



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

CHRISTOPHE TURNER,

Plaintiff,

v.

LORDSTOWN MOTORS CORP.,

Defendant.

C.A. No. 2022-0468-LWW

**PUBLIC VERSION -  
DATED: JUNE 3, 2022**

**VERIFIED COMPLAINT TO COMPEL  
INSPECTION OF BOOKS AND RECORDS UNDER 8 DEL. C. § 220**

Plaintiff Christophe Turner (“Plaintiff”), by and through his undersigned counsel, respectfully submits this Verified Complaint to Compel Inspection of Books and Records of Lordstown Motors Corp. (“Lordstown” or the “Company”) under 8 *Del. C. § 220* (“Section 220”) (the “Action”). Plaintiff alleges as follows, upon knowledge as to himself and his own actions, and upon information and belief, including the investigation of undersigned counsel, as to all other matters.

**I. NATURE OF ACTION**

1. Plaintiff, a Lordstown stockholder, brings this Action to enforce his rights, pursuant to Section 220, to inspect the Company’s corporate books and records to, among other things, investigate potential breaches of fiduciary duty by the Company’s Board of Directors (the “Board”) and certain senior officers,

including improper and opportunistic insider trading. The corporate books and records sought in this Complaint are necessary and essential to the proper purposes articulated by Plaintiff.

2. Lordstown is an electric truck company that went public through a merger with a Special Purpose Acquisition Company (“SPAC”). Leading up to the SPAC transaction in October 2020, and in the months following, the Company’s management spun an elaborate narrative that its electric trucks were well on their way to commercial viability and that it had lined up tens of thousands of buyers for 2021.

3. As the market price of Company shares rose in light of these representations, multiple officers—including the Company’s Chief Financial Officer (“CFO”) and other personnel with first-hand knowledge of the status of the Company’s electric vehicle production efforts—divested enormous portions of their holdings (in some cases, nearly all of their current holdings) in the fourth quarter of 2020 and the first quarter of 2021.

4. Shortly thereafter, the market began to learn that (i) Lordstown had nothing near a commercially viable product (as one example, its flagship “Endurance” electric truck had recently caught on fire after a short test drive); (ii) the Company almost certainly would not sell an electric truck in 2021; and (iii) the

Company's "pre-orders" for the Endurance were not only non-binding, but some were fictitious and obtained through a questionable referral scheme.

5. Under investigation by the Securities and Exchange Commission ("SEC") and the United States Department of Justice ("DOJ"), the Company's Chief Executive Officer ("CEO") and CFO resigned, and the Company eventually informed stockholders that it was uncertain whether the Company would be able to continue as a going concern without raising additional capital. In other words, in only a few months during and after key insiders dumped their personal Lordstown holdings, the Company went from a purportedly leading electric vehicle manufacturer on track to sell thousands of electric trucks in 2021 to the edge of bankruptcy.

6. Plaintiff has made an inspection demand on the Company for basic materials regarding the insider sales (and the Company's insider trading policies), the Company's knowledge of its vehicle production issues and non-binding pre-orders, the SEC's investigation, and a research report released in March 2021 that revealed some of the misconduct described herein.

7. In response, the Company produced largely fluff. Approximately half of the Company's 1,466 page Section 220 production consists of self-serving documents Plaintiff did not even request (mainly signed "pre-orders"), and virtually

nothing in the production addresses the enormous insider sales before the Company collapsed. Nor do the materials more than superficially address what the Board knew about the Company's vehicle production issues, the Company's financial condition going into Q1 2021, or its misrepresentations regarding the non-binding pre-orders. The Company even refused a subsequent request to produce seemingly relevant documents expressly referenced in documents contained in the Company's initial Section 220 production.

8. In short, the Company's Section 220 production is insufficient to permit Plaintiff to reasonably investigate the misconduct at issue, and the Company has not satisfied its obligations under Section 220.

9. Through this action, Plaintiff seeks an order from this Court instructing the Company to produce the following set of core materials:

- The Company's formal Insider Trading Policy, which the Company has repeatedly declined to produce, but has simultaneously refused to confirm does not exist.

- Board Materials<sup>1</sup> concerning the insider trading set forth below.  
Again, the Company has refused to confirm that it has produced all such documents.
- Board Materials, including Informal Board Materials,<sup>2</sup> provided by any of the Inside Sellers (defined below) demonstrating their knowledge in and around the time of the trades.
- Board Materials showing the Board’s oversight over pre-orders for the Endurance electric truck, the anticipated schedule for commercial production of the Endurance, and the Company’s statements regarding the same. While from the Company’s current superficial production such oversight appears to have been virtually

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<sup>1</sup> “Board Materials,” while not explicitly defined in the Inspection Demand, include documents provided at, considered at, discussed at, or prepared or disseminated, in connection with, in anticipation of, or as a result of any meeting of the Company’s Board or any regular or specially created committee thereof, including, without limitation, all presentations, Board packages, recordings, agendas, summaries, memoranda, charts, transcripts, notes, minutes of meetings, drafts of minutes of meetings, exhibits distributed at meetings, summaries of meetings, and resolutions.

<sup>2</sup> The Inspection Demand defines “Informal Board Materials” to include “all electronic communications – including, without limitation, emails, text messages, or other digital communications – sent to, received by, or copied to any member of the Board.”

nonexistent, the Company has refused to confirm that it has produced all such materials and consistently disclaimed that Plaintiff may infer such materials do not exist.

- Board Materials showing projected earnings in advance of the Company's release of its Q4 2020 financial results. Board minutes produced by the Company suggest that the Company's officers and directors discussed Q4 2020 earnings as early as January 2021—in and around the time the insiders were selling—and the Company has refused to produce at least one “Financial Presentation” referenced in its scant Section 220 production.
- Board Materials, including Informal Board Materials, regarding the investigative report that informed the market that the Company had exaggerated the viability of the Endurance electric truck and the market demand for the vehicle.
- Materials regarding the SEC's investigation into the Company, including the date the Company first learned of the SEC's investigation.

## II. THE PARTIES

### A. Plaintiff

10. Plaintiff Christophe Turner is a current Lordstown stockholder and has continuously owned Company shares since at least August 2020.<sup>3</sup>

### B. The Defendant

11. Defendant Lordstown is an automotive company organized as a Delaware corporation with headquarters at 2300 Hallock Young Road, Lordstown, Ohio 44481.

12. The Company was founded for the purpose of developing and manufacturing light-duty electric trucks targeted for sale to fleet customers. The Company's flagship vehicle is the Endurance, a full-size electric pickup truck.

13. The Company entered the public markets through a merger with a SPAC, DiamondPeak Holdings Corporation ("DiamondPeak"), on October 23, 2020 (the "Merger").

14. Shares of Lordstown common stock trade on the NASDAQ stock exchange under the ticker "RIDE." The Company's predecessor, DiamondPeak, traded on the NASDAQ under the ticker symbol "DPHC."

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<sup>3</sup> Plaintiff initially purchased shares in the Company's predecessor, DiamondPeak Holdings Corporation, which shares were converted into Company shares shortly thereafter.

### **III. SUBSTANTIVE ALLEGATIONS**

#### **A. Lordstown Merges With Diamond Peak To Go Public**

15. On August 3, 2020, DiamondPeak announced that it had entered into a definitive agreement for a business combination with Lordstown with an implied \$1.6 billion pro forma equity value.

16. On October 22, 2020, DiamondPeak announced that, at a Special Meeting, DiamondPeak's stockholders voted to approve all stockholder proposals necessary to complete the Merger, which would close on October 23, 2020.

