

Gary Gotto (No. 007401)
KELLER ROHRBACK LLP
3101 North Central Avenue, Suite 1400
Phoenix, AZ 85012
Telephone: (602) 230-6322
Email: ggotto@kellerrohrback.com
Liaison Counsel for Lead Plaintiffs

*(Lead Counsel for Lead Plaintiffs and for
the Class appear on the Signature Page)*

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Daniel Borteanu, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

Nikola Corporation; Trevor Milton; Mark
A. Russell; Kim J. Brady; Britton M.
Worthen; Steve Girskey; Steven Shindler;
and Jeffrey Ubben,

Defendants.

No. CV-20-01797-PHX-SPL
No. CV-20-01819-PHX-DIR (cons.)
No. CV-20-02123-PHX-JJT (cons.)
No. CV-20-02168-PHX-DLR (cons.)
No. CV-20-02237-PHX-DLR (cons.)
No. CV-20-02374-PHX-DWL (cons.)

**SECOND CONSOLIDATED
AMENDED CLASS ACTION
COMPLAINT**

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NATURE OF THE ACTION

1. This is a securities fraud class action brought by Lead Plaintiffs George Mersho, Vincent Chau, Stanley Karcynski¹ (collectively, “Lead Plaintiffs” or “Plaintiffs”), by and through their undersigned counsel. The action charges that the defendants named herein violated 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) (15 U.S.C. §§ 78j(b), 78t(a) and 78t(b)), and Rule 10b-5 promulgated thereunder by the U.S. Securities and Exchange Commission (the “SEC”) (17 C.F.R. § 240.10b-5) (the “Action”).

2. The Action is brought on behalf of all investors who purchased the common stock of Nikola, Inc. (“Nikola” or the “Company”) during the period June 4, 2020 through February 25, 2021 (the “Class Period”).

3. Lead Plaintiffs’ allegations are based upon Lead Counsels’ investigation, except as to the allegations pertaining to Lead Plaintiffs, which are based upon their personal knowledge. Lead Counsels’ investigation included, among other things, review and analysis of: (i) information publicly disseminated by Nikola, including its public filings with the SEC; (ii) public filings and other documents related to VectoIQ, a publicly traded special purpose acquisition company (“SPAC”) that merged with Nikola, permitting Nikola’s common stock to begin public trading on the NASDAQ on June 4, 2020; (iii) social media postings, news reports, press releases, analysts’ reports and other publicly available documents; (iv) interviews with former employees of Nikola, and other knowledgeable persons; (v) consultations with relevant experts; (vi) pleadings and other court documents related to litigation against Nikola’s former Chief Executive Officer

¹ Mr. Karcynski recently passed away. See ECF No. 127 (Notice). On March 31, 2023, the Estate of Mr. Karcynski filed a motion requesting the Court substitute the Estate of Stanley Karcynski in place of the deceased Mr. Karcynski. See ECF No. 128.

1 (“CEO”) and Executive Chairman, Trevor Milton (“Milton”), including documents filed
2 in the civil action by the SEC against Milton (Case No. 1:21-cv-06445 (S.D.N.Y.)) (“SEC
3 Action”)² and documents and trial testimony submitted as evidence in the criminal action
4 by the U.S. Department of Justice (“DOJ”)³ against Milton (Case No. 1:21-cr-00478-ER
5 (S.D.N.Y.)) (“DOJ Criminal Action”), which, on October 14, 2022, resulted in Milton’s
6 conviction on one count of securities fraud and two counts of wire fraud; as well as
7 pleadings and other court documents related to the derivative actions *Barbara Rhodes v.*
8 *Trevor Milton, et. al*, No. 2022-023-KSJM (Del. Ch.), and *Michelle Brown et. al v. Trevor*
9 *Milton et. al*, No. 2022-0223 (Del. Ch.), which were supported by documents obtained
10 through a books and records request; and (vii) multiple admissions made by Defendants.
11 Lead Plaintiffs believe that substantial evidentiary support will exist for the allegations set
12 forth herein after a reasonable opportunity for discovery.

13 4. Defendants engaged in a brazen and shameless fraud, misrepresenting key
14 aspect of Nikola’s business. Milton was Nikola’s founder and Executive Chairman before
15 he resigned on September 20, 2020. Milton repeatedly hyped Nikola and its stock through
16 a series of false and misleading statements. Milton’s scheme was simple and
17 straightforward: “fake it until you make it” and Milton would “make it” when his lock-up
18 agreement expired at the end of 2020, allowing him to dump his billions of dollars’ worth
19 of Nikola stock after artificially inflating the stock price.

20 5. Milton has been criminally convicted by a jury of his peers for violating
21 Section 10(b) of the Exchange Act in connection with making many of the statements
22 identified herein. Additionally, the SEC brought civil charges against both Nikola and

23 ² A copy of the SEC Civil Complaint is annexed hereto as Exhibit A.

24 ³ A copy of the original indictment against Milton is annexed hereto as Exhibit B. A copy
25 of the superseding indictment against Milton is annexed hereto as Exhibit C.

1 Milton for the same scheme to defraud investors alleged in the criminal action. The SEC's
2 complaint against Nikola resulted in the Company agreeing to pay \$125 million to settle
3 charges that it defrauded investors by misleading them about its products, technical
4 achievements, and commercial prospects. The SEC's civil enforcement action against
5 Milton was stayed pending the resolution of the criminal action and is likely to resume
6 following entry of judgment against Milton later this year.

7 6. In addition to Milton and Nikola itself, this action also charges (i) Nikola
8 CEO Mark A. Russell ("Russell"), (ii) Nikola Chief Financial Officer ("CFO") Kim J.
9 Brady ("Brady"), and (iii) Nikola Chief Legal Officer ("CLO") Britton M. Worthen
10 ("Worthen") with violating securities laws. Testimony and documentary evidence
11 introduced in the course of Milton's criminal trial provides evidence that Russell, Brady,
12 and Worthen made false and misleading statements individually and were willing
13 participants in the scheme to defraud investors.

14 7. The action also charges Steven J. Girskey ("Girskey") and Steven Shindler
15 ("Shindler"), the former CEO and CFO, respectively, of VectoIQ, with violating the
16 securities laws. VectoIQ itself had no business. As a SPAC, it was formed for the sole
17 purpose of raising capital to merge with a private company in the transportation industry.
18 VectoIQ was required to complete a merger by mid-2020, otherwise it would have to
19 refund all funds to its investors and its founders would miss out on what was likely to be a
20 lucrative payday.

21 8. Finally, the action charges Jeffrey Ubben ("Ubben"), a member of Nikola's
22 Board of Directors from September 2019 until February 24, 2022, for his false and
23 misleading statements and participation in the scheme to defraud investors as alleged
24 herein.

OVERVIEW OF THE SCHEME

1
2 9. Nikola purports to simultaneously be (i) a producer of zero emissions
3 vehicles, including hydrogen fuel-cell electric vehicles (“FCEVs”) and battery-electric
4 vehicles (“BEVs”), and (ii) a provider of hydrogen fuel for FCEVs.

5 10. While Defendants misrepresented numerous aspects of Nikola’s operations
6 (as detailed below), the fraud can be broken down into nine categories of
7 misrepresentations: **first**, that Nikola had developed a fully operational “zero-emissions”
8 tractor trailer truck powered by hydrogen fuel cell technology—the Nikola One; **second**,
9 that Nikola had, in hand, over 14,000 purchase orders for its trucks, which represented 2 to
10 3 years of production and billions in revenue; **third**, that Nikola was producing hydrogen
11 at a fraction of the cost industry experts believed was possible and that Nikola was in the
12 process of establishing a nation-wide network of hydrogen refueling stations, which could
13 reliably dispense and produce inexpensive hydrogen for the Nikola One and Nikola’s other
14 vehicles to operate on; **fourth**, that Nikola had developed, using its own technology, a fully
15 operational pick-up truck called the Badger, for which pre-orders had sold out; **fifth**, that
16 Nikola had developed all of its vehicles’ critical components “in-house,” including a
17 proprietary “game-changing” electric battery, which exceeded the range of then-existing
18 electric batteries; **sixth**, that the cost of owning and operating Nikola’s vehicles was
19 significantly less than the cost of owning and operating a traditional diesel powered
20 vehicle; **seventh**, that commercial “assembly line” production of the Nikola Tre BEV truck
21 had already been completed in Ulm, German, and that Nikola had binding orders in hand
22 for its BEV trucks; **eighth**, that Nikola’s headquarters was completely “off-grid” with solar
23 panels on the roof producing 18 megawatts of energy a day; and **ninth**, that Nikola owned
24 seven natural gas wells that were used as backup to Nikola’s solar hydrogen production.
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1 11. As alleged herein, each of these claims were materially false and misleading
2 when made. Below is a mere summary of the false and misleading representations and
3 omissions of material facts made by Defendants.

4 12. **First**, the Nikola One was neither a “zero-emissions” truck nor operational.
5 It was an empty shell. Nevertheless, in late 2016, Nikola staged an event specifically to
6 dupe investors into believing that Nikola had created a ground-breaking, fully functioning
7 zero emissions semi-truck. Then, doubling down on the charade, Nikola created a video in
8 2018 purporting to show the Nikola One driving down a road under its own power. In
9 reality, Nikola had repeatedly towed the still inoperable Nikola One to the top of a hill and
10 then filmed it as it rolled down the hill to make it appear as if it was operational. According
11 to a Nikola executive, the video did not originally show the vehicle moving at all. However,
12 Milton had demanded the change. Another Nikola employee admitted, “[a]t the time, a
13 number of employees were uncomfortable saying the truck was ‘in motion’ when they
14 knew it was not driving.”⁴ Nevertheless, throughout the Class Period, Nikola continued to
15 display the doctored video on its website and Defendants continued to falsely assert that
16 the Nikola One was operational. For example, on August 18, 2020, Milton stated “**it was**
17 **totally capable of driving, it had everything in it —power, steering, batteries—everything**
18 **in it.**”⁵ Nikola has since admitted in its SEC filings that the Company’s statements
19 concerning the Nikola One were false and misleading.

20
21
22 ⁴ On November 12, 2020, Nikola’s counsel, Kirkland & Ellis, provided a presentation to
23 the United States Attorney’s Office for the Southern District to New York regarding the
24 criminal investigation into the conduct herein. This presentation provided some of the
25 results from Kirkland’s internal investigation. This document was publicly filed in the
26 DOJ Criminal Action on December 15, 2021. It is referred to herein as the Nikola
“USAO Presentation” and annexed hereto as Exhibit D.

⁵ All emphasis in this Complaint is added unless otherwise indicated.

1 13. **Second**, Nikola represented that it had 14,000 orders for its various trucks,
2 the majority of which were for the Nikola One, which represented 2 to 3 years of production
3 and billions in expected revenue. As Milton said on June 1, 2020: “[w]e’re the only
4 company in the world that is sold out for many, many years . . . It’s all based on orders. I
5 think that’s the reason Nikola is worth so much money today.” And on July 31, 2020,
6 Milton said the truck orders were “**Not letter of intents, they’re actually contracts**. We’ve
7 got . . . **Yeah, billions and billions of dollars with the contracts**. So I want to be clear
8 about that ‘cause **a lot of people have thought that it’s just like, a non-committal thing,**
9 **it’s not. These are like, sign on the dotted line, billions and billions and billions and**
10 **billions of dollars in orders.**”

11 14. These statements were materially false and misleading because 13,200 of the
12 14,000 orders were, in fact, non-binding and could be cancelled at any time and for any
13 reason. Moreover, after four years since its purported unveiling, the Nikola One was still
14 completely inoperable and Nikola had no timeline for the production of a hydrogen-
15 powered sleeper truck. These statements misled investors into believing Nikola had billions
16 in expected revenue in the ensuing 2-to-3-year period when, in fact, Nikola, for the most
17 part, did not even have a working product to sell.

18 15. **Third**, Nikola claimed it had solved the problems of producing and reliably
19 dispensing hydrogen to power its vehicles. The primary obstacle to powering vehicles with
20 hydrogen is the high cost of hydrogen production. Nikola represented to investors that it
21 was producing hydrogen via electrolysis, a process that uses electricity to split water into
22 hydrogen and oxygen. However, producing hydrogen via electrolysis at a cost-effective
23 rate would necessitate Nikola acquiring vast amounts of electricity at a fraction of the then-
24 market prices. On June 4, 2020, after Nikola’s stock began trading publicly, Milton
25
26

1 proclaimed: “***But what Nikola solved was the cost***—was the economics on the trucking.
2 When we first started, hydrogen was \$16 a kilogram. ***We can now produce it*** for well under
3 \$4 a kilogram. So we’ve cut – it’s one quarter of the cost now than it was just a few years
4 ago. And we’re now cheaper to operate per mile than diesel.”⁶ Nikola has since admitted
5 in its SEC filings that it has ***never produced any hydrogen at all***, let alone at well under
6 \$4 a kilogram.

7 16. Nikola also claimed that it could refuel its trucks with Hydrogen in 15
8 minutes, the same amount of time it took to fuel a traditional diesel semi-truck, and that its
9 demonstration station at the Company’s Phoenix, Arizona headquarters would serve as a
10 “model” for future stations. In reality, Nikola’s “demo station” was plagued with
11 operational challenges the company had not overcome, and as a result was only able to
12 dispense hydrogen a dismal 21% of the time. When it could pump hydrogen, the station
13 took 45-80, not 15, minutes to fuel a truck.

14 17. In fact, as a result of the problems it was experiencing with obtaining
15 electricity at feasible rates and with dispensing gaseous hydrogen, Nikola secretly began
16 considering a dramatic pivot in its business model by no later than March 2020. Under the
17 new proposal, hydrogen would be produced and liquefied at a central “hub” location before
18 being shipped to dispensing-only stations, rather than being produced onsite at Nikola’s
19 stations. If put into action, this new model would require billions in additional capital
20 expenditures (“CapEx”) and would fundamentally change how and what kind of stations
21 Nikola had to construct. Yet Defendants continued throughout the summer of 2020 to
22 represent to investors that Nikola had already begun to build its dispensing stations. By
23

24 ⁶ Yahoo Finance, *Nikola debuts on Nasdaq, how it plans to to compete with other electric*
25 *truck makers* (June 4, 2020), available at: <https://finance.yahoo.com/video/nikola-debuts-nasdaq-plans-compete-150245603.html>.

1 October 2020, Nikola's Board was still being informed that Nikola had not yet settled on
2 a model for supplying its stations with hydrogen.

3 18. **Fourth**, Nikola claimed it had single-handedly developed a FCEV/BEV
4 pick-up truck, the Badger. Milton repeatedly told investors that Nikola had built the
5 Badger from the "ground up" using Nikola's in-house components and intellectual
6 property. For example, on February 10, 2020, Nikola issued a press release titled "Nikola
7 Unveils the Nikola Badger Pickup," touting the Badger as the "World's Most Advanced
8 Zero-Emission FCEV/BEV Pickup with an Estimated 600-mile Range." The press release
9 also stated that the Badger "is engineered to deliver 980 ft. lbs. of torque, 906 peak HP and
10 455 continuous HP," "was designed to handle 0-100 mph launches with minimal loss of
11 performance and to operate on grades up to 40% through advanced software blending of
12 batteries and fuel-cell," and was "engineered to outperform all electric pickup trucks on
13 the market in both continuous towing, HP and range." During the Class Period, Milton
14 repeatedly assured investors that "***we actually build the Nikola Badger from the ground***
15 ***up ourselves, the whole thing***," the Badger was "a real truck, comes from a billion-
16 dollar program" and is "legitimate." Then, on June 29, 2020, suggesting overwhelming
17 demand for this ground-breaking vehicle, Milton announced that Nikola had "sold out" of
18 the most expensive reservation packages for the Badger.

19 19. These statements were demonstrably false because, like the Nikola One,
20 Nikola never built the Badger. By June and July 2020, months after Nikola announced the
21 completed production of the Badger, Nikola had created nothing more than preliminary
22 renderings of the vehicle. Nikola's Board of Directors were informed, at a meeting on July
23 23, 2020, that even a prototype of the Badger would not be completed until November
24 2020 at the earliest.

1 20. **Fifth**, Nikola claimed that all of its vehicles' key components, including
2 inverters and batteries, were created and manufactured "in-house" by Nikola. Indeed,
3 Nikola proclaimed that it had created a "game-changing" battery for its vehicles that was
4 "half the cost and . . . double the range" of the then-most advanced battery on the market.

5 21. These statements were false, which Nikola later admitted in its SEC filings.
6 Defendant Brady as well as Nikola's chief engineer have admitted that Nikola does not
7 develop **any** components in-house, including inverters and batteries. In truth, Nikola
8 contracted with a third-party, Romeo Power Technology ("Romeo") to manufacture
9 Nikola's electric batteries. Brady has further admitted that "Nikola is 'years away' from
10 having the battery technology Milton described [and] . . . [t]he whole statement was an
11 embellishment and fiction at the time" Defendant Worthen has stated Milton's
12 statements concerning Nikola's "game-changing" battery "were a 'terrible and stupid idea'
13 **and Worthen told him not to make the statement.**" Defendant Russell said: "Romeo was
14 the best option, but Milton badly wanted Nikola to own its battery technology."

15 22. **Sixth**, Nikola misrepresented that the total cost of ownership ("TCO") of its
16 vehicles was a fraction of diesel vehicles. For example, on or about July 6, 2020, Milton
17 stated: "**We drove hydrogen down from 16 dollars a kilogram down below four dollars a**
18 **kilogram now.** So why is that? Well, why is that important? Because **now, I can provide**
19 **zero emission to a truck cheaper than diesel.** We've now won the game." He continued,
20 stating that Nikola's TCO, as compared to diesel, "**we're like 20 to 30 percent sometimes,**
21 **cheaper. So it's game over, essentially. If you don't own a Nikola truck, you're gonna**
22 **go bankrupt.**"

1 23. This was false. Nikola never produced any hydrogen, did not drive down any
2 costs and, in fact, the TCO for a diesel truck was still cheaper than the fictional, non-
3 operational, Nikola vehicles.

4 24. **Seventh**, Nikola claimed that it had not only completed a prototype of its
5 Nikola Tre BEV vehicle and that commercial manufacturing had begun, but that fully-
6 manufactured vehicles were “coming off the assembly line right now in Ulm, Germany.”

7 25. Nikola has since admitted in its SEC filings that this statement was false.
8 Nikola management has admitted, “[c]haracterization of the trucks as fully built was
9 inaccurate There was no ‘assembly line in Ulm.’”

10 26. **Eighth**, Nikola claimed that it had “the only off-grid headquarters that we
11 know of . . . [with] 3.5 megawatts of solar up on the roof producing about 18 megawatts of
12 energy a day.”

13 27. As Defendant Brady has since admitted, “[t]his statement is ‘completely
14 false.’” Nikola’s headquarters did not have any solar panels on its roof. While Nikola had
15 discussed moving to an off-grid headquarters, it had been deemed cost prohibitive. Nikola
16 has since admitted in its SEC filings that these statements were false.

17 28. **Ninth**, Nikola claimed that it owned seven natural gas wells that “can pump
18 out millions of gallons of clean natural gas each day” that the Company “[u]sed as backup
19 to solar hydrogen production.”

20 29. This statement was false. As the Company has since admitted, it never at any
21 time owned a single natural gas well.

22 30. Defendants were motivated by greed. Milton’s aim was to inflate the
23 expectations and stock price of Nikola, utilize the resulting excitement to secure and
24 publicly announce reservations for Nikola’s (non-existent) vehicles as well as partnerships
25
26

1 with top auto companies, which would further inflate Nikola's share price. As Nikola's
2 single largest shareholder, owning shares valued at as much as \$8.5 billion during the Class
3 Period, Milton openly admitted within the Company that he planned to dump his shares as
4 soon as he was contractually permitted to do so—only six months after Nikola went public
5 and before the market could discover that the Company, like the Nikola One, was an empty
6 vessel.

7 31. The other Nikola Defendants encouraged Milton to utilize social media to
8 directly and repeatedly engage with retail investors. Despite knowing of his propensity to
9 lie, they championed his self-described “media blitzes” of misinformation because
10 (1) Nikola was in dire need of additional investors bring its many products to market, and
11 (2) the other Individual Defendants were large shareholders who stood to gain millions, if
12 not billions, from Milton's fraud. Defendants have since admitted that they were aware of
13 his false statements to investors, yet they took no meaningful action to stop his conduct or
14 correct his false statements. Plus, more importantly, Nikola's SEC filings contained
15 material misstatements. Given the other Individual Defendants' knowledge that Milton was
16 misleading investors, it was critically important for Nikola's SEC filings to be accurate
17 given the misinformation being put into the market by Milton. The danger of misleading
18 investors by issuing SEC filings with inaccurate information was so obvious that the
19 Individual Defendants must have been aware of it.

20 32. Likewise, Nikola's scheme could not have been accomplished without the
21 substantial assistance provided by VectoIQ and its board. As officers and directors of
22 VectoIQ and later directors of Nikola, Girskey and Shindler owned millions of shares of
23 Nikola. As Nikola's stock price soared, they became wealthier and would have cashed out
24 if the fraud was not exposed beginning in September 2020.

1 33. Accordingly, in addition to their liability as makers of false statements and
2 control persons, each of the Individual Defendants is liable for knowingly and/or recklessly
3 engaging in acts and courses of business in furtherance of a scheme to defraud investors
4 and artificially inflate the price of Nikola common stock.

5 34. Nikola's stock price plummeted as the truth concerning Defendants' fraud
6 came to light. On September 10, 2020, Hindenburg Research ("Hindenburg") published a
7 report entitled, "Nikola: How to Parlay An Ocean of Lies Into a Partnership With the
8 Largest Auto OEM in America" (the "Hindenburg Report" or the "Report"). Having
9 gathered "extensive evidence—including recorded phone calls, text messages, private
10 emails and behind-the-scenes photographs," Hindenburg identified "dozens of false
11 statements by" Milton, which had led Hindenburg to conclude that Nikola "is an intricate
12 fraud built on dozens of lies over the course of . . . Milton's career." Defendant Milton
13 made these misrepresentations, the Report asserted, to substantially grow the Company and
14 secure partnerships with top auto companies.

15 35. On this news, Nikola's stock price dropped \$4.80 per share, or 11.33%, to
16 close at \$37.57 per share on September 10, 2020.

17 36. Nikola's stock price continued to fall, dropping another \$5.44 per share, or
18 14.5%, to close at \$32.13 per share on September 11, 2020.

19 37. On September 14, 2020, after the market had closed, *Bloomberg* reported
20 that the SEC was investigating Nikola to assess the merits of the Hindenburg Report. On
21 September 15, 2020, the *Wall Street Journal* reported that the DOJ had joined the SEC's
22 investigation of Nikola.

23 38. On this news, Nikola's stock fell another \$2.96 per share, closing at \$32.83
24 on September 15, 2020, an 8.27% decline from its previous close on September 14, 2020.

1 39. On Sunday September 20, 2020, Nikola announced that Milton had resigned
2 from his position as Executive Chairman and from the Board of Directors.

3 40. On this news, Nikola's stock plummeted another \$6.60 per share, closing at
4 \$27.58 on Monday September 21, 2020, a 19.33% decline from its previous close on Friday
5 September 18, 2020.

6 41. Over the ensuing months, auto companies with whom Nikola had secured
7 purchase and partnership agreements based on Defendants' fraud began cancelling those
8 agreements as they learned the true state of the Company and did not want to partner with
9 charlatans. Specifically, General Motors pulled out of an agreement to purchase 11% of
10 Nikola, which Milton had hyped and misrepresented to further inflate Nikola's share price.
11 Likewise, a refuse company that had placed an order for Nikola vehicles—which Milton
12 had also touted and misrepresented—cancelled its order. As a result, Nikola's stock price
13 tumbled to \$13.75 by December 24, 2020.

14 42. On February 25, 2021, after the close of trading, Nikola filed its Form 10-K
15 for the year ended December 31, 2020. In the filing, Nikola admitted that numerous
16 statements made by the Company were "inaccurate in whole or in part, when made."

17 43. On this news, Nikola's stock fell another \$1.62 per share, closing at \$18.10
18 on February 26, 2021, an 8.22% decline from its previous close on February 25, 2021.

19 44. Finally, on July 29, 2021, numerous news outlets reported that Milton had
20 been indicted on three counts of fraud by the U.S. Attorney's Office in Manhattan for
21 making deceptive and false claims to investors regarding "nearly all aspects of the
22 business." The SEC also filed related civil charges.

23 45. On this news, Nikola's stock fell another \$2.16 per share, closing at \$12.03
24 on July 29, 2021, a 15.22% decline from its previous close on July 28, 2021.

1 53. Defendant Nikola is a Delaware corporation with principal executive offices
2 located in Phoenix, Arizona. The Company purports to operate as an integrated zero-
3 emissions transportation systems provider. Nikola's common stock trades on the
4 NASDAQ under the ticker symbol "NKLA."

5 54. Defendant Trevor Milton ("Milton") founded Nikola and served as its CEO
6 until the merger in June 2020, after which he served as its Executive Chairman until he
7 resigned from Nikola on September 20, 2020. Milton served as a director of Nikola during
8 the entire length of his employment with the Company. In addition to the false and
9 misleading statements Milton made in tweets, podcasts, and news interviews identified
10 herein, Milton signed the following documents filed by the SEC which are alleged to
11 contain false and misleading statements, and which omit material facts: Nikola's March
12 13, 2020 Form S-4; its June 15, 2020 Form S-1; and its July 17, 2020 Form S-1.

13 55. Defendant Mark A. Russell ("Russell") has served as Nikola's CEO and as a
14 director of Nikola since the merger. After becoming Nikola's CEO, Russell ran the
15 Company's day-to-day operations. Russell was personally hired as Nikola's CEO by
16 Milton and has numerous close ties to Milton both personally and financially. Before
17 becoming Nikola's CEO, Russell served as President of Nikola from February 2019 to June
18 2020 and was also a director of legacy Nikola from July 2019 to the merger in June 2020.
19 Previously, from August 2012 to August 2018, Russell served as President and Chief
20 Operating Officer of Worthington Industries ("Worthington"), a company where Milton
21 was also employed until he left to found Nikola. During Russell's tenure, Worthington
22 acquired dHybrid Systems, Milton's former diesel conversion company, in 2014. Russell
23 signed Nikola's June 15, 2020 Form S-1, its July 17, 2020 Form S-1 and its Second Quarter
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2020 Form 10-Q, each of which contained materially false and misleading statements and omitted to disclose material facts.

56. Defendant Kim J. Brady (“Brady”) has served as Nikola’s CFO since the merger. Brady served as Nikola’s CFO and Treasurer from November 2017 until the merger. Brady was personally hired to be Nikola’s CFO by Milton while Nikola was privately held. Brady signed Nikola’s June 15, 2020 Form S-1, its July 17, 2020 Form S-1 and its Second Quarter 2020 Form 10-Q, each of which contained materially false and misleading statements and omitted to disclose material facts.

57. Defendant Britton M. Worthen (“Worthen”) has served as Nikola’s CLO and Secretary since June 2020, and prior to that served as Nikola’s CLO and Secretary from October 2015 to June 2020. Worthen was personally hired to serve as Nikola’s CLO by Milton. Worthen signed the September 14, 2020 Form 8-K which contained materially false and misleading statements and omitted to disclose material facts.

58. Defendants Milton, Russell, Brady, and Worthen are sometimes referred to herein as the “Individual Nikola Defendants” and, with Nikola, the “Nikola Defendants.”

59. Defendant Jeffrey W. Ubben (“Ubben”) joined Nikola’s Board of Directors in September 2019 and remained on the Board following the merger until February 24, 2022. Ubben became a member of Nikola’s Nominating and Corporate Governance Committee in June 2020. He signed the June 15, 2020 S-1 and the July 17, 2020 S-1. Ubben was compensated under Nikola’s non-employee director compensation program.

60. Steve Girsky (“Girsky”) served as President, CEO, and a director of VectoIQ until the merger between VectoIQ and Nikola. Following the merger, Girsky served as a director of Nikola and as a member of Nikola’s Audit Committee and Nominating and

1 Corporate Governance Committee and, in September 2020, became Chairman of Nikola.
2 Girsky signed the S-4, the Proxy, the June 15, 2020 S-1, and the July 17, 2020 S-1.

3 61. Defendant Steven Shindler (“Shindler”) served as CFO and director of
4 VectoIQ prior to its merger with Nikola. He has served as a Nikola director since
5 September 2020 and serves as the Chair of the Audit Committee. Shindler signed the S-4
6 and the April 6, 2020 Form 8-K on behalf of VectoIQ. The Form 8-K contained materially
7 false and misleading statements as alleged herein.

8 62. Defendants Girsky and Shindler are sometimes referred to herein as the
9 “VectoIQ Defendants” and, together with Ubben and the Individual Nikola Defendants,
10 the “Individual Defendants.”

11 63. The Individual Defendants possessed the power and authority to control the
12 contents of Nikola’s SEC filings, press releases, and other market communications. The
13 Individual Defendants were provided with copies of Nikola’s SEC filings, press releases
14 and other public statements alleged herein to be misleading prior to or shortly after their
15 issuance and had the ability and opportunity to prevent their issuance or to cause them to
16 be corrected. Because of their positions with Nikola, and their access to material
17 information available to them but not to the public, the Individual Defendants knew that
18 the adverse facts specified herein had not been disclosed to and were being concealed from
19 the public, and that the positive representations being made were then materially false and
20 misleading. The Individual Defendants are liable for the false statements and omissions
21 pleaded herein.

SUBSTANTIVE ALLEGATIONS AND FACTUAL BACKGROUND

I. Nikola and its Business Combination with VectoIQ

64. Milton founded Nikola in 2015 with the primary goals of manufacturing semi-trucks that used alternative fuels with low or zero emissions and building a fueling station infrastructure to support those vehicles. Since approximately 2016, Nikola has focused on producing FCEV (hydrogen fuel-cell vehicle) Class 8⁷ trucks. Later, Nikola also began to develop Class 8 BEV (battery-electric vehicle) trucks.

65. Although BEV cars have existed for years, FCEV cars are less common, and FCEV Class 8 trucks have never been commercially deployed. The lack of commercial deployment of FCEV trucks thus far is largely due to the high barriers to entry, including, among other things, the high cost of dispensable hydrogen compared to traditional fuels and the high cost of hydrogen dispensing infrastructure, which is uneconomical to build without vehicles to support it.

66. Defendants claimed that Nikola could overcome these barriers to entry by, among other things: (i) offering a bundled lease for its trucks that included the cost of hydrogen fuel; (ii) constructing a nationwide network of hydrogen refueling stations around routes of customers who have committed to lease Nikola's trucks; and (iii) obtaining cheap electricity that would enable the Company to produce hydrogen at a fraction of current market rates.

67. Nikola's business plan required billions of dollars of capital to finance the development and manufacturing of trucks and station infrastructure, which were not expected to generate profits until years in the future. From 2015 through March 2020,

⁷ Class 8 trucks are those with a gross vehicle weight rating exceeding 33,000 pounds. Semi-trucks or "18-wheeler" trucks typically are Class 8 vehicles.

1 Nikola raised over \$500 million through private offerings directed mostly at institutional
2 investors.

3 68. In late 2019, Nikola needed cash to fund its operations and it was targeted by
4 VectoIQ as a potential business combination partner. VectoIQ was founded in 2018 and
5 based in Mamaroneck, New York. VectoIQ was a SPAC, which had no operating business
6 of its own and was formed for the sole purpose of raising capital to merge with a private
7 company in the transportation industry. By late 2019, VectoIQ was running short on the
8 time required by its governing documents to complete a merger. If the VectoIQ Board
9 failed to find a merger partner by May 18, 2020, it would have to return its investors'
10 money, robbing VectoIQ's founders of what was likely to be a lucrative payday.

11 69. In mid-November 2019—and with only six months to go before VectoIQ's
12 May 18, 2020 deadline arrived—investment bankers from Cowen and Company, LLC
13 ("Cowen") proposed Nikola as a potential acquisition target to VectoIQ's management.
14 Cowen was an original investor in VectoIQ, having purchased 1,449,000 of the Founders
15 shares in March 2018 before the initial public offering ("IPO"). Cowen also pitched its idea
16 of a VectoIQ-Nikola merger to Nikola's management. Cowen had previously provided
17 financial advisory services to Nikola in connection with an offering of preferred stock in
18 2018.

19 70. Going public through the SPAC route had a key advantage to Nikola and
20 VectoIQ: unlike an IPO, a SPAC reverse merger is not subject to what is commonly
21 referred to as a "quiet period" mandated by the federal securities laws. During the quiet
22 period, the company's executives generally cannot provide any information about the
23 company to anyone beyond what was previously disclosed in the registration statement and
24 prospectus. The purpose of a quiet period is to create a level playing field by ensuring that
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1 all investors have access to the same information at the same time, and to prevent
2 executives from taking actions to hype or artificially inflate the company's stock price. The
3 quiet period lasts from the time the company issuing the stock discloses information about
4 the issuance in the registration statement and prospectus that are required to be filed with
5 the SEC until forty days after the new stock begins trading. Because a SPAC reverse merger
6 is not subject to a quiet period, the executives of the private company that is merging with
7 the SPAC are not limited in their ability to speak publicly about their company while the
8 company goes public. As discussed below, this aspect of the merger, which VectoIQ
9 emphasized as a key advantage in its sales pitch to Nikola, played right into Defendants'
10 hands.

11 71. On March 2, 2020, VectoIQ and Nikola entered into a business combination
12 agreement, along with certain related agreements, pursuant to which Nikola would merge
13 with a subsidiary of VectoIQ and effectively become the surviving, publicly traded entity
14 when the transaction closed. In one related transaction, VectoIQ raised approximately \$525
15 million from institutional investors in a private investment in public equity ("PIPE")
16 offering. Milton participated in the PIPE fund raising and marketing efforts by making
17 presentations at investor meetings.

18 72. Inclusive Capital Partners Spring Master Fund, L.P. ("Spring Master Fund"),
19 an entity founded by Ubben in 2018, purchased 809,936 shares of Nikola Series D
20 preferred shares for approximately \$15 million and five million shares of Nikola in the
21 PIPE offering which helped close the merger with VectoIQ. As of June 3, 2020, following
22 the Merger, Ubben directly or indirectly owned 20,362,024 Nikola common shares,
23 representing approximately 5.6% of Nikola's outstanding common stock.

1 73. Between March 3, 2020, when the merger was announced, and June 3, 2020,
2 when it was effected, investors could buy and sell VectoIQ stock based on the reasonable
3 anticipation that upon the completion of the merger, an investor's ownership of VectoIQ
4 stock would make them an equity owner of Nikola. As a result of the merger, Nikola
5 received a net contribution of approximately \$594.5 million from VectoIQ, an amount that
6 excluded a \$70 million payout to Milton made at the closing of the transaction, according
7 to its filings with the SEC. The parties consummated the business combination on June 3,
8 2020. The following day, June 4, 2020, Nikola's stock began trading on the Nasdaq.

9 **II. Defendants' Stock Ownership and Compensation**

10 **A. Trevor Milton**

11 74. Until the merger, Milton served as Nikola's CEO, was Chairman of its Board
12 of Directors, and was its largest stockholder. On or about March 3, 2020, when Nikola
13 announced it would go public by merging with VectoIQ, Nikola claimed an enterprise
14 value of approximately \$3.324 billion, implying that the Nikola stock Milton would hold
15 upon completion of the Merger, through an entity called M&M Residual, LLC ("M&M"),
16 had a value of approximately \$844 million. Immediately after the Merger, Milton held,
17 through M&M, approximately 91,602,734 shares in Nikola, representing approximately
18 25.4% of the total ownership of the Company, and he remained the Company's largest
19 stockholder during the Class Period. On or about June 3, 2020, when the Merger between
20 Nikola and VectorIQ was completed, Nikola shares opened the day trading at
21 approximately \$33.69 per share, resulting in a value for Milton's shares of approximately
22 \$3,086,096,108. At opening on or about June 9, 2020, after completion of the merger,
23 when Nikola's stock peaked, the market value of Milton's stock was approximately \$8.5
24 billion.

1 75. During the merger negotiations, Milton tried to ensure that he would not be
2 locked up from selling his Nikola stock for any period of time. Generally, one purpose of
3 such a lock-up is to keep management invested in delivering on the business's plan rather
4 than cashing out for short-term gain. Milton and Russel ultimately were required to sign
5 the Registration Rights and Lock-Up Agreement dated June 3, 2020 ("Lock-Up
6 Agreement"), which had a one-year lock-up. However, the lock-up did not apply to the \$70
7 million cash payment to M&M at the time the merger closed, and it also carved out \$70
8 million in stock that Milton could sell as soon as six months after the merger. And soon
9 after the merger, on July 17, 2020, the Lock-Up Agreement was amended to permit Milton
10 and Russell to (1) sell all of their shares (which they owned through M&M and T&M
11 Residual, LLC ("T&M"), a company co-owned by Milton and Russell, and managed by
12 Russell) beginning on December 1, 2020, only six months after the merger; and (2) transfer
13 up to 16% of their shares as collateral to borrow money to buy more Nikola stock through
14 open-market transactions—stock that Milton and Russell could presumably then turn
15 around and sell at any time allowing them to get around the lock-up provisions prohibiting
16 sales. During that six-month period, Milton expressed his intention within the Company
17 to sell shares once the lock-up period ended.

18 76. During fiscal year 2019, Nikola paid Milton \$266,000 in salary. During fiscal
19 year 2020, Nikola paid Milton \$153,462 in salary, and \$159,026,298 in stock awards
20 (valued by aggregate fair value computed as of the grant date), for total compensation of
21 \$159,179,760.

22 77. As of June 3, 2020, following the merger, Milton's compensation was to
23 consist of (1) a salary of \$1; (2) an annual "time-vested award" of \$6 million worth of
24 restricted stock units ("RSU"), vesting three years after grant, with the first such award
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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 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:

Share Price Milestone	Market Capitalization at Price	Incremental Performance Shares Earned at Share Price Milestone
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.

B. Mark Russell

78. 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. 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, Russell owned approximately \$1.7 billion worth of Nikola stock immediately after the merger

1 closed. Pursuant to the Lock-Up Agreement, Russell was permitted to sell these shares
2 starting on December 1, 2020.

