IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
NU RIDE INC., *et al.*,[1]	Case No. 23-10831 (MFW)
Reorganized Debtors.	(Jointly Administered)
	Hearing Date: November 26, 2024 at 11:30 a.m. (ET) **Objection Deadline: November 19, 2024 at 4:00 p.m. (ET)**

POST-EFFECTIVE DATE DEBTORS' AND CLAIMS OMBUDSMAN'S
JOINT NINTH (SUBSTANTIVE) OMNIBUS OBJECTION TO CLAIMS
(No Liability)

THIS OBJECTION SEEKS TO DISALLOW CERTAIN CLAIMS. CLAIMANTS RECEIVING THIS OBJECTION SHOULD REVIEW THIS OBJECTION AND LOCATE THEIR NAMES AND CLAIMS ON SCHEDULE 1 ATTACHED TO THIS OBJECTION AND, IF APPLICABLE, FILE A RESPONSE BY THE RESPONSE DEADLINE FOLLOWING THE INSTRUCTIONS SET FORTH HEREIN. THE RELIEF SOUGHT HEREIN IS WITHOUT PREJUDICE TO THE POST-EFFECTIVE DATE DEBTORS' AND CLAIMS OMBUDSMAN'S RIGHTS TO PURSUE FURTHER SUBSTANTIVE OR NON-SUBSTANTIVE OBJECTIONS AGAINST CERTAIN CLAIMS LISTED ON SCHEDULE 1 ATTACHED TO THIS OBJECTION.

Nu Ride Inc. and its affiliated reorganized debtors in the above-captioned proceeding (the "Post-Effective Date Debtors") and Alan Halperin, solely in his capacity as Claims Ombudsman (the "Claims Ombudsman" and together with the Post-Effective Date Debtors, the "Movants"),[2] by and through their respective counsel, hereby jointly submit this joint ninth omnibus (substantive) objection (the "Objection"), pursuant to §§ 105(a) and 502 of title 11 of the United

[1] The Reorganized Debtors and the last four digits of their respective taxpayer identification numbers are: Lordstown Motors Corp. (3239); Lordstown EV Corporation (2250); and Lordstown EV Sales LLC (9101). The Reorganized Debtors' service address is: Nu Ride Inc. c/o William Gallagher, CEO, M 3 Partners, 1700 Broadway, 19th Floor, New York, NY 10019.

[2] Capitalized terms used in this Objection but not otherwise defined herein shall have the same meaning as in the *Third Modified First Amended Joint Chapter 11 Plan of Lordstown Motors Corp. and its Affiliated Debtors* (the "Plan") [Dkt. No. 1066], unless the context otherwise requires.

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States Code (the "Bankruptcy Code"), Rule 3007(d) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 3007-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), seeking an order substantially in the form attached hereto as **Exhibit A** (the "Proposed Order") disallowing and expunging in full the claims for which the Debtors (defined herein) have no liability that are identified on **Schedule 1** attached to the Proposed Order (the "Disputed Claims"). In support of this Objection, the Movants submit the *Declaration of Alan D. Halperin Pursuant to 28 U.S.C. § 1746 and Local Rule 3007-1 in Support of the Post-Effective Date Debtors' and Claims Ombudsman's Joint Ninth (Substantive) Omnibus Objection to Claims (No Liability Claims)* (the "Halperin Declaration") attached hereto as **Exhibit B**. In further support of this Objection, the Movants respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012 (Sleet, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The predicates for the relief requested by this Objection are section 502 of the Bankruptcy Code, Bankruptcy Rule 3007, and Local Rule 3007-1.

3. Pursuant to Local Rule 9013-1(f), the Movants consent to the entry of a final judgment or order with respect to this Objection if it is determined that this Court lacks Article III jurisdiction to enter such final order or judgment absent consent of the parties.

BACKGROUND

4. On June 27, 2023 (the "Petition Date"), Lordstown Motors Corp. and its affiliated debtors (the "Debtors") filed voluntary petitions in the United States Bankruptcy Court for the District of Delaware (the "Court") commencing these cases (the "Chapter 11 Cases"), which are being jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015(b).

CLAIMS PROCESS

5. On June 28, 2023, the Court entered an order authorizing the Debtors to retain and employ Kurtzman Carson Consultants LLC (now known as Verita Global) ("Verita") as its claims and noticing agent [Dkt. No 54], and on July 25, 2023, the Court entered an order authorizing Verita to be the Debtors' administrative advisor under 11 U.S.C. § 327(a) [Dkt. No. 174].

6. On August 1, 2023, the Debtors filed their schedules of assets and liabilities and statements of financial affairs [Dkt. No. 210-17], which were subsequently amended [Dkt. No. 377-385] on September 7, 2023 and may be further amended from time to time (collectively, as amended, supplemented, or further amended, the "Schedules").

7. On August 24, 2023, the Court entered the *Order (A) Establishing Bar Dates and Related Procedures for Filing Proofs of Claim, Including Claims Arising Under Section 503(b)(9) of the Bankruptcy Code, (B) Approving the Form, Manner, and Procedures of Notice Thereof, and (C) Granting Related Relief* [Dkt. No. 319] (the "Bar Date Order").

8. The Bar Date Order established, among other things: (a) October 10, 2023 at 5:00 p.m. (prevailing Eastern Time) as the deadline to file proofs of claim in the Chapter 11 Cases for persons or entities (except governmental units (as such term is defined in section 101(27) of the Bankruptcy Code)) (the "General Bar Date"); (b) December 26, 2023 at 5:00 p.m. (prevailing Eastern Time) as the deadline for governmental units to file proofs of claim in the Chapter 11 Cases (the "Governmental Bar Date"); (c) the Rejection Bar Date (as defined in the Bar Date

Order) as the later of: (a) the General Bar Date or the Governmental Bar Date (if a governmental unit is the counterparty to the applicable executory contract or unexpired lease) and (b) 5:00 p.m. (prevailing Eastern Time) on the date that is thirty (30) days after the service of an order of the Court authorizing the Debtors' rejection of the applicable executory contract or unexpired lease; and (d) the Amended Schedule Bar Date (as defined in the Bar Date Order) as the later of (a) the General Bar Date or the Governmental Bar Date (if the applicable amendment relates to a claim of a Governmental Unit) and (b) 5:00 p.m. (prevailing Eastern Time) on the date that is 30 days after the claimant is served with notice of the applicable amendment or supplement to the Debtors' schedules.

9. On August 28, 2023, the Debtors filed the *Notice of Deadlines for Filing Proofs of Claim, Including Claims Arising Under Section 503(b)(9) of the Bankruptcy Code Against Debtors* [Dkt. No. 335] (the "Bar Date Notice").

10. In accordance with the Bar Date Order, on August 31, 2023, Verita served the Bar Date Notice and proof of claim forms, via email and/or first-class mail to all creditors and any other known holders of potential claims in these Chapter 11 Cases and their counsel (if known). Verita also served the Bar Date Notice to all known registered holders of Lordstown Motors Corp. common stock and preferred stock, and any holders for whose benefit such registered holder holds down the chain of ownership for all such holders of common or preferred stock. Further, the Bar Date Notice was published in the *The Wall Street Journal* and *Automotive News* on August 31, 2023 and September 11, 2023, respectively [Dkt. No. 591] (the "Publication Notice").

11. On March 6, 2024, the Court entered the *Order (I) Confirming Third Modified First Amended Joint Chapter 11 Plan of Lordstown Motors Corp. and its Affiliated Debtors and (II) Granting Related Relief* (the "Confirmation Order") [Dkt. No. 1069], confirming the Debtors'

Plan. As set forth in the *Notice of Effective Date and Entry of Order (I) Confirming the Third Modified First Amended Joint Chapter 11 Plan of Lordstown Motors Corp. and its Affiliated Debtors and (II) Granting Related Relief* (the "Notice of Effective Date") [Dkt. No. 1096], the Plan became effective on March 14, 2024 (the "Effective Date").

12. The Plan established April 14, 2024 as the deadline by which requests for payment of Allowed Administrative Claims (except with respect to Administrative Claims that are Professional Fee Claims) must be filed (the "Administrative Claims Bar Date" and together with the General Bar Date, the Governmental Bar Date, the Rejection Bar Date, and the Amended Schedule Bar Date, the "Bar Dates").

13. Pursuant to the Plan, the Debtors' Chapter 11 Cases were substantively consolidated for the limited purpose of making Distributions. *Plan,* Art. V.A. As such, Claims asserted against multiple Debtors, including Claims based on joint and several liability and guarantee and/or surety Claims are deemed to constitute a single Claim against the consolidated Estate. *Id.*

14. Pursuant to the Confirmation Order and Plan, on the Effective Date, Alan D. Halperin was appointed Claims Ombudsman in these Chapter 11 Cases. *See* Confirmation Order, ¶ 68; Plan, Article V.D.1. As Ombudsman, Alan D. Halperin has the right, authority, and responsibility to object to, seek to subordinate, compromise or settle any and all General Unsecured Claims, including by filing and prosecuting objections to General Unsecured Claims, subject to the limitations set forth in the Plan. Confirmation Order, ¶ 69, Plan, Article V.D.2. Additionally, the Ombudsman has the right to assert any and all rights and defenses that the applicable Debtor had with respect to any General Unsecured Claim immediately before the Effective Date. *Id.* All rights not expressly delegated to the Claims Ombudsman under the Plan

are expressly reserved to the Post-Effective Date Debtors. *Id.* The Post-Effective Date Debtors have asked the Claims Ombudsman to review and reconcile certain secured, administrative and priority claims that are the subject of this Objection.

15. The claims register for these Chapter 11 Cases (the "Claims Register"), prepared and maintained by Verita, shows that over 1,645 proofs of claim have been filed against the Debtors as of the filing of this Objection.

16. In the ordinary course of business, the Debtors maintained books and records (the "Books and Records") that generally reflect, among other things, the nature and amount of the liabilities owed to their creditors. The Movants, with the assistance of their advisors, have actively begun reviewing and reconciling proofs of claim with the Debtors' Schedules and Books and Records, which process includes identifying certain categories of claims that may be subject to objection, disallowance, and expungement. While this analysis and reconciliation is ongoing, the Movants have determined that the Disputed Claims should be disallowed for one or more reasons. Accordingly, the Movants file this Objection seeking the relief requested below.

CLAIM OBJECTION RELIEF REQUESTED

17. By this Objection, and for the reasons set forth more fully below, the Movants object to the Disputed Claims pursuant to §§ 105(a) and 502 of the Bankruptcy Code, Bankruptcy Rules 3007 and 9014, and Local Rule 3007-1.

18. When asserting a proof of claim against a bankruptcy estate, a claimant must allege facts that, if true, would support a finding that the debtor is legally liable to the claimant. *In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173 (3d Cir. 1992); *Matter of Int'l Match Corp.*, 69 F.2d 73, 76 (2d Cir. 1934) (finding that a proof of claim should at least allege facts from which legal liability can be seen to exist). Where a claimant alleges sufficient facts to support its claim, its claim is

afforded *prima facie* validity. *In re Allegheny Int'l, Inc.*, 954 F.2d at 173. A party wishing to dispute such a claim must produce evidence in sufficient force to negate the claim's *prima facie* validity. *Id.* In practice, the objecting party must produce evidence that would refute at least one of the allegations essential to the claim's legal sufficiency. *Id.* Once the objecting party produces such evidence, the burden shifts back to the claimant to prove the validity of his or her claim by a preponderance of the evidence. *Id.* The burden of persuasion is always on the claimant. *Id.*

19. The Movants are objecting to the Disputed Claims listed on **Schedule 1** because the Movants believe that the Debtors have no liability for such claims, either because such claims have been satisfied, or because the Debtors' Books and Records show no amount due in tandem with such claims failing to include sufficient documentation to support the amount asserted. After reviewing each Claim, together with the Books and Records and consulting with certain of the Debtors' former principals, the Movants have determined that each Disputed Claim should be disallowed for the reasons set forth on **Schedule 1**.

20. With respect to Claim numbers 1376, 1395, 1399, and 1433, the claims are based on the Ohio Securities Litigation, in which the Claimants are named plaintiffs. Such Claimants are Ohio Settlement Class Members, whose claims were settled according to the treatment afforded to the Class 10 Ohio Securities Litigation Claim under the Plan. As the treatment provided under the Plan constitutes the full and complete settlement of the Ohio Securities Litigation Claim against the Debtors, the Debtors have no further liability with respect to Claims 1376, 1395, 1399, and 1433.

21. With respect to Claim numbers 802, 809, and 816 (classified as Class 9 "RIDE Section 510(b) Claims" under the Plan), the support for such claims included copies of a complaint filed after the Petition Date in the United States District Court for the Northern District of Ohio

(the "Ohio Court") against certain directors and officers of the Debtors (which did not name the Debtors as defendants). On September 30, 2024, the Ohio Court dismissed the complaint in full on the grounds that none of the allegations in the complaint were actionable.[3] The RIDE Section 510(b) Claims therefore do not provide any basis for liability on the part of the Debtors and should be disallowed.

22. With respect to Claim numbers 1296 and 1418 (together, the "Delaware Chancery Derivative Claims"), the only support provided for such claims includes copies of a complaint filed in June 2022 in the Court of Chancery of the State of Delaware, captioned *In re Lordstown Motors Corp. Stockholder Derivative Litigation*, C.A. No. 2021-1049-LWW in which Debtor Lordstown Motors Corp. is named as a nominal defendant and which does not assert any claims against the Debtors. The Delaware Chancery Derivative Claims do not provide any basis for liability on the part of the Debtors and should be disallowed.

23. With respect to Claim numbers 853, 1181, 1222, 1278, 1298, 1316, 1342, 1359, 1360, 1361 and 1411, (the "California PTO Claims"), each filed on account of paid time off ("PTO") the Claimants assert is owed under California labor law, the Debtors' records shared with the Claims Ombudsman demonstrate that on October 25, 2023, the relevant Claimants were paid via payroll direct deposit a payment equal to the total amount of outstanding PTO as noted in the Debtors' books and records (the "October 25 Payments"). Each October 25 Payment was calculated on the basis of the number of unpaid PTO hours the relevant Claimant had accrued multiplied by the Claimant's then hourly wage. The Movants do not believe any additional amounts are owed on account of the California PTO Claims.

[3] A copy of the Memorandum Opinion and Order resolving the suit is attached to the Halperin Declaration as **Exhibit A**.

24. Based on the foregoing, the Movants submit that the Disputed Claims should be disallowed and removed from the Claims Register.

RESPONSES TO OBJECTION

25. Filing and Service of Responses. To contest this Objection, a holder of a Disputed Claim must file and serve a written response to this Objection (a "Response") so that it is actually received by the Clerk of the Court and the parties in the following paragraph no later than **4:00 p.m. (ET) on November 19, 2024** (the "Response Deadline"). Claimants should read the Proposed Order and Exhibits attached carefully.

26. Each Response must be filed and served upon the following entities at the following addresses: (i) counsel for the Post-Effective Date Debtors: (a) Brown Rudnick LLP, One Financial Center, Boston, MA 02111 (Attn: Sharon I. Dwoskin (sdwoskin@brownrudnick.com); and (b) Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, DE 19801 (Attn: Eric J. Monzo (emonzo@morrisjames.com) and Brya M. Keilson (bkeilson@morrisjames.com); and (ii) counsel for the Claims Ombudsman: (a) Halperin Battaglia & Benzija LLP, 40 Wall Street, New York, NY 10005 (Attn: Walter Benzija (wbenzija@halperinlaw.net and Keara Waldron (kwaldron@halperinlaw.net)), and (iv) (b) Bielli Klauder, LLC, 1204 N. King Street, Wilmington, DE 19801 (Attn: David M. Klauder (dklauder@bk-legal.com)).

