

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

In re

Nu Ride Inc., *et al.*,<sup>1</sup>

Reorganized Debtors.

Chapter 11

Case No. 23-10831 (MFW)

(Jointly Administered)

**Hearing Date: July, 11, 2024 at 2:00 pm (ET)**

**Obj. Deadline June 10, 2024**

**Re: ECF 1211**

**DECLARATION OF SHMUEL VASSER IN SUPPORT OF CLAIMANTS'  
RESPONSE TO POST-EFFECTIVE SATE DEBTORS' SECOND  
OMNIBUS SUBSTANTIVE OBJECTION SEEKING TO DISALLOW OR,  
ALTERNATIVELY, TO RECLASSIFY CERTAIN INDEMNIFICATION  
CLAIMS OF DIAMONDPEAK DIRECTORS AND OFFICERS**

I, Shmuel Vasser, an attorney admitted to practice in the State of New York, hereby affirms the following under the penalties of perjury:

1. I am a member of the law firm of Dechert LLP, located at 1095 Avenue of the Americas, New York, New York 10036, and counsel for David Hamamoto (“**Hamamoto**”).

2. I am fully familiar with the facts and circumstances set forth in this Declaration, which I submit in support of Claimants’ Omnibus Response to Post-Effective Date Debtors’ Second Omnibus Substantive Objection Seeking to Disallow or, Alternatively, to Reclassify Certain Indemnification Claims of DiamondPeak Directors and Officer, ECF 1211 (the “**Objection**”).

<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are: Lordstown Motors Corporation (3239); Lordstown EV Corporation (2250); and Lordstown EV Sales LLC (9101). The Debtors’ service address is 27000 Hills Tech Ct., Farmington Hills, MI 48331.



3. A true and correct copy of Mark Walsh’s Proof of Claim which was assigned Claim No. 1299, is attached hereto as **Exhibit 1**. Essentially identical Proofs of Claim were filed by all Claimants, other than Hamamoto.<sup>2</sup>

4. A true and correct copy of Hamamoto’s Proof which was assigned Claims No. 1333 is attached hereto as **Exhibit 2**. Hamamoto filed essentially identical Proofs of Claim at Claims Nos. 1334 and 1338.

5. A true and correct copy of the Delaware Settlement Agreement in the Delaware Court of Chancery action, entitled *In re Lordstown Motors Corp. Stockholders Litigation*, No. 2021-1066 (Del. Ch.) (“**Delaware Court of Chancery Action**”, is attached hereto as **Exhibit 3**.

6. A true and correct copy of the March 7, 2022 Order from Vice Chancellor Lori W. Will in the Delaware Court of Chancery Action, is attached hereto as **Exhibit 4**.

Dated: New York, New York  
June 10, 2024

/s/ Shmuel Vasser  
Shmuel Vasser  
Dechert LLP  
Three Bryant Park  
1095 Avenue of the Americas  
New York, NY 10036-6797  
Telephone: (212) 698-3500  
svasser@dechert.com

*Counsel for David Hamamoto*

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<sup>2</sup> Capitalized terms used and defined herein shall have the meaning ascribed to them in the Objection.

# EXHIBIT 1

**Fill in this information to identify the case:**

Debtor Lordstown Motors Corp.

United States Bankruptcy Court for the: \_\_\_\_\_ District of Delaware  
 (State)

Case number 23-10831

Official Form 410  
**Proof of Claim**

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** Mark Walsh and all affiliated entities  
 Name of the current creditor (the person or entity to be paid for this claim)  
 Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**

| Where should notices to the creditor be sent? | Where should payments to the creditor be sent? (if different) |
|---|---|
| See summary page                              |   |

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Contact phone 6504615600 Contact phone \_\_\_\_\_  
 Contact email oswelll@sullcrom.com Contact email \_\_\_\_\_

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
 \_\_\_\_\_

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_ \_\_\_ \_\_\_ \_\_\_

7. How much is the claim? \$ See attached addendum. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
  
See attached addendum.

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

- No
- Yes. Check all that apply:

Amount entitled to priority

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

- Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). \$ \_\_\_\_\_
- Up to \$3,350\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). \$ \_\_\_\_\_
- Wages, salaries, or commissions (up to \$15,150\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). \$ \_\_\_\_\_
- Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). \$ \_\_\_\_\_
- Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). \$ \_\_\_\_\_
- Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies. \$ \_\_\_\_\_

\* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

- No
- Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 10/10/2023  
MM / DD / YYYY

/s//s/ Laura Kabler Oswell  
Signature

Print the name of the person who is completing and signing this claim:

Name /s/ Laura Kabler Oswell  
First name Middle name Last name

Title \_\_\_\_\_

Company \_\_\_\_\_  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_ Email \_\_\_\_\_



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**KCC ePOC Electronic Claim Filing Summary**

For phone assistance: Domestic (877) 709-4757 | International 424-236-7235

|   |   |                                  |
|---|---|----------------------------------|
| <b>Debtor:</b><br>23-10831 - Lordstown Motors Corp.   |   |                                  |
| <b>District:</b><br>District of Delaware  |   |                                  |
| <b>Creditor:</b><br>Mark Walsh and all affiliated entities<br>Laura Kabler Oswell<br>Sullivan and Cromwell LLP<br>550 Hamilton Avenue<br>Palo Alto, California, 94301<br>United States<br><b>Phone:</b><br>6504615600<br><b>Phone 2:</b><br><br><b>Fax:</b><br><br><b>Email:</b><br>oswell@sullcrom.com | <b>Has Supporting Documentation:</b><br>Yes, supporting documentation successfully uploaded<br><b>Related Document Statement:</b>   |                                  |
|   | <b>Has Related Claim:</b><br>No<br><b>Related Claim Filed By:</b>   |                                  |
|   | <b>Filing Party:</b><br>Authorized agent  |                                  |
| <b>Other Names Used with Debtor:</b>  | <b>Amends Claim:</b><br>No<br><b>Acquired Claim:</b><br>No  |                                  |
| <b>Basis of Claim:</b><br>See attached addendum.  | <b>Last 4 Digits:</b><br>No   | <b>Uniform Claim Identifier:</b> |
| <b>Total Amount of Claim:</b><br>See attached addendum.   | <b>Includes Interest or Charges:</b><br>None  |                                  |
| <b>Has Priority Claim:</b><br>No  | <b>Priority Under:</b>  |                                  |
| <b>Has Secured Claim:</b><br>No<br><b>Amount of 503(b)(9):</b><br>No<br><b>Based on Lease:</b><br>No<br><b>Subject to Right of Setoff:</b><br>No  | <b>Nature of Secured Amount:</b><br><b>Value of Property:</b><br><b>Annual Interest Rate:</b><br><b>Arrearage Amount:</b><br><b>Basis for Perfection:</b><br><b>Amount Unsecured:</b> |                                  |
| <b>Submitted By:</b><br>/s/ Laura Kabler Oswell on 10-Oct-2023 9:10:16 a.m. Eastern Time<br><b>Title:</b><br><b>Company:</b>  |   |                                  |

Your claim can be filed electronically on KCC's website at <https://epoc.kccllc.net/lordstown>

|  |   |   |
|--|---|---|
| United States Bankruptcy Court for the District of Delaware  |   |   |
| Indicate Debtor against which you assert a claim by checking the appropriate box below. <b>(Check only one Debtor per claim form.)</b> |   |   |
| <input checked="" type="checkbox"/> Lordstown Motors Corp. (Case No. 23-10831)   | <input type="checkbox"/> Lordstown EV Corporation (Case No. 23-10832) | <input type="checkbox"/> Lordstown EV Sales LLC (Case No. 23-10833) |

## Official Form 410 Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Other than a claim under 11 U.S.C. § 503(b)(9), this form should not be used to make a claim for an administrative expense arising after the commencement of the case.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed.

### Part 1: Identify the Claim

|   |  |  |
|---|--|--|
| 1. <b>Who is the current creditor?</b>  | Mark Walsh and all affiliated entities, including but not limited to SP SPAC Sponsor LLC; Silverpeak Real Estate Partners L.P.; Silverpeak Strategic Partners LLC; Silverpeak Credit Partners LP; and Silverpeak Renewables Investment Partners LP<br>Name of the current creditor (the person or entity to be paid for this claim) _____<br><br>Other names the creditor used with the debtor _____ |  |
| 2. <b>Has this claim been acquired from someone else?</b>                       | <input checked="" type="checkbox"/> No<br><input type="checkbox"/> Yes. From whom? _____   |  |
| 3. <b>Where should notices and payments to the creditor be sent?</b>            | <b>Where should notices to the creditor be sent?</b><br>Mark Walsh C/O Laura Kabler Oswell Sullivan & Cromwell LLP<br>Name _____<br>550 Hamilton Avenue<br>Number Street<br>Palo Alto California 94301<br>City State ZIP Code<br>U.S.A.<br>Country _____<br>Contact phone (650) 461-5600<br>Contact email oswell@sullcrom.com  | <b>Where should payments to the creditor be sent? (if different)</b><br>Name _____<br>Number Street<br>City State ZIP Code<br>Country _____<br>Contact phone _____<br>Contact email _____<br><br>Uniform claim identifier for electronic payments in chapter 13 (if you use one):<br>_____ |
| 4. <b>Does this claim amend one already filed?</b>                              | <input checked="" type="checkbox"/> No<br><input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on ____ / ____ / ____   |  |
| 5. <b>Do you know if anyone else has filed a proof of claim for this claim?</b> | <input checked="" type="checkbox"/> No<br><input type="checkbox"/> Yes. Who made the earlier filing? _____   |  |



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_ \_

7. How much is the claim? \$ See Attached Addendum. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
See Attached Addendum.

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature of property:**  
 Real estate: If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_%  
 Fixed  
 Variable

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

|   |   |
|---|---|
| <input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).  | Amount entitled to priority<br>\$ _____ |
| <input type="checkbox"/> Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).  | \$ _____                                |
| <input type="checkbox"/> Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). | \$ _____                                |
| <input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).  | \$ _____                                |
| <input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).  | \$ _____                                |
| <input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.  | \$ _____                                |

\* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim entitled to administrative priority pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 10/10/2023  
MM / DD / YYYY

/s/ Laura Kabler Oswell  
Signature

Print the name of the person who is completing and signing this claim:

|               |   |                   |                                  |
|---------------|---|-------------------|----------------------------------|
| Name          | <u>Laura</u>  | <u>K.</u>         | <u>Oswell</u>                    |
|               | First name  | Middle name       | Last name                        |
| Title         | <u>Partner</u>  |                   |                                  |
| Company       | <u>Sullivan &amp; Cromwell LLP</u>  |                   |                                  |
|               | Identify the corporate servicer as the company if the authorized agent is a servicer. |                   |                                  |
| Address       | <u>550 Hamilton Avenue</u>  |                   |                                  |
|               | Number  | Street            |                                  |
|               | <u>Palo Alto</u>  | <u>California</u> | <u>94301</u>                     |
|               | City  | State             | ZIP Code                         |
|               |   |                   | <u>U.S.A.</u>                    |
|               |   |                   | Country                          |
| Contact phone | <u>(650) 461-5600</u>   |                   | Email <u>oswell@sullcrom.com</u> |

**Official Form 410****Instructions for Proof of Claim**

United States Bankruptcy Court

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These instructions and definitions generally explain the law. In certain circumstances, such as bankruptcy cases that debtors do not file voluntarily, exceptions to these general rules may apply. You should consider obtaining the advice of an attorney, especially if you are unfamiliar with the bankruptcy process and privacy regulations.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157 and 3571

**PLEASE SEND COMPLETED PROOF(S) OF CLAIM TO:**

Lordstown Claims Processing Center  
c/o KCC  
222 N. Pacific Coast Hwy., Ste. 300  
El Segundo, CA 90245

**How to fill out this form**

■ **Fill in all of the information about the claim as of the date the case was filed.**

■ **Fill in the caption at the top of the form**

■ **If the claim has been acquired from someone else, then state the identity of the last party** who owned the claim or was the holder of the claim and who transferred it to you before the initial claim was filed.

■ **Attach any supporting documents to this form.** Attach redacted copies of any documents that show that the debt exists, a lien secures the debt, or both. (See the definition of *redaction* on the next page.)

Also attach redacted copies of any documents that show perfection of any security interest or any assignments or transfers of the debt. In addition to the documents, a summary may be added. Federal Rule of Bankruptcy Procedure (called “Bankruptcy Rule”) 3001(c) and (d).

■ **Do not attach original documents because attachments may be destroyed after scanning.**

■ **If the claim is based on delivery health care goods or services, do not disclose confidential health care information. Leave out or redact confidential information both in the claim and in the attached documents.**

Alternatively, your claim can be filed electronically on KCC’s website at <https://epoc.kccllc.net/lordstown>.

■ **A *Proof of Claim* form and any attached documents must show only the last 4 digits of any social security number, individual’s tax identification number, or financial account number, and only the year of any person’s date of birth.** See Bankruptcy Rule 9037.

■ **For a minor child, fill in only the child’s initials and the full name and address of the child’s parent or guardian.** For example, write *A.B., a minor child (John Doe, parent, 123 Main St., City, State)*. See Bankruptcy Rule 9037.

**Confirmation that the claim has been filed**

To receive confirmation that the claim has been filed, either enclose a stamped self-addressed envelope and a copy of this form or you may view a list of filed claims in this case by visiting the Claims and Noticing and Agent’s website at <http://www.kccllc.net/lordstown>

**Understand the terms used in this form**

**Administrative expense:** Generally, an expense that arises after a bankruptcy case is filed in connection with operating, liquidating, or distributing that bankruptcy estate.  
11 U.S.C. § 503

**Claim:** A creditor’s right to receive payment for a debt that the debtor owed on the date the debtor filed for bankruptcy. 11 U.S.C. § 101 (5). A claim may be secured or unsecured.

**Claim Pursuant to 11 U.S.C. §503(b)(9):** A claim arising from the value of any goods received by the Debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of the Debtor's business. Attach documentation supporting such claim.

**Creditor:** A person, corporation, or other entity to whom a debtor owes a debt that was incurred on or before the date the debtor filed for bankruptcy. 11 U.S.C. §101 (10).

**Debtor:** A person, corporation, or other entity to who is in bankruptcy. Use the debtor's name and case number as shown in the bankruptcy notice you received. 11 U.S.C. §101 (13).

**Evidence of perfection:** Evidence of perfection of a security interest may include documents showing that a security interest has been filed or recorded, such as a mortgage, lien, certificate of title, or financing statement.

**Information that is entitled to privacy:** A *Proof of Claim* form and any attached documents must show only the last 4 digits of any social security number, an individual's tax identification number, or a financial account number, only the initials of a minor's name, and only the year of any person's date of birth. If a claim is based on delivering health care goods or services, limit the disclosure of the goods or services to avoid embarrassment or disclosure of confidential health care information. You may later be required to give more information if the trustee or someone else in interest objects to the claim.

**Priority claim:** A claim within a category of unsecured claims that is entitled to priority under 11 U.S.C. §507(a). These claims are paid from the available money or property in a bankruptcy case before other unsecured claims are paid. Common priority unsecured claims include alimony, child support, taxes, and certain unpaid wages.

**Proof of claim:** A form that shows the amount of debt the debtor owed to a creditor on the date of the bankruptcy filing. The form must be filed in the district where the case is pending.

**Redaction of information:** Masking, editing out, or deleting certain information to protect privacy. Filers must redact or leave out information entitled to **privacy** on the *Proof of Claim* form and any attached documents.

**Do not file these instructions with your form.**

**Secured claim under 11 U.S.C. §506(a):** A claim backed by a lien on particular property of the debtor. A claim is secured to the extent that a creditor has the right to be paid from the property before other creditors are paid. The amount of a secured claim usually cannot be more than the value of the particular property on which the creditor has a lien. Any amount owed to a creditor that is more than the value of the property normally may be an unsecured claim. But exceptions exist; for example, see 11 U.S.C. § 1322(b) and the final sentence of 1325(a).

Examples of liens on property include a mortgage on real estate a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In states, a court judgment may be a lien.

**Setoff:** Occurs when a creditor pays itself with money belonging to the debtor that it is holding, or by canceling a debt it owes to the debtor.

**Uniform claim identifier:** An optional 24-character identifier that some creditors use to facilitate electronic payment.

**Unsecured claim:** A claim that does not meet the requirements of a secured claim. A claim may be unsecured in part to the extent that the amount of the claim is more than the value of the property on which a creditor has a lien.

### Offers to purchase a claim

Certain entities purchase claims for an amount that is less than the face value of the claims. These entities may contact creditors offering to purchase their claims. Some written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court, the bankruptcy trustee, or the debtor. A creditor has no obligation to sell its claim. However, if a creditor decides to sell its claim, any transfer of that claim is subject to Bankruptcy Rule 3001(e), any provisions of the Bankruptcy Code (11 U.S.C. § 101 et seq.) that apply, and any orders of the bankruptcy court that apply.

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

In re

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

Debtors.