3 79. During fiscal year 2019, Nikola paid Russell \$250,866 in salary and
4 \$6,307,496 in option awards, for total compensation of \$6,558,362. During fiscal year
5 2020, Nikola paid Russell \$173,077 in salary, and \$159,026,298 in stock awards valued by
6 aggregate fair value computed as of the grant date, for total compensation of \$159,199,375.

7 80. Since June 3, 2020, following the merger, Russell's compensation has
8 consisted of (1) a salary of \$1; (2) an annual "time-vested award" of \$6 million worth of
9 RSUs, vesting three years after grant, with the first such award based on a stock price of
10 \$10; and (3) a "performance award" consisting of up to 4,859,000 RSUs earned after
11 certain stock price milestones were achieved:

12 Share Price Milestone	13 Market Capitalization at Price	14 Incremental Performance Shares Earned at Share Price Milestone
15 Below \$25.00	Below \$10 billion	0
16 \$25.00	\$10 billion	1,069,000
\$40.00	\$16 billion	1,603,000
\$55.00 or above	\$22+ billion	2,187,000

17 The performance awards were identical to the ones granted to Milton and Russell stood to
18 gain potentially tens of millions of dollars' worth of Nikola shares as a result of Milton
19 pumping up of Nikola's stock price above the price milestones for twenty consecutive
20 trading days. Based on the trading price of Nikola stock between June 3, 2020 and
21 September 20, 2020, resulting from the misleading statements regarding Nikola's business,
22 the first performance milestone was reached and Russell is now entitled to 1,069,000
23 Nikola RSUs.
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C. Kim J. Brady

81. 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 at the time of the merger.

82. 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.

83. 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 RSUs, 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:

Share Price Milestone	Market Capitalization at Price	Incremental Performance Shares Earned at Share Price Milestone
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

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.

84. 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.

D. Britton Worthen

85. 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.

86. 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 RSUs, 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:

Share Price Milestone	Market Capitalization at Price	Incremental Performance Shares Earned at Share Price Milestone
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

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

1 regarding Nikola's business, the first performance milestone was reached and Worthen is
2 now entitled to 534,00 Nikola RSUs.

3 87. On June 3, 2020, in connection with the closing of the merger, Worthen
4 received fully vested and exercisable stock options that gave him the right to purchase
5 4,603,168 shares of Nikola common stock at a price of \$1.05.

6 **E. Stephen J. Girsky**

7 88. As of June 18, 2020, Girsky owned at least 1,754,344 shares of Nikola's
8 common stock,⁸ which were previously shares of VectoIQ that Girsky acquired for nominal
9 consideration (approximately \$25,000 or less). Given that the price per share of Nikola's
10 common stock at the close of trading on June 18, 2020 was \$67.73, Girsky owned
11 approximately \$119 million worth of Nikola stock, for which he had paid only nominal
12 consideration. Pursuant to the Lock-Up Agreement, Girsky was prohibited from selling
13 these shares for a period of one year.

14 **F. Steven M. Shindler**

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

17 90. As of June 18, 2020 (the date VectoIQ Holdings, LLC, the VectoIQ-affiliated
18 sponsor entity in the Merger, dissolved and distributed its holdings to its members),
19 Shindler owned 402,298⁹ shares of Nikola's common stock, which he had previously
20

21 ⁸ The 1,754,344 shares owned by Girsky consisted of (i) 11,449 shares and 1,441 shares
22 underlying warrants owned directly by Girsky; and (ii) 1,561,459 shares and 180,005
23 shares underlying warrants previously owned, as of June 3, 2020, by VectoIQ, and
24 subsequently transferred to Girsky when VectoIQ dissolved on June 18, 2020.

25 ⁹ The 402,298 shares owned by Shindler consisted of (i) 12,889 shares owned directly by
26 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.

1 acquired for nominal consideration. Given that the price per share of Nikola's common
2 stock at the close of trading on June 18, 2020 was \$67.73, Shindler owned approximately
3 \$27 million worth of Nikola stock. Pursuant to the lock-up agreement, Shindler was
4 prohibited from selling these shares for one year.

5 **G. Jeffrey W. Ubben**

6 91. Ubben is the founder and managing partner of Inclusive Capital Partners,
7 L.P., a financial services company founded in 2020. He also founded ValueAct Capital
8 Management, L.P. in 2000, where he was employed until 2020. In 2018, Ubben founded
9 Spring Master Fund, formerly known as ValueAct Spring Master Fund, L.P., and served
10 as portfolio manager. Spring Master Fund purchased 809,936 shares of Nikola Series D
11 preferred shares for approximately \$15 million. Spring Master Fund also purchased 5
12 million shares of VectoIQ Common Stock in the PIPE offering that helped close the
13 Nikola-VectoIQ merger at \$10 per share, for a total price of \$50 million. At the time the
14 merger was completed in June 2020, Ubben directly or indirectly owned 20,362,024 Nikola
15 common shares, representing approximately 5.6% of Nikola's outstanding common stock
16 and worth approximately \$691 million on June 3, 2020. In 2020, his compensation as a
17 member of Nikola's Board consisted of \$713,370 in stock awards. When Nikola's share
18 price shot up to \$42.69 on August 11, 2020, Ubben sold 1.4 million Nikola shares for a
19 total of \$59,766,000 in violation of the Lock-up Agreement that prohibited sales within
20 180 days of the merger.

21 **III. Milton's Control Over Nikola**

22 92. Following the merger, Milton switched roles from CEO to Executive
23 Chairman. Milton explained on the *Chartcast* podcast that his change in title was a
24 promotion that allowed him to have nearly unfettered control over the company:
25
26

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

8 93. Retaining control of Nikola was important to Milton. For example, when a
9 member of Nikola's Board of Directors urged Milton in January 2020 to appoint to
10 Nikola's Board additional independent members with public company experience, Milton
11 responded, in part:

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

17 94. Milton also exercised personal control over the hiring of Nikola's executive
18 leadership. For example, Milton personally hired Nikola's CEO Russell, CFO Brady and
19 CLO Worthen.

20 95. At all relevant times, Milton acted as Nikola's primary public spokesman,
21 and he frequently exercised control over the company's social media posts and press
22 releases, although Nikola's marketing team also took direction from Russell, Brady, and
23 Worthen. Further, Milton often participated in meetings with prospective investors,
24 industry partners, and potential customers.

25 96. Milton was a hands-on executive. He engrossed himself in the details of
26 Nikola's technology and product development process. He participated in weekly update
meetings with senior technical and business leaders. During these meetings, and regularly
at other times, he received updates on Nikola's product development, technology, and

1 commercial activity directly from Nikola's technical leads. Milton worked with engineers,
2 often huddling with them in front of computer screens to discuss technical matters.

3 97. Milton was purportedly so central to Nikola's business that Nikola disclosed
4 in its filings with the SEC in the spring and summer of 2020 the risks associated with its
5 dependence on Milton. Nikola warned in these filings that it is "highly dependent" on
6 Milton's services, because he is "the source of many, if not most, of the ideas and execution
7 driving Nikola." Accordingly, Nikola cautioned that if Milton could not continue
8 employment with the company, it "would be significantly disadvantaged."

9 98. Milton viewed and touted himself publicly as a technological expert in
10 several aspects of electric vehicles. During a May 5, 2020 appearance on the *Rise of the*
11 *Young* podcast, Milton claimed:

12 I'm not trying to ever be too confident or – or brag about things, but this is
13 important to help you understand that answer. There's two people in this
14 world that know EVs better than anyone, and that's Elon [Musk] and myself.
15 There's no one in this world that – I can go into any meeting with
16 Volkswagen, Daimler, Volvo. You could put 30 PhDs in that room, and I
17 would run circles around every one of them. Because they only know one
18 thing, that's all they know. . . . So there's very few people that know the EV
19 industry or the whole entire vehicle like I do or like Elon [Musk] does, so
20 we're probably the top two guys in the world that know this shit, and we
21 know it better than anybody.

22 **IV. Milton's Social Media Activity and Fixation with Stock Price**

23 99. Because Nikola went public through a SPAC reverse merger there was no
24 quiet period and Defendants could promote Nikola stock without restriction. Defendants
25 capitalized on this aspect of the SPAC route to perpetrate their fraud.

26 100. In the months leading up to and after the merger, Defendants pursued a
deliberate communications strategy with the intent of creating maximum exposure for
Milton and Nikola to fraudulently induce retail and other investors to purchase Nikola stock
by making false and misleading statements about Nikola's products and achievements.

1 This strategy consisted of a ubiquitous social media presence coupled with frequent
2 podcast and television appearances.

3 101. Milton used his personal Twitter account (@nikolatrevor) and personal
4 Instagram account (@lakepowelltrevor) to publish material information about Nikola. As
5 of September 15, 2020, more than 104,600 users followed Milton on Twitter and more than
6 36,500 users followed Milton on Instagram. On information and belief, among Milton's
7 Twitter followers was Nikola's corporate Twitter account (@nikolamotor).

8 102. Milton repeatedly urged investors to follow his social media accounts,
9 claiming he used them to communicate "accurate data" about Nikola in a way that would
10 enable followers to receive information "way faster than you get it anywhere else."
11 Milton's statements on June 30, 2020 during a nationally televised interview on *Fox*
12 *Business* encapsulate his view of using social media to interact with Nikola's investors:

13 Well, I don't think that the market really – this is I think one of the things
14 that many people have missed. The investors around the world right now are
15 tired; they're tired of like an executive sitting in an office behind his chair,
16 making millions of dollars and, you know, forgetting about the average
17 factory worker or even the consumer. So, there's unparalleled contact
18 between myself, the executive chairman and the founder of Nikola, and all
19 of our fans. I mean, you heard in the previous segment about social media,
20 there's a lot of negative in social media, but there's also a lot of positive that
21 you can create with it. And I took the, uh, I took the decision I wanted to
22 create the positive And through this social media experience, where
23 people can actually feel like they're part of it, **they can talk to you, they can**
24 **ask you questions, the transparency,** the, the market they're just tired of the
25 older executive that just don't care. And that's why you see the market
26 evaluation of Nikola do well is because **finally there's executives out there**
that they can talk to, that they can voice their problems, their opinions with
and they actually get a response. Go on my Twitter Nikola Trevor and
you'll see . . . you'll literally see answers to probably two thirds of every
tweet out there.

23 103. Milton exponentially increased his social media activity in anticipation of
24 and after Nikola became a public company in mid-2020. This is illustrated in the following
25 chart that approximates his activity on his personal Twitter account (@nikolatrevor):
26

Year	Approximate Number of Tweets (including Replies) Per Year
2016	14
2017	22
2018	52
2019	137
2020	2,283
TOTAL	2,508

104. To further increase investor awareness of Nikola around the time of the merger, Milton embarked on a self-proclaimed “media blitz” with Defendants’ acquiescence. As part of this campaign, he participated in over a dozen nationally televised interviews and appearances and dozens of podcast appearances. Milton was able to do so because Nikola went public by means of a SPAC combination, rather than an IPO, and Milton was therefore not subject to the restrictions of a “quiet period.”

105. Milton’s “media blitz” and social media activity were closely connected with his fixation on, and desire to increase and maintain, Nikola’s stock price. Around the time of the merger, Milton became intensely focused on Nikola’s stock price.

106. On days when Nikola’s stock price declined, Milton regularly attempted to direct Nikola’s senior executives to take actions to stop the price decline. Senior executives received frantic phone calls or text messages from Milton on such days in which he urged the executives to “do something.” Milton also spoke of needing to put out “good news” or some kind of announcement “to get people excited” as a way to counteract price declines or maintain support for the stock price.

1 107. Senior Nikola executives and some members of Nikola’s Board of Directors
2 impressed upon Milton in the summer of 2020 that volatility in Nikola’s stock price was to
3 be expected, and that his focus should instead be on long-term performance.

4 108. However, Milton’s focus remained on the stock price and his attempts to
5 influence the retail investors whom he and the other Defendants viewed as driving it. For
6 instance, on or about March 2, 2020, the day before Nikola announced the merger, Milton
7 wrote an email to a member of the Nikola Board stating, “***need to make sure we are getting***
8 ***retail investors on our side***. That is what prevents the stock short selling. This is super
9 important for me.” To that end, Milton tracked the daily number of new Robinhood users
10 who held Nikola stock. On June 8, 2020, Milton shared a tweet with a senior Nikola
11 executive reflecting that over 36,000 new Robinhood users became Nikola stockholders
12 that day. The senior executive responded, in part, by expressing his amazement at how
13 many calls he received “from retail investors today that have no clue about Nikola, other
14 than their friends told them to buy. A lot of hype out there with retail investors,” to which
15 Milton replied: “That’s how you build a foundation. Love it.”

16 109. In late July 2020, Milton contacted a Nikola senior executive to discuss the
17 possibility of Milton buying shares of Nikola “for the company’s health” because Nikola
18 has had “zero news for two weeks and it’s important to prevent our stock from losing
19 credibility.” Another time, following a short period of stock price decline in August 2020,
20 Milton sent a text message to a different senior Nikola executive requesting to “talk
21 strategy ASAP.” Milton went on to say that the “continual stock decline is going to erode
22 any confidence in our stock. We have to do something We can’t just sit here and
23 watch it collapse.”

1 110. Milton’s focus on the stock price and the other Individual Defendants’
2 encouragement of Milton’s misinformation media blitz was not surprising, as they were
3 personally incentivized to push Nikola’s stock price higher. First, as the Company’s largest
4 stockholders, the Individual Defendants stood to benefit financially if they could increase
5 Nikola’s stock price and sustain that increase beyond the six-month period following the
6 merger. During this period, Milton was contractually prohibited, with some exceptions,
7 from transacting in Nikola stock. Second, Defendants’ compensation plans following the
8 merger tilted heavily toward equity. For example, Individual Defendants’ performance
9 awards and RSUs were tied to Nikola’s share price. As Milton wrote in a July 7, 2020
10 email exchange with one of Nikola’s directors justifying a release from his lock-up
11 agreement, the stock had gained “**over 400%**” and he made “**everyone else millionaires**
12 **and billionaires.**” Indeed, by August 14, 2020, Nikola’s share price achieved the first share
13 price milestone specified in Milton’s, Russell’s, Brady’s, and Worthen’s employment
14 agreements, entitling them to awards of 3,242,000 shares of Nikola stock, which were at
15 the time worth approximately \$81 million.

16 **V. Nikola Defendants Knew Milton was Making False and Misleading**
17 **Statements On Behalf of Nikola**

18 111. Russel, Brady and Worthen, Girskey, and Ubben knew of Milton’s
19 misinformation “media blitz” designed to inflate Nikola’s stock price, as Milton stated in
20 an email that he intended to go on a “media blitz” when Nikola became public and asked
21 Russell, Brady, Girskey, and Ubben to approve an unnecessary, rushed purchase order of
22 electrolyzers in late May 2020 to allow him to do so as soon as Nikola began trading
23 publicly (Defendants approved the order).

24 112. Many of the false statements described herein were posted to Nikola’s
25 corporate website or its corporate Twitter account or other social media platforms, which
26

1 Nikola's marketing team could delete with approval from Milton, Russell, Brady, or
2 Worthen. Russell, Brady and Worthen were also aware of Milton's habit of using his
3 personal Twitter account (and other social media) for Nikola-related announcements and
4 were aware that analysts and retail investors relied on these postings as accurate sources of
5 information. Moreover, as stated in Milton's criminal indictment and complaints by the
6 DOJ and SEC "Milton repeatedly made false and misleading statements about **core aspects**
7 of Nikola's products, technological advancements, and commercial prospects," which the
8 Individual Defendants as executive officers of the Company knew were false and
9 misleading. The SEC also cited evidence that Milton's misconduct was known to the senior
10 executives at the Company for months before and after the merger, including some
11 directors as well as Worthen, who was Nikola's CLO and Secretary to the Board. For
12 example, Russel, Brady and Worthen were repeatedly informed that Nikola did not, in fact,
13 manufacture all of its key vehicle components in-house. Similarly, they knew that Nikola
14 had never (and still does not) produce its own hydrogen, much less at the fictitious prices
15 represented by Milton. Indeed, Worthen has since admitted "The statement that Nikola can
16 produce 1,000 kg/day [of hydrogen] **is not true**, and **Milton knew it was not true. We**
17 **discussed this 'a million times.'**" Also evidencing his state of mind, Worthen stated that
18 he knew Milton's statements about Nikola manufacturing its batteries in-house were false
19 and Worthen has claimed that he "**told him not to make the statement.**" Notwithstanding
20 Worthen's admissions that he knew Milton was misleading investors about Nikola's
21 hydrogen production and in-house technology, Worthen signed a September 14, 2020 press
22 release denouncing the Hindenburg Report as "false and misleading" when Worthen knew
23 the Hindenburg Report's assertions that Nikola could not produce its own hydrogen were
24 accurate.

1 113. In 2019 and 2020, some of Nikola's senior executives were uneasy about
2 Milton's outright lies on social media. Senior executives were aware that Milton's public
3 statements were inaccurate, false, and misleading. Despite this, Nikola did not implement
4 formal disclosure controls or procedures for monitoring or reviewing Milton's media
5 interviews and social media activity.

6 114. Indeed, the Company's press releases and SEC filings contained material
7 misstatements and included statements that both perpetuated and failed to correct the
8 knowingly false statements being made by Milton that caused Nikola's stock price to be
9 artificially inflated.

10 115. In or around 2019, Defendant Worthen advised Milton about the legal risks
11 associated with inaccurate tweets, and a senior Nikola executive told Milton that even posts
12 from his personal accounts could be viewed as statements by Nikola itself. Then, in a series
13 of conversations in 2019 and 2020, Russell (who was also on the Board) asked Milton to
14 let Worthen pre-screen any tweets Milton planned to post from Nikola's corporate account.
15 But with only a few exceptions, no one in the Company's legal department or elsewhere at
16 Nikola ever pre-screened Milton's tweets.

17 116. Nonetheless, Russell, Worthen, and Brady could have instructed Nikola's
18 marketing team to take down false information from Nikola's social media. As described
19 more fully in ¶¶804-811, on July 19, 2020, a high-level Nikola officer who reported directly
20 to Russell requested that Nikola's marketing team remove references on Nikola's social
21 media to a podcast interview Milton gave which was rife with misleading statements. The
22 marketing team informed Nikola's Head of Business Development, Elizabeth Fretheim,
23 that they needed executive approval to remove the postings, so Fretheim contacted Russell,
24 Brady, and Worthen. Russell assured Fretheim that the executives would follow-up.

1 However, they never instructed the marketing team to remove the postings. At Milton's
2 criminal trial, Russell conceded in his testimony that "we should have taken it down."

3 117. Throughout 2020, Russell, Brady, Worthen, and Girskey, aware that Milton
4 was posting an excessive volume of false statements, asked Milton to tone down his social
5 media presence, but did nothing to protect investors from his false statements and when
6 called upon to set the record straight, deflected questions about Milton's statements. For
7 example, when an analyst on an August 4, 2020 earnings call told Russell and Brady that
8 he had been "trying to follow Trevor on his various social media outlets about the timing
9 and cadence of" news about the company's products and partnerships and asked them to
10 clarify, Worthen uncharacteristically jumped in to answer—the only analyst question he
11 answered on the call—and deflected from Milton's social media postings by vaguely
12 stating that more news would be released over the coming months. Certain senior Nikola
13 executives also asked one of Nikola's directors for assistance in getting Milton to reduce
14 his social media presence. Although the post-merger Nikola Board scheduled a media
15 training run by a third-party provider for all senior executives, it did not require Milton to
16 attend (which he did not).

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

23 *The most important [sic] is that I fully control the board at all times and*
24 *have people who work well with my personality No one sees the future*
25 *like I do, and if you get too many world class brilliant people on the board,*
26

1 you will end up fighting over everything as they think they are the smartest
2 in the room every time.

3 **DEFENDANTS' MATERIALLY FALSE AND MISLEADING STATEMENTS**
4 **CAUSED DAMAGE TO INVESTORS**

5 **I. Defendants Misled Investors Regarding the Nikola One Semi-Truck**

6 **A. Defendants Misled the Public Regarding the Capabilities of the Nikola**
7 **One**

8 119. In 2016, Nikola unveiled its first semi-truck prototype, the Nikola One. In
9 or around June 2016, Milton began to promote an unveiling event for the Nikola One
10 scheduled for December 1-2, 2016. Nikola invited potential investors, suppliers, and
11 customers to the event, and publicized that it would live-stream the event on its website.

12 120. During the construction of the Nikola One prototype, Defendant Russell,
13 then an employee of one of Nikola's early-stage investors, informed Defendant Milton that
14 he was concerned about the cost of the truck because of the cost of the turbine that ran on
15 compressed natural gas ("CNG"). During Milton's criminal trial, Russell testified that he
16 informed Milton that he did not think the planned turbine was going to work, that a
17 functional turbine would be too expensive, and that he would not recommend that his
18 current employer invest any further in Nikola. After not hearing from Milton for "some
19 period of time," Russell learned that Milton would be altering the plans for the Nikola One.
20 In or about August 2016, however, Milton abruptly pivoted and began claiming that the
21 Nikola One would rely on a hydrogen fuel cell rather than a turbine using CNG.¹⁰

22 121. A fuel cell converts hydrogen to electricity. This fundamental design change
23 ensured that the prototype to be shown at the unveiling event in December 2016 would not
24 be operable, as integrating and testing FCEV components would require significant

25 ¹⁰ Transcript of *United States v. Milton*, No. 21-cr-00478 (S.D.N.Y. 2022) ("Milton Tr.")
26 at 969-970:10-2, ECF No. 224.

1 additional time. A few weeks before the event, Nikola's chief engineer informed Milton
2 that the truck would not be functioning at the unveiling event unless the event was
3 postponed. Milton made the decision to proceed as scheduled with the knowledge that the
4 vehicle to be unveiled would not be functioning.

5 122. Russell was aware that Milton would attempt to misrepresent the
6 functionality of the inoperable Nikola One. According to Nikola's Chief Engineer, Kevin
7 Lynk, "There was an instruction (potentially from legal) to Nikola employees before the
8 event that they should be careful not to say the vehicle was 'fully functioning,' 'driving,'
9 or an 'H2 vehicle.'"¹¹

10 123. Nevertheless, in the weeks leading up to the event, Milton represented that
11 the Nikola One would be "working" or "functioning." For example, on October 16, 2016,
12 in response to a question from a Twitter user about whether the December 1, 2016 event
13 would be a "[d]esign unveiling or a functional prototype," Milton responded, via Nikola's
14 corporate Twitter account, "**functioning. Fully built truck at event.**"

15 124. The unveiling event occurred on December 1-2, 2016 and was live-streamed
16 on Nikola's website simultaneously. On the first evening, Milton hosted an event at which
17 the Nikola One was "unveiled" on a stage in front of a crowd. Individuals who had made
18 reservations to purchase a Nikola One, potential business partners, and current and
19 potential investors were invited. In his remarks at the December 1, 2016 event, Milton
20 said, despite full knowledge of facts to the contrary, that the Nikola One "**fully functions**
21 **and works which is really incredible.**" He went on to tell the audience that "you're going
22 to see that this is a real truck, **this is not a pusher.**" A video of Milton's presentation was
23 posted on Nikola's YouTube channel, where it remained throughout the Class Period.

24
25 ¹¹ USAO Presentation.

1 125. The following day, December 2, 2016, Milton recorded an interview with
 2 *Roadshow*, a website focused on the auto industry, from inside the Nikola One cab. A
 3 video of the interview was posted to YouTube and was available publicly to investors and
 4 prospective investors. During the interview, Milton stated again that the Nikola one was a
 5 “**fully functioning vehicle.**” In the interview, Milton repeated the claim that the Nikola
 6 One displayed at the event was fully functioning:

7 This isn’t just a pusher like a lot of vehicles that they unveil or just vehicles
 8 that don’t actually function This is a fully functioning, you know,
 9 vehicle, which is really incredible. You can go through, you can, you know,
 10 we can change out pretty much everything we want, all the temperatures. I
 mean this is a fully functioning vehicle. It’s not just a not just a pusher. It’s
 what they call in the automotive world a vehicle that they just push and it
 doesn’t move

11 126. The Nikola One was not operable at the time, let alone tested and validated.
 12 In the words of one Nikola engineer, the truck was “**not even remotely ready to operate.**”
 13 Defendant Brady—as well as Dane Davis (Chief Technical Officer (“CTO”)), Kevin Lynk
 14 (Chief Engineer), Tony Epperson (Sr. Manager, FP&A), and Vince Caramella (Global
 15 Head, Marketing) have since admitted, “[t]he Nikola One unveiled in December 2016 **was**
 16 **not ‘fully functional,’**” with Brady expressly admitting it was “**a pusher.**”¹² At the
 17 unveiling event:

- 18 (a) the truck had to be towed onto the stage the night prior to the
- 19 event and all electrical components were powered through a
- 20 cord running from under the truck to the wall, rather than the
- truck’s battery and the power cords had to be manually
- 21 disconnected during the event as the stage spun;
- 22 (b) neither the fuel cell nor the hydrogen gas storage tanks had
- been installed;

23
 24
 25 ¹² USAO Presentation.

- (c) an air line had to be connected to the vehicle to keep the truck's air suspension and air brakes working due to a slow leak in the truck's air supply;
- (d) the gearboxes had not been assembled, and certain parts necessary for assembly of the gear boxes had not arrived;
- (e) Nikola personnel operated the truck's headlights at the event by remote control; and
- (f) the human-machine interface, which Milton touted, consisted simply of off-the-shelf tablets mounted onto the dashboard set to display images created to have the appearance of infotainment screens, with speedometers, maps, and other information displayed.

127. According to one engineer, Milton was regularly updated on the development of the truck by Nikola's engineers, and as a result was aware that the truck had not been driven before the event and could not be driven at the event. When told by engineers that the truck would not be functioning by the scheduled date of the event, Milton nevertheless decided to proceed as scheduled, and went on to tout the truck as fully functioning—in 2016 and again in 2020 during the Class Period. For example, on August 18, 2020, Milton stated *“it was totally capable of driving, it had everything in it —power, steering, batteries—everything in it.”*

B. Nikola Defendants Sought to Boost Nikola's Appeal by Misleading the Public About the Functionality of its Incomplete and Inoperable Product Through the Nikola One “In Motion” Video

128. After the December 2016 unveiling event, Nikola did not perform any further work on the Nikola One. The truck was never completed and has never been operable. Yet Defendants continued to misrepresent the Nikola One to investors and potential investors through a video posted to the Company's website and its social media accounts.

129. In or about 2017, a representative of Phillips, a large multinational corporation, approached Nikola and asked to use the Nikola One in a commercial

1 celebrating innovation. The concept for the video included a shot of the Nikola One
2 coming to a stop in front of a stop sign.

3 130. The commercial shoot occurred in or about early 2018. For the shoot, the
4 non-functioning Nikola One truck was hauled to the shooting location by a “lowboy” semi-
5 truck. At this time, and more than a year after the unveiling event, the Nikola One still
6 could not run under its own power. It was towed to the top of a hill, the brakes were
7 released, and then the Nikola One was filmed rolling down the hill and braking to a stop in
8 front of the stop sign. The truck was again towed to the top of the hill and rolled down
9 twice more for additional takes. Additionally, the Nikola One’s door, which had been
10 constructed using minivan parts, had to be taped up during the shoot to prevent it from
11 falling off. Moreover, because the Nikola One was untested, unsafe, and inoperable,
12 certain precautions were taken before towing the vehicle to the commercial shoot. In
13 particular, the batteries and turbine, which was designed to run on natural gas, were entirely
14 removed from the vehicle to mitigate the risk of fire, explosion, or damage.

15 131. Milton attended the commercial shoot. He obtained raw video footage shot
16 that day. Milton provided the footage to a Nikola digital media employee, whom he
17 instructed to create a short clip of a rolling Nikola One for the purpose of posting the clip
18 on social media. The employee created the clip and showed it to Milton, who directed
19 certain edits to be made. Milton ultimately approved a final version of the clip, which had
20 been sped up two-to-three times. This had the effect of making the Nikola One appear to
21 move faster than it was.

22 132. On or about January 25, 2018, Milton posted, or directed the posting of, the
23 edited video clip to Nikola’s Twitter and Facebook accounts. At Milton’s direction, the
24 digital media employee also posted the clip to Nikola’s YouTube account. The video
25
26

1 embedded in Nikola’s tweet and on its YouTube post shows the Nikola One apparently
2 moving on a road with no incline, seemingly at a high rate of speed on its own power. The
3 video does not have any narration or text. The text of the tweet in which the video was
4 embedded states: “Behold, the Nikola One in motion. Pre-production units to hit fleets in
5 2019 for testing. The Nikola Hydrogen Electric trucks will take on any semi-truck and
6 outperform them in every category: weight, acceleration, stopping, safety and features –
7 all with 500-1,000 mile range!” Milton drafted the text of this tweet. The video posted on
8 YouTube had similar text accompanying it: “Behold, the 1,000 HP, zero-emission Nikola
9 One semi-truck in motion. Get ready for the pre-production units to hit fleets next year in
10 2018 for testing” The “In Motion” video remained posted on Nikola’s corporate
11 Twitter, Facebook, and YouTube accounts, as well as on its website, and was available for
12 viewing by investors and prospective investors until at least September 2020—months into
13 the Class Period. The video misleadingly gave the impression that the Nikola One was
14 capable of moving under its own power.

15 133. According to Stasy Pasterick (VP, Corporate Controller), the video the
16 Company posted did not originally show the vehicle moving at all. However, the plan was
17 changed because Milton expressly wanted to show the truck in motion. Tony Epperson (Sr.
18 Manager, FP&A) also told Pasterick that there had been internal discussions regarding
19 whether it should be clearly stated when posting the video that the truck was not moving
20 under its own propulsion. According to Tony Heaton (Battery Engineer), “[a]t the time, a
21 number of employees were uncomfortable saying the truck was ‘in motion’ when they
22 knew it was not driving.”¹³

23
24
25 ¹³ USAO Presentation.

C. **Materially False and Misleading Statements About the Nikola One**

134. Defendants made materially false and misleading statements about the Nikola One and omitted to disclose material facts that created an impression that was different from the state of affairs that actually existed.

1. *Pre-Merger False Statements Concerning the Nikola One*

135. On August 1, 2016, Nikola published a press release to its website, titled Nikola One Truck Achieves Zero Emissions, stating that Nikola “has achieved 100% zero emissions on the Nikola One commercial class 8 truck.”¹⁴:

While other companies have recently announced battery-powered semi-trucks, those trucks are restricted to a range of only a couple hundred miles and four to eight hours of charging between stops,’ said Founder and CEO Trevor Milton. ***‘Nikola has engineered the holy grail of the trucking industry. We are not aware of any zero emission truck in the world that can haul 80,000 pounds more than 1,000 miles and do it without stopping.*** The Nikola One requires only 15 minutes of downtime before heading out for the next 1,000 miles.

This statement remained on Nikola’s website during the Class Period.

136. The statement referenced in ¶135 was materially false and misleading because the Nikola Defendants knew or recklessly disregarded but failed to disclose that as of August 1, 2016, the Nikola One was still running on natural gas and thus was not “zero emission.” Paul Lackey, who worked on the development of the Nikola One at Nikola, testified in the course of Milton’s criminal trial that, as of August 1, 2016, the Nikola One was “designed to run off a natural gas turbine that does create emissions” and accordingly it was not a zero-emissions truck.

137. As detailed in the USAO Presentation, Defendant Brady admitted that “As of August 1, 2016, the ***Nikola One was running on natural gas and thus was ‘not zero***

¹⁴ Press Release, Nikola Corporation, *Nikola One Truck Achieves Zero Emissions* (August 1, 2016), available at https://nikolamotor.com/press_releases/nikola-one-truck-achieves-zero-emissions-29.

1 **emission.**’ Milton’s statements to the contrary are false.” Brady’s testimony provided
2 during Milton’s criminal trial was consistent with his admissions included in the USAO
3 Presentation. Similarly, Defendant Worthen admitted: “**The assertion that Nikola had**
4 **‘achieved 100% zero emissions on the Nikola One’ by August 1, 2016 is ‘just not true.’”**
5 Paul Lackey, who worked on the development of the Nikola One as an employee at Nikola,
6 testified that the Nikola One prototype was never a hydrogen-based truck and did not have
7 a hydrogen fuel cell. Lackey further testified that Milton was present while the truck was
8 being built, kept up to date on the progress of the project, and that Milton made “many
9 misstatements” about the progress of the project and its technology to persons touring the
10 facility, allegedly claiming, for instance, that the truck had 2,000 horsepower and had shred
11 tires during testing, when, in fact, there was “no truck that had ever been built, no test, no
12 shredded tires.”

13 138. On October 14, 2016, Defendant Nikola, through its corporate Twitter
14 account, promised to unveil its Nikola One prototype semi-truck to the market at its
15 forthcoming convention, Nikola World 2016.¹⁵ Nikola tweeted: “Only 47 days away from
16 the @nikolamotor ONE electric semi unveiling! Live stream on our website for those not
17 able to attend.” The following day, October 15, 2016, in response to a question from a
18 Twitter user about whether the December 1, 2016 event would be a “[d]esign unveiling or
19 a functional prototype,” Milton responded, via Nikola’s corporate Twitter account,
20 “**functioning. Fully built truck at event.**” These statements remained on Nikola’s Twitter
21 account and publicly available to investors throughout the Class Period.

22 139. On December 1, 2016, Nikola unveiled its Nikola One prototype semi-truck
23 to the market in a webcast hosted by Milton. The Company posted a video recording of

24 ¹⁵ @nikolamotor, Twitter (Oct. 14, 2016, 10:07 P.M.), available at
25 <https://twitter.com/nikolamotor/status/787112661007732737>.

1 this presentation to its official YouTube channel and its website, where it remained publicly
2 available to investors throughout the Class Period.¹⁶ As of January 2021, this video had
3 been viewed 1,496,419 times. During the unveiling, Milton said that the Nikola One “**fully**
4 **functions and works which is really incredible**” and went on to tell the audience that
5 “you’re going to see that **this is a real truck, this is not a pusher.**”

6 140. The following day, on December 2, 2016, in an interview with *CNET Road*
7 *Show*, Milton explained that a “pusher” was a vehicle that does not “actually function” and
8 that the Nikola One was “fully functioning”:

9 ***This isn’t just a pusher, like a lot of vehicles that they unveil are just***
10 ***vehicles that don’t actually function. This is a fully functioning, uh, you***
11 ***know, vehicle which is really incredible. . . .***

12 141. A video of the interview was posted on YouTube and was available publicly
13 to investors and prospective investors throughout the Class Period. As of August 2020, this
14 video was viewed on YouTube approximately 280,000 times.

15 142. On October 10, 2017, Nikola posted an image of its Nikola One prototype to
16 its official Twitter account.¹⁷ The Nikola One prototype bears a clearly-visible decal
17 reading “H2” on the right of the front bumper. In response to a comment from another
18 Twitter user the same day, Defendant Nikola said: “***It is fully electric but it uses hydrogen***
19 ***to give us 3x the range of battery only. We use battery and hydrogen 100% electric drive.***”
20 These statements remained on Nikola’s Twitter account and publicly available to investors
21 throughout the Class Period.

22 ¹⁶ Nikola Motor Company (YouTube), *Nikola Motor Company - Nikola One Semi*
23 *Electric Truck Unveiling – Official Video*, December 1, 2016, available at:
24 <https://www.youtube.com/watch?v=wLidTCqAAtY> (accessed February 10, 2021).

25 ¹⁷ @nikolamotor, Twitter (Oct. 19, 2017, 6:03 P.M.), available at
<https://twitter.com/nikolamotor/status/917873309357785089>.

1 143. The statements referenced in ¶¶137-142 were materially false and misleading
2 because the Nikola Defendants knew or recklessly disregarded but failed to disclose that
3 the Nikola One was not a “fully functioning” or “fully built” vehicle—it was, in fact, an
4 inoperable “pusher.” As detailed in the USAO Presentation, Defendant Brady as well as
5 Dane Davis (CTO), Kevin Lynk (Chief Engineer), Tony Epperson (Sr. Manager, FP&A),
6 Vince Caramella (Global Head, Marketing) each admitted that “The Nikola One unveiled
7 in December 2016 **was not ‘fully functional.’**” Brady has also admitted, “[t]he Nikola One
8 unveiled in December 2016 **was a pusher.**” Lynk also stated, “[t]here was an instruction
9 (potentially from legal) to Nikola employees before the event that they should be careful
10 not to say the vehicle was ‘fully functioning,’ ‘driving,’ or an ‘H2 vehicle,’” which was
11 clearly ignored by Milton and the Company. Paul Lackey testified in the course of
12 Defendant Milton’s criminal trial that engineers working on the Nikola One knew as early
13 as October of 2016 that the prototype would not be finished by the time of the unveiling
14 event in December, informed Defendant Milton of that, and the decision was to focus “on
15 things that were...externally visible.” Lackey further testified that the truck at the unveiling
16 was not operational and when asked if it was a “pusher,” Lackey confirmed that the truck
17 was in fact “not able to function under its own power” but got set up on stage by getting
18 “pulled [] up” saying “I guess it was a puller.” Defendant Russell testified at Milton’s
19 criminal trial that after he began working at Nikola in February of 2019, he learned that the
20 Nikola One unveiled at the December 2016 event did not have a fuel cell at the time of the
21 unveiling.¹⁸ Russell therefore knew, or recklessly disregarded, that the Nikola One could
22 not operate under its own power and was not a fully functioning FCEV.

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25 ¹⁸ Milton Tr. 971:1-15, ECF No. 224

1 144. On January 25, 2018, Nikola posted a tweet attaching the “Nikola One in
2 Motion” Video to its official @nikolamotor Twitter account.¹⁹ The video depicted the
3 Company’s Nikola One prototype vehicle traveling on an open road in the Arizona desert,
4 including shots which made it appear as though the Nikola One was climbing uphill. The
5 Nikola One prototype bears clearly visible decals reading, “H2” on the left and right of the
6 front bumper. The accompanying post said:

7 ***Behold the Nikola One in motion.*** Pre-production units to hit fleets in 2019
8 for testing. The Nikola Hydrogen Electric trucks will take on any semi-truck
9 and outperform them in every category; weight, acceleration, stopping,
safety and features – all with 500-1,000 mile range!