27. Content of Responses. Every Response to this Objection must contain, at a minimum, the following:

(a) a caption setting forth the name of the Court, the name of the Debtor, the case number and the title of this Objection to which the Response is directed;

(b) the name of the claimant and description of the basis for the amount of the Disputed Claim;

(c) a concise statement setting forth the reasons why the relief in this Objection should not be granted, including, but not limited to, the specific factual and legal bases upon which the claimant relies in opposing this Objection;

(d) all documentation or other evidence supporting the Disputed Claim not previously filed with the Bankruptcy Court or the Agent, upon which the claimant relies in opposing this Objection; and

(e) the name, address, telephone number, email and fax number of the person(s) (which may be the claimant or a legal representative thereof) to whom counsel for the Movants should serve a reply, if any, to the Response and who possesses authority to reconcile, settle or otherwise resolve the objection to the Claim on behalf of the claimant.

28. A Response must address each ground upon which the Debtors object to a particular Disputed Claim.

29. Timely Response Required; Hearings; Replies. If a Response is properly and timely filed and served in accordance with the above procedures, the Movants will endeavor to reach a consensual resolution with the claimant. If no consensual resolution is reached, the Court will conduct a hearing with respect to the Objection and the Response on **November 26, 2024 at 11:30 a.m. (E.T.)** or such other date and time as parties filing Responses may be notified. Only those Responses made in writing and timely filed and received will be considered by the Court at any such hearing.

30. If a claimant fails to file and serve a timely Response, then without further notice to the claimant or a hearing, the Movants will present to the Court an appropriate order, substantially in the form of the Proposed Order attached as **Exhibit A** hereto, to grant the relief requested herein.

31. Adjournment of Hearing. The Movants reserve the right to seek an adjournment of the hearing on any Response to this Objection, which adjournment will be noted on the notice of agenda for the hearing. The agenda will be served on the person designated by the claimant in its Response.

32. Separate Contested Matter. The objection by the Movants to each claim shall constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. Any order

entered by the Court regarding an objection asserted in this Objection shall be deemed a separate order with respect to each claim subject thereto.

RESERVATION OF RIGHTS

33. The Movants expressly reserve the right to amend, modify, or supplement this Objection, and to file additional objections to the Disputed Claims or any other claims (filed or not) that may be asserted against the Debtors and their estates.

34. Notwithstanding anything contained in the Objection, or the exhibits and schedules attached hereto, nothing herein will be construed as a waiver of any rights that the Movants or any successor thereof may have to enforce rights of setoff against the claimants.

35. Nothing in this Objection shall be deemed: (a) an admission as to the amount of, basis for, or validity of any Claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Movants' or any other party in interest's right to dispute any Claim; (c) a promise or requirement to pay any particular Claim; (d) an implication or admission that any particular Claim is of a type specified or defined in this Objection; (e) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (f) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law.

STATEMENT OF COMPLIANCE WITH LOCAL RULE 3007-1

36. To the extent that a response is filed regarding any Disputed Claim listed in this Objection and the Movants are unable to resolve the response, each such Disputed Claim, and the objection by the Movants to each such Disputed Claim asserted herein, shall constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. Any order entered by the Court

regarding an objection asserted in the Objection shall be deemed a separate order with respect to each Disputed Claim.

NOTICE

37. A copy of this Objection and all related exhibits will be served on (i) the Office of the United States Trustee for the District of Delaware; (ii) each Holder of a Disputed Claim; and (iii) other parties entitled to notice under the Plan and Bankruptcy Rule 2002. The Movants respectfully submit that no further notice of this Objection is required.

38. Pursuant to Bankruptcy Rule 3007, the Movants have provided all claimants affected by this Objection with at least thirty (30) days' notice of the hearing to consider this Objection.

NO PRIOR REQUEST

39. No previous request for the relief sought herein has been made to this or any other Court.

CONCLUSION

WHEREFORE the Movants respectfully request entry of an order substantially in the form of the Proposed Order attached hereto as **Exhibit A** granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: October 25, 2024

/s/ David M. Klauder

BIELLI & KLAUDER LLC
David M. Klauder (No. 5769)
1204 N. King Street
Wilmington, DE 19801
Telephone: (302) 803-4600
E-mail: dklauder@bk-legal.com

-and-

HALPERIN BATTAGLIA BENZIJA, LLP
Walter Benzija
Keara M. Waldron
40 Wall Street, 37th Floor
New York, NY 10005
Telephone: (212) 765-9100
Facsimile: (212) 765-0964
E-mail: wbenzija@halperinlaw.net
E-mail: kwaldron@halperinlaw.net

Counsel for the Claims Ombudsman

MORRIS JAMES LLP

Eric J. Monzo (DE Bar No. 5214)
Brya M. Keilson (DE Bar No. 4643)
500 Delaware Avenue, Suite 1500
Wilmington, Delaware 19801
Telephone: (302) 888-6800
Facsimile: (302) 571-1750
E-mail: emonzo@morrisjames.com
E-mail: bkeilson@morrisjames.com

BROWN RUDNICK LLP

Robert J. Stark (admitted *pro hac vice*)
Bennett S. Silverberg (admitted *pro hac vice*)
Michael S. Winograd (admitted *pro hac vice*)
7 Times Square
New York, NY 10036
Telephone: (212) 209-4800
Facsimile: (212) 209-4801
E-mail: rstark@brownrudnick.com
E-mail: bsilverberg@brownrudnick.com
E-mail: mwinograd@brownrudnick.com

-and-

Sharon I. Dwoskin (admitted *pro hac vice*)
Matthew A. Sawyer (admitted *pro hac vice*)
One Financial Center
Boston, MA 02111
Telephone: (617) 856-8200
Facsimile: (617-856-8201
E-mail: sdwoskin@brownrudnick.com
E-mail: msawyer@brownrudnick.com

Counsel for the Post-Effective Date Debtors

Exhibit A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
NU RIDE INC., *et al.*,[4]	Case No. 23-10831 (MFW)
Reorganized Debtors.	(Jointly Administered)
	Re: Docket No. ___

ORDER GRANTING POST-EFFECTIVE DATE DEBTORS' AND CLAIMS OMBUDSMAN'S JOINT NINTH (SUBSTANTIVE) OMNIBUS OBJECTION TO CLAIMS (No Liability Claims)

Upon the *Post-Effective Date Debtors' and Claims Ombudsman's Joint Ninth (Substantive) Omnibus Objection to Claims (No Liability Claims)* (the "Objection")[5], filed by Nu Ride Inc. and its affiliated reorganized debtors (the "Post-Effective Date Debtors") and Alan Halperin, solely in his capacity as Claims Ombudsman in the above-captioned cases (the "Claims Ombudsman" and together with the Post-Effective Date Debtors, the "Movants") for entry of an order disallowing and expunging in their entirety the claims set forth on **Schedule 1** hereto (each a "Disputed Claim" and collectively, the "Disputed Claims"), all as more fully set forth in the Objection; and upon the *Declaration of Alan D. Halperin Pursuant to 28 U.S.C. § 1746 and Local Rule 3007-1 in Support of the Post-Effective Date Debtors' and Claims Ombudsman's Joint Ninth (Substantive) Omnibus Objection to Claims (No Liability Claims)* (the "Halperin Declaration") filed contemporaneously with the Objection and in support thereof; and this Court having

[4] The Reorganized Debtors and the last four digits of their respective taxpayer identification numbers are: Lordstown Motors Corp. (3239); Lordstown EV Corporation (2250); and Lordstown EV Sales LLC (9101). The Reorganized Debtors' service address is: Nu Ride Inc. c/o William Gallagher, CEO, M 3 Partners, 1700 Broadway, 19th Floor, New York, NY 10019.

[5] Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Objection.

jurisdiction to consider the Objection and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated as of February 29, 2012; and consideration of the Objection and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Objection having been provided, and no other or further notice being required; and the Court having considered all responses to the Objection, if any, and all such responses having been either overruled or withdrawn; and upon all proceedings had before the Court; and the Court having determined that the legal and factual bases set forth in the Objection establish just cause for the relief granted herein; and

This Court having **FOUND AND DETERMINED THAT:**

A. Each holder of a Disputed Claim listed on **Schedule 1** attached hereto was properly and timely served with a copy of the Objection and all of its accompanying exhibits and notice of a hearing on the Objection and response deadline,

B. Any entity known to have an interest in the Disputed Claims subject to the Objection has been afforded reasonable opportunity to respond to, or be heard regarding, the relief requested in the Objection, and

C. The relief requested in the Objection is in the best interests of the Debtors, their estates, their creditors, and other parties in interest;

D. And after due deliberation and sufficient cause appearing therefor,

IT IS THEREFORE ORDERED THAT:

1. The Objection is **GRANTED**.

2. Any Response to the Objection not otherwise withdrawn, resolved, or adjourned is

overruled on the merits.

3. The Disputed Claims listed on **Schedule 1** attached hereto are hereby disallowed in their entirety.

4. The objection by the Movants to each of the Disputed Claims, as addressed in the Objection, and the schedules hereto, constitutes a separate contested matter with respect to each such claim, as contemplated by Bankruptcy Rule 9014 and Local Rule 3007-1. This Order shall be deemed a separate Order with respect to each Disputed Claim.

5. Any stay of this Order pending appeal by any holder of a Disputed Claim or any other party with an interest in such claims that are subject to this Order shall only apply to the contested matter which involves such party and shall not act to stay the applicability and/or finality of this Order with respect to other contested matters arising from the Objection or this Order.

6. Nothing in the Objection or this Order shall be construed as an allowance of any Claim.

7. Movants' rights to amend, modify, or supplement the Objection, to file additional objections to the Disputed Claims or any other claims (filed or not) which have or may be asserted against the Debtors or their estates, and to seek further reduction of any Claim, are preserved. Additionally, should one or more of the grounds of objection stated in the Objection be dismissed, the Movants' right to object on other stated grounds or any other grounds that the Movants discover during the pendency of these Chapter 11 Cases are further preserved.

8. Nothing in this Order or the Objection is intended or shall be construed as a waiver of any of the rights the Movants may have to enforce rights of setoff against the claimants.

9. The Movants, Verita, and the Clerk of this Court are authorized and directed to amend the official claims registry to reflect the disallowance of the Disputed Claims pursuant to

this Order and to make other changes to the official claims registry as necessary to reflect the terms of this Order.

10. Nothing in the Objection or this Order, nor any actions or payments made by the Post-Effective Date Debtors pursuant to this Order, shall be construed as: (a) an admission as to the amount of, basis for, or validity of any Claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Movants' or any other party in interest's right to dispute any Claim; (c) a promise or requirement to pay any particular Claim; (d) an implication or admission that any particular Claim is of a type specified or defined in this Order; (e) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (f) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law.

11. This Order is immediately effective and enforceable.

12. This Court shall retain jurisdiction to hear and determine all matters arising from the interpretation and/or implementation of this Order.

Dated: _____, 2024
Wilmington, Delaware

The Honorable Mary F. Walrath
United States Bankruptcy Judge

Schedule 1

	Name of Claimant	Claim Number	Claim Amount	Claim Type	Reason for Disallowance
1	Bajpai, Alok Kumar	1316	$0.00 $0.00 $34,944.28 $0.00	Administrative Priority Secured Priority General Unsecured	Debtors' books and records demonstrate that all paid time off owed to claimant was paid via payroll direct deposit on 10/25/23.
2	Carcoustics USA	973	$21,596.38 $0.00 $0.00 $0.00	Administrative Priority Secured Priority General Unsecured	Debtors' books and records do not reflect any amounts owed to claimant and support provided is insufficient to verify amounts sought.
3	Dinh, Richard	1359	$0.00 $0.00 $0.00 $5,466.73	Administrative Priority Secured Priority General Unsecured	Debtors' books and records demonstrate that all paid time off owed to claimant was paid via payroll direct deposit on 10/25/23
4	Dowell, Richard, as Lead Plaintiff Movant in the Securities Class Action	816	$0.00 $0.00 $0.00 UNLIQUIDATED	Administrative Priority Secured Priority General Unsecured	Claim is based on a derivative class action lawsuit that does not assert any claims against the Debtors and has been dismissed.
5	Durre, Roger	1411	$0.00 $0.00 $51,178.33 $0.00	Administrative Priority Secured Priority General Unsecured	Debtors' books and records demonstrate that all paid time off owed to claimant was paid via payroll direct deposit on 10/25/23.
6	FNY Managed Accounts LLC	1433	$0.00 $0.00 $0.00 $466,365.23	Administrative Priority Secured Priority General Unsecured	Claimant is an Ohio Settlement Class Member whose claim is to be satisfied by the Ohio Securities Litigation Settlement Fund
7	Garrahan, Gregory	1181	$0.00 $0.00 $7,338.46 $0.00	Administrative Priority Secured Priority General Unsecured	Debtors' books and records demonstrate that all paid time off owed to claimant was paid via payroll direct deposit on 10/25/23
8	Gatzaros, Nico, as Lead Plaintiff Movant in the Securities Class Action	809	$0.00 $0.00 $0.00 UNLIQUIDATED	Administrative Priority Secured Priority General Unsecured	Claim is based on a derivative class action lawsuit that does not assert any claims against the Debtors and has been dismissed.

