

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

BARBARA RHODES, derivatively on  
behalf of Nominal Defendant Nikola  
Corporation,

Plaintiff,

v.

TREVOR MILTON, STEPHEN J.  
GIRSKY, MARK A. RUSSELL, STEVEN  
M. SHINDLER, SOOYEAN (SOPHIA)  
JIN, MIKE MANSUETTI, GERRIT A.  
MARX, LON STALSBERG, DEWITT  
THOMPSON V, JEFFREY W. UBBEN,  
ROBERT GENDELMAN, SARAH W.  
HALLAC, RICHARD J. LYNCH,  
VICTORIA MCINNIS, KIM J. BRADY,  
BRITTON WORTHEN, and INCLUSIVE  
CAPITAL PARTNERS SPRING  
MASTER FUND, L.P.,

Defendants,

and

NIKOLA CORPORATION, a Delaware  
corporation,

Nominal Defendant.

C.A. No. 2022-0023-KSJM

PUBLIC VERSION FILED:  
January 12, 2022

**VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT**

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Plaintiff Barbara Rhodes, by and through her undersigned counsel, brings this action derivatively on behalf of Nominal Defendant Nikola Corporation<sup>1</sup> against certain of its current and former directors and officers (the “Individual Defendants”). The allegations below are made upon personal knowledge as to Plaintiff and her own acts, and upon information and belief as to all other matters, based upon a review of: (a) information publicly disseminated by Nikola, including its public filings with the U.S. Securities and Exchange Commission (“SEC”); (b) public filings and other documents related to VectoIQ; (c) social media postings, news reports, press releases, analysts’ reports and other publicly available documents; (d) pleadings and other court documents related to litigation against Nikola’s former Chief Executive Officer (“CEO”) and Executive Chairman, Trevor Milton (“Milton”), including documents filed by the SEC and U.S. Department of Justice (“DOJ”); and (e) multiple admissions made by certain of the Individual Defendants. One of the grounds for plaintiff’s allegations is her review of books and records produced by Nikola which are incorporated by reference in this Complaint.

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<sup>1</sup> The company currently known as Nikola Corporation (stock ticker NKLA, and CIK 0001731289) was formed on June 3, 2020 through a merger (the “Merger”) between VectoIQ Acquisition Corp. (“VectoIQ”) and Nikola Motor Company, LLC (“Legacy Nikola”) at which time VectoIQ changed its name to Nikola Corporation. Unless otherwise specified, the term “Nikola” or the “Company” as used herein refers to Legacy Nikola, VectoIQ, and Nikola Corporation. “VectoIQ” refers only to VectoIQ and its affiliates before the Merger.

## **I. INTRODUCTION**

1. This is the tale of a criminal fraud perpetrated by Trevor Milton (“Milton”), the founder of zero-emissions vehicle startup company Nikola, with the knowing assistance and aid of three disloyal, self-interested, and interconnected Boards of Directors: Nikola’s Boards of Directors both before and after its June 2020 Merger with VectoIQ (the “Legacy Nikola Board” and the “Post-Merger Nikola Board,” respectively), and VectoIQ’s Board of Directors at the time of the Merger (the “VectoIQ Board”).

2. Beginning no later than November 2019, until at least September 20, 2020, Nikola’s founder, largest stockholder and CEO, Milton, in breach of his fiduciary duties, engaged in an ongoing criminal fraud involving the dissemination of materially false and misleading statements to stockholders and the public through a variety of methods. Using social media platforms, investor presentations, podcasts and SEC filings, Milton repeatedly overstated and misrepresented Nikola’s business, technology and expected financial performance. When the fraudulent scheme commenced, Nikola was privately-held, in need of financing, and seeking to become a publicly traded entity, which would allow Milton and Nikola’s insiders to monetize and potentially cash-out their illiquid Nikola stock. Milton’s statements drove Nikola’s pre-Merger valuation to approximately \$3 billion dollars. After Nikola’s

merger with VectoIQ, a publicly-traded company, and as a result of a continued barrage of false statements, the valuation rose to as high as \$28.77 billion.

3. In short, Milton's actions were nothing more than an old fashioned "pump and dump" scheme designed to enrich Milton and Nikola's insiders. The Nikola insiders, including its Board members, knowingly went along for the ride. Each of them either personally held substantial amounts of Nikola stock or were principals in entities that invested heavily in Nikola at its early stage. They too, stood to lose their investments if Nikola could not obtain new financing, but also would profit handsomely from the hype generated by Milton if and when Nikola stock became publicly traded through a reverse merger with VectoIQ. Thus, each member of the Legacy Nikola board (and the Company's principal officers) had strong motivation to allow Milton's scheme to continue while they or their respective firms profited handsomely.

4. Despite having been on notice of Milton's fraudulent practices prior to the Merger, the Post-Merger Nikola Board, which included all the Legacy Nikola Board members, breached their fiduciary duties (i) by allowing Milton and Nikola to engage in illegal conduct; (ii) by aiding and abetting Milton's materially false and misleading statements to stockholders; (iii) by failing to implement a system of controls designed to ensure Milton's public statements regarding Nikola after the Merger were truthful; and (iv) by repeatedly ignoring signs of his illegal conduct.

5. Ultimately, allegations of Milton's fraudulent conduct were confirmed in July 2021 when he was indicted by the DOJ for securities fraud and wire fraud with similar charges leveled by the SEC. Although Milton may be under indictment, his criminal conduct has created enormous wealth for himself and Nikola's insiders and Board members who allowed his activities to flourish. One Nikola Board member, Ubben, unloaded \$59.766 million of his fund's shares barely two months after the Merger while in possession of material, non-public information and in violation of his lock-up agreement. Other Nikola officers and directors or the investors they represented on Legacy Nikola's Board received material financial benefits from the Merger. In addition, numerous insiders acquired millions of Restricted Stock Units ("RSUs") as Milton's post-Merger misrepresentations drove Nikola's stock price higher and triggered those RSU awards. As Milton himself said in a July 7, 2020 email exchange with one of Nikola's directors regarding a release from his lock-up agreement, *the stock had gained "over 400%" and he made "everyone else millionaires and billionaires."*

6. Further, in breach of their fiduciary duties to the Company and reflecting their interestedness in considering a demand, the Board permitted Milton to resign with virtually no financial consequences while under investigation by the DOJ, the SEC, the Company and others. Milton has since sold off hundreds of millions of dollars of his personal holdings of Nikola stock with no repercussions—



yet the Company is expected to pay \$125 million to settle an investigation with the SEC related to Milton's fraudulent scheme.

7. Milton and Nikola's Board were not the only ones to fail Nikola's public stockholders. Milton's scheme could not have been accomplished without the substantial assistance provided by VectoIQ and its Board. VectoIQ was a publicly traded Special Acquisition Corp. or "SPAC" formed in 2018. By late 2019 its Board was under duress to close a deal or forever lose the opportunity for a lucrative payday. The VectoIQ Board turned a blind eye to Milton's activities and agreed to a merger through which Nikola would become a public company through VectoIQ whose stockholders would then become stockholders in the surviving Nikola. VectoIQ's Board willingly provided Nikola with a vehicle to go public and for Nikola's insiders to accumulate massive wealth, while at the same time generating enormous profits for VectoIQ's founders and sponsors. Through the issuance of a misleading proxy statement regarding the Merger resulting from an inadequate due diligence into Nikola and Milton, the VectoIQ Board aided and abetted Milton's criminal activities while realizing outside profits on their investments in VectoIQ and Nikola.

8. Defendants' activities have caused enormous harm to Nikola. In addition to the \$125 million payment to the SEC, the Company has already spent and will continue to spend tens of millions on investigations and has enormous

exposure to damages in a pending securities class action. The harm to Nikola's reputation and loss of goodwill is substantial. Further, Defendants have been unjustly enriched through the illegal scheme perpetrated by Milton.

## **II. BACKGROUND**

9. From shortly after Nikola's founding in 2015, until its merger with VectoIQ in June 2020, Milton and Nikola publicly portrayed themselves as bold disruptors at the cutting edge of vehicle and hydrogen-fuel technology.

10. During this period, Milton and Nikola cultivated their image through social media, public relations events, and media appearances to boast that Nikola had built an impressive business model with its own proprietary turbine, battery, hydrogen fuel cell, hydrogen production technologies, and zero-emissions trucks. They claimed that Nikola owned gas wells and had built a sustainable, off-the-grid headquarters powered by clean energy provided by solar panels on its roof. And they 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.

11. None of this was true. As reflected in Nikola's pre-Merger Board minutes, and as later revealed in the Hindenberg Report and government investigations, Nikola neither possessed these claimed proprietary technologies or energy assets, nor had it built a fully functioning zero-emissions semi-truck or a

prototype of a zero-emissions pickup truck. In fact, prior to release of the Hindenberg Report, Nikola had *never* manufactured and commercially released even a *single* fully functioning zero-emissions truck. Yet, over several years of operations, the Legacy Nikola Board (who knew the Company did not possess the claimed technology or functionality) did nothing to investigate or stop Milton's misrepresentations, which he spread through public social media posts, podcast interviews, and television appearances—ultimately fueling a highly inflated and ultimately unsupported valuation of Nikola's business and financial prospects.

12. In the run-up to 2020, and unbeknownst to those outside the Company, Nikola was struggling. It was failing to produce trucks or develop infrastructure, and it was facing a major cash crunch as it had exhausted its private funding options. If Nikola did not raise substantial capital by finding new investors soon, the stock held by Milton and Nikola's other major investors—including members of the Legacy Nikola Board and their affiliates—would significantly decrease in value, potentially to mere pennies on the dollar.

13. VectoIQ had no operating business but was created for the sole purpose of searching for and merging with an industrial technology, transportation, or smart mobility company—like Nikola. In late 2019, at a time when Nikola needed cash to fund its operations and VectoIQ was running short on the time required by its governing documents to complete a merger, the companies began working on a

transaction where Nikola would merge with VectoIQ and become a public company. If the VectoIQ Board failed to find a merger partner, it would have to return its investors' money, robbing VectoIQ's founders of what was likely to be a lucrative payday.

14. So in March 2020, Nikola and VectoIQ agreed to take Nikola public through a reverse SPAC merger transaction. Through the Merger, the Legacy Nikola Board and Nikola's major stockholders—most prominently Milton and his close associate, Nikola Chief Executive Officer (“CEO”) Mark A. Russell, finally had the opportunity to monetize their privately held and illiquid shares in Nikola and create enormous wealth in a company whose business was built largely on smoke and mirrors and running short on cash. Milton, for his part, would profit immediately having negotiated a \$70 million cash payment from Nikola that he would receive upon the closing of the Merger, as well as awards of millions of units of Nikola stock in the months that followed. Based on an unsupportable \$3 billion valuation attributable to Nikola for purposes of establishing the relative value of shares to be issued on the Merger, Milton and Russell's stock holdings combined would be valued at approximately \$4.8 billion.

15. By acquiring a target company, the VectoIQ Board and VectoIQ's major stockholders—most prominently VectoIQ's founder and CEO, Stephen J. Girsky (“Girsky”)—stood to obtain a windfall on their investments in VectoIQ,

which would otherwise become virtually worthless if VectoIQ did not find an acquisition target by its mid-2020 deadline. As a result of their financial self-interest to complete a transaction quickly, the VectoIQ Board recklessly ignored Milton's ongoing disinformation campaign, which continued through the issuance of the Merger Proxy (defined below) and closing of the Merger. VectoIQ's Board performed nothing more than a cursory due diligence as it failed to uncover that the Company had not developed the cutting-edge electric vehicle and hydrogen-fuel technology touted by Milton and was unable to produce a fully functioning zero-emissions semi-truck or a prototype of a zero-emissions pickup truck. In short, the VectoIQ Board simply failed to look under the hood at Nikola—both figuratively and literally—completely abdicating their responsibilities to VectoIQ's stockholders.

16. Spurred by their own self-interest, the VectoIQ Board recommended that VectoIQ stockholders vote on and approve the Merger based on a false and misleading Merger Proxy and an inadequate due diligence.

17. After the Merger closed on June 3, 2020, VectoIQ Board member Girsky joined the eight Legacy Nikola Board members (who had previously turned a blind eye to Milton's glaring misconduct) to form the Post-Merger Nikola Board, helmed by none other than Milton as the Executive Chairman. Virtually every member of the Post-Merger Nikola Board, including Girsky, had reaped substantial

monetary rewards (directly or indirectly) because of the Merger and stood to gain significantly from subsequent increases in Nikola's stock price.

18. In the wake of the Merger and Milton's continuing misrepresentations, Nikola's stock price skyrocketed. At its height on June 9, 2020, less than a week after the Merger closed, Nikola's stock price had shot up from \$10.00 (the price, at one time, of buying a share in VectoIQ) to \$93.99, and Nikola's market capitalization reached \$28.77 *billion*. Milton continued his steady stream of misleading statements, fueling increases in Nikola's stock price that entitled him and other top Nikola executives to realize *millions of dollars' worth* of "performance awards" tied to Nikola's short-term share price performance. The Post-Merger Nikola Board aided and abetted Milton's ongoing stock-price hype by giving him free rein to make statements concerning the Company's business and failing to implement any oversight on his public statements. Nikola's Board was either recklessly indifferent or knew that many of Milton's public statements were materially false or misleading.

19. Thus, from June 2020 through September 2020, in dereliction of their duty and SEC regulations to oversee or implement controls concerning public statements about the Company's business, Nikola and Milton continued lying to investors about everything from Nikola's hydrogen production capabilities, to its electricity sourcing costs, to its ability to manufacture vehicle components in-house,

to the composition of its order book and truck reservations, to the specifications of its vehicles, to its progress in manufacturing its battery-electric truck, the Nikola Tre BEV. At that time, Nikola had never generated any revenues from the sales of its vehicles. The Post-Merger Nikola Board, in dereliction of their duties of oversight, turned a blind eye to Milton's and Nikola's fraudulent statements even though they knew that Nikola's technological assets, manufacturing capabilities, and orders and reservations book were not as Milton and Nikola claimed them to be.

20. The Post-Merger Nikola Board (all of whom except two had been on the Legacy Nikola Board) continued to harm Nikola by failing to oversee or control Milton's ongoing efforts to disseminate false information to stockholders, and by continuing to allow him to violate the securities laws and to engage in criminally fraudulent conduct that endangered the Company's business, including making a litany of representations regarding Nikola's business that the Defendants knew were demonstrably false. Despite the myriad red flags available to insiders, including Nikola's senior executives, general counsel and certain directors, the Post-Merger Nikola Board failed to implement any controls or procedures designed to prevent Milton's misleading statements.

21. Nearly every member of the Post-Merger Nikola Board held substantial holdings in Nikola stock—or was affiliated with, represented, and lacked independence from an entity that did—and, in many cases, had an interest in

concealing the truth and keeping the fraud going until the expiration of certain lock-up agreements after which time they or their affiliated companies could sell their Nikola stock at potentially enormous profits.

22. But then the Nikola bubble burst earlier than Defendants expected. On September 10, 2020—before any of Defendants’ lock-up agreements had expired—Hindenburg Research published a 52-page report (the “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.*” The 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. Milton resigned from Nikola just ten days later on September 20, 2020, after it was disclosed that he was under criminal investigation.

23. Although Nikola and Milton denied the report, a subsequent limited internal investigation by Kirkland & Ellis (prompted by the Hindenburg Report) revealed that Milton had, in fact, made copious statements that were “inaccurate in whole or in part, when made.”

24. On July 29, 2021, Milton was indicted by the DOJ for securities fraud and wire fraud and sued civilly by the SEC, revealing evidence showing that Milton’s falsehoods extended far beyond those to which the Company had copped



after the Kirkland & Ellis investigation. The DOJ and SEC complaints allege a course of securities fraud engaged in by Milton that covered the period beginning no later than November 2019 through September 2020—a complaint supported by internal documents and witness testimony implicating Milton directly. The DOJ indictment alleged Milton’s misrepresentations “addressed nearly all aspects of the [Company’s] business.” Significantly, the SEC complaint alleged that “*Milton repeatedly made false and misleading statements about core aspects of Nikola’s products, technological advancements, and commercial prospects*” (emphasis added) in numerous areas. The SEC also cited evidence that Milton’s misconduct was known to and a concern of the senior executives at the Company for months before and after the Merger, including its Chief Legal Officer, who was Secretary to Board, and some directors. On November 4, 2021, Nikola announced that it had agreed to pay a \$125 million penalty to the SEC to settle the investigation arising from Milton’s misconduct.

## **II. PARTIES**

### **A. Plaintiff—Barbara Rhodes**

25. Plaintiff Barbara Rhodes is a current Nikola stockholder. Rhodes purchased shares of VectoIQ on April 27, 2020, and has continuously held those shares since that date. After the Merger closed, Ms. Rhodes’ shares of VectoIQ

became shares of Nikola when the Company was renamed. Accordingly, Ms. Rhodes has continuously held shares in Nikola since April 27, 2020.

**B. Nominal Defendant—Nikola Corporation**

26. Nominal Defendant Nikola is a Delaware corporation with its principal executive offices located at 4141 E Broadway Road, Phoenix, Arizona 85040.

27. Nikola purports to be a zero-emissions transportation company. It operates two main business units: Truck and Energy. The Truck business unit aims to develop and commercialize battery electric vehicles (“BEVs”) and hydrogen fuel cell electric vehicles (“FCEVs”), with a focus on trucks. The Truck business also purports to design and manufacture electric vehicle drivetrains and vehicle components. The Energy business unit aims to develop a network of hydrogen fueling stations for FCEVs.

28. Nikola was a “pre-revenue company,” meaning it had not yet sold any vehicles or even produced a fully working prototype of any of its products that was fully ready to be commercialized, and it had not produced or sold any hydrogen fuel or built a commercially operable hydrogen fueling station.

29. Since the Merger, Nikola’s stock has traded publicly on the Nasdaq Global Select Market under the ticker symbol “NKLA.”

30. Before the Merger, Legacy Nikola was a non-public company and VectoIQ was a publicly traded SPAC founded by Defendant Girsky after he left the

board of directors of General Motors (“GM”). VectoIQ was formed to raise capital through an initial public offering (“IPO”) for the purpose of acquiring a start-up industrial technology, transportation, or smart mobility company. Under its governing documents, if VectoIQ did not complete a transaction by May 2020, its stockholders would receive their original investment back, with interest.

31. VectoIQ completed its IPO in May 2018, when it issued and sold 23 million units at \$10 per unit, consisting of one share of VectoIQ common stock and one VectoIQ warrant to purchase one share of VectoIQ common stock, for a total of \$230 million in gross proceeds. VectoIQ simultaneously completed a private placement of 890,000 private units issued to its founders and anchor investor, which also consisted of one share of VectoIQ common stock and one VectoIQ warrant to purchase one share of VectoIQ common stock, for total proceeds of \$8.9 million. Following the offering, the net proceeds from the IPO and private placement of approximately \$239 million was placed in a trust account, and VectoIQ commenced trading on the NASDAQ Capital Market.

32. Typically, when a SPAC is first created, its founders purchase a significant percentage of the SPAC’s shares in exchange for nominal consideration, often \$25,000 or less. Effectively, this gives the founders a windfall when the SPAC completes a successful SPAC reverse merger. VectoIQ was a typical SPAC in this regard. Its founders, including Defendant Girsky, purchased approximately 20% of

VectoIQ's shares in exchange for approximately \$25,000 each. Prior to the Merger, the Sponsors held approximately 6,640,000 shares for which they purportedly paid \$25,000. As a result of the Merger, those insiders' shares were worth millions.

33. VectoIQ planned to finance its acquisition of a target business both through using the proceeds from its IPO and through what is known as a "private investment in public equity," or "PIPE," subscriber agreement, which permits private equity investors to provide additional financing for the acquisition in exchange for shares of the merged company. The purpose of a PIPE is to provide additional capital to the business being acquired, to make the acquisition more financially attractive and to provide more funding for the business's future growth. Ultimately, VectoIQ raised \$525 million through PIPE subscriptions.

34. In its 2019 Form 10-K filed with the SEC, VectoIQ also represented that it planned to engage in extensive, thorough due diligence in evaluating any proposed transaction:

Consistent with our strategy, we have identified the following general criteria and guidelines that we believe are important in evaluating prospective target businesses and, in evaluating a prospective target business, we expect to conduct a thorough due diligence review that will encompass, among other things, meetings with incumbent management and employees, document reviews and inspection of facilities, as applicable, as well as a review of financial and other information that will be made available to us.

\* \* \*

In evaluating a prospective target business, we will conduct an extensive due diligence review which will encompass, among other things, meetings with incumbent management and inspection of facilities, as well as review of financial and other information which is made available to us. This due diligence review will be conducted either by our management or by unaffiliated third parties we may engage, although we have no current intention to engage any such third parties.