10 145. This video and other statements remained on Nikola’s Twitter account and
11 publicly available to investors throughout the Class Period. It has been viewed 127,800
12 times, as of December 2021.

13 146. Defendant Nikola also posted the “Nikola One In Motion” Video to its
14 official public corporate Facebook account on January 25, 2018 with a similar message to
15 the one on Twitter:

16 **Nikola Hydrogen Electric Semi in Action**

17 ***Behold, the 1,000 HP, zero emission Nikola semi-truck in motion.*** Get
18 ready for the pre-production units to hit fleets in 2019 for testing. The Nikola
19 Hydrogen Electric trucks will take on any semi-truck and outperform them
in every category; weight, acceleration, stopping, safety and features - all
with 500-1,000 mile range!

20 147. This video and statements remained on Nikola’s Facebook account and
21 publicly available to investors throughout the Class Period. Stephanie Amzallag, in charge
22 of Social Media at Nikola, testified during Defendant Milton’s criminal trial that, between
23 March 3, 2020 and September 9, 2020, the video was viewed 21,469 times and viewership

24 ¹⁹ @nikolamotor, Twitter (Jan. 25, 2018, 12:14 P.M.), available at
25 <https://twitter.com/nikolamotor/status/956576016809340928?lang=en>.

1 peaked around in early June, 2020, contemporaneously with Nikola becoming a publicly
2 traded company.

3 148. In response to questions from a Facebook user about how the Nikola One
4 performed in cold weather that he posted under the “Nikola In Motion” Video, Nikola’s
5 official Facebook account stated that the Nikola One was already “designed and tested,”
6 had over “1,000 HP,” could climb a 7% grade hill, and had over “2,000 ft lbs. of torque.”
7 These statements remained on Nikola’s Facebook account and publicly available to
8 investors throughout the Class Period.

9 149. The statements referenced in ¶¶144-148 were materially false and misleading
10 because Defendants knew or recklessly disregarded but failed to disclose that (i) Nikola
11 One was not a “fully functioning” or “fully built” vehicle—it was, in fact, an inoperable
12 “pusher,” (ii) it had not been “designed and tested,” (iii) it did not have over 1,000 HP, it
13 could not climb a 7% grade hill, or have over 2,000 ft lbs. of torque, (iv) the truck on the
14 video was rolling down an incline due to gravity rather than under its own power. As
15 detailed in Nikola’s USAO Presentation, Caramella admitted “The video is misleading
16 because it leads the viewer to believe the truck is operating under its own power.”
17 Defendant Russell testified in the course of Milton’s criminal trial that the Nikola One was
18 “not able to drive under its own power” in the way portrayed in the video. Paul Lackey
19 testified that the Nikola One in the video was unable to move under its own power, could
20 not be driven, and that the video had been made by rolling the truck down a hill with a
21 consistent 3-percent grade. As set out above, testimony introduced into evidence during
22 Milton’s criminal trial confirmed that the Nikola One could never move under its own
23 power and was not capable of actually performing in the way presented and described in
24 the statements above.

1 150. On December 18, 2019, during an interview with Liz Claman on Fox
2 Business channel, Milton claimed “in 2016 when we first launched [the Nikola One], we
3 were the first people to ever do it . . . We had the first zero-emissions semi truck that was
4 available to the market.”

5 151. The statement referenced in ¶150 was materially false and misleading
6 because the Nikola One was not, at any point, a functioning zero-emissions semi truck
7 available to the market, and by the time of the statement the development of the truck had
8 been abandoned for years.

9 2. *False and Misleading Statements After The Merger Is Announced*
10 *But Before Nikola Begins to Publicly Trade on NASDAQ By the*
11 *Nikola and VectoIQ Defendants*

12 152. On March 4, 2020, in an interview with CNBC, Defendants Milton and
13 Ubben discussed Nikola going public via SPAC to gain access to retail investors, as well
14 as the Company’s purported technology. Defendant Milton claimed “...that’s probably one
15 last thing that’s really unique about Nikola is we’re probably the only company in the world
16 that offers both battery electric trucks and hydrogen electric trucks. . . .”

17 153. The statements referenced in ¶152 were materially false and misleading
18 because, at the time they were made, Nikola had no functional hydrogen electric trucks or
19 battery electric trucks available for sale, and development of the Nikola One had been
20 abandoned for years.

21 154. Ahead of the merger, VectoIQ issued a proxy statement, filed with the SEC
22 on May 8, 2020 (the “Proxy”) which contained false and misleading statements.
23 Defendants Milton and Girskey signed the Proxy.

24 155. The Proxy represented that Nikola “designs and manufactures state-of-the-
25 art battery-electric and hydrogen fuel cell electric vehicles, electric vehicle drivetrains,
26

1 energy storage systems, and hydrogen fueling stations.” This was false and misleading as
2 Nikola did not “manufacture” BEV or FCEV vehicles and did not manufacture “fueling
3 stations.” Instead, as set out in greater detail below, these were merely concepts and ideas
4 of Nikola’s.

5 156. The Proxy lists the Nikola One as a “Zero-Emission product offering.” The
6 Nikola One is listed in the same sentence as the Nikola Two, and says:

7 Nikola’s FCEV trucks that are primarily designed for medium and long-haul
8 applications. The FCEV trucks allow Nikola to address the longer-term
9 opportunity by combining Nikola’s fuel cell technology and a network of
10 hydrogen stations across the US.

11 FCEVs use fuel cells on-board to convert hydrogen into electricity to power
12 the electric motors which transmit power to the wheels. The fuel cell
13 generates electricity through a chemical reaction, supplied from on-board
14 tanks, and oxygen from the atmosphere. A much smaller battery (compared
15 to our BEV) provides supplemental power to the drivetrain, and stores energy
16 recovered during regenerative braking. The voltage and charge of the battery
17 are maintained through a combination of power supplied from the fuel cell
18 and energy captured through regenerative braking.

19 Nikola’s FCEVs have an estimated range of 400 – 700 miles, designed to
20 address the medium and long-haul market. Our FCEVs will be leased to
21 customers via a bundled lease where customers receive an FCEV truck,
22 hydrogen fuel, and maintenance based on a fix rate per mile, for 700 thousand
23 miles, or 7 years (whichever comes first.)

24 ...

25 The Nikola Two will be marketed in the North American market, with initial
26 production expected in the first quarter of 2023.

Production plans for the Nikola One will be announced once we have
established a robust refueling infrastructure.²⁰

157. The statements referenced in ¶156 were false or misleading when made and
omitted to reveal material facts necessary to not make them misleading. The Nikola One
was at no time a functioning FCEV. It was never a viable product offering from Nikola.
To date, the Nikola One is still not capable of moving under its own power and no

²⁰ See Proxy at 148.

1 development or production work has been done to make it so. After an abortive
2 announcement and fraudulent video discussed in Sections I.A and I.B above, the Nikola
3 One was abandoned by Nikola and not pursued as a product to be offered for sale or lease
4 after 2016. Despite the fact the Nikola One was never capable of moving under its own
5 power, the fraudulent video of a non-functioning Nikola One remained on Nikola's website
6 until September 2020.

7 158. The claims in the Proxy regarding the Nikola One are material because
8 investors reading the statements would reasonably conclude that the Nikola One was a
9 product offering from Nikola. A reasonable investor would think from the Proxy and the
10 video being posted on Nikola's website that Nikola had a truck that could drive. Having a
11 functional product offering bears directly on the value of Nikola, and the then prospective
12 business combination with VectoIQ.

13 3. *Class Period False and Misleading Statements*
14 *by the Nikola Defendants*

15 159. On June 15, 2020 Nikola filed a Form S-1 with the SEC to sell 76.39 million
16 shares of common stock to the public (the "June 2020 S-1"). The June 2020 S-1 was signed
17 by Defendants Milton, Girskey, Russell, Brady and Ubben.

18 160. At pages 76-77, the June 2020 S-1 references the Nikola One as one of the
19 Company's "product offerings." It also lists the capabilities of the Nikola One and Nikola
20 Two in the same descriptive paragraph, claiming "Nikola's FCEVs have an estimated range
21 of up to 400 to 750 miles, designed to address the medium and long-haul market." These
22 statements were false and misleading when made and omitted to disclose the material fact
23 that the Nikola One was abandoned as a potential product by the Company and it was a
24 non-functioning and non-operational truck. It was materially misleading to estimate the
25 mileage range of concept vehicles that were not yet in production and commercially tested.

1 Indeed, during Milton’s criminal trial, Fretheim testified that the Nikola One was the
2 “farthest from production” at the time the company went public in June 2020. Russell
3 testified that he learned shortly after joining Nikola that the Nikola One was never
4 developed and work on the project had been abandoned shortly after the vehicle’s launch
5 in December 2016, saying that by February of 2019, Nikola had “pivoted” from the Nikola
6 One prototype and that it wasn’t relevant by the time the merger with VectoIQ was
7 announced. Russell further testified that he had multiple, daily conversations with Milton
8 about the status of Nikola’s products and technology.²¹

9 161. On July 17, 2020, Nikola filed a form SEC Form S-1 in conjunction with a
10 secondary public offering of common stock, consisting of 249,843,711 shares (the “July
11 2020 S-1”). The July 2020 S-1 was signed by defendants Milton, Girskey, Russell, Brady
12 and Ubben.

13 162. At pages 76 and 77 of the July 2020 S-1, under the heading “Nikola One and
14 Two—Class 8 FCEV Trucks,” Nikola stated, “The Nikola One (Class 8 sleeper cab) and
15 Nikola Two (Class 8 day cab) are Nikola’s FCEV trucks that are primarily designed for
16 medium and long-haul applications Nikola’s FCEVs have an estimated range of up to
17 400 to 750 miles, designed to address the medium and long-haul market Production
18 plans for the Nikola One will be announced once we have established a robust refueling
19 infrastructure.” This statement was materially false and misleading because it spoke of the
20 Nikola Two and Nikola One on the same terms, as though both are fully designed, fully
21 functional vehicles, and the Nikola One is simply awaiting an established refueling
22 infrastructure to enter production. For the reasons explained in Sections I.A and I.B above,

23
24
25 ²¹ Milton Tr. 979:20-25, ECF No. 224.

1 the Nikola One was a never-finished, never functional prototype whose development had
2 been shelved after its unveiling in December 2016.

3 163. On or about August 18, 2020, Nikola hosted a group of social-media
4 influencers and content creators, including Tesla Joy, Lauren Kalo, and Sean Mitchell, to
5 Nikola's headquarters for a guided tour and Q&A with Milton. The tour and interview were
6 recorded by several of the participants, and recordings were subsequently posted publicly
7 to YouTube, where they remained available to investors during the Class Period. On the
8 recordings, Milton made several statements, including that the Nikola One was a "drivable
9 truck"²²:

10 ***[In 2016] we never put it under propulsion, but it was totally capable of***
11 ***driving, it had everything in it —power, steering, batteries—everything in***
12 ***it***, the e-axles, you know, in it. So, you know, this entire thing was designed
13 to, uh... and the group that actually designed all of our e-axles with us in this
14 vehicle was a group that Borg Warner eventually ended up buying...2016 is
15 when we unveiled it. ***So, this was totally capable of being driven.*** We pulled
16 all the parts out, displayed them to the public, and we got—I think you guys
may have seen it, got hit with an article and said that the truck was a... was
a lie and not really drivable truck. And there's some disgruntled employee
that was feeding them fake stuff, um... guy named Jonathan,
unfortunately...it was really hard for us because, like, no, it's totally drivable,
we just didn't do it for safety.

17 164. The statements referenced in ¶¶162-163 were materially false and
18 misleading for the reasons identified in ¶¶126, 143, 157, 160 and 168.

19 165. On September 14, 2020, following the release of the Hindenburg Report,
20 Nikola filed a form 8-K with the SEC ("the September 14 8-K") discrediting the

21 ²² Ty Kara, *HUGE NIKOLA TOUR OF FACTORY (Trevor Milton meets the people of*
22 *Tesla Twitter*, YouTube (August 19, 2020), available at
<https://www.youtube.com/watch?v=MXU8UVANDJU> (accessed February 21, 2021).
23 Note that this video depicts clips from a series of videos originally posted by invitee
24 Lauren Kalo to her Twitter account on August 18-19, 2020. Ms. Kalo appears to have
25 subsequently deleted her entire Twitter history prior to September 22, 2020 —
approximately the same time that Defendant Milton deleted his personal Twitter and
Instagram accounts.

1 Hindenburg Report and dismissing its allegations as “false and misleading.” The
2 September 14 8-K was signed by Defendant Worthen, and the language was reviewed and
3 approved of at a meeting of Nikola’s Board of Directors which included Milton, Russell,
4 Brady, Worthen, Ubben, and Girskey.

5 166. In the September 14 8-K, Nikola again claimed “The Nikola One is a real
6 truck that sits in Nikola’s showroom.” Nikola went further to claim that the Nikola One is
7 not a “pusher” as alleged in the Hindenburg Report, because a “pusher means a vehicle not
8 designed to be moved on its own propulsion system. The Nikola One was, in fact, **designed**
9 **to be powered and driven by its own propulsion.** . . . The Nikola One was an **incredibly**
10 **successful proof of concept**, and everything the Company learned from that experience
11 has underpinned the successful development of its next generation of trucks that can be
12 seen driven here.” Nikola goes on to describe the functionality of the Nikola One:

13 **Gearbox** was functional and bench tested prior to installation.

14 **Batteries** were functional.

15 **Inverters** functioned and powered the motors on a bench test prior to the
16 show.

17 **Power steering, Suspension, Infotainment, Air Disc Brakes, High**
18 **Voltage, and Air Systems** were all functional.

19 167. On September 14, 2020, contemporaneous with the September 14 8-K, at
20 Cowen’s 2020 Global Transportation & Sustainable Mobility Conference, Defendant
21 Brady called the Hindenburg report a “hit job” that had “no substance to it,” alleging it was
22 “character assassination” of Defendant Milton.

23 168. The statements referenced in ¶¶165-167 were materially false and misleading
24 for the reasons identified in ¶¶126, 143, 157, and 160. The Nikola One’s systems were
25 powered via an electrical outlet in the floor that was plugged in for the entirety of its
26 demonstration, and the only source of electrical power in what Nikola insisted on calling a

1 vehicle. As the SEC later revealed in its civil complaint: “(a) all electrical components were
2 powered through a cord running from an external power source, ***rather than the truck’s***
3 ***battery***; (b) neither the fuel cell nor the hydrogen gas storage tanks had been installed; (c)
4 the ***air compressor and the turbine had not been commissioned***; (d) ***gearboxes had not***
5 ***been assembled, and certain parts necessary for assembly of the gear boxes had not***
6 ***arrived***; (e) the ***vehicle-level controls*** had not been completed; and (f) the ***human-machine***
7 ***interface, which Milton touted, consisted simply of off-the-shelf tablets set into a***
8 ***dashboard and were not integrated with the truck’s systems.***” Accordingly, it was false
9 and materially misleading to state that the Nikola One’s “**gearbox was functional,**”
10 “**batteries were functional,**” “**Suspension . . . Infotainment . . . and Air Systems were**
11 **all functional**” when these systems were not functional, or in some cases even installed.
12 The Nikola One has never moved under its own power, at the demonstration show or after.
13 Moreover, the Nikola One *never contained any hydrogen technology* and calling it a
14 “successful proof of concept” was misleading by omitting to reveal this material fact. The
15 Nikola One was originally “designed” to be a natural gas powered vehicle, and the Nikola
16 One revealed in December 2016 was designed only to look like a functional truck, not to
17 be powered and driven. In the words of one Nikola engineer, at the time of the December
18 2016 unveiling event, the Nikola One was “not even remotely ready to operate.”

19 169. Defendant Russell testified at Milton’s criminal trial that he, Brady and
20 Worthen confronted Milton in the summer of 2020 to curtail Milton from making
21 misleading statements to investors.²³ At the time of the release of the Hindenburg Report,
22 Russell testified that he, Brady and Worthen informed the Board at an emergency Board
23

24
25 ²³ Milton Tr. 1126:13-21, ECF No. 225.

1 meeting that they were all prepared to resign from the Company after the release of the
2 Hindenburg Report and they could no longer work at Nikola with Milton as an executive.²⁴

3 170. It was materially false and misleading for Nikola to issue an 8-K terming the
4 Hindenburg Report “false and misleading” when, simultaneously, Russell has testified he,
5 Brady, and Worthen were informing the Board they would all resign because Milton was
6 continuing to make false and misleading statements to investors. Moreover, Defendant
7 Brady spoke with reckless disregard for the truth when he dismissed the Hindenburg Report
8 as a “hit job” that had “no substance” at the Cowen conference. In fact, prior to dismissing
9 the allegations as “character assassination,” Brady himself, along with Worthen, had had
10 conversations with Milton regarding his misstatements on social media. Defendant
11 Worthen acted with reckless disregard for the truth when he signed the September 14 8-K
12 terming the Hindenburg Report “false and misleading.”

13 **D. Defendants’ False and Misleading Statements Concerning the Nikola**
14 **One Caused Investor Losses**

15 171. On September 10, 2020, Hindenburg published the Hindenburg Report
16 entitled, “Nikola: How to Parlay An Ocean of Lies Into a Partnership With the Largest
17 Auto OEM in America.” Asserting that it had gathered “extensive evidence—including
18 recorded phone calls, text messages, private emails and behind-the-scenes photographs,”
19 Hindenburg represented that it had identified “dozens of false statements by” Milton, which
20 had led Hindenburg to conclude that Nikola “is an intricate fraud built on dozen of lies
21 over the course of . . . Milton’s career.” For example, concerning the functionality of the
22 Nikola One, the Report alleged, *inter alia*:

23 We reveal how, in the face of growing skepticism over the functionality of
24 its truck, Nikola staged a video called “Nikola One in Motion” which showed

25 ²⁴ Milton Tr. 1131:3-19, ECF No. 225.

1 the semi-truck cruising on a road at a high rate of speed. Our investigation of
2 the site and text messages from a former employee reveal that the video was
an elaborate ruse—Nikola had the truck towed to the top of a hill on a remote
stretch of road and simply filmed it rolling down the hill. . .

3 We present behind-the-scenes photos showing that Nikola had an electricity
4 cable snaked up from underneath the stage into the truck in order to falsely
claim the Nikola One’s electrical systems fully functioned. . . .

5 We learned through emails and interviews with former partners that Trevor
6 had an artist stencil “H2” and “Zero Emission Hydrogen Electric” on the side
of the Nikola One despite it having no hydrogen capabilities whatsoever; it
was built with natural gas components. . . .

7 172. On this news, Nikola’s stock price fell \$4.80 per share, or 11.33%, to close
8 at \$37.57 per share on September 10, 2020.

9 173. On September 11, 2020, Nikola’s stock price continued to fall, falling \$5.44
10 per share, or 14.5%, to close at \$32.13 per share on September 11, 2020.

11 174. Various analysts (including those from S3 Analytics, Deutsche Bank
12 Research, and RBC Capital Markets) issued reports attributing Nikola’s stock price decline
13 to the information revealed in the Hindenburg Report and specifically referenced the claims
14 relating to the functionality of the Nikola One. This was new information that the stock
15 market reacted to. Bloomberg Business News published a story on June 17, 2020 that
16 Milton had exaggerated the “capabilities” of the Nikola One, that it was inoperable and
17 missing key components to power itself. Milton refuted the Bloomberg News Story saying
18 parts were taken out for safety reasons and that he “never deceived anyone.” Nikola’s stock
19 price rose by \$1.13 per share on June 17, 2020 and rose another \$3.67 per share on June
20 18, 2020. Clearly, the Bloomberg Business News story did not correct any prior
21 misrepresentations about the Nikola One.

22 175. On September 14, 2020, before the market opened, Nikola unequivocally
23 denied the allegations in the Hindenburg Report, asserting that the allegations themselves
24 were “false and misleading,” “false and defamatory,” and “designed to provide a false
25

1 impression to investors and to negatively manipulate the market in order to financially
2 benefit short sellers, including Hindenburg itself.”

3 176. The statements referenced in ¶175 were materially false and misleading for
4 the reasons identified in ¶168 above. The Company has since admitted that many of the
5 allegations in the Hindenburg Report were true.

6 177. The September 14 8-K also claimed:

7 Nikola described this third-party video on the Company’s social media as “In
8 Motion.” It was never described as “under its own propulsion” or
9 “powertrain driven.” Nikola investors who invested during this period, in
10 which the Company was privately held, knew the technical capability of the
11 Nikola One at the time of their investment.

12 178. As described in Sections I.A, and I.B above, Nikola repeatedly described the
13 capabilities and status of the Nikola One in false or misleading terms to investors before
14 and during the Class Period. The Nikola One was advertised to investors by Milton
15 repeatedly and as a functional product in SEC filing as recently as July 17, 2020 S-1.

16 179. On Nikola’s fierce denials of any wrongdoing, Nikola’s stock price increased
17 \$3.66 per share, closing at \$35.79 on September 14, 2020, an 11.39% increase from its
18 previous close on September 11, 2020.

19 180. On September 14, 2020, after the market had closed, *Bloomberg* reported
20 that the SEC was investigating Nikola in connection with the allegations in the Hindenburg
21 Report, including those relating to the functionality of the Nikola One. The SEC eventually
22 charged that the Nikola One was a non-functioning truck. See ¶168.

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

1 182. Also, on September 15, 2020, during intra-day trading, the *Wall Street*
2 *Journal* reported that the DOJ had joined the SEC's investigation of Nikola. These
3 investigations were subsequently confirmed by Milton's criminal conviction for violating
4 the Federal Securities laws.

5 183. On this news, Nikola's stock fell another \$2.96 per share, closing at \$32.83
6 on September 15, 2020, an 8.27% decline from its previous close on September 14, 2020.

7 184. Both the SEC and DOJ investigations were triggered in part by and focused
8 extensively on Defendants' statements regarding the functionality of the Nikola One,
9 demonstrating that both actions were causally linked to Defendants' misstatements on this
10 subject. The SEC complaint and DOJ indictment would ultimately assert, among other
11 things, that the Nikola One unveiled in 2016 was inoperable and that the "in motion" video
12 was faked. Accordingly, the SEC and DOJ investigations announced in September 2020
13 were caused, in part, by Defendants' misstatements and omissions related to the Nikola
14 One, as the agencies later confirmed.

15 185. On Sunday, September 20, 2020, the relevant truth and foreseeable risks
16 concealed by Defendants' misconduct and false representations and omissions regarding
17 the Nikola One materialized when Nikola announced that Milton had resigned from his
18 position as Executive Chairman and from the Board of Directors.

19 186. Following the Hindenburg Report's release, Nikola's Board of Directors held
20 a flurry of meetings on September 11, 2020, September 13, 2020, September 15, 2020,
21 September 16, 2020, September 18, 2020, and September 20, 2020. The Board discussed
22 Milton's use of social media, the SEC and DOJ investigations, and the Hindenburg Report
23 at these meetings. Milton tendered his resignation at the last of these meetings, on
24 September 20, 2020. Milton's resignation was directly caused by his false and misleading
25
26

1 statements—particularly those made on social media, which frequently misrepresented the
2 Nikola One’s functionality and the Company’s order book. *CNN* reported on September
3 21, 2020, that as part of his separation agreement, Milton agreed to “revise any references
4 to the positions he held at Nikola on his social media profiles so it’s clear he no longer
5 holds them. He also agreed to check with lawyers for Nikola before posting anything about
6 the company.” Milton also surrendered 4.9 million performance-based stock units he had
7 been granted in August 2020 and a two-year consultancy option worth \$20 million.

8 187. The September 20, 2020 resignation, and the widely reported related news
9 coverage was a foreseeable consequence of and within the zone of the risk concealed by
10 Defendants’ misrepresentations and omissions. For example, *Ars Technica* reported on
11 September 21, 2020 that Milton’s decision to resign came in after the Hindenburg Report’s
12 “bombshell” revelations, including that “Milton wasn’t telling the truth in 2016 when he
13 unveiled the company’s first product, the Nikola One” and the related government
14 investigations, “put Nikola’s management under immense pressure.”

15 188. Milton’s resignation also partially revealed the relevant truth concealed
16 and/or obscured by Defendants’ prior misstatements and omissions regarding the Nikola
17 One as it was the first tacit acknowledgement by the Company that the Hindenburg Report
18 was credible. The market therefore understood Milton’s resignation to be a revelation of
19 fraud and reacted accordingly. Nikola later admitted that Milton had made misstatements
20 about the Nikola One’s functionality, confirming that the market’s understanding was
21 correct.²⁵

22
23 ²⁵ See *Mineworkers’ Pension Scheme v. First Solar Inc.*, 881 F.3d 750, 753 (9th Cir.
24 2018) (citing *Lloyd v. CVB Fin. Corp.*, 811 F.3d 1200, 1210 (9th Cir. 2016)) (explaining
25 that loss causation can be found where market understands event to be caused by fraud
even absent contemporaneous admission of fraud when later revelations confirm market’s
understanding).

189. Milton's resignation was also a materialization of the risk concealed by Defendants' false statements discrediting the Hindenburg Report and defending Milton, including the September 14, 2020 Press Release and Form 8-K which falsely asserted that the Nikola One had several working components, such as gearboxes and infotainment systems, that it lacked. Defendants' unequivocal defense of Milton misled investors about the risks related to Milton's misstatements by insisting that the Hindenburg Report's claims regarding Milton, including those asserting Milton misled investors regarding the Nikola One, were "false and misleading." These statements masked the risk that Milton would have to depart Nikola—a risk Nikola explicitly warned could have dire consequences for the Company in its SEC filings, which stated:

We are highly dependent on the services of Trevor R. Milton, our Executive Chairman, 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.

This risk, which Defendants obscured in their denials that Milton had engaged in any misconduct that could lead to his departure, were partially realized by the announcement of Milton's resignation just days later. As one analyst stated in a *CNBC* interview: "Let's call it like it is. Trevor leaving. I mean he's a key part of the vision." Another analyst called it a "dark day for Nikola." A third said: "This will come as a shock to the big crowd of believers in the company and its founder. We expect heavy selling..."

190. On the news of Milton's resignation, Nikola's stock fell another \$6.60 per share, closing at \$27.58 on Monday September 21, 2020, a 19.33% decline from its previous close on Friday September 18, 2020. The timing and magnitude of the Nikola common stock price decline demonstrates the impact Defendants' statements had on the Company's stock price and negates any inference that the loss suffered by investors was

1 caused by changed market conditions or macroeconomic, industry, or Company-specific
2 factors unrelated to Defendants' fraudulent conduct.

3 191. On February 25, 2021, after the close of trading, Nikola filed its Form 10-K
4 for the year ended December 31, 2020. In the filing, Nikola admitted that the following
5 statements concerning the Nikola One and reservations for Nikola's FCEV's were
6 **"inaccurate in whole or in part, when made"** (emphasis added):

- 7 (a) in August 2016, Milton and the Company stated that the
8 Company had engineered a zero emissions truck;
- 9 (b) in December 2016, Milton stated that the Nikola One was a
10 fully functioning vehicle;
- 11 (c) that an October 2017 video released by the Company gave the
12 impression the Nikola One was driven;
- 13 (d) in July 2020, Milton stated that five trucks were "coming off
14 the assembly line" in Ulm, Germany.

15 192. This news was widely reported to the market. For example, on February 25,
16 2021, *CNBC* published an article entitled "Nikola admits ousted chairman misled investors
17 as legal costs mount" that went on to explain "Milton and the company previously denied
18 many of the claims in the report."

19 193. As *CNBC* suggested, the February 25, 2021 10-K revealed not only that
20 Milton's statements were incorrect, but that Defendants' unequivocal denials of the
21 Hindenburg Report, including the September 14, 2020 press release, were false and
22 misleading. In a reversal, Nikola acknowledged that the Hindenburg Report had been
23 largely accurate and it was materially misleading to claim that the Hindenburg Report was
24 "false and misleading" and designed to deceive investors.

25 194. Moreover, the February 25, 2021 disclosures revealed new information that
26 Defendants' misstatements, omissions, and fraudulent course of conduct previously

1 concealed and/or obscured from the market by authoritatively conceding that Nikola had
2 not engineered a zero emissions truck in 2016, the Nikola One did not function, the “in
3 motion” video gave a false impression, and that trucks were not “coming off the assembly
4 line” in July 2020.

5 195. On the news of Nikola’s February 25, 2021 10-K, Nikola’s stock fell another
6 \$1.62 per share, closing at \$18.10 on February 26, 2021, an 8.22% decline from its previous
7 close on February 25, 2021.

8 196. On July 29, 2021, the relevant truth and foreseeable risks concealed by
9 Defendants’ misconduct and false representations and omissions were revealed and
10 materialized when numerous news outlets reported that Milton had been indicted on three
11 counts of fraud by the U.S. Attorney’s Office in Manhattan for making deceptive and false
12 claims to investors regarding “nearly all aspects of the business.” The indictment said that,
13 from November 2019 to September 2020, Milton schemed to defraud investors into buying
14 Nikola shares through statements about the Company’s product and technology
15 development. The SEC also filed related civil charges. Both the criminal indictment and
16 SEC charges included specific reference to false claims about the Nikola One. In response
17 to the indictment, Milton stated that they were “false allegations.”

18 197. The July 29, 2021 announcement of the indictment and the related news
19 coverage reporting on Nikola’s representations about its production capabilities, products,
20 technological advancements, and commercial prospects, was a foreseeable consequence
21 of, and within the zone of the risk concealed by Defendants’ misrepresentations and
22 omissions. The DOJ and SEC actions were, to a large degree, premised on Milton’s
23 misstatements regarding the Nikola One.

1 198. Moreover, the July 29, 2021 disclosures revealed new information that
2 Defendants' misstatements, omissions, and fraudulent course of conduct previously
3 concealed and/or obscured from the market. For example, the SEC complaint revealed that
4 the Nikola One lacked a functional gearbox, air system, infotainment, and other
5 components, despite Defendants' earlier representations to the contrary on September 14,
6 2020.

7 199. On this news, Nikola's stock fell another \$2.16 per share, closing at \$12.03
8 on July 29, 2021, a 15.22% decline from its previous close on July 28, 2021. Nikola's stock
9 continued to steadily decline another \$1.88 per share, or 15.62%, over the next several days
10 to close at \$10.15 per share on August 5, 2021, as investors absorbed the lengthy and
11 detailed indictment and SEC complaint, which totaled over 100 pages.

12 200. Ultimately, evidence and testimony concerning Defendant Milton's false
13 claims as to the functionality of the Nikola One were presented in the course of Milton's
14 criminal trial which resulted in a conviction for violations of the Exchange Act, among
15 other counts.

16 **II. Defendants Misled Investors Regarding the Nature of Nikola's Purported**
17 **Backlog of Reservations**

18 **A. Defendants Suggested Nikola's Reservations Were Worth Billions**
19 **When They were Mere Expressions of Interest in a Product the**
20 **Company Had Never Developed and Had Abandoned**

21 201. Beginning in or about May 2016, Nikola began taking reservations for the
22 delivery of the Nikola One in connection with its announced development. Nikola
23 originally required deposits to make a reservation, ranging from \$1 to \$1,500.

24 202. Milton was personally involved in soliciting reservations from several
25 potential customers. He communicated to potential customers that the reservations were
26 cancellable for any reason at any time. For example, on May 9, 2016, as part of his efforts

1 to secure the largest reservation Nikola had received to-date, Milton wrote to a potential
2 customer, “[y]ou have full ability to cancel at any time before the options, color and major
3 deposit is made” He went on to note to the same reservation holder on three separate
4 occasions that the reservation was cancellable, even going so far to note “you can cancel
5 at any time and get [the deposit] back all the way up to the final order” Another time,
6 Milton cited the non-binding nature of the reservations in an attempt to convince a potential
7 customer to double the amount of reservations in which the customer was originally
8 interested. Milton wrote to this party, “[y]ou had asked for 50 trucks that would have been
9 \$500 for each deposit. What I did since it is fully refundable at any time, is put you down
10 for 100 at \$250. You can cancel at anytime any of those.”

11 203. In April 2018, Nikola refunded all deposits and ceased requiring deposits for
12 reservations of the Nikola One. Nikola has publicly represented, including in its SEC
13 filings, that it has approximately 14,000 reservations projected to fill at least 2-3 years of
14 production and representing billions of dollars in future revenue. As a pre-revenue
15 company, Nikola consistently emphasized to potential investors that its pre-order book,
16 which it characterized as a “backlog of interest,” was a sign that the company was primed
17 for profitability in the near future based on interest in its flagship FCEV semi-truck product.
18 The majority of the reservations were made for the Nikola One, which the Company had
19 abandoned shortly after its December 2016 “unveiling.”

20 204. Defendants repeatedly pointed to these reservations as demonstrating interest
21 in Nikola’s planned semi-trucks worth billions in expected revenues over several years.

22 205. Defendant Milton, for example, repeatedly misstated the nature of Nikola’s
23 reservations to suggest that the reservations are firm and binding (even after Nikola had
24 abandoned its plans for the Nikola One), giving an exaggerated and inaccurate impression
25
26

1 that Nikola had a predictable and committed future stream of revenue. Nikola was not sold
2 out of any trucks, nor was it building or capable of building the trucks to fulfill orders.

3 206. For example, on or about June 1, 2020, in a podcast interview, Milton stated,

4 ***We don't build on speculation; we build on orders.*** We're very similar to
5 like Airbus or Boeing where ***we're sold out for many, many years. We're***
6 ***the only company in the world that is sold out for many, many years . . .***
It's all based on orders. I think that's the reason Nikola is worth so much
money today.

7 **B. Defendants' False and Misleading Statements Concerning Demand for**
the Nikola One

8 1. *Pre-Merger False Statements Concerning the Purported Backlog of*
9 *Orders*

10 207. On December 18, 2019, in an interview with Liz Claman on Fox Business
11 channel, Milton claimed that after the Nikola One was unveiled in 2016: "Within about 4
12 months the market saw the traction we got because we got billions of dollars in orders..."
13 He continued, stating "at \$14 billion worth of orders we essentially stopped taking orders
14 because we were sold out for five plus years..."

15 208. The statement referenced in ¶207 was materially false and misleading
16 because by the time of the statement the development of the truck had been abandoned for
17 years. Additionally, the "\$14 billion" in orders were, in fact, mere non-binding expressions
18 of interest in products that the Company had no capacity to manufacture or sell.

19 2. *False and Misleading Statements After The Merger Is Announced*
20 *But Before Nikola Begins to Publicly Trade on NASDAQ By the*
Nikola and VectoIQ Defendants

21 209. On March 3, 2020, VectoIQ filed a Form 8-K (the "March 3 8-K") with the
22 SEC that included the transcript of a "merger announcement conference call." During the
23 call, Defendant Girskey emphasized "Nikola's. . . history of successfully winning customer
24 orders" claiming "[t]he current fuel cell electric reservations, which come in at over \$10
25
26

1 billion, are proof of how badly the market is seeking a solution like Nikola's." On the same
2 call, Defendant Brady stated, "Our fuel cell electric truck reservations/orders stand at over
3 \$10 billion today assuming we convert those to contracts when delivery dates are
4 guaranteed to fleets . . . With the first three years of manufacturing capacity already booked,
5 we have good visibility into future performance . . . As we reach one year from delivery,
6 we anticipate receiving significant deposits towards the fuel cell electric trucks from those
7 customers."

8 210. The statements referenced in ¶209 were false and misleading when made
9 because the reservations were non-binding expressions of interest for Nikola Ones, a
10 product the Company had already abandoned and which could not possibly be delivered in
11 a year as Nikola's former Head of Development, Elizabeth Fretheim testified in the course
12 of Milton's criminal trial. Defendant Russell confirmed he knew as much, testifying that
13 by February of 2019, Nikola had "pivoted" from the Nikola One prototype and that it
14 wasn't relevant by the time the merger with VectoIQ was announced. Yet, Girskey and
15 Brady misleadingly claimed that Nikola had billions in orders for a truck that Nikola had
16 abandoned.

17 211. On March 4, 2020, in an interview with *CNBC*, Defendants Milton and
18 Ubben discussed Nikola going public via SPAC to gain access to retail investors, as well
19 as the Company's purported technology. Defendant Milton claimed the reason Nikola
20 opted for going public via SPAC was: "We'll be sold out for quite a few years so we needed
21 access to the markets as fast as possible We needed to expedite the factory build [in
22 Phoenix]." Ubben emphasized the Company's focus on going "public early rather than to
23 go public late when you have all this VC money that's marked the stock up and to let the
24
25
26

1 smaller – the small guy, the retail investor participate in the growth of this company and
2 the industry . . .”

3 212. The statements referenced in ¶211 were materially false and misleading
4 because, at the time they were made, Nikola had no functional hydrogen electric trucks or
5 battery electric trucks available for sale, and development of the Nikola One had been
6 abandoned for years. Ubben’s emphasis on retail investors underscores his willing
7 participation in the scheme as described below in ¶¶731-835.

8 213. On March 13, 2020, VectoIQ filed a prospectus on Form S-4 with the SEC
9 signed by Milton, Girsky, and Shindler. The S-4 contained materially false and misleading
10 statements and omitted to disclose material facts necessary to make the statements made
11 therein not misleading.

12 214. As justification for the merger, the S-4 represented that “VectoIQ’s
13 management and board of directors considered the fact that Nikola has a high volume of
14 fuel cell electric vehicle pre-orders, currently at over \$10 billion.” This statement was false
15 and materially misleading as these were not “pre-orders” but expressions of interest to
16 purchase products, the majority of which were for the Nikola One that was no longer in
17 development, and for products, FCEVs, for which commercial viability was not achievable
18 at the time.

19 215. On April 3, 2020, VectoIQ filed an 8-K with the SEC (the “April 6 8-K”) in
20 anticipation of its “Analyst Day” event scheduled for April 6, 2020. Defendant Shindler
21 signed the April 6 8-K. Included in filing were slides for the “Analyst Day Presentation.”
22 The Presentation contained multiple slides emphasizing “+14,000 FCEV truck reservations
23 to-date (\$10B sales value)” and claims including “Nikola has over 14,000 FCEV truck pre-
24 orders...”