Schedule 1

	Name of Claimant	Claim Number	Claim Amount	Claim Type	Reason for Disallowance
9	Globestar Systems Inc.	1399	$0.00 $0.00 $0.00 UNLIQUIDATED	Administrative Priority Secured Priority General Unsecured	Claimant is an Ohio Settlement Class Member whose claim is to be satisfied by the Ohio Securities Litigation Settlement Fund
10	Green, Brian	1222	$0.00 $0.00 $31,386.48 $0.00	Administrative Priority Secured Priority General Unsecured	Debtors' books and records demonstrate that all paid time off owed to claimant was paid via payroll direct deposit on 10/25/23.
11	Jackson, Janelle, Derivatively on Behalf of the Debtor, Lordstown Motors Corp.	1418	$0.00 $0.00 $0.00 UNLIQUIDATED	Administrative Priority Secured Priority General Unsecured	Claim is based on a derivative action in which Debtor Lordstown Motors Corp. is a nominal defendant and no claims are asserted against the Debtors.
12	Kwong, Benny	1278	$0.00 $0.00 $22,166.98 $0.00	Administrative Priority Secured Priority General Unsecured	Debtors' books and records demonstrate that all paid time off owed to claimant was paid via payroll direct deposit on 10/25/23
13	Lee, Sung Bum	1360	$0.00 $0.00 $4,576.92 $0.00	Administrative Priority Secured Priority General Unsecured	Debtors' books and records demonstrate that all paid time off owed to claimant was paid via payroll direct deposit on 10/25/23
14	Lim, Bandol as Plaintiff in the Securities Class Action	802	$0.00 $0.00 $0.00 UNLIQUIDATED	Administrative Priority Secured Priority General Unsecured	Claim is based on a derivative class action lawsuit that does not assert any claims against the Debtors and has been dismissed.
15	Lomont, Ed Derivatively on Behalf of the Debtor, Lordstown Motors Corp.	1296	$0.00 $0.00 $0.00 UNLIQUIDATED	Administrative Priority Secured Priority General Unsecured	Claim is based on a derivative action in which Debtor Lordstown Motors Corp. is a nominal defendant and no claims are asserted against the Debtors.
16	Nguyen, Nicholas	853	$0.00 $0.00 $18,700.38 $0.00	Administrative Priority Secured Priority General Unsecured	Debtors' books and records demonstrate that all paid time off owed to claimant was paid via payroll direct deposit on 10/25/23

Schedule 1

	Name of Claimant	Claim Number	Claim Amount	Claim Type	Reason for Disallowance
17	Pabbathi, Ashith	1376	$0.00 $0.00 $0.00 UNLIQUIDATED	Administrative Priority Secured Priority General Unsecured	Claimant is an Ohio Settlement Class Member whose claim is to be satisfied by the Ohio Securities Litigation Settlement Fund
18	Palay, David D. Jr. Individually, and Palay, Carol J Individually, and as Joint Tenants	1515	$0.00 $0.00 $0.00 $74,975.22	Administrative Priority Secured Priority General Unsecured	Claimant indicates claim is subject to the Ohio Securities Litigation. Accordingly, claim is to be satisfied by the Ohio Securities Litigation Settlement Fund.
19	Platzer, Christopher	1342	$0.00 $0.00 $15,991.90 $0.00	Administrative Priority Secured Priority General Unsecured	Debtors' books and records demonstrate that all paid time off owed to claimant was paid via payroll direct deposit on 10/25/23
20	Sarvepalli, Sunil Kumar	1361	$0.00 $0.00 $39,922.50 $0.00	Administrative Priority Secured Priority General Unsecured	Debtors' books and records demonstrate that all paid time off owed to claimant was paid via payroll direct deposit on 10/25/23
21	Tavares, Daniel	1395	$0.00 $0.00 $0.00 UNLIQUIDATED	Administrative Priority Secured Priority General Unsecured	Claimant is an Ohio Settlement Class Member whose claim is to be satisfied by the Ohio Securities Litigation Settlement Fund
22	Wong, Wai Man	1298	$0.00 $0.00 $11,374.34 $0.00	Administrative Priority Secured Priority General Unsecured	Debtors' books and records demonstrate that all paid time off owed to claimant was paid via payroll direct deposit on 10/25/23
23	Workhorse Group Inc.	1168	$0.00 $0.00 $0.00 UNLIQUIDATED	Administrative Priority Secured Priority General Unsecured	The Debtors do not owe any royalties to Workhorse Group Inc. under the applicable License Agreement.

Exhibit B

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:	Chapter 11
NU RIDE INC., *et al.*,[1]	Case No. 23-10831 (MFW)
Reorganized Debtors.	(Jointly Administered)

DECLARATION OF ALAN D. HALPERIN PURSUANT TO 28 U.S.C. § 1746 AND LOCAL RULE 3007-1 IN SUPPORT OF THE POST-EFFECTIVE DATE DEBTORS' AND CLAIMS OMBUDSMAN'S JOINT NINTH (SUBSTANTIVE) OMNIBUS OBJECTION TO CLAIMS (No Liability Claims)

Alan D. Halperin, under penalty of perjury, hereby declares as follows:

1. I am the Claims Ombudsman (the "Ombudsman") for the above-captioned debtors (collectively, the "Debtors") and I submit this declaration in support of the *Post-Effective Date Debtors' and Claims Ombudsman's Joint Ninth (Substantive) Omnibus Objection to Claims (No Liability Claims)* (the "Objection"), pursuant to which I, together with the Post-Effective Date Debtors, am requesting that this Court enter an order disallowing certain claims filed in the Cases[2]. Unless otherwise stated in this declaration, I have personal knowledge of the facts set forth herein.

2. Except as otherwise indicated, all facts set forth in this declaration are based upon my personal knowledge, my review (or the review of counsel, consultants and other professionals under my supervision) of business records kept by the Debtors in the ordinary course of business, the relevant proofs of claim, and/or the Claims Register maintained by Verita, the claims and noticing agent in the Cases. The grounds for the Objection are based on the review conducted.

[1] The Reorganized Debtors and the last four digits of their respective taxpayer identification numbers are: Lordstown Motors Corp. (3239); Lordstown EV Corporation (2250); and Lordstown EV Sales LLC (9101). The Reorganized Debtors' service address is: Nu Ride Inc. c/o William Gallagher, CEO, M 3 Partners, 1700 Broadway, 19th Floor, New York, NY 10019.

[2] Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Objection.

3. I have personally reviewed the Objection and to the best of my knowledge and belief, the information contained on **Schedule 1** to the Proposed Order attached as **Exhibit A** to the Objection is true and correct.

4. I and/or my counsel, consultants and other professionals reviewed all of the Claims identified in **Schedule 1** to **Exhibit A** to the Objection (the "Disputed Claims") and the corresponding books and records of the Debtors and have determined that the Debtors have no liability for the underlying debt. We have reviewed and made reasonable efforts to research and reconcile the No Liability Claims with the Debtors' books and records, and believe that such documentation does not provide *prima facie* evidence of the validity and amount of these claims. In many instances, the Debtors' books and records reflect that the No Liability Claims in question have been satisfied. Therefore, the No Liability Claims should be disallowed in their entirety.

5. With respect to Claim numbers 802, 809, and 816 (classified as Class 9 "RIDE Section 510(b) Claims" under the Plan), the support for such claims included copies of a complaint filed after the Petition Date in the United States District Court for the Northern District of Ohio (the "Ohio Court") against certain directors and officers of the Debtors (which did not name the Debtors as defendants). On September 30, 2024, the Ohio Court dismissed the complaint in full on the grounds that none of the allegations in the complaint were actionable.[3] A true and correct copy of the complaint is attached hereto as **Exhibit A**. The RIDE Section 510(b) Claims therefore do not provide any basis for liability on the part of the Debtors and should be disallowed in their entirety.

6. With respect to Claim numbers 1296 and 1418 (together, the "Delaware Chancery Derivative Claims"), the only support provided for such claims includes copies of a complaint

[3] A copy of the Memorandum Opinion and Order resolving the suit is attached to the Halperin Declaration as **Exhibit A**.

filed in June 2022 in the Court of Chancery of the State of Delaware, captioned *In re Lordstown Motors Corp. Stockholder Derivative Litigation*, C.A. No. 2021-1049-LWW in which Debtor Lordstown Motors Corp. is named as a nominal defendant and which does not assert any claims against the Debtors. The Delaware Chancery Derivative Claims do not provide a basis for liability on the part of the Debtors and should be disallowed in their entirety.

7. With respect to Claim numbers 853, 1181, 1222, 1278, 1298, 1316, 1342, 1359, 1360, 1361 and 1411, each filed on account of paid time off ("PTO") the Claimants asserts is owed under California labor law, the Debtors' records demonstrate that on October 25, 2023, the relevant Claimants were paid via payroll direct deposit a payment equal to the total amount of outstanding PTO as noted in the Debtors' books and records (the "October 25 Payments"). The Claims Ombudsman is further advised by the Debtors' former Vice President of Finance and Controller that the Debtors' Human Resources Department calculated each October 25 Payment using the Company's payroll system to determine the number of PTO hours the Claimant had accrued less any PTO hours the Claimant previously submitted for approval to determine the balance that remained unpaid (the "Unpaid PTO"). The Unpaid PTO was then multiplied by the Claimant's then hourly wage to determine the amount that was owed to Claimant on account of unpaid PTO.

8. Based on the foregoing, and to the best of my knowledge, information and belief, the information contained in the Objection and exhibits thereto is true and correct.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Executed on: October 25, 2024

/s/ Alan D. Halperin, as Claims Ombudsman
Alan D. Halperin

Exhibit A

PEARSON, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

BANDOL LIM, *et al.*,	)	
	)	CASE NO. 4:23CV1454
Plaintiffs,	)	
	)	JUDGE BENITA Y. PEARSON
v.	)	
	)	
EDWARD HIGHTOWER, *et al.*,	)	**MEMORANDUM OF OPINION AND ORDER**
	)	
Defendants.	)	[Resolving ECF Nos. 35 and 35-14]

Pending are Defendants Edward Hightower ("Hightower"), Adam Kroll ("Kroll"), and Daniel A. Ninivaggi's ("Ninivaggi") Request for Judicial Notice (ECF No. 35-14) and Motion to Dismiss (ECF No. 35) the amended securities class-action complaint (ECF No. 31) brought by Lead Plaintiffs Andrew and Joshua Strickland, individually and on behalf of all others similarly situated. The Court has been advised, having reviewed the record, the parties' briefs, and the applicable law. For the following reasons, the Court takes Judicial Notice of Exhibits 1-11 (ECF Nos. 35-3 through 35-13) and grants Defendants' Motion to Dismiss (ECF No. 35).

I. Background

The above-entitled action concerns statements made by Defendants on behalf of Lordstown Motors Corp. ("LMC") that Plaintiffs allege misled investors about the state of LMC's partnership with Foxconn, an electronics manufacturer out of Taiwan. *See* Amended Class Action Complaint (ECF No. 31) at PageID #: 723, ¶ 2. Plaintiffs claim that Defendants

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failed to disclose significant problems in the partnership leading up to Foxconn's repudiation of the agreement with LMC and the bankruptcy of LMC. *See* ECF No. 31 at PageID #: 723, ¶ 2.

Hightower has acted as LMC's President and as Chief Executive Officer ("CEO") beginning in July 2022. *See* ECF No. 31 at PageID #: 730, ¶ 25. Kroll has served as LMC's Chief Financial Officer ("CFO") since October 2021. *See* ECF No. 31 at PageID #: 730, ¶ 26. Ninivaggi served as LMC's CEO from August 2021 to July 2022. *See* ECF No. 31 at PageID #: 730, ¶ 27.

After Foxconn repudiated its agreement with LMC, LMC filed an Adversary Complaint against Foxconn (ECF No. 31-1 at PageID #: 829-72) alleging fraud and breach of contract, which accused the company of intentionally driving LMC into bankruptcy. *See* ECF No. 31 at PageID #: 728, ¶ 17.[1] By failing to disclose the problems in the partnership prior to the bankruptcy proceedings, Plaintiffs allege Defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b) and § 78t(a), and associated Rule 10b–5 of the Securities and Exchange Commission ("SEC"), 17 C.F.R. § 240.10b–5. *See* ECF No. 31 at PageID #: 723, ¶ 1.

Plaintiffs allege the Class Period begins on August 4, 2022, during LMC's earnings conference call for the second quarter of 2022. *See* ECF No. 31 at PageID #: 757, ¶ 112.

[1] *See Lordstown Motors Corp., et al. v. Hon Hai Precision Industry Co., Ltd, et al.*, No. 23-50414-MFW (Bankr. D. Del. filed June 27, 2023).

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A. Initial Agreement with Foxconn

In 2018, LMC was founded as an electronic vehicle ("EV") manufacturing company with the main goal of developing the Endurance, an electric full-size pickup truck. *See* ECF No. 31 at PageID #: 733, ¶¶ 37-38. While LMC planned to launch sales of Endurance in 2022, the company faced financial setbacks leading to an initial agreement with Foxconn to obtain needed funding. *See* ECF No. 31 at PageID #: 733, ¶ 39. In September 2021, LMC signed a non-binding Agreement in Principle (ECF No. 31-1 at PageID #: 874-82) with Foxconn which was designed to "combine Foxconn's resources and efficiencies with Lordstown's innovation, technology, manufacturing plant, and human resources to [] develop [jointly] the next generation of electric vehicles." ECF No. 31 at PageID #: 734, ¶ 43.

Under the Agreement in Principle, Foxconn would purchase LMC's manufacturing plant for $230 million, $50 million in LMC's common stock, procure LMC's exercisable warrants for $1.7 million in shares of common stock, and enter into a Contract Manufacturing Agreement and Joint Venture Agreement. *See* ECF No. 31 at PageID #: 734-35, ¶ 44. In compliance with the Agreement in Principle, LMC and Foxconn then executed an Asset Purchase Agreement (ECF No. 31-1 at PageID #: 884-954) for Foxconn to purchase the manufacturing plant, *see* ECF No. 31 at PageID #: 734-35, ¶ 44, subject to approval from the Committee on Foreign Investment in the United States, *see* ECF No. 31-1, PageID #: 910.

B. The Joint Venture Agreement ("JVA") (ECF No. 31-1 at PageID #: 991-1052)

The joint venture was formed with 55% to be owned by Foxconn and 45% by LMC, requiring Foxconn to contribute $55 million. *See* ECF No. 31 at PageID #: 738, ¶¶ 56-57;

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PageID #: 740, ¶ 64. According to the Adversary Complaint, Foxconn delayed the development of the JVA between November 10, 2021 and May 11, 2022 before finally relenting and executing the agreement. *See* Doc 1 at Page 11, ¶ 33 in No. 23-50414-MFW; ECF No. 31 at PageID #: 737, ¶¶ 52-53. The parties experienced further delays and disagreements surrounding budgeting, with Foxconn attempting to implement a clause in the JVA requiring LMC to get Foxconn's approval for all purchases under the joint venture. *See* ECF No. 31 at PageID #: 739, ¶ 59. Plaintiffs' confidential witness ("CW-1"), a former employee of LMC and employee of Foxconn at the time of the disputed events, alleges Foxconn created "roadblocks" for LMC beginning in late 2022 and that he believed Foxconn intended to force LMC into bankruptcy. *See* ECF No. 31 at PageID #: 739-40, ¶¶ 61-63; PageID #: 743-45, ¶¶ 73-75. Foxconn also failed to provide LMC with the data for its Model C and Model E vehicles as stipulated under the JVA and continued to delay fulfilling its commitments. *See* ECF No. 31 at PageID #: 740-41, ¶¶ 64-66. Foxconn delayed approving LMC's draft budget and providing the agreed upon funds for several months, stating it disagreed with the proposal. *See* ECF No. 31 at PageID #: 743, ¶¶ 71-72. During these delays, Hightower travelled to Taiwan at Foxconn Chairman Young Liu's request. Hightower met with the chairman of Foxconn, but the CEO of Foxtron, a Foxconn affiliate in Taiwan, "refused to meet with him." ECF No. 31 at PageID #: 742, ¶ 69. Throughout the delays, Foxconn publicly characterized the partnership as successful, stating its investment in LMC served to "strengthen our development and design capabilities." Foxconn's Third Quarter 2022 Investor Conference (ECF No. 35-3) at PageID #: 1265. Under the JVA, Foxconn and LMC began production of the Endurance vehicle in September 2022. *See* ECF No. 31 at PageID #:

801-802, ¶ 188). Regarding manufacturing, LMC disclosed that the Endurance's production cost was "well above our anticipated selling price" and that production would be limited "through 2023 or possibly longer." LMC's Form 10-K filed on February 28, 2022 (ECF No. 35-5) at PageID #: 1299.

