IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE NIKOLA CORPORATION DERIVATIVE LITIGATION	CONSOLIDATED C.A. No. 2022-0023-KSJM
ED LOMONT, Plaintiff, v. TREVOR R. MILTON, MARK A. RUSSELL, KIM J. BRADY, BRITTON M. WORTHEN, MIKE MANSUETTI, STEVEN J. GIRSKY, JEFFREY W. UBBEN, GERRIT A. MARX, LONNIE R. STALSBERG, DEWITT THOMPSON V, and SOOYEAN JIN, Defendants, and NIKOLA CORPORATION, Nominal Defendant.	C.A. No. 2023-0908-KSJM

THE CHANCERY PLAINTIFFS' OPENING BRIEF IN SUPPORT OF SETTLEMENT, AWARD OF ATTORNEYS' FEES AND EXPENSES, AND INCENTIVE AWARDS

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Lead Plaintiffs Barbara Rhodes, Benjamin Rowe, and Zachary BeHage, along with additional plaintiffs Michelle Brown and Crisanto Gomes (collectively, "Chancery Plaintiffs")[1] hereby submit this Brief in Support of Settlement, Award of Attorneys' Fees and Expenses, and Incentive Awards.[2]

PRELIMINARY STATEMENT

The derivative claims in the Actions relate to events after the reverse merger transaction ("Merger") between Nikola Corporation ("Nikola" or the "Company") and the special purpose acquisition company, VectoIQ. In the weeks and months following the Merger, evidence emerged that Nikola and its founder and CEO, Defendant Trevor Milton, had grossly misrepresented the Company's business, products, technology and financial prospects to investors. Upon disclosure of the alleged fraud, Nikola's stock price and business collapsed. Following an investigation into the alleged misconduct, Chancery Plaintiffs brought derivative

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[1] Unless otherwise defined herein, all capitalized terms shall have the same meanings as set forth in the Stipulation and Agreement of Settlement, Compromise, and Release dated and filed on August 21, 2025 (the "Stipulation" or "Stip.") (Dkt. 252).

[2] This Settlement resolves the derivative claims in the above-captioned consolidated action, C.A. No. 2022-0023-KSJM, involving Nikola (the "Consolidated Action"). The Consolidated Action also asserts direct *MultiPlan* class claims which have been settled separately and will be presented to the Court concurrently with this derivative settlement.

The plaintiffs in certain related pending Court of Chancery (C.A. No. 2023-0908-KSJM) and federal stockholder derivative actions (collectively the "Stayed Derivative Actions," and together with the Consolidated Action, as defined in the Stipulation, the "Actions")—viz., Ed Lomont, Hyeyoung Byun, Prahant Salguocar, Cynthia M. Longford, Nahid Hajarian, and Chad Huhn (together with the Chancery Plaintiffs, the "Plaintiffs")—are also parties to the Settlement.

claims against certain officers and directors of Nikola for breach of fiduciary duties. After years of litigation, motion practice including a motion to dismiss hearing and ruling, extensive discovery, a highly contested mediation and negotiating process, and Nikola's intervening bankruptcy, the derivative claims have now settled for $27.45 million.[3]

As a result of Nikola seeking bankruptcy protection under Chapter 11 of the Bankruptcy Code, the Derivative Actions became property of the bankruptcy estates. Under the Stipulation, the Parties were required to obtain entry of the Bankruptcy Court Approval Order by the Bankruptcy Court prior to submitting the Stipulation for approval by this Court.[4] As explained in the Company's letter submission, dated August 29, 2025, and below, the entry of the Bankruptcy Court Approval Order was a critical first step to the consensual resolution of the Derivative Actions. Entry of such order facilitated approval of the Parties' Settlement by the Bankruptcy Court pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and, thereafter, confirmation of Nikola's Plan of Liquidation, which incorporated the terms of such resolution and was confirmed by the Bankruptcy Court at a hearing conducted on September 5, 2025. With respect to these proceedings, approval by the Bankruptcy Court of the Settlement clears the way for the Final Approval of the Stipulation at

[3] As a result of the Bankruptcy Case, explained further herein, the amount of the Settlement Fund was increased from $22 million to $27.45 million.

[4] *See* Stip. ¶¶ at 14-16.

the Settlement Hearing. That Final Approval, in turn, is a condition to the occurrence of the effective date of the Plan of Liquidation.

Pursuant to the Bankruptcy Court's Confirmation Order, which was entered on September 12, 2025, the Bankruptcy Court found that the Company's implementation of the Settlement through the Plan of Liquidation—subject to final approval by this Court—was appropriate and constitutes a good faith compromise and settlement of the Derivative Actions. Indeed, the Settlement resolves all derivative litigation pending against Defendants and provides for appropriate mutual releases under the circumstances. Chancery Plaintiffs respectfully submit that, given the significant monetary benefit and Nikola's status as a Debtor in the Bankruptcy Cases, the Settlement is fair, reasonable, and adequate, and should be approved by the Court.

Before and after the Court's April 9, 2024, bench ruling on Defendants' motions to dismiss the Second Amended Complaint (the "Motions to Dismiss"), Chancery Plaintiffs and Defendants engaged in extensive document discovery and prepared for depositions. At the same time, some but not all of the Parties engaged in several unsuccessful mediation attempts. Eventually, Chancery Plaintiffs obtained the consent of all Parties to participate in a global mediation before Gregory Danilow of Philips ADR. Over several months, the Parties negotiated an agreement in principle to settle the derivative claims which provided for a payment

to Nikola of $22 million. The payment included the full amount of Nikola's available insurance ($17.5 million) in the form of the so-called Insurance Agreement (which confirms agreement by Individual Defendants to subordinate the priority of payment so $17.5 million of settlement value can be paid directly to Nikola under the Stipulation from the Nikola D&O Insurers)[5] and a total payment of $4.5 million from certain individual defendants. The agreement in principle was memorialized in an executed Term Sheet dated November 19, 2024.[6]

Before the commencement of the Bankruptcy Cases, on December 31, 2024, Chancery Plaintiffs retained Lowenstein Sandler LLP as bankruptcy counsel in order to protect the interests of Nikola and its stockholders and the settlement as documented in the executed Term Sheet. While the final settlement papers were being drafted, on February 19, 2025, Nikola filed for Chapter 11 protection, putting the settlement as reflected in the Term Sheet at risk. Eventually, the Unsecured Creditors' Committee (the "UCC") sought to modify the previously agreed-to settlement. Following its own investigation, the UCC was able to obtain $5.45 million in additional contribution from the Ubben Released Parties. The UCC also negotiated with Chancery Plaintiffs and their bankruptcy counsel to decrease the

[5] Otherwise, the Individual Defendants would be able to seek to utilize the $17.5 million for their own advancement and indemnification claims.

[6] The Term Sheet also included negotiated corporate governance reforms which subsequently became moot as a result of the Bankruptcy Cases and are not part of the Settlement.

requested attorneys' fees and expenses to $1.8 million rather than a maximum of 25% of the settlement fund subject to Court approval. The Settlement, as revised, fixes the amount to be received by Nikola at $27.45 million less $1.8 million in fees and expenses payable to Plaintiffs' Counsel or $25.65 million.[7]

Given the monetary result achieved, including contributions from some of the Individual Defendants, together with the significant risks associated with Nikola's deteriorating financial condition during the course of the Actions, Chancery Plaintiffs believe this is an excellent result. Accordingly, the $1.8 million fee and expense request—negotiated as part of the Bankruptcy Case, agreed to by Nikola, and approved by the Bankruptcy Court—comes to a modest 6.6% of the Settlement Fund, well below benchmarks from similar cases and a significant discount to Plaintiffs' Counsel's lodestar.

[7] Per the Stipulation, page 38, ¶1.19, the "Settlement Fund shall be funded as follows: (a) $17.5 million by the Nikola D&O insurers; (b) $2.5 million by Milton; (c) $6.95 million on behalf of the Ubben Released Parties; and (d) $500,000 by Mike Mansuetti policy insurers."

FACTUAL AND PROCEDURAL BACKGROUND[8]

A. Nikola's Brief History

Nikola, a Delaware corporation headquartered in Phoenix, Arizona, is an electric semi-truck manufacturer founded in 2015 by Defendant Trevor Milton ("Milton"), who later served as its CEO and then Executive Chairman. On June 2, 2020, Nikola merged with special purpose acquisition company VectoIQ and became a public company.[9] Through the Merger, the legacy Nikola Board and Nikola's major stockholders, including Milton, had the opportunity to monetize their privately held and illiquid shares in Nikola.[10] On February 19, 2025, Nikola sought bankruptcy protection under Chapter 11 of the U.S. Bankruptcy Code.[11] Then, on September 12, 2025, the Bankruptcy Court entered an order confirming Nikola's Plan of Liquidation (the "Confirmation Order").[12]

Both prior to and following the Merger, Milton and Nikola publicly portrayed themselves as bold disruptors at the cutting edge of vehicle and hydrogen-fuel technology through social media, public relations events, and media appearances. Milton and Nikola claimed that the Company had built an impressive business model

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[8] Unless otherwise specified, all citations to "¶__" or "¶¶__" are to paragraphs of the Second Amended Complaint (Dkt. 75).

[9] ¶104.

[10] *Id.*

[11] *See* Dkt. 241.

[12] *See* Exhibit A attached hereto.

with proprietary turbine, battery, hydrogen fuel cell, and hydrogen production technologies.[13] Milton also claimed that Nikola had designed and built a fully functioning zero-emissions semi-truck, the Nikola One, and had developed a real, working prototype of a zero-emissions pickup truck, the Nikola Badger.[14] According to Milton, Nikola owned gas wells and had built a sustainable, off-the-grid headquarters powered by clean energy provided by solar panels on its roof.[15]

However, as Chancery Plaintiffs alleged, none of this was true. Nikola neither possessed these claimed proprietary technologies or energy assets, nor had it built a fully functioning zero-emissions semi-truck or zero-emissions pickup truck prototype.[16] Milton's steady stream of allegedly misleading statements fueled increases in Nikola's stock price to a high of $93.99 per share and its market capitalization to $28.77 billion.[17] Nikola's inflated stock price entitled Milton and other executives to millions of dollars in performance awards.[18] Virtually every member of the post-Merger Board reaped substantial monetary rewards (directly or

[13] ¶¶98, 99.

[14] ¶99.

[15] *Id.*

[16] ¶100.

[17] ¶109.

[18] ¶110.

indirectly) because of the Merger and stood to gain significantly from subsequent increases in Nikola's stock price.[19]

On September 10, 2020, Hindenburg Research published the 52-page Hindenburg Report, arguing that "Nikola is an intricate fraud built on dozens of lies over the course of its Founder and Executive Chairman Trevor Milton's career."[20] The Hindenburg Report gathered extensive evidence, including recorded phone calls, text messages, private emails, and behind-the-scenes photographs to substantiate its allegations of dozens of false statements by Milton and Nikola.[21] Over the next two days, Nikola's stock price plummeted by over 24%. Just ten days later, on September 20, Milton resigned from Nikola, and was then under criminal investigation.[22] Although Nikola and Milton denied the allegations in the Hindenburg Report, a subsequent limited internal investigation by Kirkland & Ellis (prompted by the Hindenburg Report) corroborated certain allegations made in the Hindenburg Report, and Milton was later convicted of securities fraud.[23]

The Nikola director defendants (who knew the Company did not possess the claimed technology or functionality) allegedly did nothing to investigate, correct, or

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[19] ¶108.

[20] ¶114.

[21] *Id.*

[22] *Id.*

[23] ¶115.

stop Milton's misrepresentations. Thus, Chancery Plaintiffs alleged that certain of the Individual Defendants breached their fiduciary duties, including disclosure violations under *Malone* and oversight failures under *Caremark*, and that certain defendants misappropriated nonpublic information under *Brophy* or aided and abetted such misappropriation. Specifically, certain of the Individual Defendants failed to oversee, prevent, and remedy Milton's and the Company's materially false and misleading public statements and omissions about Nikola's capabilities, technology, reservations, products, and commercial prospects, as well as the misappropriation of material nonpublic information.

B. DOJ And SEC Proceedings

On September 14, 2020, Nikola and five of its officers and employees, received subpoenas from the SEC.[24] On September 19, 2020, Nikola and Milton received grand jury subpoenas from the U.S. Attorney's Office.[25]

On July 29, 2021, the U.S. Attorney's Office unsealed an indictment charging Milton with two counts of securities fraud and two counts of wire fraud for making "false and misleading statements regarding Nikola's product and technology development" as part of a scheme to target "individual, non-professional investors—so-called 'retail investors'" through "social media and television, print,

[24] ¶276.

[25] ¶277.

and podcast interviews." [26] On October 14, 2022, following a four-week trial, a federal jury convicted Milton of one of the counts of criminal securities fraud and two counts of criminal wire fraud.[27]

Also on July 29, 2021, the SEC filed a civil action against Milton alleging securities and wire fraud. *SEC v. Milton*, No. 1:21-cv 06445-AKH (S.D.N.Y.) (the "SEC Action").[28]

On December 21, 2021, the Company agreed separately to a cease-and desist order with the SEC related to Milton's and the Company's alleged misconduct and was ordered to pay a $125 million penalty.[29] Nikola entered into a payment schedule with the SEC and thus far has made payments totaling approximately $44.7 million.[30] As part of the Plan of Liquidation and Conformation Order, the SEC's remaining claim was settled and split into an unsecured claim in the amount of approximately $43 million (provided, however, that the sole distribution on account of such unsecured claim will be a $4 million cash payment to the SEC on the Effective Date of the Plan of Liquidation) and a junior claim of $40 million.[31]

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[26] ¶303.

[27] ¶306. On March 27, 2025, while the criminal conviction was on appeal, Milton received "A full and Unconditional Pardon" from President Trump.

[28] Stip. at 6.

[29] ¶¶303-13.

[30] Stip. at 6.

[31] Bankruptcy Plan at 36-37.

C. Federal Securities Class Action Proceedings

A related putative federal securities class action, *Borteanu v. Nikola Corp.*, No. 2:20-cv-01797-SPL (D. Ariz.), was filed in the United States District Court for the District of Arizona (the "Securities Class Action"). Certain claims survived motions to dismiss, and the case is ongoing.[32]

D. Plaintiffs' Fiduciary Duties Derivative Allegations

The Second Amended Complaint in this Action alleged that certain of the Individual Defendants committed disclosure violations under *Malone*, oversight failures under *Caremark*, and misappropriated material nonpublic information under *Brophy* in violation of their fiduciary duties. While Defendants challenged the *Brophy* claim, wrongful-termination derivative claim, and *Multiplan* direct claims, among others, with their Motion to Dismiss, Defendants chose not to challenge the claims based on disclosure violations and oversight failures.

Chancery Plaintiffs alleged that Milton made fraudulent statements before, during, and after the Merger, and that such statements resulted in significant harm to the Company.[33] Specifically, Chancery Plaintiffs alleged that from 2016 until after the Merger in September 2020, Milton used tweets, other social media, and television and podcast interviews to falsely portray Nikola as a viable company on

[32] Stip. at 7.

[33] ¶¶209-67 (Milton's false statements); ¶¶359-63 (harm to Nikola).

the cutting edge of zero-emissions vehicle manufacturing on a multitude of different topics: (i) hydrogen fuel cells and battery production; (ii) the Nikola One, Badger, and Nikola Tre zero-emissions hydrogen trucks; (iii) natural gas wells and hydrogen fueling stations; (iv) the ability to design and manufacture components in-house; (v) the nature and number of vehicle reservations; and (vi) Nikola's engineering personnel qualifications.[34]

Chancery Plaintiffs also alleged a claim for breach of fiduciary duty against the Demand Board under "prong one" of *Caremark*.[35] In support, Chancery Plaintiffs' allegations under prong one detailed specific facts showing that Nikola's Board failed to implement and maintain adequate disclosure controls and procedures for monitoring or reviewing Milton's interviews and social media activity from at least June 3, 2020, through September 2020.[36] This, in turn, permitted Milton and the Company to issue material false and misleading statements to investors to falsely portray Nikola's technology, products, and financial position, artificially inflating the Company's stock price. As a result, Chancery Plaintiffs alleged the Individual Defendants were responsible both for Milton's false statements and for

[34] ¶209.

[35] ¶¶111-12; *see Marchand v. Barnhill*, 212 A.3d 805, 824 (Del. 2019).

[36] ¶309.

other alleged deceptions, all of which falsely portrayed the state of the Company's business and technology.[37]

Chancery Plaintiffs also alleged a *Caremark* "prong two" claim with specific facts showing that the Board knew of Nikola's underlying business problems, which placed them on notice of the threatened corporate trauma occasioned by Milton's and Nikola's fraudulent statements. Chancery Plaintiffs asserted nine "red flags" that allegedly placed the Board on notice of the misconduct.[38] Chancery Plaintiffs further alleged that, in the face of obvious red flags, the Board refused to stop Milton's unlawful conduct despite knowing, or recklessly not knowing, that Nikola's technological assets, manufacturing capabilities, and vehicle orders and reservations, among other things, were not as Milton claimed on his numerous tweets, social media posts, and television and podcast interviews.

With respect to their insider trading claim, Chancery Plaintiffs alleged that the Board could not disinterestedly and independently consider the *Brophy* claim against Ubben and his fund, Spring Master Fund, because each director faces a substantial likelihood of liability based on the same underlying facts.[39] Chancery Plaintiffs alleged that Ubben and his fund structured and timed certain stock sales based on

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[37] ¶369.

[38] ¶¶209-210, 211-16, 217-19, 221-23, 267-268, 270-73, 276-79, 280-98, 314-20, 325-28.

[39] ¶¶404, 456-62, 485-91.

Ubben's knowledge of Nikola's rapidly eroding capital and production delays.[40] Chancery Plaintiffs alleged that while in possession of material, non-public information, on August 11, 2020, Ubben (acting through Spring Master Fund) sold 1.4 million shares of Nikola stock at a price of $42.69 per share, for a total of $59.77 million, also in violation of his Lock-Up Agreement.[41]

In ruling on Defendants' Motion to Dismiss, the Court sustained the claim and rejected Ubben's contention that the *Brophy* claim must be considered apart from the claims relating to the Board's oversight failures relating to Milton's and Nikola's disclosure violations.

E. Procedural History (This Action)

Based upon the allegations described above, between October 13, 2020, and November 19, 2021, Chancery Plaintiffs, through their respective counsel,[42] obtained agreed-upon books and records from Nikola pursuant to 8 *Del. C.* § 220.

After obtaining, reviewing, and analyzing Nikola's confidential documents, on January 7, 2022, Rhodes filed a Verified Stockholder Derivative Complaint in this Court under the caption *Rhodes v. Milton,* C.A. No. 2022-0023-KSJM

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[40] ¶¶168-73.

[41] ¶¶56, 60, 170-74, 407.

[42] Chancery Plaintiffs' counsel includes Cohen Milstein Sellers & Toll PLLC, Johnson Fistel PLLP, Robbins LLP, Andrews & Springer LLC, Cooch and Taylor, P.A., and Bronstein, Gewirtz & Grossman, LLC (collectively, "Delaware Chancery Counsel").

("Rhodes Action"). On January 14, 2022, BeHage and Rowe filed a Verified Shareholder Derivative Complaint based on similar documents in this Court under the caption *BeHage v. Milton*, C.A. No. 2022-0045-KSJM ("BeHage Rowe Action").

On February 1, 2022, this Court consolidated the Rhodes Action and the BeHage Rowe Action, under the caption *In re Nikola Corporation Derivative Litigation*, Consolidated C.A. No. 2022-0023-KSJM. Two weeks later, on February 15, 2022, Rhodes, BeHage, and Rowe filed the First Amended Complaint.[43] On March 10, 2022, Michelle Brown and Crisanto Gomes filed a related Verified Stockholder Derivative Complaint captioned *Brown v. Milton*, C.A. No. 2022-0223-KSJM ("Brown Action").

Despite Chancery Plaintiffs' efforts to oppose a complete stay, the foregoing matters were stayed in part and then in full until January 12, 2023, when this Court granted the parties' stipulation to (i) consolidate the Brown Action into the Delaware Chancery Action; (ii) further stay the Delaware Chancery Action until February 14, 2023; (iii) appoint Plaintiffs Rhodes, BeHage, and Rowe as Lead Plaintiffs; (iv) appoint Cohen Milstein Sellers & Toll PLLC ("Cohen Milstein") and Johnson Fistel PLLP ("Johnson Fistel") as Lead Counsel; (v) appoint Andrews &

[43] Dkt. 23.

Springer LLC as Delaware Counsel; and (iv) appoint Robbins LLP as Additional Counsel.[44]

On February 16, 2023, Chancery Plaintiffs filed the Second Amended Complaint, which incorporated additional evidence from Milton's criminal trial.[45] The Second Amended Complaint included derivative claims and added direct *MultiPlan* class claims against certain defendants related to the Merger and new defendants related to those claims.

On May 3, 2023, Defendants filed five separate briefs in support of their motions to dismiss the Second Amended Complaint.[46] The Nikola director defendants and Milton moved to dismiss the derivative claims asserted against them in part but not the claims concerning the alleged disclosure violations under *Malone* or the purported oversight failures under *Caremark*. In response, Chancery Plaintiffs filed a 78-page omnibus opposition brief on July 26, 2023.[47]

Following December 8, 2023 oral argument, on April 9, 2024, this Court issued a bench ruling granting in part and denying in part the Defendants' motions to dismiss.[48] The Court upheld the contested *Brophy* claim against Ubben and

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[44] Dkt. 74.

[45] Dkt. 75.

[46] Dkts. 102-118.

[47] Dkt. 133.