1 216. The statements referenced in ¶215 were materially false and misleading
2 because, as confirmed by Fretheim’s testimony during the course of Milton’s criminal trial,
3 the FCEV truck pre-orders referenced in each slide were mere expressions of interest, not
4 binding sales order, for products that the Company had either abandoned or never
5 developed and had no capacity to develop, manufacture, or sell.

6 217. The April 6 8-K also describes Nikola’s reservation book. It includes
7 “~7900” trucks ordered in 2016.²⁶ In 2016, Nikola’s only announced product was the
8 Nikola One. As discussed above, and in Sections I.A and I.B, the Nikola One was, at no
9 time, a functional product offering with a plan for production. The April 6 8-K lists a total
10 of “~14,000” reservations for FCEV vehicles. This includes at least ~7,900 for the
11 inoperable and abandoned Nikola One. At least half of the total number of reservations
12 used by Nikola to market itself to investors published by VectoIQ in the April 6 8-K were
13 for a product that did not exist. The 14,000 reservations were also merely expressions of
14 interest from potential customers and not orders. Elizabeth Fretheim testified in the course
15 of Defendant Milton’s criminal trial that the reservations were not binding orders, and that
16 78 percent of the orders as of June 2019 were for the Nikola One—a product the company
17 had abandoned that was the farthest away from production at the time the Company went
18 public. The April 6 8-K omitted to reveal that the 14,000 reservations were not actual orders
19 but expressions of interest in products that were either abandoned in the case of the Nikola
20 One, or products that were not yet operational and ready for commercial sale. This
21 statement is also materially misleading as it purports to represent reservations to sell
22 products worth “\$10B” as of April 6 8-K.²⁷

23
24 ²⁶ See April 6 8-K at 40.

25 ²⁷ See April 6 8-K at 9.

218. On April 9, 2020, Nikola posted a video of its April 6 Investor Day on the Company's YouTube channel in which Milton made the following statement referring to the Nikola One: "We launched the truck in 2016 to the world and at that point when it came out we racked up billions of dollars of pre-orders."

219. The statement referenced in ¶218 was materially false and misleading because, as confirmed by the testimony of Fretheim, the FCEV truck pre-orders referenced in each slide were mere expressions of interest, not binding sales orders, for products that the Company had either abandoned or had never developed and had no capacity to develop, manufacture, or sell.

220. On or about June 1, 2020, in an interview on *The Casey Adams Show* podcast, Milton stated,

We don't build on speculation; we build on orders. We're very similar to like Airbus or Boeing where we're sold out for many, many years. We're the only company in the world that is sold out for many, many years . . . It's all based on orders. I think that's the reason Nikola is worth so much money today.²⁸

221. The statements referenced in ¶220 were materially false and misleading because Defendants failed to disclose, as admitted in the USAO Presentation: (i) all the reservations except for an 800-truck order were non-binding, fully cancellable indications of interest, (ii) anyone could make a "reservation" through Nikola's website, (iii) Nikola made no attempts to contact each reservation-holder to determine the legitimacy of individual reservations, and (iv) over 35% of Nikola's reservations (5,000 trucks valued at approximately \$3.5 billion) were by U.S. Xpress, which had only \$1.3 million in cash on

²⁸ The Casey Adams Show, *Trevor Milton-Billionaire CEO of Nikola Motor—creating Hydrogen Powered Trucks*, available at <https://anchor.fm/caseyadams/episodes/Trevor-Milton---Billionaire-CEO-of-Nikola-Motor--Creating-Hydrogen-Powered-Trucks-edl5er>. This episode is currently publicly available online and was available to investors throughout the Class Period.

1 hand and Nikola internally recognized it was “doubtful” that US Xpress planned to
2 purchase the 5,000 vehicles as a bulk order.

3 3. *False and Misleading Statements Concerning the Purported Backlog*
4 *of Orders During the Class Period*

5 222. On June 15, 2020 Nikola filed the June 2020 S-1. The June 2020 S-1 was
6 signed by defendants Milton, Girsky, Russell, Brady and Ubben.

7 223. At pages 12-13 of the June 2020 S-1, Nikola stated, “as of December 31,
8 2019 we had reservations for 14,000 Nikola Two FCEV trucks.” This statement was
9 materially false and misleading as, during Milton’s criminal trial, Fretheim testified that
10 that claim was inaccurate and that 78% the reservations were, in fact, for the Nikola One,
11 which had been abandoned by the Company by that time and was, according to Fretheim’s
12 testimony, the farthest from production at the time of the June 2020 S-1. Just 6% of the
13 reservations represented by the 14,000 figure were for the Nikola Two, with the remaining
14 16% being for the Nikola Tre. Nonetheless, the Company portrayed the same book of
15 orders it had previously touted for the Nikola One as current orders for the Nikola Two.

16 224. At page 81 of the June 2020 S-1, Nikola stated, “The current backlog of over
17 14,000 FCEVs non-binding reservations represents more than two years of production and
18 over \$10 billion of potential revenue. The FCEV reservation book was frozen in the fall of
19 2019 in order for Nikola to focus on negotiating with strategic fleet partners for launch.”
20 This statement was materially false and misleading for the reasons stated in ¶¶221 and 223.

21 225. As further noted in ¶223, the use of the 14,000 FCEV backlog figure was
22 false and misleading. Earlier uses of the 14,000 reservations figure in the April 6 8-K and
23 Proxy included the “~7900” reservations made in 2016 for the Nikola One. The reference
24 to reservations for the Nikola One as an indication of demand is false and misleading
25 because the Nikola One did not exist and has never existed as a product for sale. Demand
26

1 for a non-existent product is not demand at all, potential or otherwise. There is no indication
 2 from the S-1 that the 14,000-reservation figure used here removed any of the previously
 3 counted reservations from the Nikola One. As it is the same number used in the April 6 8-
 4 K and Proxy, and no communication or filing from Nikola indicated a new reservation or
 5 change in the reservation list since the April 6 8-K and Proxy, a reasonable investor would
 6 assume it described the same reservations. Fretheim testified during Milton's criminal trial
 7 that the reservations reported in the June 2020 S-1 were inaccurate because only 6% were
 8 for the Nikola Two—78% were for the Nikola One.

9 226. On or about July 31, 2020, Milton had the following exchange on the *This*
 10 *Week in Startups* podcast regarding Nikola's truck reservations:

11 MILTON: Our margins are gigantic, and ***we have ten billion doll – ten –***
 12 ***over ten billion dollars in preorder reservations like, like customers signed***
ready for us to deliver them trucks and it's –

13 HOST: Letters of intent.

14 MILTON: – it's just a great.

15 HOST: – these are people who want to have -- what -- and why do those
 16 trucks – why do those shippers want to switch off diesel? Is it because of –
 they have goals in terms of greenhouse gases or is it they see this as the future
 and they wanna invest in it or is it cost?

17 MILTON: No, real quick, I wanna correct something. ***Not letter of intents,***
they're actually contracts. We've got –

18 HOST: Contracts, got it.

19 MILTON: ***Yeah, billions and billions of dollars with the contracts.*** So I
 20 want to be clear about that 'cause ***a lot of people have thought that it's just***
like, a non-committal thing, it's not. These are like, sign on the dotted line,
billions and billions and billions and billions of dollars in orders. Now, we
 21 have to deliver, and they can get out if we don't deliver, but that's how it is
 with any contract you do in life, like –

22 HOST: Right.

23 227. The statements referenced in ¶226 were materially false and misleading for
 24 the reasons identified in ¶¶221 and 223.

1 228. On August 4, 2020 Nikola filed its first Form 10-Q as a public company with
2 the SEC for the period ending June 30, 2020 (“Q2 2020 10Q”). The Q2 2020 10Q, which
3 Defendants Russell and Brady signed, contained false and misleading statements and
4 omitted to disclose material facts.

5 229. With regard to orders for its FCEV trucks, *i.e.*, the Nikola One, Nikola
6 represented that it “[i]n 2019, we stopped soliciting FCEV reservations.” It continued that
7 it “consider[s] the reservation list as an indication of potential demand rather than backlog
8 for pending vehicle sales, as customers have not made firm commitments to order and take
9 deliveries of vehicles and may cancel such reservations at any time.”²⁹ Earlier in the Q2
10 2020 10-Q, however, Nikola represented that “we expect the size of our committed backlog
11 to be an important indicator of our future performance.”³⁰

12 230. Nikola’s efforts to inform investors that its FCEV reservations were merely
13 indications of potential demand were materially misleading. First, Nikola omitted to reveal
14 that it did not have a working FCEV vehicle, that it had no ability to create hydrogen, much
15 less on a commercially viable scale, and that it had no ability to build its hydrogen fueling
16 stations, without which no customer would purchase or lease an FCEV. This representation
17 also directly conflicts with Milton’s representations, just days earlier, where he said: “these
18 are actual contracts” and that “[t]hese are like, sign on the dotted line, billions and billions
19 and billions and billions of dollars in orders.” Second, Nikola misled investors by claiming
20 its “backlog” was an important indicator of our future performance when, in fact, Nikola
21 did not have the ability to create its FCEV model because of its inability to produce
22 hydrogen at a cost-effective price and no ability to build its fueling stations.

23
24 ²⁹ Q2 2020 10-Q at 37.

25 ³⁰ *Id.* at 26.

231. In an earnings call on August 4, 2020 in connection with the Q2 2020 10-Q, Russell stated, “our fuel cell electric truck reservation book exceeded 14,000 units or approximately \$10 billion in potential revenue some time ago.”

232. The statement referenced in ¶231 was false or misleading for the reasons set forth above in ¶¶216, 219, 221 and 223—the reservations were, in truth, mere non-binding expressions of interest for products that the Company had either abandoned or had no capacity to develop, manufacture or sell. 78% of the “reservations” were for the Nikola One, which Russell knew by February 2019 was no longer being developed.

233. Milton further clouded the true nature of the reservations by touting that the Company’s production facilities were “sold out” for many years. For example, in an interview on *Cheddar News* on or about August 5, 2020, in response to a question about how the pandemic impacted Nikola’s order list, Milton claimed:

Actually, as a matter of fact, you seen them increase. And I think they’re – which is really strange. At first I thought, oh, man, I wonder what this is going to do to – to – you know, to the – to everything. I had no idea. I don’t think anyone knew, right? And the orders actually came in – they’ve come in bigger and stronger, and ***we’ve had to turn a lot of people away. So for our hydrogen truck, we – we essentially have to pick and choose who we can work with because we’re sold out for so many years.***

234. The statements referenced in ¶233 were materially false and misleading for the reasons identified in ¶¶221 and 223.

C. Defendants False and Misleading Statements Concerning the Purported Backlog of Orders Caused Investor Losses

235. As set out above, on September 10, 2020, Hindenburg published the Hindenburg Report identifying “dozens of false statements by” Milton. For example, concerning Nikola’s reservations, the Report alleged, *inter alia*:

Nikola’s much-touted multi-billion dollar order book is filled with fluff. U.S. Xpress reportedly accounts for a third of its reservations, representing ~\$3.5

1 billion in orders. U.S. Xpress had only \$1.3 million in cash on hand last
2 quarter.

3 236. On this news, Nikola's stock price fell \$4.80 per share, or 11.33%, to close
4 at \$37.57 per share on September 10, 2020.

5 237. On September 11, 2020, Nikola's stock price continued to fall, falling \$5.44
6 per share, or 14.5%, to close at \$32.13 per share on September 11, 2020.

7 238. Various analysts (including those from S3 Analytics, Deutsche Bank
8 Research, and RBC Capital Markets) issued reports attributing Nikola's stock price decline
9 to the information revealed in the Hindenburg Report, including those concerning the true
10 status of the Nikola's purported backlog of orders.

11 239. On September 14, 2020, before the market opened, Nikola unequivocally
12 denied the allegations in the Hindenburg Report, asserting that the allegations themselves
13 were "false and misleading," "false and defamatory," and "designed to provide a false
14 impression to investors and to negatively manipulate the market in order to financially
15 benefit short sellers, including Hindenburg itself."

16 240. The Company has since admitted that many of the allegations in the
17 Hindenburg Report were true.

18 241. On Nikola's fierce denials of any wrongdoing, Nikola's stock price increased
19 \$3.66 per share, closing at \$35.79 on September 14, 2020, an 11.39% increase from its
20 previous close on September 11, 2020.

21 242. On September 14, 2020, after the market had closed, *Bloomberg* reported
22 that the SEC was investigating Nikola in connection with the allegations in the Hindenburg
23 Report.

24 243. In response to Nikola's denials, on September 15, 2020, Hindenburg
25 Research issued a 25-page rebuttal report, which argued that Nikola had "debunked
26

1 nothing” and had “either confirmed or sidestepped virtually everything we wrote about,
2 and in some cases raised new unanswered questions.”

3 244. Also, on September 15, 2020, during intra-day trading, the *Wall Street*
4 *Journal* reported that the DOJ had joined the SEC’s investigation of Nikola.

5 245. On this news, Nikola’s stock fell another \$2.96 per share, closing at \$32.83
6 on September 15, 2020, an 8.27% decline from its previous close on September 14, 2020.

7 246. Both the SEC and DOJ investigations were triggered in part by and focused
8 extensively on Defendants’ statements regarding Nikola’s reservations, demonstrating that
9 both actions were causally linked to Defendants’ misstatements on this subject. The SEC
10 complaint and DOJ indictment would ultimately assert, among other things, that Nikola’s
11 order book was not full of binding reservations worth billions of dollars and that the
12 Company was not “sold out” for many years. Accordingly, the SEC and DOJ investigations
13 announced in September 2020 were caused, in part, by Defendants’ misstatements and
14 omissions related to the Nikola One, as the agencies later confirmed.

15 247. On Sunday September 20, 2020, the relevant truth and foreseeable risks
16 concealed by Defendants’ misconduct and false representations and omissions regarding
17 the Nikola One materialized when Nikola announced that Milton had resigned from his
18 position as Executive Chairman and from the Board of Directors.

19 248. Milton’s September 20, 2020 resignation, and the widely reported related
20 news coverage was a foreseeable consequence of and within the zone of the risk concealed
21 by Defendants’ misrepresentations and omissions. Milton’s resignation also partially
22 revealed the relevant truth concealed and/or obscured by Defendants’ prior misstatements
23 and omissions regarding the Nikola One as it was the first tacit acknowledgement by the
24 Company that the Hindenburg Report was credible. The market therefore understood
25
26

1 Milton's resignation to be a revelation of fraud and reacted accordingly. Milton's
2 resignation was also a materialization of the risk concealed by Defendants' false statements
3 discrediting the Hindenburg Report and defending Milton, including the September 14,
4 2020 Press Release.

5 249. On the news of Milton's resignation, Nikola's stock fell another \$6.60 per
6 share, closing at \$27.58 on Monday September 21, 2020, a 19.33% decline from its
7 previous close on Friday September 18, 2020. The timing and magnitude of the Nikola
8 common stock price decline demonstrates the impact Defendants' statements had on the
9 Company's stock price and negates any inference that the loss suffered by investors was
10 caused by changed market conditions or macroeconomic, industry, or Company-specific
11 factors unrelated to Defendants' fraudulent conduct.

12 250. On February 25, 2021, after the close of trading, Nikola filed its Form 10-K
13 for the year ended December 31, 2020. In the filing, Nikola admitted that statements
14 concerning the Nikola One and reservations for Nikola's FCEV's were "inaccurate in
15 whole or in part, when made:"

16 251. This news was widely reported to the market. For example, on February 25,
17 2021, *CNBC* published an article entitled "Nikola admits ousted chairman misled investors
18 as legal costs mount" that went on to explain "Milton and the company previously denied
19 many of the claims in the report."

20 252. As *CNBC* suggested, the February 25, 2021 10-K revealed not only that
21 Milton's statements were incorrect, but that Defendants' unequivocal denials of the
22 Hindenburg Report, including the September 14, 2020 press release, were false and
23 misleading. In a reversal, Nikola was now acknowledging that the Hindenburg Report had
24 been largely accurate.

1 253. Moreover, the February 25, 2021 disclosures revealed new information that
2 Defendants' misstatements, omissions, and fraudulent course of conduct previously
3 concealed and/or obscured from the market.

4 254. On the news of Nikola's February 25, 2021 10-K, Nikola's stock fell another
5 \$1.62 per share, closing at \$18.10 on February 26, 2021, an 8.22% decline from its previous
6 close on February 25, 2021.

7 255. On July 29, 2021, the relevant truth and foreseeable risks concealed by
8 Defendants' misconduct and false representations and omissions were revealed and
9 materialized when numerous news outlets reported that Milton had been indicted on three
10 counts of fraud by the U.S. Attorney's Office in Manhattan for making deceptive and false
11 claims to investors regarding "nearly all aspects of the business." The indictment said that,
12 from November 2019 to September 2020, Milton schemed to defraud investors into buying
13 Nikola shares through statements about the Company's product and technology
14 development. The SEC also filed related civil charges. Both the criminal indictment and
15 SEC charges included specific reference to false claims about Nikola's reservations. In
16 response to the indictment, Milton stated that they were "false allegations."

17 256. The July 29, 2021 announcement of the indictment and the related news
18 coverage reporting on Nikola's representations about its production capabilities, products,
19 technological advancements, and commercial prospects, was a foreseeable consequence
20 of, and within the zone of the risk concealed by Defendants' misrepresentations and
21 omissions. The DOJ and SEC actions were, to a large degree, premised on Milton's
22 misstatements regarding the Nikola One and the value of the Company's purported backlog
23 of reservations. Moreover, the July 29, 2021 disclosures partially revealed the relevant truth
24 concealed and/or obscured by Defendants' prior misstatements and omissions regarding
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1 Nikola's reservations. The disclosures revealed new information that Defendants'
2 misstatements, omissions, and fraudulent course of conduct previously concealed and/or
3 obscured from the market and confirmed the market's understanding of the fraud.

4 257. On this news, Nikola's stock fell another \$2.16 per share, closing at \$12.03
5 on July 29, 2021, a 15.22% decline from its previous close on July 28, 2021. Nikola's stock
6 continued to steadily decline another \$1.88 per share, or 15.62%, over the next several days
7 to close at \$10.15 per share on August 5, 2021, as investors absorbed the lengthy and
8 detailed indictment and SEC complaint, which totaled over 100 pages.

9 258. Evidence and testimony concerning Defendant Milton's false claims
10 concerning Nikola's purported backlog of reservations were presented in the course of
11 Milton's criminal trial which resulted in a conviction for violation of the Exchange Act.

12 **III. Defendants Misled Investors Regarding the Company's Hydrogen** 13 **Production, Dispensing, Readiness, Costs, and Capabilities**

14 **A. Background on Nikola's Hydrogen Production and Dispensing Plans**

15 259. A key aspect of Nikola's business plan is its planned development of
16 hydrogen production and fueling station infrastructure to support its FCEV trucks.
17 Hydrogen vehicles faced what Nikola called the "chicken and the egg" problem: FCEV
18 trucks were not feasible until there was somewhere to fuel them, but at the same time
19 hydrogen fueling stations would not be viable until hydrogen-powered vehicles hit the
20 roads. Nikola purported to have solved this problem by simultaneously offering both FCEV
21 trucks and hydrogen fueling stations. Nikola represented that it offered "bundled leases" to
22 its customers, through which customers could pay a single lease covering the cost of the
23 Nikola truck, hydrogen fuel, and service and maintenance for the truck. Nikola told
24 investors that this model would result in a lower total cost of ownership for trucking
25 customers as compared to traditional diesel vehicles.

1 260. Nikola therefore needed to produce, dispense, and store tens of millions of
2 kilograms of hydrogen each year to support the trucks that it projected to put on the road
3 and would need to construct a network of hundreds of hydrogen fueling stations. To do
4 so, Nikola represented to investors that it intended to produce hydrogen via electrolysis, a
5 process that uses electricity to split water into hydrogen and oxygen. However, producing
6 Nikola's projected amount of hydrogen via electrolysis would require a massive amount of
7 electricity. In fact, Nikola has projected that, when its hydrogen station network is fully
8 built out, this network would annually consume approximately 5 percent of all electricity
9 consumed in the United States today. Because the cost of electricity is the most significant
10 cost input for operating the machines that create hydrogen, known as electrolyzers, the
11 profitability of Nikola's business model has been and is highly dependent on Nikola's
12 ability to acquire electricity at a price that would permit Nikola to produce hydrogen
13 cheaply enough to make its leases economically viable to its customers—that is, a price
14 that would let it sell hydrogen at comparable rates to diesel.

15 261. Equally important for the viability of Nikola's business model was the ability
16 of its hydrogen stations to quickly and reliably dispense hydrogen. A conventional semi-
17 truck can refuel with diesel in approximately 10-15 minutes. To truly be competitive with
18 diesel, Nikola knew it would have to offer electric semi-trucks with similar recharging or
19 refueling times. The longer it takes a vehicle to recharge or refuel, the more it costs a
20 trucking fleet in lost time and money. Because BEVs' long recharging times made them
21 impractical for long-haul trucking operations, Nikola decided to develop FCEVs and
22 hydrogen stations instead, which theoretically could dispense fuel at a comparable rate to
23 a diesel station.

B. Nikola Defendants' Fraud Concerning Nikola's Hydrogen Production and Dispensing Capabilities

262. While Milton was CEO and Executive Chairman (2015-September 2020), Nikola: (i) never produced a single kilogram of hydrogen, (ii) did not have a station permitted to produce hydrogen, (iii) had not leased or purchased any land, or even selected any specific sites, on which to construct hydrogen stations, (iv) did not have any contracts signed with any electricity providers and had learned that electricity in its target market would cost three times more than the price Nikola needed in order to make hydrogen fuel economically feasible, (v) was unable to achieve refueling times shorter than 45-80 minutes at its Phoenix demonstration station, and (vi) was only able to operate its Phoenix demonstration station 21% of the time. In fact, Nikola did not even expect to have blueprints for its stations completed before September 30, 2020, and by October 2020 it was still unsure as to whether it would produce hydrogen onsite at its stations or pivot to a new business model of liquefying hydrogen at a "hub" location and shipping it out to the fueling stations. During this time, Nikola had only developed internal financial models that included electricity price targets necessary for Nikola to produce hydrogen at a level that would be commercially viable for Nikola to sell its FCEV trucks and ever reach future profitability. Yet as early as March 2020, Nikola's infrastructure team advised the executives that these models were unachievable, and that Nikola would incur costs that were triple (and in terms of Capital Expenditures for liquefaction, tenfold) the Company's targets for viability.

263. The only hydrogen station Nikola had during Milton's tenure was a dispensing-only hydrogen fueling station at its Phoenix, Arizona headquarters, which it built in April 2019. Because the City of Phoenix had denied Nikola a permit to install electrolyzers in 2018, the station was not capable of producing hydrogen. The hydrogen

1 used to stock that station was not produced by Nikola but was instead acquired from an
2 outside vendor, Air Liquide, which did not use renewable or emission-free energy to
3 produce its hydrogen.

4 264. The dispensing-only “demo station” in Phoenix was notoriously unreliable.
5 The station was plagued with operational problems, including an inability to adequately
6 and reliably cool and compress the hydrogen. Additionally, many of the station’s
7 components were not built to withstand the extreme heat in Phoenix. As a result of these
8 technical issues, the station was only operable 21% of the time throughout 2020. When the
9 station was operational, refueling Nikola’s FCEV prototypes would take an excessively
10 long time: 45-80 minutes, depending on how close to empty the truck was when it came
11 in.

12 265. In February 2020, despite being previously informed of the lack of
13 authorization from the City of Phoenix in a December 2018 email, Milton asked employees
14 to create plans to install electrolyzers at Nikola’s headquarters because “this will give us a
15 complete system that works on site we can show investors.” Nikola personnel notified
16 Milton via email in March 2020 that installing electrolyzers “will take 5-6 months to get
17 the site permitted for hydrogen production plus another 5-6 months to get the electrical
18 supply and construction completed.” As a result, and as Milton knew, Nikola had to
19 purchase hydrogen from other suppliers for use in testing at its headquarters station.
20 Further, Milton was aware that Nikola had not standardized the design of its hydrogen
21 station because he had participated in the internal evaluation process for station design.

22 266. In May 2020, Milton asked an employee on Nikola’s hydrogen infrastructure
23 team to accelerate a previously planned purchase order for electrolyzers for Nikola’s first
24 five planned stations. As with certain other corporate actions he directed, Milton appeared
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1 principally concerned with investor perception. As Milton explained to the employee,
2 “[t]his [accelerated purchase order] will give us great news to disclose leading up to the
3 merger.” On May 31, 2020, Milton sent an email to Nikola’s Board of Directors seeking
4 approval, on one day’s notice, of a nearly \$31.5 million purchase order for electrolyzers.
5 Milton justified the purchase order, in part, as follows:

6 2nd major point. IPO. I am getting ready to go on a media blitz and the most
7 critical item in our business model is that we don’t have stations. I would
8 like to announce this on Monday as huge news. This will help our stock,
9 create much stronger following and base layers of investors and it also will
ease the criticism I am going to get going into interviews. I believe our PIPE
and SPAC will be very happy to hear we are moving on our stations and not
delaying.

10 **C. Nikola Defendants Fraud Concerning Nikola’s Cost to Produce
Hydrogen**

11 267. According to Nikola’s projections, the price of electricity comprises 75-85
12 percent of the cost of producing hydrogen via electrolysis. For purposes of its projections,
13 which Nikola disclosed to the public, it assumed it could obtain electricity at an average of
14 \$0.035 per kilowatt-hour (“kWh”)—a rate significantly cheaper than prevailing industrial
15 rates—based on its expected large consumption of electricity and its goal of obtaining
16 lower-cost renewable electricity during non-peak hours or sourcing it “behind the meter”
17 (i.e., from a source other than the grid). Nikola disclosed that if it could obtain electricity
18 at a significant discount to prevailing rates, it would not be profitable.

19 268. Both prior to and during the Class Period, Nikola never achieved cost
20 reductions from the standardization of its hydrogen stations or from lower cost electricity.
21 Indeed, the Company has since admitted that “Nikola *has never produced hydrogen*.”³¹
22 Instead, the Company had installed only one demonstration station, which at times
23 dispensed, but never produced, hydrogen. Nikola was still evaluating various design and
24

25 ³¹ USAO Presentation.

1 production options for its future stations. ***Nikola had not produced hydrogen anywhere***
2 ***nor had Nikola purchased any energy for producing hydrogen, much less at the reduced***
3 ***prices Defendants claimed during the Class Period.***

4 269. In March 2020, Nikola's Global Head of Infrastructure Development met
5 with Milton, Brady, and Russell and presented them with a document comparing the rates
6 the Company had been sharing with investors to what the hydrogen infrastructure team was
7 finding to be more realistic in actual practice. Producing hydrogen would cost over three
8 times Nikola's target price. Expenses would be significantly higher across the board.
9 Electricity costs in particular were far higher than Nikola's \$0.035/kWh target, and because
10 of the reliability problems the Company was experiencing with its demo station, to reliably
11 dispense hydrogen it would have to expend significantly more on capital expenditures,
12 maintenance, and personnel costs at its stations. The issues were so significant that the
13 hydrogen team had begun exploring the possibility of pivoting Nikola's business model
14 altogether.

15 270. Specifically, on March 21, 2020, Milton, Brady, and Russell were copied on
16 an email sent by Dale Prows, Global Head of Infrastructure Development at Nikola, with
17 the subject line "Board of director presentation." Prows was in charge of Nikola's hydrogen
18 infrastructure development and the purpose of his email was to provide content for slides
19 that would be prepared for a presentation to Nikola's board on the status of Nikola's
20 electricity rate negotiations. Prows stated that Nikola had not found an economically viable
21 source of electricity to support its planned "R&D Station" in the Phoenix area. While
22 Nikola had proposed buying electricity from Arizona Public Service ("APS") for
23 \$0.02/kWh, and had negotiations with several solar power companies, none of these
24 discussions had borne fruit. Nikola still had no contracts for electricity supply. Mr. Prows

1 also wrote that Nikola had yet to find a site in the Los Angeles area for a hydrogen station
2 or to find a low-cost source of electricity in California. In fact, Prows wrote that the costs
3 for just two components of electricity supply in California, transmission and distribution,³²
4 “are a minimum of 7 cents per kilowatt hour.” The \$0.07/kWh figure Prows shared did not
5 include the third component, generating electricity, and that was already double Nikola’s
6 target price of \$0.035/kWh. The price of electricity in California, therefore made it
7 impossible to operate economically feasible onsite hydrogen production stations in that
8 state because Nikola could not produce and sell hydrogen at the same price as diesel.

9 271. Yet Nikola could not ignore California. Nikola’s “launch” customer was
10 Anheuser-Busch, located in the Van Nuys neighborhood of Los Angeles. Nikola’s first
11 hydrogen station networks would have to support Anheuser-Busch’s delivery routes, and
12 that meant Nikola would have to build stations in California, including near Anheuser-
13 Busch’s headquarters in Los Angeles, that could supply hydrogen at competitive rates to
14 diesel. Nikola could not realistically build a hydrogen station network unless it could
15 acquire energy for significantly less than the costs of transmission and distribution alone
16 in California.

17 272. Prows’s March 21, 2020 email stated that his team was evaluating “virtual”
18 power purchase agreements (“PPAs”), which entail acquiring power in one geography and
19 using it in another where electricity may be more expensive, and on-site solar generation
20 as possibilities to reduce the cost of electricity. However, Prows observed that both options
21 had significant problems. Virtual PPAs created a “volume mismatch” that made it difficult
22 to match up pricing across geographies. On-site electricity generation, meanwhile, would

23 ³² The final cost of electricity used at a given location is roughly the sum of three
24 components: (i) the cost of generating electricity, (ii) the cost of transmitting electricity,
25 generally through high-voltage power lines, and finally (iii) the cost of distributing the
electricity locally to the target business or home.

1 require Nikola to build enormous solar farms, roughly 100 acres in size, for each hydrogen
2 station. This would not be a workable solution in dense, urban areas like Los Angeles.

3 273. Because of these challenges, Prows continued in his March 21, 2020 email,
4 his team was beginning to “evaluat[e] the feasibility of liquefying hydrogen and
5 distributing it to our fueling stations.” Thus far, Nikola’s plan had been to create gaseous
6 hydrogen through electrolysis on-site at its fueling stations. Accordingly, the demo station
7 in Phoenix, Arizona was built to store and dispense gaseous hydrogen. Prows’s team,
8 however, was finding Nikola’s existing plan to be so impractical that they were considering
9 a major pivot in Nikola’s business model, which would require employing an additional
10 technology to compress hydrogen produced in one location into a liquid, then ship the
11 liquefied hydrogen long-distance to Nikola’s fueling stations. Prows explained that he
12 believed liquefying hydrogen also had the potential to help Nikola address the reliability
13 issues it was experiencing with dispensing hydrogen, as Nikola’s long refueling times were
14 caused in part by Nikola’s failure to sufficiently compress hydrogen gas. However,
15 building liquefaction infrastructure would be incredibly expensive. Prows’ team estimated
16 that it would cost Nikola \$150 million in capital expenditures to build a single 60-ton-per-
17 day facility. Extrapolating out from Nikola’s assumptions about the 8-ton capacity of its
18 refueling stations, the Company would need approximately 93 times as much liquefaction
19 to supply its full network of 700 hydrogen stations—which would require \$14 billion in
20 capital expenditures just for the liquefaction facilities. Accordingly, Prows still did not
21 believe liquification would allow Nikola to achieve its target price in California.

22 274. Days earlier, on March 17, 2020, Prows had an email exchange with Milton,
23 Russell, and Brady, regarding conversations Nikola was having with Air Liquide, the
24 company that supplied Nikola with hydrogen gas for its demo station, over liquefaction
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1 equipment. Milton responded to the thread: “Keep these liquefaction discussions quiet
2 from the market and internally, as well, as much as possible.”

3 275. Prows and his team also met with Milton, Russell, and Brady in March 2020
4 to address: (1) the hydrogen dispensing reliability issues and the necessary costs to
5 overcome those issues, and (2) the possibility of moving towards liquefying hydrogen. In
6 a meeting that lasted approximately 45 minutes, and in which Milton, Russell, and Brady
7 all asked questions, Prows presented the executives with a document that compared costs
8 across different scenarios. The first column in Prows’ comparison consisted of the “base
9 case” costs that Nikola had represented to investors in its financial documents, such as the
10 March 3 8-K and the slides attached thereto, where Nikola had listed the cost of producing
11 and dispensing hydrogen at \$2.72 per kilogram. The next column provided a revised base
12 case that accounted for what Prows’ hydrogen infrastructure team believed were the costs
13 that Nikola would need to incur in order to improve the reliability of its hydrogen
14 dispensing stations: \$8.68 per kilogram. Prows’ revised figure was much higher than the
15 base case figure because of the need to invest in equipment, such as compressors, to allow
16 Nikola to reliably dispense hydrogen and because Nikola was discovering that electricity
17 input costs were significantly higher than Nikola’s target price of \$0.035/kWh. As Prows
18 would later testify at Milton’s criminal trial, “we were having difficulty getting the utilities
19 to buy into our pitch that would enable us to have a win-win situation with them.” Nikola
20 would not be able to compete with diesel prices at a hydrogen cost of \$8.68 per kilogram.

21 276. The document Prows presented to Milton, Russell and Brady broke down the
22 costs of producing and dispensing hydrogen into its component parts. The cost of electricity
23 was \$2.14 per kilogram in the base case, but Prows’s team adjusted this figure upward over
24 three times to a more realistic \$6.73 per kilogram for the revised base case. The document
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1 stated that this “[i]ncrease [was] due to higher electricity cost assumption. Per hydrogen
2 H2 hydrogen [sic] team, \$0.11, best rate available in California.” 11 cents per kilowatt hour
3 was triple the \$0.035/kWh target communicated to investors. Electricity was not the only
4 cost that was far higher than Nikola’s target. CapEx increased from \$0.25 in the base case
5 to \$0.68 per kilogram in the revised. The document noted that CapEx needed “to be
6 increased significantly to achieve target uptime and to mitigate risk of equipment failure.”
7 Maintenance costs increased too, from \$0.22 per kilogram in the base case to \$0.81 per
8 kilogram in the revised base case, again to address issues with station uptime. The cost of
9 personnel increased seven times, from \$0.04 per kilogram in the base case to \$0.29 per
10 kilogram in the revised base case because the team determined Nikola’s stations would
11 each need to be staffed by a hydrogen engineer.

12 277. The document Prows shared with Milton, Russell, and Brady also provided
13 revised total CapEx figures. Whereas Nikola had previously communicated to investors
14 that station CapEx would total \$16.6 million, Prows now put that figure at \$35.7 million,
15 which would be needed to address the reliability problems. If Nikola pursued liquefaction
16 instead, CapEx would drastically increase to a whopping \$319.8 million according to the
17 document shared with the executives. The document included the “key takeaway” that the
18 **“Hydrogen team does not believe current base station model cost efficiency/reliability**
19 **is achievable.** Stations will require significantly more CapEx and maintenance in order to
20 achieve uptime.” (Emphasis added).

21 278. On March 25, 2020, Milton and Prows had an email exchange, copying
22 Russell and Brady, to discuss the possibility of installing an electrolyzer at Nikola’s
23 Phoenix, Arizona headquarters. Prows explained that getting a site permitted for hydrogen
24 production would take 5-6 months, and an additional 5-6 months would be required to
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1 acquire the electricity supply and complete construction. Milton responded that Nikola
2 should “wait now until we have a clear direction from Nel about us moving forward.”
3 Nikola thereafter did not move forward with requesting a permit to install an electrolyzer
4 at its headquarters and did not install an electrolyzer at its headquarters.

5 279. Accordingly, after March 2020, at the latest, Milton, Russell, and Brady
6 knew that: (i) Nikola was not able to reliably dispense hydrogen and fixing this problem
7 would require significant capital expenditures; (ii) Nikola had no PPAs and the energy
8 suppliers it was negotiating with were not convinced by Nikola’s pitch that grid buffering
9 offered them a “win-win;” (iii) Nikola had no land on which to build hydrogen stations and
10 permitting any site could take up to and over a year; (iv) Nikola could not achieve
11 electricity at \$0.035/kWh – electricity would cost at least three times as much in California;
12 (v) Nikola could not produce hydrogen under its “base case” existing business model for
13 under \$8.68 per kilogram because of the costs of CapEx, electricity, maintenance, and
14 personnel were magnitudes higher than Nikola’s targets; (vi) Nikola had not determined
15 whether it would make hydrogen onsite or liquefy it offsite and ship it to its stations, and
16 therefore was not certain what kind of stations it would build or how much land they would
17 require; (vii) Nikola’s CapEx would be substantially higher than \$16.6 million per station
18 no matter what approach it took; (viii) Nikola was not producing and could not produce
19 hydrogen. Despite these stark realities, Milton requested that the executives and hydrogen
20 team keep the liquefaction discussions concealed from the market. Defendants not only
21 complied, they continued to use the inaccurate projections in public statements, including
22 an April 6, 2020 slide presentation as part of Nikola’s “Analyst Day” event.

23 280. As Russell testified at Milton’s criminal trial: “As we continued to negotiate
24 for electricity supply, it became clear there was going to be a **large geographic area across**
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1 ***the country and around the world*** where you wouldn't be able to get an electricity price
2 that you would need to make the hydrogen cost effectively.”³³ As such, Russell testified
3 that possible need to pivot to a liquefaction “hub” business model was still being actively
4 discussed in the summer of 2020.

5 281. On June 9, 2020, Nikola's Global Head of Infrastructure Development
6 forwarded Milton an email from an electrolyzer supplier concerning costs and delivery.
7 This employee sought Milton's input on the delivery schedule for the accelerated purchase
8 order, noting that “we don't have PPA's [Purchase Power Agreements] executed yet to
9 support these electrolyzers.”

10 282. Milton, Russell, Worthen, Brady, Girsky, and Ubben attended a July 2020
11 Board of Directors meeting at which Nikola's hydrogen infrastructure team apprised the
12 Board that the company had not yet entered into any PPAs and that rate negotiations with
13 electricity providers were ongoing at the time. In fact, the first rate agreement that the
14 Company ever entered into occurred after Milton left Nikola in September 2020.

15 283. Milton, Russell, Worthen, Brady, Girsky, and Ubben knew, or recklessly
16 disregarded, that Nikola had not entered into any PPAs or other rate agreements with any
17 providers and that Nikola was not producing any hydrogen. They also knew, or recklessly
18 disregarded, that Nikola: (i) had not sourced any “clean” or renewable electricity, (ii) was
19 not acquiring cheaper electricity along freeways by tapping into federal lines, and (iii) was
20 not acquiring electricity at specified rates.