C. The Investment Agreement ("IA")(ECF No. 31-1 at PageID #: 1054-1114)

On October 14, 2022, LMC sent a letter confronting Foxconn about its breaches of the JVA, notably the failure to provide the Model C and Model E designs by October 2022. *See* ECF No. 31 at PageID #: 743, ¶ 72. As a result, Foxconn requested that the companies restructure their agreement, proposing a direct investment agreement with Foxconn and Softbank, a large multi-national technology investor. *See* ECF No. 31 at PageID #: 745, ¶¶ 76-77. After implementing the IA, Foxconn characterized its "cooperation" with LMC as "progressing quite smoothly." Foxconn's Third Quarter 2022 Investor Conference (ECF No. 35-3) at PageID #: 1267. Foxconn Ventures PTE Ltd., a subsidiary of Foxconn and Softbank, agreed to invest a total of approximately $170 million in LMC under the IA, providing substantially greater funding for LMC. *See* ECF No. 31 at PageID #: 745, ¶¶ 77-78. The companies executed the IA on November 7, 2022. LMC and Foxconn subsequently amended the IA to allow the proceeds from Foxconn's purchase of preferred stock to be used either for a Softbank-backed EV program or for a substitute program developed by LMC. *See* ECF No. 31 at PageID #: 747-48, ¶¶ 84-85. On December 22, 2022, the companies rescinded that amendment, and replaced it with Amendment No. 1 to Investment Agreement (ECF No. 31-1 at PageID #: 1119-20), which amended Section 5.12 of the IA and continued to allow funding for a joint EV program. *See* ECF No. 31 at

PageID #: 748, ¶ 87. The IA required Foxconn to file a request to the Committee on Foreign Investment in the United States. This was filed two weeks late as a result of the issues surrounding the formation of the agreement. *See* ECF No. 31 at PageID #: 748-49, ¶ 88. Under the IA, as amended, Foxconn confirmed its "continued intent" to "utilize Lordstown Motors Corp. as its preferred North American vehicle development partner." ECF No. 31-1 at PageID #: 1089, § 5.03(f). Between December 2022 and March 2023, LMC completed several manufacturing milestones including completion of the first phase of the new vehicle development work. *See* ECF No. 31 at PageID #: 749, ¶ 89. Foxconn again delayed providing funding to LMC. *See* ECF No. 31 at PageID #: 749, ¶ 91. Plaintiffs' confidential witnesses ("CW-2" and "CW-3") allege these delays in funding led to little work being done at LMC's Michigan location and caused suppliers to back out of deals between December 2022 and March 2023. *See* ECF No. 31 at PageID #: 750, ¶ 94.

D. Foxconn's Repudiation

In March 2023, the value of LMC stock dropped below $1.00 per share. On April 19, 2023, the NASDAQ stock market issued LMC a notice informing the company that it had 180 days to return the stock price to the required minimum according to the listing qualification rules. *See* ECF No. 31 at PageID #: 751, ¶ 95. On April 21, 2023, Foxconn sent a notice of default stating the company would terminate the IA, as amended, if the stock price did not rise by May 21, 2023 *See* ECF No. 31 at PageID #: 751, ¶ 96. LMC disputed the notice of default, stating the NASDAQ notice did not constitute a breach of their agreement and that Foxconn's termination of the IA would constitute an unlawful repudiation, causing material damage to the

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company. *See* ECF No. 31 at PageID #: 751-52, ¶ 97. Foxconn did not respond to LMC's objections, forcing LMC to publicly report the termination. *See* ECF No. 31 at PageID #: 752, ¶ 98. On June 27, 2023, LMC filed a voluntary petition for relief in a case under Chapter 11 of Title 11 of the United States Code. *See In re: Lordstown Motors Corp.*, No. 23-10831-MFW (Bankr. D. Del. filed June 27, 2023). It also filed the Adversary Complaint against Foxconn. *See* ECF No. 31 at PageID #: 728, ¶ 17. LMC's complaint alleges that since Foxconn's material breach of the IA, it continues to refuse financing or cooperation, forcing the company to shut down for lack of funds. *See* Doc 1 in No. 23-50414-MFW; ECF No. 31 at PageID #: 756, ¶ 110.

E. Alleged Misleading Statements

Plaintiffs allege Defendants made multiple misleading statements between August 4, 2022 and March 6, 2023. On August 4, 2022, Hightower stated during LMC's earnings conference call for the second quarter of 2022:

> **Our manufacturing partners at the Foxconn plant in Ohio are ready for March**. . . . Our 55/45 joint venture announced in mid-May, in which Foxconn committed an additional $100 million in capital, **is another action in support of the EV ambitions of both companies**. . . . I recently spent 2 weeks in Taiwan with Foxconn Chairman, Young Liu. . . . **we had several meetings about how to best operationalize the JV**. . . .

Also on August 4, Ninivaggi stated:

> In Q2, we closed our transactions with Foxconn, providing us with a flexible and less capital-intensive business model, **a world-class contract manufacturing partner, and a more scalable vehicle development platform as well as additional capital**. . . .

ECF No. 31 at PageID #: 757, ¶ 112 (emphasis in original; ellipsis added).

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On November 7, 2022, after the abandonment of the JVA and implementation of the IA, LMC issued a press release stating:

> . . . **it has been our objective to develop a broad strategic partnership that leverages the capabilities of both companies. Foxconn's latest investment is another step in that direction**. . . . "**Over the last year, the LMC and Foxconn teams have worked collaboratively to bring the Endurance into commercial production**. . . . **The combination of LMC's experienced vehicle development team, Foxconn's growing EV ecosystem, the MIH platform, and our asset-light business model will allow us to bring great EVs to market faster and more efficiently**."

ECF No. 31 at PageID #: 760-61, ¶ 114 (emphasis in original; ellipsis added).

On November 8, 2022, LMC issued a press release announcing its financial results for the third quarter of 2022, which states:

> . . . **Foxconn's additional investment in LMC is a strong sign of confidence in our team's product development and engineering capabilities**. . . . **We continue to believe that deep collaboration with Foxconn, as its preferred North American vehicle development partner**. . . **is key to our company's long-term success**. . . . "**We are proud of the accomplishments of the Lordstown and Foxconn EV Technology teams in bringing the Endurance into commercial production**. . . . **We are also extremely excited by the additional investment and expanding relationship with Foxconn and the opportunities it provides**. . . .

ECF No. 31 at PageID #: 763-64, ¶ 117 (emphasis in original; ellipsis added).

On November 8, 2022, Hightower stated during an LMC earnings conference call:

> . . . **While launching the Endurance, we are also expanding our focus to the next vehicle program with Foxconn**. . . . **we continue to make progress in the planning and predevelopment work**. . . . **I believe we have great potential opportunities ahead of us with our growing relationship with Foxconn**. . . .

On the same call, Kroll stated:

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> . . . **the joint venture** . . . **is being disbanded. We kind of think the direct investment in Lordstown is a better, simpler, easier structure. So I think its very favorable**.

ECF No. 31 at PageID #: 764-65, ¶ 118 (emphasis in original; ellipsis added).

On November 14, 2022, Hightower stated during a President's Speaker Series:

> . . . **it was very important to me that anything I said publicly be true**. . . . **I told the team we had two objectives** . . . **launch the Endurance and build this relationship with Foxconn**. . . . **[W]e were going to focus on three principles to do that, integrity, discipline, and collaboration**. . . .

ECF No. 31 at PageID #: 767-68, ¶ 120 (emphasis in original; brackets and ellipsis added).

On November 25, 2022, Hightower gave a presentation containing a slide stating:

> **Foxconn and LMC Engineering can share expertise and resources across organizations, globally**. . . .

ECF No. 31 at PageID #: 770, ¶ 122 (emphasis in original).

On December 22, 2022, Foxconn issued a press release quoting Hightower:

> "**As Foxconn's preferred vehicle development partner for North America, Lordstown Motors' highly capable team of engineers looks forward to creating additional electric vehicles in collaboration with the MIH Consortium and Foxconn EV ecosystem**[.]"

ECF No. 31 at PageID #: 773, ¶ 124 (emphasis in original; brackets added).

On January 4, 2023, Lordstown filed a disclosure on Form 8-K with the SEC, which states:

> **Worldwide manufacturer Foxconn** . . . **and Lordstown Motors, are working together to create a new EV-native model to enable increased collaboration, fast-track innovation and the cost-effectiveness needed**. . . . **The Foxconn EV ecosystem,** . . . **together with Lordstown Motors** . . . **is uniquely positioned to act upon the increased cross-industry collaboration and rapid innovation that is possible with Evs**. . . . **Foxconn, MIH, and Lordstown Motors are**

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> **demonstrating that a new era of increased collaboration, rapid innovation and progress is here**. . . . **Foxconn supplies components, software, supply chain and manufacturing expertise**. . . . **The sale of the manufacturing plant** . . . **laid the groundwork for the two companies to collaborate on product development**. . . . **The Foxconn EV ecosystem** . . . **creates a unique ability to address new market opportunities**. . . .

ECF No. 31 at PageID #: 775-76, ¶ 126 (emphasis in original; ellipsis added).

A presentation accompanying the Form 8-K also states:

> **The Foxconn & LMC partnership provides the industry with access to the assets and expertise to accelerate innovation, develop and manufacture tailored EVs at scale. Sale of the manufacturing plant located in Lordstown, Ohio to Foxconn laid the groundwork for how the two companies will collaborate.**

ECF No. 31 at PageID #: 777, ¶ 126 (emphasis in original).

> On February 13, 2023, Hightower stated during the CEO Panel Discussion:
>
> . . . **We have an agreement by which we will be developing future electric vehicle products in collaboration with Foxconn EV ecosystem**. . . .

ECF No. 31 at PageID #: 779, ¶ 128 (emphasis in original; ellipsis added).

> On March 6, 2023, LMC issued a press release stating:
>
> **In Q4 2022, we expanded and strengthened our partnership with Foxconn. We converted our prior $100 million joint venture into a direct investment in Lordstown Motors of up to $170 million**, $52 million of which was funded in November 2022. . . . **We continue to work collaboratively with Foxconn**. . . .

ECF No. 31 at PageID #: 782, ¶ 130 (emphasis in original; ellipsis added).

> Also on March 6, 2023, Kroll stated during an earnings conference call:
>
> . . . **we benefit from substantially lower operating complexity and risk by putting manufacturing in the hands of Foxconn**. . . .

On the same call, Hightower stated:

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> . . . **we plan to leverage common components, common subsystems and share them across, that the plan is for them to be shared across multiple OEMs.**

ECF No. 31 at PageID #: 782-83, ¶ 131 (emphasis in original; ellipsis added).

A slideshow accompanying the earnings conference call states:

> **Progressed pre-development work on the new program in collaboration with Foxconn EV Ecosystem. . . . Strengthened Partnership: Additional Foxconn Investment in LMC**. . . .

ECF No. 31 at PageID #: 785, ¶ 133 (emphasis in original; ellipsis added).

Plaintiffs allege these statements were misleading because Defendants omitted significant problems arising under the partnership, characterizing it as collaborative and thriving, while, in reality, Defendants believed Foxconn was sabotaging their business, attempting to drive them into bankruptcy, and take over their assets. *See* ECF No. 31 at PageID #: 792-93, ¶¶ 156-57. Defendants deny any knowledge of the partnership's impending failure until Foxconn repudiated the IA on April 21, 2023. Defendants claim that the sudden repudiation forced them to re-evaluate Foxconn's motive, coming to the conclusion, in hindsight, that Foxconn misled LMC about their commitment to the partnership. *See* Defendants' Memorandum in Support (ECF No. 35-1) at PageID #: 1210.

F. LMC's Warnings and Disclosures

Defendants have submitted documents, subject to judicial notice, to contradict Plaintiffs' allegation that Defendants mischaracterized the relationship between LMC and Foxconn. According to Defendants, these documents detail public warnings LMC provided about the uncertainties surrounding the partnership. *See* ECF No. 35-1 at PageID #: 1211-12. LMC stated in the Form 10-K filed on February 28, 2022:

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> . . . [W]e cannot predict whether we will be able to fully realize the anticipated benefits from any aspects of our contemplated relationship with Foxconn. . . .

ECF No. 35-5 at PageID #: 1297.

In a Form 8-K filed on August 4, 2022, LMC stated:

> . . . No assurances can be given that we will successfully implement . . . the recently completed transactions with Foxconn . . . The success of the joint venture depends on many variables. . . .

ECF No. 35-7 at PageID #: 1340 (ellipsis added).

In a Form 10-Q filed on August 4, 2022, LMC stated:

> . . . The company's ability to continue as a going concern is dependant on our ability to realize the benefits of the Foxconn Transactions. . . . [T]he Foxconn Joint Venture may not succeed and may be terminated due to the failure to establish a sustainable partnership. . . .

ECF No. 35-7 at PageID #: 1345-46 (ellipsis and brackets added).

On November 7, 2022, after executing the IA, LMC stated:

> . . . [T]he Investment Transactions and other relationships entered into with Foxconn are subject to risks and uncertainties. . . . If we are unable to maintain our relationship with Foxconn . . . [, it could] have a negative effect. . . .

ECF No. 35-9 at PageID #: 1364 (ellipsis and brackets added).

LMC stated in a Form 10-K filed on March 6, 2023:

> . . . No assurance can be given that we will ultimately be successful in further vehicle development or that we will be able to effectively realize the potential benefits of the . . . development partnership with Foxconn. . . .

ECF No. 35-13 at PageID #: 1449 (ellipsis added).

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Defendants assert that these statements exemplify the public disclosures they made at the same time as the generally optimistic statements that Plaintiffs allege misled investors. *See* ECF No. 35-1 at PageID #: 1212.

II. Judicial Notice and Documents Incorporated by Reference

Under the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. § 78u-4, *et seq.*, "courts must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 322 (2007). "[D]ocuments attached to the pleadings become part of the pleadings and may be considered on a motion to dismiss." *Com. Money Ctr., Inc. v. Ill. Union Ins. Co.*, 508 F.3d 327, 335 (6th Cir. 2007). The Court may consider documents that are "referred to in the complaint and [are] central to the plaintiff's claim" without converting a 12(b)(6) motion into a motion for summary judgment. *Greenberg v. Life Ins. Co. of Virginia*, 177 F.3d 507, 514 (6th Cir. 1999) (brackets added); *Gavitt v. Born*, 835 F.3d 623, 640 (6th Cir. 2016). Under Fed. R. Evid. 201(b), the Court may take judicial notice of an adjudicative fact "that is not subject to reasonable dispute because it is generally known within the trial court's territorial jurisdiction" or "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Adjudicative facts must be relevant to the central issues in a case. *Cece v. Wayne Cnty.*, 758 Fed.Appx. 418, 424 (6th Cir. 2018). The Court considers any documents incorporated into the complaint or subject to judicial notice for the purpose of determining what information is

available, not to determine whether statements contained within the documents are true. *In re Omnicare, Inc. Sec. Litig.*, 769 F.3d 455, 468 (6th Cir. 2014).

Defendants request that the Court take judicial notice of several documents attached as exhibits to the Motion to Dismiss. *See* ECF No. 35-14. The documents are:

- Excerpts from a presentation deck used in connection with an earnings call held by Foxconn on May 12, 2022 (ECF No. 35-3)
- Form 8-K that LMC filed with the SEC on November 10, 2021, attaching the Asset Purchase Agreement and a press release issued on that date (ECF No. 35-4)
- Form 10-K that LMC filed with the SEC on February 28, 2022 (ECF No. 35-5)
- Form 8-K that LMC filed with the SEC on May 11, 2022, attaching the JVA and the Contract Manufacturing Agreement (ECF No. 35-6)
- Published transcript of an earnings call held by LMC on August 4, 2022; Form 10-Q that LMC filed with the SEC on August 4, 2022; Form 8-K that LMC filed with the SEC on August 4, 2022 (ECF No. 35-7)
- Two Form 4s that LMC filed with the SEC, which disclose (1) a transaction of LMC stock by Kroll on October 13, 2022, and (2) a transaction of LMC stock by Hightower on November 9, 2022; Form 4 disclosing a third stock transaction – by Hightower on August 26, 2022 (ECF No. 35-8)
- Form 8-K that LMC filed with the SEC on November 7, 2022, attaching a press release LMC issued on that date (ECF No. 35-9)
- Form 8-K that LMC filed with the SEC on November 8, 2022, attaching a press release LMC issued on that date; Published transcript of an earnings call held by LMC on November 8, 2022 (ECF No. 35-10)
- Press release issued by LMC on December 22, 2022 (ECF No. 35-11)
- Form 8-K that LMC filed with the SEC on January 4, 2023, attaching (1) Hightower's prepared remarks for a presentation he gave on January 5, 2023, and (2) a slide show accompanying his presentation (ECF No. 35-12)

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- Form 8-K that LMC filed with the SEC on March 6, 2023, attaching a press release LMC issued on that date; Form 10-K that LMC filed with the SEC on March 6, 2023; Published transcript of an earnings call held by LMC on March 6, 2023 (ECF No. 35-13).