[48] Dkt. 219.

certain of the direct *MultiPlan* class claims concerning the Merger. The alleged disclosure violations under *Malone* and oversight failures under *Caremark* against certain directors and officers remained in the action, as the Court did not address them in connection with the motions to dismiss.

Between June 26, 2023, and March 15, 2024, while the motions to dismiss were pending, Delaware Chancery Counsel conducted extensive fact discovery. They prepared, served, and responded to multiple document requests and subpoenas; negotiated document production scopes; reviewed privilege logs; noticed and prepared for fact witness depositions; and engaged in numerous written communications and meet-and-confers with defendants and non-parties regarding discovery timing, scope, and privilege issues. These efforts yielded over 2.4 million pages of documents from defendants and eight non-parties.

Delaware Chancery Counsel began targeted document reviews to identify witnesses for depositions and beginning on February 22, 2024, and the parties exchanged correspondence and conducted conference calls regarding identified witnesses and deposition scheduling. Three depositions were agreed to and scheduled, but on May 20, 2024, the parties agreed to temporarily adjourn the scheduling and taking of depositions, in light of their agreement to conduct an in-person mediation that included all parties.

F. Delaware Federal Derivative Action

On September 23, 2020, plaintiff Hyeyoung Byun filed a stockholder derivative complaint on behalf of nominal defendant Nikola in the United States District Court for the District of Delaware, captioned *Byun v. Milton*, No. 1:20-cv-01277-CFC (D. Del.) (the "Byun Action"). On October 19, 2020, plaintiffs Prahant Salguocar, Cynthia M. Longford, and Nahid Hajarian filed another stockholder derivative action purportedly on behalf of nominal defendant Nikola, captioned *Salguocar v. Girsky*, No. 1:20-cv-01404-CFC (D. Del.) (the "Salguocar Action"). Also on October 19, 2020, the District Court temporarily stayed the Byun Action.

On November 13, 2020, the District Court ordered that the Byun Action and the Salguocar Action be consolidated under the caption *In re Nikola Corporation Derivative Litigation*, No. 1:20-cv-01277-CFC (D. Del.). Then, on November 16, 2020, Chief Judge. Colm F. Connolly, on request of the parties, entered an order staying the consolidated Delaware Federal Derivative Action, by reinstating the temporarily stayed Byun Action. That order stayed the case until 30 days after the earlier of: (a) dismissal of the Securities Class Action in its entirety with prejudice; (b) filing of an answer to any complaint in the Securities Class Action; or (c) a joint request by plaintiff and defendants to lift the stay. Within 20 days of any of the foregoing, the stay order compelled the parties to meet and confer and submit a proposed scheduling order governing further proceedings.

Pursuant to the stay, the defendants in the Delaware Federal Derivative Action agreed to produce any documents that were produced to any other Nikola stockholder pursuant to a books and records demand under 8 *Del. C.* § 220, as well as any discovery materials produced by the defendants in the Securities Class Action.

On January 31, 2023, plaintiffs in the Delaware Federal Derivative Action filed a Verified Consolidated Shareholder Derivative Complaint, asserting claims for violations of Section 14(a) of the Exchange Act, breach of fiduciary duties, unjust enrichment, abuse of control, gross mismanagement, and insider trading.

G. Arizona Federal Derivative Action

On December 18, 2020, plaintiff Chad Huhn filed a verified stockholder derivative complaint on behalf of nominal defendant Nikola in the United States District Court for the District of Arizona captioned as *Huhn v. Milton*, No. 2:20-cv-02437-DWL (D. Ariz.). Huhn alleges violations of Section 14(a) of the Exchange Act and state law claims for breaches of fiduciary duty and unjust enrichment.

On January 21, 2021, the parties agreed to stay the Arizona Federal Derivative Action until 30 days after the earlier of: (1) dismissal of the Securities Class Action in its entirety with prejudice; (2) filing of an answer to the complaint in the Securities Class Action; or (3) a joint request by plaintiff and defendants that the court lift the stay, and to meet and confer within 20 days of the stay being lifted.

Pursuant to the stay, the defendants in the Arizona Federal Derivative Action agreed to produce any documents that were produced to any other Nikola stockholder pursuant to a books and records demand under 8 *Del. C.* § 220, as well as any discovery materials produced by the defendants in the Securities Class Action. On April 5, 2024, the Hon. Dominic W. Lanza granted the parties joint motion to stay, and the case has remained stayed.

H. Demand-Made Derivative Action

On December 23, 2022, plaintiff Ed Lomont, through counsel, sent Nikola directors Bruce Smith and Mary Petrovich a demand letter requesting that the Company's Board investigate and commence legal proceedings against certain former and/or current directors, executive officers, employees, and agents of the Company for breach of fiduciary duties, indemnification and contribution, and other relevant and appropriate claims arising out of Milton's alleged misconduct and the Company's alleged noncompliance with its disclosure obligations and its alleged inadequate controls over its public statements and disclosures. On February 1, 2023, Lomont's counsel emailed counsel for Nikola to alert him of the demand letter. Thereafter, in a February 10, 2023 email, counsel for Nikola acknowledged the Board's receipt of Lomont's demand. On April 30, 2023, Lomont's counsel requested a status update but received no response.

On September 6, 2023, Lomont filed a verified stockholder derivative complaint in this Court on behalf of Nikola alleging breaches of fiduciary duty, unjust enrichment, and contribution and indemnification against certain current and former directors and officers of Nikola, captioned as *Lomont v. Milton,* C.A. No. 2023-0908-KSJM. On February 21, 2024, this Court granted the parties' request to stay the Demand-Made Derivative Action for 180 days.

Pursuant to the stay order entered by this Court on February 21, 2024, the defendants in the Demand-Made Derivative Action agreed to produce documents that were produced to any other Nikola stockholder pursuant to a books and records demand under 8 *Del. C.* § 220, as well as any discovery materials produced by the defendants in the Securities Class Action or in any related pending derivative action. Following expiration of the initial stay, the parties to the Demand-Made Derivative Action submitted a stipulation renewing the stay for an additional 60 days, which the Court granted on September 16, 2024.

I. The Company's Arbitration Proceedings Against Milton

On November 3, 2021, the Company initiated arbitration proceedings against Milton seeking reimbursement for costs and damages arising from his alleged misconduct underlying the DOJ Action and SEC Action (the "Arbitration Proceeding").[49] Under Milton's separation agreement with the Company, Nikola

[49] Stip. at 6.

had the right to bring claims against Milton in arbitration to recover damages for misconduct while he served as the Company's executive chairman.

In October 2023, the arbitration panel ruled largely in favor of Nikola, awarding it approximately $165 million in damages (the "Arbitration Award"). The panel damage award included the $125 million SEC fine and other specified damages incurred by Nikola related to Milton's misconduct. Nikola petitioned to confirm the Arbitration Award and, on September 9, 2024, U.S. District Judge Diane Humetewa of the U.S. District Court for the District of Arizona, granted the petition, later modifying the award on November 4, 2024.[50] Milton has appealed that decision, and the appeal remains pending.[51]

J. Milton's Insurance Coverage Litigation

In January 2024, Nikola's officers and directors, who are covered by the Company's D&O policy, filed an action for declaratory relief in Delaware Superior Court against Nikola's D&O insurers and Milton seeking release of the policy to possibly settle the Actions.[52] The insurance defendants and Milton were accused of refusing to release the policy proceeds because Milton's criminal conviction remained pending.

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[50] Stip. at 6-7; s*ee Nikola Corp. v. Milton*, 2024 WL 4120320 (D. Ariz. Sept. 9, 2024).

[51] Stip. at 7.

[52] *See Nikola Corp. v. XL Specialty Ins. Co*, Case No. N24C-01-046-VLM CCLD (Del. Super. Ct.).

As part of the Settlement, this insurance coverage action was dismissed, and Milton released his insurance claim so that the $17.5 million in insurance proceeds could be contributed by Nikola's D&O insurers towards the Settlement Fund. In the absence of such agreement Milton likely would be able to seek to utilize the $17.5 million for his own advancement and indemnification claims. Delaware Chancery Counsel were instrumental in unlocking these insurance funds as they were able to convince both Milton and the insurance carriers to participate in the final mediation session that resulted in the pre-Bankruptcy Cases' settlement and Term Sheet.

K. The Pre-Bankruptcy Mediations And Term Sheet

On April 3, 2023, Plaintiffs in the Delaware Chancery Action, Delaware Federal Derivative Action, and Arizona Federal Derivative Action, along with Defendants (other than Milton and defendants named solely in the *MultiPlan* direct class claims), participated in a mediation session before The Honorable Layn R. Phillips (Ret.). Although the April 3, 2023, mediation did not result in a settlement, the attending parties continued settlement discussions.[53]

Chancery Plaintiffs sent revised settlement demands on April 25, 2023, and again on July 11, 2023, the latter of which included monetary demands for both the derivative and direct class claims, and proposed improvements to the Company's corporate governance related to the derivative claims. Because of certain insurance

[53] Stip. at 20.

issues and Milton's unwillingness to provide the insurers with the necessary release, settlement discussions were suspended.[54]

During February and March 2024, as depositions approached, Delaware Chancery Counsel commenced separate discussions with various Defendants' counsel, including Milton's counsel, and proposed a global mediation session that would include all the Parties for both the derivative and direct class claims. Ultimately, all of the Parties attended a full-day mediation on May 10, 2024, in New York City before Gregory Danilow and Niki Mendoza of Phillips ADR. Critically, once Chancery Plaintiffs obtained Milton's agreement to attend the mediation, Defendants' insurers also agreed to participate. The Parties submitted mediation statements that addressed monetary demands for both the derivative and direct claims.[55]

Although the May 10 mediation did not result in an immediate settlement, substantial progress was made, and the Parties continued settlement discussions through Mediator Danilow over the next three months.[56]

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[54] *Id.*

[55] *Id.*

[56] *Id*.

The parties ultimately reached an agreement in principle for a global settlement of all claims on August 23, 2024, following a recommendation by Mediator Danilow.[57]

The agreement in principle provided for settlement of the derivative claims in exchange for a cash payment of $22 million to the Company from the Nikola D&O insurers, along with payments made by or on behalf of Milton, Ubben, and Mansuetti, and was documented in an executed term sheet on November 19, 2024 (the "Term Sheet").[58] Certain corporate governance improvements were also part of the agreement in principle.[59]

L. The Bankruptcy Cases And Derivative Settlement

Before the commencement of the Bankruptcy Cases on February 19, 2025, Delaware Chancery Counsel retained Lowenstein Sandler LLP as bankruptcy counsel in order to protect the interests of Nikola, its stockholders, and the settlement as documented in the executed Term Sheet. At that time the pre-Bankruptcy Cases settlement totaled $22 million, which included payments of $17.5 million from

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[57] *Id.* at 21.

[58] The direct class claims, which settled separately for $6.3 million, includes only the Chancery Plaintiffs.

[59] The proposed corporate governance terms became moot upon Nikola's filing of the Bankruptcy Cases and are not part of the Settlement.

Nikola's D&O insurers, $2.5 million from Milton, $1.5 million from Ubben, and $500,000 from Mansuetti.

On February 19, 2025, Nikola commenced the Bankruptcy Cases in the Bankruptcy Court. Following the sale of substantially all the Company's assets through various sale transactions, on June 23, 2025, the Company filed the Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Nikola Corporation and its Debtor Affiliates (the "Plan of Liquidation").

As the Derivative Actions became property of the bankruptcy estates upon the commencement of the Bankruptcy Cases, the UCC, acting as fiduciary for unsecured creditors, investigated the causes of action underlying the Actions and the prepetition settlements of the Derivative Actions discussed above. Following that investigation and extensive arm's-length negotiations among the UCC, the Company and its debtor affiliates, the Ubben Released Parties, and Delaware Chancery Counsel, the Parties agreed to modify the terms of the settlements that had been reached before the commencement of the Bankruptcy Cases. As a result, the UCC determined to support the augmented settlements as fair and reasonable under the circumstances.

Specifically, the Parties agreed to two significant modifications. First, the Ubben Released Parties agreed to increase their contribution to the Settlement Fund from $1.5 million to $6.95 million. Second, the Plaintiffs agreed to reduce the amount of fees and expenses requested by counsel from an amount not to exceed

25% of the Settlement Fund to $1.8 million, subject to the Court's approval. The revised Stipulation, now contemplates Nikola receiving net settlement proceeds in the aggregate amount of $25.65 million through a combination of insurance proceeds and contributions from Individual Defendants named in the Derivative Actions, and reflects an agreed reduction of fees and expenses requested by Plaintiffs' Counsel to $1.8 million.

We recognize it is atypical for matters to proceed simultaneously before the Bankruptcy Court and this Court. Nevertheless, while uncommon, such parallel proceedings are not unprecedented,[60] and are necessary here given the unique circumstances. The prepetition settlement agreements contemplate an approval process to occur through this Court, and Nikola was concerned that departing from such approval process could be leveraged as an opportunity for one or more settling parties to seek to renegotiate the settlement agreements to the detriment of the Debtors' bankruptcy estates. Nikola therefore designed, in consultation with the UCC and certain other parties to the Stipulation, a dual-track approach to ensure none of the Individual Defendants would be able to depart from the material terms reached in the pre-Bankruptcy Cases Term Sheet.

On June 30, 2025, Nikola filed a motion with the Bankruptcy Court (the "9019 Motion"), seeking approval of the Settlement pursuant to Bankruptcy Rule 9010 to,

[60] *See, e.g., Silverberg v. Gold*, C.A. No. 7646-VCP (Del. Ch.).

among other things: (i) approving the assumption of prepetition derivative litigation settlement agreements, including ensuring the Individual Defendants continued to subordinate the priority of payment so $17.5 million of settlement value is paid directly to Nikola instead of being used for their own advancement and indemnification claims; (ii) authorizing the debtors to enter into the derivative action stipulation and perform obligations thereunder; and (iii) modifying the automatic stay to obtain authorization to submit the Stipulation to this Court and perform its obligations thereunder to approve the Settlement. Following a hearing on July 21, 2025, attended by Delaware Chancery Counsel, the Bankruptcy Court granted Nikola's foregoing request in the 9019 Motion.[61]

On August 21, 2025, the Parties reached a final agreement for the Settlement and executed and filed the Stipulation. This Stipulation reflects the final and binding agreement among the Parties and supersedes the Term Sheet. The Stipulation reflects the $5.45 million increase in the cash payment for a total of $27.45 million obtained for the derivative claims. The Stipulation and Settlement do not include the proposed corporate governance reforms, which were included in the Term Sheet but rendered moot by the Bankruptcy Cases.

[61] A copy of the July 22, 2025, Bankruptcy Court Approval Order is attached as Exhibit A to the Stipulation.

On September 5, 2025, the Bankruptcy Court considered confirmation of the Plan of Liquidation and approval of the Stipulation pursuant to Bankruptcy Rule 9019 on a final basis, at a hearing attended by Delaware Chancery Counsel. During the confirmation hearing, the Plan of Liquidation was confirmed by the Bankruptcy Court via bench ruling. Thereafter, on September 12, 2025, the Confirmation Order was entered.[62] The Stipulation is an integral part of the Plan of Liquidation, as it provides critical funding for creditor recoveries and the Debtors' orderly winddown.

Under the Stipulation, the Parties were required to obtain entry of the Bankruptcy Court Approval Order by the Bankruptcy Court before submitting the Stipulation for approval to this Court.[63] In turn, Final Approval of the Stipulation is a condition precedent to occurrence of the Effective Date of the Plan of Liquidation. As such, assuming Final Approval is obtained at the Settlement Hearing, and the various other conditions precedent under the Confirmation Order have been met (including the Debtors' receipt of the $25.65 million in settlement proceeds under the Stipulation), the Effective Date of the Plan of Liquidation will occur and the releases contemplated by the Plan of Liquidation and the settlement of the Derivative Actions under the Stipulation will all be effective. Thus, Final Approval of the

[62] Exhibit A.

[63] Stip. ¶¶ 14-16. While uncommon, such parallel proceedings before the Bankruptcy Court and this Court are not unprecedented and are necessary here given the unique circumstances.

Settlement will enable the Debtors to consummate the Plan of Liquidation and, thus, resolve the Bankruptcy Cases.

M. Notice To Applicable Nikola Stockholders

Following approval by this Court of the Notice of Pendency of Settlement of Derivative Actions (the "Notice"), on or before September 22, 2025, the Company provided Applicable Nikola Stockholders with Notice, in accordance with the terms of the Scheduling Order entered by this Court on September 3, which the Court later modified on September 19 , 2025.[64] First, Nikola mailed the Notice to all record stockholders of the Company as of the close of business on the date of the entry of the Scheduling Order at their respective addresses set forth in Nikola's stock records. Second, Nikola issued a press release disclosing that the Stipulation and the Notice can be found on the Nikola website, along with the website's address. Third, Nikola issued links to the Stipulation and Notice on the Company's Investor Relations page of its website that will be available through the date of the Settlement Hearing. Fourth, Nikola included in the Notice a statement that a copy of the Stipulation can be found on the Company's Investor Relations page of its website along with the website's address. Finally, in addition to the Notice provided by Nikola, Plaintiffs' Counsel posted copies of the Stipulation and Notice on their respective websites.

[64] Dkts. 254, 256.

The deadline for Applicable Nikola Stockholders to object to the proposed Settlement is October 31, 2025. As of filing, Delaware Chancery Counsel have received no objections to the Settlement. Delaware Chancery Counsel will notify the Court as to whether any such objections have been received after the objection deadline.[65]

ARGUMENT

A. The Settlement Is Fair, Reasonable, And Adequate

Delaware courts favor the voluntary settlement of contested claims in representative litigation.[66] In evaluating the proposed settlement of stockholder derivative litigation, the Court "looks to the facts and circumstances upon which the claim is based, the possible defenses thereto, and then exercises a form of business judgment to determine the overall reasonableness of the settlement."[67] In reviewing a proposed settlement, the Court is "not required to decide any of the issues on the merits"; rather the Court must determine whether the settlement is fair and reasonable.[68] Factors to consider include: (a) the risks of establishing liability;

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[65] Delaware Chancery Counsel will respond to objections to the Settlement or fee request, if any, in their reply brief to be filed on November 13, 2025.

[66] *See Kahn v. Sullivan*, 594 A.2d 48, 58-59 (Del. 1991); *Polk v. Good*, 507 A.2d 531, 535 (Del. 1986); *Forsythe v. ESC Fund Mgmt. Co. (U.S.) Inc.*, 2012 WL 1655538, at *2 (Del. Ch. May 9, 2012).

[67] *Polk*, 507 A.2d at 536.

[68] *Id*.

(b) the risks of establishing damages; (c) the collectability of a judgment; (d) the complexity, expense, risk, and duration of further litigation; (e) the reaction of the affected stockholders to the proposed settlement; and (f) the views of counsel.[69] "The principal focus is upon the benefits provided in the settlement, in light of the nature of the claims and the likelihood of success on the merits."[70]

Under that standard, the proposed Settlement warrants approval. The Settlement provides $27,450,000 to the Company ($25,650,000 net of attorneys' fees and expenses). Chancery Plaintiffs respectfully submit that this is an excellent result under the circumstances and considering the substantial risks they faced in successfully litigating the case to a judgment of that amount or more.

1. The Risk Of Establishing Liability And Strength Of Claims

In determining whether a settlement is fair and reasonable, the Court balances the strength of the plaintiff's claims against the benefits the settlement secures.[71] "The tasks assigned to the court include . . . assessing the reasonableness of the 'give'

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[69] *Id*.

[70] *Baupost Ltd. P'ship 1983 A-1 v. Providential Corp*., 1993 WL 401866, at *2 (Del. Ch. Sept. 3, 1993).

[71] *See Barkan v. Amsted Indus., Inc.*, 567 A.2d 1279, 1285 (Del. 1989) ("The strength of claims raised in a class action lawsuit helps to determine whether the consideration received for their settlement is adequate and whether dismissal with prejudice is appropriate.").

and the 'get….'"[72] That balance weighs heavily in favor of approving the Settlement.

The Settlement represents a fair compromise of the remaining *Brophy*, *Caremark*, or *Malone* claims against Defendants.

On the merits, Chancery Plaintiffs confronted the oft-repeated dicta from *Caremark* that bad faith oversight may be "the most difficult theory in corporation law upon which a plaintiff might hope to win a judgment."[73] Here, that reality was juxtaposed with the real prospect of prevailing on what may be the strongest claim in this action—a *Caremark* claim arising from the Board's oversight failures concerning Milton and Nikola's repeated disclosure violations.

Even as to this claim, however, Chancery Plaintiffs understood that the evidentiary record at this stage of the litigation was incomplete without depositions and with unresolved issues concerning the production of documents and privilege. Those oncoming challenges, coupled with the evidentiary burden of proving *Caremark* claims and other breaches of fiduciary duty claims created significant hurdles for Plaintiffs, particularly years of costly litigation in the face of Nikola's

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[72] *In re Activision Blizzard, Inc. S'holder Litig.*, 124 A.3d 1025, 1043 (Del. Ch. 2015).

[73] *Marchand*, 212 A.3d 820 n.99 (quoting *In re Caremark Int'l Inc. Deriv. Litig.*, 698 A.2d 959, 967 (Del. Ch. 1996)).

deteriorating financial condition. These formidable risks provided a strong case for resolving the claims when Plaintiffs agreed to settle.

Another source of uncertainty was Chancery Plaintiffs' *Brophy* claim against Ubben. Chancery Plaintiffs would have to defeat Ubben's argument that he did not violate any lock-up agreements. As the Court recognized, Ubben "might prevail on this issue ultimately" if he is able to show he was not subject to a lock-up agreement when he sold his stock.[74] Chancery Plaintiffs would also have to overcome Ubben's claim that he precleared the sale with in-house counsel. Ubben would likely further assert that, because he only sold 7% of his shares, the size of the trade does not support a *Brophy* claim. Chancery Plaintiffs recognize the significant burden and risk arising from these obstacles. Yet Ubben too faced risk, as acknowledged by his personal contribution to the Settlement Fund from the Ubben Released Parties. The compromise reflected in the Settlement supports its approval.