Chapter 11

Case No. 23-10831 (MFW)

(Jointly Administered)

**ATTACHMENT TO PROOF OF CLAIM OF MARK WALSH**

1. Mark Walsh (“Indemnitee”), hereby submits this proof of claim (the “Proof of Claim”) against Debtor Lordstown Motors Corp. (“Lordstown”) and the other Debtors<sup>2</sup> in the above-captioned Chapter 11 cases.<sup>3</sup>

2. Mr. Walsh has been named as a defendant in (i) a consolidated putative class action alleging breach of fiduciary claims pending in the Delaware Court of Chancery, entitled *In re Lordstown Motors Corp. Stockholders Litigation*, No. 2021-1066 (Del. Ch.) (the “Fiduciary Duty Litigation”), (ii) a derivative complaint pending in the U.S. District Court for the Northern District of Ohio, entitled *Thai v. Burns*, No. 21-cv-1267 (N.D. Ohio), (iii) a derivative complaint pending in the U.S. District Court for the District of Delaware, entitled *In re Lordstown Motors*

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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are: Lordstown Motors Corporation (3239); Lordstown EV Corporation (2250); and Lordstown EV Sales LLC (9101). The Debtors’ service address is 27000 Hills Tech Ct., Farmington Hills, MI 48331.

<sup>2</sup> This claim is being filed against all Debtors in the event it is determined that any other Debtor besides, or in addition to, Lordstown is liable to Mr. Walsh as to this Proof of Claim.

<sup>3</sup> Mr. Walsh submits this proof of claim on behalf of himself as Indemnitee, and on behalf of the entities that are affiliated with Mr. Walsh and entitled to indemnification rights pursuant to the indemnification agreements and rights discussed herein, including but not limited to: SP SPAC Sponsor LLC; Silverpeak Real Estate Partners L.P.; Silverpeak Strategic Partners LLC; Silverpeak Credit Partners LP; and Silverpeak Renewables Investment Partners LP.

*Corp. Shareholder Derivative Litigation*, No. 21-cv-604 (D. Del.), and (iv) two derivative actions pending in the Delaware Court of Chancery, which have been consolidated under the case name *In re Lordstown Motors Corp. Stockholder Derivative Litigation*, No. 2021-1049 (Del. Ch.) (collectively, all of these cases are referred to herein as the “Litigation”).

3. Pursuant to the Indemnity Agreement dated February 27, 2019<sup>4</sup> by and between Mark Walsh and DiamondPeak Holdings Corp. (“DiamondPeak”), which merged with Lordstown effective October 23, 2020, Debtor is obligated to indemnify, hold harmless, and exonerate Indemnitee against all Expenses, judgments, liabilities, fines, penalties and amounts paid in settlement (including, without limitation, the Fiduciary Duty Litigation Settlement Amount, as that term is defined *infra* ¶ 13) (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties and amounts paid in settlement) actually, and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with such Litigation or any claim, issue or matter therein in accordance with the provisions of the Indemnity Agreement. A copy of the Indemnity Agreement is attached hereto as Exhibit A.

4. In addition, Debtor is obligated to indemnify Mr. Walsh pursuant to Section 8.2 of the Second Amended and Restated Certificate of Incorporation of DiamondPeak, Section 8.1 of the Bylaws of DiamondPeak, and any other applicable contractual and statutory rights to indemnification and advancement, including pursuant to provisions of the Delaware General Corporate Law.

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<sup>4</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the February 27, 2019 Indemnity Agreement.

5. The Litigation qualifies as a Proceeding for which Mr. Walsh is entitled to exercise indemnification, hold harmless, exoneration, advancement and reimbursement rights from Debtor, because Mr. Walsh was named as defendant in the Litigation by reason of the fact that Mr. Walsh is or was a director or officer of DiamondPeak, by reason of any action (or failure to act) taken by Mr. Walsh or of any action (or failure to act) on Mr. Walsh's part while acting as a director or officer of DiamondPeak, or by reason of the fact that Mr. Walsh is or was serving at the request of DiamondPeak as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise. (Exhibit A, §§ 2(m), 3–8, 9(a), 10.)

6. Pursuant to Section 13(a) of the Indemnity Agreement, Mr. Walsh is presumed to be entitled to indemnification under the Indemnity Agreement in connection with the Litigation. (Exhibit A, § 13(a).)

7. Debtor is also obligated to pay the Expenses incurred by Indemnitee (or reasonably expected by Indemnitee to be incurred by Indemnitee within three months) in connection with the Litigation within ten (10) days after the receipt by Debtor of a statement or statements requesting such advances from time to time, prior to the final disposition of any Proceeding. (Exhibit A, §10(a).)

8. Pursuant to Section 11(a) of the Indemnity Agreement, Mr. Walsh provided notice in writing to Debtor that the Litigation, claim, issue or matter therein, may be subject to the indemnification, hold harmless or exoneration rights, or advancement of Expenses, pursuant to the Indemnity Agreement. (Exhibit A, § 11(a).) The written demand, dated May 9, 2023, is attached hereto as Exhibit B (the "Demand"). Prior written notice was provided to Lordstown contemporaneous with the filing of the initial complaints with respect to each Litigation.

9. Pursuant to Sections 13(b)–(e) of the Indemnification Agreement, Mr. Walsh shall be deemed to have acted in good faith because the conduct that is subject of the Litigation was based on the records or books of account of the Enterprise,<sup>5</sup> including financial statements, or on information supplied to Indemnitee by the directors, manager, or officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member, or on information or records given or reports made to the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member, by an independent certified public accountant or by an appraiser or other expert selected by the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member. (Exhibit A, § 13(b)–(e).)

10. Pursuant to Section 11(b) of the Indemnity Agreement and in furtherance of the Demand submitted May 9, 2023, Mr. Walsh delivers to the Debtor, through this Proof of Claim, written application to be indemnified, held harmless, or exonerated in accordance with the Indemnity Agreement. (Exhibit A, § 11(b).)

11. Mr. Walsh retains his rights for indemnification under the Indemnity Agreement, and did not assign, transfer, compromise or otherwise relinquish his rights to indemnification from the Indemnity Agreement.

12. The agreements and obligations of Lordstown contained in the Indemnity Agreement continued during the period Indemnitee served as a director of DiamondPeak, and

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<sup>5</sup> Enterprise is defined by the Indemnity Agreement as “[DiamondPeak] and any other corporation, constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger to which the Company (or any of its wholly owned subsidiaries) is a party, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent.” (Exhibit A, § 2(c)(iii)(g).)



survive thereafter during the period in which Indemnitee is or was subject to any possible Proceeding (including any rights of appeal thereto) by reason of Indemnitee's Corporate Status, whether or not Indemnitee acts or was acting in any such capacity at the time any liability or expense is incurred for which indemnification or advancement can be provided under the Indemnity Agreement. (Exhibit A, § 17.) Accordingly, Mr. Walsh is entitled to be indemnified, exonerated, and held harmless from and against any losses, claims, damages, liabilities, costs, expenses, attorneys' fees, ERISA taxes or penalties, judgments, fines, penalties, and amounts paid in settlement (including, without limitation, the Fiduciary Duty Litigation Settlement Amount) arising out of or in connection with the Litigation to the extent not covered by the existing insurance policies, numbered ELU160145-19 (AXA XL) (the "Insurance Policies"). (Exhibit A, §§ 3–8, 9(a), 10.)

13. Following several meetings and discussions between counsel to the parties to the Fiduciary Duty Litigation regarding a potential resolution over the course of several months, the parties participated in an all-day in-person mediation on September 27, 2023 before mediator Miles N. Ruthberg. The parties were unable to come to terms at the mediation, and engaged in more than a week of further negotiation facilitated by the mediator. As a result of those further mediated negotiations, on October 6, 2023, the parties to the Fiduciary Duty Litigation reached an agreement in principle to settle that litigation, pursuant to which Mr. Walsh, together with the other Defendants in that action, jointly agreed to pay a fixed amount (the "Fiduciary Duty Litigation Settlement Amount") subject to certain terms and conditions. On his behalf, Mr. Walsh's counsel disclosed the Fiduciary Duty Litigation Settlement Amount to Debtors, as well as the amount of the Fiduciary Duty Litigation Settlement Amount that is expected to be in excess of the Insurance Policies.

14. Mr. Walsh therefore asserts his Proof of Claim pursuant to the terms of the Indemnity Agreement for:

- a. The Fiduciary Duty Litigation Settlement Amounts that are not paid by the Insurance Policies;
- b. All Expenses, judgments, liabilities, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties and amounts paid in settlement) actually, and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with the Litigation or any claim, issue or matter therein, and any future Proceeding for which Mr. Walsh is entitled to such indemnification rights; and
- c. All attorneys' fees and other expenses (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties and amounts paid in settlement) actually, and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with the Litigation or any claim, issue or matter therein, and any future Proceeding for which Mr. Walsh is entitled to such indemnification rights.

15. Assertion of this Proof of Claim, and any election, exercise or grant of any rights or remedies referred to, implied by or set forth in this claim, does not, and is not intended to, preclude the election, exercise or grant of any other rights or remedies that may now or subsequently exist in law, in equity, by statute or otherwise.

16. Mr. Walsh reserves all rights to amend, modify and/or supplement any of the claims set forth herein in accordance with any orders of the Bankruptcy Court, the Bankruptcy Code and/or the Federal Rules of Bankruptcy Procedure and to file any amended, modified, additional and/or supplementary claims Mr. Walsh may have against any of the Debtors.

17. Mr. Walsh expressly reserves the right to attach, produce and/or rely upon additional documentation that supports his claims and any additional documents that may become available after further investigation or discovery, or upon request from the Debtors.

18. Mr. Walsh reserves all rights to assert that no claims hereunder have been or may be discharged or released and to file other claims which are not covered by this Proof of Claim. Mr. Walsh reserves, and does not waive, any and all rights and remedies he may have against any person other than Debtors who may be liable for all or part of the claims set forth in this Proof of Claim.

19. Nothing contained in this Proof of Claim nor subsequent appearance, pleading, claim or suit is intended to be a waiver or release of Mr. Walsh's rights (i) against the Debtors or any other person or entity, (ii) to a jury trial in any proceeding so triable herein or, in any case, any controversy or proceeding related hereto, (iii) to have any unliquidated portions of his claim determined by an applicable court other than the Bankruptcy Court, (iv) to have the reference withdrawn by the United States District Court for the District of Delaware in any matter subject to mandatory or discretionary withdrawal, (v) to setoff or recoupment, or (vi) to consent to the jurisdiction of the United States Bankruptcy Court other than in connection with the claims asserted herein.

20. Mr. Walsh submits this Proof of Claim without in any way acknowledging or admitting any wrongdoing, fault, liability, or damages in connection with the Litigation, including the Fiduciary Duty Litigation, and this Proof of Claim is made subject to and without waiver of Indemnitee's position that Indemnitee continues to deny any and all allegations of wrongdoing, liability, violations of law or damages arising out of or related to any of the conduct, statements, acts, or omissions alleged in the Litigation (including the Fiduciary Duty Litigation), and continues to maintain that their conduct was at all times proper, done in good faith, and in the best interests of the DiamondPeak predecessor entity and Debtor and their corresponding stockholders, and in compliance with applicable law.

21. All communications in connection with this Proof of Claim should be sent to:

Laura Kabler Oswell  
Sullivan & Cromwell LLP  
550 Hamilton Avenue,  
Palo Alto, California 94301  
Tel: (650) 461-5600  
Email: oswelll@sullcrom.com

With copies to:

Jacob M. Croke  
Sullivan & Cromwell LLP  
125 Broad Street,  
New York, New York 10004  
Tel: (212) 558-4000  
Email: crokej@sullcrom.com

Brian D. Glueckstein  
Sullivan & Cromwell LLP  
125 Broad Street,  
New York, New York 10004  
Tel: (212) 558-1635  
Email: gluecksteinb@sullcrom.com

# **Exhibit A**

## INDEMNITY AGREEMENT

**THIS INDEMNITY AGREEMENT** (this “*Agreement*”) is made as of February 27, 2019, by and between DiamondPeak Holdings Corp., a Delaware corporation (the “*Company*”), and Mark A. Walsh (“*Indemnitee*”).

### RECITALS

**WHEREAS**, highly competent persons have become more reluctant to serve publicly-held corporations as directors, officers or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of such corporations;

**WHEREAS**, the Board of Directors of the Company (the “*Board*”) has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. The Amended and Restated Certificate of Incorporation (the “*Charter*”) and the Bylaws (the “*Bylaws*”) of the Company require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to applicable provisions of the Delaware General Corporation Law (“*DGCL*”). The Charter, Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the Board, officers and other persons with respect to indemnification, hold harmless, exoneration, advancement and reimbursement rights;

**WHEREAS**, the uncertainties relating to such insurance and to indemnification have increased the difficulty of attracting and retaining such persons;

**WHEREAS**, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company’s stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

**WHEREAS**, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, hold harmless, exonerate and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so protected against liabilities;

**WHEREAS**, this Agreement is a supplement to and in furtherance of the Charter and Bylaws of the Company and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder;

**WHEREAS**, Indemnitee may not be willing to serve as an officer or director, advisor or in another capacity without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that Indemnitee be so indemnified; and

**NOW, THEREFORE**, in consideration of the premises and the covenants contained herein and subject to the provisions of the letter agreement dated as of February 27, 2019, the Company and Indemnitee do hereby covenant and agree as follows:

**TERMS AND CONDITIONS**

1. **SERVICES TO THE COMPANY.** In consideration of the Company's covenants and obligations hereunder, Indemnitee will serve or continue to serve as an officer, director, advisor, key employee or any other capacity of the Company, as applicable, for so long as Indemnitee is duly elected or appointed or retained or until Indemnitee tenders Indemnitee's resignation or until Indemnitee is removed. The foregoing notwithstanding, this Agreement shall continue in full force and effect after Indemnitee has ceased to serve as a director, officer, advisor, key employee or in any other capacity of the Company, as provided in Section 17. This Agreement, however, shall not impose any obligation on Indemnitee or the Company to continue Indemnitee's service to the Company beyond any period otherwise required by law or by other agreements or commitments of the parties, if any.

2. **DEFINITIONS.** As used in this Agreement:

(a) References to "**agent**" shall mean any person who is or was a director, officer or employee of the Company or a subsidiary of the Company or other person authorized by the Company to act for the Company, to include such person serving in such capacity as a director, officer, employee, fiduciary or other official of another corporation, partnership, limited liability company, joint venture, trust or other enterprise at the request of, for the convenience of, or to represent the interests of the Company or a subsidiary of the Company.

(b) The terms "**Beneficial Owner**" and "**Beneficial Ownership**" shall have the meanings set forth in Rule 13d-3 promulgated under the Exchange Act (as defined below) as in effect on the date hereof.

(c) A "**Change in Control**" shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:

(i) **Acquisition of Stock by Third Party.** Other than an affiliate of DiamondPeak Sponsor LLC ("**DiamondPeak Sponsor**"), any Person (as defined below) is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing fifteen percent (15%) or more of the combined voting power of the Company's then outstanding securities entitled to vote generally in the election of directors, unless (1) the change in the relative Beneficial Ownership of the Company's securities by any Person results solely from a reduction in the aggregate number of outstanding shares of securities entitled to vote generally in the election of directors, or (2) such acquisition was approved in advance by the Continuing Directors (as defined below) and such acquisition would not constitute a Change in Control under part (iii) of this definition;

(ii) **Change in Board of Directors.** Individuals who, as of the date hereof, constitute the Board, and any new director whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two thirds of the directors then still in office who were directors on the date hereof or whose election for nomination for election was previously so approved (collectively, the "**Continuing Directors**"), cease for any reason to constitute at least a majority of the members of the Board;

(iii) **Corporate Transactions.** The effective date of a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination, involving the Company and one or more businesses (a "**Business Combination**"), in each case, unless, following such Business Combination: (1) all or substantially all of the individuals and entities who were the Beneficial Owners of securities entitled to vote generally in the election of directors immediately prior to such Business Combination beneficially own, directly or indirectly, more than 51% of the combined voting power of the then outstanding securities of the Company entitled to vote generally in the election of directors resulting from such Business Combination (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more Subsidiaries (as defined below)) in substantially the same proportions as their ownership immediately prior to such Business Combination, of the securities entitled to vote generally in the election of directors; (2) other than an affiliate of DiamondPeak Sponsor, no Person (excluding any corporation resulting from such Business Combination) is the Beneficial Owner, directly or indirectly, of 15% or more of the combined voting power of the then outstanding securities entitled to vote generally in the election of directors of the surviving corporation except to the extent that such ownership existed prior to the Business

Combination; and (3) at least a majority of the Board of Directors of the corporation resulting from such Business Combination were Continuing Directors at the time of the execution of the initial agreement, or of the action of the Board of Directors, providing for such Business Combination;

(iv) Liquidation. The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement or series of agreements for the sale or disposition by the Company of all or substantially all of the Company's assets, other than factoring the Company's current receivables or escrows due (or, if such stockholder approval is not required, the decision by the Board to proceed with such a liquidation, sale, or disposition in one transaction or a series of related transactions); or

(v) Other Events. There occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or any successor rule) (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

(d) "**Corporate Status**" describes the status of a person who is or was a director, officer, trustee, general partner, manager, managing member, fiduciary, employee or agent of the Company or of any other Enterprise (as defined below) which such person is or was serving at the request of the Company.

