE HELD ON JULY 16, 2024, AT 11:00 A.M. (ET) BEFORE THE HONORABLE BRENDAN L. SHANNON AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 6th FLOOR, COURTROOM #1, WILMINGTON, DELAWARE 19801.

PLEASE TAKE FURTHER NOTICE THAT ONLY OBJECTIONS MADE IN WRITING AND TIMELY FILED AND RECEIVED IN ACCORDANCE WITH THE PROCEDURES ABOVE WILL BE CONSIDERED BY THE COURT AT SUCH HEARING.

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 Dr, La Palma, CA 90623.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: June 26, 2024
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Brenna A. Dolphin

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Proposed Counsel to the Debtors and Debtors in Possession

Exhibit A

Ordinary Course Professionals List

Ordinary Course Professionals List

Ordinary Course Professional	Types of Matters Typically Handled for the Debtors	Work Description
Axiom Group	Customer warranty claims	Contract litigation counsel providing in-house support for warranty claims, arbitrations and enforcement actions
BDO	Tax	Tax advisory services
Denmeyer & Associates	Intellectual property matters	Global patent/trademark renewal service and database provider
Dykema Gossett PLLC	Regulatory and compliance matters	Support the Company related to National Highway Traffic Safety Administration matters
Fisher Phillips, LLP	Employment and immigration law matters	Ongoing employment legal advice on employee separations and WARN, manage defense of filed employee litigations, provide immigration advice and processing on critical remaining employees.
GRAF ISOLA	International restructuring matters	Support the Debtors and their interests regarding international restructuring matters.
Kraut Law Group	California state regulatory matters	Advice and counsel regarding title and registration matters
Nelson Mullins	Legal services related to litigation, dealer activities, regulatory matters and general matters	Advice, counsel and representation related to litigation, dealer activities, advertisement, regulatory and general matters.
Setter Roche Smith & Shellenberger LLP	Intellectual property matters	Patent and trademark prosecution.

Exhibit B

Proposed 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. _____

**ORDER APPROVING PROCEDURES FOR THE RETENTION AND
COMPENSATION OF ORDINARY COURSE PROFESSIONALS**

Upon the motion (the “**Motion**”)² of Fisker Inc. and certain of its affiliates (collectively, the “**Debtors**”), each of which is a debtor and debtor in possession in the Chapter 11 Cases, for entry of an order, pursuant to sections 105, 327, 328, and 330 of the Bankruptcy Code, Bankruptcy Rule 2014(a), and Local Rule 2014-1, approving procedures for the retention and compensation of Ordinary Course Professionals, 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. §§

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.

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 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 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 Debtors are authorized, but not directed, in their sole discretion to employ the Ordinary Course Professionals, *nunc pro tunc* to the Petition Date and to compensate such Ordinary Course Professionals pursuant to the terms and conditions set forth in **Exhibit 1** attached hereto (the “**OCP Compensation Procedures**”).
3. To the extent that any agreement between the Debtors and an Ordinary Course Professional provides for the indemnification by the Debtors of such Ordinary Course Professional in connection with the services that are the subject of the Motion (each such agreement, an “**Ordinary Course Professional Agreement**”), such indemnification provisions are approved subject to the following modifications, applicable during the pendency of the Chapter 11 Cases:

- (a) The Ordinary Course Professional shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Ordinary Course Professional Agreement for services other than the services provided under the Ordinary Course Professional Agreement, unless such services and the indemnification, contribution, or reimbursement are approved by the Court.
 - (b) Notwithstanding anything to the contrary in the Ordinary Course Professional Agreement, the Debtors shall have no obligation to indemnify the Ordinary Course Professional, or provide contribution or reimbursement to the Ordinary Course Professional, for any claim or expense that is either: (i) judicially determined (the determination having become final no longer subject to appeal) to have arisen from the Ordinary Course Professional's gross negligence, willful misconduct, or fraud; (ii) for a contractual dispute in which the Debtors allege the breach of the Ordinary Course Professional's contractual obligations if the Court determines that indemnification, contribution, or reimbursement would not be permissible under applicable law; (iii) of any type for which the Court determines that indemnification, contribution, or reimbursement would not be permissible; or (iv) settled prior to a judicial determination under (i) or (ii), but determined by the Court, after notice and a hearing, to be a claim or expense for which the Ordinary Course Professional should not receive indemnity, contribution, or reimbursement under the terms of the Ordinary Course Professional Agreement as modified by the Court.
 - (c) If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in the Chapter 11 Cases (that order having become a final order no longer subject to appeal) or (ii) the entry of an order closing the Chapter 11 Cases, the Ordinary Course Professional believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, and/or reimbursement obligations under the Ordinary Course Professional Agreement (as modified by this Order), including the advancement of defense costs, the Ordinary Course Professional must file an application therefor in the Court, and the Debtors may not pay any such amounts to the Ordinary Course Professional before the entry of an order by the Court approving the payment. All parties in interest shall retain the right to object to any demand by the Ordinary Course Professional for indemnification, contribution, or reimbursement. In the event that the Ordinary Course Professional seeks reimbursement from the Debtors for attorneys' fees and expenses in connection with the payment of an indemnity claim pursuant to the Ordinary Course Professional Agreement, the invoices and supporting time records for the attorneys' fees and expenses shall be included in the Ordinary Course Professional's own applications, both interim and final, but determined by the Court after notice and a hearing.
4. The Debtors' right to dispute any invoices shall not be affected or prejudiced in any manner by the relief granted in this Order.
5. This Order shall not apply to any professional retained by the Debtors pursuant to a separate order of the Court.