Defendants would also presumably try to introduce evidence of their awareness of the scope and function of Nikola's risk management system. Continued litigation would inevitably create further risks at summary judgment, trial, and on appeal. Moreover, any additional delay could have exacerbated the

[74] Transcript of Telephonic Rulings of the Court on Defendants' Motions to Dismiss (Apr. 9, 2024) at 48:12-13.

Company's deteriorating financial condition, as Nikola was in desperate need of cash to maintain its business operations at that time.

Throughout the pendency of the litigation, Delaware Chancery Counsel diligently pursued settlement and insisted on fully exploring that possibility ahead of fact depositions considering the costs, time, and other risks that lay ahead. This persistence led to the May 10, 2024 in-person mediation and eventual Settlement. Delaware Chancery Counsel was able to negotiate for a full day mediation session attended by all Parties, including Milton and Nikola's D&O insurers—who had not participated in prior mediation sessions.

Additional risks materialized after Chancery Plaintiffs prevailed on motions to dismiss. Delaware Chancery Counsel knew, should mediation fail, Nikola's Board may well form a special litigation committee ("SLC") charged with investigating the derivative claims at issue. That SLC would seek to stay the litigation pending its investigation. Under that contingency, the potential for obtaining significant insurance proceeds and contributions from certain individual defendants might be lost.

Chancery Plaintiffs have always believed—and continue to believe—that they could defeat any summary judgment motion. But Chancery Plaintiffs also recognizes the serious risk that, at trial, the Court could side with Defendants on the

derivative claims, leaving the Company with nothing. Against those risks, the Settlement delivers substantial, certain, and immediate benefits.

Even assuming Chancery Plaintiffs were able to rebut each of Defendants' arguments first made at the pleading stage, proving their claims at trial would have been difficult. Ultimately, trial would likely have come down to a "battle of the experts" contesting: (i) the adequacy of Nikola's corporate governance; (ii) whether the disclosures at issue regarding Nikola's business, products, technology, and financial condition and prospects to investors, were material; and (iii) the ascertainable damages resulting from any breach of fiduciary duty.[75] Utilizing and presenting experts would be an expensive and time-consuming proposition for Chancery Plaintiffs and Defendants alike. Substantively, Defendants likely would have challenged the fact and amount of damages— especially in light of the Company's pending arbitration award against Milton—as well as Chancery

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[75] *See, e.g.*, *In re PLX Tech. Inc. S'holders Litig.*, 2018 WL 5018535, at *56 (Del. Ch. Oct. 16, 2018) (proving a predicate breach of fiduciary duty, but failing "to show casually related damages" resulting from the breach of fiduciary duty), *aff'd*, 2019 WL 2144476 (Del. May 16, 2019); *Malone v. Brincat*, 722 A.2d 5, 9 (Del. 1998) (plaintiff pleading disclosure-based breach of fiduciary duty claim must prove defendant "knowingly disseminate[d] false information"); *Metro Comm'cn Corp. BVI v. Advanced Mobilecomm Techs. Inc.*, 854 A.2d 121, 158 (Del. Ch. April 30, 2004) (holding "level of proof" for disclosure-based breach of fiduciary duty claim is "even more stringent than[] the level of scienter required for common law fraud"); *Steinman v. Levine*, 2002 WL 31761252, at *13 (Del. Ch. Nov. 27, 2002) (holding complaint did not state a *Malone* loyalty claim because alleged misstatements were "not false communications from directors who were deliberately misinforming shareholders"), *aff'd*, 822 A.2d 397 (Del. 2003) (emphasis omitted).

Plaintiffs' methodology for calculating damages, which would have made Plaintiffs' ability to prove damages problematic.[76]

2. The Extent Of Collectible Damages

Nikola's exposure from Milton's disclosure violations and the Board's oversight failures was potentially enormous. Nikola's D&O policies provided the only realistic source of large-scale recovery remaining because the SEC and DOJ (through prosecution of Milton resulting in a $125 million fine) and the Board (through its arbitration against Milton resulting in a $165 million award) had already mostly exhausted the remaining potential additional sources of monetary recovery. Indeed, if upheld, the arbitration award significantly impacted potential recoverable damages in the Actions. And, the chance of Nikola filing for bankruptcy in the near future was obvious and real at the time the Settlement was reached.[77]

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[76] Proving and reliably quantifying reputational damages beyond stock price impact also would be exceedingly difficult. *See, e.g.*, *Dohmen v. Goodman*, 234 A.3d 1161, 1168, 1175 (Del. 2020) (only "nominal damages" are presumed for *Malone* disclosure-based breach claim; to "recover compensatory damages," an "investor who proves a breach of the fiduciary duty of disclosure must prove reliance, causation, and damages"); *Beard Rsch., Inc. v. Kates*, 8 A.3d 573, 613 (Del. Ch. 2010) (court will refuse to award "damages based on mere 'speculation or conjecture' where a plaintiff fails to adequately prove damages"), *aff'd sub nom. ASDI, Inc. v. Beard Rsch., Inc.*, 11 A.3d 749 (Del. 2010); *Cline v. Grelock*, 2010 WL 761142, at *2 (Del. Ch. Mar. 2, 2010) (finding, despite fact of fiduciary breach, plaintiff had failed to prove any damages because the harm was entirely speculative).

[77] *See In re Coleman Co. Inc. S'holders Litig.*, 750 A.2d 1202, 1208 (Del. Ch. 1999) ("Thus, even though plaintiffs raise colorable claims, the delay, expense, and trouble of litigation coupled with serious collectability problems seem to justify the proposed settlement agreement.").

Delaware Chancery Counsel also operated on the assumption that, if the mediation was not successful, Nikola could face a liquidity crisis and file for bankruptcy protection. Indeed, from its evaluation of document discovery and other information disclosed throughout their litigation efforts, Delaware Chancery Counsel knew that Nikola was struggling financially, a fact that the Individual Defendants were well aware of as most of them were Board members or officers.

The Settlement delivers a substantial benefit to Nikola by unlocking insurance proceeds that Milton had tied up pending his criminal appeal—funds that could have remained frozen for years. Milton refused to relinquish his claim to the policy in case his conviction was overturned, but the Settlement secured the release of these proceeds for Nikola and the Individual Defendants to resolve these claims. In addition, Plaintiffs obtained $4.5 million in personal contributions from three Individual Defendants.

3. The Import Of The Mediation

The Parties were assisted in their negotiations at different times by The Honorable Layn R. Phillips (Ret.) and Gregory Danilow, mediators at Phillips ADR. Plaintiffs only agreed to settle their claims after extensive settlement negotiations, information exchanges, and a (more than) full-day mediation session. The mediators continued to assist the Parties in negotiating the remaining outstanding terms following the in-person session. During negotiations, all Parties were represented

by experienced and effective counsel. The mediation process provides further support for the Settlement.[78]

The global mediation held on May 10, 2024, was the result of Delaware Chancery Counsel's insistence to fully explore a possible settlement ahead of upcoming depositions. Thus, Chancery Plaintiffs pursued discovery and litigated the case while simultaneously pursuing a mediated resolution. As a result, Delaware Chancery Counsel were able to obtain the consent of all Defendants, including Milton, who had not participated in any of the prior mediation sessions with any of the Parties. Milton's attendance prompted Nikola's D&O carriers to participate as well, despite unresolved coverage litigation.

In assessing whether a proposed settlement is fair, Delaware courts place considerable weight on whether it was reached through adversarial litigation and arm's-length negotiations.[79] Here, the Settlement was achieved only after zealous litigation efforts by Chancery Plaintiffs, followed by serious, informed, non-collusive, and adversarial negotiations after conducting a thorough analysis of the strengths and weaknesses of the legal and factual issues.

The Chancery Plaintiffs served inspection demands and obtained non-public,

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[78] *See Activision*, 124 A.3d at 1067 (citing mediation before experienced mediator as supporting settlement); *Ryan v. Gifford*, 2009 WL 18143, at *3 (Del. Ch. Jan. 2, 2009) (same).

[79] *See, e.g.*, *In re Allion Healthcare Inc. S'holders Litig.*, 2011 WL 1145016, at *3 (Del. Ch. Mar. 29, 2011); *Ryan*, 2009 WL 18143, at *5, *10.

Board-level confidential materials from Nikola prior to filing derivative complaints. The detailed Second Amended Complaint, which incorporates those confidential Company materials as well as documents obtained from the DOJ Action and SEC Action, would later be the subject of intense, adversarial litigation in connection with the Defendants' motions to dismiss. Chancery Plaintiffs also obtained over 2.4 million pages of documents from various sources, including Defendants and non-parties. These documents permitted Delaware Chancery Counsel to negotiate and evaluate the terms of a potential resolution on an informed basis.

As a result, Plaintiffs were well-informed during settlement negotiations, conducted at arm's length and under the oversight of experienced mediators, ultimately leading to the mutually agreeable Term Sheet. Significantly, the Defendants agreed that "the Actions and Plaintiffs' and Plaintiffs' Counsels' efforts were essential causes" of the Settlement, which was reached "as a direct result of Plaintiffs' investigation, initiation, and prosecution of the Actions." [80] Moreover, Defendants acknowledge that the Settlement "is fair, reasonable, and adequate…."[81]

That the Company—the real party in interest and beneficiary of the Settlement—has approved its terms and obtained the Bankruptcy Court's approval, further confirms the Settlement's fairness, reasonableness, and adequacy.

[80] Stip. ¶6.

[81] *Id*. at 31.

Moreover, the adversarial nature of the Actions and the good faith, arm's-length negotiations overseen by the experienced mediators weigh heavily in favor of approval.

4. The Scope Of The Release Is Reasonable

As part of its evaluation of the reasonableness of a settlement, a court must consider "the scope of the release…."[82] Specifically, "[t]o satisfy due process concerns, a settlement can release claims that were not specifically asserted in an action but can only release claims that are based on the same identical factual predicate or the same set of operative facts as the underlying action."[83]

Here, the scope of the release is reasonable and supports approving the Settlement. Plaintiffs' Released Derivative Claims are clearly defined to include claims "that have been or could have been asserted on behalf of Nikola . . . arising out of or based on the facts, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act that were alleged in the Actions…."[84] Thus, unlike in *Griffith*, Plaintiffs' Released Derivative Claims have intentionally been drafted to specifically include only those claims that could have been brought in the

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[82] Del. Ct. Ch. R. 23(f)(5)(D)(iii).

[83] *Griffith v. Stein ex rel. Goldman Sachs Grp., Inc.*, 283 A.3d 1124, 1134 (Del. 2022) (internal quotation marks and citation omitted) (finding settlement release too broad as it barred potential actions that 'now or hereafter, are based upon, arise out of, relate in any way to, or involve, directly or indirectly' the amount of future director compensation).

[84] Stip. ¶1.5.

Actions (rather than any future actions) and omit any vague language such as "relate in any way to, or involve, directly or indirectly…."[85] As such, Plaintiffs' Released Derivative Claims only include claims "based on the same identical factual predicate or the same set of operative facts as the underlying action[s.]"[86]

5. The Reaction Of Applicable Nikola Stockholders

Applicable Nikola Stockholders have been provided with notice of the Settlement in accordance with the terms of the Scheduling Order. Pursuant to the Scheduling Order, any objections to the Settlement must be served and filed with the Court no later than October 31, 2025, which is 20 calendar days before the Settlement Hearing.

To date, Plaintiffs have received no objections to the Settlement.

B. The Fee Application Is Fair And Reasonable

The size of the fee award rests in the Court's discretion.[87] Delaware courts assess "reasonableness" under the *Sugarland* factors: "(1) the result achieved; (2) the time and effort of counsel; (3) the relative complexities of the litigation; (4) any contingent factor; and (5) the standing and ability of counsel involved.[88] The "results

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[85] *Griffith*, 283 A.3d at 1135.

[86] *Id*.

[87] *E.g.*, *In re Abercrombie & Fitch Co. S'holders Deriv. Litig.*, 886 A.2d 1271, 1273 (Del. 2005).

[88] *Tornetta v. Musk*, 326 A.3d 1203, 1236 (Del. Ch. 2024).

achieved" factor "is paramount,"[89] the others are "secondary."[90] In weighing results, the Court looks to the "causal relationship between 'what counsel accomplished through the litigation and the ultimate result.'"[91]

Chancery Plaintiffs' application for a Fee and Expense Award on behalf of counsel is $1.8 million (the "Fee Application"). This amount was negotiated by Delaware Chancery Counsel, Nikola, and the UCC, as part of Nikola's Plan of Liquidation and approved by the Bankruptcy Court.[92] Defendants do not oppose the Fee Application. The Fee Application is inclusive of (i) out-of-pocket costs and expenses actually incurred by Plaintiffs' Counsel in connection with the Actions; and (ii) any incentive awards to Lead Plaintiffs.[93] Pursuant to the Stipulation, any Fee and Expense Award ordered by the Court shall be paid out of, and not be in addition to, the Settlement Fund.[94] No discussion regarding an appropriate Fee and Expense Award occurred between Plaintiffs and Defendants prior to agreement on all substantive terms of the Settlement.[95]

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[89] *Id*.

[90] *Id*.

[91] *Id*.

[92] *See* Exhibit A.

[93] Stip. ¶29.

[94] *Id.*

[95] *Id*.

1. The Benefits Achieved Support The Fee Application

The benefits achieved through litigation is the most important factor in determining an appropriate fee award,[96] which should be "the product of a logical deductive process."[97] Awards from similar cases are highly instructive.[98]

Here, Chancery Plaintiffs' requested Fee and Expense Award of $1,800,000 on a cash settlement of $27,450,000 compares favorably to—and indeed is far less than awards in—comparable cases, highlighting the reasonableness of the request:

- *Emps.' Ret. Sys. of R.I. v. Marciano* (Guess?), C.A. No. 2022-0839-LWW (Del. Ch. Jan. 5, 2024) (approving $30 million payment to company and $5.3 million in attorneys' fees to settle derivative claims alleging the company's directors and officers breached their fiduciary duties by ignoring allegations of sexual misconduct);

- *Macomb Cnty, Emps.' Ret. Sys. v. McBride* (Stamps.com), C.A. No. 2019-0658 (Del. Ch. Sept. 30, 2021) (approving $30 million payment to company and $5.1 million in attorneys' fees to resolve derivative claims concerning allegations of insider trading by officers and directors); and

- *Saito v. McCall* (McKesson), 2006 WL 4804677 (Del. Ch. Dec. 21, 2006) (approving $30 million cash payment to company and $6 million in attorneys' fees to resolve derivative claims alleging that company executives had breached their fiduciary

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[96] *In re Dell Techs. Inc. Class V S'holders Litig.*, 326 A.3d 686, 698 (Del. 2024) ("The first factor – the results achieved – is paramount.").

[97] *Goodrich v. E.F. Hutton Grp., Inc*., 681 A.2d 1039, 1042 (Del. 1996).

[98] *See Olson v. ev3, Inc.*, 2011 WL 704409, at *8 (Del. Ch. Feb. 21, 2011) ("Precedent awards from similar cases may be considered for the obvious reason that like cases should be treated alike.").

> duties by conducting a "books-cooking" scheme to inflate the company's earnings and stock price).

The requested fee award represents just 6.6% of the Settlement Fund.[99] That fits comfortably within, and indeed is conservative under, the stage-of-case method endorsed by the Delaware Supreme Court:

> When a case settles early, the Court of Chancery tends to award 10-15% of the monetary benefit conferred. When a case settles after the plaintiffs have engaged in meaningful litigation efforts, typically including multiple depositions and some level of motion practice, fee awards in the Court of Chancery range from 15-25% of the monetary benefits conferred. A study of recent Delaware fee awards finds that the average amount of fees awarded when derivative and class actions settle for both monetary and therapeutic consideration is approximately 23% of the monetary benefit conferred; the median is 25%.[100]

Even viewed as an early-stage case, Chancery Plaintiffs' requested Fee and Expense Award is reasonable and conservative, countenancing in favor of approval.

2. The Contingency Risk Supports The Fee Award

The contingent nature of the representation is the "second most important factor considered by this Court" in awarding attorneys' fees.[101] It is the "public policy of Delaware to reward this risk-taking in the interests of shareholders."[102]

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[99] $1,800,000 / $27,450,000 = 6.557%.

[100] *Ams. Mining Corp. v. Theriault*, 51 A.3d 1213, 1259-60 (Del. 2012) (internal quotation marks and citation omitted).

[101] *Dow Jones & Co. v. Shields*, 1992 WL 44907, at *2 (Del. Ch. Jan. 10, 1992)

[102] *In re Plains Res. Inc. S'holders Litig.*, 2005 WL 332811, at *6 (Del. Ch. Feb. 4, 2005).

Indeed, Delaware courts have consistently "recognized that an attorney may be entitled to a much larger fee when the compensation is contingent than when it is fixed on an hourly or contractual basis."[103]

Delaware Chancery Counsel faced risk at every step, pursuing the Consolidated Action through Section 220 demands, motions to dismiss, and party and non-party document discovery, against elite defense firms on a fully contingent basis. Delaware Chancery Counsel invested significant time and money without any assurance of receiving compensation for their services, or even reimbursement for out-of-pocket expenses. That risk was exacerbated by Nikola's deteriorating financial condition and the possibility, then reality, of a Company bankruptcy. Delaware's public policy "reward[s] this sort of risk taking in determining the amount of a fee award."[104]

2. Difficult Issues In The Actions

"All else equal, litigation that is challenging and complex supports a higher fee award."[105] Courts generally recognize that stockholder derivative litigation is

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[103] *Ryan*, 2009 WL 18143, at *13; *see also Franklin Balance Sheet Inv. Fund v. Crowley*, 2007 WL 2495018, at *12 (Del. Ch. Aug. 30, 2007) ("Fee awards should encourage future meritorious lawsuits by compensating the plaintiffs' attorneys for their lost opportunity costs (typically their hourly rate), the risks associated with the litigation, and a premium."); *Plains Res.*, 2005 WL 332811, at *6 ("[P]laintiffs' counsel were all retained on a contingent fee basis, and stood to gain nothing unless the litigation was successful.").

[104] *In re First Interstate Bancorp Consol. S'holder Litig.*, 756 A.2d 353, 365 (Del. Ch. 1999), *aff'd sub nom. First Interstate Bancorp v. Williamson*, 755 A.2d 388 (Del. 2000).

[105] *Activision*, 124 A.3d at 1072.

notoriously difficult.[106] This case was no exception. The Actions posed risks at various stages, including summary judgment, trial, and any potential appeal, with the real possibility of the Chancery Plaintiffs recovering nothing on Nikola's behalf. As discussed above at Section III.A.1., the burden of proof involved and difficulties demonstrating damages created significant litigation risks for the Chancery Plaintiffs. Moreover, Chancery Plaintiffs faced the risk that Nikola's Board could form an SLC, which would have delayed proceedings, affected potential recoveries, and resulted in termination of the claims. Accordingly, this factor weighs in favor of approving the requested Fee and Expense Award.

3. Deference To A Negotiated Fee

The requested Fee and Expense Award is the product of a fee agreement with sophisticated clients and arm's-length negotiations with the UCC following Nikola's filing for Chapter 11 bankruptcy. This Court defers to fee requests, like this one, that are the product of arm's-length negotiations.[107]

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[106] *See In re Boeing Co. Deriv. Litig.*, 2021 WL 4059934, at *24 (Del. Ch. Sept. 7, 2021) ("[T]he claim that corporate fiduciaries have breached their duties to stockholders by failing to monitor corporate affairs is possibly the most difficult theory in corporation law upon which a plaintiff might hope to win a judgment.") (internal quotation marks and citation omitted).

[107] *See, e.g.*, *Forsta AP- Fonden v. News Corp.*, C.A. No. 7580-CS, at 10 (Del. Ch. Apr. 26, 2013) (TRANSCRIPT) ("I give credit to the arm's length bargaining."); *Forsythe*, 2012 WL 1655538, at *7 ("The fee falls within a reasonable range, warranting deference to the parties' negotiated amount."); *In re J. Crew Grp., Inc. S'holders' Litig.*, C.A. No. 6043-CS, at 78 (Del. Ch. Dec. 14, 2011) (TRANSCRIPT) ("I'm not going to quibble with what was negotiated.").

Vice Chancellor Laster explained that Delaware courts will defer the negotiated fee awards when the award falls "within a reasonable range":

> The fact that a fee is negotiated does not obviate the need for independent judicial scrutiny of the fee because of the omnipresent threat that plaintiffs would trade off settlement benefits for an agreement that the defendant will not contest a substantial fee award. Notwithstanding these statements, some of this court's decisions speak of giving deference to a negotiated fee agreement. In my view, any apparent tension can be harmonized by differentiating between evaluating a range of reasonableness and determining a specific amount. Under Delaware Supreme Court precedent, the court must determine that the award falls within a reasonable range. If it does, then a court can defer to the parties' negotiated amount.[108]

The requested Fee and Expense Award reflects extensive, arms-length negotiations with the UCC, which investigated the claims underlying the Actions and its prepetition settlement. Following those negotiations, the UCC, the Company (and its debtor affiliates), Defendants, Chancery Plaintiffs, and their counsel agreed to reduce the request from up to 25% of the Settlement Fund to a fixed $1,800,000 million, subject to this Court's approval.[109] The Bankruptcy Court has also approved the Fee and Expense Award, contingent on this Court's approval.