**C. Individual Defendants—Summary and Table of Abbreviations**

35. The following table summarizes the various groups of Defendants referred to in this Complaint:

<b>Group of Defendants</b>	<b>Defendants Included</b>
The Individual Defendants	Milton, Russell, Jin, Mansuetti, Marx, Ubben, Stalsberg, Thompson, Girsky, Shindler, Gendelman, Hallac, Lynch, McInnis, Brady, and Worthen
The Director Defendants	Russell, Girsky, Jin, Mansuetti, Marx, Shindler, Thompson, and Ubben
The Nikola D&O Defendants	Milton, Russell, Jin, Mansuetti, Marx, Ubben, Stalsberg, Thompson, Girsky, Shindler, Brady, and Worthen
The Officer Defendants	Russell, Brady, and Worthen
The VectoIQ Board Defendants	Girsky, Shindler, Gendelman, Hallac, Lynch, and McInnis

36. The following table summarizes which Defendants were members of which of the three Boards of Directors that are the subject of this Complaint:

<b>Board</b>	<b>Individual Defendants Included</b>
The VectoIQ Board	Girsky, Shindler, Gendelman, Hallac, Lynch, and McInnis
The Legacy Nikola Board	Milton, Russell, Jin, Mansuetti, Marx, Ubben, Stalsberg, Thompson
The Post-Merger Nikola Board	Milton, Russell, Jin, Mansuetti, Marx, Ubben, Stalsberg, Thompson, Girsky, Shindler

**D. Individual Defendants—The Nikola Board**

**1. Trevor Milton**

37. Defendant Milton founded Nikola and served as its CEO until the Merger in June 2020, after which he served as its Executive Chairman until his so-called “resignation” from Nikola on September 20, 2020. Milton served as a director of Legacy Nikola and Nikola during the entire length of his employment with the Company.

38. Milton was an avid and popular user of social media, including Twitter, Instagram, and Facebook, which platforms allowed him to fraudulently enrich his own holdings at Nikola’s expense. Milton, with the Company’s and the other Defendants’ knowledge, used his personal Twitter account (@nikolatrevor), personal Instagram account (@lakepowelltrevor), and the Company’s Twitter account (@nikolamotor), which Milton personally controlled, to publish materially false and misleading information about Nikola in violation of various securities and other criminal laws.

39. Following the Merger, Milton owned, directly or indirectly, approximately 91,602,734 shares in Nikola, representing approximately 25.4% of the total ownership of the company. On June 3, 2020, the day the Merger was completed, Nikola shares opened the day trading at approximately \$33.69 per share, and Milton's shares became worth approximately \$3.1 billion. Pursuant to the Registration Rights and Lock-Up Agreement dated June 3, 2020 and Amendment No. 1 to that Agreement dated July 17, 2020 (together, the "Lock-Up Agreement"), Milton was permitted to sell these shares starting on December 1, 2020. Additionally, Nikola paid Milton \$70 million in connection with the Merger by redeeming 7,000,000 shares of common stock from M&M Residual, LLC ("M&M") a company owned by Milton, at a purchase price of \$10.00 per share.

40. During fiscal year 2019, Nikola paid Milton \$266,000 in salary. During fiscal year 2020, Nikola paid Milton \$153,462 in salary, and \$159,026,298 in stock awards (valued by aggregate fair value computed as of the grant date), for total compensation of \$159,179,760.

41. As of June 3, 2020, following the Merger, Milton's compensation was to consist of (1) a salary of \$1; (2) an annual "time-vested award" of \$6 million worth of restricted stock units ("RSU"), vesting three years after grant, with the first such award based on a stock price of \$10 (*i.e.*, 600,000 shares of Nikola common stock); and (3) a "performance award" consisting of up to 4,859,000 shares of restricted

stock units (“RSUs”) tied directly to Nikola’s stock price, and which were earned by achieving certain stock trading milestones for at least twenty consecutive trading days:

<b>Share Price Milestone</b>	<b>Market Capitalization at Price</b>	<b>Incremental Performance Shares Earned at Share Price Milestone</b>
Below \$25.00	Below \$10 billion	0
\$25.00	\$10 billion	1,069,000
\$40.00	\$16 billion	1,603,000
\$55.00 or Above	\$22+ billion	2,187,000

The RSU performance award financially rewarded Milton to continue his misconduct after the Merger. By pumping up Nikola’s stock price above any of the share price milestones for twenty consecutive trading days, he stood to gain potentially tens of millions of dollars’ worth of Nikola stock. Based on Milton’s misleading statements regarding Nikola’s business, and the resulting trading price of Nikola stock between June 3, 2020 and September 20, 2020, the first performance milestone was reached entitling Milton to 1,069,000 Nikola RSUs.

42. Under the terms of his September 20, 2020 separation agreement with Nikola, Milton relinquished any claim he had to the performance award of up to 4,859,000 RSUs but not the 600,000 RSUs granted as an annual “time-vested” award. According to the separation agreement, as of the date of his resignation, Milton still owned 91,644,134 shares of Nikola stock. Given that the price per share



of Nikola's stock at the close of trading on September 21, 2020 was \$27.58, the Director Defendants allowed Milton to depart Nikola owning over \$2.5 billion worth of Nikola stock.

## **2. Mark A. Russell**

43. Defendant Mark A. Russell ("Russell") has served as Nikola's CEO and as a director of Nikola since the Merger. Russell was personally hired as Nikola's CEO by Milton and has numerous close ties to Milton both personally and financially.

44. Before becoming Nikola's CEO, Russell served as President of Legacy Nikola from February 2019 to June 2020 and was also a director of Legacy Nikola from July 2019 to June 2020. Previously, from August 2012 to August 2018, Russell served as President and Chief Operating Officer of Worthington Industries ("Worthington"), a company where Milton was also employed until he left to found Nikola.

45. As of June 3, 2020, following the Merger, Russell owned 49,774,487 shares of Nikola's common stock. These shares included, *inter alia*, shares held by Russell individually and shares held by T&M Residual, LLC ("T&M"), a company co-owned by Russell and Milton, and managed by Russell. Russell has sole dispositive power over the shares held by T&M, and Milton has sole voting power over those shares. Given that the price per share of Nikola's common stock at the

close of trading on June 3, 2020 was \$33.97, immediately after the Merger closed, Russell owned approximately \$1.7 billion worth of Nikola stock. Pursuant to the Lock-Up Agreement, Russell was permitted to sell these shares starting on December 1, 2020.

46. During fiscal year 2019, Nikola paid Russell \$250,866 in salary and \$6,307,496 in option awards, for total compensation of \$6,558,362. During fiscal year 2020, Nikola paid Russell \$173,077 in salary, and \$159,026,298 in stock awards valued by aggregate fair value computed as of the grant date), for total compensation of \$159,199,375.

47. Since June 3, 2020, following the Merger, Russell’s compensation has consisted of (1) a salary of \$1; (2) an annual “time-vested award” of \$6 million worth of restricted stock units (“RSU”), vesting three years after grant, with the first such award based on a stock price of \$10; and (3) a “performance award” consisting of up to 4,859,000 RSUs earned after certain stock price milestones were achieved:

<b>Share Price Milestone</b>	<b>Market Capitalization at Price</b>	<b>Incremental Performance Shares Earned at Share Price Milestone</b>
Below \$25.00	Below \$10 billion	0
\$25.00	\$10 billion	1,069,000
\$40.00	\$16 billion	1,603,000
\$55.00 or Above	\$22+ billion	2,187,000

The performance awards were identical to the ones granted to Milton and also financially motivated Russell to ignore or assist in Milton's misconduct. Russell stood to gain potentially tens of millions of dollars' worth of Nikola shares as a result of Milton pumping up of Nikola's stock price above the price milestones for twenty consecutive trading days. Based on the trading price of Nikola stock between June 3, 2020 and September 20, 2020, resulting from the misleading statements regarding Nikola's business, the first performance milestone was reached and Russell is now entitled to 1,069,000 Nikola RSUs.

### **3. Sooyean (Sophia) Jin**

48. Defendant Sooyean (Sophia) Jin ("Jin") (also known as Jin Soo Yean) has served as a director at Nikola since the Merger. Jin also serves as a member of the Audit Committee. From May 2019 until the Merger, Jin served as a director of Legacy Nikola.

49. Jin is compensated under Nikola's non-employee director compensation program. In 2020, her compensation consisted of \$679,400 in stock awards.

50. According to a Form 4 filed with SEC, as of August 21, 2020, Jin owned 20,000 shares of Nikola common stock, for which she paid \$0.

51. Since January 2019, Jin has served as senior director of venture investments of Hanwha Holdings, an investor representing Hanwha Corporation

(“Hanwha”), and from January 2018 to December 2018 she served as Hanwha Holdings’ director of venture investments. Prior to that, Ms. Jin held various positions at Hanwha Q CELLS America Inc., a global solar cell and module manufacturer, including director of corporate planning from July 2013 to June 2015 and director of head of marketing from July 2015 to December 2017.

52. Green Nikola Holdings LLC (“Green Nikola”) invested in Nikola on November 9, 2018 by purchasing 11,641,444 shares of Series C Preferred Stock of Legacy Nikola for \$100,000,003, using funds provided by certain Hanwha affiliates. Jin is also affiliated with Green Nikola. As of June 3, 2020, following the issuance of shares as part of the Merger, Green Nikola owned 22,130,385 shares of Nikola’s common stock, representing approximately 6.4% of Nikola’s outstanding common shares. Given that the price per share of Nikola’s common stock at the close of trading on June 3, 2020 was \$33.97, Green Nikola owned approximately \$751.8 million worth of Nikola stock. Pursuant to the Lock-Up Agreement, Green Nikola was prohibited from selling these shares for 180 days. Subsequently, between June 9, 2021 and June 28, 2021 Green Nikola sold 2,903,352 shares of Nikola stock for approximately \$53.67 million. As a result of Jin permitting Milton to engage in an illegal scheme to increase the price of Nikola stock, Hanwha was able to convert its illiquid shares to publicly traded securities and eventually cash out a substantial portion of its original investment.

#### **4. Mike Mansueti**

53. Defendant Mike Mansueti (“Mansueti”) has served as a Company director since the Merger. Mansueti also serves as a member of the Audit Committee. Previously, from September 2019 until the Merger, Mansueti served as a director of Legacy Nikola. Mansueti has also been employed by automotive company Robert Bosch LLC (“Bosch”).

54. Mansueti is compensated under Nikola’s non-employee director compensation program. In 2020, his compensation consisted of \$679,400 in stock awards. According to a Form 4 filed with SEC, as of August 21, 2020, Mansueti directly owned 20,000 shares of Nikola common stock, for which he paid \$0.

55. Bosch is the sole owner of Nimbus Holdings LLC (“Nimbus”). Mansueti is affiliated with Nimbus. Nimbus purchased 11,611,443 shares of Series C preferred stock in Nikola for approximately \$100 million. Nimbus also purchased 3,880,983 shares of Nikola Series B preferred stock for approximately \$30 million. As of June 3, 2020, following the Merger, Nimbus owned 23,081,451 shares of Nikola, representing approximately 6.4% of Nikola’s outstanding common stock. According to the Nimbus 13D, Mansueti may be deemed to share voting and dispositive power over shares held by Nimbus although he “disclaims beneficial ownership of any shares owned of record by Nimbus Holdings LLC other than to the extent he may have a pecuniary interest therein.” Given that the price per share

of Nikola's common stock at the close of trading on June 3, 2020 was \$33.97, Bosch owned approximately \$748.1 million worth of Nikola stock through Nimbus. In connection with the Merger, Nimbus entered into a stock repurchase agreement with Nikola whereby Nikola agreed to repurchase (before the Merger) 1,499,700 shares of Nikola Series B Preferred at a price of \$16.67 per share, totaling \$25.0 million. As a result of Mansueti permitting Milton to engage in an illegal scheme to increase the price of Nikola stock, Bosch was able to convert its illiquid shares to publicly traded securities and cash out a substantial portion of its original investment and to obtain a pre-Merger cash-out amounting to \$25 million. Nimbus and Bosch also have various commercial relationships with Nikola.

56. Pursuant to the Lock-Up Agreement, Nimbus was prohibited from otherwise selling its shares for 180 days. On December 1, 2020—immediately after the lock-up expired—Nimbus sold 4,261,155 shares of Nikola stock for approximately \$73.5 million.

## **5. Gerrit A. Marx**

57. Defendant Gerrit A. Marx ("Marx") has served as a director of Nikola since the Merger. Marx also serves as Chair of the Compensation Committee. From September 2019 until the Merger, Marx served as a director of Legacy Nikola.

58. Marx has served as CEO of commercial vehicle manufacturer Iveco S.p.A. ("Iveco") since March 2019; as president of commercial and specialty

vehicles of CNH Industrial N.V. (“CNHI”), an industrial goods manufacturing company, since January 2019. Marx is affiliated with Iveco.

59. Iveco is a major investor in Nikola. Iveco purchased 13,498,921 Series D shares of Nikola for approximately \$250 million. Under the agreement, the shares exchanged for \$50 million based on the value of a license, \$100 million for in-kind services, and \$100 million in cash. As of June 3, 2020, following the Merger, Iveco owned 25,661,449 shares of Nikola, representing approximately 7.11% of Nikola’s outstanding common stock. Given that the price per share of Nikola’s common stock at the close of trading on June 3, 2020 was \$33.97, Iveco owned approximately \$871.7 million worth of Nikola stock. As a result of Marx permitting Milton to engage in an illegal scheme to increase the price of Nikola stock, Iveco was able to convert its illiquid shares to publicly traded securities and the opportunity to eventually cash out a substantial portion of its original investment. Pursuant to the Lock-Up Agreement, Iveco was prohibited from selling these shares for 180 days.

60. Marx is compensated under Nikola’s non-employee director compensation program. In 2020, his compensation consisted of \$713,370 in stock awards. According to a Form 4 filed with the SEC, as of August 21, 2020, Marx owned 21,000 shares of Nikola’s common stock, for which he paid \$0.

**6. Jeffrey W. Ubben & Inclusive Capital Partners Spring Master Fund, L.P.**

61. Defendant Jeffrey W. Ubben (“Ubben”) has served as a Company director since the Merger. Ubben also serves as Chair of the Nominating and Corporate Governance Committee. From September 2019 until the Merger, Ubben served as a director of Legacy Nikola. Ubben has been a member of Nikola’s Nominating and Corporate Governance Committee since June 2020.

62. Ubben is the founder and managing partner of financial services company Inclusive Capital Partners, L.P., which was formed in 2020. He also founded ValueAct Capital Management, L.P. in 2000, for whom he was employed from 2000 to 2020. Ubben also founded Defendant Inclusive Capital Partners Spring Master Fund, L.P. (“Spring Master Fund”) in 2018, formerly known as ValueAct Spring Master Fund, L.P., Ubben currently serves as its portfolio manager.

63. Spring Master Fund purchased 809,936 shares of Nikola Series D preferred shares for approximately \$15 million and five million shares of Nikola in the PIPE offering which helped close the merger deal. As of June 3, 2020, following the Merger, Ubben directly or indirectly owned 20,362,024 Nikola common shares, representing approximately 5.6% of Nikola’s outstanding common stock. Given that the price per share of Nikola’s common stock at the close of trading on June 3, 2020 was \$33.97, Ubben owned approximately \$691 million worth of Nikola stock which Spring Master Fund purchased at an average price of \$7.54 per share. As a result of



Ubben permitting Milton to engage in an illegal scheme to increase the price of Nikola stock, he was able to convert Spring Master Fund's illiquid shares to publicly traded securities and sold a substantial portion of its original investment while in possession of material, non-public information. Pursuant to the Lock-Up Agreement, Ubben was prohibited from selling these shares for 180 days.

64. Ubben is compensated under Nikola's non-employee director compensation program. In 2020, his compensation consisted of \$713,370 in stock awards.

65. On August 11, 2020, before the Hindenberg Report exposed Defendants' misconduct, as alleged herein, and while in possession of material, non-public information regarding Nikola, Ubben (acting through Defendant Spring Master Fund) sold 1.4 million shares of Nikola stock at a price of \$42.69 per share, for a total of \$59,766,000. The sale also violated the terms of the Lock-up Agreement prohibiting the sale of stock for 180 days.

## **7. Lon Stalsberg**

66. Defendant Lon Stalsberg ("Stalsberg") served as director of Nikola from the Merger until his resignation on September 29, 2020. Stalsberg also served as a member of the Compensation Committee. From July 2017 until the Merger, Stalsberg served as a director of Legacy Nikola.

67. Stalsberg was compensated under Nikola's non-employee director compensation program. In 2020, he received compensation consisting of \$679,400 in stock awards. Additionally, according to a Form 4 filed with SEC, as of August 21, 2020, Stalsberg directly owned 20,000 shares of Nikola's common stock, for which he paid \$0.

68. As of June 3, 2020, following the Merger, Stalsberg held an interest in H2M Fund LLC ("H2M"), which owned 918,816 shares of Nikola common stock. Given that the price per share of Nikola's common stock at the close of trading on June 3, 2020, immediately after the Merger closed, was \$33.97, H2M owned approximately \$31.2 million worth of Nikola stock. As a result of Stalsberg permitting Milton to engage in an illegal scheme to increase the price of Nikola stock, H2M was able to convert its illiquid shares to publicly traded securities and the opportunity to eventually cash out a substantial portion of its original investment.

## **8. DeWitt Thompson V**

69. Defendant DeWitt Thompson V ("Thompson") has served as a director of Nikola since the Merger. Thompson also serves as a member of the Compensation Committee. From July 2017 until the Merger, Thompson served as a director at Legacy Nikola.

70. As of June 3, 2020, following the Merger, Thompson owned, directly or indirectly,<sup>2</sup> 21,593,927 shares of Nikola's common stock. Given that the price per share of Nikola's common stock at the close of trading on June 3, 2020 was \$33.97, Thompson owned approximately \$733 million worth of Nikola stock. As a result of Thompson permitting Milton to engage in an illegal scheme to increase the price of Nikola stock, he was able to convert his illiquid shares to publicly traded securities and the opportunity to eventually cash out a substantial portion of his original investment. Pursuant to the Lock-Up Agreement, Thompson was prohibited from selling these shares for 180 days.

71. Thompson is compensated under Nikola's non-employee director compensation program. In 2020, his compensation consisted of stock awards of \$679,400.

72. Thompson has been CEO and Chairman of Thompson Machinery Commerce Corporation, a Caterpillar equipment dealership from 1996 to at least 2021. He is also a dealer representing Nikola's products in Mississippi and Tennessee.

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<sup>22</sup> According to a Form 4 filed with SEC on September 10, 2020 Thompson indirectly owned Nikola stock through his interests in Thompson Nikola, LLC, Thompson Nikola II, LLC, and Legend Capital Partners ("Legend"). As of September 10, 2020, Legend owned 13,144,216 shares of Nikola's common stock.

## **E. Individual Defendants—The VectoIQ Board**

### **1. Stephen J. Girsky**

73. Defendant Girsky founded and served as President, CEO, and a director of VectoIQ from January 2018 until the Merger in June 2020, after which he began serving on the Post-Merger Nikola Board and Nikola’s Audit Committee and Nominating and Corporate Governance Committee. He became the Chairman of the Board in September 2020 and is a member of the Nominating and Corporate Governance Committee. He previously served as the Chair of the Audit Committee.

74. Girsky is a former vice chairman of GM. Besides Nikola, Girsky has also served as a director of U.S. Steel and Brookfield Business Partners, both of which are subject to SEC reporting requirements.

75. As of June 18, 2020, Girsky owned at least 1,754,344 shares of Nikola’s common stock,<sup>3</sup> which were previously shares of VectoIQ that Girsky acquired for nominal consideration (approximately \$25,000 or less). Given that the price per share of Nikola’s common stock at the close of trading on June 18, 2020 was \$67.73, Girsky owned approximately \$119 million worth of Nikola stock, for which he had

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<sup>3</sup> The 1,754,344 shares owned by Girsky consisted of (i) 11,449 shares and 1,441 shares underlying warrants owned directly by Girsky; and (ii) 1,561,459 shares and 180,005 shares underlying warrants previously owned, as of June 3, 2020, by VectoIQ, and subsequently transferred to Girsky when VectoIQ dissolved on June 18, 2020.

paid only nominal consideration. Pursuant to the Lock-Up Agreement, Girsky was prohibited from selling these shares for a period of one year.

## **2. Steven M. Shindler**

76. Defendant Steven M. Shindler (“Shindler”) served as the Chief Financial Officer (“CFO”) of VectoIQ from January 2018 until the Merger, as well as a director of VectoIQ. Shindler has served as a Nikola director since September 2020 and serves as the Chair of the Audit Committee.

77. Shindler is compensated under Nikola’s non-employee director compensation program. In 2020, his compensation consisted of \$134,778 in stock awards.

78. Shindler has served as a director of wireless company NII Holdings since 1997, and served as NII Holdings’ CEO from 2012 to 2017. He also served as CFO of Nextel Communications and a managing director of Toronto-Dominion Bank. He was also a founding partner of RIME Communications Capital.