Plaintiffs only oppose Defendants' request for the Court to take judicial notice of ECF Nos. 35-3, 35-4, 35-6, and 35-8. *See* Lead Plaintiffs' Memorandum in Opposition (ECF No. 37) at PageID #: 1522-23. The Court takes judicial notice of the unopposed exhibits at ECF Nos. 35-5, 35-7, and 35-9 through 35-13.

A. ECF No. 35-3

Contrary to Plaintiffs' opposition to Defendants' request, *see* ECF No. 37 at PageID #: 1525-26, Foxconn's statements during the earnings call held on May 12, 2022 do not create a factual dispute or ask the Court to evaluate them for their "truth." Instead, Defendants use the statements to portray Foxconn's positive characterization and publicly stated commitment to the partnership, regardless of whether the statements were true. Because these statements help to reveal the totality of information Foxconn communicated to LMC, they are relevant in determining whether the Court can infer scienter as to Defendants' optimistic statements. Finally, Plaintiffs do not refute the exhibit's authenticity or the public availability of its contents. *See* ECF No. 37 at PageID #: 1525-27. As such, the Court takes judicial notice of ECF No. 35-3.

B. ECF Nos. 35-4 and 35-6

Plaintiffs object to these exhibits because the Form 8-Ks were filed with the SEC before the start of the Class Period, *see* ECF No. 37 at PageID #: 1527, but Plaintiffs fail to provide justification for why this fact alone would make the documents irrelevant. Plaintiffs dispute Defendants' public characterization of the Foxconn partnership, making such public statements

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relevant in determining whether Defendants misled the public given the totality of available information. Plaintiffs submit no legal authority suggesting otherwise. Plaintiffs also do not refute that the information in these exhibits is publicly available, not subject to reasonable dispute, or accurately determined from a reputable source. As such, the Court finds that these Form 8-Ks are relevant and takes judicial notice of ECF Nos. 35-4 and 35-6.

C. ECF No. 35-8

Plaintiffs argue the Form 4s in this exhibit cannot be incorporated by reference into the Amended Class Action Complaint (ECF No. 31) because they are not central to the claims in the complaint. *See* ECF No. 37 at PageID #: 1528. Plaintiffs argue the stock sales documented by the forms are not essential to proving scienter. Plaintiffs, however, make the argument that the sales bolster an inference of scienter. *See* ECF No. 37 at PageID #: 1528. Because Plaintiffs base their scienter argument on the information disclosed in the forms by explicitly citing to them, *see* ECF No. 31 at PageID #: 798-800, ¶¶ 178, 180,Plaintiffs cannot prevent the Court from viewing the entirety of the documents. *See* *Merzin v. Provident Fin. Grp., Inc.*, 311 F. Supp.2d 676, 676 n.1 (S.D. Ohio 2004); *see also* *In re Omnicare*, 769 F.3d at 466 (practice exists to prevent plaintiffs from "quot[ing] only selected and misleading portions of [ ] documents") (brackets added) (citation omitted). Additionally, the Form 4s are filed with the SEC and

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publicly accessible, and an objectively reliable source, making them subject to judicial notice.[2] As such, the Court will consider ECF No. 35-8 in ruling on Defendants' Motion to Dismiss.

For the reasons stated above, the Court takes judicial notice of all 11 exhibits attached to Defendants' Motion to Dismiss (ECF No. 35).

III. Standard of Review

A. Motion to Dismiss Under Rule 12(b)(6)

In deciding a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), the Court must take all well-pleaded allegations in the complaint as true and construe those allegations in a light most favorable to the plaintiff. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citations omitted). A cause of action fails to state a claim upon which relief may be granted when it lacks "plausibility in th[e] complaint." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 564 (2007). A pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." *Ashcroft v. Iqbal* , 556 U.S. 662, 677-78 (2009) (quoting Fed. R. Civ. P. 8(a)(2)). Plaintiff is not required to include detailed factual allegations, but must provide more than "an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* at 678. A pleading that merely offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. Nor does a complaint suffice if it tenders "naked assertion[s]"

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[2] Courts in the Sixth Circuit often review SEC filings, including Form 4s, in determining motions to dismiss. *See Plymouth Cnty. Ret. Ass'n v. ViewRay, Inc.*, 556 F. Supp.3d 772, 799-800 (N.D. Ohio 2021), *aff'd*, No. 21-3863, 2022 WL 3972478 (6th Cir. Sept. 1, 2022); *In re Huntington Bancshares Inc. Sec. Litig.*, 674 F. Supp.2d 951, 970 (S.D. Ohio 2009); *In re Goodyear Tire & Rubber Co. Derivative Litig.*, No. 5:03CV2180, 2007 WL 43557, at *8 & n. 8 (N.D. Ohio Jan. 5, 2007).

devoid of "further factual enhancement." *Id.* at 557. It must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Id.* at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. The plausibility standard is not akin to a "probability requirement," but it suggests more than a sheer possibility that a defendant has acted unlawfully. *Twombly*, 550 U.S. at 556. When a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.' " *Id.* at 557 (brackets omitted). "[When] the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not 'show[n]' – 'that the pleader is entitled to relief.' " *Iqbal*, 556 U.S. at 679 (quoting Rule 8(a)(2)). The Court "need not accept as true a legal conclusion couched as a factual allegation or an unwarranted factual inference." *Handy-Clay v. City of Memphis, Tenn.*, 695 F.3d 531, 539 (6th Cir. 2012) (citations and internal quotation marks omitted).

B. Securities Fraud Heightened Pleadings Standard

Because Sections 10(b) and 20(a) claims involve fraud, the Court also applies the special pleading requirements set forth in Fed. R. Civ. P. 9(b). While the Court interprets all facts in the complaint as true, Plaintiffs must, at a minimum, "detail[ ] the 'who, what, when, where, and how' of the alleged fraud." *Bondali v. Yum! Brands, Inc.*, 620 Fed.Appx. 483, 489 (6th Cir. 2015) (citations omitted; brackets added). In addition, the complaint must meet the heightened pleading standards for securities claims under the PSLRA. *Id.* The PSLRA imposes more

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"[e]xacting pleading requirements," requiring Plaintiffs to "state with particularity both the facts constituting the alleged violation, and the facts evidencing scienter, *i.e.*, the defendant's intention 'to deceive, manipulate, or defraud.' " *Tellabs*, 551 U.S. at 313 (brackets added) (quoting *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 and n. 12 (1976)). Additionally, when "an allegation regarding the statement or omission is made on information and belief," Plaintiffs must "state with particularity all facts on which that belief is formed." 15 U.S.C. § 78u-4(b)(1)(B). These heightened pleading standards mean that not all allegations that would survive a traditional motion to dismiss under Rule 12(b)(6) are sufficient to survive dismissal in a private securities class action.

IV. Section 10(b) of the Securities Exchange Act and SEC Rule 10b–5 Analysis

To state a claim under Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b–5, Plaintiffs must establish "(1) a material misrepresentation or omission by the defendant; (2) scienter, (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation." *Bondali*, 620 Fed.Appx. at 489 (quoting *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148, 157 (2008)). In this case, the parties dispute the existence of a material misrepresentation or omission and scienter or mental culpability, regarding Defendants' statements.

A. Actionable Material Misrepresentations or Omissions

To establish an actionable material misrepresentation or omission, Plaintiffs must allege sufficient facts demonstrating "(1) that a defendant made a statement or omission that was false

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or misleading; and (2) that this statement or omission concerned a material fact." *In re Omnicare*, 769 F.3d at 470. "[M]ateriality depends on the significance the reasonable investor would place on the withheld or misrepresented information." *Basic Inc. v. Levinson*, 485 U.S. 224, 240 (1988) (brackets added); *see In re Nat'l Auto Credit, Inc. Sec. Litig.*, No. 1:98CV0264, 1999 WL 33919791, at *11 (N.D. Ohio Oct. 12, 1999) (holding facts are only material if a reasonable investor would have viewed the misrepresentation or omission as "having significantly altered the total mix of information made available") (citations omitted). In addition, it is not enough for a statement to be "false or incomplete, if the misrepresented fact is otherwise insignificant." *Basic*, 485 U.S. at 238.

"Soft" information and puffery do not constitute a material misrepresentation upon which stockholders would reasonably rely. *Zaluski v. United Am. Healthcare Corp.*, 527 F.3d 564, 576 (6th Cir. 2008); *Ind. State Dist. Council of Laborers & Hod Carriers Pension & Welfare Fund v. Omnicare, Inc.*, 583 F.3d 935, 943 (6th Cir. 2009). The Sixth Circuit distinguishes "hard" and "soft" information, defining "hard" information as factual information that is "objectively verifiable" and "soft" information as general predictions and opinions. "Soft" information is not actionable unless it is as certain as "hard" facts. *City of Monroe Emps. Ret. Sys. v. Bridgestone Corp.*, 399 F.3d 651, 669 (6th Cir. 2005) (citing *In re Sofamor Danek Grp., Inc.*, 123 F.3d 394, 401-402 (6th Cir. 1997)); *In re Ford Motor Co. Sec. Litig.*, 381 F.3d 563, 570 (6th Cir. 2004) (citing *Grossman v. Novell, Inc.*, 120 F.3d 1112, 1119 (10th Cir.1997)). Statements are not actionable if they are overly general, "lack[ing] the sort of definite projections that might require later correction." *In re Express Scripts Holdings Co. Sec. Litig.*, 773 Fed.Appx. 9, 12 (2d Cir.

2019) (citation omitted; brackets added). Any generically optimistic or overly broad statements cannot be the basis for a Section 10(b) claim. *See* *Ashland, Inc. v. Oppenheimer & Co.*, 648 F.3d 461, 468 (6th Cir. 2011) (ruling a vague characterization of securities bonds as "safe and secure" not objectively verifiable and, therefore, immaterial); *Nathenson v. Zonagen Inc.*, 267 F.3d 400, 418 (5th Cir. 2001) (holding statements about "positive" and "statistically significant" test results were too broad to create actionable misrepresentation).

Actionable omissions require some duty to disclose the information. *See* *Basic*, 485 U.S. at 239 n. 17 ("Silence, absent a duty to disclose, is not misleading under Rule 10b–5."). Defendants may have a duty to disclose when that duty is set forth in a statute or when an "inaccurate, incomplete or misleading prior" statement exists. *City of Monroe*, 399 F.3d at 669. Even if Defendants had a duty to disclose, the omission must also render affirmative statements misleading. *Macquarie Infrastructure Corp. v. Moab Partners, L. P.*, 601 U.S. 257, 258 (2024) ("§ 10(b) and Rule 10b–5 do not create an affirmative duty to disclose any and all information.") (citation omitted)); *In re Allscripts, Inc. Sec. Litig.*, No. 00 C 6796, 2001 WL 743411 at *8 (N.D. Ill. June 29, 2001) ("[c]orporate executives have no general duty to disclose every problem that arises") (brackets added)). Here, Plaintiffs allege no omitted facts that would render Defendants' material statements untrue.

1. "Puffery" and Statements of "Corporate Optimism"

The majority of the alleged misstatements relay Defendants' beliefs, goals, and hopes for the future of their relationship with Foxconn. *See* ECF No. 31 at PageID #: 757-88, ¶¶ 112-34; *see* *I.B.E.W. v. Limited Brands, Inc.*, 788 F. Supp.2d 609, 634 (S.D. Ohio 2011) (finding

statements about "significant growth opportunities" were "clearly the type of subjective, optimistic fluff deemed to be immaterial puffery"). Defendants publicly discussed their "**objective to develop a broad strategic partnership**" (ECF No. 31 at PageID #: 760, ¶ 114), their "**progress in the planning and predevelopment work**" (ECF No. 31 at PageID #: 764, ¶ 118), and that LMC looked "**forward to creating additional electric vehicles**" with Foxconn (ECF No. 31 at PageID #: 773, ¶ 124).[3] Defendants' statements do not contain the sort of definite, material information needed to trigger a duty to disclose. Instead, Defendants' statements contain the kinds of generalities and reflections of "corporate optimism" rejected by courts as actionable misrepresentations. *See In re Envision Healthcare Corp. Sec. Litig.*, No. 3:17-cv-01112, 2019 WL 6168254, at *9 (M.D. Tenn. Nov. 19, 2019) ("liability does not attach to mere corporate puffery or statements of corporate optimism") (citing *Ford*, 381 F.3d, at 570); *City of Monroe*, 399 F.3d at 669 ("The failure to disclose soft information is actionable only if it is virtually as certain as hard facts.") (internal quotation marks, brackets, ellipsis, and citation

[3] *See also* ECF No. 31 at PageID #: 757, ¶ 112 ("**Our manufacturing partners . . . are ready for March**."); ECF No. 31 at PageID #: 757, ¶ 112 (stating Foxconn provides "**a world-class contract manufacturing partner, and a more scalable vehicle development platform** . . . ."); ECF No. 31 at PageID #: 761, ¶ 114 (stating Foxconn partnership has helped LMC bring the Endurance and future EVs into the market); ECF No. 31 at PageID #: 761, ¶ 115 (". . . **strongly believe that deep collaboration . . . offers tremendous opportunities**. . . "); ECF No. 31 at PageID #: 763, ¶ 117 ("**Foxconn's additional investment in LMC is a strong sign of confidence**. . . ."); ECF No. 31 at PageID #: 764, ¶ 117 ("**We are proud of the accomplishments . . . . We are also extremely excited by the additional investment**. . . ."); ECF No. 31 at PageID #: 765, ¶ 118 ("**I believe we have great potential opportunities ahead of us**. . . ."); ECF No. 31 at PageID #: 767, ¶ 120 ("**[I]t was very important to me that anything I said publicly be true**.") (brackets added); ECF No. 31 at PageID #: 783, ¶ 131 (". . . **as Foxconn's preferred vehicle development partner** . . .").

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omitted)). Plaintiffs fail to allege with particularity why omissions would make generic, "soft" information in Defendants' statements misleading. *See* *In re TransDigm Grp., Inc. Sec. Litig.*, 440 F. Supp.3d 740, 767 (N.D. Ohio 2020) (finding no duty to disclose omitted information when the allegedly misleading statements were "vague, non-specific, subjective, and untethered to any kind of objectively measurable standard"); *Omnicare, Inc.*, 583 F.3d at 943 (stating omission of a contract dispute did not make the defendants' vague, optimistic predictions misleading).