21 284. Nevertheless, Defendants repeatedly touted to investors that Nikola was
22 producing over 1,000 kg/day of hydrogen at its headquarters and had driven down the price
23 to less than \$4/kg because Nikola had found a way to source electricity at a fraction of the

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25 ³³ Milton Tr. at 1073:3-13, ECF No. 226.

1 then-market price. For example, on June 4, 2020, after Nikola's stock began publicly
2 trading, Milton proclaimed: "***But what Nikola solved was the cost***—was the economics on
3 the trucking. When we first started, hydrogen was \$16 a kilogram. ***We can now produce it***
4 ***for well under \$4 a kilogram***. So we've cut – it's one quarter of the cost now than it was
5 just a few years ago. And we're now cheaper to operate per mile than diesel."³⁴ In an
6 interview published on or about July 17, 2020, Milton stated: "We are contracting with
7 wind, solar and hydro plants for energy and so far have been able to source plenty of energy
8 under \$.04 per kWh. Most of it is much lower in the 2.5 [cents] per kWh range."

9 285. As detailed below, Milton's claims that Nikola had driven down or otherwise
10 achieved this cost of production were materially false and misleading because Nikola did
11 not have the ability to produce any hydrogen, much less at the prices that Milton
12 represented. As an initial matter, any claims about Nikola's current cost to produce
13 hydrogen were false simply because Nikola had never produced any hydrogen—a fact
14 Milton knew. Further, at that time, Nikola did not have any agreements with electricity
15 providers that would have enabled it to produce hydrogen at Milton's claimed cost—a fact
16 Milton also knew. Given that electricity costs make up 75-85 percent of hydrogen
17 production costs, Milton's claims about Nikola's supposed ability to produce hydrogen at
18 the specified costs—without Nikola having any agreements in place to lock in electricity
19 costs—were false.

20 286. The figures that Milton cited as Nikola's current costs were, in reality,
21 Nikola's projections at which future production, if it ever occurred, could conceivably be
22 profitable. However, by March 2020 at the latest, the executives had been advised that

23
24 ³⁴ Yahoo Finance, *Nikola debuts on Nasdaq, how it plans to compete with other electric*
25 *truck makers*, available at [https://finance.yahoo.com/video/nikola-debuts-nasdaq-plans-](https://finance.yahoo.com/video/nikola-debuts-nasdaq-plans-compete-150245603.html)
26 [compete-150245603.html](https://finance.yahoo.com/video/nikola-debuts-nasdaq-plans-compete-150245603.html).

1 these rates were unrealistic. Yet once again, Milton presented to investors something
2 Nikola hoped to do as something it had already achieved.

3 287. Defendant Russell has since acknowledged that any representation that
4 Nikola produces hydrogen “is “**indefensible**.’ The headquarters station is for storage and
5 dispensing, not production.” Defendant Brady has likewise admitted “It is a ‘false
6 statement’ that Nikola is producing 1,000 kg/day of hydrogen at headquarters.” Defendant
7 Worthen admitted “The statement that Nikola can produce 1,000 kg/day **is not true**, and
8 **Milton knew it was not true. We discussed this ‘a million times.**’ Milton states future plans
9 as if they are a present reality.” Dale Prows (Global Head, Infrastructure Development)
10 has stated “It is ‘**false**’ for Milton to say ‘we’re down below \$3/kg on our hydrogen now.’
11 **There is no ‘our hydrogen’** – Nikola is not producing any.”³⁵

12 288. In fact, Nikola’s executives understood in 2020 that the Company might have
13 to purchase hydrogen from third-party vendors for years into the future because the
14 Company had not come up with a plan to economically produce hydrogen. Even over a
15 month after Milton’s departure, Nikola was still trying to determine what model it would
16 employ for producing hydrogen, *i.e.* whether its stations would produce hydrogen onsite
17 as the Company told investors or liquefy and ship it. An October 28, 2020 Board
18 presentation featured a slide stating that “Nikola Plan Starts with On-Site vs. Hub
19 Production. A Network Combining Both Production Models Is Likely.” Accordingly, even
20 by the end of October 2020, Nikola was nowhere near ready to begin building its stations—
21 it did not yet know what equipment they would even need or how they would get their fuel.

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25 ³⁵ USAO Presentation.

D. False Statements Regarding Hydrogen Capabilities, Infrastructure, and Costs

1. Pre-Merger False Statements Regarding Hydrogen Capabilities, Infrastructure, and Costs

289. On May 3, 2018, Defendant Nikola posted to its official Twitter account, @nikolamotor: “800,000,000 miles. 28 Hydrogen Stations. 800 trucks. Beginning 2020 delivery. #emissionsgameover #oneclearwinner.”

290. On the same day, May 3, 2018, another user responded in part: “I am 90% sure hydrogen will be a limited market. As it is expensive to maintain and ship it.” Defendant Nikola replied:

We actually produce it on site and don’t ship it. Helps reduce costs dramatically. Good observations though. ***Under the right environment it’s very cheap to produce which is how we do it.***

These statements remained on Nikola’s Twitter account and publicly available to investors throughout the Class Period.³⁶

291. The statements referenced in ¶¶289-290 were materially false and misleading because Defendants knew or recklessly disregarded but failed to disclose that Nikola had never obtained a permit for, let alone constructed, a hydrogen production station, nor had it produced any hydrogen when the statements were made. Although Nikola did complete a storage-and-dispensing-only hydrogen fueling station at its Phoenix, Arizona headquarters in or about April 2019, that station had been plagued with problems and functioned only 21% of the time. Moreover, the hydrogen that was used to stock that station was not produced by Nikola but was instead acquired from an outside vendor. Further, at that time Nikola did not have any agreements with electricity providers, let alone clean energy from wind, solar, and hydroelectric facilities directly, or energy at less than \$.04

³⁶ @nikolamotor, Twitter (May 3, 2018, 9:00 A.M.), available at <https://twitter.com/nikolamotor/status/992026084626583552>.

1 per kWh. Nikola had not purchased or leased any land on which to produce hydrogen, let
 2 alone secured any permits to install electrolyzers—a process which would itself take at
 3 least half a year if not more than twice that. As detailed in Nikola’s USAO Presentation,
 4 Nikola admitted “Nikola **has never produced** hydrogen,” Russell stated that any
 5 representation that Nikola could produce hydrogen “is **“indefensible.”** The headquarters
 6 station is for storage and dispensing, not production,” and Defendant Brady admitted “**It is**
 7 **a ‘false statement’** that Nikola is producing 1,000 kg/day of hydrogen at headquarters.”
 8 Defendant Worthen admitted “The statement that Nikola can produce 1,000 kg/day **is not**
 9 **true**, and **Milton knew it was not true. We discussed this ‘a million times.’** Milton states
 10 future plans as if they are a present reality.” Dale Prows (Global Head, Infrastructure
 11 Development) admitted “It is **‘false’** for Milton to say ‘we’re down below \$3/kg on our
 12 hydrogen now.’ **There is no ‘our hydrogen’ – Nikola is not producing any.**”

13 292. On December 2, 2019, in a joint event that Nikola hosted with Iveco, which
 14 was livestreamed and posted to Iveco’s YouTube channel, Defendant Milton told the
 15 crowd:

16 We’re building out the hydrogen station right now globally. **In America,**
 17 **we’ve already got the largest hydrogen station in the western hemisphere**
 18 **at our headquarters. Can produce over 1,000 kilograms a day on-site.**
 19 We’re planning to expand that up to—up to essentially eight tons which is
 20 about 8,000 kilograms a day. **That will be done in Phoenix, Arizona, the**
 21 **station’s already up and operational for pumping right now.**

22 A video of the event is currently publicly posted online and remained publicly available to
 23 investors throughout the Class Period.³⁷

24 293. The statements referenced in ¶292 were materially false and misleading for
 25 the reasons identified in ¶291. Moreover, by this point Milton had been involved in

26 ³⁷ IVECO, NIKOLA & IVECO EVENT, YouTube (December 2, 2019), available at
<https://www.youtube.com/watch?v=vGVb9yQ2s4o&t=683s> (accessed March 1, 2021).

1 numerous discussions about the Company's inability to produce hydrogen, including a
2 December 2018 email informing him that the City of Phoenix had denied Nikola a permit
3 to install electrolyzers at its headquarters.

4 294. On or around December 17, 2019, Milton appeared on *Fox Business's*
5 program "Claman Countdown." Milton touted the advantages of FCEVs over the battery-
6 powered trucks being developed by Nikola's rival, Tesla. The host, Liz Claman, asked
7 Milton "How long does it take to fuel up with hydrogen?" to which Milton responded:

8 Yeah, ***that's the advantage is you can do it in 15 minutes. So if you're***
9 ***turning a truck 2, 3 times a day, you can do that in 15 minutes*** and with
10 batteries if you charged it 15 minutes it would actually ruin the battery. So
you've got to scale that over 1-3 hours on a battery electric truck without
doing damage to the battery. So you can turn it in 15 minutes with hydrogen.

11 295. The statements referenced in ¶294 were materially false and misleading.
12 Nikola had failed to achieve a refueling time of 15 minutes for its FCEV trucks. Even by
13 the end of the 2020, it took Nikola 45-80 minutes to fill its FCEV prototype vehicles with
14 hydrogen at its Phoenix, Arizona demo storage and dispensing-only station, the only
15 hydrogen station Nikola had at this time. Even then, Nikola was struggling to keep the
16 station operational. Problems with compression and cooling of the hydrogen, which has a
17 tendency to heat up when going through the refueling process, meant that the demo
18 station's up-time was abysmal. It was unable to dispense hydrogen *79% of the time*. Unless
19 a truck arrived for fueling within the 21% of the time that the station was functional, it
20 would not be able to be refueled at all, let alone in 45-80 minutes. Nikola had therefore not
21 solved the operational challenges that could have made hydrogen fuel competitive to diesel
22 (or more advantageous than batteries, for that matter) for long-haul trucking operations –
23 it had not even cleared the first hurdle of determining how to reliably dispense hydrogen
24 into a truck. It could not construct hydrogen stations until it solved this threshold challenge
25
26

(something it never did in 2020) because it could not realistically build a network of hydrogen stations that were 21% reliable and took over an hour to fuel a truck. Moreover, Nikola did not (and could not) produce the hydrogen that the demo station dispensed. At this time and throughout 2020, the only electrolyzer equipment Nikola owned had never been used and was sitting in a warehouse in Phoenix. Nikola purchased the hydrogen used in the demo station from a supplier, Air Liquide, which did not source electricity from zero-emissions sources to produce hydrogen.

296. During the January 10, 2020 episode of the *Transport Topics Roadshow* podcast, Defendant Milton stated that Nikola was producing hydrogen at “**well below \$4 a kilogram**”:

What we did is, we knew that hydrogen was very expensive to produce. ***Up until Nikola came into the market, hydrogen was around \$16 a kilogram, U.S. dollars. Now, Nikola’s producing it well below \$4 a kilogram. We have driven the costs down times, almost four times...so, 1/4th the cost of normal hydrogen production, Nikola is now at.*** . . . For the last four years now, we’ve been working on the most advanced hydrogen station in the world. It’s actually in Phoenix, Arizona, it’s larger than any other hydrogen station in the western hemisphere. . . .³⁸

297. On January 23, 2020, Milton tweeted from his personal account: “Hydrogen costs have plummeted through @nikolamotor efforts not other OEM’s [sic]. ***Our costs are below \$3 per kg.*** Diesel parity is \$4/kg. Game is over for diesel. . . .” This statement remained on Milton’s Twitter account and publicly available to investors during the Class Period.

298. The same day, a Twitter user tweeted at Milton asking him to “confirm that is compressed green electrolytic hydrogen at \$3/kg, today? How soon will that be available

³⁸ TT Roadshow, *Meet Trevor Milton*, (Episode 4) (2020), available at <https://roadsigns.ttnews.com/roadshow-episode-four/>. This episode is currently publicly available online and was available to investors throughout the Class Period.

1 for public purchase, any update on that timeline?” Milton replied “Yes.” This statement
 2 remained on Milton’s Twitter account and publicly available to investors during the Class
 3 Period.

4 299. The statements referenced in ¶¶296-296298 were materially false and
 5 misleading for the reasons identified in ¶¶269–279, 291 and 295.

6 300. The March 3 8-K included a transcript of a joint pre-recorded merger
 7 announcement conference call that included statements by Milton, Girskey, Russell, and
 8 Brady. The March 3 8-K quoted Russell as stating during the conference call:

9 ***Our fuel cell trucks are the first zero-emission vehicles with a range and***
 10 ***refueling time that favorably competes with traditional diesel trucks,*** and
 11 our battery electric trucks are the perfect zero-emission solution for shorter
 12 haul missions, and urban routes with tight driving and delivery spaces.

12 ***Our bundled leasing model for our fuel cell electric vehicles allows us to***
 13 ***solve the “chicken & egg” challenge*** that’s hindered the growth of the
 14 hydrogen-electric vehicle market. We’re working with the customers who
 15 have the largest dedicated-route long-haul fleets initially, and ***we***
 16 ***simultaneously build the hydrogen stations tailored to serve their needs.***
 17 What we offer these dedicated-route customers is essentially freight as a
 18 service, with a single price for a solution that includes the truck, maintenance
 19 and the fuel, locked in for the life of the lease, with a refueling station roll
 20 out plan that addresses concerns about access to fuel. ***And we offer do all of***
 21 ***that at a price that is competitive with their existing diesel fleet. It’s the***
 22 ***closest to a no-brainer customer proposition as I’ve seen in my career.***

23 301. Russell’s statements in ¶300 identified in italics, made in the present tense,
 24 were false and misleading for the reasons identified in ¶¶267–283, 291 and 295. Nikola
 25 could not offer a comparable refueling time to diesel, even after nearly a year of failed
 26 efforts at the demo station – a station located at Nikola’s headquarters where Russell’s,
 Brady’s, Milton’s, and Worthen’s offices were located. Russell knew the station was
 unreliable, as he instructed an employee to simulate refueling for a promotional video that
 aired in April 2020. Moreover, Nikola had not solved the “chicken & egg” problem or
 offered a no-brainer proposition at a competitive price to diesel. The Board, including

1 Russell, Worthen, and Brady, had been told in December 2019 that one of the reasons
2 private investors were reluctant to back Nikola was because of the tremendous risk in
3 simultaneously building trucks and hydrogen stations—the chicken and egg approach.
4 Further, Nikola had no power agreements that would allow it to produce and supply
5 hydrogen at prices comparable to diesel at this time. The company had never produced any
6 hydrogen whatsoever. Russell knew this, or recklessly disregarded it, because Nikola’s
7 Global Head of Infrastructure Development reported to him directly and was the employee
8 overseeing efforts to secure favorable electricity rates.

9 302. The March 3 8-K also contained a 39-page slide deck. Most of these slides
10 would later be put into an April 6, 2020 Investor Presentation, including slides which
11 assumed Nikola would acquire electricity at \$0.035/kWh and incur \$16,610,000 in CapEx
12 per hydrogen station. Russell, Brady, and Girsky used a substantially similar slide deck in
13 a joint presentation given to investors in January 2020.

14 303. The day after announcing the merger, March 4, 2020, Milton and Ubben
15 appeared together on *CNBC’s Squawk Alley* program, where they were interviewed by host
16 David Faber about Nikola’s plans to go public. During the interview, Milton and Ubben
17 sat side-by-side and made the following statements:

18 **FABER:** You characterized the company as a merchant energy storage
19 company with de-risking off tank. What does that even mean?

20 **UBBEN:** Well, when you think about even the storage business today is you
21 get a PPA with the utility or maybe a commercial customer, and it’s an asset-
22 driven business that generates a fairly low return, seven, eight, nine percent,
because it’s contracted. In this particular case, ***Trevor solved the chicken and
the egg. . . . we’ve got this uncapped return, but he’s de-risked it because
of the business model that he came up with.***

23 **FABER:** So what was the key advance here that you feel you’ve made? I
would assume it has to do with the fuel cells themselves?

24 **MILTON:** No, ***it’s actually the chicken and the egg.*** Its very similar to
25 Amazon. The reason why Amazon has been so successful around the world
is that they cover not just the goods sold online, I mean anyone can do that,

1 but it's the entire logistics behind it, the vertical integration. It's very similar
 2 to what Nikola has done. What we've done is we don't just sell a truck, we're
 3 really a tech energy company is what we are. ***We actually sell all the energy
 4 for the truck to the consumer at the same time.*** So these hydrogen stations
 5 are expensive to build. But if you match them up to truck orders, then you're
 6 only dedicating \$30,000 per truck to a station. So that's nothing. BP when
 7 you, BP or Shell when you sell a truck, they get about somewhere right
 8 around \$1,000,000 in revenue, in oil revenues, every truck that you ever sell
 9 in diesel. So what ***we did*** is we took that money, ***we brought it into Nikola
 10 now. So we sell the truck, we're an energy as a provider kind of solution.***

11 * * *

12 **MILTON:** And then ***we do the grid buffering. So we help the grids buffer
 13 their grids,*** [Ubben nods in agreement] ***and that's how we get our energy so
 14 cheap to be able to broker back to the fleets.***

15 **FABER:** So when are we going to be seeing your trucks on the road fueling
 16 at your stations?

17 **MILTON:** ***So we've got the largest hydrogen station in the Western World
 18 already operational in Phoenix, Arizona. That was like our big, test facility
 19 to show it all works.***

20 * * *

21 **UBBEN:** ***It's an 8 minute refuel for a 500-mile haul on a hydrogen system.***
 22 So you can go across the country on 4 stops.

23 304. The statements in ¶303 were materially false and misleading for the reasons
 24 identified in ¶¶267–283, 291 and 295. Nikola had not solved the “chicken and the egg”
 25 problem because it had neither figured out how to economically produce or even reliably
 26 dispense hydrogen. Nikola certainly had not “de-risked” the sale of one unproven
 technology by pairing it with another, as Ubben and Milton knew because a December 11,
 2019 presentation to the Board of Directors had stated that one of the reasons private
 investors “have been reluctant to commit” to financing Nikola was because of the “High
 execution risks associated with building two businesses – manufacturing trucks and
 building out the H2 station network.” It was also misleading for Defendants to speak in the
 present tense about what Nikola planned to do as if it had already been accomplished, for
 example that Nikola was currently able to acquire cheap energy or engage in “grid
 buffering”—energy suppliers had not accepted Nikola’s “win-win” pitch that if the utilities

1 sold Nikola below-market electricity, Nikola could help with grid buffering, as Brady
2 would later testify at Milton’s criminal trial.³⁹ Moreover, Nikola could not refuel hydrogen
3 trucks in 8 minutes.

4 305. On or about March 12, 2020, Milton stated on the *Transport Topics*
5 *Roadshow* podcast:

6 Up until Nikola came in the market, hydrogen was around \$16 a kilogram,
7 U.S. dollars. ***Now Nikola is producing it well below \$4 a kilogram. We have***
8 ***driven the cost down times almost four times.*** That’s how – you know, one-
fourth the cost of normal hydrogen production, Nikola is now at.

9 306. The statements referenced in ¶305 were materially false and misleading for
10 the reasons identified in ¶¶267–283, 291 and 295.

11 307. On April 6, 2020, Nikola hosted its “Analyst Day” event to showcase its
12 business ahead of the SPAC merger. The event featured a video in which Milton and
13 Russell gave a tour of Nikola’s headquarters, then Brady and Russell proceeded to give a
14 presentation for analysts on Nikola’s data and finances. VectoIQ filed the April 6 8-K,
15 signed by Shindler, with the SEC which included slides from the joint presentation by
16 VectoIQ and Nikola and materials prepared by both entities for the event. The April 6 8-K
17 presented a wholly unrealistic and deceptive picture of the state of Nikola’s hydrogen
18 production and dispensing abilities while attempting to convince investors to support the
19 business combination.

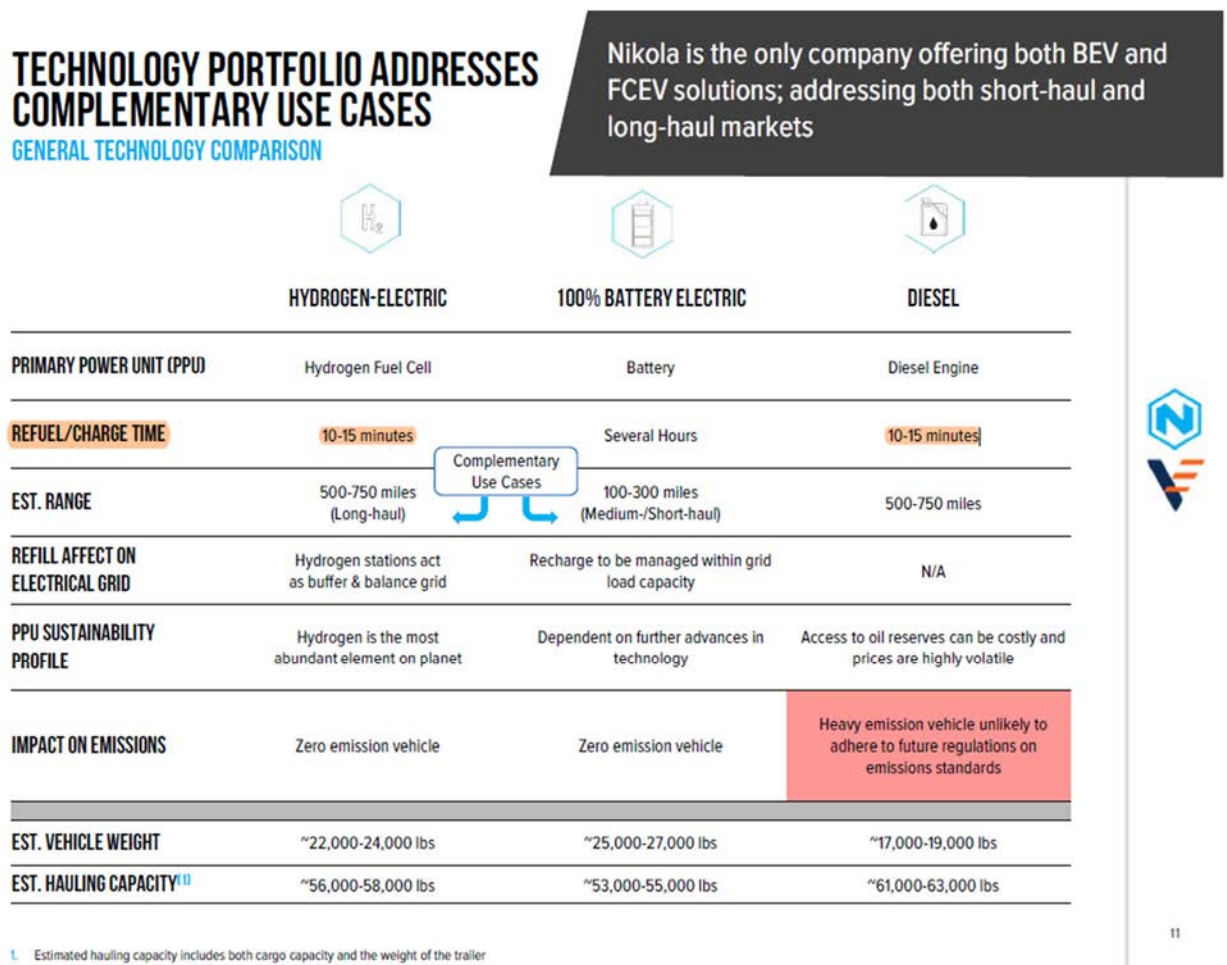
20 308. On a slide from the joint presentation titled “POWERED BY A UNIQUE
21 BUSINESS STRATEGY” contained in the April 6 8-K, Defendants listed the
22 characteristics of Nikola’s “H₂ Stations,” including: “Economically produce H₂ fuel via
23
24

25 ³⁹ Milton Tr. at 1810:5-12, ECF No. 233.

electrolysis,” and “Electricity input (grid, solar, wind) purchased via long-term supply agreements.”

309. The statements referenced in ¶308 were false and misleading for the reasons identified in ¶¶267–283, 291 and 295. Nikola could not produce hydrogen “economically” and was reconsidering its business strategy.

310. Another slide contained in the April 6 8-K purported to provide a comparison between Nikola’s hydrogen-electric and battery electric trucks and conventional diesel trucks. The slide listed “REFUEL/CHARGE TIME” as “10-15 minutes” for Nikola’s hydrogen-electric trucks, equivalent to conventional diesel trucks:



(highlighting added)

1 311. Another slide on page 22 of the presentation contained in the April 6 8-K
2 listed one of the “BENEFITS OF HYDROGEN PRODUCTION AND REFUELING” as
3 “Fast refuel time – similar to today’s refueling time for diesel engines.”

4 312. Page 23 of the presentation contained in the April 6 8-K listed the
5 “ADVANTAGES OF HYDROGEN.” The slide stated that FCEVs had the “same benefits”
6 as more traditional electric vehicles “while ***eliminating many issues derived from battery***
7 ***electric vehicles (long recharge times***, limited range, cold start, added weight, etc.),” and
8 stated that FCEV trucks had the advantage of “HEAVY DUTY FAST FUELING.”

9 313. The statements referenced in ¶¶310-312 were false and misleading for the
10 reasons identified in ¶¶267–283, 291 and 295. Additionally, Prows wrote in an email to
11 Milton, Brady, and Russell on March 17, 2020, that his team was considering pivoting to
12 hydrogen liquification in part because “we’re struggling to get 50 percent up time with our
13 headquarter station and we’re not even producing hydrogen.”

314. Another slide in the April 6 8-K purported to provide the “UNIT ECONOMICS” of hydrogen stations. It listed several costs underlying Nikola’s model, including \$0.035/kWh for electricity supply, \$640,000 for “Repair and Maintenance,” and \$115,500 for “Station Personnel Cost.” It concluded that Nikola’s cost per kg of hydrogen produced was \$2.47:

H₂ STATION UNIT ECONOMICS

Single-station model expected to generate cash to fund future stations and potentially have access to multiple financing options to fund ongoing H₂ network development

HYDROGEN STATION KEY ASSUMPTIONS

- \$0.035/kWh of electricity
- 61.2 kWh needed to produce 1 kg of hydrogen
- 11.1 liters required to produce 1 kg of hydrogen
- 3 FTE per station
- 100% station utilization, or 8,000 kg per day (2,920,000 kg per year)
- Station useful life of 21 years

Working with Nel, Nikola plans to generate hydrogen at scale in a cost effective manner

Annual Cost to Produce Hydrogen ⁽¹⁾			
Hydrogen Station Direct Variable Costs		Assumption	Notes
Electricity Consumption Cost	\$ 6,254,640	178,704	MWh @ \$35.00 per MWh
Water Consumption Cost	39,407	8,585,484	# of gallons @ \$4.59 / 1,000 gallons
Hydrogen Station Direct Fixed Costs			
Repair and Maintenance ⁽²⁾	640,000	4.3%	% of total station equipment capex
Insurance Costs and Charges	168,100	1.0%	% of total station capex
Station Personnel Cost	115,500	3.0	# of FTE's @ \$35k salary + 10% benefits
[A] Total Operating Expenses	\$ 7,215,647		
Station Depreciation	731,429		
Total P&L Expense	\$ 7,947,076		
[B] Annual H₂ Production (tonnes) ⁽³⁾	2,920		Electrolyzer power consumption of 52.8 kWh/kg
Cost per kg (excl. Depreciation)	\$ 2.47		[A] / [B]

CASH GENERATED PER STATION — 630 TRUCKS (3 LEASE CYCLES)

	Pre-Delivery	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Years 1-7	Years 1-21 Full Station Life
Station CapEx ⁽⁴⁾	(\$16,610,000)	-	-	-	-	-	-	-	(\$16,610,000)	(\$16,610,000)
Fuel Revenue - 210 Trucks		10,500,000	10,500,000	10,500,000	10,500,000	10,500,000	10,500,000	10,500,000	73,500,000	\$220,500,000
Station Fuel & Operating Cost ⁽⁵⁾		(6,919,114)	(6,919,114)	(6,919,114)	(6,919,114)	(6,919,114)	(6,919,114)	(6,919,114)	(48,433,797)	(\$145,301,392)
Annual Unlevered Cash Flow	(\$16,610,000)	\$3,580,886	\$3,580,886	\$3,580,886	\$3,580,886	\$3,580,886	\$3,580,886	\$3,580,886	\$8,456,203	\$58,588,608
Implied 21-Year Unlevered IRR ⁽⁶⁾									21%	
Implied 21-Year Levered IRR ⁽⁷⁾									43%	

A combination of debt and equity financing (at the station level) may be utilized to maximize capital efficiency and return to shareholders

1. Assumes station at 100% utilization; based on initial costs, savings are expected in 2025 and beyond due to anticipated advances in technology
2. Repair and maintenance includes monthly, quarterly, and annual inspections of the electrolyzers, dispensers and compressors, sensors and detectors, worn out parts (including the work done to replace them), replacement/filling of misc. medias, analysis and optimization of operation parameters, remote monitoring, and troubleshooting
3. 1 metric tonne = 1,000 kg
4. Given construction lead-time for each station, upfront station capex for the first lease cycle is assumed one year prior to cash flow generated in Year 1
5. Represents all hydrogen station operating expenses including electricity costs, water costs, station personnel, and station maintenance; excludes corporate G&A expenses; based on expected hydrogen station utilization of 95.8%; 100% utilization would represent \$7,215,647 per year in annual station fuel and operating costs
6. IRR based on quarterly cash flows evenly spread over each year unless otherwise noted
7. Assumes stations are financed with 60% debt, with a maturity of 10 years and a 6% interest rate

(highlighting added)

315. The statements referenced in ¶¶314314 were false and misleading for the reasons identified in ¶¶267–283, 291 and 295. Prows informed Milton, Russell, and Brady that the base case numbers shared here were not achievable. Brady later testified that it was openly discussed among management at Nikola that the Company had not achieved the

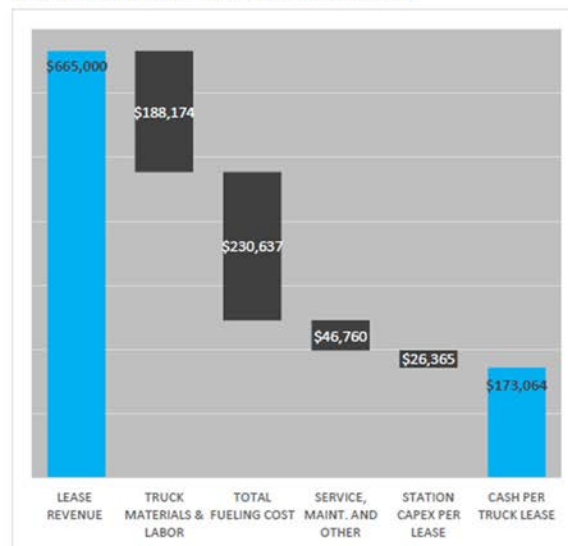
projections in its models. There was no basis for Defendants to claim that Nikola's bundled leases had achieved or could achieve "cost parity with diesel" and it was misleading to withhold information to the contrary that was within Defendants' possession.

316. The next slide in the April 6 8-K provided a breakdown of Nikola's profit per truck lease. The slide stated that Nikola's "Cost per kg of Hydrogen" was \$2.47:

SINGLE FCEV TRUCK LEASE UNIT ECONOMICS

Each individual FCEV truck lease is anticipated to have steady cash generation over the life of the lease

PROJECTED CASH GENERATED PER TRUCK LEASE



Projected Nikola Lease Model Economics ⁽¹⁾	
Gross Revenue	\$665,000
Materials	\$173,624
Labor - direct and indirect	7,500
Warranty Expense @ 3.0% of Truck Revenue	7,050
Truck Cost	\$188,174
Nikola Cost per kg of Hydrogen \$2.47	
x kg of Hydrogen used over 700,000 miles @ 7.5 Miles/kg	93,333
Hydrogen Cost Per Truck Lease ⁽²⁾	\$230,637
Service & Maintenance Cost @ \$0.067/Mile	\$46,760
Total Service & Maintenance Cost	\$46,760
Total Cost of Nikola Lease	\$465,571
Vehicle Profit Per Nikola Lease (Before Corporate G&A) ⁽³⁾	\$199,429
Vehicle Profit Margin	30.0%
Station CapEx per Lease ⁽⁴⁾	\$26,365
Cash Generated per Truck Lease ⁽⁵⁾	\$173,064

1. Analysis does not include potential financing charges that may be incurred to securitize and monetize some portion of the Nikola lease
2. Hydrogen fuel cost includes all hydrogen station related operating expenses including electricity costs, water costs, station personnel cost, and hydrogen station maintenance
3. Vehicle profit presented before corporate general and administrative expenses
4. Assumes each station has a 21-year useful life and supports 210 truck leases during each 7-year lease period
5. Does not include any potential upside from truck residual value at the end of the lease

(highlighting added)

317. The statements referenced in ¶316 were materially false and misleading for the reasons identified in ¶¶270–279, 291, and 315.

318. Page 24 of the slide presentation contained in the April 6 8-K described Nikola's strategy to mass-produce hydrogen fueling stations. The slide stated that the stations had a "Projected average one-time station capex of \$16.6M" and broke down the expected capital expenditures for Nikola hydrogen stations as requiring \$14,860,000 for "Station Production and Fueling Equipment" and \$1,750,000 for "Land and Building" for a "Total Station CapEx" of \$16,610,000.

H₂ STATION ROLL-OUT

DEDICATED SINGLE-STATION STRATEGY

Targeting dedicated routes segment enables a focused roll out of H₂ station network to optimally manage capital outlay

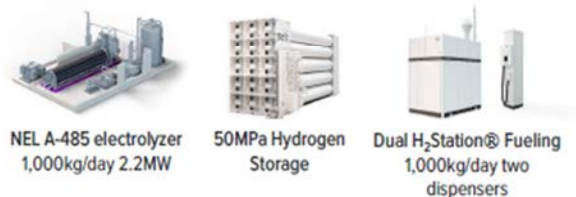
HYDROGEN STATION ROLL-OUT STRATEGY

- Hydrogen fueling stations will be built one at a time along dedicated routes, based on customer need and network optimization
- ~450,000 trucks, or ~25% of total fleets⁽²⁾, operate along dedicated routes, typically between a plant and distribution center along major freight corridors
- Initial build out of ~1,200 station equivalents⁽³⁾ will be developed to serve this section of the market (based on 210 trucks per 8,000kg station)
- Station locations determined by pre-orders, selecting customers with routes along the most trafficked freight corridors
- First stations may potentially operate as hubs, allowing fleets to refuel within a 250-mile radius
- Projected average one-time station capex of **\$16.6M** expected to support 630 leases over 21 years – improvements in technology are expected to reduce capex by 10% in 2025 and beyond

PROJECTED TOTAL STATION CAPEX

One Time Station Related Capex		
Station Production and Fueling Equipment ⁽¹⁾	\$	14,860,000
Land and Building		1,750,000
Total Station CapEx	\$	16,610,000
210 Trucks x 3 Product Cycles		630
Total Station Capex per 7-year Truck Lease	\$	26,365

Key Hydrogen Station Components



¹ Includes transformer/rectifier, electrolyzers, supply compressors, hydrogen storage, fueling station equipment, dispensers and installation
² Management/Industry source estimate
³ Equivalent of 1,200 stations producing 8,000kg; actual number of locations will likely vary as some stations will produce >8,000kgs

(highlighting added)

319. Slide 49 of the presentation contained in the April 6 8-K similarly stated that total station CapEx would be approximately \$17 million, comprised of \$15 million in hydrogen equipment and \$2 million in land and building.

1 320. The statements referenced in ¶¶318-319 were materially false and misleading
2 for the reasons identified in ¶¶270–279. Nikola’s hydrogen infrastructure team had told
3 executives that CapEx would be \$35.7 million in the revised base case hydrogen station,
4 and could jump into the hundreds of millions if Nikola employed a liquefaction strategy.
5 Additionally, the April 6 8-K failed to disclose that Nikola was not producing, and had
6 never produced any, Hydrogen. As Nikola’s Global Head of Infrastructure Development
7 Dale Prows testified at Milton’s criminal trial, the statement on slide 24 that “stations will
8 be built one at a time along dedicated routes” was “different than [saying we’re] not
9 producing hydrogen.”⁴⁰

10 321. The April 6 8-K also identifies an “R&D 8-Ton Station” at the Company’s
11 Phoenix, AZ headquarters which Nikola claimed was going to “begin in Q2 2020” and that
12 the “Station Offers H2 Production, storage, and dispensing” in addition to “(8) 1-ton
13 electrolyzers [sic] onsite capable of producing 8,000 kgs of hydrogen per day.”

14 322. The statements referenced in ¶321 were false and misleading for the reasons
15 identified in ¶¶270–279 and 291. At the time of the April 6 8-K, Nikola was already in the
16 second quarter of 2020 and the Company had not purchased electrolyzers to support the
17 R&D station, did not have any electricity supply contracts, and did not have any permits.
18 The Company could not possibly begin on its R&D Station in the current quarter.

19 323. The April 6 8-K also lists an “AB 8-Ton Pilot Station” to be located in “Van
20 Nuys, CA” to support Anheuser-Busch, with identical statistics to the “R&D 8-Ton
21 Station.” The April 6 8-K states that this station would “begin Q4 2020, complete by mid-
22 2022” and would offer “H2 production, storage, and dispensing” using its “(8) 1-ton
23 electrolyzers [sic]”

24
25 ⁴⁰ Milton Tr. at 823:4-8, ECF No. 224.

1 324. The statements referenced in ¶323 were false and misleading for the reasons
2 identified in ¶¶ 270–279 and 291. Nikola had not acquired or leased any land on which to
3 build any stations, nor had it even identified any particular locations on which it could
4 construct any station, even though stations would each require 3-10 acres, and if electricity
5 were to be generated onsite via a dedicated solar farm, the stations would need 100 acres.
6 It was completely unrealistic that work on the station could begin in Q4 2020. The process
7 of acquiring permits to install electrolyzers would itself take 5-6 months if not years. More
8 fundamentally, Nikola had not solved the engineering challenges of reliably dispensing
9 hydrogen and Nikola’s executives were informed by March 2020 at the latest that energy
10 prices in California would be prohibitively high, rendering any plan to produce 8,000 kgs
11 of hydrogen per day “onsite” through electrolysis unworkable. These problems were so
12 significant that the Company was considering a major pivot in its business model away
13 from the onsite production of hydrogen – the model the AB Station would purportedly
14 employ.