79. As of June 18, 2020 (the date VectoIQ Holdings, LLC, the VectoIQ-affiliated sponsor entity in the Merger, dissolved and distributed its holdings to its members), Shindler owned 402,298<sup>4</sup> shares of Nikola’s common

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<sup>4</sup> The 402,298 shares owned by Shindler consisted of (i) 12,889 shares owned directly by Shindler; and (ii) 359,409 shares and 30,000 shares underlying warrants previously owned, as of June 3, 2020, by VectoIQ, and subsequently transferred to Shindler when VectoIQ Holdings LLC dissolved on June 18, 2020.

stock, which he had previously acquired for nominal consideration. Given that the price per share of Nikola's common stock at the close of trading on June 18, 2020 was \$67.73, Shindler owned approximately \$27 million worth of Nikola stock. Pursuant to the Lock-Up Agreement, Shindler was prohibited from selling these shares for one year.

### **3. Robert Gendelman**

80. Defendant Robert Gendelman ("Gendelman") served as a director at VectoIQ from May 2018 until the Merger. During that period, he also served as a member of the Audit Committee.

81. As of June 18, 2020 (the date VectoIQ dissolved and distributed its holdings to its members), Gendelman owned 44,712<sup>5</sup> shares of Nikola stock, which he had previously acquired for nominal consideration. Given that the price per share of Nikola's common stock at the close of trading on June 18, 2020 was \$67.73, Gendelman owned approximately \$3 million worth of Nikola stock. Pursuant to the Lock-Up Agreement, Gendelman was prohibited from selling these shares for one year.

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<sup>5</sup> The 44,712 shares owned by Gendelman consisted of (i) 15,000 shares owned directly by Gendelman; and (ii) 26,341 shares and 3371 shares underlying warrants previously owned, as of June 3, 2020, by VectoIQ, and subsequently transferred to Gendelman when VectoIQ dissolved on June 18, 2020.

#### **4. Sarah W. Hallac**

82. Defendant Sarah W. Hallac (“Hallac”) served as a director at VectoIQ from May 2018 until the Merger. During that period, she also served as a member of the Audit Committee and the Compensation Committee.

83. VectoIQ’s Form 10-K filed with the SEC on March 6, 2020 states that Hallac owned 15,000 shares of VectoIQ stock. Given that the price per share of Nikola’s common stock at the close of trading on June 18, 2020 was \$67.73, Hallac owned approximately \$1 million worth of Nikola stock which she had previously acquired for nominal consideration. Pursuant to the Lock-Up Agreement, Hallac was prohibited from selling these shares for one year.

#### **5. Richard J. Lynch**

84. Defendant Richard J. Lynch (“Lynch”) served as a director at VectoIQ from May 2018 until the Merger. During that period, he also served as a member of the Compensation Committee.

85. According to a prospectus filed by Nikola with the SEC on July 17, 2020, as of June 18, 2020 (the date VectoIQ dissolved and distributed its holdings to its members), Lynch owned 74,424<sup>6</sup> shares of Nikola stock, which he

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<sup>6</sup> The 74,424 shares owned by Lynch consisted of (i) 15,000 shares owned directly by Lynch; and (ii) 52,682 shares and 6742 shares underlying warrants previously owned, as of June 3, 2020, by VectoIQ, and subsequently transferred to Lynch when VectoIQ dissolved on June 18, 2020.

had previously acquired for nominal consideration. Given that the price per share of Nikola's common stock at the close of trading on June 18, 2020 was \$67.73, Lynch owned approximately \$5 million worth of Nikola stock. Pursuant to the Lock-Up agreement, Lynch was prohibited from selling these shares for one year.

## **6. Victoria McInnis**

86. Defendant Victoria McInnis ("McInnis") served as a director at VectoIQ from May 2018 until the Merger. During that period, she also served as a member of the Audit Committee.

87. According to a prospectus filed by Nikola with the SEC on July 17, 2020, as of June 18, 2020 (the date VectoIQ dissolved and distributed its holdings to its members), McInnis owned 59,068<sup>7</sup> shares of Nikola stock, which she had previously acquired for nominal consideration. Given that the price per share of Nikola's common stock at the close of trading on June 18, 2020 was \$67.73, McInnis owned approximately \$4 million worth of Nikola stock which she had previously acquired for nominal consideration. Pursuant to the Lock-Up Agreement, McInnis was prohibited from selling these shares for one year.

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<sup>7</sup> The 59,068 shares owned by McInnis consisted of (i) 15,000 shares owned directly by McInnis, and (ii) 39,068 shares and 5000 shares underlying warrants previously owned, as of June 3, 2020, by VectoIQ, and subsequently transferred to McInnis when VectoIQ dissolved on June 18, 2020.



88. Defendants Girsky, Shindler, and Hallac, have continuing joint financial interests as they all are affiliated with Girsky's related SPAC, VectoIQ Acquisition Corp II.

**F. Individual Defendants—Senior Nikola Officers**

**1. Kim J. Brady**

89. Defendant Kim J. Brady ("Brady") served as Legacy Nikola's CFO and Treasurer from November 2017 until the Merger. Following the Merger, Brady became Nikola's CFO. Brady was personally hired to be Nikola's CFO by Milton while Nikola was privately held.

90. Following the Merger, Brady owned 10,275,414 shares of Nikola's common stock. Given that the price per share of Nikola's common stock at the close of trading on June 3, 2020 was \$33.97, Brady owned approximately \$349 million worth of Nikola stock.

91. During fiscal year 2019, Nikola paid Brady \$250,000 in salary and \$12,451 in other compensation. During fiscal year 2020, Nikola paid Brady \$144,231 in salary, \$1,041,139 in bonus, \$84,800,710 in stock awards, and \$50,566 in other compensation, for total compensation of \$86,036,646.

92. Since the Merger, Brady's compensation has consisted of (1) a salary of \$1; (2) an annual "time-vested award" of \$3.2 million worth of restricted stock units ("RSU"), vesting three years after grant, with the first such award based on a

stock price of \$10; and (3) a “performance award” consisting of up to 2,591,000 RSUs earned after certain stock price milestones were achieved:

<b>Share Price Milestone</b>	<b>Market Capitalization at Price</b>	<b>Incremental Performance Shares Earned at Share Price Milestone</b>
Below \$25.00	Below \$10 billion	0
\$25.00	\$10 billion	570,000
\$40.00	\$16 billion	855,000
\$55.00 or Above	\$22+ billion	1,166,000

The performance award financially motivated Brady to ignore or assist in Milton’s misconduct. Through Milton’s pumping up of Nikola’s stock price above any of the share price milestones for twenty consecutive trading days, Brady stood to potentially receive millions of dollars of Nikola stock. Based on the trading price of Nikola stock between June 3, 2020 and September 20, 2020, resulting from the misleading statements regarding Nikola’s business, the first performance milestone was reached and Brady is now entitled to 570,000 Nikola RSUs.

93. On June 3, 2020, in connection with the closing of the Merger, Brady received fully vested and exercisable stock options that gave him the right to purchase 10,275,414 shares of Nikola common stock at a price of \$1.05.

## **2. Britton Worthen**

94. Defendant Britton M. Worthen (“Worthen”) has served as Nikola’s Chief Legal Officer and Secretary since June 2020, and prior to that served as Legacy

Nikola’s Chief Legal Officer and Secretary from October 2015 to June 2020. Worthen was personally hired to serve as Nikola’s Chief Legal Officer by Milton.

95. During the fiscal year ended December 31, 2020, Worthen received compensation from Nikola consisting of \$144,231 in salary and stock awards valued at \$79,470,349 (valued by aggregate fair value computed as of the grant date), plus whatever gains Worthen would realize from appreciation in the value of the stock he owned.

96. Since the Merger, Worthen’s compensation has consisted of (1) a salary of \$1; (2) an annual “time-vested award” of \$3 million worth of restricted stock units (“RSU”), vesting three years after grant, with the first such award based on a stock price of \$10; and (3) a “performance award” consisting of up to 2,428,000 RSUs earned after certain stock price milestones were achieved:

<b>Share Price Milestone</b>	<b>Market Capitalization at Price</b>	<b>Incremental Performance Shares Earned at Share Price Milestone</b>
Below \$25.00	Below \$10 billion	0
\$25.00	\$10 billion	534,000
\$40.00	\$16 billion	801,000
\$55.00 or Above	\$22+ billion	1,093,000

The performance award financially motivated Worthen to ignore or assist in Milton’s misconduct. Through Milton’s pumping up of Nikola’s stock price above any of the share price milestones for twenty consecutive trading days, Worthen (by remaining silent) stood to receive millions of dollars of Nikola stock. Based on the

trading price of Nikola stock between June 3, 2020 and September 20, 2020, resulting from the misleading statements regarding Nikola's business, the first performance milestone was reached and Worthen is now entitled to 534,00 Nikola RSUs.

97. On June 3, 2020, in connection with the closing of the Merger, Worthen received fully vested and exercisable stock options that gave him the right to purchase 4,603,168 shares of Nikola common stock at a price of \$1.05.

### **III. SUBSTANTIVE ALLEGATIONS**

#### **A. Milton Has a Long History and a Well-Earned Reputation for Dishonesty and Questionable Business Dealings**

98. Milton likes to invite comparisons between himself and famed entrepreneur Elon Musk. But Milton's background and Musk's are very different. Musk has degrees in economics and physics from the University of Pennsylvania, and has a track record of founding successful businesses, including PayPal, Tesla, and SpaceX. By contrast, Milton has no engineering, scientific, or technical qualifications whatsoever, and his background is checkered with claims of fraud and lawsuits. Despite this, Milton touts himself as a leading expert on electric vehicles.

99. In a series of failed businesses between 2004 and 2015 before Milton founded Nikola, his partners, business associates, and stockholders described him as dishonest, unreliable, and untrustworthy. A purchaser of Milton's alarm system dealership deemed it a "disaster," with the buyer claiming that Milton

“misrepresented revenue and expense information prior to the sale.” A classified website business that Milton touted as “the website that has nearly as many hits as Craigslist and would soon be close to Amazon in hits” left investors sustaining staggering total losses on their investments.

100. In another of Milton’s businesses, dHybrid, a company that developed and designed hybrid fuel systems based on compressed natural gas (“CNG”) conversion technology for diesel engines, investors claimed that the trucks did not perform as promised; that dHybrid’s officers or directors diverted payments for their own personal use, or for other unauthorized spending; that dHybrid defaulted on a \$322,000 loan; and that Milton made numerous false claims about the technology and purported success of the business. In October 2014, dHybrid Systems was acquired by Worthington, a diversified metals manufacturing company based in Ohio that employed Russell. Milton briefly worked for Worthington under Russell, before quitting to found Nikola.

101. In interviews with CNN Business in or around October 2020, six people who “said they either invested in or did business with Milton before Nikola” said “Milton was a skilled salesman, but they soon found him hard to trust given a tendency to exaggerate and not follow through on promises. Some had questions about his character and integrity.” “Two people said they invested tens of thousands of dollars, but claim they never received the stock certificates they were owed to

formalize their investment. One investor said they've already filed a complaint with a regulatory body and another said they're in the process of doing so."

**B. In 2015, Milton Founded Nikola and Promoted It As Revolutionary to the Trucking Industry**

102. In 2015, Milton founded and became the CEO of a new zero-emissions vehicle startup named Bluegentech. In July 2017 Milton changed the company's name to "Nikola Corporation," after Nikola Tesla, the inventor and electrical engineer.

103. On May 9, 2016, Nikola came out of what it called "stealth mode," and announced it was developing a product that would "transform" the "U.S. transportation industry." Over the next several years, Milton relentlessly promoted Nikola's supposedly proprietary technologies and misleadingly represented to the public that the Company was developing products that would revolutionize the trucking industry.

**C. Milton's Misleading Statements Lay the Groundwork for a Deceptive Merger with VectoIQ**

104. In dozens of misleading statements from 2016 until after Nikola became public through the Merger, *covering no fewer than seventeen different subjects*, Milton portrayed Nikola as a company on the cutting edge of electric vehicle manufacturing technology. The breadth of Milton's fraudulent statements is

stunning. As further detailed below, until his resignation in September 2020, Milton and Nikola misrepresented Nikola's business with respect to the following matters:

- (a) Nikola's claim to have engineered a zero emissions truck by August 2016;
- (b) Nikola's purported "proprietary turbine system" technology;
- (c) Nikola's purported possession of advanced hydrogen fuel cell technology and hydrogen production capabilities;
- (d) Nikola's purportedly successful development of a "game-changing" battery technology;
- (e) Nikola's development of the revolutionary and purportedly fully functional Nikola One truck and the Nikola's ability to bring that truck to market;
- (f) Nikola's production and development of the Badger, a zero-emissions pick-up truck that Nikola would build from the "ground up" as a "clean sheet" vehicle that would use Nikola's proprietary technology, which Nikola had purportedly been developing for years;
- (g) the purported development of a luxury closed-cabin version of the NZT off-road vehicle, which was to have "full HVAC, heating and air conditioning";
- (h) Nikola's purported ownership of natural gas wells;
- (i) claims that Nikola had built an "off-grid headquarters" powered by "3.5 megawatts of solar up on the roof producing about 18 megawatts of energy a day";
- (j) Nikola's hydrogen fueling station network and its purported ability to produce hydrogen cheaply;
- (k) Nikola's sourcing and costs for electricity;
- (l) Nikola's purported in-house capabilities to design and manufacture the major components of its vehicles;

- (m) Nikola's purported ability to develop and manufacture the Nikola Tre truck;
- (n) the Nikola Two truck's purported acceleration capabilities;
- (o) the nature and number of truck reservations and possible orders, the majority of which were for the discontinued Nikola One, and approximately 94% of which were nonbinding and cancellable at any time for any reason;
- (p) qualifications of the Company's engineering personnel; and
- (q) the nature of Nikola's proprietary inverter software and demand for that software from other vehicle manufacturers.

105. These misleading statements were not isolated or later corrected. Many of them were repeated over the years in one form or another. They created an ongoing story that Nikola, at least to the public's eyes, was on the cutting edge of electric trucking technology and development and progressing toward getting electric trucks to market, among other goals. These blatant misrepresentations were persistent, occurring well before the Merger, while the Merger was pending, and continuing unabated until Milton resigned from the Company. By November 2019, Milton had artificially pumped up the value of Nikola with many of these misleading statements to an illusory \$3 billion, thus setting the stage for the combination with VectoIQ.

106. Until the allegations in the Hindenburg Report surfaced, none of these misrepresentations (many of which were known or obvious to Nikola's Board) had been corrected or, apparently, even addressed by the Board. Three boards of



directors over this time period allowed Milton to make baseless statements promoting himself and Nikola’s business while ignoring red flags surrounding his actions.

**D. Nikola Chooses to Go Public Through a SPAC to Avoid Scrutiny of the Merger by Investors, Regulators, and the Public**

107. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

108. [REDACTED]

[REDACTED], so Nikola went the SPAC

route, which also had another key advantage: unlike an IPO, a SPAC reverse merger is not subject to what is commonly referred to as a “quiet period” mandated by the federal securities laws. The purpose of a quiet period is to create a level playing field by ensuring that all investors have access to the same information at the same time, and to prevent executives from taking actions to hype or artificially inflate the company’s stock price. The quiet period lasts from the time the company issuing the stock discloses information about the issuance in the registration statement and prospectus that are required to be filed with the SEC until forty days after the new

stock begins trading. During the quiet period, the company's executives generally cannot provide any information about the company to anyone beyond what was previously disclosed in the registration statement and prospectus. Because a SPAC reverse merger is not subject to a quiet period, the executives of the private company that is merging with the SPAC are not limited in their ability to speak publicly about their company while the company goes public. This aspect of the transaction with VectoIQ, the ability to promote the stock without restrictions, played right into Milton and Defendants' hands.

109. [REDACTED]

[REDACTED]

[REDACTED]

110. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**E. VectoIQ and Nikola Decide to Merge with Nikola, Becoming a Public Company**

111. By late 2019, the deadline for VectoIQ to close a deal was fast approaching and it faced increasing pressure to complete an acquisition by mid-2020. Otherwise, VectoIQ’s founding stockholders—including Defendants Girsky, Gendelman, Hallac, Lynch, and McInnis—would lose their opportunity to realize potentially millions of dollars’ of appreciation in their 20% equity interest in VectoIQ based on the Merger with Nikola.

112. During the week of November 18, 2019—and with only six months to go before VectoIQ’s May 18, 2020 deadline arrived—investment bankers from Cowen and Company, LLC (“Cowen”) proposed Nikola as a potential acquisition target to VectoIQ’s management. Cowen was an original investor in VectoIQ having purchased 1,449,000 of the Founders shares in March 2018 before the IPO. Cowen was conflicted as it also had a prior relationship with Nikola, having provided financial advisory services to the Company in connection with an offering of

preferred stock in 2018. Around this time, Cowen also pitched its idea of a VectoIQ-Nikola merger to Nikola's management.

113. Beginning the week of November 25, 2019, members of the management teams from both companies met at Nikola's headquarters. Thereafter on December 20, 2019, VectoIQ sent a non-binding letter of intent to Nikola (the "Letter of Intent"). In a subsequent phone call on December 22, 2019, Defendant Girsky proposed, among other things, a valuation of approximately \$3 billion on a pre-money basis, two Board seats for VectoIQ, and that VectoIQ would raise at least \$500 million in a PIPE transaction as a condition to closing. Following further negotiations, the parties agreed to a \$3 billion valuation, one board seat for VectoIQ, and the \$500 million to be raised through a PIPE offering. The parties signed the Letter of Intent on December 24, 2019.

114. Over the next several weeks VectoIQ and Nikola began working together to pitch the Merger as an attractive investment opportunity with potential PIPE investors and continued to discuss the terms of the proposed Merger.

115. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(a)

[Redacted]

(b)

[Redacted]

(c)

[Redacted]

116.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

**F. The VectoIQ Board and the Legacy Nikola Board Approve the Merger Agreement**

117. Both the VectoIQ Board and the Legacy Nikola Board approved the Business Combination Agreement (referred to herein as the “Merger Agreement”) and related agreements, which were executed on March 2, 2020. On March 3, 2020, prior to the market opening, VectoIQ and Nikola issued a joint press release announcing execution of the Merger Agreement.

118. In going public, the Legacy Nikola Board and Nikola’s major stockholders—including Milton—finally had the opportunity to monetize and make liquid their privately held shares in Nikola based on a purported \$3 billion valuation. And by acquiring a target company, the VectoIQ Board and VectoIQ’s founders—including Girsky—realized the substantial value created from their 20% investment in VectoIQ for a relatively nominal out-of-pocket cost.

119. The Merger Agreement was signed by Girsky and Milton on behalf of VectoIQ and Nikola, respectively. Section 4.18 of the Merger agreement states that the Legacy Nikola Board unanimously “(a) determined that this Agreement and the Merger are fair to and in the best interests of the Company and its stockholders, (b) approved this Agreement and the Merger and declared their advisability, and (c) recommended that the stockholders of the Company approve and adopt this Agreement and approve the Merger and directed that this Agreement and the Transactions (including the Merger) be submitted for consideration by the

Company's stockholders." Section 5.10 of the Merger agreement states that the VectoIQ Board, by a majority vote of those voting, "(i) determined that this Agreement and the transactions contemplated by this Agreement are fair to and in the best interests of VectoIQ and its stockholders, (ii) approved this Agreement and the transactions contemplated by this Agreement and declared their advisability, (iii) recommended that the stockholders of VectoIQ approve and adopt this Agreement and Merger, and directed that this Agreement and the Merger, be submitted for consideration by the stockholders of VectoIQ at the VectoIQ Stockholders' Meeting."

120. The Merger was set to occur via what is known as a "SPAC reverse merger," and provided that each privately held share of Nikola common stock issued and outstanding immediately prior to the Merger would be converted into the right to receive 1.901 shares of VectoIQ common stock. VectoIQ's public stockholders would continue holding one share of common stock in the surviving corporation for each share of VectoIQ they owned prior to the Merger. VectoIQ and Nikola agreed to prepare and file a proxy statement, prospectus, and information statement to be sent to VectoIQ's and Nikola's stockholders regarding the proposed transaction. Nikola agreed to seek written consent from its stockholders for the Merger, and Nikola's key stockholders—who represented approximately 80% of Nikola's

outstanding shares prior to the Merger—agreed to enter into a Stockholder Support Agreement to vote all their shares in favor of the transaction.

121. The parties further agreed that immediately following the merger, the Company would redeem 7,000,000 shares of Nikola common stock from M&M, owned by Milton, at a price of \$10 per share, effectively resulting in a \$70 million immediate cash payment to Milton.