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[108] *Activision*, 124 A.3d at 1074-75 (internal quotation marks, alteration, and citations omitted).

[109] The Term Sheet provided for a Fee and Expense Amount not to exceed 25% of the $22 million common fund, *i.e.*, $5.5 million.

4. Standing And Ability Of Counsel

The "standing and ability of plaintiffs' counsel" also weighs in favor of the agreed-upon fee award.[110] Delaware Chancery Counsel have decades of experience securing significant results in stockholder derivative and class action litigation, including in this Court.[111] A high degree of skill was demonstrated by Delaware Chancery Counsel in presenting difficult and complex *Caremark* and *Brophy* claims that survived a motion to dismiss and then negotiating a resolution that reflected the strength of those claims. Delaware Chancery Counsel were then successful at navigating the complex nature of Nikola's Bankruptcy proceedings, wherein the Bankruptcy Court approved the Settlement, as enhanced by the UCC.

Similarly, Defendants' counsel are preeminent in the field of corporate derivative and securities defense. The standing and ability of Plaintiffs' counsel is also evidenced by the high quality of the eight law firms representing Nikola and the Defendants, as well as and the firms representing the UCC and the Company and its debtor affiliates in the Bankruptcy Action.[112]

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[110] *In re Sauer-Danfoss Inc. S'holders Litig.*, 65 A.3d 1116, 1140 (Del. Ch. 2011).

[111] *See* Cohen Milstein, Johnson Fistel | Business & Commercial Law & Litigation, Robbins LLP - Shareholder Rights Attorneys,| Investment Monitoring Andrews & Springer LLC - Delaware Securities Fraud Attorneys, Shareholders Rights Lawyers, and Home | Cooch and Taylor Attorneys at Law

[112] *See Kurz v. Holbrook*, C.A. No. 5019-VCL, at 104 (Del. Ch. July 19, 2010) (TRANSCRIPT) ("I take into account that they were opposed by five rather significant firms.").

5. The Time Expended Was Substantial

"Delaware has not generally followed the lodestar method, preferring instead to focus on the benefit conferred."[113] But "[t]he time and effort expended by counsel is considered as a cross-check to guard against windfalls."[114] This factor has two separate components: time and effort.[115] "More important than hours is 'effort, as in what plaintiffs' counsel actually did.'"[116] And "counsel should not be penalized for achieving complete victory quickly."[117]

Delaware courts are "willing to award substantial attorneys' fees, even after a relatively quick settlement . . . [to avoid incentives] for needlessly prolonging litigation."[118] Delaware Chancery Counsel litigated the Consolidated Action efficiently and aggressively, delivering a valuable recovery for the Company. Their work included: (i) obtaining and analyzing confidential books and records before filing; (ii) filing and refining derivative complaints with the benefit of those records and DOJ and SEC materials; (iii) coordinating related actions through consolidation

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[113] *Sciabucucchi v. Salzberg*, 2019 WL 2913272, at *6 (Del. Ch. July 8, 2019).

[114] *In re Emerson Radio S'holder Deriv. Litig.*, 2011 WL 1135006, at *2 (Del. Ch. Mar. 28, 2011).

[115] *Sauer-Danfoss*, 65 A.3d at 1138.

[116] *Olson*, 2011 WL 704409, at *8.

[117] *Id.*

[118] *Seinfeld v. Coker*, 847 A.2d 330, 333 (Del. Ch. 2000); *see also Sciabucucchi*, 2019 WL 2913272, at *6 ("[C]ounsel should not be rewarded for dragging out cases, incurring unnecessary hours or, even worse, exaggerating the number of hours worked.").

and leadership structures; (iv) defeating Defendants' motions to dismiss through robust briefing and oral argument; (v) pursuing and obtaining discovery from Defendants and non-parties; (vi) negotiating and scheduling depositions; (vii) conducting damages and liability analyses and preparing detailed mediation submissions; (viii) working cooperatively with four other plaintiff's firms in settlement efforts; (ix) negotiating a favorable settlement after the Court's bench ruling, securing substantial benefits for Nikola under difficult circumstances; and (x) engaging Bankruptcy Counsel to preserve the Settlement, negotiate the revised Fee and Expense Award, and obtaining preliminary approval in the Bankruptcy Court, including appearances at two hearings.

Because the Consolidated Action involves both derivative claims (the "Derivative Claims") as well as the direct *MultiPlan* class action claims (the "Class Claims") that were litigated in a single proceeding, the time, lodestar, and expense numbers listed by Delaware Chancery Counsel reflects their ***total*** time, lodestar, and expenses for prosecuting both the Derivative Claims and Class Claims in the Consolidated Action.[119] Delaware Chancery Counsel's *total* time was 9,448.93 hours, their total lodestar was $8,617,581.30, and their total expenses were $540,893.76.

[119] Affidavit of Brett M. Middleton ("Middleton Aff."), at ¶5.

Specifically, Delaware Chancery Counsel spent a total of 8,674.48 hours for a total lodestar of $7,796,982.30 from inception through November 19, 2024—the date the parties executed their pre-bankruptcy proceeding term sheet (the "Term Sheet").[120] Then, from November 20, 2024, through August 21, 2025, (the date of the Stipulation and Agreement of Compromise, Settlement, and Release for the Derivative Claims), Delaware Chancery Counsel worked an additional 774.45 hours for an additional lodestar of $820,599.00.[121] Combining the foregoing two subtotals of hours spent by the Delaware Chancery Counsel on the Consolidated Action from inception through August 21, 2025**,** results in 9,448.93 total hours for a total lodestar of $8,617,581.30.[122] Delaware Chancery Counsel incurred $540,893.76 in total expenses from inception through August 21, 2025.[123]

Delaware Chancery Counsel utilized the following methodology for allocating time, lodestar, and expenses among the Derivative Claims and the Class

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[120] The affidavits of Delaware Chancery Counsel submitted with this brief contain a breakdown of their time and lodestar in the Consolidated Action. *See* Middleton Aff. at ¶6; Unsworn Declaration of Richard A. Speirs Pursuant to 10 *Del. C.* § 5356 ("Speirs Decl."). at ¶6; Affidavit of Craig W. Smith ("Smith Aff."), at ¶6; Affidavit of David M. Sborz ("Sborz Aff."), at ¶6; Affidavit of Blake A. Bennett ("Bennett Aff."), at ¶6; Affidavit of Eitan Kimelman ("Kimelman Aff."), at ¶6.

[121] *See* Middleton Aff. at ¶7; Speirs Decl. at ¶7; Smith Aff. at ¶7; Sborz Aff. at ¶7; Bennett Aff. at ¶7; Kimelman Aff. at ¶7.

[122] *See* Middleton Aff. at ¶8; Speirs Decl. at ¶8; Smith Aff. at ¶8; Sborz Aff. at ¶8; Bennett Aff. at ¶6; Kimelman Aff. at ¶8.

[123] *See* Middleton Aff. at ¶9; Speirs Decl. at ¶9; Smith Aff. at ¶9; Sborz Aff. at ¶9; Bennett Aff. at ¶8; Kimelman Aff. at ¶9.

Claims.[124] The original settlement of the Derivative Claims as reflected in the parties' Term Sheet was **$22 million**. The Class Claims settled for **$6.3 million,** as reflected in the Term Sheet. The aggregate settlement amount is $28.3 million with the Derivative Claims settlement contributing **77.74%** ($22 million), and the Class Claims settlement contributing **22.26%** ($6.3 million).[125]

Accordingly, Delaware Chancery Counsel has allocated 77.74% of their time, lodestar, and expenses in the Consolidated Action to the Derivative Claims settlement and 22.26% of their time, lodestar, and expenses in the Consolidated Action to the Class Claims settlement.[126]

Applying the 77.74% allocation ratio for the Derivative Claims to Delaware Chancery Counsel's total time, lodestar and expenses from inception through August 21, 2025, results in 7,348.20 allocated hours, an allocated lodestar of $6,701,391.24, and $420,490.81 in allocated expenses.

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[124] Middleton Aff. at ¶11.

[125] *Id*.

[126] *Id.* This allocation ratio applies to each Delaware Chancery Counsel firm except Cooch and Taylor, P.A, whose time is allocated 100% to the Derivative Claims because it did not record any time on the Class Claims. Cooch and Taylor did not record any expenses. Bennett Aff. at ¶8.

Stayed Plaintiffs' Counsel's Fees and Expenses are also covered by the Settlement.[127] With the inclusion of their time and lodestar, the total time in the case for all Plaintiffs' Counsel totals 9,402.65 hours with a lodestar of $8,399,430.24. For the Court's consideration, Stayed Plaintiffs' Counsel's Fee and Expense Affidavits also contain a breakdown of time and lodestar for the period prior to execution of the Term Sheet and for the period until execution of the Stipulation.[128]

Delaware Chancery Counsel's allocated expenses at 77.74% are $420,490.81, and the Stayed Plaintiffs' Counsel's total expenses are $11,929.73. The total expenses incurred by Plaintiffs' Counsel as allocated to the Derivative Claims are $432,420.54.[129] After subtracting these expenses, the net requested fee award is $1,367,579.46. The net fee award reflects an effective hourly rate of $145.45 per hour, and a negative multiplier of 0.2143, well within the ranges deemed reasonable in precedential awards.[130]

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[127] The "Stayed Plaintiffs' Counsel" include counsel for plaintiffs in the Stayed Derivative Actions: The Brown Law Firm, P.C., Gainey McKenna & Egleston, Julie & Holleman LLP, and Schubert Jonckheer & Kolbe LLP.

[128] *See* Affidavit of Timothy Brown ("Brown Aff."), Affidavit of Thomas J. McKenna ("McKenna Aff."), Affidavit of W. Scott Holleman ("Holleman Aff.), and Affidavit of Dustin L. Schubert ("Schubert Aff."), submitted herewith.

[129] The affidavits of the Stayed Plaintiffs' Counsel submitted with this brief contain a breakdown of their expenses in the Actions. *See* Brown Aff. at ¶8; McKenna Aff. at ¶8; Holleman Aff. at ¶8; Schubert Aff. at ¶8.

[130] *See, e.g.*, *In re AXA Fin., Inc.*, 2002 WL 1283674, at *7 (Del. Ch. May 22, 2002) (fee award representing hourly rate exceeding $2,630 "is not out of line with those in other cases in which plaintiffs' counsel have achieved a significant benefit to the class with only

6. The Expenses Incurred by Counsel Are Reasonable

Plaintiffs' Counsel incurred out-of-pocket expenses of $432,420.54. This total includes Delaware Chancery Counsel's 77.74% ratio for allocation of expenses towards the Derivative Claims ($420,490.81),[131] plus all of the Stayed Plaintiffs' Counsel's expenses ($11,929.73).[132]

These expenses were reasonable and necessary to the effective prosecution of the Actions and are accounted for in Plaintiffs' Counsel's affidavits.[133] Consistent with this Court's practice, Plaintiffs' Counsel do not seek a separate reimbursement of out-of-pocket expenses. Rather, Delaware Chancery Counsel seeks an all-in fee award based on the benefits conferred upon Nikola.[134]

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modest litigation efforts"); *Sciabacucchi*, 2019 WL 2913272, at *6 (awarding $11,262.26 hourly rate and stating that a $6,000 hourly rate would be reasonable).

[131] The affidavits of Delaware Chancery Counsel submitted with this brief contain a breakdown of their expenses in the Consolidated Action. *See* Middleton Aff. at ¶9; Speirs Decl. at ¶9; Smith Aff. at ¶9; Sborz Aff. at ¶9; Bennett Aff. at ¶8; Kimelman Aff. at ¶9.

[132] The affidavits of the Stayed Plaintiffs' Counsel submitted with this brief contain a breakdown of their expenses in the Stayed Derivative Actions. *See* Affidavit of Brown Aff. at ¶8; McKenna Aff. at ¶8; Holleman Aff. at ¶8; Schubert Aff. at ¶8.

[133] The affidavits of Delaware Chancery Counsel submitted with this brief contain a breakdown of their expenses in the Consolidated Action. *See* Middleton Aff. at ¶9; Speirs Decl. at ¶9; Smith Aff. at ¶9; Sborz Aff. at ¶9; Bennett Aff. at ¶8; Kimelman Aff. at ¶9.

[134] *See, e.g.*, *In re Rural/Metro Corp. S'holders Litig.*, Consol. C.A. No. 6350-VCL, at 35-36 (Del. Ch. Nov. 19, 2013) (TRANSCRIPT) (the Court "has not separately awarded expenses but has rather awarded an all-in number…. [This] gives plaintiffs' firms an incentive to keep expenses down [and] has the additional benefit of not requiring the Court to do a deep independent review of the expenses….").

C. Incentive Awards For Lead Plaintiffs Are Warranted

Chancery Plaintiffs and their counsel respectfully petition the Court for a modest Incentive Award to each of the three Lead Plaintiffs to be paid out of any attorneys' fees awarded to Plaintiffs' Counsel. "Delaware decisions have approved similar awards under similar circumstances."[135] "Compensating the lead plaintiff for efforts expended is not only a rescissory measure returning certain lead plaintiffs to their position before the case was initiated, but an incentive to proceed with costly litigation (especially costly for an actively participating plaintiff) with uncertain outcomes."[136] "Courts also have considered the risks a named plaintiff shoulders when determining whether to grant an incentive award."[137]

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[135] *In re Orchard Enters., Inc. S'holder Litig.*, 2014 WL 4181912, at *13 (Del. Ch. Aug. 22, 2014); *accord In re Santander Consumer USA Holdings, Inc.*, 2021 WL 256431, at *3 (Del. Ch. Jan. 25, 2021) ("Plaintiffs' Counsel shall pay $5,000 to each Plaintiff as an incentive award."); *Riche v. Pappas*, 2020 WL 6037162, at *2 (Del. Ch. Oct. 8, 2020) (approving incentive award of $7,500); *Mesirov v. Enbridge Energy Co., Inc.*, 2019 WL 690410, at *1 (Del. Ch. Feb. 18, 2019) (approving special award of $7,500 to plaintiff); *Hignett v. Adams*, 2018 WL 4922098, at *3 (Del. Ch. Oct. 9, 2018) (approving $5,000 incentive award to each of two lead plaintiffs); *In re EZCORP Inc. Consulting Agreement Deriv. Litig.*, 2018 WL 1627226, at *4 (Del. Ch. Apr. 3, 2018) (approving incentive award of $5,000 to lead plaintiff); *In re Sanchez Energy Deriv. Litig.*, C.A. No. 9132-VCG, at 10 (Del. Ch. Nov. 6, 2017) (TRANSCRIPT) (approving $5,000 incentive payment to each plaintiff); *In re Physicians Formula Holdings*, Inc., 2017 WL 319058, at *4 (Del. Ch. Jan. 20, 2017) (approving $25,000 incentive award to one lead plaintiff, and $5,000 to another).

[136] *Raider v. Sunderland*, 2006 WL 75310, at *1 (Del. Ch. Jan. 4, 2006).

[137] *Chen v. Howard-Anderson*, 2017 WL 2842185, at *5 (Del. Ch. June 30, 2017).

Lead Plaintiffs were actively engaged at every stage of this case. They reviewed Section 220 demands, initial and amended complaints, and opposition to Defendants' motions to dismiss; responded to document requests; consulted closely with counsel throughout the 2024 mediation and settlement negotiations; and participated in the bankruptcy proceedings leading to approval of the Settlement.[138]

In light of these efforts, Chancery Plaintiffs and their counsel respectfully request that each of the three Lead Plaintiffs be awarded Incentive Awards of $5,000.

CONCLUSION

For the foregoing reasons, Chancery Plaintiffs respectfully request that the Court approve the Settlement, the Fee Award, and the Incentive Awards.

[138] *See* Affidavit of Barbara Rhodes at ¶2; Affidavit of Benjamin Rowe at ¶2; Affidavit of Zachary BeHage at ¶2.

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Dated: October 6, 2025

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
Nikola Corp., *et al.*,[1]	Case No. 25-10258 (TMH)
Debtors.	(Jointly Administered)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER APPROVING THE DISCLOSURE STATEMENT ON A FINAL BASIS, CONFIRMING THE MODIFIED SECOND AMENDED CHAPTER 11 PLAN OF LIQUIDATION OF NIKOLA CORPORATION AND ITS DEBTOR AFFILIATES, AND GRANTING RELATED RELIEF

The debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases") having:

a. commenced, on February 19, 2025 (the "Petition Date"), the Chapter 11 Cases by filing voluntary petitions in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code");

b. continued to remain in possession of their property and continue to operate and manage their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

c. filed, on June 23, 2025, (i) the *Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Nikola Corporation and its Debtor Affiliates* [D.I. 640], and (ii) the *Debtors' Motion for Entry of an Order (I) Granting Interim Approval of the Adequacy of Disclosures in the Combined Plan and Disclosure Statement; (II) Scheduling a Combined Confirmation Hearing and Setting Deadlines Related Thereto; (III) Approving Solicitation Packages and Procedures; (IV) Approving the Forms of Ballots and Notices; and (V) Granting Related Relief* [D.I. 642]

[1] The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are: Nikola Corporation (registered to do business in California as Nikola Truck Manufacturing Corporation) (1153); Nikola Properties, LLC (3648); Nikola Subsidiary Corporation (1876); Nikola Motor Company LLC (0139); Nikola Energy Company LLC (0706); Nikola Powersports LLC (6771); Free Form Factory Inc. (2510); Nikola H2 2081 W Placentia Lane LLC (N/A); 4141 E Broadway Road LLC (N/A); and Nikola Desert Logistics LLC (N/A). The Debtors' mailing address is PO Box 27028, Tempe, AZ 85285.

d. filed, on July 23, 2025, the *First Amended Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Nikola Corporation and its Debtor Affiliates* [D.I. 774];

e. obtained, on July 22, 2025, entry of the *Order (I) Granting Interim Approval of the Adequacy of Disclosures in the Combined Plan and Disclosure Statement; (II) Scheduling a Combined Confirmation Hearing and Setting Deadlines Related Thereto; (III) Approving Solicitation Packages and Procedures; (IV) Approving the Forms of Ballots and Notices; and (V) Granting Related Relief* [D.I. 766], which order was amended and superseded on July 23, 2025 by the *Amended and Superseding Order (I) Granting Interim Approval of the Adequacy of Disclosures in the Combined Plan and Disclosure Statement; (II) Scheduling a Combined Confirmation Hearing and Setting Deadlines Related Thereto; (III) Approving Solicitation Packages and Procedures; (IV) Approving the Forms of Ballots and Notices; and (V) Granting Related Relief* [D.I. 780] (the "Interim Approval Order"), (i) approving the Disclosure Statement on an interim basis, (ii) approving (A) the Solicitation and Tabulation Procedures, (B) the Ballots, the Confirmation Hearing Notice, and other related documents to be transmitted to holders of Claims in Class 3 (*i.e.,* the Voting Class) (collectively, the "Solicitation Package"), and (C) the Notice of Non-Voting Status and Confirmation Hearing Notice, to be transmitted to holders of Claims and Interests in the Non-Voting Classes, each as defined in the Interim Approval Order, (iii) setting deadlines in connection with confirmation, and (iv) scheduling a combined hearing on final approval of the Disclosure Statement and confirmation of the Plan (the "Combined Hearing");

f. caused the Solicitation Package and the Notice of Non-Voting Status to be distributed beginning on or about July 25, 2025, in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Local Rules of the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Local Rules"), the Interim Approval Order, and the Solicitation and Tabulation Procedures, as evidenced by, among other things, the Certificate of Service of Solicitation Documents [D.I. 800] (the "Solicitation Affidavit");

g. filed, on July 25, 2025, the *Memorandum of Law in Support of the Debtors' Chapter 11 Liquidating Plan Regarding Proper Classification of the SEC Claim Pursuant to Section 510(b) of the Bankruptcy Code* and the declaration of Britton M. Worthen attached as Exhibit A thereto [D.I. 796] (collectively, the "SEC Classification Brief");

h. filed, on July 28, 2025, the *Memorandum of Law in Support of the Debtors' Chapter 11 Liquidating Plan Regarding Proper Classification of the Reyes Action Claim Pursuant to Section 510(b) of the Bankruptcy Code* and the declaration of Britton M. Worthen attached as Exhibit A thereto [D.I. 804] (collectively, the "Reyes Classification Brief");

i. filed, on July 29, 2025, the *Debtors' (I) Memorandum of Law in Support of the Debtors' Chapter 11 Liquidating Plan Regarding Proper Classification of the Milton*

Claim Pursuant to Section 510(c) of the Bankruptcy Code and (II) Objections to the Milton Claim and the declaration of Britton M. Worthen attached as Exhibit A thereto [D.I. 808] (collectively, the "Milton Classification Brief");

j. filed, on August 1, 2025, the *Memorandum of Law in Support of the Debtors' Chapter 11 Liquidating Plan Regarding Proper Classification of the Shareholder Securities Litigation Claim Pursuant to Section 510(b) of the Bankruptcy Code* and the declaration of Britton M. Worthen attached as Exhibit A thereto [D.I. 820] (collectively, the "Securities Class Action Classification Brief");

k. filed, on August 13, 2025, the *Plan Supplement for the First Amended Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Nikola Corporation and its Debtor Affiliates* [D.I. 876] (including all exhibits and supplements thereto and as may be amended, supplemented, or modified, the "Plan Supplement");

l. filed, on August 29, 2025, the *Declaration of Emily Young, on Behalf of Epiq Corporate Restructuring, LLC, Regarding Solicitation and Tabulation of Ballots Cast on First Amended Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Nikola Corporation and its Debtor Affiliates* [D.I. 952] (the "Voting Report");

m. filed, on September 2, 2025, the *Second Amended Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Nikola Corporation and its Debtor Affiliates* [D.I. 955] a modified copy of which is attached hereto as **Exhibit A** (including all exhibits and supplements thereto and as may be amended, supplemented, or modified, the "Plan," the "Disclosure Statement," or the "Combined Plan and Disclosure Statement");[2]

n. filed, on September 2, 2025, the *Declaration of Britton M. Worthen in Support of Confirmation of the Second Amended Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Nikola Corporation and its Debtor Affiliates* [D.I. 957] (the "Worthen Declaration");

o. filed, on September 2, 2025, the *Declaration of Ryan P. Rowan in Support of Confirmation of Second Amended Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Nikola Corporation and its Debtor Affiliates* [D.I. 958] (the "Rowan Declaration" and together with the Worthen Declaration, the "Confirmation Declarations");

p. filed, on September 2, 2025, the *Memorandum of Law in Support of Order Granting Final Approval of the Disclosure Statement and Confirming Debtors' Second Amended Chapter 11 Plan of Liquidation* [D.I. 959] (the "Confirmation Brief"); and

the Bankruptcy Court having:

[2] Except as otherwise stated herein, capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Combined Plan and Disclosure Statement.

a. entered the Interim Approval Order on July 23, 2025;

b. set August 20, 2025, at 4:00 p.m. (prevailing Eastern Time) as the deadline for filing and serving objections to final approval of the Disclosure Statement and confirmation of the Plan (the "Combined Plan and Disclosure Statement Objection Deadline");

c. set August 20, 2025, at 5:00 p.m. (prevailing Eastern Time) as the deadline for voting on the Plan (the "Voting Deadline");

d. set September 5, 2025, at 10:00 a.m. (prevailing Eastern Time) as the date and time for commencement of the Combined Hearing;

e. considered the Plan, the Plan Supplement, the Solicitation Affidavit, the Voting Report, and all pleadings, exhibits, declarations, affidavits, statements, responses, and comments regarding the Combined Plan and Disclosure Statement, including all objections, statements, and reservations of rights filed by parties in interest on the docket of these Chapter 11 Cases;

f. held the Combined Hearing on September 5, 2025;

g. heard the statements and arguments made by counsel in respect of final approval of the Disclosure Statement and confirmation of the Plan;

h. considered all oral representations, live testimony, proffered testimony, exhibits, documents, filings and other evidence presented at the Combined Hearing; and

i. made rulings on the record at the Combined Hearing, which are incorporated in this Confirmation Order (as defined below).