6. This Order is without prejudice to the Debtors' right to request modification of the Monthly Cap (as defined in the OCP Compensation Procedures).

7. Nothing in this Order shall preclude an Ordinary Course Professional from subsequently seeking retention as an estate professional under sections 327 or 328 of the Bankruptcy Code.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

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

Exhibit 1

OCP Compensation Procedures

OCP Compensation Procedures

(a) Each Ordinary Course Professional shall provide the Debtors' attorneys with a declaration (the "**Ordinary Course Professional Declaration**"), substantially in the form attached hereto as Annex A, certifying that the Ordinary Course Professional does not represent or hold any interest adverse to the Debtors or their estates with respect to the matter on which the Ordinary Course Professional is to be employed, and shall periodically update such Ordinary Course Professional Declaration to the extent necessary to reflect new facts or circumstances relevant to their retention.

(b) The Debtors' attorneys shall promptly file each Ordinary Course Professional Declaration with the Court and serve it on the following parties (collectively, the "**Reviewing Parties**"):

- (i) the U.S. Trustee (Attn: Linda Richenderfer);
- (ii) White & Case LLP, as counsel to CVI Investments, Inc. (c/o Heights Capital Management, Inc.); and
- (iii) counsel to any official committee appointed in the Chapter 11 Cases.

(c) The Reviewing Parties shall then have 10 days following such service (the "**Objection Deadline**") to notify the Debtors, the Debtors' attorneys, the other Reviewing Parties, and the applicable Ordinary Course Professional in writing of any objection to the retention stemming from the contents of the Ordinary Course Professional Declaration. The Debtors may extend the Objection Deadline as to any Reviewing Party without further order of the Court.

(d) If no objections are received by the Debtors by the Objection Deadline in accordance with paragraph (c) above, retention of the Ordinary Course Professional shall be deemed approved and effective as of the later of the Petition Date or the date the Ordinary Course Professional commenced work.

(e) If an objection is asserted by a Reviewing Party in accordance with paragraph (c) above and such objection is not resolved within 10 days of the Objection Deadline (the "**Resolution Deadline**"), the Debtors shall schedule the matter for a hearing before the Court to be held on the next regularly scheduled hearing date that is at least 14 days from the Resolution Deadline, or such other date that may be agreeable to the applicable Ordinary Course Professional, the Debtors, and the objecting Reviewing Party. No Ordinary Course Professional shall be paid any amounts for invoiced fees or expense reimbursement until the Ordinary Course Professional Declaration has been filed with the Court and (i) the Objection Deadline has passed with no objection asserted in accordance with paragraph (c) above or (ii) if an objection is asserted in accordance with paragraph (c) above, until such objection is resolved or upon order of the Court.

(f) Provided that the Ordinary Course Professional's retention has been approved in accordance with the above procedures, the Debtors shall be permitted to pay each Ordinary Course Professional, without further application to the Court and upon the submission to, and approval by, the Debtors of appropriate invoices setting forth in reasonable detail the nature of the services

rendered and disbursements incurred, 100% of the post-petition fees and disbursements incurred, up to \$300,000.00 per month on average over a rolling three-month period (the “**Monthly Cap**”) per Ordinary Course Professional. The Debtors may increase the Monthly Cap for any Ordinary Course Professional with the consent (email is sufficient) of the Reviewing Parties. Absent consent, the Debtors shall file a motion seeking Court authority to increase the Monthly Cap.