**G. Pressure Increases on VectoIQ and Nikola to Consummate the Merger**

122. In the months before the Merger closed, VectoIQ was under intense pressure to consummate a business combination, as it was running up on its May 18, 2020 deadline to find a suitable acquisition target or return its investors' money. On April 20, 2020, VectoIQ filed a Schedule 14A (the "April 2020 Proxy") with the SEC, which was signed by Girsky, Gendelman, Hallac, Lynch, and McInnis pursuant to Exchange Act § 14(a). The April 2020 Proxy was necessary to amend VectoIQ's certificate of incorporation and extend the date by which the Merger with Legacy Nikola would be consummated, from May 18, 2020 to July 31, 2020, to allow sufficient time to obtain stockholder approval by way of a second proxy vote, and complete the Merger.

123. Nikola too was under intense financial pressure in the months before the Merger closed—pressure that had been mounting since late 2019. Indeed, [REDACTED]



[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

124. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

125. [REDACTED]

126. [REDACTED]

**H. After the Merger Announcement, Milton Continues His Fraudulent Course of Conduct With the Acquiescence of the VectoIQ and Legacy Nikola Boards**

127. Beginning in March 2020 when the Merger was announced, and increasingly thereafter, Milton became fixated on maximizing Nikola's value and consequently its stock price. Once the Merger was announced, VectoIQ's stock price was directly linked to statements and information concerning the success and promise of Nikola's business. Thus, on March 3, 2020, the day after the Merger was announced, VectoIQ's stock traded at \$11.50 per share. On the day before the closing of the transaction it traded at \$31.37 per share—pumped up over time by

Milton's continuing scheme to misrepresent Nikola's business, which was aided and abetted by both VectoIQ Board and the Legacy Nikola Board.

128. For instance, on or about March 2, 2020, the day before Nikola announced the Merger, Milton wrote an email to a member of the Legacy Nikola Board stating, "need to make sure we are getting retail investors on our side. That is what prevents the stock short selling. This is super important for me." Milton continued to disseminate misleading tweets, internet posts, and other statements in the weeks leading up to the Merger. Additionally, on days after the Merger when Nikola's stock price declined, Milton would send frantic phone calls or text messages to senior Nikola executives urging them to "do something" or to put out "good news" to "get people excited" about Nikola's business prospects.

129. Milton was personally motivated to increase Nikola's stock price before the Merger (when it was linked to VectoIQ), pending the Merger, as well as after the Merger. First, he already owned a significant amount of Nikola stock, which he was contractually permitted (under the Merger Agreement and related agreements) to sell beginning six months following the Merger. Second, Milton and Nikola's senior executives stood to receive substantial grants of Nikola stock based on its trading price and would gain millions of dollars by virtue of their substantial holdings of Nikola stock which increased in value as Milton continued his relentless media campaign.

130. Milton was particularly concerned with hyping Nikola stock to unsophisticated retail investors—so-called “Robinhood investors.” Milton tracked the daily number of new Robinhood users who held Nikola stock, and at one point he shared a tweet with a senior Nikola executive reflecting that over 36,000 new Robinhood users became Nikola stockholders that day. The senior executive responded, in part, by expressing his amazement at how many calls he received “from retail investors today that have no clue about Nikola, other than their friends told them to buy. A lot of hype out there with retail investors,” to which Milton replied: “That’s how you build a foundation. Love it.”

131. During the negotiations for the Merger, Milton tried to ensure that he would not be locked up from selling his Nikola stock for any period of time, but ultimately was forced to sign a one-year lock-up. However, the lock-up did not apply to the \$70 million cash payment to M&M at the time the Merger closed, and it also carved out \$70 million in stock that Milton could sell as soon as six months after the Merger. And soon after the Merger, on July 17, 2020, the lock-up agreement was amended to permit Milton and Russell to (1) sell all of their shares (which they owned through M&M and T&M) beginning on December 1, 2020; and (2) transfer up to 16% of their shares as collateral to borrow money to buy more Nikola stock through open-market transactions—stock that Milton and Russell could presumably

then turn around and sell at any time allowing them to get around the lock-up provisions prohibiting sales.

**I. Defendants File a Misleading Proxy Statement in Connection with the Merger**

132. On March 13, 2020, VectoIQ filed a Registration Statement on Form S-4 which was declared effective on May 8, 2020. Pursuant to the Registration Statement, VectoIQ, issued a Proxy Statement in connection with the stockholder vote on the Merger (the “Merger Proxy”), which was signed by Milton and Girsky.

133. The Merger Proxy contained a section titled “VectoIQ’s Board of Directors’ Reasons for Approval of the Business Combination that stated in relevant part:

VectoIQ’s board of directors considered a number of factors pertaining to the Business Combination as generally supporting its decision to enter into the Business Combination Agreement and the transactions contemplated thereby, including, but not limited to, the following:

- *Highly Disruptive Technology.* VectoIQ’s management and board of directors believe that Nikola is a market disruptor in an attractive and growing industry with over 70 patents issued or pending and strong growth prospects within the hydrogen fuel, BEV and FCEV sectors as well as adjacent markets;
- *Strategic Partnerships.* VectoIQ’s management and board of directors considered Nikola’s strategic partnerships with industry leaders, which it believes reduce Nikola’s technology and execution risk from truck and hydrogen station development to truck sales and maintenance;
- *High Demand for Product.* VectoIQ’s management and board of directors considered the fact that Nikola has a high volume of fuel cell electric vehicle pre-orders, currently at over \$10

billion, as well as contracts with top tier customers with investment-grade credit ratings;

- *Platform Supports Further Growth Initiatives.* VectoIQ’s management and board of directors believe that Nikola’s business model uniquely supplies both the truck and hydrogen fueling infrastructure, solving the fleets’ concerns as to where to refuel with green hydrogen at competitive pricing to diesel;
- *Due Diligence.* VectoIQ’s management and board of directors conducted due diligence examinations of Nikola and discussions with Nikola’s management and VectoIQ’s financial and legal advisors concerning VectoIQ’s due diligence examination of Nikola;
- *Financial Condition.* VectoIQ’s board of directors also considered factors such as Nikola’s outlook, financial plan and debt structure, as well as valuations and trading of publicly traded companies and valuations of precedent combination and combination targets in similar and adjacent sectors (see “—*Certain Nikola Projected Financial Information*”);
- *Attractive Market Valuation of Comparable Companies.*

. . . While Nikola’s projected performance metrics used to derive the initial market valuation multiples of the post-Business Combination company reflected in the terms of the Business Combination are based on forecast periods two to five years beyond the comparable peer metrics, the VectoIQ board of directors believes that the implied valuation discount is such that even applying conservative discount rate assumptions to arrive at a present value for the post-Business Combination company results in a favorable comparison. For example, when applying the median 2020 enterprise value/revenue multiple for the Comparable Fuel Cell Technology Companies of 9.5x to Nikola’s 2024 projected revenue, the initial market valuation of the post-Business Combination company implies a 67.6% annual discount rate from December 31, 2024 to June 30, 2020. Since Nikola’s business is not expected to achieve scale until 2024, the VectoIQ board of directors believes this present value methodology is the most reasonable method of comparison. Although this analysis is based on the current Nikola

projections, the valuation multiples decline each year as a result of the high growth projected for Nikola's business;

- *Experienced and Proven Management Team.* VectoIQ's management and board of directors believe that Nikola has a strong management team which is expected to remain with the combined company to seek to execute Nikola's strategic and growth goals;

134. Further, the Merger Proxy described the Company's due diligence and

Nikola's purported ability to produce hydrogen as follows:

Q. Who is Nikola?

A. Nikola is a vertically integrated zero-emissions transportation solution provider that designs and manufactures state-of-the-art battery-electric and hydrogen fuel cell electric vehicles, electric vehicle drivetrains, energy storage systems, and hydrogen fueling stations. Nikola's core product offering is centered around its battery-electric vehicle ("BEV") and hydrogen fuel cell electric vehicle ("FCEV") Class 8 semi-trucks. The key differentiator of Nikola's business model is its planned network of hydrogen fueling stations. Nikola is offering a revolutionary bundled lease model, which provides customers with the FCEV truck, hydrogen fuel, and maintenance for a fixed price per mile, locks in fuel demand and significantly de-risks infrastructure development. See "*Information About Nikola.*"

\* \* \*

During the week of November 25, 2019, members of the management teams from both companies met at Nikola's headquarters in Phoenix, Arizona to enable VectoIQ's management to learn more about Nikola's current and planned business. Throughout the week the management teams also held calls to discuss scheduling for continued due diligence meetings as well as a timeline for a potential combination. During this period, VectoIQ assembled a number of industry experts to advise with respect to



vehicle development, electrification, fuel cells, software, connectivity and manufacturing in connection with its due diligence efforts.

During the week of December 2, 2019, representatives of VectoIQ and Nikola held a technical due diligence call and VectoIQ had discussions with industry experts on commercial conditions in the Class 8 Hydrogen and Electrification markets.

\* \* \*

*First Test Station Installed at Nikola's Phoenix HQ*

Through our partnership with Nel ASA, a Norwegian hydrogen company ("Nel"), we have initiated the development of the hydrogen station infrastructure by completing our first 1,000 kg demo station in the first quarter of 2019 at our corporate headquarters in Phoenix, Arizona. The demo hydrogen station offers hydrogen storage and dispensing and serves as a model for future hydrogen stations.

135. The Merger Proxy described the Company's business as follows:

*DESCRIPTION OF BUSINESS AND BASIS OF PRESENTATION*

Nikola Corporation ("Nikola" or the "Company") is a designer and manufacturer of battery-electric and hydrogen-electric vehicles, electric vehicle drivetrains, vehicle components, energy storage systems, and hydrogen stations.

*The Company is also developing a network of hydrogen fueling stations to meet hydrogen fuel demand for its customers.* Fueling related activities will be conducted through the Company's wholly-owned subsidiary, Nikola Energy.

(Emphasis added.)

136. The Merger Proxy additionally touted the Company’s “in-house” capabilities and Milton’s purported value and expertise—and the risks faced thereby, stating in relevant part:

In June 2019, Nikola moved into our state-of-the-art headquarters and R&D facility in Phoenix, Arizona, which consists of more than 150,000 square feet *and where we are capable of designing, building, and testing prototype vehicles in-house.*

\* \* \*

We are highly dependent on the services of Trevor R. Milton, Chief Executive Officer, and largest stockholder. Mr. Milton is the source of many, if not most, of the ideas and execution driving Nikola. If Mr. Milton were to discontinue his service to us due to death, disability or any other reason, we would be significantly disadvantaged.

(Emphasis added.)

137. The Merger Proxy also predicted that Nikola would begin BEV truck production in 2021, followed by low volume FCEV production commencing in the first half of 2023, leading to the following financial and non-financial projections:

**Key Financial Metrics:**

(in millions)	Forecast				
	Year Ended December 31,				
	2020P	2021P	2022P	2023P	2024P
Total Revenue	\$ —	\$ 150	\$ 300	\$ 1,414	\$ 3,226
Gross Profit	—	38	58	301	719
EBITDA(1)	(211)	(245)	(175)	(66)	213
Capital expenditures(2)	(156)	(298)	(296)	(369)	(673)

(1) Earnings Before Interest, Taxes, Depreciation and Amortization.

(2) Capital expenditures for hydrogen stations are expected to be funded with approximately 60% equity and 40% debt. Capital expenditures related to our manufacturing facility are expected to be funded with 80% equity and 20% debt.

**Key Non-Financial Metrics:**

	Forecast				
	Year Ended December 31,				
	2020P	2021P	2022P	2023P	2024P
Total BEV trucks sold or leased ( <i>units</i> )	—	600	1,200	3,500	7,000
Total FCEV trucks sold or leased ( <i>units</i> )	—	—	—	2,000	5,000
Hydrogen stations—Started in period	—	2	13	28	57
Hydrogen stations—Completed in period	—	—	—	10	24

138. The Merger Proxy was materially false and misleading as described further below in paragraphs 144 to 146. Once the Merger closed, Milton continued his relentless dissemination of the same types of materially misleading statements.

**J. The Merger Closes and Nikola Becomes a Publicly Traded Company**

139. The Merger closed on June 3, 2020, with Legacy Nikola stockholders receiving 276,998,624 shares in VectoIQ, representing 77.1% of the total shares outstanding, valued for purposes of the Merger, at \$2.77 billion. VectoIQ also changed its name to Nikola. On the day of the closing, Nikola stock ended the day trading at \$33.97 per share giving Nikola's major stockholders stock valued at over \$2 billion in the merged company.

140. As alleged above, the VectoIQ Board Defendants each profited handsomely from the Merger through the conversion of their financial interests in VectoIQ into Nikola stock. Specifically, as of June 18, 2020:

- (a) Girsky owned approximately \$119 million worth of Nikola stock, for which he had paid only a nominal amount—a *gain of nearly \$119 million*.
- (b) Shindler owned approximately \$27 million worth of Nikola stock, for which he had previously paid only a nominal amount—a *gain of nearly \$27 million*.
- (c) Gendelman owned approximately \$3 million worth of Nikola stock, for which he had previously paid only a nominal amount—a *gain of approximately \$3 million*.
- (d) Hallac owned approximately \$1 million worth of Nikola stock, for which she had previously paid only a nominal amount—a *gain of nearly \$1 million*.
- (e) Lynch owned approximately \$5 million worth of Nikola stock, for which he had previously paid only a nominal amount—a *gain of nearly \$5 million*.
- (f) McInnis owned approximately \$4 million worth of Nikola stock, for which she had previously paid only a nominal amount—a *gain of nearly \$4 million*.

141. Further, as alleged above, VectoIQ's Board acceded to Milton's demands to shorten the lock-up period and also agreed to paying Milton \$70 million in cash in connection with the Merger, by redeeming 7,000,000 shares of common stock that were excluded from the lock-up agreement from M&M, a company owned by Milton, at a purchase price of \$10.00 per share. During the six months that

followed, Milton expressed his intention within the Company to sell shares after the lock-up period was over.

142. Another consequence of the Merger was that Milton ceased being Nikola's CEO and became its Executive Chairman. Still, Milton retained extraordinary control over Nikola, as he explained during a July 17, 2020 *Chartcast* podcast:

I can assume any role [I] want[] at any time, whenever it needs and all . . . roles report directly up to the executive chairman . . . in other words, the CEO reports directly to me and I have the ability to . . . assume or manage any division, any person . . . anyone inside the company, any given time I need to, because they believe that I have . . . more knowledge and more vision than anyone in the company. And so they wanted to make sure I had no restrictions on that.

**K. After the Merger, Nikola's Stock Price Skyrockets as Milton Issues a Litany of False Statements to Hype the Company**

143. The Merger closed on June 3, 2020. Afterward, Milton—motivated by performance awards tied to share-price milestones and the ability to cash in on his stockholdings within the following six months—unleashed a relentless torrent of additional false and misleading statements to pump up Nikola's stock price, primarily by targeting unsophisticated “Robinhood investors” to buy Nikola stock.

144. Specifically, Milton—with the knowledge or assistance of the Nikola Board—knowingly made no fewer than thirty-three false and misleading statements to the public as follows in just a three-month period:

- (a) On June 3, 2020, the same day the Merger closed, Milton tweeted a link to a podcast interview during which he falsely stated that Nikola made its “own powertrains, battery, battery management systems, controls . . . in-house.” The following day, in response to a tweet that another company “supplies the batteries,” Milton tweeted, “We do our own batteries at Nikola and have since day 1.”<sup>8</sup>
- (b) On June 6, 2020, on Twitter, Milton falsely claimed that “All the technology, software, controls, E axle, inverters etc. we do internally.” On July 1, 2020, Milton tweeted, “We make the entire [battery] pack like the top guys do . . . all internals are Nikola’s IP; batteries, inverters, software, ota, infotainment, controls, etc. We own it all in-house.”
- (c) On June 7, 2020, Milton announced on Twitter that Nikola planned to start taking reservations for the Badger on June 29, 2020. On June 9, 2020, in response to a question about when the first Badger prototype would come out, Milton falsely responded on Twitter, “Already.”
- (d) On June 9, 2020, Milton tweeted: “We source energy directly with either wind farms, solar or hydroelectricity. Once we broker a 20 year agreement, we feed it into the federal lines, pay some small fees, then take it out on location. This ensures the energy is clean and we don’t pay post meter rates.”
- (e) On June 9, 2020, Milton tweeted: “We take all energy behind the meter which allows us to get below \$.04 per kWh and guaranteed clean energy.” Milton further tweeted: “Yes, we have stations going up in Canada and they use clean energy for our hydrogen. Solar, Wind and Hydro give us under \$4 per kg hydrogen.”
- (f) On June 10, 2020, Milton tweeted: “H2 is now under \$4 per kg and working on sub \$3 per kg. . . . 15 min full [sic] time & 10,000 lbs lighter

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<sup>8</sup> Milton began making false and misleading claims about Nikola’s in-house design and manufacturing capabilities even before the Merger. In a February 14, 2020 interview on Fox Business, Milton stated: “[W]e’re probably one of the only companies in the world that does everything ourselves. We do our own batteries, we do our own frames, we do our own vehicles from the ground up, our own inverters, our own infotainment, you know, the cool screens. So ultimately, that entire truck from the ground up is designed by Nikola, and they do cost a lot of money . . . .”

. . . . Before anyone goes and slams me about cost of hydrogen, we don't produce it in the city, we do it behind the meter at about \$.04 / kWh on PPP clean energy.”

- (g) On June 21, 2020, a Twitter user asked Milton, “can you please explain how Nikola is achieving cheap power along freeways? And how will you still achieve cheap power for stations inner city? This is more of the game changer for nikola [sic] in my opinion. Thanks.” Milton responded: “Freeway allows you 20 year PPP without paying high fees to transport through utilities. It is nearly 5x cheaper to produce h2 on freeways, where hydrogen excels.”
- (h) On June 21, 2020, Milton published an article on LinkedIn, in which he wrote: “Most hydrogen that Nikola makes is on the freeway . . . Nikola uses energy transmitted on the federal transmission lines before we enter the utility. We buy this clean energy directly from Wind, Solar and Hydro facilities directly. This allows us to get sub \$.04/kwh 20-year agreements on the freeways.”
- (i) On June 25, 2020, Milton made several false claims on Twitter regarding how the Badger would use the water created by the operation of its hydrogen fuel cell. Milton tweeted that the Badger uses ““most all of it for our windshield washer fluid and . . . a little bit for clean, pure, drinking water.” Milton then tweeted, “Yes you heard that right, we will have a drinking fountain in our truck using the hydrogen bi product water for the drivers to have nice cold, clean, pure drinking water.”<sup>9</sup>
- (j) On June 29, 2020, Milton stated during the Raging Bull podcast, in response to a question regarding who manufactures the batteries used

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<sup>9</sup> At the time, Milton had not yet discussed the idea of using fuel cell by-product as washer fluid or drinking water with Nikola's engineers, who were apparently dubious of the idea—when informed of Milton's claims, one engineer questioned whether “this [is] a joke,” a marketing employee wrote that his “head is fuzzy,” and a designer texted, “[u]hhhhh what.” And several days later, Milton attempted to determine if such use was possible by running an internet search for: “can you drink water from a fuel cell?” Despite this, Milton instructed that Badger's engineers to build the prototypes with water fountains—even though they were BEVs, and not FCEVs that ran on hydrogen fuel—and continued to promote the Badger's drinking water system on television and social media during June-July 2020.

by Nikola's vehicles: "The battery is actually done by Nikola. We own all the tech and we're building all the batteries in-house. So it's all owned by Nikola . . . . [W]e use other people's cells. . . . [B]ut the rest of the entire battery is all our tech, like the cooling, the thermal, the structural, the battery management system, the software; all that's all Nikola."

- (k) Shortly after June 29, 2020, when Nikola began taking reservations and deposits for the Badger trucks, Milton falsely tweeted that the most expensive of the three available reservation packages was "sold out," even though it was not.
- (l) On July 1, 2020, Milton tweeted: "We don't make the cells. We make the entire [battery] pack like the top guys do. We do have an OEM making our truck, but all internals are Nikola's IP; batteries, inverters, software, ota, infotainment, controls, etc. We own it all in-house. Just not the plant to build the truck."
- (m) On July 5 or 6, 2020, Milton falsely tweeted: "All major components are done in house; batteries, inverters, software, controls, infotainment, over the air, etc."
- (n) On July 6, 2020, Milton claimed in an interview on the *Founder Hour* podcast that Nikola's TCO, as compared to diesel, was "like 20 to 30 percent sometimes, cheaper." He further stated, "So it's game over, essentially. If you don't own a Nikola truck, you're gonna go bankrupt."
- (o) On July 14, 2020, Milton stated the following in an Instagram Live video he posted: "Who makes Nikola's batteries? Nikola does. Do we make the cells? No, we do not. . . . We do however, make everything in our battery. All the cooling, the thermal, the battery management system, the software, the hardware, everything except for the cell."
- (p) On July 14, 2020, Milton stated in an Instagram Live video—which he also tweeted about—that the Badger was "a real truck, comes from a billion dollar program" and was "legitimate."
- (q) On July 14, 2020, Milton stated the following in an Instagram Live video he posted: "we charge cost per mile, that's it. Everything all in, service, warranty, maintenance, the entire thing, including the hydrogen fuel, it's under a dollar a mile and, and in some area—it depends on



how many miles you drive a year. That can range much cheaper than that, all the way up to about a dollar a mile. It depends on . . . how it's built out and . . . it's 20 to 30 percent less than diesel.”

