

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

Prodigy Investment Holdings, Inc.,¹
Reorganized Debtor.

Chapter 11

Case No. 23-11120 (BLS)

Re: Docket Nos. 1182 & 1368

**ORDER APPROVING STIPULATION BY AND BETWEEN DISTRIBUTION
TRUSTEE AND NIKOLA CORPORATION**

This Court, having considered the Stipulation to amend the Thirtieth Omnibus Rejection Order and enter into mediation to resolve the Nikola Dispute (the “Stipulation”) between Steven Balasiano, in his capacity as the distribution trustee (the “Distribution Trustee”) of the PTR A Distribution Trust (the “Distribution Trust”) and Nikola Corporation (“Nikola”), attached hereto as **Exhibit A**; the Court having determined that good and adequate cause exists for approval of the Stipulation; and the Court having determined that no further notice of the Stipulation must be given;

IT IS HEREBY ORDERED THAT:

1. The Stipulation is approved.
2. The Thirtieth Omnibus Rejection Order shall be modified such that the deadline identified in paragraph 5(f) of the Thirtieth Omnibus Order, which instructs the Distribution Trustee to file a pleading with the Court seeking determination of the Nikola Dispute, shall be adjourned *sine die*; provided however, that in the event the Mediation is unsuccessful, such deadline shall be reinstated no less than thirty (30) days following the conclusion of the Mediation.

¹ The Reorganized Debtor in this Chapter 11 Case, along with the last four digits of the Reorganized Debtor’s federal tax identification number is: Prodigy Investments Holdings, Inc. (9565). The location of the Reorganized Debtor’s service address is: 3350 Virginia St., 2nd Floor, Miami, FL 33133.

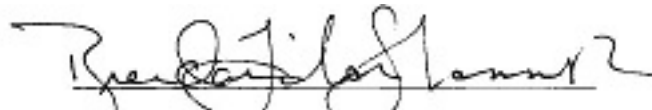


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3. All mediation statements and any discussions during and in connection with the Mediation will be subject to Federal Rule of Evidence 408 and all equivalents and shall not prejudice any rights, defenses, or arguments of Nikola or the Distribution Trustee, as applicable, including any rights, defenses, or arguments asserted in the pleading described in paragraph 5(f) of the Thirtieth Omnibus Order.

4. The Distribution Trustee shall only be required to serve the Stipulation on: (a) the U.S. Trustee; (b) Nikola, and (c) any party that has requested notice pursuant to Bankruptcy Rule 2002.

5. This Court retains jurisdiction to interpret, implement and enforce the provisions of this Order and the Stipulation.

A handwritten signature in black ink, appearing to read "Brendan L. Shannon", written over a horizontal line.

BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

Dated: June 13th, 2024
Wilmington, Delaware

EXHIBIT A

Stipulation

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

In re:

Prodigy Investment Holdings, Inc.,¹

Reorganized Debtor.

Chapter 11

Case No. 23-11120 (BLS)

**STIPULATION AND AGREEMENT BY AND BETWEEN THE DISTRIBUTION
TRUSTEE AND NIKOLA CORPORATION TO AMEND THE THIRTIETH OMNIBUS
REJECTION ORDER REGARDING THE RESOLUTION OF THE NIKOLA DISPUTE**

This stipulation and agreement (“Stipulation”) is made and entered into by and between Steven Balasiano, in his capacity as the distribution trustee (the “Distribution Trustee”) of the PTRA Distribution Trust (the “Distribution Trust”) established in the above-captioned chapter 11 case (the “Chapter 11 Case”) of the reorganized debtor (“Prodigy” or the “Reorganized Debtor”) and Nikola Corporation (“Nikola,” together with the Distribution Trustee, the “Parties”). The Parties hereby stipulate and agree as follows:

RECITALS

WHEREAS, on August 7, 2023, Proterra Inc (“Proterra Inc”) and its affiliate, Proterra Operating Company, Inc. (“Proterra OpCo”) (together with Proterra Inc, the “Debtors”) filed voluntary petitions for relief in the United States Bankruptcy Court for the District of Delaware (the “Court”), commencing the Chapter 11 Cases;²

¹ The Reorganized Debtor in this Chapter 11 Case, along with the last four digits of the Reorganized Debtor’s federal tax identification number is: Prodigy Investments Holdings, Inc. (9565). The location of the Reorganized Debtor’s service address is: 3350 Virginia St., 2nd Floor, Miami, FL 33133.

² For the avoidance of doubt, references to the Debtors and the Chapters 11 Cases pertain to the time period before the entry of the *Order (I) Amending Case Caption to Reflect Change of Debtors’ Names, (II) Closing Proterra Operating Company, Inc’s Chapter 11 Case; and (III) Granting Related Relief* [D.I. 1233] (the “Case Closing Order”), while references to the Reorganized Debtor and the Chapter 11 Case pertain to the period after the Effective Date and entry of the Case Closing Order, as applicable.