15 325. Nikola also aired a 17-minute long, pre-recorded “Analyst Day Video” on
16 April 6, 2020 at the investor event, prior to going into the presentation quoted in the
17 preceding paragraphs. The Analyst Day Video featured Milton, Russell, and Brady. The
18 video was uploaded to YouTube on April 9, 2020, and remained publicly available
19 throughout the Class Period. In the video, Milton gives a tour of Nikola’s headquarters.
20 The video then follows Milton as he moves outside to the demo station and states:

21 And welcome to the largest hydrogen station in the Western world. ***This is***
22 ***where all the hydrogen is stored, cooled, pumped and dispensed.***

23 326. The statement referenced in ¶325 was materially false and misleading for the
24 reasons identified in ¶295. Nikola was struggling to cool hydrogen at its demo station and
25
26

1 could not reliably dispense it. Touting the capabilities of the station without acknowledging
2 any of its limitations or problems was misleading.

3 327. In the Analyst Day Video, Milton then introduces Russell, who goes on to
4 give an overview of the demo hydrogen station. A Nikola Two prototype is docked inside
5 the demo station as Russell speaks. Referring to the Nikola Two, Russell states:

6 No diesel engine in here. Hydrogen fuel cells. They're taking oxygen from
7 the air combining with hydrogen that we have on board and they're turning
8 it into electricity. The only byproduct of this exchange is water ***which is what
we started out with when we made the hydrogen.***

9 328. The statement referenced in ¶327 was materially false and misleading for the
10 reasons identified in ¶¶279 and 291. It was false and misleading for Russell to state that
11 Nikola made the hydrogen.

12 329. The Analyst Day Video continues with the camera following Russell around
13 the Nikola Two. As Russell speaks, the camera moves with him to reveal Dale Prows,
14 Global Head of Infrastructure Development, holding a hydrogen fuel nozzle up to the
15 Nikola Two's fueling port. As Prows enters the frame, Russell says: "Over here, is Dale
16



1 Prows – he’s one of our hydrogen experts and he’s getting us some fuel so we can take a
2 ride here in a minute.”

3 330. The statement referenced in ¶329 was false and misleading for the reasons
4 identified in ¶¶279 and 295. As Prows has since acknowledged, he was not fueling the
5 Nikola Two in the Analyst Day Video.⁴¹ Russell had wanted to show the truck being
6 “fueled” and directed him to pretend to dispense hydrogen into it for the camera because it
7 could not be fueled in real time. Defendants knew they could not show the truck actually
8 being fueled because the station was notoriously unreliable, and even when it was working,
9 fueling would have taken 45-80 minutes, far longer than the entire run-time of the Analyst
10 Day Video. By stating that Prows was fueling the vehicle, Russell created the misleading
11 impression that the demo station could reliably and quickly dispense hydrogen on cue.

12 331. On April 9, 2020, Milton, Russell, Ubben, Brady, and Worthen attended a
13 meeting of Nikola’s Board of Directors. During the meeting, the Board received a
14 presentation warning that Nikola was unable to develop its hydrogen infrastructure. The
15 Board was advised that September 30, 2020, was the target date for completing the initial
16 blueprints, contract, and charging standard for Nikola’s hydrogen stations. No physical
17 infrastructure would be completed before this date.

18 332. The Proxy, signed by Milton and Girskey, also contained false and misleading
19 statements regarding Nikola’s hydrogen capabilities and preparedness. The Proxy claimed:

20 “we have initiated the development of the hydrogen station infrastructure by
21 completing our first 1,000 kg demo station in the first quarter of 2019 at our
22 corporate headquarters in Phoenix, Arizona. ***The demo hydrogen station
offers hydrogen storage and dispensing and serves as a model for future
hydrogen stations.***”

23
24
25 ⁴¹ Milton Tr. at 806:23-24, ECF No. 224; 1215:20-1216:3, ECF No. 226.

The following graphic appeared below the quoted text, which showed a “FAST 70 MPA FUELING STATION”⁴² and a “FAST 70 MPA HYDROGEN DISPENSER”:



333. The statements referenced in ¶332 were materially false and misleading for the reasons identified in ¶¶291, 295, and 270–279. Nikola’s demo station in Phoenix, Arizona functioned 21% of the time because of operational problems and could not fuel an empty truck in less than an hour. This made it unsuitable as a “model” for Nikola’s future stations and it was misleading to state that the station was “complet[ed]” or that it offered “dispensing” without disclosing its unreliability. It was further misleading to state that Nikola would soon build out a network to include “FAST,” high pressure, fueling equipment when Nikola had thus far failed to compress hydrogen to a point where it could quickly fuel a truck. Moreover, by March 2020, in part because of these operational problems, Nikola was considering switching its business model entirely to deploy liquid hydrogen at its stations. As the demo station dispensed gaseous hydrogen, it could not serve as a “model” for stations that might have to dispense liquid hydrogen instead. Moreover, the graphic was misleading to the extent that Nikola had no plan or ability to generate electricity from renewable energy, it had no agreements or plans to purchase that energy, if it could produce or purchase that energy, and by this point was not even certain it would produce hydrogen “onsite.” By omitting to disclose this information, and the material fact that Nikola had not produced *any* hydrogen to date, the statements misrepresented both

⁴² MPa, or MegaPascal, is a measure of pressure.

1 Nikola's current capabilities and that it was ready to build out its hydrogen network when
2 in fact it had yet to solve threshold operational problems or settle on a business model.

3 334. The Proxy also stated: "The Energy business unit **is developing and**
4 **constructing a network of hydrogen fueling stations** to meet hydrogen fuel demand for
5 FCEV customers."

6 335. The statement referenced in ¶334 was materially false and misleading when
7 made for the reasons identified in ¶¶270–279. Nikola was not then "constructing" hydrogen
8 fueling stations and was not close to doing so.

9 336. The Proxy also contained a section on Nikola's hydrogen station rollout
10 strategy. Under the sub-heading "California-First Hydrogen Station Strategy," the Proxy
11 stated:

12 Our initial plan for the station rollout begins with an eight-ton pilot station
13 accessible to the AB brewery in Van Nuys, California. From there, we then
14 plan to build up to 10-12 additional stations in California. These stations will
15 supply fuel for our launch customers in those geographies that have dedicated
16 routes in California. California is offering incentives to build out our
hydrogen fueling infrastructure and deploy zero-emissions vehicles,
including opportunities for funding along major freeway corridors. We
expect to rollout these stations in 2022-2023.

17 337. The statements referenced in ¶336 were materially false and misleading for
18 the reasons identified in ¶¶270–279. It was misleading to discuss Nikola's plans to build
19 stations in California without disclosing that Nikola's existing business model was not
20 economically feasible in the state, in part due to a minimum cost of electricity which was
21 more than triple Nikola's \$0.035/kWh target.

22 338. The Proxy also stated:

23 **Hydrogen will normally be produced on-site at each station via electrolysis.**
24 The electrolysis process occurs by passing electricity through water in an
electrolyzer, thus breaking the water molecule into gaseous hydrogen and
oxygen. **Nikola's base station is expected to have a daily production**
25 **capacity of 8,000 kg** and will be capable of supporting approximately 210

FCEV trucks per day. ***Our stations are designed to be scalable to up to 40,000 kg per day of production, if needed.***

The Proxy further explained the benefits of onsite production: “The single-station strategy allows for maximum capital efficiency. Each station will be highly utilized from the start and is expected to generate substantial revenue and cash flow, which can be used to fund the development of future stations.”

339. The statements referenced in ¶338 were materially false and misleading for the reasons identified in ¶¶270–279. It was misleading to state that Hydrogen would “normally” be produced onsite at the hydrogen stations while omitting to disclose that Defendants were considering a change in Nikola’s business model because onsite production was proving to be prohibitively expensive. Milton requested that Russell, Brady, and Prows not disclose to the market that Nikola was considering the liquefaction option. Additionally, it was misleading to tout that the stations were “designed” to have certain production capacities when the blueprints for the stations would not be completed until September 2020.

340. The Proxy also contained a risk factor that stated:

[G]iven our lack of experience building and operating fueling stations, there ***could be unanticipated challenges*** which *may* hinder our ability to provide our bundled lease to customers or ***make the provision of our bundled leases costlier than anticipated.*** If we are unable to build, or experience delays in building, our network of hydrogen fueling stations, we may be unable to meet our fueling commitments under our bundled lease arrangements with customers and experience decreased sales or leases of our vehicles, which may negatively impact our business, prospects, financial condition and operating results.

341. The statements identified in ¶340 were materially false and misleading for the reasons identified in ¶¶270–279. It was misleading to present as an unrealized

1 hypothetical the danger that “unanticipated challenges” could result in the bundled leases
 2 being costlier than anticipated without disclosing that Russell, Brady, and Milton had
 3 already been informed that Nikola’s station CapEx and cost of hydrogen would be
 4 substantially more expensive than Nikola’s feasibility target.⁴³

5 342. On May 30, 2020, Milton tweeted from his personal account in response to
 6 a user’s question about “where the electricity comes from.” Milton stated:

7 ***Wind solar and hydro for most. That’s all we really touch is non carbon***
 8 ***energy. Creating it on site under contracts give us 3 or 4 cents per kWh***
 9 ***clean energy making hydrogen very competitive and cheaper than diesel.***

10 343. The statements referenced in ¶342 were materially false and misleading for
 11 the reasons identified in ¶¶270–279 and 291.

12 344. On June 3, 2020, the day before Nikola went public, Nikola issued a press
 13 release announcing that it had “signed a purchase order with Nel ASA for [\$30 million
 14 worth of] 85 megawatt alkaline electrolyzers supporting five of the world’s first 8 ton per
 15 day hydrogen fueling stations. Together, these electrolyzers may produce over 40,000 kgs
 16 of hydrogen each day.” The press release quoted Milton as saying: “We are building the
 17 largest hydrogen network in the world . . . These electrolyzers will support five heavy duty
 18 hydrogen stations which will cover multiple states and trucking routes. The future of clean
 19 transportation is here, and fleets are lining up to be part of the transition with Nikola.”

20 345. The statements referenced in ¶344 were materially false and misleading. It
 21 was misleading to state that the electrolyzers would produce 40,000 kgs of hydrogen per
 22 day, or that the electrolyzers were “supporting five of the world’s first eight-ton-per-day
 23 hydrogen fueling stations,” or that Nikola was currently “building” a hydrogen network

24 ⁴³ *In re Alphabet, Inc. Sec. Litig.*, 1 F. 4th at 704 (“Risk disclosures that ‘speak entirely of
 25 as-yet-unrealized risks and contingencies’ and do not ‘alert the reader that some of these
 26 risks may already have come to fruition’ can mislead reasonable investors.”).

1 while omitting to disclose that Nikola had not leased, purchased or even identified any sites
 2 on which to locate its stations, did not have any contracts for electricity to use the
 3 electrolyzers, did not have any permits to install any electrolyzers at any sites, and had still
 4 not solved its threshold dispensing reliability problems. Nikola was nowhere near being
 5 ready to build any hydrogen production and dispensing stations at this time, and, as
 6 described more fully in ¶¶775-783 it was for these reasons that Nikola's Head of
 7 Infrastructure Development informed Russell, Brady, and Milton that they should not go
 8 forward with the purchase order because it was premature and would deceive investors.⁴⁴
 9 Additionally, Nikola had yet to decide whether it would produce hydrogen on-site (as the
 10 press release proclaimed) or opt for liquefaction. Defendants rushed the purchase order so
 11 that they could announce seemingly positive news the day before Nikola's IPO. Milton
 12 explained to the hydrogen infrastructure team, the purchase order would "give us great
 13 news to disclose leading up to the merger," and Russell pushed the marketing team to draft
 14 a press release "ASAP" so that Nikola could publicize the deal as it went public.

15 346. Nonetheless, Nikola's Board of Directors, including Ubben and Russell, as
 16 well as Brady, approved the purchase order of the electrolyzers and Nikola put out the June
 17 3, 2020 Press Release.

18 2. *Class Period False and Misleading Statements Regarding Hydrogen*
 19 *Capabilities, Infrastructure, and Costs*

20 347. In a June 4, 2020 interview with Yahoo! Finance, which remained publicly
 21 available to investors during the Class Period, Milton told investors:

22 ***But what Nikola solved was the cost-- was the economics on the trucking.***
 23 ***When we first started, hydrogen was \$16 a kilogram. We can now produce***
 24 ***it for well under \$4 a kilogram. So we've cut – it's one quarter of the cost***

25 ⁴⁴ Milton Tr. at 742:4-745:2, ECF No 222.

1 ***now than it was just a few years ago. And we're now cheaper to operate***
 2 ***per mile than diesel.***⁴⁵

3 348. On June 9, 2020, Milton replied on his personal Twitter account to another
 4 user, who appeared to have been citing a source projecting dispensed hydrogen to be priced
 5 at \$6.00 to \$8.50 per kilogram by 2025, “[w]e are already under \$4 working on \$3.”

6 349. On June 9, 2020, Milton tweeted from his personal account: “We source
 7 energy directly with either wind farms, solar or hydro electricity. Once we broker a 20
 8 year agreement, we feed it into the federal lines, pay some small fees, then take it out on
 9 location. This ensures the energy is clean and we don’t pay post meter rates.”

10 350. On June 9, 2020, Milton also tweeted from his personal account: “I am the
 11 biggest supporter of BEV and FCEV. We take all energy behind the meter which allows
 12 us to get below \$.04 per kWh and guaranteed clean energy. Once you go post meter, you
 13 can’t control the energy, you get 50% dirty energy. I am trying to help and educate. Not
 14 hurt BEV.”

15 351. Again, on June 9, 2020, Milton tweeted from his personal account: “Yes, we
 16 have stations going up in Canada and they use clean energy for our hydrogen. Solar, Wind
 17 and Hydro give us under \$4 per kg hydrogen.”

18 352. The statements referenced in ¶¶347–351 were materially false and
 19 misleading for the reasons identified in ¶¶270–279 and 291. Moreover, federal utilities had
 20 told Nikola that it would not be possible for Nikola to connect into federal electricity
 21 transmission lines in or before April 2020 – a concern Fretheim relayed to Russell in an
 22 email expressing alarm at the misstatements Milton was making in his podcast

23
 24 ⁴⁵ Yahoo Finance, *Nikola debuts on Nasdaq, how it plans to compete with other electric*
 25 *truck makers* (June 4, 2020), available at [https://finance.yahoo.com/video/nikola-debuts-](https://finance.yahoo.com/video/nikola-debuts-nasdaq-plans-compete-150245603.html)
 26 [nasdaq-plans-compete-150245603.html](https://finance.yahoo.com/video/nikola-debuts-nasdaq-plans-compete-150245603.html).

appearances. Additionally, on June 9, 2020, Prows noted in an email to Milton: “we don’t have PPA’s [sic] executed yet to support these electrolyzers.”

353. On June 9, 2020, Nikola’s stock price increased another \$6.46 per share, or 8.82%, above its closing price of \$73.27 per share on June 8, 2020.

354. On June 10, 2020, Milton tweeted from his personal account:
I love both BEV & Hydrogen. Here’s the breakdown to combat all the lies.
A loaded truck w/full weight & average weather conditions. **H2 is now under \$4 per kg and working on sub \$3 per kg. . . . 15 min full [sic] time** & 10,000 lbs lighter 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.** That’s why hydrogen makes sense for long haul. You’re not fighting utilities and rates.

355. The statement referenced in ¶354 was materially false and misleading for the reasons identified in ¶¶ 270–279, 291 and 295.

356. On June 10, 2020, Milton tweeted from his personal account in reply to a user who asked, “[w]ondering if I could get your thoughts on how you intend to lower the cost/kg of hydrogen?” Milton responded: “**We are now below \$4 per kg which is the lowest in the world. We started at \$16 and now we are at \$4. We plan on reducing that again.** The key is to order tons of equipment, scale it and buy clean energy cheap.”

357. In an interview on the *Autoline After Hours* podcast on or about June 11, 2020, Milton had the following exchange with the host:

MILTON: And we just ordered \$30 million worth of equipment two days – or three days ago for our electrolyzer. **So, it’s – all it takes is just electricity, clean energy from hydro, wind, or solar. And we can produce it all 24 hours of the day, never paying peak rates, never buying dirty energy, all zero emission. So, if you really love zero emissions –**

HOST: **You make it on site?**

MILTON: **We do. We make it on site.**

HOST: You make it on site at the station?

MILTON: Yes. And that’s why it’s so – this is – you know, people don’t get Nikola . . . we have the largest hydrogen station in the western world at our

headquarters. So, we’ve already proven it . . . *Now we’re down two, three bucks a kilogram and it’s pretty awesome.*”

358. The statements referenced in ¶¶356-357 were materially false and misleading for the reasons identified in ¶¶ 270–279 and 291.

359. The June 2020 S-1, signed by defendants Milton, Girskey, Russell, Brady and Ubben, contained further false and misleading statements.

360. Russell testified at Milton’s criminal trial that he understood before joining Nikola that “[p]ublic companies have to be very careful about their statements being true and correct . . . [b]ecause investors have to be able to rely on those.”⁴⁶ Yet the June 2020 S-1 contained misleading statements, including statements that portrayed Nikola’s future ambitions as if they had already been achieved.

361. In the June 2020 S-1, for example, Nikola touted the importance of both its future FCEV/BEV sales and hydrogen technology and infrastructure as “*core*” to the Company’s ongoing success and a “*key differentiator*”:

Our core product offering is centered around our battery-electric vehicle (“BEV”) and hydrogen fuel cell electric vehicle (“FCEV”) Class 8 semi-trucks. *The key differentiator of our business model is our planned network of hydrogen fueling stations.* We are 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.

362. This statement was materially false and misleading when made and omitted to reveal material facts for the reasons identified in ¶¶ 270–279 and 291. By March 2020 Nikola’s executives were aware that it could not produce and sell hydrogen at economically feasible rates. Additionally, as stated in ¶304, Nikola’s infrastructure plan was not “de-risk[ed]” and Nikola had still yet to commit, and was completely unprepared, to build out a “network of hydrogen fueling stations.” This statement also omitted to reveal material

⁴⁶ Milton Tr. at 958:3-7, ECF No. 224.

1 facts about the planned network of hydrogen fueling stations, the omission of which misled
2 reasonable investors.

3 363. At page 48 and 78–79, the June 2020 S-1 repeats some of the claims made
4 previously in the Proxy, discussed fully in ¶¶332-339, regarding the dispensing station at
5 Nikola’s Phoenix headquarters serving as “a model for future hydrogen stations,” that
6 Nikola was currently “constructing” hydrogen stations, the “California-First Hydrogen
7 Station Strategy,” and that hydrogen would “normally be produced on-site at each station.”
8 These statements are false for the same reasons as they were in the Proxy. Moreover, in
9 opposing the pending deal to purchase electrolyzers from Nel on May 31, 2020, Prows
10 emailed Russell and Brady: “It seems ludicrous that Nel insists on us buying more stations
11 when they can’t even make our demo station run even after a full year of pathetic efforts.”⁴⁷
12 The Phoenix HQ dispensing station was not and could not serve as a “model” for Nikola’s
13 hydrogen station for the simple reason that it did not work. Moreover, as Brady later
14 testified, by June 2020 “the costs were too high than what we were estimating. So we were
15 exploring different technology for electrolyzers as well as different vendors. We were
16 exploring various models so that we moved on away from on-site gaseous hydrogen
17 generation and dispensing to potentially a centralized hydrogen hub production separate
18 from dispensing stations.”⁴⁸ However, Brady testified that Nikola had not by this point
19 taken any steps to lock in land or electricity rates for any potential hydrogen station model
20 and understood that Nikola might have to resort to purchasing hydrogen from a vendor
21 rather than producing it, even when it began building out its stations in the coming years.

22
23
24 ⁴⁷ Milton Tr. at 743:2-5, ECF No. 222.

25 ⁴⁸ Milton Tr. at 1812:3-22, ECF No. 232.

1 364. On page 10, the June S-1 repeated the risk factor contained in the proxy
2 concerning “unanticipated challenges which *may*” cause bundled leases to be “costlier than
3 anticipated.” The risk factor was materially misleading for the same reasons identified in
4 ¶341.

5 365. In a June 18, 2020 article in the *Irish Times* titled “Nikola Motor Takes a
6 Big-Money Punt on the Hydrogen Future,” Milton is quoted as follows: “**We can now
7 produce hydrogen for between \$2 and \$4 a kilogram. We’re now cheaper than diesel
8 to operate per-mile** and we’re almost at parity with a battery electric per-mile, and
9 ultimately that’s game over for diesel.”

10 366. On June 19, 2020, *CNN* aired an interview with Milton on “First Move with
11 Julia Chatterley.” Milton made multiple statements suggesting Nikola was currently able
12 to produce hydrogen using zero-emission electricity, and that it could dispense hydrogen
13 in 15 minutes:

14 [T]he unique thing about Nikola is, we’re the only company that I know of
15 in the world that is fully vertically integrated. That means, we don’t just
16 provide the truck, **we provide all the hydrogen for it, too. We produce our
17 own hydrogen through zero emission methods. So, our supply chain is zero
emission from production to consumption** unlike anyone else in the world,
and that’s why there has really been so much excitement.

* * *

18 The advantage of hydrogen is you can turn that truck, **you can fill it up in 15
19 minutes and then go on the road again** and you can do that 24 hours a day
20 without ever stopping. **Hydrogen is produced over 24 hours of the day using
21 all the peak load from solar.** So, right now, throughout the world, like **solar
and wind energy, a lot of it is just given away or they pay people to take it
22 at their power companies because they have too much of it on the grid.**

23 367. On June 21, 2020, a Twitter user asked Milton, “can you please explain how
24 Nikola is achieving cheap power along freeways? And how will you still achieve cheap
25 power for stations inner city? This is more of the game changer for nikola [sic] in my
26 opinion. Thanks.” Milton responded: “**Freeway allows you 20 year PPP without paying**

1 **high fees to transport through utilities. It is nearly 5x cheaper to produce h2 on freeways,**
 2 **where hydrogen excels.”**

3 368. On June 21, 2020, Milton published on LinkedIn an article he wrote titled
 4 *Trevor Milton: Hydrogen vs Battery Electric-Why Nikola is the Leader-Reality Sets In*, in
 5 which he wrote:

6 Most hydrogen that Nikola makes is on the freeway . . . Nikola uses energy
 7 transmitted on the federal transmission lines before we enter the utility. We
 8 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.

9 369. The statements referenced in ¶¶365–368 were materially false and
 10 misleading for the reasons identified in ¶¶270–279, 291 and 295.

11 370. On June 27, 2020, Milton responded to a twitter user who posted “Hydrogen
 12 fuel prices could be as low as gas in five years” by tweeting:

13 It’s lower now. Which is awesome. Now has it below \$4-kilogram, which is
 14 cheaper than diesel. Working on sub \$2.50 kilogram now.

15 371. On or about July 6, 2020, Milton stated on the Founder Hour podcast: “**We**
 16 **drove hydrogen down from 16 dollars a kilogram down below four dollars a kilogram**
 17 **now.** So why is that? Well, why is that important? Because **now, I can provide zero**
 18 **emission to a truck cheaper than diesel.** We’ve now won the game.”

19 372. The statements referenced in ¶¶370-371 were materially false and misleading
 20 for the reasons identified in ¶¶270–279 and 291.

21 373. On or about July 14, 2020, the Observer.com posted a video of an interview
 22 with Milton on YouTube. Milton stated in this interview: “We build all of our hydrogen
 23 through clean energy directly from the energy source. So we go contract with like wind
 24 farms or solar farms or whatever. And with that, what we do, is **we take that energy and**

1 ***we produce hydrogen 24 hours a day with it. And then we can produce that very cheap***
 2 ***like you know like \$2, \$3 a kilogram. We're under \$4 a kilogram for hydrogen. . . .***

3 374. The statement referenced in ¶373 was materially false and misleading for the
 4 reasons identified in ¶¶270–279 and 291.

5 375. In the same July 14, 2020 Instagram Live video, Milton also stated:
 6 We charge cost per mile, that's it. Everything all in, service, warranty,
 7 maintenance, the entire thing, including the hydrogen fuel, it's under a dollar
 8 a mile and, and in some area – it depends on how many miles you drive a
 9 year. That can range much cheaper than that, all the way up to about a dollar
 10 a mile. It depends on – that is, um, that is – that's it how would – that's how
 11 it's built out and that's much – ***it's 20 to 30 percent less than diesel.***

12 376. The statement referenced in ¶375 was materially false and misleading for the
 13 reasons identified in ¶¶270–279 and 291.

14 377. In an interview with Jessica Meckmann published on LinkedIn on or about
 15 July 17, 2020, Milton stated: “We are contracting with wind, solar and hydro plants for
 16 energy and so far have been able to source plenty of energy under \$.04 per kWh. Most of
 17 it is much lower in the 2.5 [cents] per kWh range.”

18 378. In an interview on the *Chartcast* podcast (hosted by “Tesla Charts” and
 19 “Georgia Orwell”) recorded on or about July 17, 2020 and published by the podcast on or
 20 about July 19, 2020, Milton stated that Nikola has been able to “chop the cost of hydrogen
 21 from \$16 per kilogram down to – ***we're down below \$3 per kilogram on our hydrogen***
 22 ***right now. . . .***”

23 379. On the same *Chartcast* podcast, Milton claimed:

24 So the energy on the freeway, we, we, ***we tap directly into the main federal***
 25 ***transmission lines and we contract directly with groups . . .*** an example
 26 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.

1 380. Milton further claimed that “[w]e only look at areas where we can get this
2 energy for sub, you know, sub three or four cents a kilowatt hour, guaranteed 24 hours a
3 day. And we’ve been able to do that in almost every one of our major locations that we’re
4 going up, and we’re gobbling up those locations.” Milton also asserted that “we have exact
5 costs for our customers” and “every contract we’ve been doing right now has been to where
6 we get very good discounts, if not free for a lot of energy, you’re talking about, you know,
7 **\$2 a kilogram**, buck, buck 50, buck 80.”

8 381. In the *Chartcast* podcast, Milton also stated, among other things, that when
9 Nikola first started, hydrogen production stations “were going to be 50 to 60 million,” but
10 now Nikola is “down to, you know, 14, 14 million bucks” due to the “standardization of a
11 hydrogen station.”

12 382. On the same *Chartcast* podcast, Milton stated that Nikola has been able to
13 **“chop the cost of hydrogen from \$16 per kilogram down to – we’re down below \$3 per**
14 **kilogram** on our hydrogen right now: and that **“the standardization of the hydrogen station**
15 **was the most important aspect”** of cost-saving.”

16 383. In the same *Chartcast* podcast, Milton stated: “You have essentially 30, you
17 know, you’re almost, you, **you’re 25, 30% less than a diesel engine to operate**, um, which
18 is game over for diesel.”

19 384. The statements referenced in ¶¶377-383 were materially false and misleading
20 for the reasons identified in ¶¶270–279, and 291372. These statements were also materially
21 false and misleading because Defendants knew or recklessly disregarded but failed to
22 disclose that Nikola had not achieved the cost reductions from “standardization” of its
23 hydrogen stations. Moreover, on July 20, 2020, Elizabeth Fretheim (Global Head, Business
24 Development) emailed Defendants Russell, Brady and Worthen as well as Pablo Koziner
25
26

1 and the communications teams, acknowledging that Milton's statements that Nikola's
2 "cost of hydrogen below \$3/kg" was an "inaccuracy[y]." Fretheim also took issue with
3 Milton's portrayal of the Company as "gobbling up" locations when Nikola had neither
4 acquired any property nor identified any specific sites to acquire.

5 385. The July 2020 S-1, signed by defendants Milton, Girskey, Russell, Brady and
6 Ubben, contained additional false and misleading statements.

7 386. At page 78 of the July 2020 S-1, as in the June S-1 and the Proxy, Nikola
8 stated, "[W]e have initiated the development of the hydrogen station infrastructure by
9 completing our first 1,000 kg demo station in the first quarter of 2019 at our corporate
10 headquarters in Phoenix, Arizona. ***The demo hydrogen station offers hydrogen storage***
11 ***and dispensing and serves as a model for future hydrogen stations.***" Below, the S-1
12 included a graphic showing a "FAST 70 MPA FUELING STATION" and a "FAST 70
13 MPA HYDROGEN DISPENSER."

14 387. The statements referenced in ¶386 were materially false and misleading for
15 the same reasons identified in ¶¶295 and 333.⁴⁹

16 388. The July S-1 also repeated the statements in the June 2020 S-1 and the Proxy
17 regarding the "California-First Hydrogen Station Strategy," that hydrogen would
18 "normally be produced on-site at each station via electrolysis," that Nikola was
19 "constructing" hydrogen stations, as well as the risk factor regarding the possibility of
20 bundled leases proving to be costlier than anticipated. These statements were misleading
21 for the same reasons identified in ¶¶332-341.⁵⁰

23 ⁴⁹ *In re Alphabet, Inc. Sec. Litig.*, 1 F. 4th at 704 ("Risk disclosures that 'speak entirely of
24 as-yet-unrealized risks and contingencies' and do not 'alert the reader that some of these
risks may already have come to fruition' can mislead reasonable investors.").

25 ⁵⁰ *In re Alphabet*, 1 F.4th at 704.

1 389. In late July 2020, when Nikola’s stock price began to decline, Milton
2 contacted a Nikola senior executive to discuss the possibility of Milton buying shares of
3 Nikola “for the company’s health” because Nikola has had “zero news for two weeks and
4 it’s important to prevent our stock from losing credibility.” Shortly thereafter, Milton began
5 another “media blitz” to inflate Nikola’s stock price.

6 390. In an interview on the *This Week in Startups* podcast on or about July 31,
7 2020, Milton claimed that “what we did is ***we’ve been able to drive hydrogen to under \$4***
8 ***a kilogram, we’re about \$3 a kilogram on hydrogen now.***” When asked by the host how
9 Nikola got “from 14 to 3 – is there some special sauce there,” Milton replied, “[y]eah, very
10 simple. It’s all about – ***it’s about standardization.*** . . . So in America right now, there’s no
11 two hydrogen stations that were actually developed on the same platform, they’re all
12 engineered from the ground up separately ***So we, we developed the first ever standard***
13 ***hydrogen station that can be produced in the thousands.***”

14 391. The statement referenced in ¶390 was materially false and misleading for the
15 reasons identified in ¶¶270–279, 291 and 384. Nikola had not developed a standard
16 hydrogen station that could be mass produced. Milton and the Board knew that Nikola had
17 projected that it would not even have blueprints for the stations until the end of September
18 2020 at the earliest.

19 392. In an interview on the *Stockcast* podcast on or about July 31, 2020, Milton
20 stated that “diesel’s dead in the trucking world. And why is that? Because trucking operates
21 on eight percent margins, somewhere around there. So, if you’re eight percent less than
22 diesel, it’s already game over and so that’s why it’s so great. ***We’re almost 20 to 30 percent***
23 ***less than diesel right now and we’re working on, you know, if we can get really good, if***
24 ***we can get down to two dollars a kilogram.***”

1 393. The statements referenced in ¶¶392 were materially false and misleading for
 2 the reasons identified in ¶¶270–279 and 291. Moreover, Milton, along with Russell, Brady,
 3 Worthen, Girskey, and Ubben, had recently attended a July 23, 2020 Board of Directors
 4 meeting in which the hydrogen infrastructure team reiterated that the Company still had
 5 not entered into any PPAs.

6 394. In an interview on the *Barron's Roundtable* show on Fox Business on or
 7 about August 1, 2020, Milton was asked by the anchor: “right now hydrogen, which powers
 8 those cells is about four times as expensive as diesel. Why do you like fuel cells and how
 9 can you make this actually work?” Milton responded:

10 Yeah, that's, uh, that was a big problem we tackled. That's why we came
 11 into the market. We saw an opportunity to bring the cost of hydrogen down
 12 going zero emission and **putting it on parity or lower than diesel**. And that's
 13 the first time in history that's been able to be done. So it went from about
 14 \$16 a kilogram, **we're down now below \$4 a kilogram and there's lots of**
 15 **reasons for that. But the main one is standardization of a hydrogen station**
 16 **worldwide has allowed us to drive that cost down dramatically.**

17 395. On August 3, 2020, a Twitter user asked Milton to share how he reduced the
 18 price of hydrogen in a way that was “more technical than standardized stations.” Milton
 19 replied: “Essentially, **\$.04 kWh equals under \$4 per kg. We are already locking in much**
 20 **lower than \$.04 per kWh** on our stations going in as they are on freeways with 20 year
 21 PPA. That along with other things I mentioned get us below that.”

22 396. The statements referenced in ¶¶394-395 were materially false and misleading
 23 for the reasons identified in ¶¶270–279, 291, and 384.

24 397. On August 3, 2020, Nikola's stock price increased \$6.49 per share, or
 25 21.63%, above its closing price of \$30.00 per share on the prior trading day, July 31, 2020,
 26 which was an increase of \$7.43 per share, or 25.56%, above its closing price of \$29.06 per
 share on July 30, 2020.

1 398. The Q2 2020 10-Q, filed on August 4, 2020, signed by defendants Russell
2 and Brady, contained additional false and misleading statements.

3 399. The Q2 2020 10Q contained the same risk factor as the Proxy, June S-1, and
4 July S-1 that “there ***could be unanticipated challenges*** which ***may*** hinder our ability to
5 provide our bundled lease to customers or ***make the provision of our bundled leases***
6 ***costlier than anticipated.***” This statement was materially misleading for the same reasons
7 identified in ¶¶270-279, 3401, and 393.⁵¹

8 400. On August 4, 2020, Nikola held its Q2 2020 Earnings Call. Russell,
9 Worthen, and Brady participated in the call. In his remarks, Russell highlighted Nikola’s
10 recent purchase agreement for electrolyzers:

11 During the quarter, we signed an order for 85 megawatts of alkaline
12 electrolyzer capacity from Nel ASA, which is enough to build five of our
13 base 8-ton hydrogen production and dispensing stations. At full capacity,
14 these stations can produce 40,000 kilos of hydrogen every day which is
15 enough to fuel up to 1,100 trucks. ***This milestone marks the beginning of***
16 ***the construction of our hydrogen station network.***

17 401. The statements referenced in ¶400 were materially false and misleading for
18 the reasons identified in ¶¶270–279 and 345. Russell was putting the chicken before the
19 egg. It was misleading to refer to the purchase of electrolyzers as a “milestone” marking
20 the “beginning of the construction of [Nikola’s] hydrogen station network” when Nikola
21 was not in a position to construct any hydrogen stations for a myriad of reasons that Russell
22 and Brady knew of. Prows had protested the electrolyzer purchase as premature to Russell
23 for this very reason: Nikola had no PPAs, couldn’t yet reliably dispense hydrogen, and had
24 yet to identify any specific sites on which to build stations, let alone acquire and permit
25 them. In the summer of 2020, Nikola had merely identified general municipalities in which
26 it aspired to build stations, such as Los Angeles, but had not had any conversations to

⁵¹ *In re Alphabet*, 1 F.4th at 704.

1 purchase or lease any specific sites. Agreeing to purchase electrolyzers did little to move
 2 the needle. Brady testified that by June 2020 at the latest Nikola understood it might have
 3 to continue purchasing hydrogen from third-party vendors for years to come because the
 4 Company could not produce it.⁵² Russell’s representing to investors that purchasing
 5 electrolyzers was a “milestone mark[ing] the beginning of the construction of our hydrogen
 6 station network” was made with reckless disregard for the truth and the danger of
 7 misleading investors was so obvious that Russell must have been aware of it.

8 402. During the August 4, 2020 Q2 2020 Earnings Call, analyst Emmanuel Rosner
 9 inquired about the “cost of electricity” Nikola had targeted. Rosner asked Nikola’s
 10 executives to explain if they had had any discussions with electricity companies and if they
 11 had received any indication that Nikola’s “input cost is actually realistic.” Russell and
 12 Brady responded:

13 **RUSSELL:** Absolutely. It’s a great question. *So, we can make hydrogen for*
 14 *about a decimal move or better on the cost of electricity. So, our – if we can*
 15 *get, say, the electricity at \$0.035, then we should be able to make hydrogen*
 16 *at \$3.50 a kilo or better, given our current technology and the current*
 17 *design of our stations.* So, the key for us to have our target hydrogen cost is
 18 for us to get the electricity at the right cost. . . .

19 This is one of the reasons we got a big investment from a solar provider out
 20 there. We have a big – we had a big investment in our private realm from
 21 Hanwha, which is a big solar panel provider and solar array manufacturer,
 22 because they can profitably build solar arrays and sell the electricity on a
 23 long-term basis for the projected life of our stations *even on a fixed cost*
 24 *basis for our target price. They can do that. . . .*

25 The other thing you want to pay attention to is the wholesale price of
 26 electricity at the major trading points in places where it’s free to trade. You’re
 going to see that price, when it’s being driven by the renewables, that price
 falls way down there. It even goes to zero once in a while and occasionally
 goes negative when one grid has too much of it. That’s the reason *we have*
faith that we’re going to be able to hit this number especially on the average.
Some places will be lower, some places a little bit higher. But we’re going
to be on our average. We’re very confident.

⁵² Milton Tr. at 1812:3-22, ECF No. 232.

1 **BRADY:** And, Emmanuel, we are having some conversations in the Phoenix
 2 area and ***we’re getting some indications that it can be below \$0.035 per***
 3 ***kilowatt hour.*** And we are also having some number of discussions in
 4 various areas about collaboration and various projects where we can achieve
 5 that.