17. An article published on Freightwaves.com that same day, entitled "SPAC shareholders approve Lordstown Motors reverse merger," noted the unusual speed at which the deal was announced and approved:

The deal went from announcement on Aug. 3 to Thursday's vote in about 11 weeks. That is fast even by special purpose acquisition company (SPAC) standards. Due diligence by the shell company of its target and U.S. Securities and Exchange Commission review typically take four to six months.

18. Additionally, according to DiamondPeak's October 8, 2020 Schedule 14A, DiamondPeak's board of directors did not obtain a third-party valuation or fairness opinion in connection with their recommendation that stockholders approve the Merger.

19. On October 23, 2020, Lordstown and DiamondPeak announced the closing of the business combination and that beginning on October 26, 2020,



DiamondPeak would change its name to “Lordstown Motors Corp.” and its shares would begin trading on the NASDAQ under the new ticker symbol “RIDE.”

20. Upon closing of the Merger, each legacy share of DiamondPeak was converted into 55.8817 shares of Lordstown Series A common stock and options to purchase DiamondPeak common stock were converted into options to purchase Class A shares of Lordstown common stock.

**B. The Company Launches An Aggressive Marketing Campaign Based On Unsupportable Claims Regarding The Commercial Viability Of Its Electric Truck**

21. As early as the date of the Merger announcement, the Company, through its officers and directors, began spinning a story about the commercial viability of the Endurance pickup that simply was not true.

22. In an August 3, 2020 joint press release announcing the Merger, the Company’s CEO, Stephen Burns (“Burns”), stated that:

We are thrilled with the opportunity to build Lordstown Motors into a top-tier electric truck company that is highly differentiated from the competition. . . . Since its unveiling just over a month ago, the Endurance has been met with enthusiastic support, and to date, we have **secured \$1.4 billion of pre-orders.**

23. The August 3, 2020 joint press release further stated that “Lordstown unveiled the prototype of its flagship Endurance pickup truck on June 25, 2020, and to date, **has received more than 27,000 pre-orders for the vehicle representing over \$1.4 billion of potential revenue,** primarily from commercial fleet customers.”

24. The August 3, 2020 joint press release also included the following quote

by DiamondPeak's CEO, David Hamamoto:

Lordstown's top-tier management team, led by Steve Burns, has captured a clear lane of customers in the fleet market . . . and **positions the company to achieve its milestone of commencing production of the Endurance in the second half of 2021.**

25. Later in the day, Lordstown and DiamondPeak held an analyst and investor conference call to further promote the proposed business combination, during which call Mr. Hamamoto stated that the significant pre-orders for the Endurance demonstrated the robust demand for the truck:

Lordstown has attracted a **clear lane of customers in the commercial fleet segment of the market, as evidenced by its 1.4 billion dollars of pre-orders to-date**, with a product that has a significant total cost of ownership advantage over competitors in both traditional and electric trucks, supports sustainable clean energy, and has a simple design that provides a robust, safe and stable ride.

26. Burns similarly touted Lordstown's pre-orders as evidence of significant demand:

We officially unveiled the Endurance in late-June. The Endurance was met with great excitement and acclaim, and we now have **garnered significant demand with pre-orders totaling approximately 27,000 vehicles since inception, representing more than 1.4 billion dollars of potential revenue.** We hear from many fleets who cannot wait to get their hands on the Endurance. The electric vehicle market is expected to grow significantly the next decade, underlying our expectations of selling more than 100,000 vehicles per year by 2024.

27. Burns also stated on the call that Lordstown expected “full production” to commence “in early 2021 ahead of anticipated deliveries later that year.”

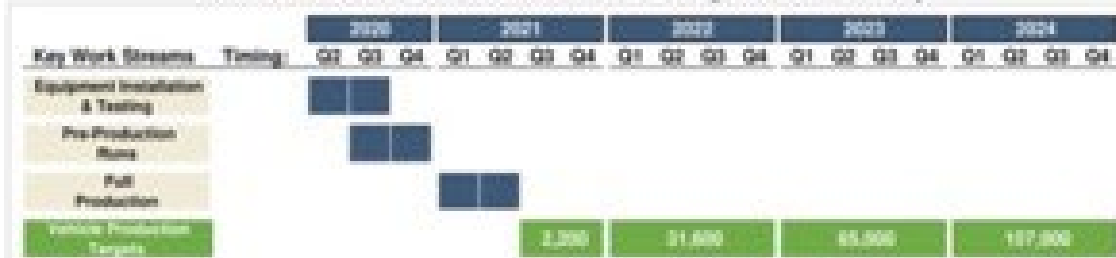
28. During the conference call, Lordstown and DiamondPeak presented slides which were later made available to all investors in DiamondPeak’s Form 8-K filing with the SEC. The slides highlighted the Company’s purported pre-order customers (including Clean Fuels Ohio, Duke Energy, FirstEnergy, Grid-X, ServePro, Summit Petroleum Inc., and Turner Mining Group), and repeated the claim that demand for the Endurance was “proven with pre-orders covering the first year of production.”

29. The slides further boasted that “existing pre-orders have been achieved with minimal marketing costs,” suggesting that the orders were largely driven by pent-up demand from the “Fleet Market,” and touted that the Company had received “Significant Pre-Orders” of about 27,000 pre-sales for the Endurance which represented “potential revenue sufficient to cover 2021 production and into 2022” with commercial production beginning in third quarter 2021.

# Clear Path to be First to Market



## Poised to Commence Production with a Clearly Defined Roadmap



### Pre-Production Milestones Achieved

- ✓ Working Prototype
- ✓ Substantially Complete with Virtual Crash Testing
- ✓ Significant Pre-Orders Received
- ✓ Key Component Supply Secured Through GM
- ✓ Secured Fully Operational Production Facility
- ✓ Finalizing Engineering and Certification Preparations

Lordstown has already received ~27k orders (average order size of ~300 trucks) before the first vehicle has been produced, representing potential revenue sufficient to cover 2021 production and into 2022

As a majority of parts and processes exist today, Lordstown expects to integrate these vs. designing from scratch

30. The August 3, 2020 slides included a “Financial Overview” which contained “Summary Financials” reiterating that the Company was set to sell an estimated 2,200 units in 2021 for \$118 million in revenue, 31,600 units in 2022 for \$1.69 billion in revenue, 65,000 units in 2023 for \$3.476 billion in revenue, and 107,000 units in 2024 for \$5.776 billion in revenue.

## Financial Overview



Summary Financials						Commentary
(\$ in millions)	2020E	2021E	2022E	2023E	2024E	
Total Units Sold	0	2,200	21,600	65,000	107,000	<ul style="list-style-type: none"> <li>No additional capital requirements expected between F1PE and going to market, achieving positive cash-flow</li> <li>Reflects market share of ~3.5% by 2024E<sup>1</sup></li> <li>Lordstown's first-mover advantage and innovative technology drives high margins</li> <li>Low capital intensity driven by existing Lordstown plant and use of off-the-shelf parts and technologies</li> <li>Current plan assumes no new products and there is significant upside with introduction of additional new identified products</li> </ul>
Revenue	\$ 0	\$ 118	\$ 1,690	\$ 3,426	\$ 5,775	
% Growth	-	-	1326.4 %	105.7 %	66.2 %	
Cost of Goods Sold	-	\$(203)	\$(1,551)	\$(2,877)	\$(4,751)	
Gross Profit	\$ 0	\$85	\$ 139	\$ 549	\$ 1,024	
% Margin	NM	NM	8.2 %	17.2 %	18.6 %	
EBITDA	\$(64)	\$(155)	\$ 10	\$ 298	\$ 600	
% Margin	NM	NM	0.6 %	8.6 %	10.4 %	
CapEx	\$(90)	\$(45)	\$(40)	\$(40)	\$(20)	
% Sales	NM	38.3 %	2.4 %	1.2 %	0.3 %	

<sup>1</sup> Assumes pickup truck market of ~370m units

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31. On August 24, 2020, DiamondPeak filed with the SEC its preliminary proxy statement on Schedule 14A, which likewise touted the Company's 27,000 pre-orders from fleet operators and repeated that the Company expected full production to begin in 2021, with 2,200 vehicles produced and sold that year.