- (r) In a video published on or around July 14, 2020, Milton said, with respect to the powertrain for the Nikola Two: “We do all the e-axle design in house. All the gears, the gear reductions, the thermal, the cooling, even the controls that go with it, and also, the inverters as well. All inverters on the Nikola truck are probably some of the most advanced software systems that I know of anywhere in the automotive world.” Milton also stated that while Nikola does not manufacture the battery cell, it does “make everything in our battery. All the cooling, the thermal, the battery management system, the software, the hardware, everything except for the cell.”
- (s) On or around July 15, 2020, Milton posted a falsified video purporting to show that the Nikola Two could go “0-60 in under 5 seconds.” After some Twitter users questioned whether the video really showed the Nikola Two going from 0MPH to 60MPH in five seconds, Milton promised a follow-up video to back up his claims, but one was never posted.
- (t) On or about July 17, 2020, Milton recorded a podcast with *The Chartcast with TC & Georgia* that was published on or about July 19, 2020, during which he stated: “So the energy on the freeway, we, we, we tap directly into the main federal transmission lines and we contract directly with groups . . . an example would be like, you know, um, would be like a Tennessee Valley Authority. . . . So out on the freeways where the federal transmission lines are, and we can tap in, and we’ve, we’ve already preplanned all these, these locations where they can go. Um, and we’re gobbling up the best locations right now. Milton further stated: “We only look at areas where we can get this energy for sub, you know, sub three or four cents a kilowatt hour, guaranteed 24 hours a day. And we’ve been able to do that in almost every one of our major locations that we’re going up, and we’re gobbling up those locations.” And he stated, “we have exact costs for our customers” and “every contract we’ve been doing right now has been to where we get very good discounts, if not free for a lot of energy, you’re talking about, you know, \$2 a kilogram, buck, buck 50, buck 80.” During the podcast, Milton also claimed that Nikola had five BEVs “coming off the assembly line right now in Ulm, Germany.” Milton also claimed that

the TCO for Nikola's trucks was "essentially 30 . . . 25, 30% less than a diesel engine to operate . . . which is game over for diesel."

- (u) In an interview on July 17, 2020 on the TeslaCharts podcast, Milton claimed Nikola "chop[ped] the cost of hydrogen from \$16/kg down to . . . below \$3/kg." Milton also claimed he had "so much experience" with hydrogen production, that he "knows the stuff better than anyone he has ever encountered," and said he spent "seven years" driving the cost of hydrogen down.
- (v) In a July 17, 2020 interview with Jessica Meckmann published on LinkedIn, Milton stated: "We are contracting with wind, solar and hydro plants for energy and so far have been able to source plenty of energy under \$.04 per kWh. Most of it is much lower in the 2.5 [cents] per kWh range."
- (w) On July 22, 2020, Milton falsely tweeted that Nikola had "5 units coming off assembling line now in Ulm Germany" and "5 Units coming off assembling lines in Germany for testing."
- (x) On July 31, 2020, during the *This Week in Startups* podcast, Milton stated as follows: "[W]e do make our own battery packs, that's the key, that's the key element because of the cost. . . . You'll never make it as an OEM if you don't build your own battery. That's the most critical part. . . . [T]he tech is ours. So the battery—like, all the important stuff like software, batteries, or, or eAxle designs, it just means we use someone else to, to build them in the thousands for us, but we own all the tech." Additionally, during the podcast, Milton claimed that Nikola had "over ten billion dollars in preorder reservations," then stated that the orders were not "non-committal" and reiterated that Nikola had "billions and billions and billions and billions of dollars in orders."
- (y) On July 31, 2020, during the *Stockcast* podcast, Milton stated that "diesel's dead in the trucking world. And why is that? Because trucking operates on eight percent margins, somewhere around there. So if you're eight percent less than diesel, it's already game over and that's why it's so great. We're almost 20 to 30 percent less than diesel right now and we're working on, you know, if we can get really good, if we can get down to two dollars a kilogram."

- (z) In an August 1, 2020 interview with Fox Business News, Milton falsely claimed that Nikola was able to produce hydrogen “below \$4/kg” because “standardization of a hydrogen station worldwide has allowed us to drive that cost down dramatically.”
- (aa) On August 3, 2020, after a Twitter user asked Milton to share how he reduced the price of hydrogen, Milton responded: “Essentially, \$.04 kWh equals under \$4 per kg. We are already locking in much lower than \$.04 per kWh on our stations going in as they are on freeways with 20 year PPA. That along with other things I mentioned get us below that.”
- (bb) On August 5, 2020, in an interview with *Cheddar News*, Milton stated that Nikola had received so many orders during the Covid-19 pandemic that it was “sold out for so many years.”
- (cc) On August 10, 2020, Milton announced a purportedly “binding truck order” of 2500-5000 trucks by a publicly traded waste collection company, and tweeted from his personal Twitter account to promote his upcoming appearance on CNBC’s *Fast Money* to discuss the order. Then, when he appeared on *Fast Money*, Milton again stated that the “contract” was “worth about, between 1 and 2 billion dollars, um, they have the right – or they’re obligated to buy up to 2500 of these electric trash trucks, and they have the option to go up to 5000.” Milton also later referred to the order as a billion-dollar-plus opportunity for Nikola in tweets from his personal account on August 16, 2020 and during a TD Ameritrade Network interview on August 19, 2020. In fact, the agreement with the waste collection company did not specify a price term, and the contract gave the waste-collection company broad rights to cancel for a variety of reasons.
- (dd) On August 13, 2020, Milton Tweeted: “We currently make our own green H2 for under \$4 / kg.”
- (ee) In a YouTube video posted on the Tesla Joy YouTube channel on August 24, 2020, Milton stated: “So the things that we do insource is all of our controls, all of our inverters . . . . All of that is actually done in-house in Nikola. . . . But what we do not do is manufacture those in mass production. So we design and engineer them. . . . Same thing with our inverter. We designed our own inverter. We actually have full prototypes here.”

- (ff) On September 8, 2020, Nikola and GM announced a strategic partnership to develop and manufacture the Badger. On September 8-9, 2020, Milton stated on Twitter that Nikola had “designed the Badger from a clean sheet,” “built the [B]adger from the ground up,” and that GM would “use Nikola’s design, and engineer it to fit on the existing GM modular EV platform.”
- (gg) During a September 9, 2020 television interview, Milton stated that Nikola had “built the Nikola Badger from the ground up ourselves, the whole thing” and that the vehicle is “pretty close” to the “final car” that GM would manufacture. Milton stated that the Badger was “probably 70 percent Nikola 30 percent GM” and that Nikola was “really doing most of the IP internally . . . the over-air updating, the software, the controls, the infotainment, the design of the vehicle, the cab, the interior of the cab, . . . even the driver profile, we’ve been all the way down to suspension, that all comes from Nikola.” In truth, the Badger was to be built on a GM electric vehicle platform using GM components. There was no plan to use any proprietary Nikola technology, with the possible exception of the infotainment system. Nobody at GM ever saw or used Nikola’s Badger prototypes.

145. As ultimately revealed, the truth about Nikola’s business presented a starkly different picture than the one painted by Milton and the Company before and after the Merger. Milton and the Company’s statements were materially false and misleading for the following reasons, among others:

- (a) Nikola did not have proprietary turbine technology and needed to obtain the technology from a third party;
- (b) Nikola had never produced a single kilogram of hydrogen, has never had a station permitted to produce hydrogen, and has never signed any contracts with electricity provider relating to the production or distribution of hydrogen;
- (c) Nikola did not, in fact, have any in-house hydrogen capabilities or any partners capable of providing such technology;

- (d) Nikola had not sought a permit for nor built any hydrogen stations, nor had it acquired any land for the stations;
- (e) Nikola never possessed the claimed battery technology and could not manufacture batteries in-house, and internal Nikola documents refer to sourcing the batteries for Nikola's vehicles from third-party suppliers;
- (f) Nikola had not designed or built a functioning prototype of the Badger vehicle at the time it was announced, and the agreement Nikola later signed with GM provided that very little, if any, of Nikola's design, engineering, or intellectual property would be used in producing the Badger and GM never saw or intended to use Nikola's purported prototypes;
- (g) At the time of Nikola's claims regarding the luxury closed-cabin version of the NZT, Nikola had only prepared a "mock up" vehicle that lacked some of the described features, including air conditioning, and the Company soon after abandoned this design and outsourced a re-design of the NZT to another company;
- (h) Nikola does not own any gas wells;
- (i) Nikola did not have solar panels on the roof of its headquarters at least through January 2020;
- (j) Nikola did not have any source for clean energy, was not able to tap into federal electricity transmission lines, and did not have any purchase power agreements ("PPA's") to buy electricity at specific rates;
- (k) The purported assembly line producing the Nikola Tre was not operational;
- (l) Reservations and/or orders for the Nikola trucks were fully cancellable, or highly contingent; and
- (m) "high-ranking" engineering personnel did not have the requisite education or experience to manage and develop an EV truck.

146. Thus, with no oversight or control from Nikola's Board or executives, Milton was free to continue his illegal conduct. However, Defendants were aware,

or should have been aware that Milton's statements, as summarized by the following eight categories, misrepresented Nikola's business and products.

- (a) Nikola's purported hydrogen production capabilities and hydrogen station network (which were in fact non-existent):

Milton and members of the Legacy Nikola Board and Defendants Brady and Worthen knew, or were reckless in not knowing, that these statements were false, [REDACTED]

[REDACTED]

- (b) Nikola's purported ability to tap into federal electricity transmission lines and contract with clean energy sources to obtain cheap electricity (which Nikola could not in fact do):

The Post-Merger Nikola Board and Defendants Brady and Worthen learned that these statements were false and misleading as Milton was making them. [REDACTED]

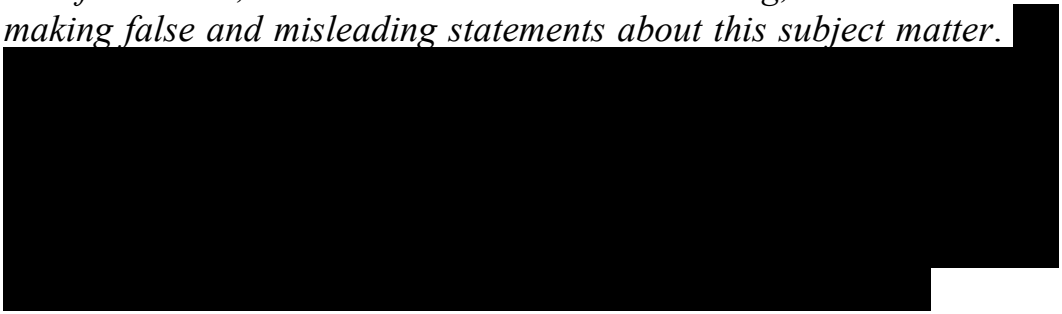
[REDACTED]. Despite this, the Post-Merger Nikola Board did absolutely nothing to prevent Milton from making further false and misleading statements about this subject matter or to correct his then-recent prior false and misleading statements.

- (c) Nikola's purported in-house development and manufacturing of vehicle components (Nikola in fact sourced most major components, including inverters and batteries, from third parties):

Nikola entered into an agreement to develop inverters with a supplier in 2018, but that agreement was terminated in spring 2020 due to a lack of progress. Milton was involved in the termination and requested a refund from the supplier. Further, Nikola's own in-house program for developing inverters had only just begun. Milton also knew that Nikola could not make the Nikola Tre BEV's batteries in-house and was

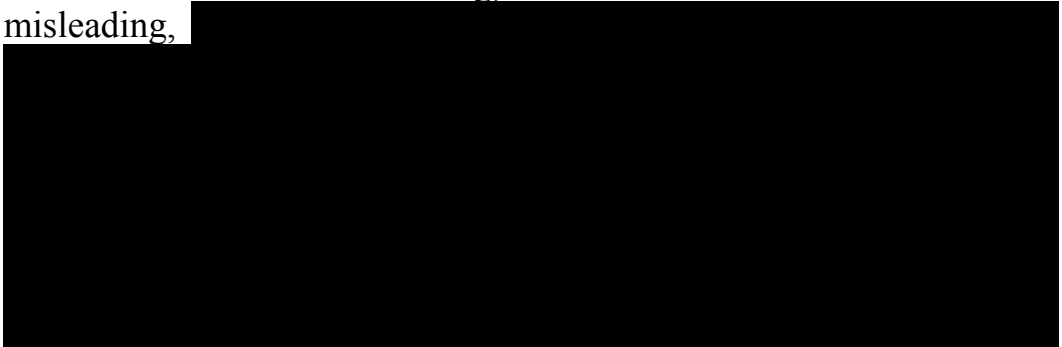
instead using a third-party supplier. Nikola entered into a multi-million dollar purchase order for third-party batteries in November 2019, and Milton was told in April 2020 by a Nikola Vice President of Technology that the Nikola Tre BEV would have to use a third-party battery. In fact, Nikola entered into a battery supply contract in August 2020, and *Milton took steps to conceal* that the batteries for the Nikola Tre BEV were being supplied by a third party, including refusing to give the battery supplier permission to disclose that it was supplying the batteries for the Nikola Tre BEV.

Further, the members of the Post-Merger Nikola Board and Defendants Brady and Worthen were *repeatedly* informed that Nikola did not, in fact, manufacture all of its key vehicle components in-house, *and they therefore know, or were reckless in not knowing, that Milton was making false and misleading statements about this subject matter.*



- (d) Nikola's purportedly imminent manufacturing of the Nikola Tre truck (which was not in fact imminent because the manufacturing plant was not ready to begin production):

The Legacy Nikola Board and Defendants Brady and Worthen knew, or were reckless in not knowing, that these statements were false and misleading,



- (e) The design and development of the Nikola Badger pickup truck (which in reality consisted almost entirely of non-Nikola technology and for which Nikola had not developed a safe, working prototype):

The Legacy Nikola Board and Defendants Brady and Worthen knew, or were reckless in not knowing, that these statements were false and misleading, [REDACTED]

[REDACTED] The prototypes were also missing airbags or an operable HVAC system.

(f) Nikola’s purported truck reservations:

Milton, the Legacy Nikola Board and Defendants Brody and Worthen knew the vast majority of Nikola’s reservations were non-binding and cancellable. However, as the SEC complaint alleges, Milton’s statements regarding the number and nature of orders were untrue. Milton repeatedly and falsely claimed that Nikola was “sold out” on its vehicles based on the number of reservations it had taken; he claimed that Nikola had secured a 2,500-5,000 “binding truck order” from a publicly traded waste collection company; and he claimed that Nikola had secured over \$10 billion in committed pre-order reservations.

(g) The total cost of ownership (“TCO”) of Nikola’s trucks:

Milton knew that Nikola’s projected TCO was at best on par with diesel. In 2019, Nikola’s Finance department and its Head of Business Development informed Milton and other senior executives that based on their analyses and discussions with semi-truck fleet representatives, Nikola’s “costs are high and not at parity with diesel.” After learning this information, in March 2019, Nikola removed claims about its trucks’ TCO savings compared to diesel from private offering documents. But despite his knowledge that Nikola trucks’ projected TCO was at best on par with diesel, and potentially worse, Milton repeatedly falsely claimed that the TCO of Nikola’s trucks was up to 20–30% below that of diesel vehicles.

(h) The Nikola Two truck’s purported ability to go from 0-60 miles per hour in under five seconds (which was never documented or proven):

Milton claimed the Nikola Two truck could accelerate from a stop to 60 miles per hour in under five seconds, but nobody has ever provided proof that it can do so.



147. Evidence of these fraudulent statements was either known to all three Boards or ascertainable through reasonable efforts. First, the VectoIQ Board, motivated by their own significant personal financial interests and the looming deadline to close a deal, and with the substantial assistance of Milton and the Legacy Nikola Board, ignored Milton’s misrepresentations, and utterly failed to satisfy its due diligence obligations to investigate Nikola’s business prior to the Merger by failing to recognize obvious red flags concerning Milton’s representations and Nikola’s business as described above. Second, Nikola’s senior executives and the Post-Merger Nikola Board—eight members of which served on the Legacy Nikola Board—knew, were reckless in not knowing about, or disregarded red flags surrounding Milton’s relentless public campaign to promote Nikola and its stock with unsubstantiated statements and failed to implement any controls over the statements he made in the Company’s name as its CEO.

148. Milton was able to make these false and misleading statements leading up to and after the Merger for two reasons. First, because Nikola went public through a SPAC reverse merger, and not a traditional IPO, Milton and Nikola were not subject to a mandatory “quiet period” preventing them from promoting the Company. Milton made this explicit during a June 2020 podcast in which he stated that an advantage of Nikola going public through a SPAC reverse merger was that he could “communicate with the market,” instead of “bankers . . . trying to tell people

what your company is like.” During the podcast, Milton also stated “I wanted to be in control, I wanted to be in communication with the public about what we are, who we are, how our company—our business model is so successful.”

149. Second, the Defendants did nothing to stop him, largely because they, too, stood to gain financially from increases in Nikola’s stock price. As alleged above, the Nikola Defendants knew, or were reckless in not knowing, that Nikola’s technological assets, manufacturing capabilities, and orders and reservations book were not as Nikola and Milton claimed them to be. Further, they had been aware of Milton’s use of Twitter, Instagram, LinkedIn, and Facebook to promote Nikola before the Merger. But they each had substantial holdings in Nikola stock (or were affiliated with an entity that did) or held stock in VectoIQ, and had a financial interest (directly or indirectly) in keeping the material false and/or misleading narrative going through and after the Merger. Additionally, as alleged above, several of the Nikola D&O Defendants otherwise received lucrative compensation from Nikola by virtue of their position at the Company. And Defendants Russell, Brady and Worthen, in particular, were motivated not to intervene to stop Milton from hyping Nikola because they, too, stood to gain from performance awards and RSUs tied to Nikola’s share price. *As Milton wrote in a July 7, 2020 email exchange with one of Nikola’s directors regarding a release from his lock-up agreement, the stock*

*had gained “over 400%” and he made “everyone else millionaires and billionaires.”*

150.

[REDACTED]

151.

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

152. [Redacted]

[Redacted]

[Redacted]

[Redacted]

153. [Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

154. Milton’s unrestrained illegal promotional efforts to increase Nikola’s stock price were successful. Shares in VectoIQ, which became shares of Nikola, had traded at or around \$10.30 before the Merger was announced, and rose to \$38 on the day before the Merger. Less than a week later, on June 9, 2020, Nikola’s stock price hit \$93.99. By August 14, 2020, Nikola’s share price achieved the first share price milestone specified in Milton’s, Russell’s, Brady’s, and Worthen’s employment agreements, entitling them to awards of 3,242,000 shares of Nikola stock, which were at the time worth approximately \$81 million.

**L. Starting in September 2020, the Truth Begins to Emerge**

**1. The Hindenburg Report**

155. On September 10, 2020, Hindenburg Research published a 52-page report asserting that “Nikola is an intricate fraud built on dozens of lies over the course of its Founder and Executive Chairman Trevor Milton’s career.” 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.

156. On September 11, 2020, Nikola issued a press release responding to the Hindenburg report titled “Nikola Refutes Allegations.” Nikola claimed Hindenburg

had ulterior motives and issued its report “to manipulate the market and profit from a manufactured decline in our stock price.” Nikola claimed the report was “replete with misleading information and salacious accusations,” and that the report was “not accurate” and a “hit job for short sale profit driven by greed.” Nikola further stated: “We have nothing to hide and we will refute these allegations. They have already taken up more time and attention than they deserve. We have retained leading law firm Kirkland & Ellis LLP to evaluate potential legal recourse, including with respect to the activist short seller and any others acting in concert. Nikola also intends to bring the actions of the activist short-seller, together with evidence and documentation, to the attention of the U.S. Securities and Exchange Commission.”

157. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

158. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

159. Nikola then issued the press release on September 14, 2020. The press release called the Hindenburg Report “false and defamatory” and stated:

Nikola believes that the Hindenburg [R]eport, and the opportunistic timing of its publication shortly after announcement of Nikola’s partnership with General Motors Co. and the resulting positive share price reaction, was designed to provide a false impression to investors and to negatively manipulate the market in order to financially benefit short sellers, including Hindenburg itself.

Nikola has contacted and briefed the U.S. Securities and Exchange Commission (SEC) regarding Nikola’s concerns pertaining to the Hindenburg report. Nikola

intends to fully cooperate with the SEC regarding its inquiry into these matters.

Nikola, an early-stage growth company, has been through extensive due diligence processes, starting with Bosch in 2017, Hanwha Group and ValueAct Capital in 2018, CNH Industrial N.V. in 2019, and VectoIQ Acquisition Corp. and General Motors in 2020. Nikola remains laser-focused on laying the groundwork toward becoming the global leader in zero-emissions transportation.