2. Statements Describing the Foxconn Partnership and Agreements

Plaintiffs argue Defendants' statements generally discussing the Foxconn partnership misled the public due to the failure to disclose delays and breaches happening behind the scenes. *See* ECF No. 36 at PageID #: 1494. Plaintiffs allege Foxconn "stonewalled" LMC, delayed both entering into and fulfilling their obligations under the JVA, and "consistently failed to honor its agreements." Therefore, according to Plaintiffs, Defendants omitted facts that rendered their public statements misleading. ECF No. 31 at PageID #: 758-60, ¶ 113. There is no dispute regarding the verifiable, factual information in Defendants' public statements about the JVA. Plaintiffs do not refute that the JVA was a "55/45 joint venture . . . in which Foxconn committed an additional $100 million in capital" or that the agreement provided LMC "a flexible and less capital-intensive business model, **a world-class contract manufacturing partner, and a more scalable vehicle development platform as well as additional capital**." ECF No. 31 at PageID #: 757, ¶ 112. During the same time, Defendants were candid about possible risks under the JVA, explaining to potential investors that it "may not succeed and may be terminated due to the

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failure to establish a sustainable partnership." Form 10-Q that LMC filed with the SEC on August 4, 2022 (ECF No. 35-7) at PageID #: 1346. In claiming the statements discussing the agreement were misleading, Plaintiffs rely on assertions that the CEO of Foxconn "refused" to meet with Hightower and Foxconn failed to grant LMC access to the Model C and Model E vehicle designs. *See* ECF No. 31 at PageID #: 758-59, ¶ 113. Assuming *arguendo* that Foxconn's CEO refused to meet with Hightower, no facts in Defendants' statements mentioning the meeting are rendered untrue. Hightower did discuss the partnership with other Foxconn executives during his trip to Taiwan. *See* ECF No. 31 at PageID #: 742, ¶ 69. On August 4, 2022, Hightower stated during LMC's Second Quarter 2022 Earnings Conference Call that "**[w]hile in country, we had several meetings on how to best operationalize the [JVA]**." ECF No. 31 at PageID #: 757, ¶ 112 (brackets added). Plaintiffs fail to allege facts showing how this statement by Hightower is false. After all, Defendants have no duty to disclose every detail of the meetings. *See In re United Am. Healthcare Corp. Sec. Litig.*, No. 2:05CV-72112 LPZ/RSW, 2007 WL 313491, at *10 (E.D. Mich. Jan. 30, 2007) (finding the omission of a material breach of contract to be immaterial when the breach did not render the defendants' factual statements about the agreement inaccurate).

Plaintiffs also allege Defendants mischaracterized the state of their partnership after the companies abandoned the JVA and entered into the IA, as amended. Plaintiffs conclude that the only reason the companies entered into a new agreement was because Foxconn "forced" LMC to renegotiate through their failure to provide the Model C and Model E vehicle designs and "constant bad faith conduct." ECF No. 31 at PageID #: 743, ¶ 72; PageID #: 745, ¶¶ 76-77; ECF

No. 36 at PageID #: 1494. Following the restructuring, Defendants described the new agreement as "**favorable**" due to its "**better, simpler, easier structure**," ECF No. 31 at PageID #: 765, ¶ 118, and that they "**benefit from substantially lower operating complexity and risk**," ECF No. 31 at PageID #: 782, ¶ 131.[4] Contrary to Plaintiffs' conclusory beliefs, none of the delays or breaches under a previous agreement mean the general descriptions and beliefs about the new agreement or partnership are misleading. Statements about the terms of the IA, as amended, are unrelated to the alleged omissions about the reasons behind the formation of it. *Albert Fadem Tr. v. Am. Elec. Power Co.*, 334 F. Supp.2d 985, 1024 (S.D. Ohio 2004) (finding no duty to disclose omissions "unrelated to the statements" or "the subject of the omissions was not certain to occur"). Without alleging specific facts contradicting existing statements, Plaintiffs fail to plead omissions with the required particularity. Because they did not result in an affirmative misleading statement, Defendants had no duty to disclose the omitted details behind the formation of the IA, as amended. *City of Monroe*, 399 F.3d at 669.

To be actionable under the securities laws, an omission "must affirmatively create an impression of a state of affairs that differs in a material way from the one that actually exists."

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[4] *See also* ECF No. 31 at PageID #: 764, ¶ 118 ("**we continue to make progress in the planning and predevelopment work** . . ."); ECF No. 31 at PageID #: , ¶ 118 ("**Foxconn's additional investment in LMC is a strong sign of confidence** . . . **and will help accelerate the EV ambitions of both companies**"); ECF No. 31 at PageID #: 770, ¶ 122 ("**Foxconn and LMC Engineering can share expertise and resources across organizations, globally** . . ."); ECF No. 31 at PageID #: 776, ¶ 126 ("**Foxconn supplies components, software, supply chain and manufacturing expertise**. . . . **The sale of the manufacturing plant located in Lordstown, Ohio to Foxconn** . . . **laid the groundwork for the two companies to collaborate** . . ."); ECF No. 31 at PageID #: 779, ¶ 128 ("**We have an agreement by which we will be developing future electric vehicle products** . . .").

Brody v. Transitional Hosps. Corp., 280 F.3d 997, 1006 (9th Cir. 2002); *see* *Basic*, 485 U.S. at 232 (ruling that material misrepresentations or omissions must "significantly alter[ ] the total mix of information made available") (brackets added; internal quotation marks and citation omitted)). Plaintiffs cannot rely on the problems and ignore the benefits in the partnership to prove Defendants' general, optimistic statements are inconsistent with the actual "state of affairs" between the companies. Despite any disputes or delays that arose as part of a developing partnership, Defendants also experienced success and progress. The Amended Class Action Complaint (ECF No. 31) does not dispute that Foxconn tripled its investment in LMC under the IA, as amended, vouched for LMC with Softbank, moved the Endurance into production despite the delays, referred to LMC as a "strategic partner" and characterized the relationship as "progressing quite smoothly." ECF No. 35-3 at PageID #: 1265, 1267; *see, e.g.*, IA, as amended, at § 5.03(f) (Foxconn and its Affiliates "will utilize [LMC] as their preferred North American vehicle development partner") (ECF No. 31-1 at PageID #: 1089). Defendants do not claim that the partnership was without flaws, only that they were hopeful about its success. They submitted numerous statements warning of potential risks surrounding the partnership, acknowledging that "the Investment Transactions and other relationships entered into with Foxconn are subject to risks and uncertainties" and that "[n]o assurances can be given that [LMC] will successfully implement . . . [the] recently completed transactions with Foxconn." ECF No. 35-9 at PageID #: 1364 (brackets added). *See* *Lucescu v. Zafirovski*, No. 09cv4691 (DLC), 2018 WL 1773134, at *11 (S.D.N.Y. April 11, 2018) (rejecting argument that broad or general descriptions of company progress were misleading, especially when the defendants addressed uncertainties); *Allscripts*,

2001 WL 743411, at *9 (ruling that a statement is not misleading when defendants clearly disclosed the risks).

To the extent Plaintiffs argue that Defendants' general statements describing collaboration between LMC and Foxconn mischaracterized the relationship, the Court finds the argument to be lacking in merit. Throughout the partnership, Defendants generally stated that LMC and Foxconn "**worked collaboratively**," ECF No. 31 at PageID #: 761, ¶ 114; PageID #: 811, ¶ 212, worked "**together to create a new EV-native model to enable increased collaboration**," ECF No. 31 at PageID #: 775, ¶ 126, and "**expanded and strengthened**" their partnership, ECF No. 31 at PageID #: 782, ¶ 130. Plaintiffs do not allege facts in the Amended Class Action Complaint (ECF No. 31) that would show the parties did not work collaboratively. Instead, Plaintiffs argue that Foxconn's general "bad faith" and the delays in producing the Endurance – LMC's first electric vehicle – must mean the companies were not working together. *See* Lead Plaintiffs' Memorandum in Opposition (ECF No. 36) at PageID #: 1496-98. While the Memorandum in Opposition asserts that Hightower "discovered" Foxtron's (Foxconn's subsidiary) competitive plans "during [his] Taiwan trip before the Class Period," ECF No. 36 at PageID #: 1498, that allegation is not in the Amended Class Action Complaint (ECF No. 31) and is in fact contradicted by Plaintiffs' allegation that LMC learned this information "later," *i.e.*, at some unidentified point *after* that meeting. ECF No. 31 at PageID #: 742, ¶ 70 (citing Adversary Complaint at ¶ 39 (ECF No. 31-1 at PageID #: 843) (LMC learned this "subsequent[]" to Hightower's trip)). Defendants disclosed in August 2022 that production of the Endurance would occur "initially at a very slow rate," ECF No. 35-7, PageID #: 1323, for reasons unrelated

to the state of the Foxconn partnership, ECF No. 35-7 at PageID #: 1346. As such, the delays were not concealed by Defendants and were unrelated to collaboration between the companies. Regardless, supposed delays and Plaintiffs' allegations of "bad faith" do not negate the possibility that the companies did collaborate at the times alleged in Defendants' statements. *See Allscripts*, 2001 WL 743411, at *9 (stating there is no "duty to report every glitch that arises" when a company is candid about the risks it faces); *Basic*, 485 U.S. at 232 (ruling that material misrepresentations or omissions must "significantly alter[ ] the total mix of information made available") (brackets added; internal quotation marks and citation omitted)).

Overall, the breaches under the abandoned JVA, delays, and other minor issues do not render general, positive statements describing the partnership or agreements inaccurate, especially considering the totality of the state of affairs and public revelation of risks. As such, Plaintiffs fail to allege sufficient misstatements or omissions upon which investors would reasonably rely.

3. Forward-Looking Statements and the Safe Harbor Doctrine

The Safe Harbor Doctrine protects forward-looking statements from liability when they are accompanied by meaningful cautionary statements or when they are made without "actual knowledge." 15 U.S.C.A. § 78u-5(c); *see Huntington Bancshares*, 674 F. Supp.2d at 957; *Miller v. Champion Ents., Inc.*, 346 F.3d 660, 672 (6th Cir. 2003) (stating safe harbor provision of the PSLRA protects forward-looking statements accompanied by cautionary language regardless of scienter and forward-looking statements without warnings that Defendants made without actual knowledge that they were false or misleading). A statement is forward-looking if

its "veracity" cannot be determined at the time the statement is made. *Lousiana Sheriffs' Pension & Relief Fund v. Cardinal Health, Inc.*, No. 2:19-cv-3347, 2021 WL 4397946, at *12 (S.D. Ohio Sept. 27, 2021). "A plaintiff may overcome this protection only if the statement was material; if defendants had actual knowledge that it was false or misleading; and if the statement was not identified as 'forward-looking' or lacked meaningful cautionary statements." *Helwig v. Vencor, Inc.*, 251 F.3d 540, 548 (6th Cir. 2001) (en banc), *abrogated on other grounds by Tellabs*, *supra* (citing 15 U.S.C. § 78u-5(c)(1)). Many of the alleged misstatements contain immaterial, forward-looking statements.[5] *See* 15 U.S.C. § 78u-5(i)(1) (defining forward-looking statements under the PSLRA's safe harbor provision as defendants' projections, statements of plans and objectives, estimates of future economic performance, and the assumptions underlying forward-looking statements).

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[5] *See* ECF No. 31 at PageID #: 757, ¶ 112 ("We expect production to accelerate. . . ."); ECF No. 31 at PageID #: 758, ¶ 112 (". . . **further developing our broad partnership with Foxconn** . . ."); ECF No. 31 at PageID #: 761, ¶ 114 (". . . **LMC's experienced vehicle development team, Foxconn's growing EV ecosystem** . . . **will allow us to bring great EVs to market faster and more efficiently**."); ECF No. 31 at PageID #: 761, ¶ 115 ("**deep collaboration** . . . **offers tremendous opportunities**. . . ."); ECF No. 31 at PageID #: 763-64, ¶ 117 ("**Foxconn's additional investment in LMC** . . . **will help accelerate the EV ambitions of both companies**."); ECF No. 31 at PageID #: 765, ¶ 118 ("**I believe we have great potential opportunities ahead of us** . . . **I look forward to our team executing and realizing them**."); ECF No. 31 at PageID #: 767-68, ¶ 120 (". . . **we have two objectives** . . . **launch the Endurance and build this relationship with Foxconn**"); ECF No. 31 at PageID #: 773, ¶ 124 (". . . **looks forward to creating additional electric vehicles in collaboration** . . ."); ECF No. 31 at PageID #: 776, ¶ 126 ("**Foxconn will leverage** . . ."); ECF No. 31 at PageID #: 779, ¶ 128 (". . . **we will be developing future electric vehicle products** . . ."); ECF No. 31 at PageID #: 783, ¶ 131 (". . . **we plan to leverage common components** . . . **the plan is for them to be shared** . . .").

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Defendants made numerous cautionary statements about the Foxconn partnership throughout the class period.[6] To constitute "meaningful cautionary language," Defendants statements must "convey substantive information about factors that realistically could cause results to differ materially from those projected in the forward-looking statements." *Helwig*, 251 F.3d at 558-59. In multiple forms filed with the SEC, LMC provides warnings about their production abilities and agreements with Foxconn. In the Form 8-K filed on August 4, 2022,

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[6] *See* Form 10-K filed with the SEC on February 28, 2022 (ECF No. 35-5 at PageID #: 1297) (". . . we cannot predict whether we will be able to fully realize the anticipated benefits from any aspects of our contemplated relationship with Foxconn. . . ."); Form 8-K filed with the SEC on August 4, 2022 (ECF No. 35-7 at PageID #: 1340) ("No assurances can be given that we will successfully implement . . . the recently completed transactions with Foxconn, including the contract manufacturing agreement and the [JVA]. . . . The success of the joint venture depends on many variables, including our ability to utilize the designs, engineering data and other foundational work of Foxconn, its affiliates, ..."); Form 10-Q that LMC filed with the SEC on August 4, 2022 (ECF No. 35-7 at PageID #: 1345) ("The Company's ability to continue as a going concern is dependent on our ability to realize the benefits of the Foxconn Transactions, raise substantial additional capital, complete the development of the Endurance, obtain regulatory approval, begin commercial production and launch the sale of the Endurance. . . ."); Form 10-Q that LMC filed with the SEC on August 4, 2022 (ECF No. 35-7 at PageID #: 1346) (". . . the Foxconn Joint Venture may not succeed and may be terminated due to the failure to establish a sustainable partnership. . . ."); Form 8-K filed with the SEC on November 7, 2022 (ECF No. 35-9 at PageID #: 1364) (". . . the Investment Transactions and other relationships entered into with Foxconn are subject to risks and uncertainties. No assurances can be given that we will successfully implement . . . the Investment Transactions or other recently completed transactions with Foxconn. . . . The funding transactions under the Investment Agreement are subject to closing conditions including regulatory approvals and further negotiation of development milestones. . . . If we are unable to maintain our relationship with Foxconn or effectively manage outsourcing the production of the Endurance to Foxconn, . . . [it could] have a negative effect on our production and operations."); Form 10-K filed with the SEC on March 6, 2023 (ECF No. 35-13 at PageID #: 1449) (". . . No assurance can be given that we will ultimately be successful in further vehicle development or that we will be able to effectively realize the potential benefits of the . . .development partnership with Foxconn. . . .").