(e) "**Delaware Court**" shall mean the Court of Chancery of the State of Delaware.

(f) "**Disinterested Director**" shall mean a director of the Company who is not and was not a party to the Proceeding (as defined below) in respect of which indemnification is sought by Indemnitee.

(g) "**Enterprise**" shall mean the Company and any other corporation, constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger to which the Company (or any of its wholly owned subsidiaries) is a party, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent.

(h) "**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended.

(i) "**Expenses**" shall include all direct and indirect costs, fees and expenses of any type or nature whatsoever, including, without limitation, all reasonable attorneys' fees and costs, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, fees of private investigators and professional advisors, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, fax transmission charges, secretarial services and all other disbursements, obligations or expenses in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, settlement or appeal of, or otherwise participating in, a Proceeding (as defined below), including reasonable compensation for time spent by Indemnitee for which he or she is not otherwise compensated by the Company or any third party. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding (as defined below), including without limitation the principal, premium, security for, and other costs relating to any cost bond, supersede as bond, or other appeal bond or its equivalent. "Expenses," however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(j) References to "**fines**" shall include any excise tax assessed on Indemnitee with respect to any employee benefit plan; references to "**servicing at the request of the Company**" shall include any service as a director, officer, employee, agent or fiduciary of the Company which imposes duties on, or involves services by, such director, officer, employee, agent or fiduciary with respect to an employee benefit plan, its participants or beneficiaries; and if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan, Indemnitee shall be deemed to have acted in a manner "**not opposed to the best interests of the Company**" as referred to in this Agreement.

(k) "**Independent Counsel**" shall mean a law firm or a member of a law firm with significant experience in matters of corporation law and that neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to



matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements); or (ii) any other party to the Proceeding (as defined below) giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement.

(l) The term “*Person*” shall have the meaning as set forth in Sections 13(d) and 14(d) of the Exchange Act as in effect on the date hereof; provided, however, that “Person” shall exclude: (i) the Company; (ii) any Subsidiaries (as defined below) of the Company; (iii) any employment benefit plan of the Company or of a Subsidiary (as defined below) of the Company or of any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company; and (iv) any trustee or other fiduciary holding securities under an employee benefit plan of the Company or of a Subsidiary (as defined below) of the Company or of a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

(m) The term “*Proceeding*” shall include any threatened, pending or completed action, suit, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil (including intentional or unintentional tort claims), criminal, administrative or investigative or related nature, in which Indemnitee was, is, will or might be involved as a party or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Company, by reason of any action (or failure to act) taken by Indemnitee or of any action (or failure to act) on Indemnitee’s part while acting as a director or officer of the Company, or by reason of the fact that Indemnitee is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Agreement.

(n) The term “*Subsidiary*,” with respect to any Person, shall mean any corporation, limited liability company, partnership, joint venture, trust or other entity of which a majority of the voting power of the voting equity securities or equity interest is owned, directly or indirectly, by that Person.

**3. INDEMNITY IN THIRD-PARTY PROCEEDINGS.** To the fullest extent permitted by applicable law, the Company shall indemnify, hold harmless and exonerate Indemnitee in accordance with the provisions of this Section 3 if Indemnitee was, is, or is threatened to be made, a party to or a participant (as a witness, deponent or otherwise) in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor by reason of Indemnitee’s Corporate Status. Pursuant to this Section 3, Indemnitee shall be indemnified, held harmless and exonerated against all Expenses, judgments, liabilities, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties and amounts paid in settlement) actually, and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal Proceeding, had no reasonable cause to believe that Indemnitee’s conduct was unlawful.

**4. INDEMNITY IN PROCEEDINGS BY OR IN THE RIGHT OF THE COMPANY.** To the fullest extent permitted by applicable law, the Company shall indemnify, hold harmless and exonerate Indemnitee in accordance with the provisions of this Section 4 if Indemnitee was, is, or is threatened to be made, a party to or a participant (as a witness, deponent or otherwise) in any Proceeding by or in the right of the Company to procure a judgment in its favor by reason of Indemnitee’s Corporate Status. Pursuant to this Section 4, Indemnitee shall be indemnified, held harmless and exonerated against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company. No indemnification, hold harmless or exoneration for Expenses shall be made under this Section 4 in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court to be liable to the Company, unless and only to the extent that any court in which the Proceeding was brought or the Delaware

Court shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnatee is fairly and reasonably entitled to indemnification, to be held harmless or to exoneration.

**5. INDEMNIFICATION FOR EXPENSES OF A PARTY WHO IS WHOLLY OR PARTLY SUCCESSFUL.** Notwithstanding any other provisions of this Agreement except for Section 27, to the extent that Indemnatee was or is, by reason of Indemnatee's Corporate Status, a party to (or a participant in) and is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnatee against all Expenses actually and reasonably incurred by Indemnatee in connection therewith. If Indemnatee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnatee against all Expenses actually and reasonably incurred by Indemnatee or on Indemnatee's behalf in connection with each successfully resolved claim, issue or matter. If Indemnatee is not wholly successful in such Proceeding, the Company also shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnatee against all Expenses reasonably incurred in connection with a claim, issue or matter related to any claim, issue, or matter on which Indemnatee was successful. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

**6. INDEMNIFICATION FOR EXPENSES OF A WITNESS.** Notwithstanding any other provision of this Agreement except for Section 27, to the extent that Indemnatee is, by reason of Indemnatee's Corporate Status, a witness or deponent in any Proceeding to which Indemnatee was or is not a party or threatened to be made a party, Indemnatee shall, to the fullest extent permitted by applicable law, be indemnified, held harmless and exonerated against all Expenses actually and reasonably incurred by Indemnatee or on Indemnatee's behalf in connection therewith.

**7. ADDITIONAL INDEMNIFICATION, HOLD HARMLESS AND EXONERATION RIGHTS.**

(a) Notwithstanding any limitation in Sections 3, 4, or 5, except for Section 27, the Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnatee if Indemnatee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties and amounts paid in settlement) actually and reasonably incurred by Indemnatee in connection with the Proceeding. No indemnification, hold harmless or exoneration rights shall be available under this Section 7(a) on account of Indemnatee's conduct which constitutes a breach of Indemnatee's duty of loyalty to the Company or its stockholders or is an act or omission not in good faith or which involves intentional misconduct or a knowing violation of the law.

(b) Notwithstanding any limitation in Sections 3, 4, 5 or 7(a), except for Section 27, the Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnatee if Indemnatee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties and amounts paid in settlement) actually and reasonably incurred by Indemnatee in connection with the Proceeding.

**8. CONTRIBUTION IN THE EVENT OF JOINT LIABILITY.**

(a) To the fullest extent permissible under applicable law, if the indemnification, hold harmless and/or exoneration rights provided for in this Agreement are unavailable to Indemnatee in whole or in part for any reason whatsoever, the Company, in lieu of indemnifying, holding harmless or exonerating Indemnatee, shall pay, in the first instance, the entire amount incurred by Indemnatee, whether for judgments, liabilities, fines, penalties, amounts paid or to be paid in settlement and/or for Expenses, in connection with any Proceeding without requiring

Indemnitee to contribute to such payment, and the Company hereby waives and relinquishes any right of contribution it may have at any time against Indemnitee.

(b) The Company shall not enter into any settlement of any Proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such Proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnitee.

(c) The Company hereby agrees to fully indemnify, hold harmless and exonerate Indemnitee from any claims for contribution which may be brought by officers, directors or employees of the Company other than Indemnitee who may be jointly liable with Indemnitee.

**9. EXCLUSIONS.** Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnification, advance expenses, hold harmless or exoneration payment in connection with any claim made against Indemnitee:

(a) for which payment has actually been received by or on behalf of Indemnitee under any insurance policy or other indemnity or advancement provision, except with respect to any excess beyond the amount actually received under any insurance policy, contract, agreement, other indemnity or advancement provision or otherwise;

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act (or any successor rule) or similar provisions of state statutory law or common law; or

(c) except as otherwise provided in Sections 14(f)-(g) hereof, prior to a Change in Control, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, hold harmless or exoneration payment, in its sole discretion, pursuant to the powers vested in the Company under applicable law. Indemnitee shall seek payments or Advances from the Company only to the extent that such payments or Advances are unavailable from any insurance policy of the Company covering Indemnitee.

**10. ADVANCES OF EXPENSES; DEFENSE OF CLAIM.**

(a) Notwithstanding any provision of this Agreement to the contrary, except for Section 27, and to the fullest extent not prohibited by applicable law, the Company shall pay the Expenses incurred by Indemnitee (or reasonably expected by Indemnitee to be incurred by Indemnitee within three months) in connection with any Proceeding within ten (10) days after the receipt by the Company of a statement or statements requesting such advances from time to time, prior to the final disposition of any Proceeding. Advances shall, to the fullest extent permitted by law, be unsecured and interest free. Advances shall, to the fullest extent permitted by law, be made without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to be indemnified, held harmless or exonerated under the other provisions of this Agreement. Advances shall include any and all reasonable Expenses incurred pursuing a Proceeding to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Company to support the advances claimed. To the fullest extent required by applicable law, such payments of Expenses in advance of the final disposition of the Proceeding shall be made only upon the Company's receipt of an undertaking, by or on behalf of Indemnitee, to repay the advanced amounts to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified, held harmless or exonerated by the Company under the provisions of this Agreement, the Charter, the Bylaws of the Company, applicable law or otherwise. This Section 10(a) shall not apply to any claim made by Indemnitee for which an indemnification, hold harmless or exoneration payment is excluded pursuant to Section 9.

(b) The Company will be entitled to participate in the Proceeding at its own expense.

(c) The Company shall not settle any action, claim or Proceeding (in whole or in part) which would impose any Expense, judgment, fine, penalty or limitation on Indemnatee without Indemnatee's prior written consent.

#### **11. PROCEDURE FOR NOTIFICATION AND APPLICATION FOR INDEMNIFICATION.**

(a) Indemnatee agrees to notify promptly the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding, claim, issue or matter therein which may be subject to indemnification, hold harmless or exoneration rights, or advancement of Expenses covered hereunder. The failure of Indemnatee to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnatee under this Agreement, or otherwise.

(b) Indemnatee may deliver to the Company a written application to indemnify, hold harmless or exonerate Indemnatee in accordance with this Agreement. Such application(s) may be delivered from time to time and at such time(s) as Indemnatee deems appropriate in his sole discretion. Following such a written application for indemnification by Indemnatee, Indemnatee's entitlement to indemnification shall be determined according to Section 12(a) of this Agreement.

#### **12. PROCEDURE UPON APPLICATION FOR INDEMNIFICATION.**

(a) A determination, if required by applicable law, with respect to Indemnatee's entitlement to indemnification shall be made in the specific case by one of the following methods, which shall be at the election of Indemnatee: (i) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (ii) by a committee of such directors designated by majority vote of such directors, (iii) if there are no Disinterested Directors or if such directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnatee, or (iv) by vote of the stockholders. The Company promptly will advise Indemnatee in writing with respect to any determination that Indemnatee is or is not entitled to indemnification, including a description of any reason or basis for which indemnification has been denied. If it is so determined that Indemnatee is entitled to indemnification, payment to Indemnatee shall be made within ten (10) days after such determination. Indemnatee shall reasonably cooperate with the person, persons or entity making such determination with respect to Indemnatee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnatee and reasonably necessary to such determination. Any costs or Expenses (including reasonable attorneys' fees and disbursements) incurred by Indemnatee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnatee's entitlement to indemnification) and the Company hereby agrees to indemnify and to hold Indemnatee harmless therefrom.

(b) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 12(a) hereof, the Independent Counsel shall be selected as provided in this Section 12(b). The Independent Counsel shall be selected by Indemnatee (unless Indemnatee shall request that such selection be made by the Board), and Indemnatee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected and certifying that the Independent Counsel so selected meets the requirements of "Independent Counsel" as defined in Section 2 of this Agreement. If the Independent Counsel is selected by the Board, the Company shall give written notice to Indemnatee advising Indemnatee of the identity of the Independent Counsel so selected and certifying that the Independent Counsel so selected meets the requirements of "Independent Counsel" as defined in Section 2 of this Agreement. In either event, Indemnatee or the Company, as the case may be, may, within ten (10) days after such written notice of selection shall have been received, deliver to the Company or to Indemnatee, as the case may be, a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 2 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court of competent jurisdiction has determined that such objection is without merit. If, within twenty (20) days after submission by Indemnatee of a written request for indemnification pursuant to Section 11(b) hereof, no Independent Counsel shall

have been selected and not objected to, either the Company or Indemnitee may petition the Delaware Court for resolution of any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the Delaware Court, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 12(a) hereof. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 14(a) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

(c) The Company agrees to pay the reasonable fees and expenses of Independent Counsel and to fully indemnify and hold harmless such Independent Counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

### **13. PRESUMPTIONS AND EFFECT OF CERTAIN PROCEEDINGS.**

(a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 11(b) of this Agreement, and the Company shall have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by the Disinterested Directors or Independent Counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by the Disinterested Directors or Independent Counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) If the person, persons or entity empowered or selected under Section 12 of this Agreement to determine whether Indemnitee is entitled to indemnification shall not have made a determination within thirty (30) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall, to the fullest extent permitted by law, be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a final judicial determination that any or all such indemnification is expressly prohibited under applicable law; provided, however, that such 30-day period may be extended for a reasonable time, not to exceed an additional fifteen (15) days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining or evaluating of documentation and/or information relating thereto.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(d) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the directors, manager, or officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member, or on information or records given or reports made to the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member, by an independent certified public accountant or by an appraiser or other expert selected by the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member. The provisions of this Section 13(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed or found to have met the applicable standard of conduct set forth in this Agreement.

(e) The knowledge and/or actions, or failure to act, of any other director, officer, trustee, partner, manager, managing member, fiduciary, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

#### 14. REMEDIES OF INDEMNITEE.

(a) In the event that (i) a determination is made pursuant to Section 12 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses, to the fullest extent permitted by applicable law, is not timely made pursuant to Section 10 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 12(a) of this Agreement within thirty (30) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to Section 5, 6, 7 or the last sentence of Section 12(a) of this Agreement within ten (10) days after receipt by the Company of a written request therefor, (v) a contribution payment is not made in a timely manner pursuant to Section 8 of this Agreement, (vi) payment of indemnification pursuant to Section 3 or 4 of this Agreement is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification, or (vii) payment to Indemnitee pursuant to any hold harmless or exoneration rights under this Agreement or otherwise is not made in accordance with this Agreement, Indemnitee shall be entitled to an adjudication by the Delaware Court to such indemnification, hold harmless, exoneration, contribution or advancement rights. Alternatively, Indemnitee, at Indemnitee's option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Except as set forth herein, the provisions of Delaware law (without regard to its conflict of laws rules) shall apply to any such arbitration. The Company shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) In the event that a determination shall have been made pursuant to Section 12(a) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 14 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination.

(c) In any judicial proceeding or arbitration commenced pursuant to this Section 14, Indemnitee shall be presumed to be entitled to be indemnified, held harmless, exonerated and to receive advancement of Expenses under this Agreement and the Company shall have the burden of proving Indemnitee is not entitled to be indemnified, held harmless, exonerated and to receive advancement of Expenses, as the case may be, and the Company may not refer to or introduce into evidence any determination pursuant to Section 12(a) of this Agreement adverse to Indemnitee for any purpose. If Indemnitee commences a judicial proceeding or arbitration pursuant to this Section 14, Indemnitee shall not be required to reimburse the Company for any advances pursuant to Section 10 until a final determination is made with respect to Indemnitee's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed).

(d) If a determination shall have been made pursuant to Section 12(a) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 14, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(e) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 14 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

(f) The Company shall indemnify and hold harmless Indemnitee to the fullest extent permitted by law against all Expenses and, if requested by Indemnitee, shall (within ten (10) days after the Company's receipt of such written request) pay to Indemnitee, to the fullest extent permitted by applicable law, such Expenses which are

incurred by Indemnitee in connection with any judicial proceeding or arbitration brought by Indemnitee: (i) to enforce his rights under, or to recover damages for breach of, this Agreement or any other indemnification, hold harmless, exoneration, advancement or contribution agreement or provision of the Charter, or the Bylaws now or hereafter in effect; or (ii) for recovery or advances under any insurance policy maintained by any person for the benefit of Indemnitee, regardless of the outcome and whether Indemnitee ultimately is determined to be entitled to such indemnification, hold harmless or exoneration right, advancement, contribution or insurance recovery, as the case may be (unless such judicial proceeding or arbitration was not brought by Indemnitee in good faith).