32. On September 17, 2020, DiamondPeak and Lordstown hosted an analyst day with select Wall Street firms to provide an overview of Lordstown's business and discuss historical and projected financial performance and various other matters, including recent developments with Lordstown and with the electric vehicle industry generally.

33. During the presentation, the companies exhibited slides similar to those shown to investors in August and repeated the claim that demand for the Endurance was “proven with pre-orders covering the first year of production.” They also highlighted the Company’s purported pre-order customers and that “\$2.0bn+ of Existing Pre-Orders” were “achieved with minimal marketing costs,” suggesting that the purported pre-orders were driven by demand from the “Fleet Market.”

34. The analyst day slides likewise touted a “Working Prototype” and showed that Lordstown had now received “Significant Pre-Orders” (approximately 40,000) for the Endurance, representing “potential revenue sufficient to cover production into 2023.” The analyst day slides also set forth a timeline for commercial production beginning in third quarter 2021. The analyst day slides included a “Financial Overview” showing “Summary Financials” reiterating that the Company was on track to sell an estimated 2,200 units in 2021 for \$118 million in revenue, 31,600 units in 2022 for \$1.69 billion in revenue, 65,000 units in 2022 for \$3.476 billion in revenue, and 107,000 units in 2024 for \$5.776 billion in revenue.

35. On September 18, 2020, DiamondPeak supplemented its proxy statement in an SEC filing that included a September 1, 2020 article from The Detroit News (where CEO Burns again touted 40,000 pre-orders) and the slides from the investor presentations described above.

36. On October 8, 2020, DiamondPeak filed with the SEC its definitive proxy statement on Schedule DEFM14A, which stated that the Company had pre-orders for more than 38,000 vehicles, that the Company “achieved several key milestones” to “commencing commercial production and sales,” and that the Company anticipated commencing full production in 2021 “with a target of 2,200 vehicles produced and sold in the year.”

37. While the proxy stated that the “non-binding pre-orders that Lordstown has signed did not require customer deposits and *may* not be converted into binding orders or sales,” it failed to disclose that the Company had, in reality, secretly paid consultants for each pre-order received such that the consultants were highly motivated to, and did, accumulate largely fictitious “pre-orders” from “customers” lacking genuine intent and/or means to purchase the trucks. Thus, a large percentage of these “pre-orders” had zero chance of resulting in sales.

38. On October 23, 2020, the Merger between Lordstown and DiamondPeak closed.

39. The press release announcing the Merger stated, in part, that the Company’s “flagship Endurance pickup truck in June 2020, remains on pace to commence commercial production in the second half of 2021 . . . . We have a near

production-ready plant and approximately \$675 million in proceeds from this transaction, which is more than enough funding to get us through initial production.”

40. In an interview published by Youngstown Publishing Co. in The Business Journal on October 26, 2020 – the same day Lordstown began trading under the ticker symbol RIDE – CEO Burns highlighted that the Company’s beta vehicles were “nearly production ready” and would launch into full production by September 2021.

41. Burns also noted that the Company had received 40,000 pre-orders and that he “was surprised that the truck has attracted so much attention this soon,” attributing the success to “a pent-up demand.”

42. On November 12, 2020, Lordstown filed with the SEC its preliminary prospectus and registration statement on Form S-1, which was amended by the Company’s December 1, 2020 Form S-1/A (together with the Prospectus dated December 4, 2020, the “Registration Statement”), in which the Company registered to sell 5,066,667 shares of Class A common stock that were issuable upon the exercise of private placement warrants and (ii) 9,333,333 shares of Class A common stock that were issuable upon the exercise of certain public warrants, with expected proceeds to the Company of approximately \$182.1 million.



43. In the Registration Statement, Lordstown also registered for resale 143,666,024 shares of Class A common stock by certain “Selling Shareholders,” including the Company’s Chief Production Officer, Phil Richard Schmidt (72,778 shares), the Company’s CFO, Julio Rodriguez (43,380 shares), Mr. Hamamoto (4,229,135 shares and 1,826,396 warrants), and multiple other insiders.

44. Climb2Glory LLC, which was paid to gather pre-orders and later took a stake in Lordstown, registered 62,628 shares for resale, which were valued at more than \$1.4 million on December 4, 2020 when the Registration Statement became effective.

45. Lordstown received no proceeds from the sale of these shares, despite having registered them to permit the Selling Shareholders to sell them to the public.

46. In connection with the sales, the Registration Statement claimed that Lordstown, which had only “engaged in limited marketing activities,” now had pre-orders for more than 50,000 vehicles, primarily from fleet purchasers.

47. Lordstown also claimed to have built “an operational prototype” of the Endurance and that it was “targeting commencement of commercial production of the Endurance and initial sales in the second half of 2021.”

48. The Registration Statement also stated that the Company “achieved several key milestones” to “commencing commercial production and sales,” and that

the Company anticipated commencing full production in 2021 “with a target of 2,200 vehicles produced and sold in the year.”

49. On November 16, 2020, Lordstown issued a press release providing a business update. In this release, Lordstown announced that it “Remains on Track to Begin Production of the Lordstown Endurance in September 2021.”

50. The Company also detailed several “[n]otable developments,” including that “Lordstown Motors has received approximately 50,000 non-binding production reservations from commercial fleets for its Lordstown all-electric pickup truck, with an average order size of approximately 500 vehicles per fleet.”

51. The Company further boasted that “[t]his figure does not capture interest the company has received from organizations that are not in position to be able to place pre-orders, such as federal, state and municipal governments, and military fleets.”

52. The Company again stated that “[d]eliveries of the Lordstown Endurance are expected to begin in September 2021, with full production ramping up throughout 2022.”

53. On November 16, 2020, Reuters published a report entitled “Lordstown Motors says electric pickup launch ‘on track’ for fall 2021” in connection with a visit by then-President Donald Trump to inspect an Endurance model on the South Lawn

of the White House. Reuters quoted the Company as stating that “it remained ‘on track’ to begin building electric pickup trucks next September at a former General Motors Co. plant in northeastern Ohio.”

54. In an interview on CNBC’s Mad Money the following day, November 17, 2020, CEO Burns declared “we sell to commercial fleets. That’s our first customer. And like I said, we’ve already got 50,000 pre-orders.”

55. Burns went on to say that most of the orders were signed by the CEOs of large firms—so “very serious orders.”

56. On December 21, 2020, Lordstown announced that it received 80,000 pre-orders for the Endurance and that the Company remained on track to begin production of the Endurance in September 2021. In a “tweet” promoting the news, the Company declared, “we have hit a new milestone.”

57. Internal management materials at the time, however, suggested that production in 2021—much less September 2021—was a long shot at best.

58. For example, a report dated for the week ending December 11, 2020 included three red indicators, four orange indicators, and only one green indicator relating to “Purchasing and Supplier Development,” and stated that:

- The Company had only just begun “supplier capability assessments;”
- The “[c]ompressed timeline [was] resulting in vendors to no-quote;”

- “[First-stage model] Beta to PV [second-stage model] lead-time maybe too tight for some vendors;”
- The powertrain “[p]roduction equipment/process timeline [was] concerning;”
- “Design changes continue. Time and \$ . . .;” and
- “Infotainment BOM and total cost still not clear but expected to be \$\$\$\$.”