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Defendants warned investors that their success was subject to dangers including "our limited operating history and our ability to execute our business plan, including through our relationship with Foxconn," and '[t]he success of the joint venture depend[ed] on many variables, including our ability to utilize the designs, engineering data and other foundational work of Foxconn. . . ." ECF No. 35-7 at PageID #: 1339-40 (brackets added). Defendants also explicitly directed shareholders to these warnings in the earnings call held on August 4, 2022 in which Plaintiffs allege that Hightower and Ninivaggi made the first misleading statements of the class period. *Compare* ECF No. 35-7 at PageID #: 1322 ("Before we begin, I want to call your attention to our safe harbor provision, forward-looking statements that is posted on our website as part of our quarterly update and included in our earnings release. The safe harbor provision identifies risk factors and uncertainties that may cause actual results to differ materially from the content of our forward-looking statements for the reasons that we cite in our Form 10-K and other SEC filings, including uncertainties posed by the difficulty in predicting future outcomes.") *with* ECF No. 31 at PageID #: 757, ¶ 112. The forward-looking statements in the earnings call expressly directed investors to the warnings, therefore, adequately disclosing the risks associated with their statements. *See Pension Fund Grp. v. Tempur-Pedic Int'l, Inc.*, 614 Fed.Appx. 237, 244 (6th Cir. 2015) (stating risks are disclosed when the allegedly misleading statements incorporate the warnings by reference).[7]

[7] The same analysis applies to the forward-looking statements made in the press releases in November 2022 (ECF No. 31at PageID #: 760-61, ¶ 114; PageID #: 763-65, ¶¶ 117-18) accompanied by the warnings about the amended IA in the Form 8-K filed on November 7, 2022 (ECF No. 35-9, PageID #: 1363-64), and the forward-looking

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Contrary to Plaintiffs' position, *see* ECF No. 36 at PageID #: 1499-1500, these disclosures do not contain mere generalities applicable to any partnership. Instead, they specifically reference the Foxconn agreements and the specific reasons the partnership could fail. *See* *Miller*, 346 F.3d at 678 (stating defendant is "not required to detail every facet or extent of that risk to have adequately disclosed the nature of the risk"); *Arbitrage Event-Driven Fund v. Tribune Media Co.*, No. 18 C 6175, 2020 WL 60186, at *8 (N.D. Ill. Jan. 6, 2020) (finding statements that a merger is "subject to a number of conditions" and there can be "no assurance" of success convey substantive warnings as required under the Safe Harbor provision). In addition, none of the forward-looking statements or warnings in the case at bar disclose risks that had already materialized. The delays in producing the Model C and Model E vehicle designs and other issues do not demonstrate that Defendants failed to "utilize the designs . . . of Foxconn," (ECF No. 35-7 at PageID #: 1340) or that any other material risks described in the SEC filings had already come to pass. Before the IA was restructured, LMC could not have known Foxconn would never fulfill its responsibilities. Defendants do not deny having experienced challenges in the partnership. The IA, as amended, did not require use of the model designs and none of the alleged breaches or delays after its implementation prove that any of Defendants' disclosed risks had occurred. *See* *Wochos v. Tesla, Inc.*, 985 F.3d 1180, 1196 (9th Cir. 2021) (stating none of the challenged statements contained an "explicit or implicit representation that Tesla had *not*

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[7](...continued)
statements made in the press release and earnings call on March 6, 2023 (ECF No. 31, PageID #: 782-85, ¶¶ 130-31 and 133) accompanied by the warnings in the Form 10-K filed that day (ECF No. 35-13, PageID #: 1449-53).

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already experienced" the specific risks they warned investors about, and therefore, defendants' forward-looking statements were protected) (emphasis in original).

Therefore, the Safe Harbor Doctrine excuses from liability the allegations regarding all of Defendants' forward-looking statements qualified by the meaningful cautionary language in LMC's SEC reports.[8]

B. "Fraud by Hindsight" Theory

Many of Plaintiffs' allegations rest on LMC's claims of "bad faith" made against Foxconn in the Adversary Complaint, which was filed after Foxconn's repudiation. *See* ECF No. 31 at PageID #: 756, ¶¶ 110-11.[9] While Defendants may have been aware of the breaches and delays LMC experienced during the partnership, the law does not require them to reach and disclose conclusions about the future of the relationship based on the issues. In the Amended Class Action Complaint, Plaintiffs generally allege that each misleading statement omitted the facts that Foxconn "stonewalled" LMC and was "determined to maliciously and in bad faith destroy Lordstown's business in an effort to strip Lordstown's assets and poach its talent at little cost." ECF No. 31 at PageID #: 765-67, ¶ 119. Allegations made in light of Foxconn's

[8] As detailed in the discussion of scienter in Section IV(C) of this Memorandum of Opinion and Order, Plaintiffs fail to establish Defendants' actual knowledge that their statements were misleading. Without actual knowledge, Plaintiffs forward-looking statements are protected under the Safe Harbor Doctrine, even if they had not been accompanied by cautionary language.

[9] *See also* ECF No. 31 at PageID #: 728, ¶ 15; PageID #: 748-49, ¶ 88; PageID #: 792-93, ¶¶ 156-59.

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repudiation *after* the fact do not establish Defendants' beliefs or knowledge about the partnership *before* it disbanded.

Defendants only had a duty to disclose contemporary information that would make material statements misleading. Claims of securities fraud or misrepresentation based on allegations that "defendants should have anticipated future events and made certain disclosures earlier than they actually did" fail on their merits. *Huntington Bancshares*, 674 F. Supp.2d at 959 (quoting *Novak v. Kasaks*, 216 F.3d 300, 309 (2d Cir. 2000) ("[W]e have refused to allow plaintiffs to proceed with allegations of 'fraud by hindsight.' Corporate officials need not be clairvoyant; they are only responsible for revealing those material facts reasonably available to them.") (brackets added; citation omitted)). Allegations based on a pattern of "bad faith" and other conclusions drawn in the adversary complaint fail to plead facts with the required particularity. *See Doshi v. Gen. Cable Corp.*, 823 F.3d 1032, 1044 (6th Cir. 2016) (explaining allegations based on assumptions and conclusions about future consequences represent "impermissible fraud by hindsight"). The only facts Plaintiffs can draw from the adversary complaint are facts that were available to Defendants before the repudiation such as the existence of any breaches or delays. The alleged omissions of Defendants' conclusions drawn after the repudiation are not actionable.

C. Scienter

To state a claim under Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b–5, Plaintiffs must allege facts giving rise to a strong inference of either knowing or reckless behavior. *Bondali*, 620 Fed.Appx. at 489. Although "[r]ecklessness will satisfy the

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scienter requirement for misstatements or omissions of present fact . . . if the alleged misstatement or omission is a 'forward-looking statement,' the required level of scienter is 'actual knowledge.' " *Plymouth*, 556 F. Supp.3d at 793 (quoting *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 48 n. 14 (2011)) (brackets added). The Sixth Circuit defines recklessness as an "extreme departure from the standards of ordinary care" rising above mere negligence and "akin to conscious disregard." *In re Comshare Inc. Sec. Litig.*, 183 F.3d 542, 550 (6th Cir. 1999); *In re Officemax, Inc. Sec. Litig.*, No. 1:00CV2432, 2002 WL 33959993, at *11 (N.D. Ohio March 26, 2002).

To meet the heightened pleading standard for scienter, the Court must "engage in a comparative evaluation," considering "competing inferences rationally drawn from the facts alleged." *Tellabs*, 551 U.S. at 314. When evaluating possible inferences of scienter, the allegations must be assessed "holistically" and not in isolation. *Id.* at 326. The Sixth Circuit established nine factors that can suggest a defendant's mental culpability under Section 10(b) and Rule 10b–5. *See Helwig*, 251 F.3d at 552. The parties only dispute factors "(1) insider trading at a suspicious time or in an unusual amount," "(2) divergence between internal reports and external statements on the same subject" "(3) closeness in time of an allegedly fraudulent statement or omission and the later disclosure of inconsistent information," and "(6) disregard of the most current factual information before making statements."[10] Because the Court does not find the omission of the specific breaches and delays actionable, only Defendants' knowledge of

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[10] Lead Plaintiffs' Memorandum in Opposition only addresses *Helwig* factors (1), (2), (3), and (6), *see* ECF No. 36 at PageID #: 1506-1509, conceding that the other five factors are not present here.

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Foxconn's "bad faith" and the state of the partnership is at issue regarding scienter.

1. Insider Trading at a Suspicious Time or in an Unusual Amount

First, Plaintiffs allege Defendants engaged in insider trading, suggesting that they knew of the issues in the partnership and had motive to conceal them in order to make a profit before stock prices fell. Plaintiffs base this allegation on two Form 4s that LMC filed with the SEC, which disclose (1) a transaction of LMC stock by Kroll on October 13, 2022, and (2) a transaction of LMC stock by Hightower on November 9, 2022. *See* ECF No. 31, PageID #: 798-800, ¶¶ 178, 180. As earlier indicated, the Court takes judicial notice of the Form 4s (ECF No. 35-8 at PageID #: 1351-52). These explicitly state restricted stock units were converted into common stock in LMC to satisfy certain tax withholding obligations and were not sold by Kroll and Hightower as Plaintiffs claim. Considering these documents, the allegation that these Defendants sold stock because of a failing relationship with Foxconn lacks factual support and subsist only on Plaintiffs' conclusory speculation. Additionally, it is noteworthy that Hightower purchased 10,000 shares of LMC stock during the class period. *See* ECF No. 35-8 at PageID #: 1350; *I.B.E.W.*, 788 F. Supp.2d at 631 (stating insider purchases "undermine any inference of scienter"). Therefore, the Court finds no suspicious insider trading activity supporting an inference of scienter. *See City of Pontiac Gen. Employees' Ret. Sys. v. Stryker Corp.*, 865 F.Supp.2d 811, 834-35 (W.D. Mich. 2012) (explaining that a lack of sales by individual defendants "actually undermines an inference of scienter," particularly when they "suffered large losses . . . from the shares they retained").

2. Temporal Proximity of a Misleading Statement and Disclosure of Inconsistent Information

Second, Plaintiffs claim the temporal proximity between allegedly misleading statements and the disclosure of Foxconn's April 21, 2023 repudiation support their allegations of scienter. *See* ECF No. 36 at PageID #: 1508-1509. Plaintiffs do not allege LMC knew of the termination of the IA, as amended, prior to this disclosure. Rather, they claim that LMC's statement on March 6, 2023 describing an "**expanded and strengthened** [ ] **partnership with Foxconn**", ECF No. 31 at PageID #: 782, ¶ 130 (brackets added), after Foxconn's additional investment in the company misled investors because LMC knew or should have known the partnership would fail. *See* ECF No. 36 at PageID #: 1509. The IA, as amended – an additional investment and restructured agreement with LMC – reasonably leads to an inference of a continued partnership despite issues under a different, possibly less favorable agreement. After the restructuring, Plaintiffs only allege delays and minor issues, nothing that would suggest Foxconn planned to back out of the partnership. *See* ECF No. 31 at PageID #: 748-50, ¶¶ 88-94. After the final breach and failure to remedy it, Defendants publicly stated that Foxconn did not fulfill their obligations under the IA and likely would not. *See* ECF No. 31 at PageID #: 789-92, ¶¶ 143-52. Plaintiffs do not allege facts suggesting Defendants knew of the upcoming repudiation, and, contrary to Plaintiffs' claim, Defendants did not refuse to see obvious facts suggesting Foxconn would repudiate after they made their initial statement. *See Doshi*, 823 F.3d at 1039 ("Before drawing an inference of recklessness, courts typically require multiple, obvious red flags demonstrating an egregious refusal to see the obvious, or to investigate the doubtful.") (internal quotation marks and citations omitted). In light of Defendants' reasonable opposing beliefs, the

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allegations in the Amended Class Action Complaint (ECF No. 31) do not meet the recklessness standard of "extreme departure from the standards of ordinary care." *Comshare*, 183 F.3d at 550; *Officemax*, 2002 WL 33959993, at *11. Even if Plaintiffs had meet this standard, the change in relationship caused by Foxconn's material breach of contract undermines the claim that statements made prior to the breach give rise to a strong inference of scienter. *See Officemax*, 2002 WL 33959993, at *18 (ruling that significant changes in circumstance explain the discrepancies in the defendant's statements, rather than any fraudulent conduct); *Tellabs*, 551 U.S., at 323-24 (holding that plaintiffs must allege facts giving rise to an inference of scienter that is at least as strong as any plausible opposing inferences).

3. Disregarding Current Factual Information and "Red Flags"

Third, Plaintiffs argue Defendants disregarded the most current factual information available to them by failing to disclose Foxconn's breaches and delays, including the Foxconn CEO's failure to meet with Hightower, Foxconn not providing the Model designs required by the JVA, and Foxconn's intention to sell its own vehicles in the U.S., allegedly in competition with LMC. *See* ECF No. 36 at PageID #: 1506. Plaintiffs argue Kroll's awareness of "day-to-day operations, business and financial affairs, and books and records" prove Defendants were aware of the alleged omissions. ECF No. 36 at PageID #: 1503-04. "[H]igh-level executives can be presumed to be aware of matters central to their business's operations," however, courts cannot infer "fraudulent intent" solely from "Defendants' positions in the company and alleged access to information." *PR Diamonds, Inc. v. Chandler*, 364 F.3d 671, 688 (6th Cir. 2004) (*abrogated on other grounds by Frank v. Dana Corp.*, 646 F.3d 954 (6th Cir. 2011)) (brackets added); *In re*

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Cardinal Health Inc. Sec. Litig., 426 F. Supp.2d 688, 724 (S.D. Ohio 2006). Defendants do not claim to be unaware that issues arose during the partnership, only to being unaware of Foxconn's bad faith and the likelihood the partnership would fail. Allegations that Defendants "closely monitored" the partnership[11] do not show they knew of the intentions behind Foxconn's actions. Defendants also argue that statements demonstrating LMC's admitted reliance on Foxconn for "critical funding" proves they knew the danger posed by a repudiation. *See* ECF No. 36 at PageID #: 1505. Again, knowledge of issues and possible dangers surrounding the partnership does little to prove Defendants were aware of or even recklessly disregarded information suggesting Foxconn's secret intentions.

Plaintiffs also contend that Defendants' positions as senior level officers in the company means they must have known about the terms of the JVA and IA and the issues that arose. *See* ECF No. 36 at PageID #: 1504-1508. While knowledge of significant business operations including the issues with the partnership can be assumed based on Defendants' positions, this knowledge does not translate to knowledge of Foxconn's intentions. Plaintiffs again fail to sufficiently justify why knowledge of the terms of the JVA and IA would suggest awareness of

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[11] *See, e.g.*, Hightower stated that he was "in constant communication with the chairman of Foxconn," ECF No. 31 at PageID #: 798, ¶ 175; PageID #: 810, ¶ 210; attended "**several meetings on how to best operationalize the** [**JVA**]," ECF No. 31 at PageID #: 757, ¶ 112 (brackets added); and, "had several discussions about the first vehicle program of the [JVA, *i.e.*, the Endurance]," ECF No. 31 at PageID #: 796, ¶ 171 (brackets added). Kroll also admitted to being familiar with "[Lordstown's] day-to-day operations, business and financial affairs, and books and records." ECF No. 31 at PageID #: 808, ¶ 202 (brackets in original). Finally, Ninivaggi noted the "**tremendous opportunities**" that a "**deep collaboration with the Foxconn EV Ecosystem**" would offer Lordstown. ECF No. 31 at PageID #: 761, ¶ 115.