(g) Interest shall be paid by the Company to Indemnitee at the legal rate under Delaware law for amounts which the Company indemnifies, holds harmless or exonerates, or advances, or is obliged to indemnify, hold harmless or exonerate or advance for the period commencing with the date on which Indemnitee requests indemnification, to be held harmless, exonerated, contribution, reimbursement or advancement of any Expenses and ending with the date on which such payment is made to Indemnitee by the Company.

15. **SECURITY.** Notwithstanding anything herein to the contrary, except for Section 27, to the extent requested by Indemnitee and approved by the Board, the Company may at any time and from time to time provide security to Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of Indemnitee.

**16. NON-EXCLUSIVITY; SURVIVAL OF RIGHTS; INSURANCE; SUBROGATION.**

(a) The rights of Indemnitee as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Charter, the Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any Proceeding (regardless of when such Proceeding is first threatened, commenced or completed) or claim, issue or matter therein arising out of, or related to, any action taken or omitted by such Indemnitee in Indemnitee's Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in applicable law, whether by statute or judicial decision, permits greater indemnification, hold harmless or exoneration rights or advancement of Expenses than would be afforded currently under the Charter, the Bylaws or this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) The DGCL, the Charter and the Bylaws permit the Company to purchase and maintain insurance or furnish similar protection or make other arrangements including, but not limited to, providing a trust fund, letter of credit, or surety bond ("**Indemnification Arrangements**") on behalf of Indemnitee against any liability asserted against Indemnitee or incurred by or on behalf of Indemnitee or in such capacity as a director, officer, employee or agent of the Company, or arising out of Indemnitee's status as such, whether or not the Company would have the power to indemnify Indemnitee against such liability under the provisions of this Agreement or under the DGCL, as it may then be in effect. The purchase, establishment, and maintenance of any such Indemnification Arrangement shall not in any way limit or affect the rights and obligations of the Company or of Indemnitee under this Agreement except as expressly provided herein, and the execution and delivery of this Agreement by the Company and Indemnitee shall not in any way limit or affect the rights and obligations of the Company or the other party or parties thereto under any such Indemnification Arrangement.

(c) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, trustees, partners, managers, managing members, fiduciaries, employees, or agents of the Company or of any other Enterprise which such person serves at the request of the Company, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, trustee, partner, managers, managing member, fiduciary, employee or agent under such policy or policies. If, at the time the Company receives notice from any source of a Proceeding

as to which Indemnitee is a party or a participant (as a witness, deponent or otherwise), the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(d) In the event of any payment under this Agreement, the Company, to the fullest extent permitted by law, shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(e) The Company's obligation to indemnify, hold harmless, exonerate or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, trustee, partner, manager, managing member, fiduciary, employee or agent of any other Enterprise shall be reduced by any amount Indemnitee has actually received as indemnification, hold harmless or exoneration payments or advancement of expenses from such Enterprise. Notwithstanding any other provision of this Agreement to the contrary except for Section 27, (i) Indemnitee shall have no obligation to reduce, offset, allocate, pursue or apportion any indemnification, hold harmless, exoneration, advancement, contribution or insurance coverage among multiple parties possessing such duties to Indemnitee prior to the Company's satisfaction and performance of all its obligations under this Agreement, and (ii) the Company shall perform fully its obligations under this Agreement without regard to whether Indemnitee holds, may pursue or has pursued any indemnification, advancement, hold harmless, exoneration, contribution or insurance coverage rights against any person or entity other than the Company.

**17. DURATION OF AGREEMENT.** All agreements and obligations of the Company contained herein shall continue during the period Indemnitee serves as a director or officer of the Company or as a director, officer, trustee, partner, manager, managing member, fiduciary, employee or agent of any other corporation, partnership, joint venture, trust, employee benefit plan or other Enterprise which Indemnitee serves at the request of the Company and shall continue thereafter so long as Indemnitee shall be subject to any possible Proceeding (including any rights of appeal thereto and any Proceeding commenced by Indemnitee pursuant to Section 14 of this Agreement) by reason of Indemnitee's Corporate Status, whether or not Indemnitee is acting in any such capacity at the time any liability or expense is incurred for which indemnification or advancement can be provided under this Agreement.

**18. SEVERABILITY.** If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, each portion of any Section, paragraph or sentence of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section, paragraph or sentence of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

**19. ENFORCEMENT AND BINDING EFFECT.**

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director, officer or key employee of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director, officer or key employee of the Company.

(b) Without limiting any of the rights of Indemnitee under the Charter or Bylaws of the Company as they may be amended from time to time, this Agreement constitutes the entire agreement between the parties



hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

(c) The indemnification, hold harmless, exoneration and advancement of expenses rights provided by or granted pursuant to this Agreement shall be binding upon and be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company), shall continue as to an Indemnitee who has ceased to be a director, officer, employee or agent of the Company or a director, officer, trustee, general partner, manager, managing member, fiduciary, employee or agent of any other Enterprise at the Company's request, and shall inure to the benefit of Indemnitee and Indemnitee's spouse, assigns, heirs, devisees, executors and administrators and other legal representatives.

(d) The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(e) The Company and Indemnitee agree herein that a monetary remedy for breach of this Agreement, at some later date, may be inadequate, impracticable and difficult of proof, and further agree that such breach may cause Indemnitee irreparable harm. Accordingly, the parties hereto agree that Indemnitee may, to the fullest extent permitted by law, enforce this Agreement by seeking, among other things, injunctive relief and/or specific performance hereof, without any necessity of showing actual damage or irreparable harm and that by seeking injunctive relief and/or specific performance, Indemnitee shall not be precluded from seeking or obtaining any other relief to which Indemnitee may be entitled. The Company and Indemnitee further agree that Indemnitee shall, to the fullest extent permitted by law, be entitled to such specific performance and injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, without the necessity of posting bonds or other undertaking in connection therewith. The Company acknowledges that in the absence of a waiver, a bond or undertaking may be required of Indemnitee by a court of competent jurisdiction. The Company hereby waives any such requirement of such a bond or undertaking to the fullest extent permitted by law.

20. **MODIFICATION AND WAIVER.** No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the Company and Indemnitee. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions of this Agreement nor shall any waiver constitute a continuing waiver.

21. **NOTICES.** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) if delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, or (ii) mailed by certified or registered mail with postage prepaid, on the third (3rd) business day after the date on which it is so mailed:

(a) If to Indemnitee, at the address indicated on the signature page of this Agreement, or such other address as Indemnitee shall provide in writing to the Company.

(b) If to the Company, to:

DiamondPeak Holdings Corp.  
40 W 57<sup>th</sup> Street  
29<sup>th</sup> Floor  
New York, New York 10019  
Attention: David T. Hamamoto

With a copy, which shall not constitute notice, to

Ellenoff Grossman & Schole LLP  
1345 Avenue of the Americas

New York, New York 10105  
Attn: Stuart Neuhauser, Esq.  
Fax No.: (212) 370-7889

or to any other address as may have been furnished to Indemnitee in writing by the Company.

**22. APPLICABLE LAW AND CONSENT TO JURISDICTION.** This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 14(a) of this Agreement, to the fullest extent permitted by law, the Company and Indemnitee hereby irrevocably and unconditionally: (a) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Court and not in any other state or federal court in the United States of America or any court in any other country; (b) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement; (c) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court; and (d) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum, or is subject (in whole or in part) to a jury trial. To the fullest extent permitted by law, the parties hereby agree that the mailing of process and other papers in connection with any such action or proceeding in the manner provided by Section 21 or in such other manner as may be permitted by law, shall be valid and sufficient service thereof.

**23. IDENTICAL COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

**24. MISCELLANEOUS.** Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

**25. PERIOD OF LIMITATIONS.** No legal action shall be brought and no cause of action shall be asserted by or in the right of the Company against Indemnitee, Indemnitee's spouse, heirs, executors or personal or legal representatives after the expiration of two years from the date of accrual of such cause of action, and any claim or cause of action of the Company shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such two-year period; provided, however, that if any shorter period of limitations is otherwise applicable to any such cause of action such shorter period shall govern.

**26. ADDITIONAL ACTS.** If for the validation of any of the provisions in this Agreement any act, resolution, approval or other procedure is required to the fullest extent permitted by law, the Company undertakes to cause such act, resolution, approval or other procedure to be affected or adopted in a manner that will enable the Company to fulfill its obligations under this Agreement.

**27. WAIVER OF CLAIMS TO TRUST ACCOUNT.** Indemnitee hereby agrees that it does not have any right, title, interest or claim of any kind (each, a "*Claim*") in or to any monies in the trust account established in connection with the Company's initial public offering for the benefit of the Company and holders of shares issued in such offering, and hereby waives any Claim it may have in the future as a result of, or arising out of, any services provided to the Company and will not seek recourse against such trust account for any reason whatsoever.

**28. MAINTENANCE OF INSURANCE.** The Company shall use commercially reasonable efforts to obtain and maintain in effect during the entire period for which the Company is obligated to indemnify the Indemnitee under this Agreement, one or more policies of insurance with reputable insurance companies to provide the officers/directors of the Company with coverage for losses from wrongful acts and omissions and to ensure the Company's performance of its indemnification obligations under this Agreement. The Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director or officer under such policy or policies. In all such insurance policies, the Indemnitee shall be

named as an insured in such a manner as to provide the Indemnitee with the same rights and benefits as are accorded to the most favorably insured of the Company's directors and officers.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Indemnity Agreement to be signed as of the day and year first above written.

**DIAMONDPEAK HOLDINGS CORP.**

By: 

Name: David T. Hamamoto

Title: Chief Executive Officer

**INDEMNITEE**

By: \_\_\_\_\_

Name:

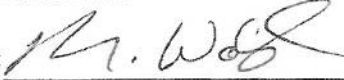
Address:

IN WITNESS WHEREOF, the parties hereto have caused this Indemnity Agreement to be signed as of the day and year first above written.

DIAMONDPEAK HOLDINGS CORP.

By: \_\_\_\_\_  
Name: David T. Hamamoto  
Title: Chief Executive Officer

INDEMNITEE

By:  \_\_\_\_\_  
Name: Mark A. Walsh  
Address:

# **Exhibit B**

## SULLIVAN & CROMWELL LLP

TELEPHONE: 1-650-461-5600  
FACSIMILE: 1-650-461-5700  
WWW.SULLCROM.COM

*1870 Embarcadero Road  
Palo Alto, California 94303-3308*

LOS ANGELES • NEW YORK • WASHINGTON, D.C.

BRUSSELS • FRANKFURT • LONDON • PARIS

BEIJING • HONG KONG • TOKYO

MELBOURNE • SYDNEY

May 9, 2023

Via E-mail

Lordstown Motors Corp.,  
2300 Hallock Young Rd., S.W.,  
Lordstown, OH 44481.

Attention: Melissa Leonard

Re: Notice of Demand for Indemnification

Dear Melissa:

On behalf of Steven Hash, David Hamamoto, Judith Hannaway, Andrew Richardson, and Mark Walsh (the “Indemnitees”), I write to provide this notice and demand for indemnification to Lordstown Motors Corp. (the “Company”).

As you know, the Indemnitees have been named in a consolidated putative class action alleging breach of fiduciary claims pending in the Delaware Court of Chancery, entitled *In re Lordstown Motors Corp. Stockholders Litigation*, No. 2021-1066 (Del. Ch.). In addition, the Indemnitees have been named in a derivative complaint pending in the U.S. District Court for the Northern District of Ohio, entitled *Thai v. Burns*, No. 21-cv-1267 (N.D. Ohio), as well as a derivative complaint pending in the U.S. District Court for the District of Delaware, entitled *In re Lordstown Motors Corp. Shareholder Derivative Litigation*, No. 21-cv-604 (D. Del.). Finally, the Indemnitees have been named in two derivative actions pending in the Delaware Court of Chancery, which have been consolidated under the case name *In re Lordstown Motors Corp. Stockholder Derivative Litigation*, No. 2021-1049 (Del. Ch.). David Hamamoto has also been named in a securities class action complaint pending in the U.S. District Court for the Northern District of Ohio, consolidated under the case name *In re Lordstown Motors Corp. Securities Litigation*, No. 21-cv-616 (N.D. Ohio) (collectively, all of these cases are referred to herein as the “Litigation”).

The claims in the Litigation are subject to indemnification and advancement as provided by (i) Section 8.2 of the Second Amended and Restated Certificate of Incorporation of DiamondPeak Holdings Corp. (the “Charter”); (ii) Section 8.1 of the Bylaws of DiamondPeak Holdings Corp. (the “Bylaws”); (iii) the Indemnification Agreements between each Indemnitee and DiamondPeak Holdings Corp. dated February

Lordstown Motors Corp.

-2-

27, 2019 (the “Indemnification Agreements”); and (iv) other applicable contractual and statutory rights to indemnification and advancement, including pursuant to provisions of the Delaware General Corporate Law.

The Indemnitees hereby demand the Company indemnify, exonerate, and hold harmless the Indemnitees from and against any losses, claims, damages, liabilities, costs, expenses, attorneys’ fees, ERISA taxes or penalties, judgments, fines, penalties, and amounts paid in settlement arising out of or in connection with the Litigation to the extent not covered by the existing insurance policies, numbered ELU160145-19 (AXA XL) (the “Insurance Policies”). The Indemnitees also request that the Company pay in advance all reasonable expenses incurred by the Indemnitees arising out of or in connection with the Litigation or any future claims or litigation arising out of similar allegations as have been made in the Litigation) to the extent not covered by the Insurance Policies.

The Indemnitees reserve all rights, claims, and remedies. Nothing in this letter or any action (or inaction) of the Indemnitees or their representatives shall waive, limit, or modify any of their rights, claims, and remedies.

Sincerely,

*/s/ Laura Kabler Oswell*

Laura Kabler Oswell



# EXHIBIT 2

**Fill in this information to identify the case:**

Debtor Lordstown EV Corporation

United States Bankruptcy Court for the: \_\_\_\_\_ District of Delaware  
(State)

Case number 23-10832

**Official Form 410  
Proof of Claim**

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

|  |  |   |
|--|--|---|
| 1. Who is the current creditor?  | <u>David T. Hamamoto</u><br>Name of the current creditor (the person or entity to be paid for this claim)  |   |
|  | Other names the creditor used with the debtor _____  |   |
| 2. Has this claim been acquired from someone else?                       | <input checked="" type="checkbox"/> No<br><input type="checkbox"/> Yes. From whom? _____   |   |
| 3. Where should notices and payments to the creditor be sent?            | Where should notices to the creditor be sent?<br>See summary page  | Where should payments to the creditor be sent? (if different) |
| Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)                      | Contact phone <u>2126983500</u><br>Contact email <u>See summary page</u>   | Contact phone _____<br>Contact email _____                    |
|  | Uniform claim identifier for electronic payments in chapter 13 (if you use one):<br>_____  |   |
| 4. Does this claim amend one already filed?                              | <input checked="" type="checkbox"/> No<br><input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____<br><span style="float: right;">MM / DD / YYYY</span> |   |
| 5. Do you know if anyone else has filed a proof of claim for this claim? | <input checked="" type="checkbox"/> No<br><input type="checkbox"/> Yes. Who made the earlier filing? _____   |   |



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_ \_

---

7. How much is the claim? \$ Unknown/Unliquidated. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

---

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
  
See attached addendum

---

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

|   | Amount entitled to priority |
|---|-----------------------------|
| <input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).  | \$ _____                    |
| <input type="checkbox"/> Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).  | \$ _____                    |
| <input type="checkbox"/> Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). | \$ _____                    |
| <input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).  | \$ _____                    |
| <input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).  | \$ _____                    |
| <input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.  | \$ _____                    |

\* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 10/10/2023  
MM / DD / YYYY

/s/Andrew Levander  
Signature

Print the name of the person who is completing and signing this claim:

Name Andrew Levander  
First name Middle name Last name

Title Partner

Company Dechert LLP  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_ Email \_\_\_\_\_



Case 23-10831-MFW Doc 1260-1 Filed 06/10/24 Page 43 of 106  
 KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 709-4757 | International 424-236-7235

|  |   |                                  |
|--|---|----------------------------------|
| <b>Debtor:</b><br>23-10832 - Lordstown EV Corporation  |   |                                  |
| <b>District:</b><br>District of Delaware   |   |                                  |
| <b>Creditor:</b><br>David T. Hamamoto<br>c/o Andrew Levander and Shmuel Vasser, Dechert LLP<br>1095 Avenue of the Americas<br><br>New York, New York, 10036<br><br><b>Phone:</b><br>2126983500<br><br><b>Phone 2:</b><br><br><b>Fax:</b><br><br><b>Email:</b><br>andrew.levander@dechert.com,<br>shmuel.vasser@dechert.com | <b>Has Supporting Documentation:</b><br>Yes, supporting documentation successfully uploaded<br><br><b>Related Document Statement:</b>   |                                  |
|  | <b>Has Related Claim:</b><br>No<br><br><b>Related Claim Filed By:</b>   |                                  |
|  | <b>Filing Party:</b><br>Authorized agent  |                                  |
| <b>Other Names Used with Debtor:</b>   | <b>Amends Claim:</b><br>No<br><br><b>Acquired Claim:</b><br>No  |                                  |
| <b>Basis of Claim:</b><br>See attached addendum  | <b>Last 4 Digits:</b><br>No   | <b>Uniform Claim Identifier:</b> |
| <b>Total Amount of Claim:</b><br>Unknown/Unliquidated  | <b>Includes Interest or Charges:</b><br>No  |                                  |
| <b>Has Priority Claim:</b><br>No   | <b>Priority Under:</b>  |                                  |
| <b>Has Secured Claim:</b><br>No<br><br><b>Amount of 503(b)(9):</b><br>No<br><br><b>Based on Lease:</b><br>No<br><br><b>Subject to Right of Setoff:</b><br>No   | <b>Nature of Secured Amount:</b><br><b>Value of Property:</b><br><br><b>Annual Interest Rate:</b><br><br><b>Arrearage Amount:</b><br><br><b>Basis for Perfection:</b><br><br><b>Amount Unsecured:</b> |                                  |
| <b>Submitted By:</b><br>Andrew Levander on 10-Oct-2023 1:57:32 p.m. Eastern Time<br><br><b>Title:</b><br>Partner<br><br><b>Company:</b><br>Dechert LLP   |   |                                  |

# EXHIBIT 3



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

IN RE LORDSTOWN MOTORS CORP.  
STOCKHOLDERS LITIGATION

Consolidated  
C.A. No. 2021-1066-LWW

**STIPULATION AND AGREEMENT OF SETTLEMENT,  
COMPROMISE, AND RELEASE**

This Stipulation and Agreement of Settlement, Compromise, and Release, dated March 4, 2024 (the “Stipulation”), is entered into by and among: (i) Co-Lead Plaintiffs Atri Amin and Benjamin Hebert (collectively, “Plaintiffs”); on behalf of themselves and the other members of the Settlement Class (as defined in Paragraph 1(z) below); and (ii) Defendants David Hamamoto, Mark Walsh, Andrew Richardson, Steven Hash, and Judith Hannaway (collectively, “Defendants”) (Plaintiffs and Defendants, together, the “Parties”).<sup>1</sup> Subject to the terms and conditions set forth herein and the approval of the Court of Chancery of the State of Delaware (the “Court”) under Delaware Court of Chancery Rule 23, the Settlement embodied in this Stipulation is intended to be a full and final disposition of the claims asserted against Defendants in the above-captioned consolidated stockholder class action (the “Action”).