NOW, THEREFORE, the Bankruptcy Court having found that notice of the Combined Hearing and the opportunity for any party in interest to object to final approval of the Disclosure Statement and confirmation of the Plan have been adequate and appropriate as to all parties affected or to be affected by the Plan and the transactions contemplated thereby; and the Bankruptcy Court having found that the record of these Chapter 11 Cases and the legal and factual bases set forth in the documents filed in support of approval of the Disclosure Statement and confirmation of the Plan and all evidence proffered or adduced by counsel at the Combined Hearing establish just cause for the relief granted herein; and after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following

findings of fact and conclusions of law, and orders (collectively, this "Order" or "Confirmation Order"):

FINDINGS OF FACT AND CONCLUSIONS OF LAW

IT IS HEREBY FOUND, DETERMINED, ADJUDGED, DECREED, AND ORDERED THAT:

A. Findings and Conclusions

1. The findings and conclusions set forth herein and in the record of the Combined Hearing constitute the Bankruptcy Court's findings of fact and conclusions of law under rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. Each finding of fact set forth or incorporated in this Order, to the extent it is or may be deemed a conclusion of law, shall also constitute a conclusion of law. Each conclusion of law set forth or incorporated in this Order, to the extent it is or may be deemed a finding of fact, shall also constitute a finding of fact.

B. Jurisdiction and Venue

2. Venue in this Bankruptcy Court was proper as of the Petition Date and continues to be proper under 28 U.S.C. §§ 1408 and 1409. Approval of the Disclosure Statement and confirmation of the Plan are core proceedings under 28 U.S.C. § 157(b)(2). The Bankruptcy Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1334. The Bankruptcy Court has jurisdiction to determine whether the Disclosure Statement and Plan comply with the applicable provisions of the Bankruptcy Code and should be approved and confirmed, respectively, and to enter a final order with respect thereto.

C. Commencement and Joint Administration of the Chapter 11 Cases

3. On the Petition Date, the Debtors commenced the Chapter 11 Cases, and the Bankruptcy Court entered an order authorizing the joint administration of the Chapter 11 Cases in

accordance with Bankruptcy Rule 1015(b) [D.I. 46]. The Debtors have managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors were and are entities eligible for relief under section 109 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

D. Committee Appointment

4. On February 27, 2025, the Office of the United States Trustee (the "U.S. Trustee") appointed an official committee of unsecured creditors (the "Committee") pursuant to section 1102 of the Bankruptcy Code [D.I. 106]. The composition of the Committee was modified on April 23, 2025 [D.I. 445], June 12, 2025 [D.I. 599], July 28, 2025 [D.I. 797], and August 20, 2025 [D.I. 912].

E. Judicial Notice

5. The Bankruptcy Court takes judicial notice of the docket of the Chapter 11 Cases maintained by the clerk of the Bankruptcy Court, including, but not limited to, all pleadings and other documents filed, all orders entered, and all evidence and arguments made, proffered, adduced, and/or presented at the various hearings held before the Bankruptcy Court during the pendency of the Chapter 11 Cases.

F. Objections

6. All parties have had a fair opportunity to litigate all issues raised, or that might have been raised, in objections to final approval of the Disclosure Statement and confirmation of the Plan and such objections, if any, have been fully and fairly litigated or resolved. Any resolution of objections to confirmation of the Plan or final approval of the Disclosure Statement explained on the record at the Combined Hearing is hereby incorporated by reference. All unresolved objections, statements, informal objections, and reservations of rights (except with respect to

unresolved cure amounts), if any, related to the Disclosure Statement or confirmation of the Plan are overruled on the merits.

G. Conditions Precedent to Confirmation

7. Any conditions precedent to confirmation set forth in the Plan have been satisfied or waived.

H. Plan Supplement

8. On August 13, 2025, the Debtors filed the Plan Supplement with the Bankruptcy Court. The Plan Supplement (including as subsequently modified, supplemented, or otherwise amended in accordance with the Plan as of the date hereof), complies with the terms of the Plan. The Debtors provided good and proper notice of the filing of the Plan Supplement in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Interim Approval Order. All parties required to be given notice of the documents identified in the Plan Supplement have been provided due, proper, timely, and adequate notice and have had an opportunity to appear and be heard with respect thereto. The transmittal and notice of the Plan Supplement (and all documents identified in the Plan Supplement) was appropriate and satisfactory based upon the circumstances of these Chapter 11 Cases and was conducted in good faith. All documents included in the Plan Supplement are integral to, part of, and incorporated by reference into the Plan. No other or further notice is or will be required with respect to the Plan Supplement. Subject to the terms of the Plan (including the review and consent rights of certain parties as set forth in the Plan), the Debtors reserve the right to alter, amend, update, or modify the Plan Supplement following the date of this Order in accordance with the terms of the Plan, this Order, the Bankruptcy Code, and the Bankruptcy Rules; *provided*, that the Debtors shall provide reasonable advance notice to the Committee of any material alterations amendments, updates, supplements, or modifications to the Plan (including the Plan Supplement).

I. Modifications to the Plan

9. Pursuant to section 1127 of the Bankruptcy Code, any modifications to the Plan made after the entry of the Interim Approval Order, including those described or set forth in this Order, constitute technical or clarifying changes or modifications that do not otherwise materially or adversely affect or change the treatment of any other Claim or Equity Interest under the Plan. These modifications are consistent with the disclosures previously made pursuant to the Disclosure Statement and Solicitation Package served pursuant to the Interim Approval Order, and notice of these modifications was adequate and appropriate under the facts and circumstances of the Chapter 11 Cases. In accordance with Bankruptcy Rule 3019, these modifications do not require additional disclosure under section 1125 of the Bankruptcy Code or the resolicitation of votes under section 1126 of the Bankruptcy Code, and they do not require that holders of Claims be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The filing with the Bankruptcy Court of the Plan as modified by the Plan modifications, and the disclosure of the Plan modifications on the record at the Combined Hearing, constitute due and sufficient notice thereof. Accordingly, the Plan is properly before this Bankruptcy Court and all votes cast with respect to the Plan prior to such modifications shall be binding and shall apply with respect to the Plan. The Plan, as modified and attached hereto, and as may be further modified consistent with the terms of this Order, shall constitute the Plan submitted for confirmation by the Bankruptcy Court.

J. Adequacy of the Disclosure Statement

10. The Disclosure Statement contains extensive material information regarding the Debtors so that parties entitled to vote on the Plan could make informed decisions regarding the Plan. The Disclosure Statement contains "adequate information" (as such term is defined in section 1125(a) of the Bankruptcy Code and used in section 1126(b)(2) of the Bankruptcy Code) with respect to the Debtors, the Plan, and the transactions contemplated therein. The Debtors'

solicitation of acceptances and rejections of the Plan via transmittal of the Interim Approval Order and the other materials in the Solicitation Packages was authorized by and complied with the Interim Approval Order and was appropriate under the circumstances.

K. Interim Approval Order and Notice

11. On July 23, 2025, the Bankruptcy Court entered the Interim Approval Order. As evidenced by the Solicitation Affidavit and the record in the Chapter 11 Cases, the Debtors provided due, adequate, and sufficient notice of the Combined Plan and Disclosure Statement, the Interim Approval Order, the Solicitation Package, the Notice of Non-Voting Status, the Confirmation Hearing Notice, the Plan Supplement, the settlement, release, exculpation, and injunction provisions contained in the Plan, the Combined Hearing, the Voting Deadline, the Combined Plan and Disclosure Statement Objection Deadline, and any other applicable dates and deadlines described in the Interim Approval Order, in compliance with the Bankruptcy Code, the Bankruptcy Rules, including Bankruptcy Rules 2002(b), 3016, 3017, 3019, and 3020(b), the Bankruptcy Local Rules, the Solicitation and Tabulation Procedures, and the Interim Approval Order. No other or further notice is or shall be required.

L. Solicitation

12. The Debtors solicited votes for acceptance and rejection of the Plan in good faith, and such solicitation complied with the Bankruptcy Code, including sections 1125 and 1126 of the Bankruptcy Code, the Bankruptcy Rules, including Bankruptcy Rules 3017, 3018, and 3019, the Bankruptcy Local Rules, the Interim Approval Order, the Solicitation and Tabulation Procedures, and all other applicable rules, laws, and regulations. Transmission and service of the Solicitation Package was timely, adequate, and sufficient under the facts and circumstances of the Chapter 11 Cases. No other or further notice is or shall be required.

M. Service of Opt-Out Instructions

13. The Ballots included instructions (the "Opt-Out Instructions") for holders of Claims in Class 3 (the "Voting Class") to voluntarily elect to opt out of the Third-Party Release by either (a) checking the appropriate box on the Ballot and timely returning such Ballot to the Claims and Noticing Agent or (b) timely objecting to the Third-Party Release. The process described in the Interim Approval Order, the Solicitation and Tabulation Procedures, and the Solicitation Affidavit that the Debtors and the Claims and Noticing Agent followed to identify the relevant parties on which to serve the Ballots, which included the Opt-Out Instructions, was reasonably calculated to ensure that each holder of Claims in the Voting Class was informed of its ability to opt out of the Third-Party Release and the consequences for failing to timely do so. Transmission and service of the Ballots, which included the Opt-Out Instructions, was timely, adequate, and sufficient under the facts and circumstances of the Chapter 11 Cases. No other or further notice is or shall be required.

N. Voting Report

14. The Voting Report was admitted into evidence during the Combined Hearing without objection. The procedures used to tabulate Ballots were fair and conducted in accordance with the Interim Approval Order, the Solicitation and Tabulation Procedures, the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, and all other applicable rules, laws, and regulations.

15. As set forth in the Plan, holders of General Unsecured Claims in Class 3 (the "Voting Class") were eligible to vote to accept or reject the Plan in accordance with the Solicitation and Tabulation Procedures. As evidenced by the Voting Report, the Voting Class voted to accept the Plan in accordance with section 1126 of the Bankruptcy Code.

O. Bankruptcy Rule 3016

16. The Plan and all modifications thereto are dated and identify the entities submitting them, satisfying Bankruptcy Rule 3016(a). The Debtors appropriately filed the Combined Plan and Disclosure Statement with the Bankruptcy Court, satisfying Bankruptcy Rule 3016(b). The injunction, release, and exculpation provisions in the Combined Plan and Disclosure Statement describe, in bold font and with specific and conspicuous language, all acts to be enjoined and identify the entities that will be subject to the injunction, satisfying Bankruptcy Rule 3016(c) and Bankruptcy Rule 3020(c).

P. Burden of Proof

17. The Debtors, as proponents of the Plan, have met their burden of proving the elements of sections 1129(a) and 1129(b) of the Bankruptcy Code by a preponderance of the evidence, the applicable evidentiary standard for confirmation. Further, to the extent applicable, the Debtors have proven the elements of sections 1129(a) and 1129(b) by clear and convincing evidence. Each witness who testified (by declaration, proffer, or otherwise) on behalf of the Debtors in connection with the Combined Hearing was credible, reliable, and qualified to testify as to the topics addressed in his or her testimony.

Q. Substantive Consolidation

18. Article VIII of the Combined Plan and Disclosure Statement provides for the substantive consolidation of the Debtors and their respective Estates for all purposes relating to the Plan, including for purposes of voting, confirmation, and distributions. Therefore, the Plan serves as, and is deemed to be, a motion for entry of an order substantively consolidating each of the Estates into a single consolidated estate for all purposes associated with confirmation and consummation of the Plan. Based on, among other things, the Confirmation Brief, the Confirmation Declarations, and the record made at the Combined Hearing (a) no class of creditors

or interest holders is disadvantaged by the substantive consolidation of the Debtors and their Estates and (b) substantive consolidation of the Debtors and their Estates is justified, appropriate, and in the best interests of the Debtors, their Estates, creditors, and all other parties-in-interest. The proposed substantive consolidation of the Debtors and their respective Estates for all purposes relating to the Plan, including for purposes of voting, Confirmation, and Distributions is therefore approved.

R. Compliance with the Requirements of Section 1129 of the Bankruptcy Code

19. Based on the following findings of fact and conclusions of law, the Plan, all pleadings, documents, exhibits, statements, declarations, and affidavits filed in connection with confirmation of the Plan, and all evidence and arguments made, proffered, or adduced at the Combined Hearing, all requirements for plan confirmation set forth in section 1129 of the Bankruptcy Code have been satisfied.

1. Section 1129(a)(1): Compliance with Applicable Provisions of the Bankruptcy Code

20. The Plan complies with all applicable provisions of the Bankruptcy Code, including sections 1122 and 1123, as required by section 1129(a)(1) of the Bankruptcy Code.

a. Sections 1122 and 1123(a)(1): Proper Classification

21. The Plan designates all Claims and Equity Interests, other than the Claims of the type described in sections 507(a)(2), 507(a)(3), or 507(a)(8) of the Bankruptcy Code, into eight Classes. The Claims or Equity Interests in each designated Class have the same or substantially similar rights as the other Claims or Equity Interests in such Class. Valid business, legal, and factual reasons exist for separately classifying the various Classes of Claims and Equity Interests under the Plan. The classifications were not promulgated for any improper purpose, and the creation of such Classes does not unfairly discriminate between or among holders of Claims or

Equity Interests. The Plan, therefore, satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

22. The Plan's classification of Claim No. 54 (the "Milton Claim") in Class 8 (Equitably Subordinated Claims) is approved. Based on the evidence in support proffered or adduced by the Debtors at or before the Combined Hearing and for the reasons set forth on the record at the Combined Hearing, in the Milton Classification Brief and the Debtors' other submissions in support of Plan confirmation, equitable subordination of the Milton Claim is warranted under section 510(c) because, among other reasons set out in the Debtors' submissions, (a) the claimant, Trevor Milton was an "insider" of the Debtors, (b) Trevor Milton engaged in inequitable conduct, (c) Trevor Milton's inequitable conduct resulted in injury to other creditors or conferred an unfair advantage on Trevor Milton, and (d) equitable subordination of the Milton Claim is not inconsistent with the Bankruptcy Code.

23. The Plan's classification of Proof of Claim No. 10254 (the "Reyes Action Claim") in Class 7 (Section 510(b) and Other Junior Claims) is approved. As set forth in the Reyes Classification Brief and the Debtors' other submissions in support of confirmation, the Reyes Action Claim seeks damages allegedly "arising from" the prepetition purchase or sale of the Debtors' stock. The Reyes Action Claim is thus subject to subordination under section 510(b) of the Bankruptcy Code because it is a claim "for damages arising from the purchase or sale of [a security of the debtor]."

24. The Plan's classification of Proof of Claim No. 10257 (the "Securities Class Action Claim") in Class 7 (Section 510(b) and Other Junior Claims) is approved. As set forth in the Securities Class Action Classification Brief and the Debtors' other submissions in support of confirmation, the Securities Class Action Claim seeks damages allegedly "arising from" the

prepetition purchase or sale of the Debtors' stock. The Securities Class Action Claim is thus subject to subordination under section 510(b) of the Bankruptcy Code because it is a claim "for damages arising from the purchase or sale of [a security of the debtor]."

b. Section 1123(a)(2): Specification of Unimpaired Classes

25. The Plan specifies that Claims in Class 1 and Class 2 are Unimpaired (the "Presumed Accepting Classes") within the meaning of section 1124 of the Bankruptcy Code, thereby satisfying section 1123(a)(2) of the Bankruptcy Code.

c. Section 1123(a)(3): Specification of Treatment of Impaired Classes

26. The Plan specifies that Claims or Equity Interests in Classes 3, 4, 5, 6, 7, and 8 are Impaired within the meaning of section 1124, and specifies the treatment of such Classes, thereby satisfying section 1123(a)(3) of the Bankruptcy Code.

d. Section 1123(a)(4): No Disparate Treatment

27. The Plan provides for the same treatment for each Claim or Equity Interest in each respective Class unless the holder of a particular Claim or Equity Interest has agreed to less favorable treatment on account of such Claim or Equity Interest. Accordingly, the Plan satisfies section 1123(a)(4) of the Bankruptcy Code.

e. Section 1123(a)(5): Adequate Means for Implementation

28. The Plan, the various documents included in the Plan Supplement, and the terms of this Order provide adequate and proper means for the implementation of the Plan, including, among other things: (a) the general treatment of Claims and Equity Interests; (b) the sources of consideration for distributions under the Plan; (c) the establishment of the Liquidating Trust; (d) the appointment of the Liquidating Trustee; (e) the vesting of the Liquidating Trust Assets in

the Liquidating Trust; and (f) the wind down of the Debtors' affairs. Accordingly, the Plan satisfies the requirements of section 1123(a)(5) of the Bankruptcy Code.

f. Section 1123(a)(7): Directors, Officers, and Trustees

29. The identity of the Liquidating Trustee is disclosed in the Plan Supplement. In accordance with the Plan and the Plan Supplement, the Liquidating Trustee has been selected and appointed by the Committee. The selection of the Liquidating Trustee is consistent with the interests of holders of Claims and Equity Interests and public policy. Thus, the Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code.

g. Sections 1123(a)(6) and 1123(a)(8): Inapplicable Provisions

30. The Plan does not provide for the issuance of new equity interests and, therefore, section 1123(a)(6) of the Bankruptcy Code is inapplicable. Additionally, none of the Debtors are individuals and, therefore, section 1123(a)(8) of the Bankruptcy Code is inapplicable.

h. Section 1123(b): Discretionary Contents of the Plan

31. The Plan's discretionary provisions comply with section 1123(b) of the Bankruptcy Code and are not inconsistent with the applicable provisions of the Bankruptcy Code. Thus, the Plan satisfies section 1123(b) of the Bankruptcy Code.

(i) Impairment/Unimpairment of Any Class of Claims or Equity Interests

32. In accordance with section 1123(b)(1) of the Bankruptcy Code, each Class of Claims and Equity Interests is either Impaired or Unimpaired under the Plan.

(ii) Assumption and Rejection of Executory Contracts and Unexpired Leases

33. In accordance with section 1123(b)(2) of the Bankruptcy Code, the Plan provides that, on the Effective Date, except as otherwise provided therein, each Executory Contract and

Unexpired Lease of the Debtors shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code.

34. The Debtors' determinations regarding the assumption (or assumption and assignment) or rejection of Executory Contracts and Unexpired Leases are based on, and within, the sound business judgment of the Debtors, are necessary to the implementation of the Plan, and are in the best interests of the Debtors, their Estates, holders of Claims and Equity Interests, and other parties in interest in the Chapter 11 Cases. Entry of this Order by the Bankruptcy Court shall constitute approval of such assumptions, assumptions and assignments, and/or rejections, as applicable, pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

(iii) The Plan Settlements

35. The Plan incorporates certain settlements of issues among the Debtors and various parties in interest. Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, as among the settlement parties, the applicable provisions of the Plan are, and shall be deemed, a good-faith compromise and settlement of all Claims, interests, and controversies released, settled, compromised, or otherwise resolved pursuant to the Plan, including those resolved by the Settlement (as defined in the *Order (A)(I) Approving the Assumption of Prepetition Derivative Litigation Settlement Agreements; (II) Authorizing the Debtors to Enter Into the Derivative Action Stipulation and Perform Obligations Thereunder; (III) Modifying the Automatic Stay to Allow the Debtors to Seek Final Approval of, and Obtain Any Other Relief Necessary in Furtherance of the Derivative Action Stipulation and Take All Steps Necessary to Implement and Effectuate the Derivative Action Stipulation; and (B) Authorizing Approval of the Derivative Action Stipulation at the Confirmation Hearing* [D.I. 763] (the "9019 Order")) and the Derivative Action Stipulation

(as updated when submitted to the Court of Chancery of the State of Delaware, as described in the Worthen Declaration). Such settlements and compromises are fair, equitable, and reasonable and in the best interests of the Debtors, their Estates, and holders of Claims and Equity Interests and hereby approved in all respects.