Foxconn's bad faith. *See* *Albert Fadem Trust v. Am. Elec. Power Co., Inc.*, 334 F. Supp.2d 985, 1006 (S.D. Ohio 2004) (finding that conclusory allegations "based wholly on inferences to be drawn from circumstances and Defendants' conduct" insufficiently plead scienter). It is untenable to argue that Defendants would enter into the Foxconn agreements and continue to implement their terms, all the while knowing the partnership would fail and force LMC into bankruptcy. *See* *In re Sinclair Broadcast Grp., Inc. Sec. Litig.*, 473 F. Supp.3d 529, 537 (D. Md. 2020) (rejecting scienter premised on "secret intention" not to comply with agreement). The Court finds Defendants' explanation of the alleged facts, which lacks fraudulent intent, more compelling. It is not uncommon for businesses to restructure agreements that are unproductive. Here, the facts suggest the companies decided to distance themselves from a business model that was not working and enter into an agreement with a larger investment in LMC, not based on the Model C and E vehicle designs, but on developing a new "EV Program." ECF No. 31 at PageID #: 745, ¶¶ 76-77. In light of this competing inference, the Court finds Plaintiffs' allegation that Defendants knew the partnership would not be successful after the breach of the first agreement speculative.

Even if knowledge of the issues did equate to knowledge of Foxconn's intentions, Defendants' positions alone cannot lead to an inference of scienter. As stated above, all allegations must be viewed holistically. *Tellabs*, 551 U.S. at 326; *see* *Pittman v. Unum Grp.*, 861 Fed.Appx. 51, 55 (6th Cir. 2021) ("[T]he fact that executives are intimately familiar with a core component of their business does little to suggest fraudulent intent. So this is not a scienter-bolstering fact.") (brackets added). Without compelling facts suggesting scienter,

Plaintiffs' arguments based on Defendants' positions in the company or close monitoring of the partnership do not give rise to a strong inference of scienter.

Plaintiffs also allege the red flags in the partnership suggest Defendants knew or should have known of the poor status of the partnership. *See* ECF No. 31 at PageID #: 794-809, ¶¶ 164-207. The alleged red flags do not recharacterize Defendants' overall public portrayal of the relationship, especially considering the warnings Defendants provided. *See PR Diamonds*, 364 F.3d at 686-87 (stating that ignoring red flags can suggest negligence but typically fails to prove knowing or reckless behavior without blatantly obvious red flags). Plaintiffs do not allege facts contradicting the positive aspects of the partnership that support Defendants' generally hopeful public characterizations of the relationship. *See Campbell v. Lexmark Int'l Inc.*, 234 F. Supp.2d 680, 686 (E.D. Ky. 2002) (holding that scienter must be viewed in light of the "rest of the picture," not just the narrow context alleged by plaintiff); *Albert Fadem Trust*, 334 F. Supp.2d at 1007 (stating that allegations of recklessness in securities fraud cases must be based on highly unreasonable conduct wherein the danger is "so obvious that any reasonable man would have known of it"). In *Ashland, Inc.*, the Sixth Circuit ruled the defendant "may have engaged in bad (in hindsight) business judgments" but "such actions fall short of scienter in the context of securities fraud." *Ashland, Inc.*, 648 F.3d at 470 (citations omitted). Therefore, Defendants alleged "disregard of the most current factual information before making statements," *i.e.*, the sixth *Helwig* factor, favors Defendants and does not establish scienter under the heightened pleading standards.

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4. Confidential Witness Statements Suggesting Scienter

"[P]laintiffs may rely on confidential witnesses if they plead facts with sufficient particularity to support the probability that a person in the confidential witness's position would possess the information alleged." *Doshi*, 823 F.3d at 1037 n. 2 (brackets added). The Sixth Circuit ruled that "[w]hile . . . anonymous sources are not altogether irrelevant to the scienter analysis, *conclusory or vague allegations* do not deserve much weight." *Ricker v. Zoo Entm't, Inc.* 534 Fed.Appx. 495, 496 n. 2 (6th Cir. 2013) (emphasis and brackets added) (internal quotation marks and citations omitted); *see also Konkol v. Diebold, Inc.*, 590 F.3d 390, 399 (6th Cir. 2009) ("When confidential sources are used to support vague and conclusory allegations, the allegations are not accorded much weight."), *abrogated on other grounds by Matrixx, supra* (internal quotation marks and citation omitted). To the extent Plaintiffs rely on the statements made by the three confidential witnesses, the Court does not find their scienter arguments persuasive.

CW-1 states the belief that Foxconn deliberately caused delays and failed to provide LMC with data required under the JVA. *See* ECF No. 31 at PageID #: 739-40, ¶¶ 61-63; PageID #: 743-44, ¶ 73. For example, a Foxconn supervisor instructed CW-1, who now worked for Foxconn, not to help LMC with issues that arose at the Lordstown plant. CW-1 based their conclusion that Foxconn was sabotaging LMC on this instruction and on witnessing other delays. Despite CW-1's "personal belief," Plaintiffs allege that the employee "was not told explicitly that Foxconn wanted [LMC] to fail" *See* ECF No. 31 at PageID #: 739, ¶ 62; PageID #: 804-805, ¶ 196 (brackets added). In addition, Plaintiffs do not allege CW-1 shared the confidential

witness's beliefs with Defendants, only that they must have known that the Foxconn partnership was failing because the employees at an LMC plant concluded that it was.

CW-2 and CW-3 merely allege work was stalled at LMC's Michigan location due to lack of funds, *see* ECF 31 at PageID #: 750, ¶ 94, but Plaintiffs again do not allege that these confidential witnesses informed Defendants of their beliefs. Like with CW-1's allegations, Plaintiffs conclude Defendants must have been aware of delays and deteriorating relationships with suppliers because of employees' beliefs. *See* ECF 31 at PageID #: 750, ¶ 94. Plaintiffs claim Hightower's statement congratulating the team at LMC, their "partners at Foxconn," and their "supplier partners around the world for **bringing the Endurance into commercial production**," *see* ECF No. 31 at PageID #: 802, ¶ 189, is intentionally misleading because of the delays witnessed by CW-2 and CW-3. *See* ECF No. 36 at PageID #: 1511. Delays and the production of only twelve vehicles does not mean the companies did not launch the Endurance together, especially when Defendants did not claim to produce or even plan to produce a certain number. Again, Plaintiffs use the CWs' statements to defend vague, conclusory allegations. Overall, the CWs' statements fail to create a connection between employees' beliefs and Defendants knowledge of the overall state of the partnership; therefore, they do not adequately support an inference of scienter under the heightened pleading standards.

5. Motive

Plaintiffs also allege Defendants had motive to deceive investors by portraying the Foxconn partnership as positive and strategic in order to "attract new partners and financing

prepetition" and obtain critical financing. ECF No. 31 at PageID #: 809-11, ¶¶ 208-14. *See In re FirstEnergy Corp. Sec. Litig.*, 316 F. Supp.2d 581, 599 (N.D. Ohio 2004) (finding that Plaintiffs had alleged a strong inference of scienter when considering Plaintiffs' allegations in the aggregate). Without also establishing Defendants acted with the requisite state of mind, facts demonstrating motive and opportunity do not establish a strong inference of scienter. *Comshare*, 183 F.3d at 551. While the Court may consider possible motives in analyzing scienter, generic motive allegations are typically unpersuasive, considering all corporations seek to portray themselves and their operations in a positive light. *PR Diamonds*, 364 F.3d at 690 ("All corporate managers share a desire for their companies to appear successful. That desire does not comprise a motive for fraud.").

Plaintiffs also claim Defendants relied on the Foxconn partnership for funding, and, therefore, had motive to conceal their bad faith and "attempts to sabotage" LMC. ECF No. 31 at PageID #: 795, ¶¶ 167-68; PageID #: 809, ¶ 208. Without knowledge or reckless disregard of facts suggesting Foxconn would repudiate, Defendants' general motive to appear successful to stockholders, does not present persuasive evidence of scienter. *See Bondali*, 620 Fed.Appx. at 492 (stating motive to conceal aspects of plaintiff's operations does not prove scienter simply because they were important to the company's success).

Overall, Plaintiffs do not plead sufficient evidence or circumstances that would have alerted Defendants to Foxconn's bad faith prior to their repudiation. When viewed holistically, Plaintiffs' allegations fail to give rise to a strong inference of scienter, especially in light of more compelling opposing inferences.

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V. Analysis of Section 20(a) Claim

When a primary violation of securities law is shown, Section 20(a) imposes joint and several liability on ''controlling persons.'' Section 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78t(a), provides, in relevant part, that "[e]very person who, directly or indirectly, controls any person liable under any provision of this chapter or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person." (brackets added). Because Plaintiffs' Section 10(b) and Rule 10b–5 claim fails, their Section 20(a) claim also fails. *See Omnicare, Inc.*, 583 F.3d at 947 ("[T]he district court properly dismissed the Plaintiffs' claims under § 10(b) and Rule 10b–5. Therefore, dismissal of control person liability under § 20 was also proper." (brackets added; footnote omitted); *Bondali*, 620 Fed.Appx. at 493.

VI. Conclusion

For the foregoing reasons, the Court grants Defendants' Request for Judicial Notice (ECF No. 35-14) and takes judicial notice of Exhibits 1-11 (ECF Nos. 35-3 through 35-13). The Court also grants Defendants' Motion to Dismiss (ECF No. 35) and dismisses the Amended Class Action Complaint (ECF No. 31).

IT IS SO ORDERED.

September 30, 2024
Date

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
NU RIDE INC., *et al.*,[1]	Case No. 23-10831 (MFW)
Reorganized Debtors.	(Jointly Administered)
	Hearing Date: November 26, 2024 at 11:30 a.m. (ET) **Objection Deadline: November 19, 2024 at 4:00 p.m. (ET)**

NOTICE OF OMNIBUS OBJECTION AND HEARING

PLEASE TAKE NOTICE THAT, on October 25, 2024, the Post-Effective Date Debtors and Claims Ombudsman filed the *Post-Effective Date Debtors' and Claims Ombudsman's Joint Ninth (Substantive) Omnibus Objection to Claims* (the "**Objection**") with the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"). **Your claim(s) may be disallowed and/or modified as a result of the Objection. Therefore, you should read the attached Objection (including the schedule attached thereto) carefully.**

PLEASE TAKE FURTHER NOTICE THAT YOUR RIGHTS MAY BE AFFECTED BY THE OBJECTION AND BY ANY FURTHER CLAIM OBJECTION THAT MAY BE FILED BY THE POST-EFFECTIVE DATE DEBTORS, CLAIMS OMBUDSMAN OR OTHERWISE. THE RELIEF SOUGHT HEREIN IS WITHOUT PREJUDICE TO THE POST-EFFECTIVE DATE DEBTORS' AND CLAIMS OMBUDSMAN'S RIGHT TO PURSUE FURTHER OBJECTIONS AGAINST YOUR

[1] The Reorganized Debtors and the last four digits of their respective taxpayer identification numbers are: Lordstown Motors Corp. (3239); Lordstown EV Corporation (2250); and Lordstown EV Sales LLC (9101). The Reorganized Debtors' service address is: Nu Ride Inc. c/o William Gallagher, CEO, M 3 Partners, 1700 Broadway, 19th Floor, New York, NY 10019.

CLAIM(S) SUBJECT TO THE OBJECTION IN ACCORDANCE WITH APPLICABLE LAW AND APPLICABLE ORDERS OF THE BANKRUPTCY COURT.

PLEASE TAKE FURTHER NOTICE that if the holder of a claim that is the subject of the Objection wishes to respond to the Objection, the holder must file and serve a written response so that it is actually received no later than **November 19, 2024 at 4:00 p.m. (ET)** by (i) the Office of the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, DE 19801; (ii) counsel for the Post-Effective Date Debtors: (a) Brown Rudnick LLP, One Financial Center, Boston, MA 02111 (Attn: Sharon I. Dwoskin (sdwoskin@brownrudnick.com); and (b) Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, DE 19801 (Attn: Eric J. Monzo (emonzo@morrisjames.com) and Brya M. Keilson (bkeilson@morrisjames.com); and (iii) counsel for the Claims Ombudsman: (a) Halperin Battaglia & Benzija LLP, 40 Wall Street, New York, NY 10005 (Attn: Walter Benzija (wbenzija@halperinlaw.net and Keara Waldron (kwaldron@halperinlaw.net)), and (iv) (b) Bielli Klauder, LLC, 1204 N. King Street, Wilmington, DE 19801 (Attn: David M. Klauder (dklauder@bk-legal.com)).

PLEASE TAKE FURTHER NOTICE that responses to the Objection must contain, at minimum, the following: (a) a caption setting forth the name of the Court, the name of the Debtor, the case number, and the title of the Objection to which the response is directed; (b) the name of the claimant, his/her/its claim number, and a description of the basis for the amount of the claim; (c) the specific factual basis and supporting legal argument upon which the party will rely in opposing the Objection; (d) any supporting documentation, to the extent that it was not included with the proof of claim previously filed with the clerk or Verita, upon which the party will rely to support the basis for and amounts asserted in the respective proof of claim; and (e) the name,

address, telephone number, fax number and/or email address of the person(s) (which may be the claimant or the claimant's legal representative) with whom counsel for the Post-Effective Date Debtors and Claims Ombudsman should communicate with respect to the claim or the response and who possesses authority to reconcile, settle, or otherwise resolve the objection to the disputed claim on behalf of the claimant.

PLEASE TAKE FURTHER NOTICE that if no response to the Objection is timely filed and received in accordance with the above procedures, an order may be entered sustaining the Objection without further notice or a hearing. If a response is properly filed, served and received in accordance with the above procedures and such response is not resolved, a hearing to consider such response and the Objection will be held before The Honorable Mary F. Walrath, United States Bankruptcy Judge for the District of Delaware, at the Bankruptcy Court, 824 North Market Street, 5th Floor, Courtroom No. 4, Wilmington, Delaware 19801 on **November 26, 2024 at 11:30 a.m. (E.T.) (the "Hearing")**. Only a response made in writing and timely filed and received will be considered by the Bankruptcy Court at the Hearing.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY SUSTAIN THE OBJECTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: October 25, 2024

/s/ David M. Klauder

BIELLI & KLAUDER LLC
David M. Klauder (No. 5769)
1204 N. King Street
Wilmington, DE 19801
Telephone: (302) 803-4600
E-mail: dklauder@bk-legal.com

-and-

HALPERIN BATTAGLIA BENZIJA, LLP
Walter Benzija
Keara M. Waldron
40 Wall Street, 37th Floor
New York, NY 10005
Telephone: (212) 765-9100
Facsimile: (212) 765-0964
E-mail: wbenzija@halperinlaw.net
E-mail: kwaldron@halperinlaw.net

Counsel for the Claims Ombudsman

MORRIS JAMES LLP

Eric J. Monzo (DE Bar No. 5214)
Brya M. Keilson (DE Bar No. 4643)
500 Delaware Avenue, Suite 1500
Wilmington, Delaware 19801
Telephone: (302) 888-6800
Facsimile: (302) 571-1750
E-mail: emonzo@morrisjames.com
E-mail: bkeilson@morrisjames.com

BROWN RUDNICK LLP

Robert J. Stark (admitted *pro hac vice*)
Bennett S. Silverberg (admitted *pro hac vice*)
Michael S. Winograd (admitted *pro hac vice*)
7 Times Square
New York, NY 10036
Telephone: (212) 209-4800
Facsimile: (212) 209-4801
E-mail: rstark@brownrudnick.com
E-mail: bsilverberg@brownrudnick.com
E-mail: mwinograd@brownrudnick.com

-and-

Sharon I. Dwoskin (admitted *pro hac vice*)
Matthew A. Sawyer (admitted *pro hac vice*)
One Financial Center
Boston, MA 02111
Telephone: (617) 856-8200
Facsimile: (617-856-8201
E-mail: sdwoskin@brownrudnick.com
E-mail: msawyer@brownrudnick.com

Counsel for the Post-Effective Date Debtors