---

<sup>1</sup> All terms herein with initial capitalization shall, unless defined elsewhere in this Stipulation, have the meanings given to them in Paragraph 1 below.

**WHEREAS:**

**Summary of the Action**

A. On March 4, 2019, DiamondPeak Holdings Corp. (“DiamondPeak”), a special purpose acquisition company formed for the purpose of effecting a merger or other business combination, completed its initial public offering.

B. On August 1, 2020, DiamondPeak and Lordstown EV Corporation (“Legacy LMC”) entered into an Agreement and Plan of Merger (such merger agreement with any amendments thereto, the “Merger Agreement”), pursuant to which Legacy LMC would become a fully owned subsidiary of DiamondPeak (the “Merger”), with the post-Merger entity named Lordstown Motors Corp. (“Lordstown”).

C. On October 8, 2020, DiamondPeak filed a definitive proxy statement pursuant to Section 14(a) of the Securities Exchange Act of 1934 with the United States Securities and Exchange Commission relating to the Merger (such proxy statement together with any preliminary proxy filings, as well as any amendments or supplements thereto, the “Proxy”).

D. On October 22, 2020, DiamondPeak stockholders voted to approve the Merger.

E. On October 23, 2020, the Merger closed.



F. On June 17 and 23, 2021, Benjamin Hebert and Atri Amin, respectively, made demands pursuant to 8 *Del C.* § 220 to inspect certain documents of Lordstown (the “Demands”). In response to the Demands, Lordstown produced over 1,400 pages of documents to Benjamin Hebert and Atri Amin.

G. On December 8, 2021, Benjamin Hebert commenced an action bearing the caption *Hebert v. Hamamoto, et al.*, C.A. No. 2021-1066-LWW (the “Hebert Action”), on behalf of himself and all other similarly situated current and former DiamondPeak stockholders, against Defendants and DiamondPeak Sponsor LLC (“DiamondPeak Sponsor”), asserting claims for breach of fiduciary duty in connection with the Merger.

H. On December 13, 2021, Atri Amin commenced an action bearing the caption *Atri Amin v. David Hamamoto, et al.*, C.A. No. 2021-1085-LWW (the “Amin Action”), on behalf of himself and all other similarly situated current and former DiamondPeak stockholders, against Defendants and DiamondPeak Sponsor, also asserting claims for breach of fiduciary duty in connection with the Merger.

I. On January 10, 2022, DiamondPeak Sponsor moved to dismiss the complaints under Court of Chancery Rules 12(b)(6) and 23.1 in the Amin and Hebert Actions.

J. On January 18, 2022, Defendants moved to dismiss the complaints under Court of Chancery Rules 12(b)(6) and 23.1 in the Amin and Hebert Actions.

After Defendants' motions to dismiss were fully briefed and submitted to the Court for decision, Defendants withdrew their motions on May 6, 2022.

K. On January 19, 2022, Defendants filed motions to stay (the "Motion to Stay") in both the Amin Action and the Hebert Action.

L. On February 11, 2022, the Court entered an Order, which consolidated the Hebert and Amin Actions for all purposes into the consolidated Action and, among other things, appointed Messrs. Amin and Hebert as co-lead plaintiffs in the Action, appointed the law firms of Bernstein Litowitz Berger & Grossmann LLP and Pomerantz LLP as co-lead counsel in the Action ("Plaintiffs' Co-Lead Counsel"), and designated the Verified Class Action Complaint filed in the Amin Action as the operative complaint in the Action.

M. On March 7, 2022, the Court denied the Motion to Stay.

N. On July 22, 2022, Plaintiffs filed a verified amended class action complaint (the "Complaint"). The Complaint advanced two breach of fiduciary duty claims against (i) Defendants in their capacities as DiamondPeak directors and (ii) Defendants Hamamoto and Walsh in their capacities as DiamondPeak's alleged controlling stockholders. The Complaint alleged that (i) Defendants breached their fiduciary duties by, among other things, issuing a false and misleading Proxy, which allegedly interfered with DiamondPeak minority stockholders' ability to make an informed redemption decision and (ii) Defendants Hamamoto and Walsh acted to

advance their own interests by pursuing a transaction with Legacy LMC to the detriment of minority stockholders. The Complaint further alleged that, as a result, Plaintiffs and the Class were harmed by not exercising their redemption rights prior to the Merger. The Complaint sought damages on behalf of Plaintiffs and the Class resulting from these alleged breaches of fiduciary duty.

O. On October 14, 2022, DiamondPeak Sponsor and Defendants moved to dismiss the Complaint under Court of Chancery Rules 12(b)(6) and 23.1. After Defendants' second round of motions to dismiss was fully briefed and submitted to the Court for decision, Defendants withdrew their motion on January 5, 2023.

P. On January 11, 2023, the Court entered a Stipulation and Order for the Production and Exchange of Confidential Information.

Q. On February 2, 2023, the Court entered a Stipulation and Order Governing Case Schedule.

R. On February 3, 2023, Defendants filed an Answer to the Complaint (the "Answer"). In the Answer, Defendants asserted defenses to Plaintiffs' claims, including that: (i) the Complaint failed to state a claim upon which relief could be granted; (ii) Plaintiffs' claims failed because the business judgment rule applied; (iii) Plaintiffs' claims were barred by the 8 *Del. C.* § 102(b)(7) exculpatory provision in DiamondPeak's certificate of incorporation "eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary

damages for breach of” the fiduciary duty of care; (iv) Defendants’ conduct did not cause any damages to Plaintiffs or the Class; (v) Plaintiffs’ claims failed under the doctrine of acquiescence because they voted in favor of the Merger and elected not to redeem their shares; and (vi) Plaintiffs’ claims were barred by 8 *Del. C.* § 141(e) because Defendants relied in good faith upon the records of DiamondPeak and information presented by DiamondPeak’s officers and/or advisors.

S. On May 8, 2023, Plaintiffs filed a motion to compel directed at non-party Lordstown, which the Court granted in part and denied in part on June 9, 2023.

T. On June 21, 2023, the Court entered a Stipulation and Order of Dismissal of DiamondPeak Sponsor without prejudice.

U. On June 27, 2023, Lordstown filed a suggestion of bankruptcy and notice of the automatic stay.

V. On June 29, 2023, Lordstown filed a Corrected Suggestion of Bankruptcy and Notice of Automatic Stay, clarifying that the automatic stay did not automatically apply to actions against non-debtors, including the Action.

W. On July 5, 2023, Lordstown and its affiliated debtors filed a complaint for injunctive relief against the Plaintiffs and a motion to extend the automatic stay and for injunctive relief pursuant to 11 U.S.C. § 105 (the “Motion to Extend the Automatic Stay”) in the United States Bankruptcy Court for the District of Delaware

bearing the caption *Lordstown Motors Corp., et al., v. Amin et al.*, Docket No. 1:23-ap-50428 (Bankr. D. Del.) (the “Adversary Bankruptcy Action”).

X. On July 19, 2023, Plaintiffs’ Co-Lead Counsel and Plaintiffs’ bankruptcy counsel filed an opposition to the Motion to Extend the Automatic Stay in the Adversary Bankruptcy Action.

Y. On July 21, 2023, Plaintiffs filed a motion for class certification under Court of Chancery Rule 23, which has been fully briefed.

Z. On August 17, 2023, following a hearing with live witness testimony, the Motion to Extend the Automatic Stay was denied in the Adversary Bankruptcy Action, allowing Plaintiffs to continue prosecuting the Action.

AA. On August 28, 2023, the court in the Adversary Bankruptcy Action entered an Order Approving Stipulation Staying the Adversary Proceeding.

BB. Between July 2022 and October 2023, the Parties engaged in the following document and other written discovery: (i) Plaintiffs propounded 70 requests for production of documents to Defendants, served 48 interrogatories directed to Defendants, and served subpoenas on 12 third parties; (ii) Plaintiffs obtained over 139,207 pages and 138,288 pages of documents from their discovery requests propounded to Defendants and third parties, respectively, as well as responses to interrogatories; (iii) Plaintiffs responded to over 52 document requests and 52 interrogatories propounded by Defendants and produced responsive

documents to Defendants' discovery requests; and (iv) Plaintiffs filed a motion to compel discovery against Lordstown.

CC. Between January and October 2023, while discovery was proceeding, the Parties engaged in discussions concerning, among other things, the merits of the claims and defenses asserted in the Action.

DD. On September 27, 2023, the Parties attended a full day, in-person mediation session (the "Mediation") overseen by an experienced neutral mediator, Miles Ruthberg of Phillips ADR Enterprises (the "Mediator"). Plaintiffs set forth a summary of their claims, the issues presented in the Action, and the relief sought, as summarized in paragraph N above. Defendants set forth their defenses, as summarized in paragraph R above. Although the Mediation session concluded without a settlement agreement, the Parties continued for several weeks thereafter to negotiate the terms of a potential resolution of the Action with the assistance and under the oversight of the Mediator.

EE. On October 31, 2023, following extensive arm's-length negotiations, the Parties entered into a confidential term sheet (the "Term Sheet") that reflected the Parties' agreement in principle to settle the Action, subject to certain terms and conditions and the execution of a customary "long form" stipulation and agreement of settlement and related papers.

FF. This Stipulation (together with the Exhibits hereto) reflects the final and binding agreement among the Parties, and supersedes the Term Sheet.

**Plaintiffs' Claims and the Benefits of the Settlement**

GG. Plaintiffs believe that the claims asserted in the Action have merit, but also believe that the Settlement set forth herein provides substantial and immediate benefits for the Settlement Class (as defined herein). In addition to these substantial benefits, Plaintiffs and Plaintiffs' Co-Lead Counsel have considered: (i) the attendant risks of continued litigation and the uncertainty of the outcome of the Action; (ii) the probability of success on the merits; (iii) the inherent problems of proof associated with, and possible defenses to, the claims asserted in the Action; (iv) the desirability of permitting the Settlement to be consummated according to its terms; (v) the expense and length of continued proceedings necessary to prosecute the Action through trial and appeals; and (vi) the conclusion of Plaintiffs and Plaintiffs' Co-Lead Counsel that the terms and conditions of the Settlement and this Stipulation are fair, reasonable, and adequate, and that it is in the best interests of the Settlement Class to settle the claims asserted in the Action on the terms set forth herein.

HH. Based on Plaintiffs' Co-Lead Counsel's thorough review and analysis of the relevant facts, allegations, defenses, and controlling legal principles, Plaintiffs' Co-Lead Counsel believe that the Settlement set forth in this Stipulation

is fair, reasonable, and adequate, and confers substantial benefits upon the Settlement Class. Based upon Plaintiffs' Co-Lead Counsel's evaluation, as well as their own evaluations, Plaintiffs have determined that the Settlement is in the best interests of the Settlement Class, and have agreed to the terms and conditions set forth in this Stipulation.

**Defendants' Denial of Wrongdoing and Liability**

II. Defendants deny any and all allegations of wrongdoing, fault, liability, or damages with respect to the Action and Plaintiffs' Released Claims, including, but not limited to, any allegations that Defendants have committed any violations of law or breach of any duty owed to DiamondPeak or Lordstown stockholders, that the Merger was not entirely fair to, or in the best interests of, DiamondPeak and Lordstown stockholders, that Defendants have acted improperly in any way, or that Defendants have any liability or owe any damages of any kind to Plaintiffs and/or the Settlement Class. Defendants maintain that their conduct was at all times proper, in the best interests of DiamondPeak, Lordstown, and their stockholders, and in compliance with applicable law. Defendants also deny that DiamondPeak's stockholders were harmed by any conduct of Defendants that was alleged, or that could have been alleged, in the Action. Each of the Defendants asserts that, at all relevant times, such Defendant acted in good faith and in a manner believed to be in the best interests of DiamondPeak, Lordstown and all of their stockholders.



**NOW THEREFORE**, it is **STIPULATED AND AGREED**, by and among Plaintiffs (individually and on behalf of the Settlement Class) and Defendants that, subject to the approval of the Court under Court of Chancery Rule 23, for good and valuable consideration set forth herein and conferred on Plaintiffs and the Settlement Class, the sufficiency of which is acknowledged, the claims asserted in the Action on behalf of the Settlement Class against Defendants shall be finally and fully settled, compromised, and dismissed with prejudice, and that the Released Plaintiffs' Claims shall be finally and fully compromised, resolved, discharged, settled, and dismissed with prejudice against the Released Defendants' Persons, and that the Released Defendants' Claims shall be finally and fully compromised, resolved, discharged, settled, and dismissed with prejudice against the Released Plaintiffs' Persons, in the manner set forth herein.

## **I. DEFINITIONS**

1. In addition to the terms defined elsewhere in this Stipulation, the following capitalized terms, used in this Stipulation and any Exhibits attached hereto and made a part hereof, shall have the meanings given to them below:

(a) “Defendants' Counsel” means Sullivan & Cromwell LLP and Richards, Layton & Finger, P.A.

(b) “DTC” means the Depository Trust & Clearing Corporation, including its subsidiary the Depository Trust Company.

(c) “Effective Date” means the first date by which all of the events and conditions specified in Paragraph 31 of this Stipulation have been met and have occurred or have been waived.

(d) “Effective Time” means the effective time of the merger with Lordstown EV Corporation (f/k/a Lordstown Motors Corp.) on October 23, 2020.

(e) “Escrow Account” means the account maintained by Bernstein Litowitz Berger & Grossmann LLP and into which the Settlement Amount shall be deposited.

(f) “Excluded Stockholders” means the persons and entities that Defendants shall identify to be excluded from the Settlement Class by definition, in accordance with Paragraph 24(b) below.

(g) “Final,” when referring to the Judgment or any other court order, means (i) if no appeal is filed, the expiration date of the time provided for filing or noticing any motion for reconsideration, reargument, appeal, or other review of the order; or (ii) if there is an appeal from the Judgment or order, (a) the date of final dismissal of all such appeals, or the final dismissal of any proceeding on certiorari, reconsideration, or otherwise, or (b) the date the judgment or order is finally affirmed on an appeal, the expiration of the time to file a petition for a writ of certiorari, reconsideration, reargument, or other form of review, or the denial of a writ of certiorari, reconsideration, reargument, or other form of review, and, if certiorari,

reconsideration, or other form of review is granted, the date of final affirmance following review pursuant to that grant; provided, however, that any disputes or appeals relating solely to (i) the amount, payment, or allocation of attorneys' fees and expenses or (ii) the plan of allocation of the Settlement proceeds (as submitted or subsequently modified), shall have no effect on finality for purposes of determining the date on which the Judgment becomes Final and shall not otherwise prevent, limit or otherwise affect the Judgment, or prevent, limit, delay or hinder entry of the Judgment.