6 403. The statements referenced in ¶402 were materially false and misleading for
 7 the reasons identified in ¶¶270–279 and 291. It was additionally misleading for Russell to
 8 state that Nikola “can make hydrogen for about a decimal move or better on the cost of
 9 electricity” when Nikola had never made any hydrogen (a fact which Defendants had never
 10 disclosed and, as the testimony of Dale Prows illuminated, conspicuously avoided
 11 disclosing).⁵³ Moreover, it was misleading for Russell and Brady to state that Nikola could
 12 achieve its target price of \$0.035 for electricity when this figure was unachievable. Russell
 13 and Brady both representing that Nikola would be able to produce hydrogen and
 14 economically feasible prices – when they both knew Nikola at the time could not produce
 15 any hydrogen and all internal models stated Nikola could not come close to producing
 16 hydrogen at prices anywhere near economically feasible prices was made with reckless
 17 disregard for the truth and the danger of misleading investors was so obvious that Russell
 18 and Brady must have been aware of it.

19 404. Following a short period of stock price decline in August 2020, Milton sent
 20 a text message to a senior Nikola executive requesting to “talk strategy ASAP.” Milton
 21 went on to say that the “continual stock decline is going to erode any confidence in our
 22 stock. We have to do something We can’t just sit here and watch it collapse.”

23 405. On August 13, 2020, Milton tweeted: “***We currently make our own green***
 24 ***H2 for under \$4 a kilogram.*** We are open to others down the road, but ***we have our stations***
 25 ***everywhere.***”

26 ⁵³ Milton Tr. at 823:8, ECF No. 224.

1 **going up** and need to focus on completing ours first. Then we can work with others as we
2 expand.”

3 406. On September 14, 2020, Nikola issued a press release unequivocally refuting
4 the claims made by the Hindenburg Report. Nikola’s Board of Directors had held a meeting
5 on September 13, 2020, in which Milton, Russell, Brady, Russell, Girskey, and Ubben
6 approved of a communications protocol for responding to the Hindenburg Report,
7 including the release of the September 14 press release. In one paragraph, the press release
8 stated: “*Short Seller Intentionally Underestimates Extent of Hydrogen Production*
9 *Capabilities.*” In defense of Nikola’s hydrogen capabilities, the press release stated:
10 “Nikola has already installed a 1,000 kg hydrogen storage and dispensing demo station at
11 its headquarters and ordered over \$30 million of electrolyzers to support the initial
12 hydrogen station rollout.” The press release also included a link to the June 3, 2020 press
13 release announcing the Nel purchase order, and concluded that the allegations by the short
14 seller regarding Nikola’s hydrogen production capabilities “*are false and misleading, and*
15 *designed to manipulate the market to profit from a manufactured decline in Nikola’s stock*
16 *price.*”

17 407. The statements referenced in ¶406 were materially false and misleading for
18 the reasons identified in ¶¶270–279, 291, 295 and 345. Specifically, Hindenburg did not
19 underestimate Nikola’s “Hydrogen Production Capabilities”—it accurately reported that
20 Nikola had never produced any hydrogen, which Defendants knew but did not disclose.
21 This was new information that had never been previously reported to investors. Moreover,
22 by referring to the purchase order of Nel electrolyzers, Defendants again created the
23 misleading impression that Nikola was much closer to being able to build out its hydrogen
24 station infrastructure than it was, as described in ¶401. By this point, Nikola had not even
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1 decided whether it would employ an on-site production model for hydrogen or a
2 liquefaction model, and, as Brady later admitted, Nikola's executives internally
3 understood that the company might have to continue purchasing hydrogen from third-party
4 vendors for years to come. It was additionally misleading for Nikola to tout that its demo
5 station illustrated its hydrogen capabilities without disclosing that the station was
6 inoperable 79% of the time and routinely took 45-80 minutes to fuel a truck.

7 408. The Hindenburg Report also stated that "Trevor has claimed in a presentation
8 to hundreds of people and in multiple interviews to have succeeded at cutting the cost of
9 hydrogen by ~81% compared to peers and to *already be producing hydrogen*. Nikola has
10 not produced hydrogen at this price or at *any* price." This was a truthful and accurate
11 statement and Defendants claiming the Hindenburg Report was "false and misleading" was
12 untrue as each of the Defendants knew Nikola was not producing hydrogen and at the costs
13 claimed by Milton.

14 409. The statements referenced in ¶406 were additionally misleading because by
15 attempting to discredit the Hindenburg Report, Defendants obscured the legal risks that
16 they understood Nikola faced. Nikola's Board of Directors met several times following the
17 Hindenburg Report. On September 11, 2020, the Board held a meeting attended by Milton,
18 Russell, Girskey, Ubben, Brady, and Worthen. Attorneys from Kirkland & Ellis were also
19 "present for the purpose of providing legal advice to the Company in anticipation of
20 potential litigation." The Kirkland & Ellis attorneys also discussed and answered questions
21 from the Board regarding "the process and strategy with respect to the SEC, and other legal
22 matters that can be expected to arise in the coming weeks." The Board met again on
23 September 13, 2020, with Milton, Russell, Girskey, Ubben, Brady, and Worthen in
24 attendance. On September 13, 2020, the Board discussed the "SEC Process and Other
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Legal Matters” and the impact of the SEC investigation on future transactions, as well as Milton’s use of social media. Nonetheless, despite discussing the real risks the Company was facing as a result of the Hindenburg Report’s revelations, Milton, Russell, Girskey, Ubben, Brady, and Worthen approved Nikola’s communications plan for responding to the Hindenburg Report and approved issuing the September 14, 2020 press release—a draft of which was distributed to the Board at the meeting.

410. On September 22, 2020, Brady attended the Evercore ISI Virtual Forum. In a question-and-answer segment, the host brought up Nikola’s target of acquiring electricity for \$0.03 to \$0.04/kWh and asked Brady “how do you get comfort over those assumptions and then how do we think about this cost assuming those assumptions relative to diesel at \$2.50 a gallon?” In his response, Brady stated:

[W]hat we **guarantee** them [customers] is that you got fixed price lease over seven years. And what that means is that ***we’re going to make sure that we are able to deliver hydrogen at the right price and we believe that right price is sub \$3.*** And as you pointed out, John, the biggest variable especially from operating perspective to achieve that is really cost of electricity. When we think about cost of electricity as you know it all depends on the location and that’s really important and ***we recognized that in many locations where you have solar and wind or even hydro that’s highly achievable.***

411. The statements referenced in ¶410 were materially false and misleading for the reasons identified in ¶¶270–279. Prows had notified Brady in March 2020 that a “sub \$3” cost was not “achievable,” in large part because Nikola was struggling to find cheap electricity. As Brady would later testify at Milton’s criminal trial, Nikola was finding it challenging at this very time, September 2020, to find a partner who could provide energy at a price close to 3.5 cents per kilowatt hour.⁵⁴

⁵⁴ Milton Tr. at 1810:5-12, ECF No. 232.

E. Defendants' False and Misleading Statements Regarding Hydrogen Production, Dispensing, and Infrastructure Caused Investor Losses

412. Prior to and during the Class Period, as detailed herein, Defendants engaged in a scheme to deceive the market and a course of conduct that artificially inflated the price of Nikola and operated as a fraud or deceit on Class Period purchasers of Nikola common stock by failing to disclose and misrepresenting the adverse facts detailed herein.

413. Class members unknowingly and in reliance upon Defendants' materially false or misleading statements and/or omissions (prior to and during the Class Period) regarding Nikola's hydrogen capabilities and energy supply purchased Nikola common stock at artificially inflated prices, as the market perceived Nikola to be far more advanced in its ability to build out a network of stations that could produce and dispense low-cost hydrogen fuel. But for Defendants' misrepresentations, omissions, and fraudulent scheme, Lead Plaintiffs and other Class members would not have purchased Nikola common stock at the artificially inflated prices at which it traded during the Class Period.

414. The truth regarding Defendants' fraud was revealed in a series of corrective disclosures and/or materializations of concealed risk that occurred between September 9, 2020 and July 29, 2021. During this time, the price of Nikola common stock fell precipitously as the artificial inflation caused by Defendants' unlawful conduct exited Nikola common stock.

415. The decline in the price of Nikola common stock during this period is directly attributable to the market absorbing information that corrected and/or reflected the materialization of risks concealed by the Defendants' material misrepresentations or omissions prior to and during the Class Period.

416. As a result of their purchases of Nikola common stock during the Class Period, Lead Plaintiffs and the other Class members suffered economic loss (*i.e.*, damages)

1 under the federal securities laws. Defendants’ materially false and misleading statements
2 had the intended effect and caused Nikola common stock to trade at artificially inflated
3 levels throughout the Class Period and, in certain instances, caused inflation in Nikola’s
4 stock price.

5 417. By concealing from investors the adverse facts detailed herein, Defendants
6 presented a false and misleading picture of Nikola’s business. As the truth about the
7 Company and the extent of the fraud was revealed to the market, the price of Nikola
8 common stock fell significantly. This decline removed the inflation from the price of
9 Nikola common stock, causing real economic loss to investors who had purchased Nikola
10 common stock during the Class Period.

11 418. Moreover, the market for Nikola common stock was open, well-developed,
12 and efficient at all relevant times. As a result of Defendants’ misstatements and material
13 omissions, as alleged herein, Nikola common stock traded at artificially inflated prices.
14 Lead Plaintiffs and other Class members purchased Nikola common stock relying upon the
15 integrity of the market relating to Nikola common stock and suffered economic losses as a
16 result thereof.

17 419. On September 10, 2020, the relevant truth and foreseeable risks concealed
18 by Defendants’ misconduct and their false representations and omissions prior to and
19 during the Class Period were partially revealed when Hindenburg Research published the
20 Hindenburg Report, partially exposing the truth about Nikola’s hydrogen capabilities,
21 supposedly “off-grid” headquarters, and ownership of natural gas wells, among other
22 subjects.

23 420. The Hindenburg Report asserted that Nikola had never produced any
24 hydrogen and that Milton’s claims that Nikola could do so at low cost—*e.g.*, that the
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1 Phoenix demo station could “produce over 1,000 kilograms a day on site,” that Nikola was
2 “down below \$3/kg on our hydrogen now”—were baseless. The Hindenburg Report also
3 found that Nikola was wholly unprepared to build out a nationwide hydrogen production
4 and dispensing infrastructure. Hindenburg dug into the backgrounds of Nikola’s primary
5 hydrogen infrastructure personnel and learned that they (including Milton’s brother, Travis
6 Milton) had little to no relevant experience. Hindenburg based its report in part on
7 “extensive evidence—including recorded phone calls, text messages, private emails and
8 behind-the-scenes photographs” and no market participant had previously compiled and
9 released the information Hindenburg had on Nikola’s hydrogen capabilities. Hindenburg
10 was the first to put together and release these findings.

11 421. Additionally, the September 10, 2020 publication of the Hindenburg Report,
12 and related news coverage reporting on Nikola’s representations about its hydrogen
13 production capabilities and technological advancements to achieve low-cost hydrogen was
14 a foreseeable consequence of, and within the zone of the risk concealed by, the Defendants’
15 misrepresentations and omissions regarding Nikola’s hydrogen capabilities and the
16 Company’s readiness to begin building a hydrogen network.

17 422. As a direct and proximate result of this corrective disclosure and/or
18 materialization of the foreseeable risks concealed by Defendants’ fraud, the price of Nikola
19 common stock declined \$4.80 per share, or 11.33%, to close at \$37.57 per share on
20 September 10, 2020.

21 423. On September 11, 2020, Nikola’s stock price continued to fall in response to
22 the news, falling another \$5.44 per share, or 14.5%, to close at \$32.13 per share on
23 September 11, 2020.

1 424. The decline in Nikola’s common stock price on September 10, 2020 and
2 September 11, 2020 were a direct result of the nature and extent of Defendants’ prior
3 misstatements and omissions being revealed to investors, including Defendants’ statements
4 concerning Nikola’s hydrogen capabilities. The timing and magnitude of the Nikola
5 common stock price decline evidences the impact Defendants’ statements had on the
6 Company’s stock price during the Class Period and negate any inference that the loss
7 suffered by Lead Plaintiffs and other Class members was caused by changed market
8 conditions or macroeconomic, industry, or Company-specific factors unrelated to
9 Defendants’ fraudulent conduct. Moreover, various analysts (including those from S3
10 Analytics, Deutsche Bank Research, and RBC Capital Markets) issued reports attributing
11 Nikola’s stock price decline to the information revealed in the Hindenburg Report.

12 425. As referenced in ¶ 406, on September 14, 2020, before the market opened,
13 Nikola issued a statement that unequivocally denied the allegations in the Hindenburg
14 Report, asserting that Hindenburg “Intentionally Underestimates Extent of [Nikola’s]
15 Hydrogen Production Capabilities” and concluding that the Hindenburg Report’s
16 assertions about hydrogen were “false and misleading.”

17 426. On Nikola’s fierce denials of any wrongdoing, Nikola’s stock price increased
18 \$3.66 per share, closing at \$35.79 on September 14, 2020, an 11.39% increase from its
19 previous close on September 11, 2020.

20 427. On September 14, 2020, the relevant truth and foreseeable risks concealed
21 by Defendants’ misconduct and their false representations and omissions prior to and
22 during the Class Period regarding Nikola’s hydrogen capabilities partially materialized
23 when, after the market had closed, Bloomberg reported that the SEC was investigating
24 Nikola in connection with the allegations in the Hindenburg Report. “[T]he announcement
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1 of an SEC investigation related to an alleged misrepresentation . . . can serve as a corrective
 2 disclosure for the purpose of loss causation.” *Lloyd v. CVB Fin. Corp.*, 811 F.3d 1200,
 3 1202 (9th Cir. 2016).⁵⁵ The investigation announcements partially revealed the relevant
 4 truth concealed and/or obscured by Defendants’ prior misstatements and omissions
 5 regarding the Nikola’s hydrogen capabilities as it was an acknowledgement that the
 6 Hindenburg Report was credible, which was later confirmed. The market therefore
 7 understood the announcements to be a revelation of fraud and reacted accordingly. Thus,
 8 the SEC and DOJ investigations announced in September 2020 were caused, in part, by
 9 Defendants’ misstatements and omissions related to Nikola’s hydrogen capabilities, as the
 10 agencies later confirmed.⁵⁶

11 428. The next day, on September 15, 2020, during intra-day trading, the Wall
 12 Street Journal reported that the DOJ had joined the SEC’s investigation of Nikola. Also,
 13 during the trading day, *CNBC* published an article noting explaining that the “SEC and
 14 DOJ are reportedly looking into the merits of a short seller’s claims that electric vehicle
 15 manufacturer Nikola misled investors.

17 ⁵⁵ The Ninth Circuit clarified in *Mineworkers’ Pension Scheme v. First Solar Inc.*, 881
 18 F.3d 750 (9th Cir. 2018) that “Disclosure of the fraud is not a sine qua non of loss
 19 causation, which may be shown even where the alleged fraud is not necessarily revealed
 20 prior to the economic loss. . . . In *Lloyd*, though the plaintiffs pleaded that the market
 21 understood the subpoena to be a revelation of fraud, we did not suggest that this path is
 22 the only way to satisfy loss causation. Indeed, we affirmed the opposite: the plaintiffs
 23 simply adequately pleaded a causal connection between the material misrepresentation
 24 and the loss.” *Id.* at 753 (citations and internal quotations omitted).

25 ⁵⁶ The Ninth Circuit clarified in *Mineworkers’ Pension Scheme v. First Solar Inc.*, 881
 26 F.3d 750 (9th Cir. 2018) that “Disclosure of the fraud is not a sine qua non of loss
 causation, which may be shown even where the alleged fraud is not necessarily revealed
 prior to the economic loss. . . . In *Lloyd*, though the plaintiffs pleaded that the market
 understood the subpoena to be a revelation of fraud, we did not suggest that this path is
 the only way to satisfy loss causation. Indeed, we affirmed the opposite: the plaintiffs
 simply adequately pleaded a causal connection between the material misrepresentation
 and the loss.” *Id.* at 753 (citations and internal quotations omitted).

1 429. The same day, Hindenburg issued also a 25-page rebuttal report, which
2 argued that Nikola had “debunked nothing” and had “either confirmed or sidestepped
3 virtually everything we wrote about, and in some cases raised new unanswered questions.”

4 430. The SEC and DOJ investigations were triggered in part by and focused
5 extensively on Defendants’ statements regarding Nikola’s hydrogen production
6 capabilities and the Company’s costs of producing hydrogen, demonstrating that both
7 actions were causally linked to Defendants’ misstatements on these subjects. Nikola would
8 ultimately settle civil fraud charges with the SEC for \$125 million in December 2021. In
9 announcing the settlement, the SEC stated that Nikola “misled investors by
10 misrepresenting or omitting material facts about the refueling time of its prototype vehicles,
11 the status of its headquarters’ hydrogen station, [and] the anticipated cost and sources of
12 electricity for its planned hydrogen production...” Moreover, the SEC and DOJ actions
13 against Milton centered on Nikola’s hydrogen capabilities. The SEC complaint against
14 Milton confirmed that the SEC’s action had been prompted by statements about Nikola’s
15 hydrogen production capabilities and costs, such as that Nikola could produce hydrogen,
16 source electricity for under \$0.04/kWh, or achieve a TCO that was cheaper than diesel. The
17 DOJ indictment, meanwhile, stated that Nikola had never produced hydrogen and that the
18 demo station “has been plagued with problems because many components of the station
19 were not built to withstand the extreme heat in Phoenix.” Accordingly, the SEC and DOJ
20 investigations announced in September 2020 were caused, in part, by Defendants’
21 misstatements and omissions related to Hydrogen, as the agencies later confirmed.

22 431. The announcement of the DOJ and SEC investigations was also a
23 materialization of the risk concealed by Defendants’ false statements defending Milton in
24 the wake of the Hindenburg Report, including the September 14, 2020 Press Release.

1 Defendants misled investors about the risks related to Milton's misstatements by insisting
2 that the Hindenburg Report's claims regarding Milton, including those asserting Milton
3 exaggerated Nikola's hydrogen production capacity, were "false and misleading" and
4 "defamatory" and "Intentionally Underestimate[d]" Nikola's "Hydrogen Production
5 Capabilities." These statements masked the risks that Milton had exposed the Company to
6 government action and that Milton may have to depart Nikola. These obscured risks were
7 partially realized by the announcement of the DOJ's and SEC's investigations.

8 432. As a direct and proximate result of this corrective disclosure and/or
9 materialization of the foreseeable risks concealed by Defendants' fraud, the price of Nikola
10 common stock declined by \$2.96 per share, closing at \$32.83 on September 15, 2020, an
11 8.27% decline from its previous close on September 14, 2020.

12 433. The decline in Nikola's common stock price on September 15, 2020 was a
13 direct result of the nature and extent of Defendants' prior misstatements and omissions
14 regarding Nikola's hydrogen capabilities and costs being revealed to investors. The timing
15 and magnitude of the Nikola common stock price decline evidences the impact Defendants'
16 statements had on the Company's stock price during the Class Period and negate any
17 inference that the loss suffered by Lead Plaintiffs and other Class members was caused by
18 changed market conditions or macroeconomic, industry, or Company-specific factors
19 unrelated to Defendants' fraudulent conduct.

20 434. On Sunday September 20, 2020, the relevant truth and foreseeable risks
21 concealed by Defendants' misconduct and their false representations and omissions prior
22 to and during the Class Period regarding Nikola's hydrogen capabilities and costs
23 materialized when Nikola announced that Defendant Milton had resigned from his position
24 as Executive Chairman and from the Board of Directors.

1 435. Following the Hindenburg Report’s release, Nikola’s Board of Directors held
2 a flurry of meetings on September 11, 2020, September 13, 2020, September 15, 2020,
3 September 16, 2020, September 18, 2020, and September 20, 2020. The Board discussed
4 Milton’s use of social media, the SEC and DOJ investigations, and the Hindenburg Report
5 at these meetings. Milton tendered his resignation at the last of these meetings, on
6 September 20, 2020. Milton’s resignation was directly caused by his false and misleading
7 statements—particularly those made on social media, which frequently misstated Nikola’s
8 hydrogen production capabilities and costs. *CNN* reported on September 21, 2020, that as
9 part of his separation agreement, Milton agreed to “revise any references to the positions
10 he held at Nikola on his social media profiles so it’s clear he no longer holds them. He also
11 agreed to check with lawyers for Nikola before posting anything about the company.”
12 Milton also surrendered 4.9 million performance-based stock units he had been granted in
13 August 2020 and a two-year consultancy option worth \$20 million.

14 436. The September 20, 2020 resignation, and the widely reported related news
15 coverage was a foreseeable consequence of and within the zone of the risk concealed by
16 Defendants’ misrepresentations and omissions. For example, on September 21, 2021
17 during intra-day trading, Barron’s published an article entitled “Nikola Founder Trevor
18 Milton Is Out. Wall Street Tries to Make Sense of the Chaos” which explained that analysts
19 viewed the resignation as casting uncertainty on Nikola’s ability to build out its network
20 of hydrogen fueling stations, causing some analysts to lower their price targets. Wedbush
21 analyst Dan Ives did not change his price target, but called Milton’s resignation “shocking
22 and said it ‘will be perceived by the Street as a major near-term gut punch.’ He is on the
23 sidelines until he has more confidence about hydrogen filling stations.”

1 437. Milton’s resignation also partially revealed the relevant truth concealed
2 and/or obscured by Defendants’ prior misstatements and omissions touting the Company’s
3 hydrogen production capabilities as it was the first tacit acknowledgement by the Company
4 that the Hindenburg Report was true. The market therefore understood Milton’s resignation
5 to be a revelation of fraud and reacted accordingly. Nikola later admitted that Milton had
6 made misstatements, confirming that the market’s understanding was correct.⁵⁷

7 438. Milton’s resignation was also a materialization of the risk concealed by
8 Defendants’ false statements defending Milton in the wake of the Hindenburg Report,
9 including the September 14, 2020 Press Release. Defendants misled investors about the
10 risks related to Milton’s misstatements by insisting that the Hindenburg Report’s claims
11 regarding Milton, including those asserting Milton exaggerated Nikola’s hydrogen
12 production capacity, were “false and misleading,” “defamatory,” and “Intentionally
13 Underestimate[d]” Nikola’s “Hydrogen Production Capabilities.” These statements
14 masked the risk that Milton would have to depart Nikola—a risk Nikola explicitly warned
15 could have dire consequences for Nikola in its SEC filings, which stated: “We are highly
16 dependent on the services of Trevor R. Milton, our Executive Chairman, and largest
17 stockholder. Mr. Milton is the source of many, if not most, of the ideas and execution
18 driving Nikola. If Mr. Milton were to discontinue his service to us due to death, disability
19 or any other reason, we would be significantly disadvantaged.” This risk, which Defendants
20 obscured in their unequivocal denials that Milton had engaged in any conduct that could
21 lead to his departure, were partially realized by the announcement of Milton’s resignation
22 just days later. As one analyst stated in a *CNBC* interview: “Let’s call it like it is. Trevor

23 ⁵⁷ See *Mineworkers’ Pension Scheme v. First Solar Inc.*, 881 F.3d 750, 753 (9th Cir.
24 2018) (citing *Lloyd*, 811 F.3d at 1210) (loss causation can be found where market
25 understands event to be caused by fraud even absent contemporaneous admission of fraud
when later revelations confirm market’s understanding).

1 leaving. I mean he's a key part of the vision." Another analyst called it a "dark day for
2 Nikola." A third said: "This will come as a shock to the big crowd of believers in the
3 company and its founder. We expect heavy selling..."

4 439. As a direct and proximate result of this corrective disclosure and/or
5 materialization of the foreseeable risks concealed by Defendants' fraud, the price of Nikola
6 common stock declined by \$6.60 per share, closing at \$27.58 on Monday September 21,
7 2020, an 19.33% decline from its previous close on Friday September 18, 2020.

8 440. The decline in Nikola's common stock price on September 21, 2020 was a
9 direct result of Milton's resignation, which itself was caused in part by his fraud related to
10 Nikola's hydrogen capabilities. The timing and magnitude of the Nikola common stock
11 price decline evidences the impact Defendants' statements had on the Company's stock
12 price during the Class Period and negate any inference that the loss suffered by Lead
13 Plaintiffs and other Class members was caused by changed market conditions or
14 macroeconomic, industry, or Company-specific factors unrelated to Defendants'
15 fraudulent conduct.

16 441. On September 23, 2020, the relevant truth and foreseeable risks concealed
17 by Defendants' misconduct and their false representations and omissions prior to and
18 during the Class Period regarding Nikola's hydrogen capabilities and costs were partially
19 revealed and/or materialized when *The Wall Street Journal* and *Dow Jones Newswires*
20 reported that talks between Nikola and several potential energy partners, including BP, to
21 build hydrogen-refueling stations stalled "following allegations the company had misled
22 investors."

23 442. These reports were widely distributed by the financial news media. For
24 example, during the trading day on September 23, 2020, Markets Insider issued an article
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1 entitled “Nikola fell 22% on Wednesday amid a report from The Wall Street Journal that
2 potential partnership talks have been put on hold after weeks of controversy” which
3 detailed the stalled talks between energy companies and Nikola.

4 443. The September 23, 2020 reports of stalled discussions with energy
5 companies and the related news coverage was a foreseeable consequence of and within the
6 zone of the risk concealed by Defendants’ misrepresentations and omissions concerning
7 Nikola’s hydrogen capabilities. Nikola’s hydrogen capabilities had been greatly
8 exaggerated. The Company was, in fact, nowhere near ready to build its hydrogen stations.
9 Even a month later, the Company had still not determined whether it would build hydrogen
10 stations with on-site hydrogen production capabilities, or whether it would employ a hub-
11 and-spoke liquefaction model. Moreover, Nikola still had not figured out how to reliably
12 and quickly dispense hydrogen, let alone produce it. The Company’s head of Infrastructure
13 Development had argued against a May 2020 purchase of electrolyzers as premature
14 because Nikola was years away from being able to build out hydrogen infrastructure.
15 Moreover, the Company had no realistic pathway to acquiring electricity at rates that would
16 make its business model practical. As the Wall Street Journal reported, it was told by its
17 sources close to the matter that talks between Nikola and its potential partners stalled
18 because recent events had “cast doubt on the company and its statements about the
19 readiness of its technology.” Accordingly, the risk concealed by Defendants misstatements
20 about Nikola’s hydrogen capabilities partially materialized when potential partners walked
21 away upon learning about Defendants’ misstatements.

22 444. As a direct and proximate result of this corrective disclosure and/or
23 materialization of the foreseeable risks concealed by Defendants’ fraud, the price of Nikola
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1 common stock declined by \$7.36 per share, closing at \$21.15 on September 23, 2020, a
2 25.82% decline from its previous close on September 22, 2020.

3 445. The decline in Nikola's common stock price on September 23, 2020 was a
4 direct result of the nature and extent of Defendants' prior misstatements and omissions
5 being revealed to investors. The timing and magnitude of the Nikola common stock price
6 decline evidences the impact Defendants' statements had on the Company's stock price
7 during the Class Period and negate any inference that the loss suffered by Lead Plaintiffs
8 and other Class members was caused by changed market conditions or macroeconomic,
9 industry, or Company-specific factors unrelated to Defendants' fraudulent conduct.

10 446. On February 25, 2021 the relevant truth and foreseeable risks concealed by
11 Defendants' misconduct and their false representations and omissions prior to and during
12 the Class Period were partially revealed and/or materialized when, after the close of
13 trading, Nikola filed its Form 10-K for the year ended December 31, 2020. In the filing,
14 Nikola admitted that several of Milton's statements that were highlighted in the
15 Hindenburg Report were "inaccurate in whole or in part, when made," including the
16 statements Milton made in December 2019 and July 2020 that "the Company 'can produce'
17 over 1,000 kg of hydrogen at the Company's demo stations and that the Company was
18 'down below' \$3/kg at that time."

19 447. This news was widely reported to the market. For example, on February 25,
20 2021, *CNBC* published an article entitled "Nikola admits ousted chairman misled investors
21 as legal costs mount" that went on to explain "Milton and the company previously denied
22 many of the claims in the report."

23 448. As *CNBC* suggested, the February 25, 2021 10-K revealed not only that
24 Milton's statements were incorrect, but that Defendants' unequivocal denials of the
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1 Hindenburg Report, including the September 14, 2020 press release, were false and
2 misleading. In a reversal, Nikola was now acknowledging that the Hindenburg Report had
3 been largely accurate. Moreover, by admitting that Nikola was not able to produce
4 hydrogen below \$3/kg even by July 2020, the 10-K demonstrated that the figures
5 Defendants shared with investors and subsequent statements made by Russell and Brady
6 asserting that Nikola could acquire electricity at its target price and produce and sell
7 hydrogen at parity with diesel were false.

8 449. The February 25, 2021 disclosure of the false and misleading nature of
9 Defendants' statements, and the related news coverage reporting on Nikola's
10 misrepresentations about its production capabilities, products, technological
11 advancements, and commercial prospects, was a foreseeable consequence of, and within
12 the zone of the risk concealed by Defendants' misrepresentations and omissions.

13 450. Moreover, the February 25, 2021 disclosures revealed new information that
14 Defendants' misstatements, omissions, and fraudulent course of conduct previously
15 concealed and/or obscured from the market by authoritatively conceding that Nikola had
16 not produced hydrogen and had not achieved a \$3/kg cost of hydrogen.

17 451. As a direct and proximate result of this corrective disclosure and/or
18 materialization of the foreseeable risks concealed by Defendants' fraud, the price of Nikola
19 common stock declined by \$1.62 per share, closing at \$18.10 on February 26, 2021, an
20 8.22% decline from its previous close on February 25, 2021.

21 452. The decline in Nikola's common stock price on February 26, 2021, was a
22 direct result of the nature and extent of Defendants' prior misstatements and omissions
23 being revealed to investors by the 10-K, including statements about Nikola's hydrogen
24 capabilities. The timing and magnitude of the Nikola common stock price decline
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1 evidences the impact Defendants' statements had on the Company's stock price during the
2 Class Period and negate any inference that the loss suffered by Lead Plaintiffs and other
3 Class members was caused by changed market conditions or macroeconomic, industry, or
4 Company-specific factors unrelated to Defendants' fraudulent conduct.

5 453. On July 29, 2021 the relevant truth and foreseeable risks concealed by
6 Defendants' misconduct and their false representations and omissions prior to and during
7 the Class Period were revealed and/or materialized when numerous news outlets reported
8 that Defendant Milton had been indicted on three counts of fraud by the U.S. Attorney's
9 Office in Manhattan for making deceptive and false claims to investors regarding "nearly
10 all aspects of the business." The indictment said that, from November 2019 to September
11 2020, Milton schemed to defraud investors into buying Nikola shares through statements
12 about the Company's product and technology development. The SEC also filed related
13 civil charges. In response to the indictment, Milton stated that they were "false allegations."

14 454. The July 29, 2021 announcement of the indictment and the related news
15 coverage reporting on Nikola's representations about its production capabilities, products,
16 technological advancements, and commercial prospects, was a foreseeable consequence
17 of, and within the zone of the risk concealed by Defendants' misrepresentations and
18 omissions. The DOJ and SEC actions were, to a large degree, premised on Milton's
19 misstatements regarding Nikola's hydrogen production capabilities and costs.

20 455. Moreover, the July 29, 2021 disclosures revealed new information that
21 Defendants' misstatements, omissions, and fraudulent course of conduct previously
22 concealed and/or obscured from the market. Both the SEC complaint and the DOJ
23 indictment described messages, discussions, and other evidence from inside Nikola that
24 showed its hydrogen capabilities had been exaggerated. The DOJ indictment in particular
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1 revealed that the demo station in Phoenix, Arizona lacked the capabilities that Defendants
2 had touted:

3 Nikola had never obtained a permit for, let alone constructed, a hydrogen
4 production station, nor had it produced any hydrogen. Although Nikola did
5 complete a dispensing-only hydrogen fueling station at its Phoenix, Arizona
6 headquarters in or about April 2019, ***that station has been plagued with
7 problems because many components of the station were not built to
8 withstand the extreme heat in Phoenix. Moreover, the hydrogen that was
9 used to stock that station was not produced by Nikola, but was instead
10 acquired from an outside vendor.***

11 (Emphasis added).

12 456. As a direct and proximate result of this corrective disclosure and/or
13 materialization of the foreseeable risks concealed by Defendants' fraud, the price of Nikola
14 common stock declined by \$2.16 per share, closing at \$12.03 on July 29, 2021, a 15.22%
15 decline from its previous close on July 28, 2021. Nikola's stock continued to steadily
16 decline another \$1.88 per share, or 15.62%, over the next several days to close at \$10.15
17 per share on August 5, 2021, as investors absorbed the lengthy and detailed indictment and
18 SEC complaint, which totaled over 100 pages.

19 457. The decline in Nikola's common stock price on July 29 through August 5,
20 2021 was a direct result of the nature and extent of Defendants' prior misstatements and
21 omissions being revealed to investors, including misstatements regarding Nikola's
22 hydrogen capabilities. The timing and magnitude of the Nikola common stock price
23 decline evidences the impact Defendants' statements had on the Company's stock price
24 during the Class Period and negate any inference that the loss suffered by Lead Plaintiffs
25 and other Class members was caused by changed market conditions or macroeconomic,
26 industry, or Company-specific factors unrelated to Defendants' fraudulent conduct.

IV. Defendants Misled Investors Regarding the Badger

A. Nikola Did Not Produce the Badger, its Purported Pickup Truck

458. Defendants misrepresented the capabilities of Nikola's pickup truck, the Badger, even though the Badger did not exist. In November 2020, Nikola's partners finally completed the parts for two prototypes of the Badger, which were assembled in December 2020. By that time, Defendants had made numerous public statements about the Badger's specs, appearance, and manufacturing as if it were already in production. Nikola and its partners never produced the Badger for sale, and the two prototypes are the only versions of the Badger ever made.

459. On November 22, 2019, Milton tweeted images of a rendering of a pickup truck in response to the public announcement by a large electric vehicle manufacturer that it would be producing an electric pickup truck. In January 2020, Milton approached other executives at Nikola with a proposal to develop a pickup truck based on the image he had tweeted. Although executives were reluctant to agree to the plan, which they understood to be distracting from and potentially harmful to Nikola's core business plan, Milton insisted on creating a pickup truck line based on, among other things, his perception of the interest the pickup truck had generated on social media. Milton agreed that Nikola would only move forward with the pickup truck if he found an original equipment manufacturer ("OEM") partner to produce the vehicle.

460. On February 9, 2020, when Nikola was working toward finalizing and announcing its deal with VECTOIQ, Milton sent an email to Nikola's board and executive officers attaching a draft press release he had prepared with input from Nikola's public relations team and Russell. In the email, Milton asked Nikola's Board and officers, including Brady, Russell, and Worthen, to review and modify or approve the press release. Certain Nikola executives, including Russell and Brady, disagreed with the decision to

1 announce the development of a pickup. Brady, for example, replied that the Badger
2 program might be a “[d]istractio[n] from the BEV and FCEV truck programs” and a “strain
3 on management’s bandwidth,” and that the program might require “[a]dditional capital and
4 risks.” He further anticipated “[l]ikely criticism that Nikola hasn’t even started serial
5 production of BEV and FCEV, yet we keep announcing new products.” A Board meeting
6 was held at which the Board, including Russell, unanimously approved the creation of the
7 pickup truck program and the press release. At Milton’s trial, Russell testified that he voted
8 for approval despite sharing Brady’s concerns because “after following the discussion at
9 the board level, it was clear that it was going to go through.”⁵⁸ On February 10, 2020,
10 Nikola issued the press release, which misleadingly announced the creation of the Badger
11 as if it already existed even though at the time it was merely a concept.

12 461. On February 18, 2020, the Nikola Board held a meeting at which Milton,
13 Russell, Brady, and Worthen were in attendance. At the meeting, the Board discussed
14 obtaining help from third parties to help design and develop the Badger because Nikola
15 was unable to develop a prototype on its own.⁵⁹

16 462. In January, February, and March 2020, Milton sought an OEM partner to
17 develop the Badger. In the absence of an OEM partner, Milton directed a small group of
18 Nikola employees to build two Badger prototypes. In a March 7, 2020 email, Milton
19 instructed the group to build both prototypes as BEV rather than FCEV trucks because,
20 according to Milton, that arrangement would be simpler than building one of each. He
21 further ordered that the prototypes would appear to have hydrogen filling receptacles but
22 no actual hydrogen fuel cell capacity.

24 ⁵⁸ Milton Tr. at 1039:2-1041:23, ECF No. 226.

25 ⁵⁹ See Compl. ¶ 150, *Rhodes v. Milton*, No. 2022-0023 (Del. Ch. Jan. 7, 2022).

1 463. In the meantime, Milton embarked on a media blitz during which he
 2 repeatedly touted the Badger as if Nikola had already built it. His Twitter activity came to
 3 the attention of other Individual Defendants, who did nothing to correct Milton's
 4 misstatements. For example, on April 29, 2020, Girskey texted Russell, "Trevor pretty
 5 active on Twitter Re: Badger." Russell replied, "Wish he wouldn't. Can't convince him to
 6 stop that."⁶⁰

7 464. Milton specifically targeted retail investors with his lies about the Badger.
 8 For example, on May 30, 2020—when the Badger was still just an idea—Milton stated on
 9 *JMac Investing* podcast:

10 Soon I'll be announcing when we're going to show off the Badger to the
 11 whole world. And this thing is insanity. It is the most beautiful truck I think
 12 the world has ever seen. ***It's a fully functioning vehicle inside and outside,***
 13 ***HVAC, and everything, windows, all of it works.*** I shouldn't say all of it –
 14 I'll probably have a couple of pieces that'll break on me, but hey, that's part
 15 of the process of building the truck, ***but it's a real real [sic] truck. It's not***
 16 ***just some mock up thing that other people have done. This is a real, real***
 17 ***truck.***

18 465. The production of Badger prototypes was outsourced, at Milton's direction,
 19 to third parties, with one vendor contracted to create the upper body of the vehicles in
 20 Europe, and another to build the chassis in Michigan. The two parts would then be
 21 integrated. Under the terms of these agreements, very little, if any, of Nikola's design,
 22 engineering, or intellectual property were to be used in production. As a result, Nikola
 23 purchased several Ford F-150 pickup trucks—a highly popular model to which Milton had
 24 claimed his Badger would compare favorably—to use as "donor" or "surrogate" vehicles
 25 and used the F-150's chasses and bodies as the base for constructing the Badger prototypes.
 26 The third-party suppliers used some show car technology for the vehicles, which were not

⁶⁰ Milton Tr. at 1065:10-21, ECF No. 226.