(g) Notwithstanding any professional being designated as an Ordinary Course Professional, the Debtors may choose to file a separate application to employ any Ordinary Course Professional pursuant to section 327 or 328 of the Bankruptcy Code in their discretion if the Debtors determine a separate retention application is advisable or appropriate. To the extent an Ordinary Course Professional seeks compensation in excess of its applicable Monthly Cap (the “**Excess Fees**”), the Ordinary Course Professional shall file with the Court a notice of fees in excess of the applicable cap (the “**Notice of Excess Fees**”) and an invoice setting forth, in reasonable detail, the nature of the services rendered, and disbursements actually incurred. The Reviewing Parties shall then have 14 days to file an objection to the Notice of Excess Fees with the Court. If no objection is filed after 14 days, the Excess Fees shall be deemed approved, and the Ordinary Course Professional may be paid 100% of its fees and 100% of its expenses without the need to file a fee application. If an objection is timely filed and such objection cannot be resolved within 21 days, the Debtors will schedule the matter for a hearing before the Court.

(h) Unless a chapter 11 plan has been confirmed, at three-month intervals during the pendency of the Chapter 11 Cases (each, a “**Quarter**”), beginning with the three-month interval which commences on the Petition Date, the Debtors shall file with the Court and serve on the Reviewing Parties, no later than 30 days after the end of such Quarter, a statement that shall include the following information for each Ordinary Course Professional: (i) the name of the Ordinary Course Professional; (ii) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses incurred by that Ordinary Course Professional during the reported Quarter; (iii) all post-petition payments made to that Ordinary Course Professional through the reported Quarter; and (iv) a general description of the services rendered by that Ordinary Course Professional. The initial Ordinary Course Professional statement shall cover the period beginning on the Petition Date and ending on July 16, 2024, and shall be filed no later than August 16, 2024.

(i) The Debtors reserve the right to retain additional Ordinary Course Professionals from time to time during the Chapter 11 Cases; *provided*, that such Ordinary Course Professionals comply with these procedures.

(j) If the Debtors seek to retain an Ordinary Course Professional not already listed on the Ordinary Course Professionals List during the Chapter 11 Cases, the Debtors will file with the Court and serve upon the Reviewing Parties a notice listing those Ordinary Course Professionals to be added to the Ordinary Course Professionals List (the “**Supplemental Notice of Ordinary Course Professionals**”), along with the attendant Ordinary Course Professionals’ Affidavits. Any Ordinary Course Professionals retained pursuant to the Supplemental Notice of Ordinary Course Professionals shall be subject to the terms and conditions set forth herein.

Annex A

Ordinary Course Professional Declaration

**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 DISINTERESTEDNESS OF

IN SUPPORT OF EMPLOYMENT OF

AS A PROFESSIONAL UTILIZED IN THE ORDINARY COURSE OF BUSINESS

_____, declares and says:

1. I am a [_____] of _____, located at _____ (the “**Firm**”).

2. 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 (the “**Chapter 11 Cases**”), have requested that the Firm provide [INSERT BRIEF DESCRIPTION OF SERVICES – E.G., ACCOUNTING] to the Debtors, and the Firm has consented to provide those services.

3. Pursuant to rule 2014 of the Federal Rules of Bankruptcy Procedure, the Firm hereby confirms that, to the best of its knowledge and belief, the Firm may have performed services

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.

in the past, may currently perform services, and may perform services in the future, in matters unrelated to the Chapter 11 Cases, for persons that are claimants or other parties in interest in the Chapter 11 Cases. The Firm does not perform services for any such person in connection with the Chapter 11 Cases.

4. Neither I nor [any partner or associate of the Firm], insofar as I have been able to ascertain, holds, or represents any interest adverse to the Debtors or their estates with respect to the matters on which the Firm is to be employed.

5. Neither I nor [any partner or associate of the Firm] has agreed to share or will share any portion of the compensation to be received from the Debtors with any person other than partners and associates of the Firm.

6. The Debtors owe the Firm \$_____ for prepetition services.

7. The Firm is conducting further inquiries regarding its retention by any creditors of the Debtors and, upon conclusion of that inquiry or at any time during the period of its employment, if the Firm should discover any facts bearing on the matter described herein, the Firm will supplement the information contained in this declaration.

8. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on _____, 2024.

[Name]