(h) "Judgment" means the Order and Final Judgment, substantially in the form attached hereto as Exhibit D, to be entered by the Court approving the Settlement.

(i) "Litigation Expenses" means costs and expenses incurred by Plaintiffs' Counsel in connection with commencing, prosecuting, and settling the Action, for which Plaintiffs' Co-Lead Counsel intend to apply to the Court for payment from the Settlement Fund.

(j) "Net Settlement Fund" means the Settlement Fund less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any attorneys' fees and/or Litigation Expenses awarded by the Court from the Settlement Fund, including any incentive awards to Plaintiffs to be deducted solely from any award of attorneys' fees and Litigation Expenses; and (iv) any other costs or fees approved by the Court.

(k) “Notice” means the Notice of Pendency and Proposed Settlement of Stockholder Class Action, Settlement Hearing, and Right to Appear, substantially in the form attached hereto as Exhibit B, which is to be mailed (or emailed) to potential Settlement Class Members.

(l) “Notice and Administration Costs” means the costs, fees, and expenses that are incurred by the Settlement Administrator and/or Plaintiffs’ Counsel in connection with: (i) providing notice to the Settlement Class; and (ii) administering the Settlement, including but not limited to the costs, fees, and expenses incurred in connection with the Escrow Account.

(m) “Plan of Allocation” means the proposed plan of allocation of the Net Settlement Fund set forth in the Notice.

(n) “Plaintiffs’ Counsel” means Plaintiffs’ Co-Lead Counsel and Kaskela Law LLC.

(o) “Redeeming Stockholders” means the persons and entities who exercised redemption rights in connection with the Merger.

(p) “Released Claims” means, collectively, the Released Plaintiffs’ Claims and the Released Defendants’ Claims.

(q) “Released Defendants’ Claims” means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under state, federal, or common law, that are based on the institution,

prosecution, or settlement of the claims against Defendants, but excluding claims relating to the enforcement of the Settlement.

(r) “Released Defendants’ Persons” means Defendants and their current and former parents, affiliates, affiliated entities, subsidiaries, officers, directors, agents, successors, predecessors, assigns, assignees, partnerships, partners, trustees, trusts, employees, family members, insurers, reinsurers, and attorneys.

(s) “Released Plaintiffs’ Claims” means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under state, federal, or common law, that (i) Plaintiffs asserted in the Complaint; or (ii) could have asserted in the Complaint or in any other forum that (1) are based on the same set of operative facts as those alleged in the Complaint and (2) relate to the ownership of DiamondPeak Class A common stock as of the Effective Time on October 23, 2020, but excluding (a) claims relating to the enforcement of the Settlement; and (b) claims that have been asserted in *In re Lordstown Motors Corp. Sec. Litig.*, No. 4:21-cv-00616 (N.D. Ohio).

(t) “Released Plaintiffs’ Persons” means Plaintiffs, all other Settlement Class Members, Plaintiffs’ Counsel, and their current and former parents, affiliates, affiliated entities, subsidiaries, officers, directors, agents, successors,

predecessors, assigns, assignees, partnerships, partners, trustees, trusts, employees, family members, insurers, reinsurers, and attorneys.

(u) “Released Persons” means, collectively, the Released Plaintiffs’ Persons and the Released Defendants’ Persons.

(v) “Releases” means the releases set forth in Paragraphs 4-6 of this Stipulation.

(w) “Scheduling Order” means the Order, substantially in the form attached hereto as Exhibit A, directing notice of the Settlement and scheduling Settlement-related events.

(x) “Settlement” means the resolution of Action as against Defendants on the terms and conditions set forth in this Stipulation.

(y) “Settlement Administrator” means the settlement administrator selected by Plaintiffs to provide notice to the Settlement Class and administer the Settlement.

(z) “Settlement Class” means all record and beneficial holders of DiamondPeak Class A common stock as of the effective time (the “Effective Time”) of the merger with Lordstown EV Corporation (f/k/a Lordstown Motors Corp.) on October 23, 2020. Excluded from the Settlement Class are (i) Defendants and DiamondPeak; (ii) the directors, officers, or partners of DiamondPeak as of the Effective Time on October 23, 2020; (iii) the members of the immediate families of

Defendants or of any person who was a director, officer, or partner of DiamondPeak as of the Effective Time on October 23, 2020; (iv) the parents, subsidiaries, and affiliates of DiamondPeak; (v) any entity in which any Defendant or any other excluded party has, or had as of the Effective Time on October 23, 2020, a controlling interest; and (vi) the heirs, successors, or assigns of any such excluded person or entity and the legal representatives of Defendants.

(aa) “Settlement Class Member” means a member of the Settlement Class.

(bb) “Settlement Hearing” means the hearing to be set by the Court under Delaware Court of Chancery Rule 23 to consider, among other things, final approval of the Settlement.

(cc) “Summary Notice” means the Summary Notice of Pendency and Proposed Settlement of Stockholder Class Action, Settlement Hearing, and Right to Appear, substantially in the form attached hereto as Exhibit C, to be published as set forth in the Scheduling Order.

(dd) “Taxes” means: (i) all federal, state, and/or local taxes of any kind on any income earned by the Settlement Fund; and (ii) the reasonable expenses and costs incurred by Plaintiffs’ Co-Lead Counsel in connection with determining the amount of, and paying, any taxes owed by the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants).

(ee) “Settlement Amount” means \$15,500,000 (United States Dollars) in cash.

(ff) “Settlement Fund” means the Settlement Amount plus any and all interest earned thereon.

(gg) “Unknown Claims” means any Released Plaintiffs’ Claims which Plaintiffs or any other Settlement Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, and any Released Defendants’ Claims which any Defendant does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, which, if known by him, her, or it, might have affected his, her, or its decision(s) with respect to this Settlement.

## **II. CLASS CERTIFICATION**

2. Solely for the purposes of the Settlement and for no other purpose, the Parties stipulate and agree to: (a) certification of the Settlement Class as a non-opt-out class pursuant to Delaware Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2); (b) appointment of Plaintiffs as Class Representatives for the Settlement Class; and (c) appointment of Plaintiffs’ Co-Lead Counsel as Class Counsel for the Settlement Class.



### **III. RELEASE OF CLAIMS**

3. The obligations incurred pursuant to this Stipulation are in consideration of: (a) the full and final disposition of the Action; and (b) the Releases provided for under this Stipulation.

4. Pursuant to the Judgment, without further action by anyone, upon the Effective Date of the Settlement, Plaintiffs and all other members of the Settlement Class, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged the Released Plaintiffs' Claims against the Released Defendants' Persons, and shall forever be barred and enjoined from prosecuting the Released Plaintiffs' Claims against the Released Defendants' Persons.

5. Pursuant to the Judgment, without further action by anyone, upon the Effective Date of the Settlement, Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged the Released Defendants' Claims against the Released Plaintiffs' Persons, and shall forever be barred and enjoined

from prosecuting the Released Defendants' Claims against the Released Plaintiffs' Persons.

6. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, Plaintiffs and Defendants shall expressly waive, and each of the other Settlement Class Members shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

Plaintiffs and Defendants acknowledge, and each of the other Settlement Class Members shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement.

7. Notwithstanding Paragraphs 4-6 above, nothing in the Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of this Stipulation or the Judgment.

#### IV. SETTLEMENT CONSIDERATION

8. Defendants shall cause the \$15,500,000 Settlement Amount to be paid into the Escrow Account as follows:

(a) Defendants shall cause \$1,000,000 to be deposited from the DiamondPeak insurance policies into the Escrow Account no later than the later of twenty (20) business days after (i) the Court's entry of the Scheduling Order; and (ii) Plaintiffs' delivery to Defendants' Counsel of wire transfer instructions needed to make payment into the Escrow Account, including an appropriate W-9 form, which are confirmed verbally by the bank holding the Escrow Account;

(b) Defendants shall cause \$11,000,000 to be deposited from the DiamondPeak insurance policies into the Escrow Account no later than twenty (20) business days prior to the date of the Settlement Hearing; and

(c) Defendants shall cause \$3,500,000 to be deposited into the Escrow Account no later than (i) ten (10) business days after such funds are received by Defendants in respect of the claims submitted in connection with the Lordstown Motors Corp. bankruptcy captioned *In re Lordstown Motors Corp.*, No. 23-10831 (Bankr. D. Del.) (the "Lordstown Bankruptcy") for indemnification pursuant to Defendants' respective Indemnification Agreements or (ii) ninety (90) calendar days after the Court's entry of the

Judgment, whichever occurs first. Defendants will cause issuance of a bond or other form of security to be agreed with Plaintiffs, whose consent shall not unreasonably be withheld, for the remaining \$3,500,000 balance of the Settlement Amount to be established no later than ten (10) business days prior to the Settlement Hearing and agree that Plaintiffs are entitled to execute against the bond or other security for payment of the remaining balance of the Settlement Amount following expiration of the time set forth above in subparagraph (c)(ii) of this Paragraph 8.

9. If Defendants fail to cause the full payment of the Settlement Amount in a timely manner, Plaintiffs may seek an executable judgment compelling payment of the Settlement Amount or exercise their right under Paragraph 33 below to terminate the Settlement. Payment of the Settlement Amount shall be made by wire transfer into the Escrow Account; payment shall not be made by check.

#### **V. USE OF SETTLEMENT FUND**

10. The Settlement Amount plus any and all interest earned thereon is referred to as the “Settlement Fund.” The Settlement Fund shall be used to pay: (a) any Taxes; (b) any Notice and Administration Costs; (c) any attorneys’ fees and/or Litigation Expenses awarded by the Court from the Settlement Fund; and (d) any other costs and fees approved by the Court. The balance remaining in the Settlement Fund, that is, the Net Settlement Fund, shall be distributed to Class

Members pursuant to the proposed Plan of Allocation set forth in the Notice or such other plan of allocation approved by the Court.

11. Except as provided herein or pursuant to orders of the Court, the Net Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held by the Escrow Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court. The Escrow Agent shall invest any funds in the Escrow Account exclusively in United States Treasury Bills (or a mutual fund invested solely in such instruments) and shall collect and reinvest all interest accrued thereon, except that any residual cash balances up to the amount that is insured by the FDIC may be deposited in any account that is fully insured by the FDIC. In the event that the yield on United States Treasury Bills is negative, in lieu of purchasing such Treasury Bills, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States. Additionally, if short-term placement of the funds is necessary, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States.

12. The Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that Bernstein Litowitz Berger & Grossmann LLP (“Bernstein Litowitz”), as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Settlement Fund. Bernstein Litowitz shall also be responsible for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. The Released Defendants’ Persons shall not have any liability or responsibility for any such Taxes. Upon written request, Defendants will provide to Bernstein Litowitz the statement described in Treasury Regulation § 1.468B-3(e). Bernstein Litowitz, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this Paragraph, including, as necessary, making a “relation back election,” as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

13. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid, or caused to be paid, by Bernstein Litowitz and without further order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with the previous Paragraph and in all events shall reflect that all Taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

14. The Settlement is not a claims-made settlement. Upon the occurrence of the Effective Date, Defendants, the other Released Defendants' Persons, Defendants' insurance carriers, and any other person or entity who or which paid any portion of the Settlement Amount shall not have any right to the return of the Settlement Fund or any portion thereof for any reason whatsoever, including the inability to locate Settlement Class Members or the failure of Settlement Class Members to deposit settlement funds distributed by the Administrator.

15. Notwithstanding the fact that the Effective Date of the Settlement has not yet occurred, Plaintiffs' Co-Lead Counsel may pay from the Settlement Fund, without further approval from Defendants or further order of the Court, all Notice and Administration Costs actually incurred and paid or payable, provided such Notice and Administration Costs are reasonable in amount and reasonably necessary. Such costs and expenses shall include, without limitation, the actual costs of printing and mailing the Notice, publishing the Summary Notice, reimbursements

to nominee owners for forwarding the Notice to their beneficial owners, the administrative expenses incurred and fees charged by the Settlement Administrator in connection with providing notice and administering the Settlement, and the fees, if any, of the Escrow Agent. In the event that the Settlement is terminated pursuant to the terms of this Stipulation, all Notice and Administration Costs paid or incurred, including any related fees, shall not be returned or repaid to Defendants, any of the other Released Defendants' Persons, or any other person or entity who or which paid any portion of the Settlement Amount.

## **VI. ATTORNEYS' FEES AND LITIGATION EXPENSES**

16. In connection with the Settlement, Plaintiffs' Counsel will apply to the Court for a collective award of attorneys' fees and payment of Litigation Expenses (the "Fee and Expense Award") to be paid solely from (and out of) the Settlement Fund. In connection with Plaintiffs' Counsel's application for a Fee and Expense Award, each Plaintiff may petition the Court for an incentive award to be paid solely from any Fee and Expense Award to Plaintiffs' Counsel (the "Incentive Awards"). Plaintiffs' Counsel's application for a Fee and Expense Award is not the subject of any agreement among the Parties other than what is set forth in this Stipulation.

17. The Fee and Expense Award shall be paid to Plaintiffs' Co-Lead Counsel, and any Incentive Awards approved by the Court shall be paid to Plaintiffs, from the Settlement Fund immediately upon award, notwithstanding the existence



of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to Plaintiffs' Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund, plus accrued interest at the same net rate as is earned by the Settlement Fund, if the Settlement is terminated pursuant to the terms of this Stipulation or if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the Fee and Expense Award is reduced or reversed and such order reducing or reversing the award has become Final. Plaintiffs' Counsel shall make the appropriate refund or repayment in full no later than twenty (20) business days after: (a) receiving from Defendants' Counsel notice of the termination of the Settlement; or (b) any order reducing or reversing the Fee and Expense Award has become Final. Any Fee and Expense Award is not a necessary term of this Stipulation and is not a condition of the Settlement embodied herein. Neither Plaintiffs nor Plaintiffs' Counsel may cancel or terminate the Settlement based on this Court's or any appellate court's ruling with respect to any Fee and Expense Award.

18. Plaintiffs' Co-Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel in a manner which they, in their discretion, believe reflects the contributions of such counsel to the institution, prosecution, and settlement of the Action. The Released Defendants' Persons shall have no

responsibility for or liability whatsoever with respect to the allocation or award of any Fee and Expense Award to Plaintiffs' Counsel.

## **VII. SUBMISSION OF THE SETTLEMENT TO THE COURT FOR APPROVAL**

19. As soon as practicable after execution of this Stipulation, Plaintiffs shall apply to the Court for entry of the Scheduling Order, substantially in the form attached hereto as Exhibit A, providing for, among other things: (a) the dissemination by mail (or email) of the Notice; (b) the publication of the Summary Notice; and (c) the scheduling of the Settlement Hearing to consider: (i) final approval of the proposed Settlement, (ii) the request that the Judgment, substantially in the form attached hereto as Exhibit D, be entered by the Court, (iii) Plaintiffs' Counsel's application for an award of attorneys' fees and Litigation Expenses, including any application for incentive awards to Plaintiffs, and approval of the proposed Plan of Allocation, and (iv) any objections to any of the foregoing. The Parties shall take all reasonable and appropriate steps to seek and obtain entry of the Scheduling Order. The date and time of the Settlement Hearing set by the Court in Scheduling Order may be changed by the Court without further written notice to the Settlement Class.

20. The Parties shall request at the Settlement Hearing that the Court approve the Settlement and enter the Judgment, substantially in the form attached

hereto as Exhibit D. The Parties shall take all reasonable and appropriate steps to obtain entry of the Judgment.

### **VIII. SETTLEMENT ADMINISTRATION**

21. Plaintiffs shall retain a Settlement Administrator to provide notice of the Settlement and for the disbursement of the Net Settlement Fund to eligible Class Members. Defendants and the other Released Defendants' Persons shall not have any involvement in or any responsibility, authority, or liability whatsoever for the selection of the Settlement Administrator.

22. Defendants shall cooperate with Plaintiffs in providing notice of the Settlement and administering the Settlement, including, but not limited to, providing the information required under Paragraphs 23 and 24 below.

23. For purposes of providing notice of the Settlement to potential Settlement Class Members, Defendants shall continue to work together with Plaintiffs' Co-Lead Counsel and the Settlement Administrator to obtain from Lordstown, in an electronically searchable form, such as Excel, the stockholder register from DiamondPeak's transfer agent containing the names, mailing addresses and, if available, email addresses for all registered holders of DiamondPeak Class A common stock as of the Effective Time on October 23, 2020 (the "Registered Holders"), and the number of shares of DiamondPeak Class A common stock held by each of the Registered Holders as of the Effective Time on October 23, 2020.