59. Nonetheless, in January, management continued to publicly promote its unfeasible production timeline.

60. On January 11, 2021, Lordstown issued a press release announcing that it “is now building the first Beta Endurance vehicles and is on track for start of production in September of this year,” and had “[s]urpasse[d] 100,000 pre-orders for the Lordstown Endurance.”

61. In this release, Burns stated: “Receiving 100,000 pre-orders from commercial fleets for a truck like the Endurance is unprecedented in automotive history. Adding in the interest we have from federal, state, municipal and military fleets on top of that, I think you can see why we feel that we are about to revolutionize the pickup truck industry.”

62. Two days later, on January 13, 2021, an Endurance test model exploded into flames during a road test, requiring emergency personnel to respond, an incident that was not disclosed to investors. Nonetheless, the Company’s full-court press in the media continued.

63. On January 28, 2021, Lordstown issued a press release providing business updates, and stating that the Company was “Prepar[ing] Ohio Factory to Begin Building Betas Next Month.”

64. Burns stated that “[w]e are hard at work in the factory preparing to begin Beta builds in the coming weeks,” and that “[w]ith this step on the horizon, we remain on track to meet our September start-of-production timeline while continuing to see indicators of strong demand for an all-wheel drive, full-size electric pickup truck with 250 miles of range from commercial, government and military fleets.”

65. On February 17, 2021, Lordstown issued a press release announcing that it had entered a race model of the Endurance pickup in the 2021 SCORE International San Felipe 250, which is part of the SCORE World Desert Championship race series.

66. In the February 17, 2021 press release, the Company again claimed that it was “now building the first Beta Endurance vehicles and is on track for start of production in September of this year.”

67. Internally, however, the “Issues/Concerns” continued to build, rendering calendar year 2021 production a pipedream. These issues and concerns included:

- “Delayed HV Battery availability for testing,” resulting in “development timing delay[];”
- “Part delays” as to “leaf springs, coil springs, stabilizer bars;”
- “In-house frame . . . required immediate design freeze - Frame insourcing plan needed;”
- “Durability & integration timing behind due to lack of Alpha 2 availability;”
- “Virtual GA build held- many issues to be resolved before actual build;”
- “Sample A motors delayed after first 9 motor sets—COVID outbreak delay of +1 week and diversions to BAJA and Military vehicles;”
- “JVIS display timing continues to slip, in spite of executive elevation to JVIS president;”

- “[Parts] GMW3097 and 3172 are not available for our purchase = elevated to GM;”
- “CGW software is not ready . . . team working 12+hrs/day;”
- “Missing parts for initial beta build through end of April: speakers, camera, potentially the dual display;” and
- “Timing delay for Dual Display critical for development—due to impact of silicon shortages and JVIS project management weakness.”

**C. Company Executives Dumped Their Stock As The Problems Built Behind The Scenes**

68. Beginning in December 2020, senior personnel began to unwind their holdings in Lordstown, despite the purportedly bright future they had painted for investors.

69. On December 11, 2020, after telling the market that the Company had “50,000 pre-orders” from commercial fleet companies, Mr. Schmidt sold 51,900 shares, 72% of his holdings at the time.<sup>4</sup>

70. On December 14, 15, and 16, 2020, John Vo, VP of Propulsion, sold 98,300 shares, roughly 50% of his holdings at the time.

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<sup>4</sup> The information and calculations set forth herein reflect the Inside Sellers’ (as defined below) holdings of Lordstown common stock, excluding vested and unvested options.

71. After informing the market that the Company’s purported “pre-orders” had “[s]urpasse[d] 100,000”—and after the Endurance’s undisclosed road test resulted in a massive battery fire—the insiders began selling again.

72. On February 2, 2021, Mr. Schmidt exercised options for 150,000 shares, and then sold 161,512 shares—95% of his then-current holdings—leaving him with only 9,366 shares.

73. The same day, Mr. Vo sold again, reducing his holdings by 99% by selling 100,000 of his 100,717 shares held at the time.

74. The next day, February 3, 2020, Mr. Schmidt sold again, exercising options for 50,000 shares and immediately selling those shares on the open market.

75. On February 4, 2021, other Company insiders entered the fray.

76. Darren Post, VP of Engineering, exercised options for 10,000 shares, which he immediately sold in the open market, leaving him with no remaining holdings in the Company.

77. Shane Brown, Chief Production Officer, exercised options for 18,608 shares, and immediately sold those shares in addition to 400 previously held shares, leaving him with no holdings in the Company.

78. CFO Rodriguez likewise disposed of 9,300 shares—22% of his holdings.



79. Together, these insiders are referred to as the “Inside Sellers.” They collectively sold more than 500,000 shares of Lordstown stock in the above-listed transactions—receiving approximately \$11.9 million in proceeds—while they knew not only that the Company’s pre-orders were overstated, but that the Company had little chance of producing a working product by 2021.

80. Not surprisingly, the trades would prove to be perfectly timed: in the weeks and months following, the Company’s optimistic public spin would give way to a near-complete collapse.

**D. The Company’s False Narrative Begins To Unravel**

81. On February 17, 2021—the same day the Company touted its purported race truck—the SEC sent Lordstown a nonpublic request for the voluntary production of documents and information, including relating to the Merger and the pre-orders of the Company’s Endurance pickup truck.

82. Lordstown did not timely disclose the SEC’s inquiry. Rather, the Company’s executives continued to hype the market on the purported demand for Endurance and the Company’s expedited production schedule.

83. During a February 23, 2021 interview with Yahoo! Finance Live, Burns stated: “Our initial foray is into fleets, and we have pre-sold 100,000 of these vehicles to various fleets across America – really a big appetite.”

84. This article further provided that “Burns said production for the Endurance will begin in September” which “will make the Endurance the first all electric pickup truck on the market.”

85. On March 12, 2021, however, a report by Hindenburg Research exposed the Company’s fabricated and exaggerated commercial viability on multiple counts.

86. The report was entitled “The Lordstown Motors Mirage: Fake Orders, Undisclosed Production Hurdles, And A Prototype Inferno” (the “Hindenburg Report”), and summarized its findings, in part, as follows:

- “Lordstown is an electric vehicle SPAC with no revenue and no sellable product, which we believe has misled investors on both its demand and production capabilities.”
- “The company has consistently pointed to its book of 100,000 pre-orders as proof of deep demand for its proposed EV truck. Our conversations with former employees, business partners and an extensive document review show that the company’s orders are largely fictitious and used as a prop to raise capital and confer legitimacy.”
- “For example, Lordstown recently announced a 14,000-truck deal from E Squared Energy, supposedly representing \$735 million in sales. E Squared

- is based out of a small residential apartment in Texas that doesn't operate a vehicle fleet.”
- “Another 1,000-truck, \$52.5 million order comes from a 2-person startup that operates out of a Regus virtual office with a mailing address at a UPS Store. We spoke with the owner who acknowledged it won't actually order any vehicles, instead describing the ‘pre-order’ as a mere marketing relationship.”
  - “Yet another firm that is supposedly set to buy 500 trucks from Lordstown told us: ‘...The letters of interest are non-binding. It's not like you'd obligate yourself to a pre-order or that you would contractually bind yourself to buying this truck. That's not what they are.’”
  - “Lordstown CEO Steve Burns has called these arrangements ‘very serious orders.’ The actual customer agreements, which we present for the first time today, require no deposit and are non-binding. Many of the supposed customers do not operate fleets nor do many have the means to actually make the stated purchases.”
  - “Former employees and litigation records reveal that in order to raise capital and confer credibility, Steve Burns began paying consultants for

every truck pre-order as early as 2016 while he was serving as CEO at Workhorse.”