WHEREAS, on December 8, 2021, Proterra OpCo and Nikola entered into a product supply agreement (“PSA”), which was subsequently amended pursuant to the First Amendment to the Product Supply Agreement, dated as of November 8, 2022, the “Amended Product Supply Agreement,” and, together with the PSA, the “Product Supply Agreement”);

WHEREAS, on February 5, 2024, the Debtors filed the *Debtors’ Thirtieth Omnibus Motion for Entry of an Order (I) Authorizing the Debtors to Reject Certain Executory Contracts and (II) Granting Related Relief* [D.I. 998], which sought to reject the Product Supply Agreement;

WHEREAS, on February 20, 2024, Nikola filed a limited objection to the *Debtors’ Thirtieth Motion for Entry of an Order (I) Authorizing the Debtors to Reject Certain Executory Contracts and (II) Granting Related Relief* [D.I. 1087];

WHEREAS, on March 6, 2024, the Court entered the *Thirtieth Omnibus Order (I) Authorizing the Debtors to Reject Certain Executory Contracts and (II) Granting Related Relief* [D.I. 1182] (the “Thirtieth Omnibus Order”), effectuating the rejection of the Product Supply Agreement and implementing a protocol to resolve the remaining dispute between Nikola and the Debtors over whether Nikola was required to achieve a 2023 “minimum purchase commitment” under the Product Supply Agreement of 386 units, or any other basis that the Debtors had to draw a letter of credit (the “LC”) securing Nikola’s obligations under the Product Supply Agreement (the “Nikola Dispute”);

WHEREAS, on March 6, 2024, the Court entered the *Findings of Fact, Conclusions of Law, and Order Confirming the Fifth Amended Joint Chapter 11 Plan of Reorganization of Proterra Inc and its Debtor Affiliate* [D.I. 1180] (the “Confirmation Order”), confirming the *Fifth Amended Joint Chapter 11 Plan of Reorganization for Proterra Inc and its Debtor Affiliate* [D.I.

1154] (the “Plan”) and all supplements thereto, including the Distribution Trust Agreement (the “DTA”);

WHEREAS, on March 13, 2024, the Plan went effective (the “Effective Date”) [D.I. 1208], and the Distribution Trust was established, and Steven Balasiano was appointed as the Distribution Trustee of the Distribution Trust;

WHEREAS, pursuant to the Plan, Confirmation Order and DTA, the Distribution Trustee is authorized to resolve disputes, including the Nikola Dispute, and to pursue objections, compromises, settlements of all Disputed Claims (as defined in the Plan), as well as sue and participate, as a party or otherwise, in any judicial administrative, arbitrate or other proceeding, as required to reconcile, administer, or defend against the Disputed Claims. *See Plan, Arts. IV.D.7, IV.8.H.*;

WHEREAS, in accordance with the protocol outlined in paragraphs 5(c)–(e) of the Thirtieth Omnibus Order, the Parties exchanged written explanations and convened a settlement conference to engage in good faith discussion concerning the consensual resolution of the Nikola Dispute;

WHEREAS, the Parties were unable to consensually resolve the Nikola Dispute at such time, but desire to work towards a consensual resolution of the underlying issues, and in furtherance of such goal, the Parties now enter into this Stipulation and Agreed Order to (i) establish a mediation protocol, (ii) amend paragraph 5 of the Thirtieth Omnibus Order, and (iii) provide a framework to resolve the Nikola Dispute;

NOW, THEREFORE, subject to the approval of the Bankruptcy Court, the Parties stipulate and agree as follows:

1. The Hon. Christopher S. Sontchi (*ret.*), or such other mediator as may be mutually acceptable to the Parties after consulting in good faith (the “Mediator”), will preside over the mediation of the Nikola Dispute (the “Mediation”).

2. Nikola’s opening offer to resolve the Nikola Dispute in connection with the Mediation will be to permit the Distribution Trust to draw under the LC an amount equal to not less than \$646,112.

3. Nikola shall be permitted, with the full cooperation of the Distribution Trust, to reduce the amount of the LC from \$15 million to \$8.8 million, and the LC will remain available to potentially be drawn upon by the Distribution Trust pending the outcome of the Mediation and the resolution of Nikola Dispute.

4. The Distribution Trustee hereby waives its asserted claim for \$69,517,386.10 in damages related to any anticipatory breach of Nikola’s 2024 “minimum purchase commitment” under the Product Supply Agreement.

5. Within thirty (30) days from the date of entry of this Stipulation, the Parties will exchange documents that they have identified as critical in support of their respective arguments (the “Supporting Documents”).

6. The form and manner of submission of each Party’s mediation statement and any other related briefing associated with the Mediator shall be determined by the Mediator.

7. Subject to the availability of the Mediator, the Parties will engage in a full-day mediation session and such other sessions as may be determined by the Mediator. The Mediation may take place in person or via Zoom, with the logistics to be determined by the Parties in good faith in consultation with the Mediator.

8. The costs associated with the Mediator conducting the Mediation shall be split equally between the Parties.

9. The deadline identified in paragraph 5(f) of the Thirtieth Omnibus Order, which instructs the Distribution Trustee to file a pleading with the Court seeking determination of the Nikola Dispute, shall be adjourned *sine die*; provided however, that in the event the Mediation is unsuccessful, such deadline shall be reinstated no less than thirty (30) days following the conclusion of the Mediation.

10. All mediation statements and any discussions during and in connection with the Mediation will be subject to Federal Rule of Evidence 408 and all equivalents and shall not prejudice any rights, defenses, or arguments of Nikola or the Distribution Trustee, as applicable, including any rights, defenses, or arguments asserted in the pleading described in paragraph 5(f) of the Thirtieth Omnibus Order.

11. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Stipulation and Agreed Order.

12. The Distribution Trustee shall only be required to serve this Stipulation and Agreed Order on: (a) the U.S. Trustee; (b) Nikola, and (c) any party that has requested notice pursuant to Bankruptcy Rule 2002.

STIPULATED and AGREED on this 13th day of June 2024:

[remainder of page left intentionally blank]

Dated: June 13, 2024

LOWENSTEIN SANDLER LLP

By: /s/ Daniel B. Besikof

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Counsel to the Distribution Trustee

Dated: June 13, 2024

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