24. For purposes of distributing the Net Settlement Fund to eligible Settlement Class Members, within five (5) business days after the date of execution of this Stipulation, Defendants shall work together with Plaintiffs' Co-Lead Counsel and the Settlement Administrator to obtain from Lordstown, in an electronically-searchable form, such as Excel, the following information:

(a) the allocation, "chill," or such other report ("Allocation Report") generated by DTC setting forth each and every DTC participant ("DTC Participant") that held shares of DiamondPeak Class A common stock as of the Effective Time on October 23, 2020, which shall include, for each DTC Participant, the number of shares of DiamondPeak Class A common stock held by the DTC Participant as of the Effective Time on October 23, 2020; and

(b) a list containing the names of the Excluded Stockholders and the names of the Redeeming Stockholders, and for each of the Excluded Stockholders and the Redeeming Stockholders, (i) an indication of whether the Excluded Stockholder or the Redeeming Stockholders was, as of the Effective Time on October 23, 2020, either (1) a Registered Holder of DiamondPeak Class A common stock or (2) a beneficial holder of DiamondPeak Class A common stock whose shares were held via a financial institution on behalf of the Excluded Stockholder (a "Beneficial Holder");

(ii) the number of shares of DiamondPeak Class A common stock owned by the Excluded Stockholder or the Redeeming Stockholder as of the Effective Time on October 23, 2020 (“Excluded Shares”); and (iii) for each Excluded Stockholder and Redeeming Stockholder that is a Beneficial Holder, (x) the name and “DTC Number” of the financial institution(s) where his, her, or its Excluded Shares were held and the number of Excluded Shares held at each such financial institution(s); and (y) the account number(s) at such financial institution(s) where his, her, or its Excluded Shares were held and the number of shares or warrants held in each such account(s).

25. At the request of Plaintiffs’ Co-Lead Counsel, Defendants will use reasonable efforts to work with Plaintiffs’ Co-Lead Counsel and the Settlement Administrator to obtain such additional information as may be required to distribute the Net Settlement Fund to eligible Settlement Class Members and not to Excluded Stockholders or Redeeming Stockholders, and shall use reasonable efforts to obtain suppression letters from Excluded Stockholders, Redeeming Stockholders, and/or their brokers if requested to do so by DTC.

26. Defendants, other Excluded Stockholders, and Redeeming Stockholders shall not have any right to receive any part of the Settlement Fund for his, her, or its own account(s) (*i.e.*, accounts in which he, she, or it holds a proprietary interest, but not including accounts managed on behalf of others), or any additional

amount based on any claim relating to the fact that Settlement proceeds are being received by any other stockholder, in each case under any theory, including but not limited to contract, application of statutory or judicial law, or equity.

27. The Net Settlement Fund shall be distributed to eligible Settlement Class Members in the accordance with the proposed Plan of Allocation set forth in the Notice or such other plan of allocation as may be approved by the Court. The Plan of Allocation proposed in the Notice is not a necessary term of the Settlement or of this Stipulation and it is not a condition of the Settlement or of this Stipulation that any particular plan of allocation be approved by the Court. Plaintiffs and Plaintiffs' Co-Lead Counsel may not cancel or terminate the Settlement (or this Stipulation) based on this Court's or any appellate court's ruling with respect to the Plan of Allocation or any other plan of allocation in this Action. Defendants and the other Released Defendants' Persons shall not object in any way to the Plan of Allocation or any other plan of allocation in this Action and shall not have any involvement with the application of the Court-approved plan of allocation.

28. The Net Settlement Fund shall be distributed to eligible Class Members only after the Effective Date of the Settlement and after: (i) all Notice and Administration Costs, all Taxes, and any Fee and Expense Award, including any Incentive Awards to Plaintiffs to be solely from any Fee and Expense Award, have been paid from the Settlement Fund or reserved; and (ii) the Court has entered an

order authorizing the specific distribution of the Net Settlement Fund (the “Class Distribution Order”). At such time that Plaintiffs’ Co-Lead Counsel, in their sole discretion, deem it appropriate to move forward with the distribution of the Net Settlement Fund to the Settlement Class, Plaintiffs’ Co-Lead Counsel will apply to the Court, on notice to Defendants’ Counsel, for the Class Distribution Order.

29. Payment pursuant to the Class Distribution Order shall be final and conclusive against all Settlement Class Members. Plaintiffs, Defendants, and the other Released Defendants’ Persons and their respective counsel, shall have no liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund, the determination, administration, or calculation of any payment from the Net Settlement Fund, the nonperformance of the Settlement Administrator or a nominee holding eligible shares of DiamondPeak Class A common stock, the payment or withholding of Taxes (including interest and penalties) owed by the Settlement Fund, or any losses incurred in connection therewith.

30. All proceedings with respect to the administration of the Settlement and distribution pursuant to the Class Distribution Order shall be subject to the exclusive jurisdiction of the Court.

## **IX. CONDITIONS OF SETTLEMENT**

31. The Effective Date of the Settlement shall be deemed to occur on the occurrence or waiver of all of the following events, which the Parties shall use their best efforts to achieve:

(a) the full amount of the \$15,500,000 Settlement Amount has been paid into the Escrow Account accordance with Paragraph 8 above;

(b) the Court has entered the Scheduling Order, substantially in the form attached hereto as Exhibit A;

(c) Defendants have not exercised their option to terminate the Settlement pursuant to the provisions of this Stipulation;

(d) Plaintiffs have not exercised their option to terminate the Settlement pursuant to the provisions of this Stipulation;

(e) the Court has approved the Settlement as described herein, following notice to the Settlement Class and a hearing, and entered the Judgment, substantially in the form attached hereto as Exhibit D; and

(f) the Judgment has become Final.

32. Upon the occurrence of the Effective Date, any and all remaining interest or right of Defendants or their insurance carriers in or to the Settlement Fund, if any, shall be absolutely and forever extinguished and the Releases herein shall be effective.



**X. TERMINATION OF SETTLEMENT; EFFECT OF TERMINATION**

33. Plaintiffs (provided Plaintiffs unanimously agree amongst themselves) and Defendants (provided Defendants unanimously agree amongst themselves) shall each have the right to terminate the Settlement and this Stipulation, by providing written notice of their election to do so (“Termination Notice”) to the other Parties within thirty (30) calendar days of: (a) the Court’s final refusal to enter the Scheduling Order in any material respect and such final refusal decision has become Final; (b) the Court’s final refusal to approve the Settlement or any material part thereof and such final refusal decision has become Final; (c) the Court’s final refusal to enter the Judgment in any material respect as to the Settlement and such final refusal decision has become Final; or (d) the date upon which an order modifying or reversing the Judgment in any material respect becomes Final. In addition to the foregoing, Plaintiffs shall have the unilateral right to terminate the Settlement and this Stipulation, by providing written notice of their election to do so to Defendants within thirty (30) calendar days of: (i) any failure by Defendants to cause the full funding of the Settlement Amount into the Escrow Account in a timely manner in accordance with Paragraph 8 above if any failure to fund is not cured within ten (10) business days of such written notice; or (ii) any required return, at any time, of any portion of the Settlement Fund already funded into the Escrow Account to Defendants or their insurance carriers, and such returned amount is not deposited

into the Settlement Fund within ten (10) business days of such written notice, in which event, at the election of Plaintiffs, the Parties shall jointly move the Court to vacate and set aside the Releases given and the Judgment entered in favor of Defendants and the other Released Persons pursuant to this Stipulation. However, any decision or proceeding, whether in this Court or any appellate court, with respect to an application by Plaintiffs' Counsel for attorneys' fees and Litigation Expenses, or with respect to any plan of allocation, shall not be considered material to the Settlement, shall not affect the finality of the Judgment, and shall not be grounds for termination of the Settlement.

34. If (i) Plaintiffs exercises their right to terminate the Settlement as provided in this Stipulation; or (ii) Defendants exercise their right to terminate the Settlement as provided in this Stipulation, then:

(a) The Settlement and the relevant portions of this Stipulation shall be canceled and terminated;

(b) Plaintiffs and Defendants shall revert to their respective positions in the Action as of immediately prior to the execution of the Term Sheet on October 31, 2023;

(c) The terms and provisions of this Stipulation, with the exception of this Paragraph 34 and Paragraphs 15, 17, 35, and 55 of this Stipulation, shall have no further force and effect with respect to the Parties and shall not be used in the

Action or in any other proceeding for any purpose, and any Judgment or order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*; and

(d) Within twenty (20) business days after joint written notification of termination is sent by Defendants' Counsel and Plaintiffs' Co-Lead Counsel to the Escrow Agent, the Settlement Fund (including accrued interest thereon, and change in value as a result of the investment of the Settlement Fund, and any funds received by Plaintiffs' Counsel consistent with Paragraph 17 above), less any Notice and Administration Costs actually incurred, paid, or payable and less any Taxes paid, due, or owing shall be refunded by the Escrow Agent to Defendants and/or such other person or entity contributing to the payment of the Settlement Amount, with the refund allocated according to the respective contributions to the Settlement Amount (according to instructions to be provided by Defendants to Plaintiffs' Co-Lead Counsel). In the event that the funds received by Plaintiffs' Counsel consistent with Paragraph 17 above have not been refunded to the Settlement Fund within the twenty (20) business days specified in this Paragraph, those funds shall be refunded by the Escrow Agent to Defendants and/or such other person or entity contributing to the payment of the Settlement Amount, with the refund allocated according to the respective contributions to the Settlement Amount (according to instructions to be

provided by Defendants to Plaintiffs' Co-Lead Counsel) immediately upon their deposit into the Escrow Account consistent with Paragraph 17 above.

## **XI. NO ADMISSION OF WRONGDOING**

35. Neither the Term Sheet, this Stipulation (whether or not consummated), including the Exhibits hereto and the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court), the negotiations leading to the execution of the Term Sheet or this Stipulation, nor any proceedings taken pursuant to or in connection with the Term Sheet or this Stipulation and/or approval of the Settlement (including any arguments proffered in connection therewith):

(a) shall be offered against any of the Released Defendants' Persons as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Defendants' Persons with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Released Defendants' Persons or in any way referred to for any other reason as against any of the Released Defendants' Persons, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;

(b) shall be offered against any of the Released Plaintiffs' Persons, as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Plaintiffs' Persons that any of their claims are without merit, that any of the Released Defendants' Persons had meritorious defenses, or that damages recoverable under the Complaint would not have exceeded the Settlement Amount or with respect to any liability, negligence, fault, or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Released Plaintiffs' Persons, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; or

(c) shall be construed against any of the Released Persons as an admission, concession, or presumption that the consideration to be given hereunder represents the consideration which could be or would have been achieved after trial; *provided, however*, that if this Stipulation is approved by the Court, the Parties and the Released Persons and their respective counsel may refer to it to effectuate the protections from liability granted under this Stipulation or otherwise to enforce the terms of the Settlement.

## **XII. MISCELLANEOUS PROVISIONS**

36. All of the Exhibits attached hereto are incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, if there exists a conflict

or inconsistency between the terms of this Stipulation and the terms of any Exhibit attached hereto, the terms of the Stipulation shall prevail.

37. Each of the Parties intend this Stipulation and the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Plaintiffs and any other Settlement Class Members against Defendants with respect to the Released Plaintiffs' Claims. Accordingly, Plaintiffs and their counsel and Defendants and their counsel agree not to assert in any forum that this Action was brought by Plaintiffs or defended by Defendants in bad faith or without a reasonable basis. The Parties agree that the amounts paid and the other terms of the Settlement were negotiated at arm's length and in good faith by the Parties, and reflect the Settlement that was reached voluntarily after extensive negotiations and consultation with experienced legal counsel, who were fully competent to assess the strengths and weaknesses of their respective clients' claims or defenses.

38. Plaintiffs and their counsel and Defendants and their counsel shall not make any accusations of wrongful or actionable conduct by any Party concerning the prosecution, defense, and resolution of the Action, and shall not otherwise suggest that the Settlement constitutes an admission of any claim or defense alleged. While retaining their right to deny that the claims asserted in the Action were meritorious, Defendants and their counsel, in any statement made to any media representative (whether or not for attribution) will not assert that the Action was

commenced or prosecuted in bad faith, nor will they deny that the Action was commenced and prosecuted in good faith and is being settled voluntarily after consultation with competent legal counsel. While retaining their right to assert that the claims asserted in the Action were meritorious, Plaintiffs and their counsel, in any statement made to any media representative (whether or not for attribution) will not assert that the Action was defended in bad faith, nor will they deny that the Action was defended in good faith and is being settled voluntarily after consultation with competent legal counsel.

39. The terms of the Settlement, as reflected in this Stipulation, may not be modified or amended, nor may any of its provisions be waived except by a writing signed on behalf of each of the Parties (or their successors-in-interest).

40. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

41. If any deadline set forth in this Stipulation or the Exhibits thereto falls on a Saturday, Sunday, or legal holiday, that deadline will be continued to the next business day.

42. Without further Order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of this Stipulation.

43. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain

jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and Litigation Expenses to Plaintiffs' Counsel, and enforcing the terms of this Stipulation, including the Plan of Allocation (or such other plan of allocation as may be approved by the Court) and the distribution of the Net Settlement Fund to eligible Settlement Class Members.

44. The waiver by one Party of any breach of this Stipulation by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

45. This Stipulation and its Exhibits constitute the entire agreement among the Parties concerning the Settlement and this Stipulation and its Exhibits. Each Party acknowledges that no other agreements, representations, warranties, or inducements have been made by any Party concerning this Stipulation or its Exhibits other than those contained and memorialized in such documents.

46. This Stipulation may be executed in one or more counterparts, including by signature transmitted via facsimile, or by a .pdf/.tif image of the signature transmitted via email. All executed counterparts and each of them shall be deemed to be one and the same instrument.

47. This Stipulation shall be binding upon and inure to the benefit of the successors and assigns of the Parties, and the Released Persons, and any corporation, partnership, or other entity into or with which any Party may merge, consolidate, or



reorganize. The Parties acknowledge and agree, for the avoidance of doubt, that the Released Defendants' Persons and the Released Plaintiffs' Persons are intended beneficiaries of this Stipulation and are entitled to enforce the Releases contemplated by the Settlement.

48. The construction, interpretation, operation, effect and validity of this Stipulation and all documents necessary to effectuate it shall be governed by the internal laws of the State of Delaware without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

49. Any action arising under or to enforce this Stipulation or any portion thereof shall be commenced and maintained only in the Court.

50. This Stipulation shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that it is the result of arm's-length negotiations between the Parties and that all Parties have contributed substantially and materially to the preparation of this Stipulation.

51. All counsel and all other persons executing this Stipulation and any of the Exhibits hereto, or any related Settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take

appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

52. Plaintiffs' Co-Lead Counsel and Defendants' Counsel agree to cooperate fully with one another to obtain (and, if necessary, defend on appeal) all necessary approvals of the Court required of this Stipulation (including, but not limited to, using their best efforts to resolve any objections raised to the Settlement), and to use best efforts to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement.

53. If any Party is required to give notice to another Party under this Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon receipt of hand delivery or email transmission, with confirmation of receipt. Notice shall be provided as follows:

If to Plaintiffs or Plaintiffs' Co-Lead Counsel:

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600 Third Avenue  
New York, New York 10016  
(646) 581-9941  
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If to Defendants:

Sullivan & Cromwell LLP  
Attn: Laura Kabler Oswell  
550 Hamilton Avenue  
Palo Alto, California 94301  
(650) 461-5600  
oswelll@sullcrom.com

Sullivan & Cromwell LLP  
Attn: Jacob M. Croke  
125 Broad Street  
New York, New York 10004  
(212) 558-4000  
crokej@sullcrom.com

54. Except as otherwise provided herein, each Party shall bear his, her or its own costs.

55. Whether or not the Stipulation is approved by the Court and whether or not the Stipulation is consummated, or the Effective Date occurs, the Parties and their counsel shall use their best efforts to keep all negotiations, discussions, acts performed, agreements, drafts, documents signed, and proceedings in connection with the Stipulation confidential.

56. All agreements made and orders entered during the course of this Action relating to the confidentiality of information shall survive this Settlement.

57. No opinion or advice concerning the tax consequences of the proposed Settlement to individual Settlement Class Members is being given or will be given by the Parties or their counsel; nor is any representation or warranty in this regard made by virtue of this Stipulation. Each Settlement Class Member's tax obligations,

and the determination thereof, are the sole responsibility of the Settlement Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement Class Member.

**IN WITNESS WHEREOF**, the Parties have caused this Stipulation to be executed, by their duly authorized attorneys, as of March 4, 2024.

[Signatures Beginning on Next Page]

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# EXHIBIT 4

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

LORI W. WILL  
VICE CHANCELLOR

LEONARD L. WILLIAMS JUSTICE CENTER  
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Date Submitted: February 28, 2022

Date Decided: March 7, 2022

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RE: *In re Lordstown Motors Corp. Stockholders Litigation*,  
CA. No. 2021-1066-LWW

Dear Counsel:

The defendants have moved to stay this putative class action pending the resolution of a federal securities class action. I decline to grant a stay. The *McWane* doctrine applies with less force in the context of representative litigation and is particularly inapt here. Although the federal action is first-filed and concerns and the same business combination, the parties, claims, and remedy sought are different.