- “Later, heading into Lordstown’s eventual go-public transaction in 2020, a small consulting group called Climb2Glory was paid to generate pre-orders. Climb2Glory openly described the purpose behind the pre-order game: ‘the faster the pre-orders arrived, the greater investors’ confidence would be in the company and the faster funds would flow in.’”
- “One company rep that committed to buy 40 trucks through Climb2Glory told us: ‘. . . I’m not committed to anything, not to buying a single vehicle. I committed to consider buying vehicles. I’d have a lot of questions before I commit to anything.’”
- “Others had similar remarks. ‘The commitment of that size (15) is totally impossible,’ a representative for the City of Ravenna told us about its pre-order. We document numerous other ‘customers’ that disclaim any intent to actually purchase vehicles.”
- “Multiple former senior employees who have worked with Lordstown Founder & CEO Steve Burns openly described him as a ‘con man,’ or a ‘PT Barnum’ figure. One senior employee told us that, while working with

Steve for a couple of years, they saw more questionable and unethical business practices than they had seen in their entire career.”

- “Despite being allowed to resign from Workhorse, former senior employees described how Burns was pushed out of his old company by the board for wasting R&D money and missing promised deadlines. He then launched Lordstown months later.”
- “Despite claims that Lordstown will be producing vehicles by September, a former employee explained how the company is experiencing delays and making ‘drastic’ design modifications, putting them an estimated 3-4 years away from production. For example, in mid-January the company ‘totally switched from a plastic exterior to aluminum,’ we were told.”
- “Despite claims that battery packs would be manufactured in-house, we were told that the equipment is months away from arriving, let alone being put into a production environment. In the meantime, we were told that battery packs are being put together by hand.”
- “Former employees also shared that the company has completed none of its needed testing or validation, including cold weather testing, durability testing, and Federal Motor Vehicle Safety Standards (FMVSS) testing required by the NHTSA.”

- “In January 2021, Lordstown’s first street road test resulted in the vehicle bursting into flames 10 minutes into the test drive. We share copies of the 911 call and a police report we received through FOIA requests.”
- “Lordstown only went public in October 2020, but in that brief time, executives and directors have unloaded ~\$28 million in stock. We think it bodes poorly when executives unload stock in a company with no actual product that claims to be on the cusp of mass-production.”

87. The Hindenburg Report revealed that “Lordstown’s order book consists of fake or entirely non-binding orders, from customers that generally do not even have fleets of vehicles,” and that in some instances “CEO Steve Burns sought to book orders, regardless of quality, purely as a tool to raise capital” and even “paid for customers to book valueless, non-binding pre-orders.”

88. The Hindenburg Report stated that Lordstown “hired small consulting group Climb2Glory, which was to receive \$50 per truck pre-order” and that Climb2Glory “boast[ed] on its own website how it was key in helping Lordstown generate pre-orders faster in order to use the orders as a capital raising tool.”

89. The Hindenburg Report quotes Climb2Glory’s managing partner, Pat Mangin, as stating that Climb2Glory initially received “contract dollars,” but later

took a “significant amount of shares in the deal” through the Merger, which it cashed in through the registered offering discussed above.

90. The Hindenburg Report quoted a former sales representative for the Lordstown Endurance, who stated that “I think the way it’s being communicated especially to the media is probably not accurate” and that “[t]here’s no such thing as a preorder. What they’re doing is getting letters of intent and there is no commitment whatsoever. I could commit to 100,000 pre-orders or reservations but I have no commitment, no financial commitment, no nothing. . . I hope they can get all 100,000 of them but I think that’s extraordinarily unlikely.”

91. The Hindenburg Report further revealed that as executives were promoting a near-production-ready vehicle, the first road test resulted in an explosion within “about ten minutes.” The associated police report stated that the truck was “fully engulfed” in flames upon the officer’s arrival.

92. The Hindenburg Report likewise revealed that the Company, even as of mid-January, was “still making extensive modifications” including that it “switched from a plastic exterior to aluminum” to reduce weight. The former employee called this change “drastic” and suggested that this would “essentially restart any testing and validation process.”

93. This same former employee also explained that Lordstown had not completed any of its required testing and validation, including: “[c]old weather testing, which typically takes about 3 months and had not begun;” “[a] ‘million mile’ test or similar durability test done by major automakers,” which typically “requires 6 months of 24/7 testing;” or “[m]ajor testing required for the Federal Motor Vehicle Safety Standards (FMVSS) by the NHTSA.”

94. The Hindenburg Report also quoted a union leader, who worked for decades at a GM plant located in Lordstown, Ohio, as stating, “I know they’re way behind . . . . They can’t fire up the old machines. Some of them they can. But everything else has to be reprogrammed and some of it has to be rebuilt.” The person continued by stating that “[t]hey showed some stuff on TV in the body shop with the robots that do the welding. But if you never worked in a body shop you didn’t realize they weren’t working. They were moving but not welding. There were no sparks.”

95. In response to the revelations in the Hindenburg Report, Lordstown’s stock price fell by approximately 16.5% in a single day, closing at \$14.78 on March 12, 2021, down from \$17.71 the previous day.

**E. The Fallout Amplifies As Investors Learn More About Problems At The Company**

96. Following the Hindenburg Report and a month after the SEC launched its investigation, on March 17, 2021, the Company held an earnings call during



which CEO Burns first disclosed that Lordstown had received the SEC inquiry and was cooperating with regulators.

97. The Company also stated that the Board had formed a special committee to “review these matters” (the “Special Committee”). The Special Committee declined to further comment until it “has finished its review.”

98. Nonetheless, in an interview with CNBC on March 18, 2021, before the opening of trading, Burns attempted to defend his conduct over the preceding months, claiming that the Company had “never said we had orders,” and admitting that the Company “[didn’t] have a product yet” and “[b]y definition we can’t have orders.”

99. Burns stated that the previously hyped “preorders did exactly what they were supposed to do. Gauge interest. Nobody knew if fleets would buy an electric pickup truck. It was completely unknown science, no data around it.” He further claimed that “I don’t think anybody thought we had actual orders. That’s just not the nature of this business.”

100. On this news, the stock dropped 13% to \$13.01 per share, thereby erasing \$367 million in stockholder equity.

101. On March 24, 2021, Hindenburg Research posted pictures of the Endurance prototype breaking down during a commercial shoot about three months

prior to the Merger (around July 2020), during which time the Company had been claiming it would begin delivering its pickup trucks in early 2021:



102. On May 14, 2021, the Company announced that it had to delay the announcement of its first quarter 2021 financial results, previously scheduled to be released on May 17, 2021.

103. On May 24, 2021, after the market closed, the Company revealed Q1 2021 earnings, stating that it had lost \$125.2 million, or 72 cents per share, in the first quarter—nearly three times the loss expected by analysts—compared with a loss of \$11.9 million, or 16 cents a share, in Q1 2020.

104. Moreover, the Company revealed to investors that production of its Endurance pickup “would at best be 50% of our prior expectations,” and that it required “additional capital to fund our business plans.”

105. The Company disclosed that, without additional capital, it would finish the year with between \$50 million and \$75 million on hand, down from the \$200 million forecast the Company provided in March.

106. On June 4, 2021, although the Company had disclosed its Q1 financial results, it had not yet filed its Form 10-Q with the SEC and had received a notice from the Listing Qualifications Department of The Nasdaq Stock Market LLC stating that the Company was not in compliance with Nasdaq Listing Rule 5250(c)(1).

107. On June 8, 2021, the Company belatedly filed its Form 10-Q, disclosing that it lacked sufficient cash to start full commercial production and stating for the first time that the Company had “substantial doubts” about whether it would continue as a going concern.