160. In response, on September 15, 2020, Hindenburg Research issued a 25-page rebuttal report, which argued that Nikola had “debunked nothing” and had “either confirmed or sidestepped virtually everything we wrote about, and in some cases raised new unanswered questions.”

## **2. Kirkland & Ellis’ Internal Investigation**

161. After Hindenburg Research published its reports, Nikola and its Board retained the law firm Kirkland & Ellis to conduct an internal investigation of the allegations in the report. Kirkland & Ellis contacted the SEC’s Division of Enforcement to make it aware of the investigation, and Nikola subsequently learned that the SEC had previously opened an investigation.

162. On September 14, 2020, Nikola and five of its officers and employees, including CEO Russell, received subpoenas from the Staff of the SEC Division of Enforcement as a part of a fact-finding inquiry related to aspects of Nikola’s business as well as certain matters described in the Hindenburg article. The Staff of the Division of Enforcement issued additional subpoenas to another three of the



Company's officers and employees, including CFO Brady, on September 21, 2020 and to Nikola's current and former directors on September 30, 2020.

163. Nikola and Milton also received grand jury subpoenas from the U.S. Attorney's Office for the Southern District of New York (the "USAO SDNY") on September 19, 2020. The following day, Milton offered to voluntarily step down from his position as Nikola's Executive Chairman, as a member of the Board, including all committees thereof, and from all positions as an employee and officer of Nikola. The Board accepted his resignation and appointed Stephen Girsky as Chairman of the Board. The Company has subsequently appointed three new board members, Defendant Shindler and non-parties Mary Petrovich ("Petrovich") and Bruce Smith ("Smith").

164. Nikola also received a grand jury subpoena from the New York County District Attorney's Office on September 21, 2020. On October 16, 2020, the New York County District Attorney's Office agreed to defer its investigation.

165. On October 28, 2020, the Company received an information request from The Nasdaq Stock Market LLC, seeking an update on the status of the inquiries from the SEC and the USAO SDNY, which Nikola provided.

166. Nikola purported to be cooperating with all of the above investigations. Nikola has purportedly made "voluminous productions of information" and has made witnesses available for interviews.

167. Kirkland & Ellis substantially completed its investigation by February 25, 2021, the date Nikola filed its 2020 Form 10-K.

168. Based on its investigation—which, according to Nikola’s 2020 Form 10-K/A, was limited to the allegations in the Hindenburg Report—Kirkland & Ellis determined that the following statements by the Company or Milton were “inaccurate in whole or in part, when made”:

- (a) in July 2016, the Company stated that it owned rights to natural gas wells, and in August 2016 that the wells were used as a backup to solar hydrogen production;
- (b) in August 2016, Milton and the Company stated that Nikola had engineered a zero emissions truck;
- (c) in December 2016, Milton stated that the Nikola One was a fully functioning vehicle;
- (d) that an October 2017 video released by the Company gave the impression the Nikola One was driven;
- (e) in April 2019, Milton stated that solar panels on the roof of the Company’s headquarters produce approximately 18 megawatts of energy per day;
- (f) in December 2019 and July 2020, Milton stated that Nikola “can produce” over 1,000 kg of hydrogen at Nikola’s demo stations and that Nikola was “down below” \$3/kg at that time;
- (g) in July 2020, Milton stated that “all major components are done in house”; he made similar statements in June 2020;
- (h) in July 2020, Milton stated that the inverter software was the most advanced in the world and that other OEMs had asked to use it; and
- (i) in July 2020, Milton stated that five trucks were “coming off the assembly line” in Ulm, Germany.

169. Kirkland & Ellis disagreed with certain other contentions in the Hindenburg Report, including the report's "main conclusion . . . that Nikola was an 'intricate' or 'massive fraud.'" But tellingly, Kirkland & Ellis did not say specifically which other contentions in the Hindenburg Report it disagreed with, or why, or whether the investigation had uncovered more evidence of fraud beyond the allegations in the Hindenburg Report

170. Kirkland & Ellis said nothing about Milton's or Nikola's false, deceptive, and misleading claims relating to subject matters that the Hindenburg Report had not addressed. This omission was notable because Kirkland & Ellis was also representing Nikola in response to the DOJ and SEC investigations, which Kirkland & Ellis knew to be much broader.

### **3. Defendants Cover Up Their Complicity by Granting Milton a Generous Separation Agreement from Nikola**

171. On September 20, 2020, Nikola announced that Milton had resigned as its Executive Chairman.

172. Milton was replaced as Executive Chairman by Russell, Milton's co-owner in T&M and his former boss at Worthington, which acquired Milton's previous company dHybrid Systems in 2014 and had also invested in Nikola.

173. The Post-Merger Nikola Board granted Milton a generous separation package, providing further evidence of Defendants' bad faith and attempted cover-up of the alleged misconduct at Nikola. Although Milton's separation

agreement required him to forfeit 4,859,000 RSUs he had been granted through a performance award tied to Nikola's stock achieving various share-price milestones, the Board approved the accelerated vesting and settlement of 600,000 time-vested RSUs (for which Milton paid nothing), which Nikola subsequently settled on March 15, 2021. Additionally, under the terms of the separation agreement, Nikola agreed to pay for the costs of a security inspection of Milton's residence and to reimburse Milton up to \$100,000 for a full-time security detail for him and his family for three months. Thus, at a time when Kirkland & Ellis' and Ernst & Young's investigations had barely begun, much less concluded, and while criminal investigations were gaining steam, the Post-Merger Nikola Board allowed Milton to resign rather than terminating him for cause and agreed to provide him with a generous separation package rather insisting on a contingency that would claw back compensation and stock that he had earned while acting in bad faith and against the Company's interest.

#### **4. Milton Attempts to Cash In On His Nikola Shares Before He Is Criminally Prosecuted**

174. Between December 3, 2020 and March 31, 2021, Milton disposed of 7,295,997 shares of Nikola common stock for proceeds valued at approximately \$112 million.

175. Between July 23, 2021 and August 10, 2021, Milton transferred 1,750,000 shares of Nikola to his spouse and sold 15,038,705 shares of Nikola stock for approximately \$153 million.

176. In November 2021 Milton sold another 11,708,687 shares of Nikola common stock for proceeds of approximately \$130.44 million.

177. In short, Milton's scheme to take Nikola public and unload his stock after making exaggerated claims about its business was successful.

**5. Milton's Indictment for Securities Fraud and Wire Fraud and Nikola's Agreement to Pay a \$125 Million Penalty to the SEC**

178. On July 29, 2021, DOJ unsealed an indictment charging Milton with two counts of securities fraud and one count 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, and podcast interviews." The indictment alleges (with emphasis added):

The deceptive, false, and misleading claims made by TREVOR MILTON, the defendant, regarding the development of Nikola's products and technology, *addressed nearly all aspects of the business* and included: (a) false and misleading statements that the company had early success in creating a "fully functioning" semi-truck prototype known as the "Nikola One," when MILTON knew that the prototype was inoperable; (b) false and misleading statements that Nikola had engineered and built an electric- and hydrogen-powered pickup truck known as "the Badger" from the "ground up" using Nikola's parts and technology, when MILTON knew that was not true; (c) false and misleading statements that Nikola was producing hydrogen and was doing so at a reduced cost, when MILTON knew that in fact no hydrogen was being produced at all by Nikola, at any cost;

(d) false and misleading statements that Nikola had developed batteries and other important components in-house, when MILTON knew that Nikola was acquiring those parts from third parties; and (e) false and misleading claims that reservations made for the future delivery of Nikola's semi-trucks were binding orders representing billions in revenue, when the vast majority of those orders could be cancelled at any time and were for a truck Nikola had no intent to produce in the near-term.

179. The Indictment alleges that Milton “made these false and misleading statements regarding Nikola’s products and capabilities to induce retail investors to purchase Nikola stock,” and that Milton “was motivated to engage in the fraudulent scheme in order to enrich himself and elevate his stature as an entrepreneur.”

180. The Indictment further alleges:

[D]uring the course of the fraud, MILTON, who aspired to be listed among Forbes’s 100 richest people, saw the market value of his interest in Nikola rise substantially. On or about March 3, 2020, when Nikola announced that it would go public by merging with [VectoIQ], Nikola claimed an enterprise value of approximately \$3.324 billion, implying that the Nikola stock that MILTON would hold upon completion of the merger, through an entity called ‘M&M Residual,’ had a value of approximately \$844 million. At opening on or about June 9, 2020, after the merger was complete, and when Nikola’s stock peaked in the wake of announcements by MILTON about the Badger, the market value of Milton’s stock was at least approximately \$8.5 billion.

181. The SEC also filed a parallel civil action against Milton, alleging that Milton violated Securities Act §§ 10(b) and 17(a), detailing similar allegations concerning how Milton defrauded Nikola’s investors. The indictment of Milton

specifically references statements made on Nikola’s official company Twitter and Facebook accounts, and the SEC’s civil complaint against Milton explicitly alleges that “Milton made the false and misleading statements in tweets from his personal Twitter account, posts to his personal Instagram account, *tweets from Nikola’s corporate Twitter account, in Nikola press releases, and in television and podcast appearances in which he was identified as Nikola’s CEO or Executive Chairman.*” (emphasis added). As the SEC complaint states, “much of what Milton represented as accomplishments were, at best, internal targets years away from completion and subject to significant execution risks or, worse, ideas conceived only on paper.”

182. On December 21, 2021, the SEC announced the resolution of its investigation arising from Milton’s misconduct in a cease-and-desist order, which ordered Nikola to pay a \$125 million civil penalty.

**M. Defendants Knew of Milton’s Fraudulent Scheme to Pump Nikola’s Stock Price But Consciously Chose Not to Implement Appropriate Controls or Otherwise Oversee the Issuance of Misleading Information Concerning Nikola’s Business**

**1. Nikola’s Board of Directors and Its Senior Executives Were Completely Beholden to Milton During His Time with the Company**

183. In 2019 and 2020, some of Nikola’s senior executives were concerned about Milton’s apparent efforts on social media to increase Nikola’s value and influence potential investors. Some senior executives also became concerned that Milton’s public statements were inaccurate, false, and misleading. Despite this,

Nikola did not implement formal disclosure controls or procedures for monitoring or reviewing Milton's media interviews and social media activity, nor did anyone at the Company routinely consult with Milton before he published Nikola-related information on either his or Nikola's social media accounts or before he conducted media interviews. Nor did anyone at Nikola routinely review Milton's social media posts prior to their publication.

184. In or around 2019, Defendant Worthen (Nikola's Chief Legal Officer and Secretary to the Board) advised Milton about the legal risks associated with inaccurate tweets, and a senior Nikola executive told Milton that even posts from his personal accounts could be viewed as statements by Nikola itself. Then, in a series of conversations in 2019 and 2020, Russell (who was also on the Board) asked Milton to let Worthen pre-screen any tweets Milton planned to post from Nikola's corporate account. But with only a few exceptions, Milton refused to let Nikola's legal department or anyone else pre-screen his tweets.

185. Throughout 2020, certain of Nikola's senior executives continued to urge Milton to reduce his social media presence, and to be sure that his posts were accurate, rather than taking corrective action because of the injury he was causing to the Company. Certain senior Nikola executives also asked one of Nikola's directors for assistance in getting Milton to reduce his social media presence. Although the Post-Merger Nikola Board scheduled a media training run by a third-party provider



for all senior executives, it inexplicably did not require Milton to attend (which he did not).

186. Milton responded to the other executives' concerns about his social media presence by telling them he needed to be on social media to put out good news about Nikola to boost its stock price, clearly telegraphing to them his intention of putting his own (and their own) financial self-interest above that of the Company and its stockholders. Nikola's Board of Directors and its senior executives completely deferred to Milton during his time with the Company. As Milton said in January 2020 when a member of Nikola's Board urged him to appoint independent board members with public company experience:

*The most important [sic] is that I fully control the board at all times* and have people who work well with my personality . . . . No one sees the future like I do, and if you get too many world class brilliant people on the board, you will end up fighting over everything as they think they are the smartest in the room every time.

**2. Meetings of Nikola's Board of Directors**

187. [REDACTED]

[REDACTED]

[REDACTED]

188.

[REDACTED]

[REDACTED]

[REDACTED]

189. [REDACTED]

[REDACTED]

190. [REDACTED]

[REDACTED]

[REDACTED]

191.

[REDACTED]

[REDACTED]

[Redacted]

[Redacted]

192.

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193.

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[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

**N. In 2020, Defendants’ Failure to Implement Appropriate Corporate Controls Enabled Additional Misrepresentations by Nikola**

194. In addition to the material misrepresentations Nikola made through Milton, as alleged above, the SEC charged Nikola with disseminating other material misrepresentations and misleading statements to investors in the Company’s SEC filings and public statements concerning its vehicles’ hydrogen refueling time, its demonstration hydrogen fueling station, its electricity costs and sourcing, and the economic risks and benefits of its contemplated partnership with GM to develop and commercialize the Badger.

195. Refueling Time. Nikola presented a misleading picture of its hydrogen refueling capabilities. Nikola understood that hydrogen-fueled FCEV trucks would need to be able to be fueled in approximately 10–15 minutes to be competitive with diesel trucks. However, because of engineering obstacles, in 2020, it took Nikola 45–80 minutes to fill its semi-truck prototypes with hydrogen. But Nikola failed to publicly disclose its FCEV trucks’ long refueling time. In fact, in an April 2020 investor presentation, Nikola stated that the refueling time for its FCEV was “10–15 minutes.” Nikola’s executives also claimed in 2020 that Nikola’s FCEV refueling time was comparable to that for diesel trucks.

196. Hydrogen Station. In 2020, Nikola misled investors regarding the status of its demonstration hydrogen station. Although Nikola was not producing hydrogen in 2020, it installed a station at its headquarters designed to dispense test quantities of hydrogen purchased from third parties. The hydrogen station was beset by significant operational challenges and was only operable 21% of the time over the course of 2020. Despite this, in several SEC filings, Nikola touted the demonstration station as a “model for future hydrogen stations.”

197. Electricity. Nikola made material omissions about its electricity costs and sourcing. Low electricity costs are a critical component of Nikola’s business model because electricity costs account for approximately 75% to 85% of hydrogen production costs, and Nikola planned to produce hydrogen on-site at each of its planned hydrogen fueling stations. Nikola failed to disclose that its planned hydrogen fueling station network would require up to approximately 5% of all electricity consumed in the United States to operate. Nikola also failed to disclose its planned hydrogen fueling station network’s electricity costs beyond just the cost of electricity production, including transmission, distribution, and energy storage costs. And Nikola failed to disclose it was receiving significantly higher per kWh price indications from grid and solar energy suppliers than its target price point.

198. The General Motors Partnership. Nikola also misled investors by failing to disclose the potential economic impact of its proposed strategic partnership

with GM to develop and commercialize the Badger. Although in a press release dated September 8, 2020 Nikola claimed that the partnership would save “over \$4 billion in battery and powertrain costs over 10 years and over \$1 billion in engineering and validation costs,” in reality, unless the market could support a “premium” price for the Badger, Nikola’s internal projections showed that the entire Badger program could potentially generate a net loss of \$3.1 billion over six years—enough to make Nikola go bankrupt. A Nikola executive prepared these internal projections and provided them to Nikola’s senior executives and the Post-Merger Nikola Board.

199. Nikola’s material misrepresentations concerning its vehicles’ hydrogen refueling time, its demonstration hydrogen fueling station, its electricity costs and sourcing, and the economic risks and benefits of its contemplated partnership with GM to develop and commercialize the Badger, as alleged above, were enabled by Defendants’ failure to implement appropriate corporate disclosure controls.

#### **IV. THE INDIVIDUAL DEFENDANTS’ DUTIES**

200. By reason of their positions as officers and/or directors of Nikola, and because of their ability to control the business and corporate affairs of the Company, the Individual Defendants owed Nikola and its stockholders the fiduciary obligations of loyalty and due care.



201. As directors and officers of Nikola, the Individual Defendants who served on the Post-Merger Nikola Board were and are bound by the Company's Code of Business Conduct and Ethics (the "Code"). The Code provides, in relevant part, the following

#### Compliance with Laws, Rules and Regulations

Company policy requires that our business activities comply with both the letter and the spirit of all applicable laws, rules[,] and regulations. Although not all employees are expected to know the details of these laws, it is important to know enough to determine when to seek advice from supervisors, managers or other appropriate personnel.

\* \* \*

#### Conflicts of Interest

A "conflict of interest" arises when a person's loyalties or actions are divided between the interests of the Company and those of another, such as a competitor, supplier or customer, or personal business. A conflict of interest can arise when an employee takes actions or has interests that may make it difficult to perform his or her work for the Company objectively and effectively. A conflict of interest may also arise when an individual, or a member of his or her family, receives an improper personal benefit as a result of his or her position in, or relationship with, the Company. Breach of confidentiality obligations can also give rise to a conflict of interest. Moreover, the appearance of a conflict of interest alone can adversely affect the Company and its relations with customers, suppliers[,] and employees.

Employees are expected to use good judgment, to adhere to high ethical standards and to avoid situations that create an actual or potential conflict of interest. It is almost

always a conflict of interest for employees to work simultaneously for a competitor, customer[,] or supplier.

A conflict of interest can also arise with respect to employment of relatives and persons with close personal relationships. If an employee or someone with whom an employee has a close relationship (e.g., a family member or close companion) has a financial or employment relationship with an actual or potential competitor, supplier[,] or customer, the employee must disclose this fact in writing to the Chief Financial Officer of the Company. The Company may take any action that it deems necessary in its sole discretion to avoid or remedy an actual, prospective or perceived conflict of interest, including a reassignment of some or all of the employee's duties or change of the employee's position.

A conflict of interest may not always be clear, therefore, you should consult with higher levels of management if you have any questions. Any employee who becomes aware of a conflict or a potential conflict should bring it to the attention of the Chief Financial Officer of the Company.

\* \* \*

### Fair Dealing

Although the prosperity of our Company depends on our ability to outperform our competitors, the Company is committed to achieving success by fair and ethical means. We seek to maintain a reputation for honesty and fair dealing among our competitors and the public alike. In light of this aim, dishonest, unethical or illegal business practices are prohibited, including, without limitation, corruption, bribery, kickbacks, extortion, embezzlement, or other similar practices. An exhaustive list of unethical practices cannot be provided. Instead, the Company relies on the judgment of each individual to avoid such practices. Furthermore, each employee should endeavor to deal fairly with the Company's customers, suppliers,

competitors and employees. No employee should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair business practice.

\* \* \*

### Insider Trading

You are not permitted to use, share or disseminate confidential information for stock trading purposes or for any other purpose except the conduct of our business. To use confidential information for personal financial benefit or to “tip” others who might make an investment decision on the basis of this information is not only unethical, but is also illegal. You are expected to comply with the Company’s Insider Trading Policy.

\* \* \*

### Record Keeping

The Company requires honest and accurate recording and reporting of information in order to make responsible business decisions. If you use a business expense account, expenses to be reimbursed must be documented and recorded accurately. If you are not sure whether an expense is appropriate, ask your supervisor.

All of the Company’s books, records, accounts and financial statements must be maintained in reasonable detail, must appropriately reflect the Company’s transactions and must conform both to applicable legal requirements and to the Company’s system of internal controls. All Company business data, records[,] and reports must be prepared truthfully and accurately. The Company’s business records must be maintained for the periods specified in the Company’s applicable record retention policies.

Employees who contribute to or prepare the Company's financial statements, public filings, submissions[,] or communications should do so in accordance with the following guidelines:

- All accounting records, as well as reports produced from those records, must be prepared in accordance with the laws of each applicable jurisdiction.
- All records must fairly and accurately reflect the transactions or occurrences to which they relate.
- All records must fairly and accurately reflect, in reasonable detail, the Company's assets, liabilities, revenues[,] and expenses.
- The Company's accounting records must not contain any false or intentionally misleading entries.
- No transactions should be intentionally misclassified as to accounts, departments[,] or accounting periods.
- All transactions must be supported by accurate documentation in reasonable detail and recorded in the proper account and in the proper accounting period.
- No information should be concealed from independent auditors.
- Compliance with the Company's system of internal accounting controls is required.

Business records and communications often become public, and employees should avoid exaggeration, derogatory remarks, guesswork or inappropriate characterizations of people and companies that can be misunderstood. This applies equally to e-mail, internal memos and formal reports.

\* \* \*

#### Reporting Violations of this Code

Employees are responsible for being aware of the corporate policies applicable to their activities and to comply with them fully. If you become aware of illegal

activity, unethical behavior, a violation of this Code or believe that a violation may take place in the future, you must promptly report the matter. Failure to report a known violation allows misconduct to go unremedied and is itself grounds for discipline.