Perhaps more importantly, this case raises emerging issues of Delaware law. Established doctrines of fiduciary duty law are, of course, far from novel. But this court has had occasion to apply these principles in the context of special purpose



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acquisition companies and stockholder redemption rights just once—in a decision rendered two months ago. This court’s essential role of providing guidance in developing areas of our law would be impaired if the court were to denude its jurisdiction because a federal securities action resting on similar facts was filed first.

## **I. RELEVANT BACKGROUND**

On October 23, 2020, Lordstown Motors Corp. (“Legacy LMC”) completed a business combination with special purpose acquisition company DiamondPeak Holding Corp. (“DiamondPeak,” and, after the combination, “Lordstown”).<sup>1</sup> Disclosures issued in connection with the transaction indicated that Lordstown would have a first-mover advantage in the burgeoning electric truck market and that Lordstown had a large and growing backlog of truck orders.<sup>2</sup> On March 12, 2021, an analyst report was published that purported to identify problems faced by Lordstown.<sup>3</sup> A drop in Lordstown’s stock price followed.<sup>4</sup>

Litigation followed, to say the least.

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<sup>1</sup> Verified Class Action Compl. (“Compl.”) ¶¶ 6, 13 (Dkt. 1).

<sup>2</sup> *See id.* ¶¶ 5-6.

<sup>3</sup> *Id.* ¶¶ 102-03.

<sup>4</sup> *See* Defs.’ Mot. to Stay Ex. A (“Securities Compl.”) ¶¶ 20-29 (Dkt. 15).

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Starting in March 2021, multiple federal securities class actions were filed in the United States District Court for the Northern District of Ohio.<sup>5</sup> The cases were consolidated in June 2021 (the “Securities Action”).<sup>6</sup> The defendants named in the Securities Action complaint are Lordstown, the Lordstown subsidiary that is the continuation of Legacy LMC, certain of Lordstown and Legacy LMC’s current and former officers, and Lordstown director David Hamamoto.<sup>7</sup> The complaint asserts various violations of the Securities Act of 1933 and Securities Exchange Act of 1934.<sup>8</sup> The claims are brought on behalf of a putative class of persons and entities who “(a) purchased or otherwise acquired [Lordstown’s] Class A Common Stock . . . publicly traded warrants . . . or any publicly traded option to purchase or sell [Lordstown’s] Class A Common Stock, from August 3, 2020, through July 2, 2021. . . and/or (b) held [Lordstown’s] Class A Common Stock as of September 21, 2020.”<sup>9</sup>

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<sup>5</sup> Defs.’ Mot. to Stay ¶ 10.

<sup>6</sup> See *In re Lordstown Motors Corp. Sec. Litig.*, No. 4:21-cv-00616 (PAG) (N.D. Ohio).

<sup>7</sup> Securities Compl. ¶¶ 51-57. Specifically, that complaint names as defendants former Legacy LMC (and later Lordstown) officers Caimin Flannery, Darren Post, and Rich Schmidt, and Lordstown officer Shane Brown. *Id.*; see Compl. ¶ 22.

<sup>8</sup> Securities Compl. ¶¶ 451-90.

<sup>9</sup> *Id.* ¶ 442.

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Related derivative actions were also filed in the United States District Court for the District of Delaware,<sup>10</sup> the Northern District of Ohio,<sup>11</sup> and in this court.<sup>12</sup>

The present action (the “Action”) was brought after two Lordstown (previously DiamondPeak) stockholders obtained documents pursuant to 8 *Del. C.* § 220.<sup>13</sup> Their class action complaints were filed in this court on December 8 and December 13, 2021 and have been consolidated.<sup>14</sup> The plaintiffs’ claims are brought on behalf of a putative class of “all record and beneficial holders of [DiamondPeak] common stock who continuously held such stock between the [transaction’s] Record Date of September 21, 2020 and the closing of the de-SPAC Acquisition on October 23, 2020.”<sup>15</sup>

The plaintiffs’ Verified Class Action Complaint (the “Complaint) advances one claim against Hamamoto and four other former members of the DiamondPeak Board<sup>16</sup> and another claim against the “Controller Defendants”—defined as

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<sup>10</sup> *In re Lordstown Motors Corp. S’holder Deriv. Litig.*, No. 21-cv-00604 (D. Del.).

<sup>11</sup> *Thai v. Burns*, No. 4:21-cv-01267 (N.D. Ohio). That action has been stayed pending the resolution of the Securities Action. *See* Defs.’ Mot. to Stay ¶ 16.

<sup>12</sup> *Cormier v. Burns*, C.A. No. 2021-1049-LWW (Del. Ch.).

<sup>13</sup> Compl. ¶¶ 15-16.

<sup>14</sup> *See* Dkt. 1; *Amin v. Hamamoto*, C.A. No. 2021-1085-LWW (Dkts. 1, 44).

<sup>15</sup> Compl. ¶ 148.

<sup>16</sup> *Id.* ¶¶ 21-26, 158-63. Those individuals are Mark Walsh, Andrew Richardson, Steven Hash, and Judith Hannaway.

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Diamond Peak Sponsor LLC and two of the former directors.<sup>17</sup> I previously described those claims as follows:

The plaintiff[s] assert[] that the directors of DiamondPeak breached their fiduciary duties by failing to disclose certain information about [Legacy LMC's] purchase orders and production timeline. The plaintiff[s] further allege[] that DiamondPeak's controlling stockholders acted to advance their own interests by pursuing the transaction with Legacy LMC to the detriment of minority stockholders. The putative class of then-DiamondPeak stockholders were purportedly harmed by not exercising their redemption rights.<sup>18</sup>

On January 10 and 18, 2022, the defendants filed one-page motions to dismiss pursuant to Court of Chancery Rules 12(b)(6) and 23.1.<sup>19</sup> On January 19, 2022, the defendants filed a Motion to Stay this Action pending the resolution of the Securities Action.<sup>20</sup> I heard argument on the Motion to Stay on February 28, 2022.<sup>21</sup>

## II. LEGAL ANALYSIS

The defendants seek to stay this Action pending the resolution of the Securities Action, relying on *McWane Cast Iron Pipe Corp. v. McDowell Wellman*

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<sup>17</sup> *Id.* ¶¶ 28, 164-71.

<sup>18</sup> *In re Lordstown Motors Corp. S'holders Litig.*, 2022 WL 601120, at \*2 (Del. Ch. Feb. 28, 2022).

<sup>19</sup> Dkts. 11, 14.

<sup>20</sup> Dkt. 20.

<sup>21</sup> Dkt. 43.

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*Engineering Corp.* and its progeny.<sup>22</sup> Under the *McWane* doctrine, the court’s discretion to grant a stay should be freely exercised where “there is a prior action pending elsewhere, in a court capable of doing prompt and complete justice, involving the same parties and the same issues.”<sup>23</sup> “[T]hese concepts are impelled by considerations of comity and the necessities of an orderly and efficient administration of justice.”<sup>24</sup>

The defendants contend that allowing the Action to proceed in parallel with the Securities Action would tax the resources of the court and the parties. They further assert that the plaintiffs here seek to represent a subset of the stockholder class represented in the Securities Action and that the breach of fiduciary duty claims in this Action are premised upon the same statements alleged to be misleading in the Securities Action.<sup>25</sup>

In response, the plaintiffs note that the claims in this Action involve novel issues of Delaware law that are not implicated in the Securities Action. They further argue that, regardless, none of the *McWane* factors support staying the Action.<sup>26</sup>

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<sup>22</sup> 263 A.2d 281 (Del. 1970).

<sup>23</sup> *Id.* at 283.

<sup>24</sup> *Id.*

<sup>25</sup> See Defs.’ Mot. to Stay ¶¶ 1, 21-22.

<sup>26</sup> See Pls.’ Opp’n to Defs.’ Mot. to Stay (“Pls.’ Opp’n”) ¶¶ 7-10 (Dkt. 34).

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A *McWane* analysis is an imperfect method to guide my assessment of the defendants' motion.<sup>27</sup> “[T]his court has proceeded cautiously when facing the question of whether to defer to a first-filed representative action and has given much less weight to first-filed status than is required in the non-representative action context.”<sup>28</sup> In the representative litigation setting, the court’s “paramount interest” is to ensure that “stockholders receive ‘fair and consistent enforcement of their rights under the law governing the corporation.’”<sup>29</sup>

Here, the fundamental question is whether this court’s interest in resolving corporate governance issues under Delaware law prevails over considerations of comity and practicality. This Action concerns allegations that the defendants breached their fiduciary duties of loyalty and impaired the exercise of stockholders’ redemption rights in the context of a de-SPAC transaction. Those claims raise “novel issues” akin to those that this court was presented with in a matter of first

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<sup>27</sup> *Biondi v. Scrushy*, 820 A.2d 1148, 1150 (Del. Ch. 2003) (explaining that “the *McWane* doctrine does not apply with full force” in representative actions).

<sup>28</sup> *Id.* at 1159; Donald J. Wolfe & Michael A. Pittenger, *Corporate and Commercial Practice in the Delaware Court of Chancery* § 5.01 (2021) (observing that “the Court of Chancery tends to afford decidedly less deference” to the *McWane* factors when considering competing stockholder representative suits).

<sup>29</sup> *Brandin v. Deason*, 941 A.2d 1020, 1024 (Del. Ch. 2007) (quoting *In re Topps Co. S’holders Litig.*, 924 A.2d 951, 953 (Del. Ch. 2007)).

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impression earlier this year.<sup>30</sup> The Court of Chancery has “long been chary” about deferring to a first-filed action pending elsewhere “when a case involves important questions of our law in an emerging area.”<sup>31</sup>

None of the remaining factors appropriately considered under *McWane* outweigh that vital interest. The parties in this Action and the Securities Action differ significantly. Although these actions have facts in common, the issues presented are distinct. And the claims brought here are not a simple repackaging of securities claims with a Delaware law label.

To start, the Securities Action names only one of the Action’s defendants. The defendants point to the overlap in defendants here and in the related derivative actions (though they do not seek a stay in deference to those cases) to support their position that this Action should not move forward.<sup>32</sup> But—insofar as the derivative actions are even relevant to whether a stay in deference to the Securities Action is appropriate—those cases seek to recover on behalf of Lordstown while this action

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<sup>30</sup> See *In re MultiPlan Corp. S’holders Litig.*, --- A.3d ---, 2022 WL 24060, at \*1 (Del. Ch. Jan. 3, 2022) (stating that, until that decision, “Delaware courts ha[d] not previously had an opportunity to consider the application of our law in the SPAC context”).

<sup>31</sup> *In re Topps*, 924 A.2d at 960; see *Brandin*, 941 A.2d at 1024-25 (finding that the presence of novel, complicated, and unsettled issues of Delaware law “strongly favor[ed]” denial of a motion to stay); *Ryan v. Gifford*, 918 A.2d 341, 349-50 (Del. Ch. 2007) (noting that Delaware courts have substantial interests in resolving cases “where the law is novel”).

<sup>32</sup> See Defs.’ Mot. to Stay ¶¶ 28-31.

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is brought on behalf of a putative class of former DiamondPeak stockholders. It is not apparent to me why this court would stand down from hearing class action claims in deference to derivative actions that might themselves defer to prior-filed securities claims.

The putative class in the Securities Action is also not equivalent to the class the plaintiffs seek to represent in this Action. The class proposed in the Securities Action includes stockholders who “purchased” Lordstown publicly traded warrants, units, or options to purchase or sell Class A shares from August 3, 2020 through July 2, 2021 “and/or . . . held” Class A shares as of September 21, 2020.<sup>33</sup> This Action, by contrast, is brought on behalf of a putative class of stockholders who “continuously held” Lordstown common stock “between the Record Date of September 21, 2020 and the closing of the de-SPAC Acquisition on October 23, 2020.”<sup>34</sup> Members of the stockholder class in this Action also fall within the Securities Action class (which is not unusual in parallel actions). But, as the plaintiffs point out, any recovery for the earlier investors included in the Securities

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<sup>33</sup> Securities Compl. ¶ 442.

<sup>34</sup> Compl. ¶ 148.



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Action class—who are the focus of this Action—could be affected by the breadth of that class period.<sup>35</sup>

The issues in the actions coincide insofar as the disclosures in DiamondPeak’s proxy statement require examination. They are otherwise fundamentally different. The crux of the Securities Action rests on whether Lordstown’s stock price was “artificially inflated” by false and misleading disclosures.<sup>36</sup> The plaintiffs’ Complaint, by contrast, alleges that the defendants harmed the putative class members by impairing the informed exercise of their redemption rights to the defendants’ benefit.<sup>37</sup> These are quintessential Delaware concerns—not, as the defendants argue, a rebranding of securities claims about material misstatements as fiduciary duty claims.

That reality renders the cases relied upon by the defendants inapposite. In *Derdiger v. Tallman*, a lead plaintiff in a consolidated federal securities action was appointed to “pursue *all* available causes of action against *all* possible defendants

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<sup>35</sup> The plaintiffs also contend that the proposed Securities Action class is under-inclusive of the class here because it would not include investors who purchased shares before August 3, 2020. The Securities Action class, however, also includes investors who “held” Class A shares as of the September 21, 2020 record date—which is the beginning of the plaintiffs’ proposed class. *Compare* Securities Compl. ¶ 442, *with* Compl. ¶ 148.

<sup>36</sup> *E.g.*, Securities Compl. ¶¶ 114, 246, 432.

<sup>37</sup> Compl. ¶¶ 161-63, 168-70.

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under *all* available legal theories.”<sup>38</sup> A class action complaint was subsequently filed in the Court of Chancery, “seeking redress for . . . allegedly false statements made in connection with [a] merger.”<sup>39</sup> The court deferred to the federal action because the cases “share[d] the same core facts, legal claims, and alleged damages.”<sup>40</sup>

In *Schnell v. Porta Systems Corp.*, a federal securities complaint alleged “that the defendants engaged in a conspiracy to conceal adverse material information, to defraud purchasers, and to maintain an artificially high market price” for a company’s stock.<sup>41</sup> A class action complaint filed in Delaware three weeks later likewise alleged that the defendants “breached their fiduciary duties owed to the shareholders in that they made material misrepresentations and failed to correct those material misrepresentations with subsequent disclosures” and that those actions “amounted to fraud.”<sup>42</sup> In staying the Delaware action, the court explained that “while the claims in the two courts may be stated in different ways, they [were] actually the same claims.”<sup>43</sup>

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<sup>38</sup> 773 A.2d 1005, 1010 (Del. Ch. 2000) (emphasis in original).

<sup>39</sup> *Id.* at 1009.

<sup>40</sup> *Id.* at 1016.

<sup>41</sup> 1994 WL 148276, at \*4 (Del. Ch. Apr. 12, 1994).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

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In this instance, the distinction between the federal claims pleaded in the Securities Action and the plaintiffs' Delaware law fiduciary duty claims is not an "artificial" one.<sup>44</sup> Without considering the viability of the plaintiffs' claims, even a superficial review of the Complaint makes plain that the plaintiffs are pursuing more than a narrow disclosure claim.<sup>45</sup> The claims advanced "invoke[] both the duty of loyalty and disclosure duties implicating director loyalty."<sup>46</sup> They are not "redundant or duplicative of"<sup>47</sup> the first-filed securities claims.<sup>48</sup>

The gap between the claims here and those in the Securities Action widens when the potential remedies are considered. The defendants argue that any monetary damages that could be awarded in this Action would be addressed by the relief sought in the Securities Action. But the bases for measuring the relief (if any) would be entirely different. The Securities Action seeks to recover damages for losses allegedly caused by the decline in Lordstown's stock price from a class period high

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<sup>44</sup> *Derdiger*, 773 A.2d at 1016-17 (describing the "forceful[]" rejection" of an alleged distinction between state and federal "misdisclosure claims" in *Schnell v. Porta Systems Corp.*).

<sup>45</sup> *E.g.*, Compl. ¶¶ 97, 123-25; *see MultiPlan*, 2022 WL 24060, at \*8.

<sup>46</sup> *MultiPlan*, 2022 WL 24060, at \*8.

<sup>47</sup> *Derdiger*, 773 A.2d at 1018.

<sup>48</sup> It bears mentioning that the defendants have also moved to stay the *Cormier* action. *Cormier*, C.A. No. 2021-1049-LWW, Dkt. 13. This decision should not be viewed as determinative of that motion, which concerns a subsequently-filed derivative action. *See id.*

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of \$31.57.<sup>49</sup> The plaintiffs' attempted recovery in this Action, by contrast, could turn on the \$10 redemption price (plus interest) relative to the value the class received in the de-SPAC transaction.<sup>50</sup>

### III. CONCLUSION

Delaware has a substantial interest in addressing the issues presented by this case. And there is limited overlap—in terms of the parties, issues, and potential remedies—between this Action and the Securities Action. The defendants' Motion to Stay is denied.

Sincerely yours,

*/s/ Lori W. Will*

Lori W. Will  
Vice Chancellor

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<sup>49</sup> See Securities Compl. ¶ 434.

<sup>50</sup> See Compl. ¶ 147.