108. The Company stated that it “believes that its current level of cash and cash equivalents are not sufficient to fund commercial scale production and the launch of sale of such vehicles. These conditions raise substantial doubt regarding

our ability to continue as a going concern for a period of at least one year from the date of issuance of these unaudited condensed consolidated financial statements.”

109. On June 14, 2021, the Company announced via press release and a Form 8-K filed with the SEC that, “pursuant to mutual agreements with the Company, Steve Burns resigned as the Chief Executive Officer of the Company and from the Company’s Board of Directors” and “Julio Rodriguez resigned as Chief Financial Officer of the Company.” The Company did not provide a reason for the resignations, but thanked Burns “for his passion and commitment to the company.”

110. Pursuant to a Separation and Release Agreement, Burns would receive “continued base salary payments for a period of 18 months in the aggregate amount of \$750,000,” and Rodriguez would receive “continued base salary payments for a period of six months in the aggregate amount of \$200,000 and continued vesting of certain outstanding stock options with an exercise price per share equal to \$1.79 that are scheduled to vest in November 2021.”

111. Also on June 14, 2021, the Special Committee, aided by Sullivan & Cromwell, announced its findings regarding the Hindenburg Report.

112. With respect to the Company’s claims that production of the Endurance would begin in September 2021, the Special Committee found that “the projected September 2021 start of production remains achievable with the expectation of

delivery to customers in the first quarter of 2022,” despite the Company’s substantial doubt regarding its ability to continue as a going concern.

113. With respect to the Company’s purported “pre-orders,” however, the Special Committee found “issues regarding the accuracy of certain statements regarding the Company’s pre-orders.”

114. Specifically, it noted that “Lordstown Motors has stated on several occasions that its pre-orders were from, or ‘primarily’ from commercial fleets,” when in fact they were “obtained from (i) fleet management companies or other end users that indicated interest in purchasing Endurance trucks, similar to commercial fleets, and (ii) so-called ‘influencers’ or other potential strategic partners that committed to attempt to secure pre-orders from other entities, but did not intend to purchase Endurance trucks directly.”

115. Further, the Special Committee acknowledged that an “entity that provided a large number of pre-orders does not appear to have the resources to complete large purchases of trucks. Other entities provided commitments that appear too vague or infirm to be appropriately included in the total number of pre-orders disclosed.”

116. Notwithstanding the above, the Special Committee concluded that the Company had “repeatedly disclosed that its pre-orders are non-binding, and it has highlighted the risk that pre-orders may not be converted to actual orders.”

117. Yet, by June 15, 2021—the very next day—the Company’s executives were back at it, convincing the market that the Company’s pre-orders were in fact binding.

118. During an Automotive Press Association online media event, Schmidt, by then the Company’s President, described the projected demand as enough to support factory production of the Endurance in 2021 and 2022, stating that “[t]hey are basically binding orders” and “[t]hey are pretty solid.”

119. On June 17, 2021, the Company again had to walk back its executives’ statements.

120. The Company stated in a press release and Form 8-K: “[t]o clarify recent remarks by company executives at the Automotive Press Association online media event on June 15, although these vehicle purchase agreements provide us with a significant indicator of demand for the Endurance, **these agreements do not represent binding purchase orders or other firm purchase commitments.** As previously disclosed . . . we have engaged in limited marketing activities and we

have no binding purchase orders or commitments from customers.” (Emphasis added.)

121. On the production front, the Company also continued to hype its September 2021 production date, despite a widely held view among analysts that the deadline was unachievable.

122. In a June 23, 2021 interview with CNBC, Ian Upton, Lordstown director of production control, stated that “[t]here is a lot to be done, no question,” “[b]ut I think [the motor line] will be ready. We will ramp slow this fourth quarter.”

123. The same day, an analyst at RBC Capital who recently toured the Company’s Lordstown factory reported to CNBC that it was “largely empty.”

124. On July 2, 2021, the Wall Street Journal reported that the DOJ had launched a criminal probe into the Company, which was being handled by the U.S. Attorney’s Office for the Southern District of New York.

125. The Company confirmed the criminal investigation on July 15, 2021, stating in a post-effective amendment to its prior Registration Statement that “we have been informed by the U.S. Attorney’s Office for the Southern District of New York that it is investigating” matters relating to “the Merger between DiamondPeak and Legacy Lordstown and pre-orders of vehicles.”

126. On August 11, 2021, the Company announced Q2 financial results, again missing earnings expectations.

127. The next day, August 12, 2021, in a Form 10-Q, the Company again issued a warning to investors about its prospects of producing a commercially viable product.

128. The filing stated that “[t]he Company believes that its current level of cash and cash equivalents are not sufficient to fund commercial scale production and the launch of sale of such vehicles,” and that “[t]hese conditions raise substantial doubt regarding our ability to continue as a going concern for a period of at least one year from the date of issuance of these unaudited condensed consolidated financial statements.”

#### **IV. PLAINTIFF SERVED A PROPER DEMAND FOR INSPECTION**

129. On April 29, 2021, Plaintiff (along with Lordstown shareholder Kelly McLear) made a written demand on Lordstown (the “Inspection Demand”) to inspect and copy certain books and records of the Company pursuant to Section 220. *See Ex. A.*

130. On May 12, 2021, the Company responded to the Inspection Demand asserting typical objections, including assertions that Plaintiff’s purposes were improper, the requests were overbroad, the Inspection Demand failed to show a credible basis to suspect wrongdoing, and that Plaintiff had not shown entitlement



to documents beyond Board-level materials. *See* Ex. B. Nonetheless, the Company stated that it “anticipates that it will make available for inspection an appropriate, non-burdensome set of non-privileged books and records, without waiving any objections, rights, or defenses.”

131. The Inspection Demand included the following books and records demands, to which the Company provided specific responses by letter dated June 7, 2021 (*see* Ex. C) – and in response to which the Company made inadequate productions – as follows:

	<b><u>Plaintiff’s Request</u></b>	<b><u>Company’s Response</u></b>	<b><u>Scope of Documents Produced</u></b>
1.	The Company’s Insider Trading Policy and any other written policies and procedures concerning sales of Lordstown stock by the Company’s directors, officers, and/or employees.	Company will “make available non-privileged board level materials (e.g., board minutes, written consents, board packets, and written presentations provided to the Board) to the extent they relate to these requests. The Company also will undertake a non-burdensome review of other potentially relevant records related to these requests.”	No responsive documents produced.
2.	All Rule 10b5-1 trading plans for the Inside Sellers.	Same.	No responsive documents produced.

	<b><u>Plaintiff's Request</u></b>	<b><u>Company's Response</u></b>	<b><u>Scope of Documents Produced</u></b>
3.	All reports, presentations, and other written materials provided to the Board (or any Committee thereof) concerning trading (or anticipated trading) of Lordstown stock by the Inside Sellers.	Same.	No responsive documents produced. <sup>5</sup>
4.	Minutes of all meetings of the Board (or any Committee thereof) during which trading (or anticipated trading) of Lordstown stock by the Inside Sellers was discussed and any attachments.	Same.	No responsive documents produced.

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<sup>5</sup> Following the Company's initial response to Plaintiff's requests for documents relating to insider sales, the Company referred Plaintiff to the Company's public report of its Special Committee's findings. By the Company's own admission, however, the public report was only a "summary of its findings," does not provide the documents the Company additionally agreed to provide, and, in any event, does not satisfy the Company's obligations under Section 220.