36. The Plan incorporates the Settlement and Derivative Action Stipulation, including the releases set forth therein, and constitutes a good faith compromise and settlement of the Derivative Actions. Such settlement is fair, equitable, and reasonable and in the best interests of the Debtors, their Estates, and holders of Claims and Equity Interests and is hereby approved. The releases set forth in Paragraphs 2 through 5 of the Derivative Action Stipulation are an inextricable element of the Settlement and are fair, reasonable, and in the best interests of the Debtors, their Estates, and holders of Claims and Equity Interests and are thus approved in all respects. In accordance with the Settlement and the Derivative Action Stipulation, the Unnamed Parties shall, as of the Effective Date, be deemed to be Released Defendant Parties (as defined in the Derivative Action Stipulation), and the Plaintiffs' Releasing Parties (as defined in the Derivative Action Stipulation) shall be deemed to have, and by operation of law shall have, completely, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged, and shall forever be barred and enjoined from commencing or prosecuting, each and all of the Unnamed Parties from any and all of the Plaintiffs' Released Derivative Claims.

37. The Plan incorporates the SEC Claim Resolution, including the allowance and treatment of the SEC's Claim on the terms set forth therein, the releases set forth therein, and constitutes a good faith compromise and settlement of the SEC Claim. Such settlement is fair, equitable, and reasonable and in the best interests of the Debtors, their Estates, and holders of Claims and Equity Interests and is hereby approved. The releases set forth in the SEC Claim

Resolution are an inextricable element of the SEC Claim Resolution and are fair, reasonable, and in the best interests of the Debtors, their Estates, and holders of Claims and Equity Interests and are thus approved. Other than with respect to the SEC Claim Resolution, notwithstanding any language to the contrary contained in the Combined Disclosure Statement and Plan or the Plan Confirmation Order, no provision of the Combined Disclosure Statement and Plan or Plan Confirmation Order shall (a) preclude the SEC from enforcing its police or regulatory powers, or (b) enjoin, limit, impair, or delay the SEC from commencing or continuing any claims, causes of action, proceedings or investigations against the Debtors or any non-debtor person or entity in any forum.

(iv) Preservation of Causes of Action

38. Unless a Cause of Action of the Debtors is expressly waived, relinquished, released, compromised, or settled in the Plan or any Final Order, in accordance with section 1123(b)(3)(B) of the Bankruptcy Code, such Cause of Action is a Preserved Estate Claim. All Preserved Estate Claims shall be preserved and shall automatically be transferred to and/or assigned to, and vest in, the Liquidating Trust on the Effective Date in accordance with sections 1123(b) and 1141 of the Bankruptcy Code and the Plan. For the avoidance of doubt, the Preserved Estate Claims shall not be released under the Plan. The Plan and the Plan Supplement provide adequate disclosure with respect to the Causes of Action to be retained by the Liquidating Trust, and all parties in interest received adequate notice thereof. The Plan and Plan Supplement are specific and unequivocal with respect to Causes of Action to be preserved and retained by the Liquidating Trust. Notwithstanding anything to the contrary, as of the Effective Date, the Debtors waive and release any Cause of Action arising under section 547 of the Bankruptcy Code, section 548 of the Bankruptcy Code to the extent arising under the same facts as any such Avoidance Action arising under section 547 of the Bankruptcy Code, or any state law equivalent thereof, in

each case, other than against the following Entities, including their respective Affiliates: (i) 3i, LP, and any funds, accounts, or other entities managed or advised by 3i, LP; (ii) Kirkland & Ellis LLP; (iii) Robert Bosch LLC; and (iv) The Lion Electric Company. For the avoidance of doubt, Avoidance Actions against the entitles listed in (i)–(iv) of this paragraph are not released and shall be Preserved Estate Claims.

39. As set forth in Article VII.B.3 of the Plan, notwithstanding anything to the contrary in the Plan or otherwise, any recovery (including by way of settlement or judgment) from the D&O Actions against any Other Director and Officer shall, unless otherwise agreed to by an Other Director and Officer in writing, be limited to the applicable D&O Policy Cap; *provided*, that there shall be no such limitation on recoveries with respect to any Other Director and Officer that is found by Final Order (a) to have intentionally and materially impaired or impeded insurance coverage, (b) to have intentionally attempted to cause or caused a material delay of any insurance coverage or the payment thereof, or (c) not to be entitled to insurance coverage (i) on account of such Other Director and Officer's failure to make a timely claim under the applicable D&O Policies; (ii) as a result of such Other Director and Officer's failure to cooperate with the insurers or otherwise comply in all material respects with its obligations under the D&O Policies, including any obligation to assist in the defense of claims as may be required by such D&O Policies; or (iii) as a result of an act or omission determined under a Final Order to have constituted willful misconduct, gross negligence, or fraud.

(v) Releases by the Debtors

40. Article XII.A of the Plan (the "Debtor Release") describes certain releases granted by the Debtors and their Estates, which represent an inextricable element of the Plan. Such releases are a necessary and integral element of the Plan, and are fair, reasonable, and in the best interests of the Debtors, their Estates, and holders of Claims and Equity Interests. The Debtor Release is:

(a) in exchange for the good and valuable consideration provided by the Released Parties; (b) a good-faith settlement and compromise of the Causes of Action released by the Debtor Release; (c) given and made after due notice and opportunity for hearing; (d) appropriately tailored under the facts and circumstances of the Chapter 11 Cases; and (e) a bar to any of the Debtors and their Estates asserting any Cause of Action released by the Debtor Release against the Released Parties or their property. Accordingly, the Debtor Release is approved.

(vi) Releases by Creditors

41. Article XII.B of the Plan (the "Third-Party Release") describes certain releases granted by the Releasing Parties to the Released Parties. The Releasing Parties were provided proper and sufficient notice of the Plan, the Third-Party Release, and the Combined Plan and Disclosure Statement Objection Deadline through the service of the Solicitation Package. No further notice is necessary. The Plan and the Solicitation Package each included the Third Party Release provision in conspicuous, boldface type, and the Solicitation Package informed holders of Claims in the Voting Class that they would be deemed to have consented to the Third Party Release if they did not (a) timely elect to opt out of the Third-Party Release by checking the appropriate box on their Ballot in accordance with the Solicitation Procedures by the Voting Deadline or (b) timely object to their inclusion as a Releasing Party by the Combined Plan and Disclosure Statement Objection Deadline. The Plan provides appropriate and specific disclosure with respect to the Causes of Action that are subject to the Third-Party Release, and no other disclosure is necessary. The Third-Party Release is specific in language, integral to the Plan, and given for substantial consideration.

42. The Third-Party Release is (a) consensual with respect to the Releasing Parties, (b) an essential provision of the Plan, (c) a good-faith settlement and compromise of the Causes of Action released by the Third-Party Release, (d) materially beneficial to, and in the best interests

of, the Debtors, their Estates, and their stakeholders, and important to the overall objectives of the Plan to finally resolve certain Cause of Actions among or against certain parties in interest in the Chapter 11 Cases, (e) fair, equitable, and reasonable, (f) given and made after due notice and opportunity for hearing, (g) a bar to any of the Releasing Parties asserting any Cause of Action released by the Third-Party Release against any of the Released Parties or their property, and (h) consistent with sections 105, 524, 1123, 1129, and 1141 and other applicable provisions of the Bankruptcy Code. Accordingly, the Third-Party Release is approved.

(vii) Exculpation

43. Consistent with sections 157 and 1334(a) and (b) of title 28 of the United States Code, and sections 105(a), 1123(b)(3), 1123(b)(6), and 1125(e) of the Bankruptcy Code, the Bankruptcy Court has jurisdiction and authority to approve the exculpation set forth in Article XII.C of the Plan (the "Exculpation"). The Exculpation is appropriate under applicable law because it was proposed in good faith, was formulated following extensive good-faith, arm's-length negotiations with key constituents, is essential to the Plan, and is appropriately limited in scope. The record in the Chapter 11 Cases fully supports the Exculpation, which is appropriately tailored to protect the Exculpated Parties from unnecessary litigation and contains appropriate carve outs for actions determined by a Final Order to have constituted intentional fraud, willful misconduct, and gross negligence. Accordingly, the Exculpation is approved. The Exculpated Parties, subject to the exculpation provision have, and, upon entry of this Order, will be deemed to have, participated in good faith and in compliance with all applicable laws with regard to the distribution of recoveries under the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule or regulation governing solicitation or such distributions made pursuant to the Plan.

(viii) Injunction

44. Section 105(a) and sections 1123(b)(3) and (b)(6) of the Bankruptcy Code permit issuance of the injunction provisions set forth in Article XII.D of the Plan (the "Injunction"). The Injunction is essential to the Plan and is necessary to implement the Plan and to preserve and enforce the Debtor Release, the Third-Party Release, and the Exculpation provisions. The Injunction is appropriately tailored to achieve those purposes and is, therefore, approved.

(ix) Additional Plan Provisions

45. The other discretionary provisions in the Plan, including the Plan Supplement, are appropriate and consistent with applicable provisions of the Bankruptcy Code.

2. Section 1129(a)(2): Compliance of the Debtors and Others with the Applicable Provisions of the Bankruptcy Code

46. The Debtors, as proponents of the Plan, have complied with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(2) of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, 1126, 1128, and 1129, and with Bankruptcy Rules 2002, 3017, 3018, and 3019. The Debtors and their agents transmitted the Solicitation Package and related documents and solicited and tabulated votes with respect to the Plan fairly, in good faith, and in compliance with the Interim Approval Order, the Solicitation and Tabulation Procedures, the Bankruptcy Code, the Bankruptcy Rules, and the Bankruptcy Local Rules, including, but not limited to, sections 1125 and 1126(b) of the Bankruptcy Code.

3. Section 1129(a)(3): Proposal of Plan in Good Faith

47. The Plan is the product of the open, honest, and good faith process through which the Debtors have conducted their Chapter 11 Cases and reflects extensive, good faith, arm's length negotiations among the Debtors, the Committee, and the Debtors' key economic stakeholders. The Plan itself and the process leading to its formulation provide independent evidence of the Debtors' good faith, serve the public interest, and assure fair treatment of holders of Claims. In addition to

achieving a result consistent with the objectives of the Bankruptcy Code, the Plan allows the Debtors' economic stakeholders to realize the highest possible recoveries under the circumstances. Consistent with the overriding purpose of the Bankruptcy Code, the Chapter 11 Cases were filed and the Plan was proposed with the legitimate and honest purpose of maximizing the value of the Debtors' Estates. Accordingly, the Plan is fair, reasonable, and consistent with sections 1122, 1123, and 1129 of the Bankruptcy Code. Based on the foregoing, as well as the facts and record of the Chapter 11 Cases, including, but not limited to, the Combined Hearing, the Plan has been proposed in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code.

4. Section 1129(a)(4): Court Approval of Certain Payments as Reasonable

48. All payments made or to be made by the Debtors for services or for costs and expenses in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, have been authorized by, approved by, or are subject to the approval of, the Bankruptcy Court as reasonable, thereby satisfying section 1129(a)(4) of the Bankruptcy Code.

5. Section 1129(a)(5): Disclosure of Certain Individuals

49. The Debtors have disclosed the identity and affiliations with the Debtors, if any, of the Liquidating Trustee in the Plan Supplement. The appointment of the Liquidating Trustee is consistent with the interests of holders of Claims and Equity Interests and with public policy. Accordingly, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

6. Section 1129(a)(6): Rate Changes

50. The Plan does not provide for any rate changes over which a governmental regulatory commission has jurisdiction, and, accordingly, section 1129(a)(6) of the Bankruptcy Code is inapplicable to the Plan.

7. Section 1129(a)(7): Best Interests of Holders of Claims and Equity Interests

51. Each holder of a Claim or Equity Interest either (a) has voted to accept the Plan, (b) is Unimpaired and deemed to have accepted the Plan, or (c) shall receive or retain under the Plan, on account of such Claim or Equity Interest, property of a value, as of the Effective Date of the Plan, that is not less than the amount that such holder would receive or retain if the Debtors were to be liquidated under chapter 7 of the Bankruptcy Code. In addition, the liquidation analysis included in the Combined Plan and Disclosure Statement (the "Liquidation Analysis"), as well as the other evidence related thereto in support of the Plan that was proffered or adduced at or prior to the Combined Hearing, (a) are reasonable, persuasive, credible, and accurate as of the dates such analysis or evidence was proffered, adduced, and/or presented, (b) utilize reasonable and appropriate methodologies and assumptions, (c) have not been controverted by other evidence, and (d) establish that, with respect to each Impaired Class of Claims or Equity Interests, each holder of an Allowed Claim or Equity Interest in such Class, unless otherwise agreed to by such holder, shall receive under the Plan on account of such Allowed Claim or Equity Interest property of a value, as of the Effective Date, that is not less than the amount such holder would receive if the Debtors were liquidated on the Effective Date under chapter 7 of the Bankruptcy Code.

52. Accordingly, the Debtors have satisfied the requirements of section 1129(a)(7) of the Bankruptcy Code.

8. Section 1129(a)(8): Acceptance by Certain Classes

53. Claims in Classes 1 and 2 are Unimpaired under the Plan and are thus presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. The Voting Class is Impaired under the Plan and has voted to accept the Plan. Accordingly, section 1129(a)(8) of the Bankruptcy Code has been satisfied with respect to the Presumed Accepting Classes and the Voting Class.

54. Claims in Classes 4 through 8 are Impaired under the Plan and are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code (the "Deemed Rejecting Classes"). Although section 1129(a)(8) of the Bankruptcy Code has not been satisfied with respect to the Deemed Rejecting Classes, the Plan is confirmable because the Plan does not discriminate unfairly and is fair and equitable with respect to the Deemed Rejecting Classes and, thus, satisfies section 1129(b) of the Bankruptcy Code with respect to such Classes as described further below.

9. Section 1129(a)(9): Treatment of Claims Entitled to Priority Pursuant to Section 507(a) of the Bankruptcy Code

55. The treatment of Administrative Claims, Professional Fee Claims, Tax Claims, and Other Priority Claims under the Plan satisfies the requirements of and complies in all respects with section 1129(a)(9) of the Bankruptcy Code.

10. Section 1129(a)(10): Acceptance by Impaired Class

56. As evidenced by the Voting Report, without including any acceptance of the Plan by any insider (as defined in the Bankruptcy Code), holders of Claims in the Voting Class voted to accept the Plan in accordance with section 1126(c) of the Bankruptcy Code. As such, there is at least one Impaired Class of Claims that has accepted the Plan and, therefore, section 1129(a)(10) of the Bankruptcy Code has been satisfied.

11. Section 1129(a)(11): Feasibility of the Plan

57. The evidence supporting the Plan proffered or adduced by the Debtors at or before the Combined Hearing: (a) is reasonable, persuasive, credible, and accurate as of the dates such evidence was prepared, presented, or proffered; (b) has not been controverted by other evidence; (c) establishes that the Plan is feasible and confirmation of the Plan is not likely to be followed by liquidation (other than as contemplated by the Plan) or the need for further financial reorganization; and (d) establishes that the Liquidating Trust will have sufficient funds available to meet its obligations under the Plan. Accordingly, the Plan satisfies section 1129(a)(11) of the Bankruptcy Code.

12. Section 1129(a)(12): Payment of Statutory Fees

58. The Plan provides for the payment of all fees payable under section 1930 of title 28 of the United States Code in accordance with section 1129(a)(12) of the Bankruptcy Code.

13. Sections 1129(a)(13), (14), (15), and (16): Inapplicable Provisions

59. Section 1129(a)(13) is inapplicable because the Debtors do not maintain any retirement benefits as defined in section 1114 of the Bankruptcy Code. Section 1129(a)(14) is inapplicable because the Debtors are not required to pay domestic support obligations pursuant to a judicial or administrative order or statute. Section 1129(a)(15) is inapplicable because the Debtors are not individuals under the Bankruptcy Code. Section 1129(a)(16) of the Bankruptcy Code is inapplicable because the Debtors are not nonprofit entities or trusts.

14. Section 1129(b): No Unfair Discrimination; Fair and Equitable

60. Notwithstanding the rejection of the Plan by the Deemed Rejecting Classes, based upon the record before the Bankruptcy Court and the treatment provided on account of such Claims and Equity Interests, (a) the Plan does not discriminate unfairly against, and is fair and equitable with respect to, such Classes of Claims and Equity Interests and (b) the Plan satisfies all the

requirements for confirmation set forth in section 1129(a) of the Bankruptcy Code, except for section 1129(a)(8) of the Bankruptcy Code. Accordingly, the Plan satisfies section 1129(b) of the Bankruptcy Code with respect to the Deemed Rejecting Classes.

15. Section 1129(c): Only One Plan

61. The Plan is the only plan being confirmed in the Chapter 11 Cases and, accordingly, satisfies section 1129(c) of the Bankruptcy Code.

16. Section 1129(d): Principal Purpose of the Plan is Not Avoidance of Taxes or Section 5 of the Securities Act

62. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act, thereby satisfying the requirements of section 1129(d) of the Bankruptcy Code.

17. Section 1129(e): Not Small Business Cases

63. The Chapter 11 Cases are not small business cases and, accordingly, section 1129(e) of the Bankruptcy Code is inapplicable to the Chapter 11 Cases.

18. Good Faith

64. The Debtors have proposed the Plan in good faith, with the legitimate and honest purpose of maximizing the value of the Debtors' Estates for the benefit of their stakeholders. The Plan accomplishes this goal. The Debtors and the Exculpated Parties have acted in "good faith" within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Bankruptcy Local Rules in connection with all of their respective activities relating to support and consummation of the Plan, including the solicitation of acceptances of the Plan, their participation in the Chapter 11 Cases and the activities described in section 1125 of the Bankruptcy Code, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code. Therefore, the Plan has been

proposed in good faith to achieve a result consistent with the objectives and purposes of the Bankruptcy Code. The Exculpated Parties have, and upon completion of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of votes and distributions pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptance of rejections of the Plan or such distributions made pursuant to the Plan.

S. Implementation

65. All documents and agreements necessary to implement the transactions contemplated by the Plan, including those contained or summarized in the Plan Supplement, and all other relevant and necessary documents have been negotiated in good faith and at arm's-length, are in the best interests of the Debtors, the Estates, and holders of Claims and Equity Interests, and shall, upon completion of documentation and execution, be valid, binding, and enforceable documents and agreements not in conflict with any federal, state, or local law. Such documents and agreements are essential elements of the Plan, and entry into and consummation of the transactions contemplated by each such document or agreement is in the best interests of the Debtors, their Estates, and holders of Claims and Equity Interests. The Debtors have exercised reasonable business judgment in determining which documents and agreements to enter into and have provided sufficient and adequate notice of such documents and agreements. The Debtors and the Liquidating Trust, as applicable, are authorized to take any action reasonably necessary or appropriate to implement, effectuate and consummate the Plan, the documents and agreements necessary to implement the Plan, this Order and the transactions contemplated thereby or hereby, and including performance under the Liquidating Trust Agreement.

ORDER

BASED ON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

A. Findings of Fact and Conclusions of Law

66. The above-referenced findings of fact and conclusions of law are hereby incorporated by reference as though fully set forth herein and constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable by Bankruptcy Rule 9014. To the extent that any finding of fact is determined to be a conclusion of law, it is deemed so, and vice versa.

B. Approval of the Disclosure Statement

67. The Disclosure Statement is approved on a final basis pursuant to section 1125 of the Bankruptcy Code as containing adequate information, and sufficient information of a kind necessary to satisfy the disclosure requirements of any applicable non-bankruptcy laws, rules, and regulations.

C. Confirmation of Plan

68. The Plan, including (a) all modifications to the Plan filed with the Bankruptcy Court prior to or during the Combined Hearing and (b) all documents incorporated into the Plan through the Plan Supplement, is approved in its entirety, as may be modified herein, and confirmed pursuant to section 1129 of the Bankruptcy Code. The Debtors are authorized to enter into and execute all documents and agreements related to the Plan (including all exhibits and attachments thereto and documents referred to therein, including the Plan Supplement), and the execution, delivery, and performance thereafter by the Debtors, are hereby approved and authorized. The Debtors are authorized to take all actions necessary or appropriate to enter into, implement, and consummate the contracts, instruments, releases, and other agreements or documents created in

connection with the Plan, including without limitation entry into any agreements contained in the Plan Supplement, as applicable, as may be modified by the Debtors in their business judgment subject to the terms and conditions of the Plan. The terms of the Plan (including the Plan Supplement) shall be effective and binding as of the Effective Date.

69. All terms of the Plan and the Plan Supplement are incorporated herein by reference and are an integral part of this Order. The failure to specifically include or refer to any particular article, section, or provision of the Plan, the Plan Supplement, or any related document in this Order does not diminish or impair the effectiveness or enforceability of such article, section, or provision.