\* \* \*

#### Accountability for Adherence to this Code

The Board of Directors shall determine, or designate appropriate persons to determine, appropriate actions to be taken in the event of violations of this Code. Such actions shall be reasonably designed to deter wrongdoing and to promote accountability for adherence to this Code, and shall include written notices to the individual involved that the Board of Directors or its designee has determined that there has been a violation, and may include censure by the Board of Directors or its designee, demotion or re-assignment of the individual involved, suspension with or without pay (as determined by the Board of Directors or its designee) and termination of the individual's employment or other service.

202. The Individual Defendants who served on the Post-Merger Nikola Board were and are bound by the Company's Corporate Governance Guidelines. The Corporate Governance Guidelines provide, in relevant part, as follows:

*Director Responsibilities* — Directors must exercise their business judgment to act in the best interests of the stockholders and the Company. In discharging this obligation, directors reasonably may rely on the Company's senior executives and its advisors and auditors. Directors are expected to attend and participate in all meetings of the Board and of committees on which they serve and to spend the time needed and prepare for and meet as frequently as necessary to discharge their

responsibilities. The Board shall make the determination that at least one of the members of the Audit Committee meets the Audit Committee financial expert requirements.

203. As senior financial officers of Nikola, Defendants Milton, Russell, and Brady were or are bound by the Company's Code of Ethics for Senior Financial Officers, which provides, in relevant part, as follows

The Officers are responsible for full, fair, accurate, timely and understandable disclosure in the reports and documents that Nikola files with, or submits to, the Securities and Exchange Commission and in other public communications made by the Company. It is the responsibility of each Officer to promptly bring to the attention of the Chair of the Audit Committee (the "Audit Chair") of the Board of Directors (the "Board") any material information of which he or she may become aware that is omitted from or misstated in the disclosures made by the Company in its public filings.

Each Officer shall promptly bring to the attention of the Audit Chair any information he or she may have concerning (a) significant deficiencies in the design or operation of internal controls that could adversely affect the Company's ability to record, process, summarize and report financial data or (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's financial reporting, disclosures or internal control over financial reporting.

Each Officer shall act with honesty and integrity in the performance of his or her duties and shall comply with laws, rules and regulations of federal, state and local governments and other private and public regulatory agencies that affect the conduct of the Company's business and the Company's financial reporting.

Each Officer shall promptly bring to the attention of the Audit Chair any information he or she may have concerning evidence of a material violation of the securities or other laws, rules or regulations applicable to the Company and the operation of its business, by the Company or any agent thereof, or any violation of this Code.

Each Officer shall maintain high standards of honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships.

204. During the Relevant Period, seven of the Individual Defendants were members of the Audit Committee of either the VectoIQ Board (Gendelman, Hallac, and McInnis) or the Post-Merger Nikola Board (Shindler, Girsky, Jin, and Mansueti) and thus had additional responsibilities to Nikola. Nikola's current Audit Committee Charter describes the duties and responsibilities of its members to "assist the Board in oversight of . . . the integrity of the Company's financial statements, the Company's compliance with legal and regulatory requirements . . . [and] the Company's risk management and assessment pertaining to the financial, accounting and tax matters of the Company, including data privacy and security."

## **V. DERIVATIVE ALLEGATIONS**

205. Plaintiff brings this action derivatively in the right and for the benefit of Nikola to redress injuries suffered, and to be suffered, by Nikola as a direct result of breaches of fiduciary duties by the Individual Defendants. Nikola is named as a Nominal Defendant solely in a derivative capacity.

206. Plaintiff will adequately and fairly represent the interests of Nikola in enforcing and prosecuting its rights and has retained counsel competent and experienced in derivative litigation.

207. Plaintiff was a stockholder of Nikola at the time of the wrongdoing complained of, has continuously been a stockholder since April 2020, and is a current stockholder of Nikola. Plaintiff understands her obligation to hold stock throughout the duration of this action and is prepared to do so.

208. Plaintiff has not made a demand on the Board to pursue this action because such demand would be futile, as alleged below.

## **VI. DEMAND FUTILITY ALLEGATIONS**

209. As a result of the facts set forth herein, Plaintiff has not made any demand on Nikola's Board of Directors to institute this action against the Individual Defendants. Such demand would be a futile and useless act because Nikola's Board is incapable of making an independent and disinterested decision to institute and vigorously pursue this action.

210. Nikola's Board of Directors currently consists of ten directors: Defendants Russell, Girsky, Jin, Mansuetti, Marx, Shindler, Thompson, and Ubben (*i.e.*, the Director Defendants), and non-parties Petrovich and Smith. Demand is excused as to Defendant Russell for the following reasons:

- (a) *Defendant Russell received a material personal benefit from the alleged misconduct.* Defendant Russell received material personal



benefits from the alleged misconduct because the alleged misconduct enabled him to receive lucrative compensation from Nikola, including an annual time-vested award of \$6 million worth of RSUs and a performance award consisting of 4,859,000 RSUs earned after stock price milestones were purportedly achieved as a result of Defendant Milton's and the Company's numerous false and misleading statements, which were designed to inflate the price of Nikola's common stock.

- (b) *Defendant Russell faces a substantial likelihood of liability on the claims.* Defendant Russell is alleged to have breached his fiduciary duties in connection with Milton's ongoing scheme to mislead stockholders and the public regarding Nikola's business. As a senior executive of Nikola both before and after the Merger, and as a member of the Legacy Nikola Board and the Post-Merger Nikola Board, Russell knew or was reckless in not knowing of the litany of false and misleading statements that were issued on the Company's behalf and took no steps to implement and/or oversee reasonable disclosure controls and/or remedy the situation.

Specifically, Russell faces a substantial likelihood of liability for aiding and abetting Milton's misconduct.

Russell also faces a substantial likelihood of liability for approving Milton's resignation rather than terminating him for cause and clawing back compensation and stock he had earned while acting in bad faith, and for agreeing to the terms of Milton's separation agreement with Nikola, which provided Milton with the accelerated vesting and settlement of 600,000 RSUs, the costs of a security inspection of Milton's residence, and the reimbursement of up to \$100,000 for a full-time security detail for him and his family for three months.

Russell also faces a substantial likelihood of personal liability as a defendant in the following securities class actions, which involve some of the same subject matters as this litigation: *Borteanu v. Nikola Corp.*, No. 2:20-cv-01797-SPL (D. Ariz.); *Wojichowski v. Nikola Corp.*, No. 2:20-cv-01819-SPL (D. Ariz.); *Holzmacher v. Nikola Corp.*, No. 2:20-cv-02123-SPL (D. Ariz.); *Eves v. Nikola Corp.*, No. 2:20-cv-02168-SPL (D. Ariz.); *Salem v. Nikola Corp.*, No. 2:20-cv-02374-SPL (D. Ariz.) (the "Securities Class Actions").

(c) *Defendant Russell lacks independence from Milton.* Defendant Russell is a non-independent employee director who is dependent on Nikola for his primary livelihood and therefore conflicted. Defendant Russell is also a long-time colleague of Milton's and co-owns T&M with Milton, which company owned 49,774,487 shares of Nikola common stock as of June 3, 2020. Thus, Russell's finances are intertwined with those of Milton. Further, Russell and Milton (individually and through M&M and T&M) owned over 36.4% of Nikola's common stock and had effective control of the Company. Russell, together with the Legacy Nikola Board members and officers, continues to have voting control over the Company. Accordingly, Russell is interested and cannot impartially consider any demand.

211. Demand is excused as to Defendant Jin for the following reasons:

(a) *Defendant Jin received a material personal benefit from the alleged misconduct.* Defendant Jin received material personal benefits from the alleged misconduct because it enabled her to receive lucrative compensation from Nikola, including \$679,400 in stock awards in 2020. In addition, Jin, an employee of Hanwha and Hanwha's representation on the Board, had an interest in protecting Hanwha's investment in Nikola and maximizing its profit and ability to recover its investment in the company.

(b) *Defendant Jin faces a substantial likelihood of liability on the claims.* Defendant Jin is alleged to have breached her fiduciary duties in connection with Milton's ongoing scheme to mislead stockholders regarding Nikola's business. As a member of the Legacy Nikola Board and the Post-Merger Nikola Board, Jin, through her attendance at Board meetings, knew or was reckless in not knowing of the litany of false statements made concerning the Company's business and took no steps to implement and/or oversee reasonable disclosure controls and/or remedy the situation. Specifically, Jin faces a substantial likelihood of liability for permitting Milton to operate in violation of the federal securities laws and other criminal laws, which prohibit the dissemination of materially false and misleading information to the markets in SEC filings, public statements and through the use of social media.

Jin also faces a substantial likelihood of liability for permitting or assisting Milton in the illegal scheme to misrepresent Nikola's business

and products which allowed her affiliated company, a Nikola stockholder, to profit from Milton's criminal activities.

Jin also faces a substantial likelihood of liability for agreeing to let Milton resign rather than terminating him for cause and clawing back compensation and stock he had earned while acting in bad faith, and for agreeing to the terms of Milton's separation agreement with Nikola, which provided Milton with the accelerated vesting and settlement of 600,000 RSUs, the costs of a security inspection of Milton's residence, and the reimbursement of up to \$100,000 for a full-time security detail for him and his family for three months. Accordingly, Jin is interested and cannot impartially consider any demand.

212. Demand is excused as to Defendant Mansueti for the following reasons:

- (a) *Defendant Mansueti received a material personal benefit from the alleged misconduct.* Defendant Mansueti received material personal benefits from the alleged misconduct because it enabled him to receive lucrative compensation from Nikola, including \$679,400 in stock awards in 2020. In addition, Mansueti, as an employee of Bosch and Bosch's representative on the Board, had an interest in protecting Bosch's investment in Nikola and maximizing its profits and ability to recover its investment in the Company.
- (b) *Defendant Mansueti faces a substantial likelihood of liability on the claims.* Defendant Mansueti is alleged to have breached his fiduciary duties in connection with Milton's ongoing scheme to mislead stockholders regarding Nikola's business. As a member of the Legacy Nikola Board and the Post-Merger Nikola Board, Mansueti knew through his attendance at Board meetings or was reckless in not knowing of the litany of false statements made concerning the Company's business and took no steps to implement and/or oversee reasonable disclosure controls and/or remedy the situation. Defendant Mansueti's failure to implement and oversee reasonable disclosure controls subjects him to a substantial likelihood of liability or for aiding and abetting Milton's and the Company's fraudulent conduct. Mansueti also faces a substantial likelihood of liability for permitting Milton and Nikola to operate in violation of the federal securities laws and other criminal laws which prohibit the dissemination of materially

false and misleading information to the markets in SEC filings, public statements and through the use of social media.

Mansuetti also faces a substantial likelihood of liability for permitting or assisting Milton in the illegal scheme to misrepresent Nikola's business and products which allowed his affiliated company, a Nikola stockholder, to profit from Milton's criminal activities.

Mansuetti also faces a substantial likelihood of liability for agreeing to let Milton resign rather than terminating him for cause and clawing back compensation and stock he had earned while acting in bad faith, and for agreeing to the terms of Milton's separation agreement with Nikola, which provided Milton with the accelerated vesting and settlement of 600,000 RSUs, the costs of a security inspection of Milton's residence, and the reimbursement of up to \$100,000 for a full-time security detail for him and his family for three months.

Accordingly, Mansuetti is interested and cannot impartially consider any demand.

213. Demand is excused as to Defendant Marx for the following reasons:

- (a) *Defendant Marx received a material personal benefit from the alleged misconduct.* Defendant Marx received material personal benefits from the alleged misconduct because it enabled him to receive lucrative compensation from Nikola, including \$713,370 in stock awards in 2020.
- (b) *Defendant Marx faces a substantial likelihood of liability on the claims.* Defendant Marx is alleged to have breached his fiduciary duties in connection with Milton's ongoing scheme to mislead stockholders regarding Nikola's business. As a member of the Legacy Nikola Board and the Post-Merger Nikola Board, Marx through his attendance at Board meetings knew or was reckless in not knowing of the litany of false statements made concerning the Company's business and took no steps to implement and/or oversee reasonable disclosure controls and/or remedy the situation. Defendant Marx's failure to implement and oversee reasonable disclosure controls subjects him to a substantial likelihood of liability or for aiding and abetting Milton's and the Company's fraudulent conduct. Marx also faces a substantial likelihood of liability for permitting Milton and Nikola to operate in

violation of the federal securities laws and other criminal laws which prohibit the dissemination of materially false and misleading information to the markets in SEC filings, public statements and through the use of social media.

Marx also faces a substantial likelihood of liability for permitting or assisting Milton in the illegal scheme to misrepresent Nikola's business and products which allowed his affiliated company, a Nikola stockholder, to profit from Milton's criminal activities.

Marx also faces a substantial likelihood of liability for agreeing to let Milton resign rather than terminating him for cause and clawing back compensation and stock he had earned while acting in bad faith, and for agreeing to the terms of Milton's separation agreement with Nikola, which provided Milton with the accelerated vesting and settlement of 600,000 RSUs, the costs of a security inspection of Milton's residence, and the reimbursement of up to \$100,000 for a full-time security detail for him and his family for three months.

Accordingly, Marx is interested and cannot impartially consider any demand.

214. Demand is excused as to Defendant Thompson for the following reasons:

- (a) *Defendant Thompson received a material personal benefit from the alleged misconduct.* Defendant Thompson received material personal benefits from the alleged misconduct because (a) the alleged misconduct enabled him to receive lucrative compensation from Nikola, including \$679,400 in stock awards in 2020; (b) it increased the value of his ownership of Nikola dealership rights in Mississippi and Tennessee; and (c) it increased the value of his holdings of Nikola stock.
- (b) *Defendant Thompson faces a substantial likelihood of liability on the claims.* Defendant Thompson is alleged to have breached his fiduciary duties in connection with Milton's ongoing scheme to mislead stockholders regarding Nikola's business. As a member of the Legacy Nikola Board and the Post-Merger Nikola Board, Thompson through

his attendance at Board meetings knew or was reckless in not knowing of the litany of false statements made concerning the Company's business and took no steps to implement and/or oversee reasonable disclosure controls and/or remedy the situation. Defendant Thompson's failure to implement and oversee reasonable disclosure controls subjects him to a substantial likelihood of liability or for aiding and abetting Milton's and the Company's fraudulent conduct. Thompson also faces a substantial likelihood of liability for permitting Milton and Nikola to operate in violation of the federal securities laws and criminal laws which prohibit the dissemination of materially false and misleading information to the markets in SEC filings, public statements and through the use of social media.

Thompson also faces a substantial likelihood of liability for permitting or assisting Milton in the illegal scheme to misrepresent Nikola's business and products which allowed his affiliated companies, Nikola stockholders, to profit from Milton's criminal activities.

Thompson also faces a substantial likelihood of liability for agreeing to let Milton resign rather than terminating him for cause and clawing back compensation and stock he had earned while acting in bad faith, and for agreeing to the terms of Milton's separation agreement with Nikola, which provided Milton with the accelerated vesting and settlement of 600,000 RSUs, the costs of a security inspection of Milton's residence, and the reimbursement of up to \$100,000 for a full-time security detail for him and his family for three months.

Accordingly, Thompson is interested and cannot impartially consider any demand.

215. Demand is excused as to Defendant Ubben for the following reasons:

- (c) *Defendant Ubben received a material personal benefit from the alleged misconduct.* Defendant Ubben is a major investor in Nikola and he received material personal benefits from the alleged misconduct because (a) the alleged misconduct caused material increases in the value of his holdings of Nikola stock (which as alleged above totaled 20,362,024 shares as of June 3, 2020), on which Ubben was able to cash in at least partially through his sale of 1.4 million shares at a price of \$42.69 per share; and (b) the alleged misconduct enabled him to receive lucrative compensation from Nikola, including \$713,370 in stock

awards in 2020, the value of which increased as a result of the alleged misconduct.

- (d) *Defendant Ubben faces a substantial likelihood of liability on the claims.* Defendant Ubben is alleged to have breached his fiduciary duties in connection with Milton's ongoing scheme to mislead stockholders regarding Nikola's business. As a member of the Legacy Nikola Board and the Post-Merger Nikola Board, Ubben through his attendance at Board meetings knew or was reckless in not knowing of the litany of false statements made concerning the Company's business and took no steps to implement and/or oversee reasonable disclosure controls and/or remedy the situation. Defendant Ubben's failure to implement and oversee reasonable disclosure controls subjects him to a substantial likelihood of liability or for aiding and abetting Milton's and the Company's fraudulent conduct. Ubben also faces a substantial likelihood of liability for permitting Milton and Nikola to operate in violation of the federal securities laws and criminal laws which prohibit the dissemination of materially false and misleading information to the markets in SEC filings, public statements and through the use of social media.
- (e) Ubben also faces a substantial likelihood of liability under *Brophy v. Cities Service Co.*, 70 A.2d 5 (Del. Ch. 1949), for his \$59,766,000 million insider sale through Spring Master Fund in August 2020, which was based on his knowledge of the material, non-public information described above, and motivated, in whole or in part, by the substance of such information.
- (f) Ubben also faces a substantial likelihood of liability for permitting or assisting Milton in the illegal scheme to misrepresent Nikola's business and products which allowed his affiliated companies, Nikola stockholders, to profit from Milton's criminal activities.
- (g) Ubben also faces a substantial likelihood of liability for agreeing to let Milton resign rather than terminating him for cause and clawing back compensation and stock he had earned while acting in bad faith, and for agreeing to the terms of Milton's separation agreement with Nikola, which provided Milton with the accelerated vesting and settlement of 600,000 RSUs, the costs of a security inspection of Milton's residence, and the reimbursement of up to \$100,000 for a full-time security detail for him and his family for three months.

Accordingly, Ubben is interested and cannot impartially consider any demand.

216. Demand is excused as to Defendant Girsky for the following reasons:

- (a) *Defendant Girsky received a material personal benefit from the alleged misconduct.* Defendant Girsky received material personal benefits from the alleged misconduct because the alleged misconduct caused material increases in the value of his holdings of Nikola stock (as alleged above, as of June 18, 2020, Girsky owned at least 1,754,344 shares of Nikola's common stock, for which he paid only nominal consideration).
- (b) *Defendant Girsky faces a substantial likelihood of liability on the claims.* Defendant Girsky is alleged to have breached his fiduciary duties in connection with Milton's ongoing scheme to mislead stockholders regarding Nikola's business. As a member of the VectoIQ Board and the Post-Merger Nikola Board, Girsky knew or was reckless in not knowing of the litany of false statements made concerning the Company's business and took no steps to implement and/or oversee reasonable disclosure controls and/or remedy the situation. Defendant Girsky's failure to implement and oversee reasonable disclosure controls subjects him to a substantial likelihood of liability. Defendant Girsky also faces a substantial likelihood for putting his self-interest above the needs of the VectoIQ stockholders by approving the Merger without performing an adequate due diligence. Girsky also faces potential personal liability as a defendant in two of the Securities Class Actions.

As a member of the Post-Merger Nikola Board, Girsky through his attendance at Board meetings knew or was reckless in not knowing of the litany of false statements made concerning the Company's business. Defendant Girsky's failure to implement and oversee reasonable disclosure controls subjects him to a substantial likelihood of liability for aiding and abetting Milton's and the Company's fraudulent conduct. Girsky also faces a substantial likelihood of liability for permitting Milton and Nikola to operate in violation of the federal securities laws and criminal laws which prohibit the dissemination of materially false and misleading information to the markets in SEC filings, public statements and through the use of social media.



Girsky also faces a substantial likelihood of liability for permitting or assisting Milton in the illegal scheme to misrepresent Nikola's business and products which allowed him to increase the value of his VectoIQ stock through the merger with Nikola.

Girsky also faces a substantial likelihood of liability for agreeing to let Milton resign rather than terminating him for cause and clawing back compensation and stock he had earned while acting in bad faith, and for agreeing to the terms of Milton's separation agreement with Nikola, which provided Milton with the accelerated vesting and settlement of 600,000 RSUs, the costs of a security inspection of Milton's residence, and the reimbursement of up to \$100,000 for a full-time security detail for him and his family for three months.

Accordingly, Girsky is interested and cannot impartially consider any demand.

217. Demand is excused as to Defendant Shindler for the following reasons:

- (a) *Defendant Shindler received a material personal benefit from the alleged misconduct.* Defendant Shindler received material personal benefits from the alleged misconduct because the alleged misconduct caused material increases in the value of his holdings of Nikola stock (as alleged above, as of June 18, 2020, Shindler owned 402,298 shares of Nikola's common stock, for which he paid only nominal consideration).
- (b) *Defendant Shindler faces a substantial likelihood of liability on the claims.* Defendant Shindler is alleged to have breached his fiduciary duties in connection with Milton's ongoing scheme to mislead stockholders regarding Nikola's business. As a member of the VectoIQ Board, Shindler knew or was reckless in not knowing of the litany of false statements made concerning the Company's business and took no steps to implement and/or oversee reasonable disclosure controls and/or remedy the situation. Defendant Shindler's failure to implement and oversee reasonable disclosure controls subjects him to a substantial likelihood of liability or for aiding and abetting Milton's and the Company's fraudulent conduct. Shindler also faces potential personal liability as a defendant in two of the Securities Class Actions.