	<b><u>Plaintiff's Request</u></b>	<b><u>Company's Response</u></b>	<b><u>Scope of Documents Produced</u></b>
5.	Job descriptions for each of the Inside Sellers and any other written materials describing their respective roles and responsibilities with the Company.	Same.	No responsive documents produced.
6.	All reports, presentations, or other written materials that any of the Inside Sellers provided to, or discussed with, the Board (or any Committee thereof).	Same.	No responsive documents identified. <sup>6</sup>
7.	Minutes of all meetings of the Board (or any Committee thereof) that were attended by any of the Inside Sellers, whether in person or otherwise.	Same.	Limited by, and potentially beyond, <sup>7</sup> the Company's response.

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<sup>6</sup> While the Company produced a handful of presentations prepared by Inside Sellers, it is unclear which of these went to the Board (or any of its Committees).

<sup>7</sup> The agenda for the June 23, 2021 Board meeting indicates at least one of the Inside Sellers (Schmidt) was slated to attend, but the Company did not produce minutes of that meeting.

	<b><u>Plaintiff's Request</u></b>	<b><u>Company's Response</u></b>	<b><u>Scope of Documents Produced</u></b>
8.	All financial reports and other written materials discussing projected earnings provided to the Board (or any Committee thereof).	Company will “make available non-privileged board level materials (e.g., board minutes, written consents, board packets, and written presentations provided to the Board) to the extent they relate to these requests. The Company objects to providing drafts of earnings releases or components thereof.”	No responsive documents produced.
9.	Minutes of all meetings of the Board (or any Committee thereof) during which financial reports or projected earnings were discussed.	Same.	Limited by, and potentially beyond, <sup>8</sup> the Company's response.

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<sup>8</sup> The Section 220 production suggests that – from December 2020 until June 23, 2021 – the Board met on at least eleven (11) occasions. The production includes minutes from nine (9) Board meetings.

	<b><u>Plaintiff's Request</u></b>	<b><u>Company's Response</u></b>	<b><u>Scope of Documents Produced</u></b>
10.	All drafts of the March 17, 2021 earnings release or any component thereof (including the press release, the Consolidated Statement of Operations, and/or the Consolidated Balance Sheet) that were prepared on or before February 4, 2021.	Same.	No responsive documents produced.
11.	All reports, presentations, and other written materials provided to the Board (or any Committee thereof) concerning the March 12, 2021 report by Hindenburg Research and/or the investigation conducted by Hindenburg Research.	Company will “make available non-privileged board level materials (e.g., board minutes, written consents, board packets, and written presentations provided to the Board) to the extent [they] relate to these requests.”	Limited by, and potentially beyond, <sup>9</sup> the Company's response.

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<sup>9</sup> The Company did not organize its production into board “packets” and has even refused to produce materials identified in Board minutes and agendas as “[a]ttachments.” Other than the Hindenburg Report itself, referenced attachments to Board minutes and agendas were not identifiable elsewhere within the Section 220 production.

	<b><u>Plaintiff’s Request</u></b>	<b><u>Company’s Response</u></b>	<b><u>Scope of Documents Produced</u></b>
12.	Minutes of all meetings of the Board (or any Committee thereof) during which the March 12, 2021 report by Hindenburg Research and/or the investigation conducted by Hindenburg Research were discussed.	Same.	Limited by, and potentially beyond, the Company’s response.
13.	All Officer Materials <sup>10</sup> or Informal Board Materials concerning the March 12, 2021 report by Hindenburg Research and/or the investigation conducted by Hindenburg Research.	Same.	No responsive documents produced.

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<sup>10</sup> The Inspection Demand defines Officer Materials to include “all documents and communications, regardless of whether they were ever provided to any member of the Board, provided to, considered by, discussed by, created by, and/or sent to or by any executive officer of the Company—including via emails, text messages, or other digital communications methods such as instant messaging platforms.”

	<b><u>Plaintiff's Request</u></b>	<b><u>Company's Response</u></b>	<b><u>Scope of Documents Produced</u></b>
14.	All Officer Materials or Informal Board Materials concerning the trades by the Inside Sellers discussed herein.	Company will “make available non-privileged board level materials (e.g., board minutes, written consents, board packets, and written presentations provided to the Board) to the extent they relate to these requests. The Company also will undertake a non-burdensome review of other potentially relevant records related to these requests.”	No responsive documents produced.
15.	All reports, presentations, or other written materials provided to the Board concerning pre-orders for the Endurance.	Company will “make available non-privileged board level materials (e.g., board minutes, written consents, board packets, and written presentations provided to the Board) to the extent they relate to these requests.”	Limited by, and potentially beyond, the Company's response.
16.	Minutes of all meetings of the Board (or any Committee thereof) during which pre-orders for the Endurance were discussed.	Same.	Limited by, and potentially beyond, the Company's response.

	<b><u>Plaintiff's Request</u></b>	<b><u>Company's Response</u></b>	<b><u>Scope of Documents Produced</u></b>
17.	All reports, presentations, or other written materials provided to the Board concerning the anticipated schedule for commercial production of the Endurance and/or any potential delays in such production.	Same.	Limited by, and potentially beyond, the Company's response.
18.	Minutes of all meetings of the Board (or any Committee thereof) during which the anticipated schedule for commercial production of the Endurance and/or any potential delays in such production were discussed.	Same.	Limited by, and potentially beyond, the Company's response.
19.	Documents sufficient to show the date of the first communication between the Company and the SEC regarding the merger with DiamondPeak and/or any other topics discussed herein.	Same.	February 22, 2021 Board minutes only.



132. On September 10, 2021, in light of the intervening Special Committee investigation into the Hindenburg Report, Plaintiff made two supplemental inspection demands. *See* Ex. D.

133. On October 25, 2021, the Company formally responded to the supplemental requests. *See* Ex. E.

134. The following chart outlines the two supplemental requests, the Company’s responses, and the inadequate scope of the Company’s production:

	<b><u>Plaintiff’s Request</u></b>	<b><u>Company’s Response</u></b>	<b><u>Scope of Documents Produced</u></b>
20.	Board minutes, memorandums or other materials relating to the Special Committee Investigation Of Hindenburg Research Report released on June 14, 2021 (the “Special Committee Report”).	The Company will “produce relevant, non-privileged board-level materials to the extent they relate to these requests.”	Limited by, and likely beyond, <sup>11</sup> the Company’s response.
21.	All materials reviewed by the Special Committee in connection with the Special Committee Report.	Same.	Limited by, and likely beyond, the Company’s response.

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<sup>11</sup> The Company produced two documents, totaling six pages, in response to these requests – a three page set of minutes for a June 13, 2021 Board meeting and a three page agenda for a June 23, 2021 Board meeting. The Company did not produce an agenda for the June 13, 2021 meeting, minutes for the June 23, 2021  
*(cont’d)*

135. The Inspection Demand sets forth Plaintiff's proper purposes under Delaware law to: (i) investigate potential breaches of fiduciary duties by Lordstown officers and directors, including the Inside Sellers, in connection with the Company's public misstatements and omissions and the inside sales; (ii) determine whether to institute litigation, make a demand on the Board, or take other corrective action against the Inside Sellers, the Board, or any other persons in connection therewith; (iii) communicate with shareholders concerning governance of the Company; and (iv) evaluate the independence of the members of the Board. Particularly as narrowed herein, the Inspection Demand is appropriately targeted to seek the information necessary to fulfill these proper purposes.

136. Further, as described herein and in the Inspection Demand, and as will be proven at trial, there is a credible basis to infer possible wrongdoing warranting further investigation. Specifically, Plaintiff has well-founded concerns that the Company's officers and directors breached their fiduciary duties by, *inter alia*, falsely inflating the Company's operations and prospects in advance of the Merger, overstating (or falsely stating) the pre-orders received by the Company and the

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Board meeting, nor any documents provided to the Board in conjunction with these meetings.

commercial viability of its electric trucks, at least in the short term, and selling shares with knowledge of the Company's mounting production problems and inability to produce a working product.