D. Substantive Consolidation

70. The Debtors and their respective Estates are hereby substantively consolidated into a single consolidated estate for all purposes relating to the Plan, including for purposes of voting, Confirmation, and Distributions, as set forth in Article VIII of the Combined Plan and Disclosure Statement. For all purposes associated with the Confirmation and Consummation of the Plan, all assets and liabilities of the Debtors shall be treated as though they were merged into a single economic unit, and all guarantees by any Debtor of the obligations of any other Debtor, to the extent such exist, shall be considered eliminated so that any Claim and any guarantee thereof by any other Debtor, as well as any joint and several liability of any Debtor with respect to any other Debtor, shall be treated as one collective obligation of the Debtors. Moreover, (a) no Distribution shall be made under the Plan on account of any Intercompany Interest, if any, held by any Debtor in any of the other Debtors except to the extent necessary to effect the substantive consolidation provided for herein, (b) all guaranties of any Debtor of the obligations of any of the other Debtors, to the extent such exist, shall be eliminated so that any Claim against any Debtor, and any guaranty thereof executed by any of the other Debtors, shall be one obligation of the consolidated Debtors'

Estates, and (c) every Claim that is timely filed or to be filed in the Chapter 11 Cases of any of the Debtors shall be deemed filed against the consolidated Estates and shall be one Claim against, and one obligation of, the Estates.

71. Notwithstanding any provision of the Plan to the contrary, any holder of multiple Allowed Claims against more than one Debtor that arise from the contractual, joint, joint and several, or several liability of such Debtors, the guaranty by one Debtor of another Debtor's obligation or other similar circumstances, shall be entitled to one Allowed Claim that, in the aggregate, does not exceed the amount of the underlying Claim giving rise to such multiple Claims. Claims against more than one of the Debtors arising from the same injury, damage, cause of action, or common facts shall be Allowed only once as if such Claim were against a single Debtor.

72. Any alleged defaults under any applicable agreement, including Executory Contracts and Unexpired Leases, with the Debtors arising from substantive consolidation under the Plan shall be deemed unenforceable as of the Effective Date.

E. Objections Overruled

73. All objections or responses, if any, to final approval of the Disclosure Statement or confirmation of the Plan that have not been withdrawn, waived, settled, resolved prior to the Combined Hearing or otherwise resolved on the record of the Combined Hearing or in this Order are hereby overruled and denied on the merits, with prejudice. All objections to the entry of this Order or to the relief granted herein that were not timely filed and served prior to the Combined Plan and Disclosure Statement Objection Deadline are deemed waived and forever barred.

F. Plan Transactions

74. All of the transactions contemplated by the Plan and the Plan Supplement are hereby approved. The entry of this Order shall constitute authorization for the Debtors and the Liquidating Trustee, as applicable, to take or cause to be taken all corporate actions necessary or

appropriate to implement all provisions of, and to consummate, the Plan Documents prior to, on and after the Effective Date and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court without further approval, act or action under any applicable law, order, rule or regulation. On the Effective Date, the officers of the Debtors or the Liquidating Trustee, on behalf of the Liquidating Trust, as applicable, are authorized to do all things and to execute and deliver all agreements, documents, instruments, notices and certificates as are contemplated by the Plan and to take all necessary actions required in connection therewith, in the name of and on behalf of the Debtor and the Liquidating Trust, as applicable.

G. Dissolution of the Debtors

75. On the Effective Date, each of the Debtors' directors and officers shall be discharged from their duties and terminated automatically without the need for any corporate action or approval and without the need for any corporate filings, and, unless subject to a separate agreement with the Liquidating Trustee, shall have no continuing obligations to the Debtors after the Effective Date.

H. Preservation of Causes of Action

76. Except as otherwise provided in the Plan, Plan Supplement, or this Order, on the Effective Date, the Preserved Estate Claims, including any and all rights to commence, pursue, litigate or settle, as appropriate, such Preserved Estate Claims, whether existing as of the Petition Date or arising thereafter, shall automatically be deemed to have been vested in and transferred to the Liquidating Trust. Upon the Effective Date, the Liquidating Trust shall have standing and the sole authority to investigate, prosecute, settle, or abandon the Preserved Estate Claims, and shall be the successor-in-interest to the Debtors and the Debtors' rights, title, and interest in any Preserved Estate Claim, including, without limitation, any actions specifically enumerated in the Plan Supplement.

77. Unless a Cause of Action against a holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including this Order or by virtue of the allowance of such Claim under the Plan), such Cause of Action is expressly preserved for later adjudication by the Liquidating Trust (including Causes of Action not specifically identified or of which the Debtors or their creditors who shall receive beneficial interests in the Liquidating Trust may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtors at this time or facts or circumstances that may change or be different from those the Debtors now believe to exist and all Preserved Estate Claims, to the extent such claim are not released by this Plan). No preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Preserved Estate Claims, except where such Causes of Action have been expressly released in the Plan or this Order. The Liquidating Trust shall be entitled to the benefit of the tolling provisions provided under section 108 of the Bankruptcy Code and shall succeed to the Debtors' rights with respect to the time periods in which a Preserved Estate Claim may be brought under the Bankruptcy Code.

78. The Liquidating Trust shall have the exclusive right to investigate, enforce, sue on, settle, compromise, transfer, or assign (or decline to do any of the foregoing) any Preserved Estate Claims without notice to or approval from the Bankruptcy Court or the Debtors.

I. Liquidating Trustee

79. The appointment of Thomas A. Pitta to serve as the Liquidating Trustee is approved in all respects and the Liquidating Trustee is authorized to (a) carry out all rights and duties as set forth in the Plan and Liquidating Trust Agreement, (b) appear and be heard on all matters related

to the Chapter 11 Cases (as a representative of the Liquidating Trust and/or the Debtors, as applicable), (c) as set forth in the Plan and this Order, investigate, prosecute and resolve, in the name of the Debtors and/or the name of the Liquidating Trustee, any Preserved Estate Claims (including, for the avoidance of doubt, any criminal causes of action), and (d) present to creditors and other courts of competent jurisdiction this Order as evidence of such authority. The compensation of the Liquidating Trustee as set forth in the Plan Supplement is approved in all respects and the Liquidating Trustee shall perform its duties in its capacity as such as set forth in the Plan and the Liquidating Trust Agreement.

J. Liquidating Trust

80. On the Effective Date, the Debtors and the Liquidating Trustee shall execute the Liquidating Trust Agreement and shall take all other steps necessary to establish the Liquidating Trust pursuant to the Liquidating Trust Agreement and consistent with the Plan.

81. On the Effective Date, other than as set forth in the Plan or this Order, the Debtors shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Liquidating Trust all of the Debtors' and Estates' rights, title, and interest in and to all of the Liquidating Trust Assets, and, in accordance with section 1141 of the Bankruptcy Code, the Liquidating Trust Assets, shall automatically vest in the Liquidating Trust free and clear of all Claims, Liens, encumbrances, or interests, subject to the terms of the Plan and the Liquidating Trust Agreement. The act of transferring the Liquidating Trust Assets to the Liquidating Trust shall not be construed to destroy or limit any such assets or rights or be construed as a waiver of any right, and such rights may be asserted by the Liquidating Trust as if the asset or right was still held by the Debtors. The Liquidating Trust shall be governed by the Liquidating Trust Agreement.

K. Matters as to the United States

82. As to the United States, its agencies, or any instrumentalities thereof (collectively, the "United States"), notwithstanding anything contained in the Plan Documents, including, without limitation, the Combined Plan and Disclosure Statement, the Plan Supplement, or this Order, to the contrary, nothing herein shall:

a. limit or be intended to or be construed to bar the United States from pursuing any police or regulatory action or any criminal action;

b. discharge, release, exculpate, impair, or otherwise preclude: (i) any liability to the United States that is not a "claim" within the meaning of section 101(5) of the Bankruptcy Code; (ii) any Claim of the United States arising on or after the Effective Date; (iii) any liability of the Debtors under police or regulatory statutes or regulations to the United States as the owner, lessor, lessee or operator of property that such Entity owns, operates, or leases after the Effective Date; or (iv) any liability to the United States, including any liabilities arising under the federal environmental, criminal, civil, or common law, of any Person, including any Released Parties or Exculpated Parties other than the Debtors; *provided*, however, that the foregoing provisions of this clause (b) shall not diminish the scope of any exculpation to which any Person is entitled under section 1125(e) of the Bankruptcy Code;

c. enjoin or otherwise bar the United States from asserting or enforcing, outside the Bankruptcy Court, any liability described in the preceding clause (b) (subject to any provisos thereof); *provided*, however, that the non-bankruptcy rights and defenses of all Persons with respect to (i)–(iv) in the preceding clause (b) (including any provisos included in clause (b)) are likewise fully preserved;

d. affect any valid right of setoff or recoupment of the United States against any of the Debtors; provided, however, that the rights and defenses of the Debtors with respect thereto

are fully preserved (other than any rights or defenses based on language in the Plan or this Order that may extinguish or limit setoff or recoupment rights of the United States);

e. confer exclusive jurisdiction to the Bankruptcy Court except to the extent set forth in 28 U.S.C. § 1334 (as limited by any other provisions of the United States Code);

f. authorize the assumption, assignment, sale or other transfer of any federal (i) grants, (ii) grant funds, (iii) contracts, (iv) agreements, (v) awards, (vi) task orders, (vii) property, including any intellectual property and patents belonging to the United States or any of its agencies or components thereof, (viii) leases, (ix) certifications, (x) applications, (xi) registrations, (xii) billing numbers and other identifiers, (xiii) licenses, (xiv) permits, (xv) covenants, (xvi) inventory, (xvii) guarantees, (xviii) indemnifications, (xix) data, (xx) records, (xxi) payment obligations, or (xxii) any other interests belonging to the United States (collectively, "Federal Interests") without compliance with all terms of the Federal Interests and with all applicable non-bankruptcy law;

g. be interpreted to set cure amounts related to any Federal Interests or to require the United States to novate, approve, or otherwise consent to the assumption, assignment, sale, or other transfer of any Federal Interests;

h. except as provided by the SEC Claim Resolution, be construed as a compromise or settlement of any liability, Claim, Cause of Action, or Interest of the United States;

i. modify the scope of section 525 of the Bankruptcy Code; or

j. cause rejection damage Claims to have to be filed before the Governmental Bar Date or alter the priority and treatment of such rejection damage Claims under the Bankruptcy Code.

83. Further, in the event of an inconsistency between any provision of the Plan and any provision of this Order, then, as to the United States, the provisions of this Order and federal law (subject to this Order) shall control.

84. As to the United States, nothing in the Plan, the Plan Documents, including, without limitation, the Combined Plan and Disclosure Statement, the Plan Supplement or this Order overrides or supersedes paragraphs 55 or 56 of the Lucid Sale Order. In the event of an inconsistency between or ambiguity in any provision of the Plan, the Plan Documents, including, without limitation, the Combined Plan and Disclosure Statement, the Plan Supplement or this Order and paragraphs 55 or 56 of the Lucid Sale Order, then, as to the United States, the provisions of paragraphs 55 and 56 of the Lucid Sale Order shall control. For the sake of clarity, as to the United States, the terms of paragraphs 55 and 56 of the Lucid Sale Order shall be paramount to any other provisions of the Plan, Plan Documents, Plan Supplement and this Order.

L. Mitsubishi

85. Notwithstanding anything to the contrary in the Plan or this Order, (i) to the extent any claims held by Mitsubishi HC Capital America, Inc. ("MHCA") or Mitsubishi HC Capital Canada, Inc. ("MHCC-Canada") are determined to be secured by rights of setoff, security deposits, or other cash held by MHCA or MHCC-Canada as security or collateral (the "Mitsubishi Cash Collateral"), they shall constitute Other Secured Claims under the Plan; (ii) the rights of MHCA and MHCC-Canada to seek relief from the Court to effectuate a setoff by applying the Mitsubishi Cash Collateral against their respective Allowed Other Secured Claims are expressly preserved and such rights (if any) shall not be impaired by any provision of the Plan or this Order; *provided*, *however*, that in each case of (i) and/or (ii), all parties' (including, for the avoidance of doubt, the Debtors' and the Liquidating Trust's) rights and remedies with respect thereto are expressly preserved, including the right to challenge the validity, enforceability, extent, priority, and secured

status of any claims held by MHCA or MHCC-Canada or rights of setoff. For clarity, among its various asserted Claims, MHCA has an Allowed Claim in the amount of $556,442.31 under the terms of the Settlement Agreement that was approved by the Court at Docket No. 903; the validity, enforceability and amount of that Claim are not subject to challenge, but the rights of all parties are reserved with respect to whether such Claim constitutes an Other Secured Claim or is otherwise secured by a right of setoff against the Mitsubishi Cash Collateral.

86. To the extent the Bankruptcy Court orders, or the Debtors or Liquidating Trustee (as applicable) agree in writing to such a setoff against the Mitsubishi Cash Collateral, any remaining deficiency claim(s) held by MHCA or MHCC-Canada shall constitute General Unsecured Claim(s) under the Plan.

87. Notwithstanding anything to the contrary in the *Second Amended Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Nikola Corporation and its Debtor Affiliates* [D.I. 955], the first paragraph of Article IX.C. of the Plan shall be modified to provide as follows: On the Effective Date or as soon thereafter as is practicable, the Liquidating Trustee may establish and administer Disputed Claims Reserves for each Class or category, in the case of unclassified Claims, of Disputed Claims as of each Plan Distribution Date in accordance with the Liquidating Trust Agreement. The Liquidating Trustee shall reserve, in Cash or Liquidating Trust Units, as applicable, the expected recovery that such Disputed Claim would receive if it were ultimately determined to be an Allowed Claim (or such lesser amount as may be determined or estimated by the Bankruptcy Court after notice and a hearing) with respect to each such Disputed Claim. For the avoidance of doubt, the Liquidating Trustee may administer the Disputed Claims Reserves by book entry.

M. No Successor in Interest

88. Except as otherwise expressly provided in the Plan, the Liquidating Trust Agreement, or this Order, the Liquidating Trust (a) is not agreeing to, and shall not be deemed to assume the obligation to, perform, pay, or otherwise have any responsibilities for any liabilities or obligations of the Debtors or any other Entity relating to or arising out of the operations or the assets of the Debtors on or prior to the Effective Date, (b) is not, and shall not be, a successor to the Debtors by reason of any theory of law or equity or responsible for the knowledge or conduct of any Debtor prior to the Effective Date, and (c) shall not have any successor, transferee, or similar liability of any kind or character.

N. Securities Exempt

89. The Liquidating Trust Units to be distributed pursuant to the Combined Plan and Disclosure Statement shall not constitute "securities" under applicable law. To the extent the Liquidating Trust Units are considered "securities" under applicable law, the issuance of such interests satisfies the requirements of section 1145 of the Bankruptcy Code and, therefore, such issuance is exempt from registration under the Securities Act and any state or local law requiring registration.

O. Exemption from Transfer Tax and Recording Fees

90. To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfer of property pursuant to or in connection with the Plan, including the transfer of the Liquidating Trust Assets to the Liquidating Trust, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate or bulk transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment. This Order hereby directs the appropriate federal, state, or local governmental officials or agents to forego the collection of any

such tax or governmental assessment and to accept for filing and recordation any of the instruments or documents filed or recorded pursuant to the Plan without payment of any such tax or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(a) of the Bankruptcy Code, shall forgo the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

P. Cancellation of Notes, Instruments, Certificates, and Other Documents

91. Except as otherwise provided in the Plan or this Order, the Debtors' obligations under any other note, bond, indenture or other instrument or document evidencing or creating any indebtedness or obligation of the Debtors shall be deemed released, settled, and compromised on the Effective Date.

92. Notwithstanding anything in Article VII.F of the Plan, the Unsecured Notes Indentures shall remain in effect solely with respect to the rights of the Unsecured Notes Indenture Trustee (a) to make Plan distributions in accordance with the Plan, (b) to preserve the rights and protections of the Unsecured Notes Indenture Trustee with respect to the Holders of Unsecured Notes Claims, and (c) preserve the Unsecured Notes Indenture Trustee's charging lien rights set forth in the Unsecured Notes Indentures. Except for the distribution of Class 3 Plan consideration delivered to it in accordance with the Unsecured Notes Indentures at the expense of the Debtors, the Unsecured Notes Indenture Trustee shall have no duties to Holders of Unsecured Notes Claims following the Effective Date of the Plan, including no duty to object to claims or treatment of other creditors.

Q. Treatment of Executory Contracts and Unexpired Leases

93. Except as otherwise provided in the Plan or this Order, on the Effective Date, all Executory Contracts and Unexpired Leases of the Debtors shall be deemed rejected pursuant to the provisions of sections 365 and 1123 of the Bankruptcy Code. Except as otherwise provided in the Plan, any Claims arising from the rejection of any Executory Contracts or Unexpired Leases that are rejected under Article XI of the Plan must be filed with the Bankruptcy Court within thirty (30) days of service of the Notice of Effective Date (as defined below). Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not filed within such time shall be Disallowed, forever barred from assertion, and shall not be enforceable against, as applicable, the Debtors, the Estates, the Liquidating Trust or property of the foregoing parties, without the need for any objection by the Debtors or the Liquidating Trust, as applicable, or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied notwithstanding anything in the Schedules, if any, or a Proof of Claim to the contrary.

R. The Releases, Injunction, Exculpation, and Related Provisions Under the Plan

94. The releases, exculpations, injunction and related provisions set forth in Article XII of the Plan are incorporated herein in their entirety, are hereby approved and authorized in all respects, are so ordered, and shall be immediately effective on the Effective Date without further order or action on the part of this Bankruptcy Court or any other party.

1. Releases by the Debtors

95. **Except as otherwise provided in the Plan, as of the Effective Date, for good and valuable consideration, including the obligations of the Debtors under the Plan and the contributions of the Released Parties to facilitate and implement the Plan, on and after the**

Effective Date, each Released Party is, and is deemed to be, hereby conclusively, absolutely, unconditionally, generally, individually, collectively, irrevocably, and forever released and discharged by the Debtors and their Estates, including any of their successors and assigns, including but not limited to the Liquidating Trust, and any and all other Entities who may purport to assert any Causes of Action, directly or derivatively, by, through, for, or because of the Debtors or their Estates from any and all Causes of Action whatsoever, including any derivative claims, asserted or assertable on behalf of the Debtors or their Estates, as applicable, notwithstanding section 1542 of the California Civil Code or any law of any jurisdiction that is similar, comparable or equivalent thereto (which shall conclusively be deemed waived) whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, contingent or noncontingent, in law, equity, contract, tort or otherwise, that the Debtors or their Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Equity Interest in, a Debtor, the Estates, or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, as such Entities existed prior to or after the Petition Date, the Debtors' in- and out-of-court restructuring efforts, the Chapter 11 Cases, the Plan Documents, or any other instrument, contract, or document related to the foregoing, the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Equity Interests before or during the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, filing, pursuit, performance, administration, implementation, or consummation of the Chapter 11 Cases (including any payments, distributions or transfers

in connection therewith), the Plan Documents, or any other instrument, contract, or document related to the foregoing, or any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date.

96. **For the avoidance of doubt and notwithstanding anything to the contrary in the Plan, this Order, or any prior order of the Bankruptcy Court, the releases set forth in Article XII.A and Article XII.B of the Plan (1) shall be in addition to the Causes of Action released as part of the SEC Claim Resolution; and (2) do NOT release: (a) any Released Party, other than the Ubben Released Parties subject to approval of the Derivative Action Stipulation and the Debtors' receipt of the Ubben Contribution, from any Causes of Action arising from or related to any act or omission by such Released Party that is determined in a Final Order to have constituted fraud, willful misconduct, or gross negligence; (b) any obligations of any party or Entity under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan; (c) any Claims or Causes of Action against any Entity that is not a Released Party; (d) any Preserved Estate Claims including but not limited to (i) the D&O Actions, subject to the limitations set forth in Article VII.B.3 of the Plan, or (ii) Claims or Causes of Action of the Debtors against Trevor Milton and any entity that Trevor Milton directly or indirectly owns, holds, or controls any equity in; and (e) any Released Party from any Causes of Action arising from or related to (x) the Securities Class Action; (y) the Roy Action; or (z) the Tenneson Action.**

2. Releases by Creditors

97. Except as otherwise provided in the Plan, as of the Effective Date and to the fullest extent authorized by applicable law, for good and valuable consideration, including the obligations of the Debtors under the Plan and the contributions of the Released Parties to facilitate and implement the Plan, each Releasing Party conclusively, absolutely,

unconditionally, generally, individually, collectively, irrevocably, and forever releases and discharges the Released Parties from any and all Causes of Action whatsoever (including any derivative claims purportedly asserted or assertable by any Releasing Party against any Released Party), whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, contingent or noncontingent, in law, equity, contract, tort or otherwise, that such Releasing Party would have been legally entitled to assert in its own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Equity Interest in, a Debtor, the Estates, or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' in- and out-of-court restructuring efforts, the Chapter 11 Cases, the Plan Documents, or any other instrument, contract, or document related to the foregoing, the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Equity Interests before or during the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, filing, pursuit, performance, administration, implementation, or consummation of the Chapter 11 Cases (including any payments, distributions or transfers in connection therewith), the Plan Documents, or any other instrument, contract, or document related to the foregoing.

98. For the avoidance of doubt and notwithstanding anything to the contrary in the Plan, this Order, or any prior order of the Bankruptcy Court, the releases set forth in this Article XII.B of the Plan do NOT release: (a) any Released Party, other than the Ubben Released Parties subject to approval of the Derivative Action Stipulation and the Debtors' receipt of the Ubben Contribution, from any Causes of Action arising from or related to any

act or omission by such Released Party that is determined in a Final Order to have constituted fraud, willful misconduct, or gross negligence; (b) any obligations of any party or Entity under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan; (c) any Claims or Causes of Action against any Entity that is not a Released Party; (d) any Preserved Estate Claims including but not limited to (i) the D&O Actions, subject to the limitations set forth in Article VII.B.3 of the Plan, or (ii) Claims or Causes of Action of the Debtors against Trevor Milton and any entity that Trevor Milton directly or indirectly owns, holds, or controls any equity in; and (e) any Released Party from any Causes of Action arising from or related to (x) the Securities Class Action; (y) the Roy Action; or (z) the Tenneson Action.