218. Demand is excused as to Defendant Stalsberg for the following reasons:

- (a) *Defendant Stalsberg received a material personal benefit from the alleged misconduct.* Defendant Stalsberg received material personal benefits from the alleged misconduct because the alleged misconduct caused material increases in the value of his holdings of Nikola stock (as of October 27, 2020, Stalsberg owned 6466 Nikola RSUs).
- (b) *Defendant Stalsberg faces a substantial likelihood of liability on the claims.* Defendant Stalsberg is alleged to have breached his fiduciary duties in connection with Milton's ongoing scheme to mislead stockholders regarding Nikola's business. As a member of the Legacy Nikola Board and the Post-Merger Nikola Board, Stalsberg through his attendance at Board meetings knew or was reckless in not knowing of the litany of false statements made concerning the Company's business and took no steps to implement and/or oversee reasonable disclosure controls and/or remedy the situation. Defendant Stalsberg's failure to implement and oversee reasonable disclosure controls subjects him to a substantial likelihood of liability or for aiding and abetting Milton's and the Company's fraudulent conduct. Stalsberg also faces a substantial likelihood of liability for permitting Milton and Nikola to operate in violation of the federal securities laws and other criminal laws which prohibit the dissemination of materially false and misleading information to the markets in SEC filings, public statements and through the use of social media.

Stalsberg faces a substantial likelihood of liability for permitting or assisting Milton in the illegal scheme to misrepresent Nikola's business and products which allowed his affiliated company, a Nikola stockholder, to profit from Milton's criminal activities.

Stalsberg also faces a substantial likelihood of liability for agreeing to let Milton resign rather than terminating him for cause and clawing back compensation and stock he had earned while acting in bad faith, and for agreeing to the terms of Milton's separation agreement with Nikola, which provided Milton with the accelerated vesting and settlement of 600,000 RSUs, the costs of a security inspection of Milton's residence, and the reimbursement of up to \$100,000 for a full-time security detail for him and his family for three months.

Accordingly, Stalsberg is interested and cannot impartially consider any demand.

219. Each of the Director Defendants approved and/or permitted the wrongs alleged herein to have occurred and participated in efforts to conceal or disguise those wrongs from the Company's stockholders or recklessly and/or with gross negligence disregarded the wrongs complained of herein and are therefore not disinterested parties.

220. In violation of Nikola's Code of Conduct, the Director Defendants failed to exercise meaningful oversight of the Company's issuance of materially false and misleading statements to investors and to disguise Defendants' violations of the law, as alleged in this complaint. In further violation of Nikola's Code of Conduct, the Director Defendants failed to maintain the accuracy of Company records and reports, conduct business in an honest and ethical manner, and properly report violations of the Code of Conduct. Thus, the Director Defendants each face a substantial likelihood of liability and demand is futile as to each of them.

221. Additionally, each of the Director Defendants received payments, benefits, stock options, and other emoluments by virtue of their membership on the Board and their control of the Company.

## **VII. COUNTS FOR RELIEF**

### **COUNT I**

#### **DERIVATIVE CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST DEFENDANT MILTON**

222. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

223. By reason of his fiduciary roles as an officer and director of the Company, Defendant Milton specifically owed or continues to owe Nikola the highest obligation of due care, good faith, and loyalty in the management and administration of Nikola's business and affairs. Defendant Milton's duties to Nikola obligated him to act in good faith and in conformity with positive law, including with complying positive law and with respect to making accurate material disclosures about Nikola.

224. Defendant Milton, through engaging in the misconduct alleged herein, intentionally or recklessly violated and breached the fiduciary duties he owed to Nikola and to protect the Company's rights and interests. Defendant Milton knew or was reckless in not knowing that his misconduct posed a serious risk of injury to Nikola. Defendant Milton's misconduct was not a good faith exercise of prudent business judgment to protect and promote Nikola's interests.

225. Defendant Milton breached his fiduciary duties to Nikola by engaging in an illegal scheme to violate federal and state law willfully or recklessly and by

knowingly issuing or causing Nikola to issue false and misleading statements between June 2020 to September 2020, in violation of the federal securities and criminal laws, concerning, among other matters and as alleged above:

- (a) Nikola's purported hydrogen production capabilities and hydrogen station network;
- (b) Nikola's purported ability to tap into federal electricity transmission lines and contract with clean energy sources to obtain cheap electricity;
- (c) Nikola's purported in-house development and manufacturing of vehicle components;
- (d) Nikola's purportedly imminent manufacturing of the Nikola Tre truck;
- (e) the Nikola Two truck's purported ability to go from 0-60 miles per hour in under five seconds;
- (f) the design and development of the Nikola Badger pickup truck; and
- (g) Nikola's purported truck reservations.

226. As a direct or proximate result of Defendant Milton's failure to perform his fiduciary obligations to Nikola, Nikola has sustained significant monetary damages and damage to its corporate image and goodwill. Such damages include, among other things, payment of fines to government regulators, costs associated with defending securities class action lawsuits, government investigations and subpoenas, severe damage to Nikola's share price, loss of goodwill and harm to Nikola's reputation. Therefore, as a direct or proximate result of the misconduct alleged herein, Defendant Milton is liable to the Company. Further, Plaintiff, on behalf of Nikola, has no adequate remedy at law.

## COUNT II

### **DERIVATIVE CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST THE NIKOLA DIRECTOR DEFENDANTS**

227. Plaintiff incorporates by reference and re-alleges every allegation contained above, as though fully set forth herein.

228. The Director Defendants (Russell, Jin, Marx, Mansueti, Ubben, Stalsberg, Girsky and Thompson) owe the Company and its stockholders the fiduciary duties of due care, good faith, and loyalty.

229. The Director Defendants acted with a conscious disregard for their responsibilities to ensure that the Company and Milton operated in compliance with federal and state law, and that Nikola's public statements, including those that Milton made on behalf of the Company through both his personal and the Company's Twitter accounts, other social media, and SEC filings, were not materially false and misleading, by failing to oversee Milton's misconduct or correct his or Nikola's misstatements.

230. The Director Defendants also acted with a conscious disregard for their responsibilities to ensure that the Company's public statements, including those that Milton made through social media accounts, press releases and public filings, were not false and materially misleading, by failing to put into place any sort of oversight mechanism with respect to Milton's or Nikola's statements or to otherwise control his or Nikola's dissemination of false or misleading information concerning Nikola.

The Director Defendants failed to provide such controls despite having been warned of Milton's misconduct and by ignoring red flags, while knowing that Milton and Nikola disseminated materially false and misleading information to the public.

231. The Director Defendants, collectively and individually, violated and breached their fiduciary duties of care, loyalty, reasonable inquiry, oversight, good faith, and supervision, including by:

- (a) utterly failing to implement any reporting or information system or controls capable of detecting the misconduct alleged herein and thereby engaging in a sustained or systematic failure to exercise oversight of Nikola's corporate affairs;
- (b) consciously failing to monitor or oversee the operations of Nikola's system of internal controls and thus disabling themselves from being informed of the risks or problems requiring their attention associated with the misconduct alleged herein;
- (c) consciously or recklessly disregarding that Nikola's employees, including Defendant Milton, were engaging in violations of the law and taking no steps in a good faith effort to prevent or remedy that situation, other than at most treating it is a mere public relations problem or litigation risk, and thereby failing to discharge their fiduciary obligation in good faith; and
- (d) engaging in a sustained or systematic failure to exercise oversight.

232. The Director Defendants, collectively and individually, breached their fiduciary duties of good faith, loyalty, oversight, and supervision.

233. As a direct or proximate result of the Director Defendants' failure to perform their fiduciary obligations to Nikola, Nikola has sustained significant monetary damages and damage to its corporate image and goodwill and will

continue to sustain damages, for which the Director Defendants are liable to the Company. Such damages include, among other things, payment of fines to government regulators, costs associated with defending securities class action lawsuits, government investigations and subpoenas, severe damage to Nikola's share price, loss of goodwill and harm to Nikola's reputation. Therefore, as a direct or proximate result of the misconduct alleged herein, the Director Defendants are liable to the Company. Further, Plaintiff, on behalf of Nikola, has no adequate remedy at law.

### **COUNT III**

#### **DERIVATIVE CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST THE OFFICER DEFENDANTS RUSSELL, BRADY, AND WORTHEN**

234. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

235. By reason of their fiduciary roles as officers of the Company, the Officer Defendants (Russell, Brady, and Worthen) specifically owed or continue to owe Nikola the highest obligation of due care, good faith and loyalty.

236. The Officer Defendants, collectively and individually, through engaging in the misconduct alleged herein, intentionally or recklessly violated and breached the fiduciary duties they owed to Nikola. The Officer Defendants were aware, recklessly failed to make themselves aware, or should have been aware that this misconduct posed a serious risk of injury to Nikola. The Officer Defendants'



misconduct was not a good faith exercise of prudent business judgment to protect and promote Nikola's corporate interests.

237. The Officer Defendants had actual knowledge of the misrepresentations and omissions of material facts alleged herein, or acted with reckless disregard for the truth, in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such material misrepresentations and omissions were committed knowingly or recklessly and for the purpose and effect of artificially inflating the price of Nikola's securities.

238. The Officer Defendants, collectively and individually, breached their fiduciary duties to Nikola by failing to maintain internal controls over the Company's disclosure regime and thereby directly or proximately causing the misconduct alleged herein; by willfully or recklessly making or causing Nikola to make false and misleading statements, and failing to correct statements by Nikola or Milton that the Officer Defendants knew, were reckless in not knowing, or should have known were false and misleading.

239. The Officer Defendants had actual knowledge that Milton and Nikola was engaging in the fraudulent schemes set forth herein, and that internal controls were not adequately maintained, or acted with reckless disregard for the truth, in that they caused Nikola to improperly participate in the fraudulent schemes even though such facts were available to them. Such improper conduct was committed knowingly

or recklessly and for the purpose and effect of artificially inflating the price of Nikola's securities. The Officer Defendants, in good faith, should have taken appropriate action to correct the schemes alleged herein and to prevent them from continuing to occur.

240. By their actions alleged herein, the Officer Defendants abandoned and abdicated their responsibilities and fiduciary duties with regard to prudently managing the assets and business of Nikola in a manner consistent with the operations of a publicly held corporation.

241. As a direct or proximate result of the Officer Defendants' failure to perform their fiduciary obligations to Nikola, Nikola has sustained significant monetary damages and damage to its corporate image and goodwill. Such damages include, among other things, the payment of a \$125 million penalty to the SEC, costs associated with defending securities lawsuits and government investigations and subpoenas, and reputational harm. Therefore, as a direct or proximate result of the misconduct alleged herein, the Officer Defendants are liable to the Company. Further, Plaintiff, on behalf of Nikola, has no adequate remedy at law.

## COUNT IV

### **DERIVATIVE CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST THE DIRECTOR DEFENDANTS FOR FAILING TO TERMINATE MILTON FOR CAUSE**

242. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

243. By reason of their fiduciary roles as directors of the Company, the Director Defendants (Defendants Russell, Jin, Mansuetti, Marx, Ubben, Stalsberg, Thompson, and Girsky) specifically owed or continue to owe Nikola the highest obligation of good faith, loyalty, oversight, and supervision in the management and administration of Nikola's business and affairs.

244. The Director Defendants, collectively and individually, breached their fiduciary duties to Nikola by failing to terminate Milton for cause based on his alleged criminal misconduct that has exposed Nikola to criminal and regulatory investigations.

245. By their actions alleged herein, the Director Defendants abandoned and abdicated their responsibilities and fiduciary duties with regard to prudently managing the assets and business of Nikola in a manner consistent with the operations of a publicly held corporation.

246. As a direct or proximate result of the Director Defendants' failure to perform their fiduciary obligations to Nikola, Nikola has sustained significant

monetary damages and damage to its corporate image and goodwill. Such damages include, among other things, the payment of a \$125 million penalty to the SEC, costs associated with defending securities lawsuits and government investigations and subpoenas, and reputational harm. Therefore, as a direct or proximate result of the misconduct alleged herein, the Director Defendants are liable to the Company. Further, Plaintiff, on behalf of Nikola, has no adequate remedy at law.

### **COUNT V**

#### **DERIVATIVE CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST THE VECTOIQ BOARD DEFENDANTS GIRSKY, SHINDLER, GENDELMAN, HALLAC, LYNCH, AND MCINNIS**

247. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

248. This claim is asserted derivatively on behalf of Nikola.

249. By reason of their fiduciary roles as officers and/or directors of VectoIQ, the VectoIQ Board Defendants (Defendants Girsky, Shindler, Gendelman, Hallac, Lynch, and McInnis) specifically owed or, in the case of Defendant Girsky, continue to owe Nikola (*i.e.*, VectoIQ before the Merger, and Nikola Corporation after the Merger) the highest obligation of candor, good faith, fair dealing, loyalty, due care, reasonable inquiry, oversight, and supervision in the management and administration of Nikola's business and affairs.

250. The VectoIQ Board Defendants, collectively and individually, through engaging in the misconduct alleged herein, intentionally or recklessly violated and breached the fiduciary duties they owed to protect the rights and interests of VectoIQ stockholders with respect to the Merger. The VectoIQ Board Defendants, collectively and individually, breached their fiduciary duties to the Company by willfully or recklessly directing and overseeing a wholly inadequate due diligence process, failing to obtain an independent valuation of Nikola or its businesses, misrepresenting the business and financial prospects of Nikola, and overpaying for the Legacy Nikola business and its assets.

251. The VectoIQ Board Defendants breached their duty of candor to the Company's stockholders by withholding critical information concerning Nikola's ability to actually design and manufacture zero-emission vehicles and to produce and store hydrogen fuel, and by uncritically accepting Nikola's and Milton's inflated valuations and projections.

252. The VectoIQ Board Defendants, collectively and individually, breached their duty of loyalty to the Company by causing it to adopt a structure for the Merger that allowed the Individual Defendants to enrich themselves at the expense of the Company's stockholders. The VectoIQ Board Defendants breached their fiduciary duties to Nikola by prioritizing their own personal, financial, and reputational interests in approving the Merger.

253. The VectoIQ Board Defendants, collectively and individually, breached their fiduciary duties to the Company by willfully or recklessly permitting Milton to retain an extraordinarily high degree of concentrated control over the Company and by failing to implement adequate internal controls over disclosures and by permitting him to continue to engage in criminal misconduct involving the dissemination of misleading statements about the viability of Nikola's business and products.

254. The VectoIQ Board Defendants were aware, recklessly failed to make themselves aware, or should have been aware that Milton's illegal conduct posed a serious risk of injury to Nikola. The VectoIQ Board Defendants' misconduct was not a good faith exercise of prudent business judgment to protect and promote the Nikola's corporate interests.

255. As a direct or proximate result of the VectoIQ Board Defendants' failure to perform their fiduciary obligations to Nikola, Nikola has sustained significant monetary damages and damage to its corporate image and goodwill. Such damages include, among other things, the payment of a \$125 million penalty to the SEC, overpayment for the acquisition of Legacy Nikola, costs associated with defending securities lawsuits and government investigations and subpoenas, severe damage to Nikola's share price, and reputational harm. Therefore, as a direct or proximate result of the misconduct alleged herein, the VectoIQ Board Defendants

are liable to the Company. Further, Plaintiff, on behalf of Nikola, has no adequate remedy at law.

## **COUNT VI**

### **CLAIM FOR INSIDER TRADING UNDER *BROPHY* AGAINST DEFENDANT UBBEN**

256. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

257. By reason of his fiduciary role as a director of Nikola, Ubben specifically owed and continues to owe Nikola the highest obligation of due care, good faith and loyalty.

258. When Ubben sold his Nikola stock on August 11, 2020, he was in possession of material, non-public information described above, and sold Nikola stock because he was motivated, in whole or in part, by the substance of such information.

259. The information described above was proprietary, non-public information concerning the Company's business operations, financial condition, and growth prospects. It was a proprietary asset belonging to the Company, which Ubben misappropriated to his own benefit when he sold holdings in Nikola stock. Ubben knew that this information was not intended to be available to the public. Had such information been generally available to the public, it would have significantly reduced the market price of Nikola stock.

260. Ubben's sale of stock while in possession and control of this material, adverse, non-public information was a breach of his fiduciary duties of loyalty and good faith. Ubben is therefore liable to the Company for insider trading.

261. Since the use of the Company's proprietary information for personal gain constituted a breach of the fiduciary duties of Defendant Ubben, the Company is entitled to disgorgement and/or the imposition of a constructive trust on any profits Ubben obtained thereby.

262. Plaintiff, on behalf of Nikola, has no adequate remedy at law.

### **COUNT VII**

#### **AGAINST INCLUSIVE CAPITAL PARTNERS SPRING MASTER FUND, L.P. FOR AIDING AND ABETTING INSIDER TRADING**

263. Plaintiff incorporates by reference and realleges each and every allegation contained above as though fully set forth herein.

264. Defendant Ubben had a fiduciary relationship with Nikola and owed Nikola a fiduciary duty of loyalty.

265. Defendant Ubben breached his fiduciary duties of loyalty to Nikola by providing Spring Master Fund with material undisclosed adverse information and engaging in unlawful insider trading.

266. Spring Master Fund knowingly participated in Ubben's breach of fiduciary duty by selling shares motivated in whole or in part by material adverse inside information Ubben shared with it.



267. In selling their Nikola stock, as set forth above, these defendants used Nikola's non-public information for private gain.

268. These defendants profited through aiding and abetting breaches of fiduciary duty.

### **COUNT VIII**

#### **AGAINST THE LEGACY NIKOLA BOARD FOR AIDING AND ABETTING THE VECTOIQ BOARD'S BREACH OF FIDUCIARY DUTIES**

269. Plaintiff incorporates by reference and realleges each and every allegation contained above as though fully set forth herein.

270. Each member of the VectoIQ Board had a fiduciary relationship with VectoIQ and owed VectoIQ (now Nikola) fiduciary duties.

271. The VectoIQ Board Defendants breached their fiduciary duties to VectoIQ (now Nikola) as described herein.

272. The Legacy Nikola D&O Defendants knowingly participated in VectoIQ's Board's breach of fiduciary duty by aiding and abetting the unfair Merger and issuance of a materially false and misleading Merger Proxy as set forth above.

273. These Legacy Nikola D&O Defendants profited through aiding and abetting those breaches of fiduciary duty and Nikola was damaged.

## **COUNT IX**

### **DERIVATIVE CLAIM FOR UNJUST ENRICHMENT AGAINST THE INDIVIDUAL DEFENDANTS**

274. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

275. By their wrongful acts, violations of law, and false and misleading statements and omissions of material fact that they made and/or caused to be made, the Individual Defendants were unjustly enriched at the expense of, and to the detriment of, Nikola.

276. The Individual Defendants, based on improper and unjustifiable conduct, received bonuses, stock options, or similar compensation from Nikola that was tied to the performance or artificially inflated valuation of Nikola, received were that was unjust in light of the Individual Defendants' bad faith conduct, or received excessive compensation.

277. Plaintiff, as a stockholder and a representative of Nikola, seeks restitution from the Individual Defendants and seeks an order from this Court disgorging all profits, including from insider transactions, benefits, and other compensation, including any performance-based or valuation-based compensation, obtained by the Individual Defendants due to their wrongful and unjustifiable conduct and breach of their fiduciary and contractual duties.

278. Plaintiff, on behalf of Nikola, has no adequate remedy at law.

## COUNT X

### **DERIVATIVE CLAIM FOR WASTE OF CORPORATE ASSETS AGAINST THE INDIVIDUAL DEFENDANTS**

279. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

280. As a result of the misconduct described above, the Individual Defendants wasted corporate assets by, *inter alia*: (i) overpaying for Legacy Nikola and its assets; (ii) paying excessive compensation, bonuses, and termination payments to certain of Nikola's executive officers; (iii) awarding self-interested stock options to certain of Nikola's officers and directors; and (iv) incurring potentially millions of dollars of legal liability and/or legal costs to defend the Individual Defendants' unlawful actions.

281. As a result of the waste of corporate assets, the Individual Defendants are liable to the Company.

282. Plaintiff, on behalf of Nikola, has no adequate remedy at law.

### PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

A. Determining that this action is a proper derivative action maintainable under law and demand on Nikola's Board is excused;

B. Declaring that the Individual Defendants have breached their fiduciary duties to Nikola, been unjustly enriched, and wasted corporate assets;

C. Awarding against all the Individual Defendants and in favor of Nikola the amount of damages sustained by the Company as a result of the Individual Defendants' breaches of fiduciary duties, unjust enrichment, and waste of corporate assets;

D. Ordering Defendant Ubben to disgorge the profits obtained as a result of his sales of Nikola stock while in possession of material nonpublic information as described herein;

E. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and experts' fees, costs, and expenses; and

F. Granting such other and further relief as the Court may deem just and proper.

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