137. The Inspection Demand was accompanied by a declaration and documents evidencing Plaintiff's beneficial ownership of Lordstown stock and a Power of Attorney signed by Plaintiff.

138. As such, Plaintiff has met his burden under well-settled Delaware law, and the Court should find that Plaintiff is entitled to inspect Lordstown's books and records, particularly the enumerated subset of documents requested in the Inspection Demand set forth in Section VI below.

#### **V. THE COMPANY'S PRODUCTION TO DATE**

139. Despite purportedly agreeing to produce documents in all categories at issue, as shown in the charts above, the Company's production contained few documents directly responsive to the issues enumerated in Plaintiff's Inspection Demand.

140. The Company initially produced 1,460 pages of documents, over 650 of which consisted of standard form "Non-Binding Letter[s] of Intent" for various clients, which Plaintiff had not even requested. Nearly 200 pages consisted only of Board questionnaires.

141. The remaining approximately 600 pages produced by the Company were various marketing materials, cursory Board materials (with references to seemingly relevant documents that were not produced), and a limited selection of internal reports and presentations related to vehicle production.

142. These documents, while helpful to some extent as cited herein, came nowhere near providing Plaintiff a reasonable opportunity to investigate the misconduct at the Company, and do not satisfy the Company's duty under Delaware law.

143. On September 10, 2021, Plaintiff's counsel, in a letter to Defendant's counsel, raised a limited set of key areas of omission in the production in an effort to avoid litigation and reach a negotiated resolution to the Inspection Demand.

144. In a letter dated October 8, 2021, the Company refused to produce any additional documents in response to the Inspection Demand.

145. In response to Plaintiff's supplemental requests, on December 8, 2021, the Company produced six (6) pages of documents—a three page agenda for a January 23, 2021 Board meeting and three pages of heavily redacted minutes from a June 13, 2021 Board meeting.

146. The Company's production to date has both frustrated Plaintiff's proper purposes and, at the same time, heightened Plaintiff's concerns that the Company's Board and management failed to properly discharge their fiduciary duties.

147. Lordstown has failed to fulfill its obligations to permit Plaintiff to inspect its books and records as set forth in the Inspection Demand (and further narrowed in this Action), failing to make the requested books and records available to Plaintiff in a timely or complete manner and refusing to produce some records altogether.

## **VI. SPECIFIC RECORDS SOUGHT THROUGH THIS ACTION**

148. Through this action, Plaintiff seeks the following narrowly tailored set of documents, each category of which is supported by an original request in the Inspection Demand, but significantly narrowed from the original scope:

149. Insider Trading Policy. Plaintiff seeks the Company's formal Insider Trading Policy (Request No. 1), if any. The Company has played coy, stating at one point that we "we refer your clients to the Company's public filings and the Special Committee's public report of its findings." The Company has not, however, produced the policy, nor will it admit that a formal, stand-alone policy does not exist.

150. Board Materials On Insider Trading. Plaintiff seeks minutes, reports, presentations, and other written materials provided to the Board (or any Committee thereof) concerning trading (or anticipated trading) of Lordstown stock by the Inside

Sellers (Requests 3 & 4). The Company produced almost nothing with respect to the enormous insider sales before the Company's collapse—either before the trades were executed or after. These materials are core to the investigation of both why the Inside Sellers were trading and what, if anything, the Board was doing to oversee the trading.

151. Materials On Pre-Orders And Production Timeline. Plaintiff seeks materials provided to the Board (or any Committee thereof) regarding pre-orders for the Endurance and the anticipated schedule for commercial production of the Endurance (Requests 15-18), which pre-orders we now know were drastically exaggerated by the Company for months. The Company's production suggests that the Board scarcely discussed these critical issues facing Lordstown and that its oversight was superficial at best. Documents do not show the Board pressing on these issues, asking for updates or further evidence supporting the Company's repeated statements, or otherwise inquiring as to the veracity of the statements at all until the Hindenburg Report exposed the Company publicly. The Company has not confirmed that all such materials, if any exist, have been produced.

152. Materials Reflecting Insiders' Knowledge. Plaintiff seeks reports, presentations, or other written materials that any of the Inside Sellers provided to, or discussed with, the Board (or any Committee thereof) (Request 6). These materials

are critical to Plaintiff's investigation into what the Inside Sellers knew, and were telling the Board, at or around the time that they were divesting significant portions of their holdings in the Company.

153. Pre-Earnings Knowledge Of Financial Results. Plaintiff seeks materials discussing projected earnings provided to the Board (or any Committee thereof) in advance of the Company's Q4 2020 financial results (Requests 8 & 10). Board minutes produced by the Company suggest that Q4 2020 earnings were discussed by the Company's officers and directors as early as January 2021—in and around the time the Inside Sellers were trading—and other produced materials reference documents, including a “Financial Presentation,” that were not produced. These materials should also indicate who at the Company had access to them.

154. Materials Addressing The Investigative Report. Plaintiff seeks materials addressing the Hindenburg Report (Requests 11 & 12), virtually none of which were produced. Given the lack of formal Board Materials on the topic, Plaintiff also renews his request (pursuant to Request 13) for Officer Materials and Informal Board Materials (including email messages). The dearth of formal Board Materials fully supports Plaintiff's request for additional materials, including email communications, in order to fairly evaluate and investigate wrongdoing at the Company.

155. SEC Investigation. Plaintiff seeks documents sufficient to show the first date the Company learned of the SEC's investigation into its operations, documents the Company has not confirmed whether it has produced.

### **CAUSE OF ACTION**

#### **(Inspection of Books and Records Under 8 Del. C. § 220)**

156. Plaintiff repeats and re-alleges all of the preceding allegations as if fully set forth herein.

157. On April 29, 2021, Plaintiff made a written demand upon the Company for the inspection of the books, records, and documents identified in the Inspection Demand.

158. Plaintiff has fully complied with all the requirements of Section 220 with respect to the form and manner of making a demand for the inspection of the Company's books and records set forth in the Inspection Demand.

159. Plaintiff's Inspection Demand is made for the proper purposes set forth herein., which includes (i) investigating and assessing potential breaches of fiduciary duties by Lordstown officers and directors, including the Inside Sellers, in connection with the Company's public misstatements and omissions and the inside sales set forth above; (ii) determining whether to institute litigation, make a demand on the Board, or take other corrective action against the Insider Seller, the Board, or



any other persons in connection therewith; (iii) communicate with shareholders concerning governance of the Company; and (iv) evaluate the independence of the members of the Board.

160. As detailed herein, the Company has failed to provide Plaintiff with access to the books and records demanded in the Inspection Demand.

161. By reason of the foregoing and pursuant to Section 220, Plaintiff requests a summary order permitting them to inspect and make copies of the subset of books and records identified in the Inspection Demand, as enumerated in Section VI herein.

162. Plaintiff has no adequate remedy at law.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests that this Court enter an Order:

A. Summarily entering judgment in favor of Plaintiff and against the Company:

B. Declaring that the Inspection Demand complied with the requirements of Section 220;

C. Ordering the Company immediately to produce to Plaintiff the further narrowed subset of books and records identified in the Inspection Demand and enumerated in Section VI;

D. Awarding to Plaintiff and directing the Company to pay the costs and expenses incurred in connection with the Inspection Demand and this Action, including reasonable attorneys' fees; and

E. Granting Plaintiff any and all further relief the Court deems just and proper.

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May 31, 2022

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