3. Exculpation

99. No Exculpated Party shall have or incur, and each Exculpated Party is hereby exculpated from any Claim, obligation, Cause of Action or liability for any Claim related to any act or omission occurring between the Petition Date and the Effective Date in connection with or arising out of, the administration of the Chapter 11 Cases, the events described in Article IV of the Plan, the entry into the Liquidating Trust Agreement, the negotiation and pursuit of the Plan, or the solicitation of votes for, or confirmation of, the Plan, the funding of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, and the issuance of securities or beneficial interests under or in connection with the Plan or the transactions contemplated by the foregoing, except for willful misconduct, gross negligence, or fraud as finally determined by a Final Order, but in all respects such Exculpated Party shall be entitled to reasonably rely upon the advice of counsel with respect to its duties and responsibilities pursuant to the Plan. The Exculpated Parties have participated in compliance with the applicable provisions of the Bankruptcy

Code with regard to the solicitation and distribution of the securities pursuant to the Plan, and are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan. Notwithstanding anything to the contrary in the foregoing or any other provision of the Plan, the foregoing provisions of this exculpation provision shall not operate to waive or release the rights of the Debtors or other parties in interest to enforce the Plan and the contracts, instruments, releases and other agreements or documents delivered under or in connection with the Plan and Plan Supplement or assumed pursuant to the Plan or assumed pursuant to Final Order of the Bankruptcy Court.

4. Injunction

100. Except as otherwise provided in the Plan or this Order, as of the Confirmation Date, but subject to the occurrence of the Effective Date, all Entities who have held, hold or may hold Causes of Action, Claims or Equity Interests in the Debtors or the Estates that have been released or are subject to exculpation or are otherwise treated under the Plan are, with respect to any such Causes of Action, Claims or Equity Interests, enjoined, from and after the Effective Date through and until the date upon which all remaining property of the Debtors is vested in and been transferred to the Liquidating Trust, has been liquidated and distributed to creditors, or otherwise, in accordance with the terms of the Plan and the Liquidating Trust Agreement, and the Plan has been fully administered, subject to further extension or reduction by motion on notice, with all parties' rights with respect to such extension or reduction reserved, from: (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the

Debtors, the Estates or any of their Assets, the Liquidating Trust, the Released Parties, the Exculpated Parties, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to any of the foregoing Entities or any property of any such transferee or successor; (ii) enforcing, levying, attaching (including any pre-judgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order against the Debtors, the Estates or any of their Assets, the Liquidating Trust, the Released Parties, the Exculpated Parties or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Entities, or any property of any such transferee or successor; (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtors, the Estates or any of their Assets, the Liquidating Trust, the Released Parties, the Exculpated Parties, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Entities, or any property of any such transferee or successor; (iv) commencing or continuing in any manner or in any place, any suit, action or other proceeding on account of or respecting any Claim, demand, liability, obligation, debt, right, Cause of Action, interest or remedy released or to be released pursuant to the Plan or this Order, including the releases and exculpations provided under Article XII.A, Article XII.B, and XII.C of the Plan; (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan to the fullest extent permitted by applicable law; and (vi) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan; *provided, however*, that nothing contained herein shall preclude such persons from exercising their rights pursuant to and

consistent with the terms of the Plan. Each holder of an Allowed Claim or Allowed Equity Interest shall be deemed to have specifically consented to the injunctions set forth herein. For the avoidance of doubt, the foregoing provisions of this Section shall not operate to waive or release the rights of the Debtors or other parties in interest to enforce the Plan and the contracts, instruments, releases and other agreements or documents delivered under or in connection with the Plan and Plan Supplement or assumed pursuant to the Plan or assumed pursuant to Final Order of the Bankruptcy Court.

5. Release of Liens

101. Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date, all mortgages, deeds of trust, liens, pledges, or other security interests against any property of the estates shall be fully released, and the holders of such mortgages, deeds of trust, Liens, pledges, or other security interests shall execute such documents as may be reasonably requested by the Debtors or the Liquidating Trustee, as applicable, to reflect or effectuate such releases, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, liens, pledges, or other security interests shall revert to the Liquidating Trust and their successors and assigns.

S. Derivative Action Stipulation Releases

102. The releases, exculpations, injunction and related provisions set forth in Paragraphs 2 through 5 of the Derivative Action Stipulation are incorporated into the Plan and this Order in their entirety and are hereby approved and authorized in all respects, are so ordered, and, subject to the conditions precedent set forth in the Derivative Action Stipulation, shall be immediately effective on the Effective Date without further order or action on the part of this Bankruptcy Court or any other party:

a. The obligations incurred pursuant to the Derivative Action Stipulation are in consideration of: (a) the full and final disposition of the Actions as against Defendants (each, as defined in the Derivative Action Stipulation); and (b) the releases provided for in the Derivative Action Stipulation.

b. Upon entry of the Order and Final Judgment, Plaintiffs' Releasing Parties (each, as defined in the Derivative Action Stipulation), shall be deemed to have, and by operation of law shall have, completely, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged, and shall forever be barred and enjoined from commencing or prosecuting, each and all of the Released Defendant Parties from any and all of the Plaintiffs' Released Derivative Claims (each, as defined in the Derivative Action Stipulation).

c. Upon entry of the Order and Final Judgment, Defendants' Releasing Parties (as defined in the Derivative Action Stipulation), shall be deemed to have, and by operation of law shall have, completely, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged, and shall forever be barred and enjoined from commencing or prosecuting, each and all of the Released Plaintiff Parties (as defined in the Derivative Action Stipulation) from any and all of the Defendants' Released Derivative Claims (as defined in the Derivative Action Stipulation).

d. Nothing in the Derivative Action Stipulation or this Order shall in any way release, waive, impair, or restrict the rights of any Party to enforce the terms of the Derivative Action Stipulation or the Order and Final Judgment.

e. The Unnamed Parties shall, as of the Effective Date, be deemed to be Released Defendant Parties (as defined in the Derivative Action Stipulation), and the Plaintiffs' Releasing Parties (as defined in the Derivative Action Stipulation) shall be deemed to have, and by operation

of law shall have, completely, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged, and shall forever be barred and enjoined from commencing or prosecuting, each and all of the Unnamed Parties from any and all of the Plaintiffs' Released Derivative Claims.

f. The Fee and Expense Award (as defined in the Derivative Action Stipulation) is approved and shall be paid solely from the Settlement Fund on the Effective Date; *provided,* for the avoidance of doubt*,* the Fee and Expense Award shall only be payable upon and remains subject to entry of the Order and Final Judgment pursuant to the Derivative Action Stipulation and the Debtors' receipt of the Settlement Fund.

T. Notice of Effective Date

103. On or within two (2) Business Days of the Effective Date, the Debtors shall file and serve a notice of Effective Date and entry of this Order (the "Notice of Effective Date"). The Debtors will serve the Notice of Effective Date on all creditors and equity security holders, including (i) all parties filing a notice of appearance and request for service pursuant to Bankruptcy Rule 2002 in the Chapter 11 Cases, (ii) state and local taxing authorities in which the Debtors did business, (iii) the Internal Revenue Service, (iv) Holders of Claims or Interests in the Non-Voting Classes, (v) the U.S. Trustee, (vi) all person or entities listed on the Schedules, (vii) all other persons or entities listed on the Debtors' mailing matrix, (viii) all persons or entities that have filed a proof of claim or request for allowance of a claim as of the Voting Record Date, (ix) the Securities and Exchange Commission, (x) the United States Attorney's Office for the District of Delaware, (xi) any regulatory agencies with oversight authority of the Debtors, (xii) the Committee, and (xiii) all holders of Claims or Interests (to the extent not otherwise included in the foregoing).

104. The Notice of Effective Date may provide that to continue receiving service of documents filed in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002 after the Effective

Date, parties must file a renewed request to receive such service, *provided*, that the U.S. Trustee need not file such a renewed request and shall continue to receive documents without further action being necessary. Except as otherwise provided in the Plan, the Liquidating Trust Agreement, or this Order, notice of all subsequent pleadings in the Chapter 11 Cases after the Effective Date will be limited to the following parties: (a) the U.S. Trustee; (b) the Liquidating Trustee; (d) any party known to be directly affected by the relief; and (e) any party that, after the Effective Date, has filed a renewed request under Bankruptcy Rule 2002.

105. The Notice of Effective Date shall be in substantially the form annexed hereto as **Exhibit B**. The form of the Notice of Effective Date substantially in the form attached hereto as Exhibit B is approved.

U. Administrative Claims

106. Except as otherwise provided in the Plan or this Order, requests for payment of Administrative Claims must be filed no later than the applicable Administrative Claims Bar Date in accordance with the Plan.

V. Insurance Contracts

107. Notwithstanding Article XI.A.1 of the Plan, all Insurance Contracts to which any Debtor is a party as of the Effective Date, including but not limited to the D&O Policies (including any "tail policy"), shall be deemed to be and treated as Executory Contracts and shall be assumed by the applicable Debtor and assigned to the Liquidating Trust effective as of the Effective Date, and such Insurance Contracts shall continue in full force and effect after the Effective Date in accordance with their respective terms. Nothing in the Plan (including the assignment of any Insurance Contract to the Liquidating Trust pursuant to the Plan), this Order, or the Liquidating Trust Agreement shall impair, diminish, or otherwise adversely modify the enforceability of, or any coverage under, any Insurance Contracts. The Liquidating Trust shall be responsible for

monitoring and preserving the ability to maintain claims against the Insurance Contracts. To the extent the Debtors are not the first named insured under any Insurance Contract and notwithstanding confirmation of the Plan or the occurrence of the Effective Date (i) nothing herein or in the Plan shall constitute a rejection of such Insurance Contracts, (ii) such Insurance Contracts shall remain in full force and effect, and (iii) any and all rights of the Debtors under such Insurance Contracts shall remain in full force and effect. For the avoidance of doubt, the Liquidating Trust shall retain all rights of the applicable Debtors to assert claims against the Insurance Contracts and/or to recover the proceeds thereof, and the dissolution of the Debtors shall have no impact upon the rights of the Liquidating Trust to assert claims against the Insurance Contracts or to recover the proceeds thereof.

W. Privilege

108. The Liquidating Trust shall be given access by the Debtors and their professionals (at the expense of the Liquidating Trust with respect to any expenditure of resources that is more than de minimis) to all information the Liquidating Trustee determines is necessary to prosecute, investigate, sell, transfer, or convey any of the Preserved Estate Claims and to benefit from any relevant Privileges. Prior to the Effective Date, at the sole cost of the Debtors, the Debtors shall deliver or cause to be delivered to the Liquidating Trust any and all books and records and all other documents, files, electronic data, tangible objects, and communications, or copies of the same (the "Debtors' Records"). The Debtors shall not destroy, abandon, or otherwise render the Debtors' Records unavailable. The Liquidating Trust shall stand in the same position as the Debtors and their estates and the Committee as to all evidentiary privileges of any type or nature whatsoever, including attorney-client privilege, the work product privilege or doctrine, any other privilege or immunity attaching to any documents or communications in any form, including electronic data hosted on remote servers, and any other applicable evidentiary privileges of each of the foregoing

(collectively, the "Privileges"), and shall succeed to all of the rights of the Debtors and their estates and the Committee to preserve, assert, or waive any such Privileges, and shall be deemed to be the assignee by each Debtor and its respective estate and the Committee of each such Privilege as of the latter of (a) the Effective Date, or (b) the formation of the Liquidating Trust. For the avoidance of doubt, the Privileges shall be shared with, and shall vest in, the Liquidating Trust. Notwithstanding the Debtors, the Committee, or any party-in-interest providing any privileged information to the Liquidating Trust, the Liquidating Trustee, or the Oversight Board, including any member thereof, such privileged information shall be without waiver in recognition of the joint and/or successor interest in investigating and prosecuting the Preserved Estate Claims and shall remain privileged.

X. Reports and Statutory Fees

109. Except as otherwise provided in the Plan, the Liquidating Trust Agreement, or this Order, after entry of this Order, the Debtors and Liquidating Trust, as applicable, shall have no obligation to file with the Bankruptcy Court, serve on any parties, or otherwise provide any party with any other report that the Debtors were obligated to provide under the Bankruptcy Code or an order of the Bankruptcy Court; *provided*, that (a) before the Effective Date, the Debtors shall file all monthly operating reports due prior to the Effective Date when they become due, and (b) after the Effective Date, if applicable, the Liquidating Trustee and the Debtors shall file separate UST Form 11-PCR quarterly reports if and when they become due. Notwithstanding anything in the Plan, the rights of the Liquidating Trust, on one hand, and the U.S. Trustee, on the other hand, are reserved with respect to the applicability and amount of Statutory Fees with respect to transfers or distributions made on the Effective Date and any future transfers or distributions from the Liquidating Trust.

Y. Binding Effect

110. On the date of and after entry of this Order and subject to the occurrence of the Effective Date, the terms of the Plan, and the final versions of the documents contained in the Plan Supplement and this Order shall be immediately effective and enforceable and deemed binding upon the Debtors, the Liquidating Trust, any and all holders of Claims or Equity Interests (irrespective of whether the holders of such Claims or Equity Interests accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunction described in the Plan or in effect as of the date hereof, all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors, and all other parties in interest. All Claims against and Equity Interests in the Debtors shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any holder of a Claim or Equity Interest has voted on the Plan.

111. Pursuant to section 1141 of the Bankruptcy Code, subject to the occurrence of the Effective Date and subject to the terms of the Plan and this Order, all prior orders entered in the Chapter 11 Cases, all documents and agreements executed by the Debtors as authorized and directed under such prior orders, and all motions or requests for relief by the Debtors pending before this Bankruptcy Court as of the Effective Date shall be binding upon and shall inure to the benefit of the Debtors and the Liquidating Trust, and each of their respective successors and assigns.

112. The Plan, all documents and agreements executed by the Debtors in connection therewith, this Order, and all prior orders of the Bankruptcy Court in the Chapter 11 Cases shall be binding against and binding upon and shall not be subject to rejection or avoidance by any chapter 7 or chapter 11 trustee appointed in any of the Chapter 11 Cases or any successor case or the Liquidating Trustee.

Z. Nonseverability of Plan Provisions Upon Confirmation

113. Each term and provision of the Plan, as may have been altered or interpreted by the Bankruptcy Court prior to the entry of this Order in accordance with the Plan, is (a) valid and enforceable pursuant to its terms, (b) integral to the Plan and may not be deleted or modified except in accordance with the Plan, and (c) nonseverable and mutually dependent.

AA. Injunctions and Automatic Stay

114. Unless otherwise provided in the Plan or in this Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and existing on the Confirmation Date (excluding any injunctions or stays contained in the Plan or this Order) shall remain in full force and effect to the maximum extent permitted by law. All injunctions or stays contained in the Plan or this Order shall remain in full force and effect in accordance with their terms.

BB. Dissolution of Creditors' Committee

115. On the Effective Date, the Committee and any other statutory committee appointed in the Chapter 11 Cases shall dissolve automatically and the members thereof and the Professionals retained by the Committee shall be released and discharged from all rights, duties, responsibilities, and liabilities arising from, or related to, the Chapter 11 Cases and under the Bankruptcy Code; *provided*, that, the Committee shall continue to exist, and its Professionals shall continue to be retained, after the Effective Date and have standing and a right to be heard for the following limited purposes: (a) requests for payment of Professional Fee Claims for services and reimbursement of expenses incurred prior to the Effective Date, and (b) any appeals of this Order or other appeal or pending litigation to which the Committee is a party.

CC. Substantial Consummation and Effectiveness of the Plan

116. The Debtors are authorized to consummate the Plan at any time after the entry of this Order subject to satisfaction or waiver, in accordance with the terms of the Plan, of the conditions precedent to the occurrence of the Effective Date set forth in Article XIII of the Plan. The substantial consummation of the Plan, within the meaning of sections 1101(2) and 1127 of the Bankruptcy Code, shall be deemed to occur on the Effective Date. The Plan shall not become effective unless and until the conditions set forth in Article XIII.A of the Plan have been satisfied or waived in accordance with Article XIII.B of the Plan.

DD. Other Provisions

117. In accordance with Article VII.E of the Plan, on the Effective Date, each Debtor shall be deemed dissolved without further order of the Bankruptcy Court or action by the Debtors or the Liquidating Trustee; *provided*, that the Liquidating Trustee is authorized to file certificates of cancellation and any other documents with the secretary of state in which such dissolved Debtor was formed or in any other jurisdiction; *provided*, *further*, that, one or more of the Debtors may continue to exist after the Effective Date in accordance with the respective laws of the state under which any such Debtor was formed and pursuant to any such Debtor's certificates of incorporation, bylaws, articles of formation, operating agreements, and other organizational documents in effect prior to the Effective Date, to the extent necessary to comply with the Debtors' obligations under the Plan (including the payment of Allowed Professional Fee Claims), or otherwise until such date as reasonably determined by the Liquidating Trustee, subject in all respects to Article VII.C of the Plan.

118. The Professional Fee Escrow shall be held by a post-Effective Date Debtor or the Liquidating Trust, and the Liquidating Trustee shall be authorized to make distributions from the

Professional Fee Escrow to pay unpaid Professional Fee Claims in accordance with the Plan and further order of the Bankruptcy Court.

119. Plan Distributions to be made to holders of Unsecured Notes Claims shall be made to, or at the reasonable direction of, the Unsecured Notes Indenture Trustee, which shall transmit or direct the transmission of such distributions to holders of Unsecured Notes Claims, subject to the priority and charging lien rights of the Unsecured Notes Indenture Trustee. The Unsecured Notes Indenture Trustee, subject to the payment of its fees and expenses, shall transfer or direct the transfer of such distributions. Except to the extent inconsistent with Article IX.B of the Plan, the Unsecured Notes Indenture Trustee shall be entitled to recognize and deal for all purposes under the Plan with holders of the Unsecured Notes Claims to the extent consistent with the customary practices of DTC. Because the Liquidating Trust Units will not be eligible for distribution through DTC, the Unsecured Notes Indenture Trustee will work with the Debtors and the Liquidating Trustee at the Debtors' expense to distribute the Liquidating Trust Units in accordance with the terms of the Unsecured Notes Indentures. All distributions by the Liquidating Trustee on account of the Liquidating Trust Units shall be made to the Unsecured Notes Indenture Trustee until such time as the Liquidating Trust Units are distributed to holders of Unsecured Notes Claims on the records of the Liquidating Trustee. The Unsecured Notes Indenture Trustee is not responsible for distributions by the Liquidating Trustee.

120. After the Effective Date, and prior to making any distributions to Liquidating Trust Beneficiaries, the Liquidating Trust shall pay all reasonable and documented fees and expenses of the Unsecured Notes Indenture Trustee solely from the proceeds of Liquidating Trust Assets that would otherwise be available for distribution to Liquidating Trust Beneficiaries, and without the

requirement to file a fee application with the Bankruptcy Court or comply with any guidelines of the U.S. Trustee.

EE. The Texas Comptroller

121. Notwithstanding anything in the Plan to the contrary, the Plan shall not release or discharge any entity, other than the Debtors or the Liquidating Trust, as applicable, from any liability owed to the Texas Comptroller of Public Accounts for a tax debt, including interest and penalties on such tax. This provision is not admission by any party that such liability exists.

122. Notwithstanding anything in the Plan to the contrary, the Plan shall not limit the Texas Comptroller's setoff rights (if any) under 11 U.S.C. § 553. This provision is not admission by any party that any such setoff rights exist, and all such rights of any party, including, without limitation, the Debtors and their Estates, the Committee, the Liquidating Trust, the Liquidating Trustee, and the post-Effective Date Debtors, are expressly preserved with respect thereto.

123. If the Debtors or the Liquidating Trust, as applicable, fail to pay or treat the Allowed Tax Claim(s) (if any) of the Texas Comptroller in accordance with Article V.C. of the Plan, then the Texas Comptroller may seek any relief as may be appropriate in this Court.

FF. Provites Gear Systems Inc.

124. Notwithstanding any provision in the Plan, Confirmation Order or any plan related documents to the contrary, nothing in the Plan or Confirmation shall cut off, prejudice, or impair Provites Gear Systems Inc.'s set off and recoupment rights, if any.

GG. Effect of Conflict Between the Plan, the Plan Supplement, and this Order

125. The provisions of the Plan and this Order shall be construed in a manner consistent with each other so as to effect the purpose of each other. If there is any direct conflict between the terms of the Plan (including the Plan Supplement) and the terms of this Order, the terms of this Order shall govern and control. Except as set forth in the Plan or any such document, in the event

of any inconsistency among the Plan and any document or agreement filed in the Plan Supplement, the Plan shall control.

HH. Retention of Jurisdiction

126. Notwithstanding entry of this Order and the occurrence of the Effective Date, on and after the Effective Date, this Bankruptcy Court retains jurisdiction over the Chapter 11 Cases, all matters arising out of or related to the Chapter 11 Cases and the Plan, including the matters set forth in Article XIV of the Plan (except as otherwise provided in the Plan or Liquidating Trust Agreement).

II. Headings

127. Headings utilized herein are for convenience and reference only and shall not constitute a part of the Plan or this Order for any other purpose.

JJ. Final Order

128. This Order is a final order, shall take effect immediately and be enforceable immediately upon entry, and its provisions shall be self-executing and the period in which an appeal must be filed will commence upon entry of this Order. In the absence of any Person obtaining a stay pending appeal, the Debtors are authorized to consummate the Plan.

Thomas M. Horan

Dated: September 12th, 2025
Wilmington, Delaware

THOMAS M. HORAN
UNITED STATES BANKRUPTCY JUDGE