1 engineered or intended to be used for production. As of May 2020, the Badger was in early
2 stages of conceptual development.

3 466. Once Nikola's stock was officially publicly traded on June 3, 2020, Milton
4 increased the number of public comments he made about the Badger. Many of these
5 statements concerning engineering of the Badger and the status of the trucks were false and
6 misleading, giving the impression that the truck's development or engineering was more
7 advanced than it really was.

8 467. In order to further inflate the price of Nikola stock, Milton aimed to convince
9 investors not only that the Badger was already a reality but that it was far enough along to
10 justify taking reservations. On June 8, 2020, Milton announced on Twitter that Nikola was
11 going to start taking reservations for the Badger on June 29, 2020. However, as of June 8,
12 2020, Nikola only had renderings of the vehicles and concept sketches. Nevertheless, on
13 June 8, 2020, in response to a Twitter user who asked, "when will the first prototype [of
14 the Badger] be produced?," Milton tweeted, "Already."

15 468. On June 8, 2020, the morning following the announcement by Milton that
16 Nikola would take reservations for the Badger, Nikola's stock opened at \$42 per share, \$7
17 above where it had closed the prior day, and \$9 above the price when it went public less
18 than a week prior. On or about June 9, 2020, Nikola's stock price opened at \$93.13 per
19 share.

20 469. In early June 2020, a Nikola employee who led the Badger's design informed
21 Milton that one third-party supplier was six to eight weeks from beginning tooling, which
22 means making the tools needed to produce the parts of the vehicle that Nikola's
23 subcontractors were fabricating.

1 470. On June 29, 2020, before production of the Badger prototypes began and
2 before any OEM had agreed to work with Nikola to manufacture the Badger for sale to the
3 public, Nikola began taking deposits for the Badger with three differently priced
4 reservation packages. On the day reservations opened, Nikola received approximately
5 2,411 preorders. Nikola received approximately 249 additional orders on June 30, 2020;
6 approximately 87 on July 1, 2020; and approximately 124 on July 2, 2020. On July 2, 2020,
7 without any basis whatsoever, Milton announced that the most expensive reservation for
8 the Badger was sold out. Nikola employees then scrambled to remove the package from
9 the company's website.

10 471. At a meeting of Nikola's Board of Directors on July 23, 2020, which included
11 Defendants Girsky, Russell, and Ubben, and at which Milton was present, Nikola provided
12 to the Board materials indicating that the Badger prototypes would not be completed until
13 at least November 2020. In August 2020, Nikola's partners began tooling. This meant that
14 they were still weeks away from beginning actual construction of the prototypes.
15 Defendants continued making public statements falsely touting the Badger's readiness for
16 production and its capabilities.

17 472. During June, July, and August 2020, while development of the two
18 prototypes slowly moved forward, Milton continued to seek an OEM partner who could
19 mass-produce the Badger. In late August 2020, Nikola, at Milton's direction, entered into
20 an agreement with General Motors as an OEM partner, pursuant to which General Motors
21 would develop and manufacture the Badger for production and make a \$2 billion
22 investment in Nikola in exchange for an 11% stake in the Company. Nikola further agreed
23 to fund all capital expenditures to build the Badger. The Badger was to be built using one
24 of General Motors' electric vehicle platforms. General Motors was responsible for all
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1 components of the Badger except for the general aesthetic and potentially the infotainment
2 system. Apart from the infotainment system, there was no plan to use any parts over which
3 Nikola had intellectual property rights.

4 473. Milton received documents reflecting the proposed allocation of
5 responsibilities for the Badger between General Motors and Nikola. These documents
6 showed that nearly all technology and parts of the Badger would be General Motors'
7 responsibility. No one at General Motors ever saw the Badger prototypes that Nikola had
8 been working on and they were not part of General Motors' engineering or development
9 plans.

10 474. The prototypes were not finished until about December 2020. Nikola never
11 developed a Badger FCEV prototype and little, if any, of Nikola's technology was used on
12 the Badger BEV prototypes. The two prototype Badgers were little more than show cars
13 and not real consumer vehicles. The Badger prototypes could not be driven on roads
14 because some of the parts of the body were carbon fiber composite and because they had
15 not undergone safety testing. The Badger prototypes also lacked certain parts, such as
16 airbags and an operable HVAC. Similarly, many of the lights in the interior of the Badger
17 prototypes were not operable and were merely backlit.

18 475. On November 30, 2020, with the scandals surrounding the Hindenburg
19 Report and Milton's departure engulfing Nikola, the company cancelled the Badger
20 program. Nikola never produced Badger vehicles for consumer purchase. Despite the many
21 false statements Defendants made about the Badger's capabilities as detailed below, all
22 Nikola ever had to show for the program were conceptual sketches and two late-delivered
23 prototypes. Put simply, there never was a Badger.

B. False and Misleading Statements Regarding the Badger

1. Pre-Merger False and Misleading Statements Regarding the Badger

476. On February 10, 2020, Nikola published the press release announcing the Badger, titled “Nikola Unveils the Nikola Badger Pickup.” The press release and corresponding social media posts announced that Nikola was making a pickup truck called the Badger that would be unveiled at an event in or about late 2020. The press release touted the Badger as the “World’s Most Advanced Zero-Emission FCEV/BEV Pickup with an Estimated 600-mile Range.” This press release also stated that the Badger “is engineered to deliver 980 ft. lbs. of torque, 906 peak HP and 455 continuous HP,” “was designed to handle 0-100 mph launches with minimal loss of performance and to operate on grades up to 40% through advanced software blending of batteries and fuel-cell,” and was “engineered to outperform all electric pickup trucks on the market in both continuous towing, HP and range.”⁶¹ These statements, accompanied by a computer-generated rendering of the Badger, remained on Nikola’s website and publicly available to investors during the Class Period.

477. The same day, on February 10, 2020, a Twitter user replied to a tweet from Milton’s personal account that promoted the Badger press release, commenting that “the spec sheet looks ridiculously exaggerated” Milton responded: “Specs are dead on actually.” This statement remained on Milton’s Twitter account and publicly available to investors during the Class Period.

478. The statements referenced in ¶¶476-477 were materially false and misleading because Defendants knew or recklessly disregarded but failed to disclose that at the time

⁶¹ Press Release, Nikola Corporation, *Nikola Unveils the Nikola Badger Pickup* (February 10, 2020), available at https://nikolamotor.com/press_releases/nikola-unveils-the-nikola-badger-pickup-73. This press release is publicly available online and was available to investors throughout the Class Period.

1 of the announcement, Nikola had not performed any engineering work or design work on
 2 the Badger other than CGI renderings, and that remained the case for several months. An
 3 OEM engineer, who visited Nikola's offices in February 2020 to conduct diligence in
 4 connection with a potential partnership to build the Badger, summed up the Badger's state
 5 at the time as "vaporware." It was not until June or July 2020 that third-party suppliers
 6 were completing computer-aided design and beginning "tooling" for the Badger. Nikola's
 7 Vice President of Technology referred to the Badger in an internal email as "vapor ware"
 8 [sic] "with no technical plan." Badger prototypes were not delivered until November 2020.
 9 Further, Individual Defendants Russell, Brady, and Worthen knew these statements were
 10 false and misleading because they were asked to review the February 10, 2020 press release
 11 and were involved in discussions about the wisdom of starting development of the Badger.

12 479. Defendants continued making false and misleading statements about the
 13 Badger before the prototypes were developed. In the April 6 8-K, signed by Defendant
 14 Shindler, the Badger is described as having a "blended FCEV/BEV" system with a range
 15 of "600 miles" or a "300 mile" range on just the BEV. The April 6 8-K further claimed the
 16 Badger could switch between an FCEV/BEV and BEV only system "only by touch of
 17 button." It additionally stated that the truck had "980 ft. lbs. of torque", "906 HP" engine,
 18 a "160kWh flood module lithium ion battery" and a "120 kW fuel cell."⁶²

19 480. The statements referenced in ¶479 were materially false and misleading for
 20 the reasons identified in ¶478.

21 481. Further, on or about April 20, 2020, Milton stated on the *Truck Show*
 22 *Podcast*, referring to the Badger:

23 ***"We built the thing to be a true vehicle," it is based on a "billion dollars of***
 24 ***knowledge" from Nikola's semi-truck program, the "truck can go 700***

25 ⁶² April 6 8-K at 15.

1 ***miles in a real environment,” and it can “whoop a Ford F-150 . . . whoop***
 2 ***a Silverado . . . whoop a Dodge Ram.”***

3 482. On the same podcast, Milton further stated:

4 ***We spent a billion dollars essentially on our hydrogen program . . . with***
 5 ***our semi-truck and we’re the leaders in hydrogen technology around the***
 6 ***world. . . . We took that billion dollars in knowledge and put it into this***
 7 ***pickup truck.***⁶³

8 483. The statements referenced in ¶¶481–482 were materially false and
 9 misleading for the reasons identified in ¶478. Moreover, these statements were materially
 10 false and misleading because Defendants knew or recklessly disregarded but failed to
 11 disclose that Nikola had not put a billion dollars of semi-truck technology into the Badger.
 12 The prototypes that Nikola’s partners eventually developed for the Badger were based on
 13 the Ford F-150 and show car technology.

14 484. The Proxy, signed by Defendants Milton and Girskey on May 8, 2020, also
 15 contained false and misleading statements about the Badger. Page 149 of the Proxy states:
 16 “Unlike anything on the market, the Badger is designed to target and exceed every electric
 17 or fossil fuel pickup in its class.”

18 485. The statement referenced in ¶484 was materially false and misleading
 19 because at the time, the Badger pickup truck did not exist aside from a computer generated
 20 rendering of a pickup truck created by a Nikola employee before the Badger’s
 21 announcement in February 10, 2020.⁶⁴ A prototype of the Badger would not be delivered
 22 to Nikola from its partners until November of 2020.⁶⁵ All statistics used to market the
 23 Badger to investors in the April 6 8-K and summarized later in the Proxy consisted of

24 ⁶³ The Truck Show Podcast, *Plugging In With Nikola CEO Trevor Milton* (Episode 118)
 25 (2020), [https://truckshowpodcast.libsyn.com/ep-118-plugging-in-with-nikola-ceo-trevor-](https://truckshowpodcast.libsyn.com/ep-118-plugging-in-with-nikola-ceo-trevor-milton)
 26 [milton](https://truckshowpodcast.libsyn.com/ep-118-plugging-in-with-nikola-ceo-trevor-milton). This episode is currently publicly available online and was available to investors
 throughout the Class Period.

⁶⁴ See SEC Complaint at ¶ 89.

⁶⁵ See *id.* at ¶¶ 94-95.

nothing but modeling based on assumptions given to Nikola engineers by Milton.⁶⁶ The Proxy also omitted to reveal the material fact that the Badger was nothing more than a prototype in development.

486. On or about May 30, 2020, Milton stated on the *JMac Investing* podcast:

Soon I'll be announcing when we're going to show off the Badger to the whole world. And this thing is insanity. It is the most beautiful truck I think the world has ever seen. ***It's a fully functioning vehicle inside and outside, HVAC, and everything, windows, all of it works.*** I shouldn't say all of it – I'll probably have a couple of pieces that'll break on me, but hey, that's part of the process of building the truck, but ***it's a real real [sic] truck. It's not just some mock up thing that other people have done. This is a real, real truck.***

487. The statements referenced in ¶486 were materially misleading for the reasons identified in ¶¶478 and 485.

2. *Class Period False and Misleading Statements Regarding the Badger*

488. On June 8, 2020, Milton announced on Twitter that Nikola was going to start taking reservations for the Badger on June 29, 2020. At the time, Nikola only had renderings of the vehicles and concept sketches and had not even begun production of Badger prototypes. Nevertheless, on June 8, 2020, in response to a Twitter user who asked, “when will the first prototype [of the Badger] be produced?,” Milton tweeted, “Already.”

489. The statements referenced in ¶488 were materially false and misleading because Nikola had not produced a prototype of the Badger at the time the statements were made, and would not until December 2020. Moreover, Milton's announcement that Nikola was going to start taking reservations for the Badger on June 29, 2020 furthered the false impression created by Defendants' other misrepresentations that the vehicle had already

⁶⁶ See *id.* at ¶ 95.

1 been produced when, at the time, it was nothing more than a concept sketch. At Milton's
2 criminal trial, Russell testified that following Milton's June 8, 2020 tweets, Russell and
3 Brady had a conversation with Milton in which they discussed that Milton's statements
4 regarding the Badger's readiness for production were inaccurate.⁶⁷ Neither Russell, Brady,
5 nor any other defendant publicly contradicted the statements or took any corrective action.

6 490. Milton and Nikola's senior executives gloated about the money they were
7 making from investors as a result of their fraudulent statements concerning the Badger. On
8 June 8, 2020, Milton shared a tweet with a senior Nikola executive reflecting that over
9 36,000 new Robinhood users became Nikola stockholders that day. The senior executive
10 responded, in part, by expressing his amazement at how many calls he received "from retail
11 investors today that have no clue about Nikola, other than their friends told them to buy. A
12 lot of hype out there with retail investors," to which Milton replied: "That's how you build
13 a foundation. Love it."

14 491. On or about June 11, 2020, Milton stated in an appearance on Cheddar News:
15 "We've made it very clear that we don't want to build this [Badger] on our own. **So we**
16 **developed all the tech. We've built the whole truck**, and now what we want to do is partner
17 with a big OEM."

18 492. The statement referenced in ¶491 was materially false and misleading for the
19 reasons identified in ¶¶478 and 485. Moreover, this statement was materially false and
20 misleading because Defendants knew or recklessly disregarded but failed to disclose that
21 Nikola did not intend to develop a Badger FCEV prototype, and little, if any, of Nikola's
22 technology was used on the Badger BEV prototype. Nikola retained two third-party
23 suppliers to build the BEV prototype using "donor" vehicles manufactured by another

24
25 ⁶⁷ See Milton Tr. at 1082:4-10, ECF No. 226.

1 OEM. The upper body was built by a supplier in Europe, while the chassis was built by a
2 supplier in Michigan, and then the two parts were integrated.

3 493. In the June 2020 S-1, signed by defendants Milton, Girskey, Russell, Brady
4 and Ubben, Defendants stated regarding the Badger, “[r]ecently we announced the Nikola
5 Badger . . . an advanced zero-emission FCEV/BEV hybrid pickup truck. Unlike anything
6 on the market, the Badger is designed to target and exceed every electric or fossil fuel
7 pickup truck in its class.”

8 494. The statement referenced in ¶493 was materially false and misleading for
9 the reasons identified in ¶485. Moreover, this statement was materially false and
10 misleading because it did not disclose that Milton had directed that the prototypes in
11 development only be BEV trucks, not FCEV trucks.

12 495. On or about June 25, 2020, Milton made the outlandish claim from his
13 personal Twitter account that the Badger uses “most all of” the water created as a byproduct
14 of the hydrogen fuel cell “for our windshield washer fluid and . . . a little bit for clean,
15 pure, drinking water.” Several minutes later, Milton tweeted, “**Yes, you heard that right,**
16 **we will have a drinking fountain in our truck using the hydrogen bi product water for**
17 **the drivers to have nice cold, clean, pure drinking water.**” Milton instructed the team
18 working on the Badger to add drinking fountains.

19 496. The statements referenced in ¶495 were materially false and misleading for
20 the reasons identified in ¶478. Moreover, the statements were materially false or
21 misleading because Defendants knew or recklessly disregarded but failed to disclose that
22 at that point, Milton had not discussed with Nikola’s engineers the idea of using fuel cell
23 by-product as washer fluid or drinking water. Several days later, Milton attempted to
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1 determine if it was even possible by searching on the internet, “can you drink water from
2 a fuel cell?”

3 497. When informed of the tweets, one engineer questioned whether “this [is] a
4 joke,” a marketing employee wrote that his “head is fuzzy,” and a designer texted,
5 “[u]hhhhh what.” The drinking fountains in the prototypes were simply connected to water
6 reservoirs, as there was no fuel cell or system for converting fuel cell by-product to drinking
7 water. Although both prototypes were BEV trucks (at Milton’s direction) and neither was
8 designed to operate on hydrogen fuel, Milton directed that they also be fitted with hydrogen
9 fueling ports to make it appear as though they were FCEV trucks.

10 498. On June 29, 2020, in an interview on the Raging Bull podcast, Milton stated
11 regarding the Badger: “So together ***we literally built the most badass pickup truck the***
12 ***world had ever seen***, and it’s the reason why Nikola is on the front page of almost every
13 news organization out there around the world right now.”

14 499. The statement referenced in ¶498 was materially false and misleading for the
15 reasons identified in ¶¶478 and 485.

16 500. During the same podcast, Milton stated:

17 ***So when we built all this technology, we had billions of dollars spent on the***
18 ***electrification platforms for our big trucks.*** I know I could take that money,
19 all that technology that’s been built, and port it over to the most advanced
20 pickup truck in the world. . . . Now, we’re going to use an existing OEM to
21 build our Nikola Badgers. ***So we own all the tech. So all the cool stuff you***
guys want, the design, the inside, the connectivity with your phone . . . all
the e-axes or, you know the electric motors, the batteries, the controls, all
that’s done by Nikola. . . .

22 501. The statement referenced in ¶500 was materially false and misleading for the
23 reasons identified in ¶¶478 and 483.

24 502. On July 1, 2020, Milton tweeted from his personal account in response to a
25 user who questioned “how are you able to get the [Badger] truck ready in 4 months.” Milton
26

1 replied: “Exactly, which means it’s not fake. **Truck is real**. It’s going to be fun releasing
2 teaser videos leading up to #nikolaworld2020 of the #nikolabadger.”

3 503. The statement referenced in ¶502 was materially false and misleading for the
4 reasons identified in ¶¶478 and 485.

5 504. On July 2, 2020, Milton announced that the most expensive reservation for
6 the Badger was sold out.

7 505. The statement referenced in ¶504 was materially false and misleading
8 because there were no Badger trucks in production.

9 506. On a July 14, 2020 Instagram Live video, Milton stated that the Badger was
10 “a real truck, comes from a billion-dollar program,” and is “legitimate.” Milton then asked
11 rhetorically, in an apparent reference to the criticism he was receiving on social media,
12 “[w]hy do I not show the Badger right now?” Answering his own question, Milton stated,
13 “[b]ecause I don’t have to. And why else? Because it’s marketing. So go get a degree in
14 marketing, learn what it’s like, even negative press brings great press. With every hater
15 comes great followers and great investors.”

16 507. The statement referenced in ¶506 was materially false and misleading for the
17 reasons identified in ¶¶478 and 485.

18 508. In the July 2020 S-1, signed by defendants Milton, Girskey, Russell, Brady
19 and Ubben, Defendants stated, “Recently we announced the Nikola Badger (the ‘Badger’),
20 an advanced zero-emission FCEV/BEV hybrid pickup truck. Unlike anything on the
21 market, the Badger is designed to target and exceed every electric or fossil fuel pickup in
22 its class.”

23 509. The statement referenced in ¶508 was materially false and misleading for the
24 reasons identified in ¶¶485 and 494.

1 510. On or about July 19, 2020, Milton stated on the Jimmy Rex Show podcast:
2 “So we . . . had been working on [the Badger] for a while. I decided to put my teams on it.
3 We got it done.”

4 511. The statement referenced in ¶510 was materially false and misleading for the
5 reasons identified in ¶¶478 and 485.

6 512. The Q2 2020 10-Q, signed by Defendants Russell and Brady, represented
7 that “[o]n June 29, 2020 we began accepting non-binding reservations for the Badger . . .”

8 513. The statement referenced in ¶512 was materially false and misleading as the
9 Badger was merely a concept vehicle at the time and “accepting reservations” implied that
10 Nikola had a real product to sell when all it had was a concept of a product.

11 514. On September 8, 2020, Nikola and General Motors announced their strategic
12 partnership. Nikola published a press release on its website titled “Nikola and General
13 Motors Form Strategic Partnership.” The press release materially misled investors by
14 failing to disclose the potential economic impact of the agreement with General Motors.
15 Specifically, the press release claimed that “Nikola anticipates saving over \$4 billion in
16 battery and powertrain costs over 10 years and over \$1 billion in engineering and validation
17 costs.”

18 515. The statement referenced in ¶514 was materially false and misleading
19 because it failed to disclose that Nikola in fact projected that the Badger program would
20 create a huge loss for Nikola. Defendants were aware of the omission at the time of the
21 press release. In an August 25, 2020 email exchange between Brady, Milton, Russell, and
22 Worthen, Brady emailed an internal Nikola projection showing that the Badger program
23 would create a net loss of \$3.2 billion from 2022–2026. Brady added, “Based on the current
24 deal structure with GM, we are projecting massive losses for the company, which will not
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1 be sustainable.” Brady finally stated that assuming the accuracy of the projections, “we
 2 will likely be putting the company in insolvency.” The projections were provided to
 3 Nikola’s board, which included Girskey and Ubben.⁶⁸ In short, the Individual Defendants
 4 knew the project would be financially crippling for the Company and evidently had no
 5 intention of consummating the deal as described—rather, it was yet another ploy to inflate
 6 the value of Nikola’s stock.

7 516. On September 8-9, 2020, Milton stated on Twitter that Nikola had “designed
 8 the Badger from a clean sheet,” “built the [B]adger from the ground up,” and that General
 9 Motors would “use Nikola’s design, and engineer it to fit on the existing General Motors
 10 modular EV platform.”

11 517. On September 9, 2020, Milton engaged on his personal Twitter account with
 12 a user who commented that the Badger is “[n]ot Nikola, but a General Motors Badger. The
 13 unveiling at Nikola World will not even be the truck being sold, only the dream of what
 14 could have been. . . .” Milton replied: “**Actually it is the truck being sold. It’s all Nikola.**
 15 **Sharing parts has nothing to do with who’s [sic] truck it is. . . .**”

16 518. On September 9, 2020, Milton stated on the *TD Ameritrade Network*: “So
 17 this is how it works, **we actually build the Nikola Badger from the ground up ourselves,**
 18 **the whole thing**” In response to a question about “what’s the important IP that’s
 19 coming from you guys,” Milton stated:

20 Yeah, the battery supply from the sale comes from GM, the cells and the
 21 module. **The rest of the vehicle, like the over-air updating, the software, the**
 22 **controls, the infotainment, the design of the vehicle, the cab, the interior of**
 23 **the cab, even the, even the driver profile, we’ve been all the way down to**
 24 **suspension, that all comes from Nikola,** with some support of GM’s
 integration team, but GM’s gonna handle the, they’ve already built a multi-
 billion dollar platform for their electric truck platform, so we’ve, **we’ve took**
our technology and our existing Badger, we overlaid it on theirs, used what

25 ⁶⁸ Milton Tr. at 1044:2-1048:9, ECF No. 226 (citing govt. ex. 274).

1 we could, implemented theirs, and then we built the rest around, um, around
2 ours. So it's probably 70 percent Nikola 30 percent GM when it comes to,
3 um, the parts that are really important to us

4 519. The statements referenced in ¶¶517–519 were materially false and
5 misleading for the reasons identified in ¶478. Further, these statements were materially
6 false and misleading because Defendants knew or recklessly disregarded but failed to
7 disclose that General Motors planned to use nearly all of its own intellectual property, parts,
8 and components to build the Badger, except for the general aesthetic and potentially the
9 infotainment system. No one at General Motors ever saw the Badger prototypes that Nikola
10 had been working on and they were not part of GM's engineering or development plans.

11 **C. Defendants' False and Misleading Statements About the Badger**
12 **Caused Investor Losses**

13 520. The truth regarding the Badger first partially came out with the September
14 10, 2020 publication of the Hindenburg Report. Regarding the Badger, the Hindenburg
15 Report stated, "In addition to now using GM's battery technology, Nikola seeks to use the
16 automaker's production and fuel cell capabilities. Nikola seems to be bringing nothing to
17 the partnership but concept designs, their brand name and up to \$700 million they will be
18 paying GM for costs related to production." The Hindenburg Report thus directly
19 contradicted Defendants' statements about Nikola's role in building the Badger in ¶¶477,
20 479, 481, 482, 484, 486, 491, 493, 498, 500, 502, 508, 510, 516, 517, and 518.

21 521. On this news, Nikola's stock price fell \$4.80 per share, or 11.33%, to close
22 at \$37.57 per share on September 10, 2020.

23 522. On September 11, 2020, Nikola's stock price continued to fall, falling \$5.44
24 per share, or 14.5%, to close at \$32.13 per share on September 11, 2020.

25 523. On September 14, 2020, the foreseeable risks concealed by Defendants'
26 misconduct and false representations partially materialized when, after the market had

1 closed, Bloomberg reported that the SEC was investigating Nikola in connection with the
2 allegations in the Hindenburg Report.

3 524. On September 15, 2020, the foreseeable risks concealed by Defendants'
4 misconduct and false representations partially materialized when, during intra-day trading,
5 the Wall Street Journal reported that the DOJ had joined the SEC's investigation of Nikola.

6 525. On this news, Nikola's stock fell another \$2.96 per share, closing at \$32.83
7 on September 15, 2020, an 8.27% decline from its previous close on September 14, 2020.

8 526. The SEC and DOJ investigations were triggered in part by and focused
9 extensively on Defendants' statements regarding the Badger, demonstrating that both
10 actions were causally linked to Defendants' misstatements on these subjects. The SEC
11 complaint and DOJ indictment would ultimately charge that the February 10, 2020 press
12 release and tweet, as well as statements regarding the Badger made by Milton on April 20,
13 2020, May 30, 2020, June 8, 2020, June 29, 2020, July 1, 2020, and July 19, 2020 were
14 misleading. The investigation announcements partially revealed the relevant truth
15 concealed and/or obscured by Defendants' prior misstatements and omissions regarding
16 the Badger as it was an acknowledgement that the Hindenburg Report was credible, which
17 was later confirmed. The market therefore understood the announcements to be a revelation
18 of fraud and reacted accordingly. Accordingly, the SEC and DOJ investigations announced
19 in September 2020 were caused, in part, by Defendants' misstatements and omissions
20 related to the Badger, as the agencies later confirmed.

21 527. On Sunday September 20, 2020, Nikola announced that Milton had resigned
22 from his position as Executive Chairman and from the Board of Directors. As described
23 above, Nikola's Board of Directors held a series of meetings between September 11, 2020,
24 and September 20, 2020 in which it discussed Milton's use of social media and the impact
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1 of the investigation and Hindenburg report on Nikola's ability to raise capital from
2 investors. The Board determined that Milton should separate from Nikola because of the
3 threat his continued involvement with the Company posed to its credibility with investors.
4 Accordingly, Milton's resignation was directly caused by his false and misleading
5 statements—particularly those made on social media, which frequently misrepresented the
6 Badger's status and wholly invented its capabilities.

7 528. Moreover, the market perceived that Milton's fraud-induced departure and
8 Nikola's misrepresentations about its technology could threaten the Company's
9 partnerships, including to build the Badger. As *Autoweek* reported on September 20, 2020:
10 "It's hard to say if Milton's resignation will have a major impact on the company's deal
11 with GM, though it might be safe to assume that if the SEC or Justice Department confirms
12 the suspicion of fraud there could be trouble with the partnership." Deutsche Bank put out
13 a note on Nikola on September 21, 2020, stating that Milton's resignation was "clearly
14 another negative development for the company, potentially making it harder to sign new
15 partnerships and customers, and for the NKLA stock which could struggle to regain
16 credibility with investors."

17 529. On the news of Milton's resignation, Nikola's stock fell another \$6.60 per
18 share, closing at \$27.58 on Monday September 21, 2020, a 19.33% decline from its
19 previous close on Friday September 18, 2020.

20 530. Between September 29, 2020, and November 30, 2020, incremental news
21 leaked into the market which slowly informed the market's perception of the probability
22 that the Badger deal with General Motors would fall through as a result of Nikola's
23 overstatements about its technology and the consequent loss of credibility and reluctance
24 of partners to be associated with Nikola's sullied brand. These risks were obscured from
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1 the market by Defendants' misstatements and scheme, but it became incrementally more
2 clear that the deal would collapse. The market reacted accordingly and incrementally as
3 more news came out, until the deal was finally and fully cancelled.

4 531. On September 29, 2020, Reuters reported that General Motors and Nikola
5 would not finalize their deal to jointly build electric pickup trucks and hydrogen fuel cell
6 tractor-trailers by the previously announced target date of September 30, with General
7 Motors stating that it was "continuing our discussions with Nikola." *CNBC* reported
8 "General Motors and Nikola are not expected to finalize a \$2 billion deal scheduled to close
9 before Wednesday after allegations of fraud and sexual abuse surfaced against the
10 embattled start-up's founder and former executive chairman, Trevor Milton, according to
11 two people familiar with the negotiations."

12 532. On the news that the fraud allegations against Nikola were causing General
13 Motors to rethink its partnership with Nikola to build the Badger, Nikola's stock fell \$1.42
14 per share, closing at \$17.88 on September 29, 2020, a 7.36% decline from its previous
15 close on September 28, 2020. This decline was a direct and proximate result of the
16 undisclosed risk that Nikola's technology, including the Badger, was not as developed as
17 it represented publicly as well as the risk that Defendants' fraud posed a reputational risk
18 to Nikola that could undermine partners' willingness to work with the Company. That
19 General Motors was faltering on its commitment to build the Badger was a foreseeable
20 consequence of the Badger being a poorly conceived, under-developed product that was
21 announced as part of a scheme to attract retail investors. These undisclosed risks partially
22 materialized on September 29, 2020 as it became clear to the market that there was a
23 significant probability General Motors may back out of the deal.

1 533. On October 16, 2020, various news organizations reported that Nikola's new
2 CEO, Defendant Russell, stated in an interview that Nikola had a plan in place to go it
3 alone if deal talks with General Motors fall through and downplayed the role of the Badger
4 in the company's business.

5 534. On this news, Nikola's stock fell another \$3.75 per share, closing at \$19.55
6 on October 16, 2020, a 16.12% decline from its previous close on October 15, 2020.
7 Fortune reported "Nikola shares sank as much as 16% in Friday trading after the electric-
8 truck startup's chief executive officer said he sees a path for his company even if it can't
9 come to terms with General Motors on a proposed strategic partnership." The October 16,
10 2020 decline was a direct and proximate result of the undisclosed reality that Nikola's
11 technology, including the Badger, was not as developed as it represented publicly as well
12 as the risk that Defendants' fraud posed a reputational risk to Nikola that could undermine
13 partners' willingness to work with the Company. These undisclosed risks partially
14 materialized on October 16, 2020 as the market digested the news to mean there was a
15 heightened probability that General Motors may back out of the deal because of
16 Defendants' actions.

17 535. On November 13, 2020, Nikola gave a presentation to General Motors
18 concerning the "Phase I" investigation conducted by the Company following the
19 Hindenburg Report and the investigations launched by various government entities. The
20 presentation included admissions that Milton had made numerous false and misleading
21 statements concerning Nikola.

22 536. On November 24, 2020, after the market closed, Nikola CEO Russell
23 appeared on *CNBC's* "Mad Money" and did not reassure investors that the partnership with
24 General Motors would still go through, indicating that the previously announced General
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1 Motors partnership was a ploy to inflate Nikola's stock, and that General Motors was not
2 interested in partnering with a company that had misrepresented its capabilities and
3 prospects.

4 537. On this news, Nikola's stock fell another \$4.26 per share, closing at \$30.24
5 on November 25, 2020, a 12.35% decline from its previous close on November 24, 2020.
6 *CNBC* reported "Shares of embattled electric vehicle start-up Nikola Corp. fell by as much
7 as 17.4% during trading Wednesday [11/25] morning after CEO Mark Russell failed to
8 reassure investors that the company's \$2 billion deal with General Motors would still go
9 through." The November 25, 2020 decline was a direct and proximate result of the
10 undisclosed risk that Nikola's technology, including the Badger, was not as developed as
11 it represented publicly as well as the risk that Defendants' fraud posed a reputational risk
12 to Nikola that could undermine partners' willingness to work with the Company. These
13 undisclosed risks partially materialized on November 25, 2020 as the market digested the
14 news to mean there was an even greater probability that General Motors would back out of
15 the deal because of Defendants' actions.

16 538. On November 30, 2020, Nikola announced that the deal with General Motors
17 had fallen through and that the companies had instead signed a much smaller, scaled-back,
18 agreement in which General Motors would only supply its Hydrotec fuel-cell system for
19 certain of Nikola's vehicles and take no ownership interest in Nikola. As a result, Nikola
20 also announced that it was scrapping the Badger vehicle.

21 539. On this news, Nikola's stock fell \$7.52 per share, closing at \$20.41 on
22 November 30, 2020, a 26.92% decline from its previous close on Friday November 27,
23 2020. Nikola stock continued to decline another \$3.04, closing at \$17.37 on December 1,
24 2020, a 14.89% decline from its previous close on November 30, 2020, for a two-day
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1 decline of \$10.56 per share, a 37.80% decline from its close on Friday November 27, 2020.
2 Headlines stating: “Nikola Shr Slides 27% after GM Scraps Investment Plan,” “GM pulls
3 pin on electric ute,” Nikola tumbles after GM drops equity tie...,” “GM abandons plan to
4 take equity stake in Nikola” made clear that the deal fell apart because of Defendants’
5 fraud. As *The New York Times* reported: “Nikola...had made a big splash on Wall Street,
6 announced a broad alliance with General Motors in September that promised to give the
7 company critical technology, financial support and credibility with investors. But the news
8 was quickly overtaken by claims that Nikola had exaggerated its capabilities, and the firm’s
9 founder resigned. Investors were left to wonder whether Nikola was indeed an automotive
10 innovator and whether G.M. had made an embarrassing mistake in associating with the
11 start-up.”

12 540. The November 30, 2020 decline was a direct and proximate result of the
13 undisclosed risk that Nikola’s technology, including the Badger, was not as developed as
14 it represented publicly as well as the risk that Defendants’ fraud posed a reputational risk
15 to Nikola that could undermine partners’ willingness to work with the Company. These
16 undisclosed risks partially materialized on November 30, 2020 as the market learned that,
17 as had begun to be forecasted and partially reflected in Nikola’s share price declines in the
18 previous weeks, General Motors would back out of the Badger deal.

19 541. On July 29, 2021, numerous news outlets reported that Milton had been
20 indicted on three counts of fraud by the U.S. Attorney’s Office in Manhattan for making
21 deceptive and false claims to investors regarding “nearly all aspects of the business.” The
22 indictment said that, from November 2019 to September 2020, Milton schemed to defraud
23 investors into buying Nikola shares through statements about the Company’s product and
24 technology development. For example, the indictment alleged that Milton made “false and
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1 misleading statements that Nikola had engineered and built an electric- and hydrogen-
2 powered pickup truck known as ‘the Badger’ from the ‘ground up’ using Nikola’s parts
3 and technology.” The SEC also filed related civil charges. In response to the indictment,
4 Milton stated that they were “false allegations.”

5 542. On this news, Nikola’s stock fell another \$2.16 per share, closing at \$12.03
6 on July 29, 2021, a 15.22% decline from its previous close on July 28, 2021. Nikola’s stock
7 continued to steadily decline another \$1.88 per share, or 15.62%, over the next several days
8 to close at \$10.15 per share on August 5, 2021, as investors absorbed the lengthy and
9 detailed indictment and SEC complaint, which totaled over 100 pages.

10 **V. Defendants Misled Investors Regarding Nikola’s Manufacturing of In-House**
11 **Components**

12 **A. Nikola Did Not Manufacture Any Components In-House**

13 543. Semi-trucks like the Nikola One must be constructed from thousands of
14 parts, including motors, batteries, inverters, transmissions, drive shafts, axles, steering
15 components, brakes, the chassis frame, the metal body, lighting, HVAC, and wheels, to
16 name a few. Most truck and car manufacturers outsource production of many of the parts
17 of a vehicle to third-party vendors. Some large manufacturers, however, produce some
18 components in-house because it is cheaper due to economies of scale, or because
19 technology is proprietary.

20 544. Since at least 2016 and into the Class Period, Milton claimed that Nikola has
21 intellectual property rights over important components of its semi-truck line. While Milton
22 stated that Nikola outsources certain parts of the trucks, like tires or windshields, Milton
23 also repeatedly stated that Nikola makes the most important parts of the semi-trucks “in-
24 house.” Milton did so, among other reasons, to claim that Nikola has valuable intellectual
25 property, to support his claims that Nikola’s trucks outperform competitors, and to
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1 differentiate the Company from other electric vehicle manufacturers and startups.
2 However, to inflate Nikola's stock price, Milton exaggerated Nikola's in-house
3 development of batteries, inverters and other components and falsely stated that the
4 Company made parts in-house when it did not. Milton also responded strongly to
5 suggestions that Nikola was solely an "integrator" and perhaps not as valuable as an OEM
6 that designed and manufactured its own key components.

7 545. In 2020, Milton repeatedly stated that "all major components" such as
8 batteries and inverters were designed or made by Nikola "in-house." But what Milton
9 presented to the public about Nikola's in-house design and manufacturing programs,
10 capabilities, and achievements relating to the battery and the inverter, and the true state of
11 those programs, diverged widely.

12 546. For example, on or about February 14, 2020, in an interview on *Fox Business*,
13 Milton said: "[W]e're probably one of the only companies in the world that **does everything**
14 **ourselves**. We do our own **batteries**, we do our own frames, **we do our own vehicles from**
15 **the ground up**, our own **inverters**, our own infotainment, you know, the cool screens. So
16 ultimately, that **entire truck from the ground up is designed by Nikola**, and they do cost a
17 lot of money. . . ." On July 5, 2020, Milton tweeted from his personal account: "**All major**
18 **components are done in house; batteries, inverters, software, controls, infotainment,**
19 **over the air, etc.**"

20 547. As Defendant Brady has since admitted, "Nikola **aspires** to build components
21 in-house but **does not do so at present**." Kevin Lynk (Chief Engineer) admitted "**Nikola**
22 **does not currently develop any components** on its own." Indeed, on March 27, 2020, Lynk
23 emailed Katherine Beebee (project manager, Truck) regarding responsibility for e-axle
24 components: "FPT is responsible for the mechanical design of the e-axle. Iveco is
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1 responsible for the vehicle integration of the e-axle and traction inverters. Nikola is
2 responsible for purchasing the traction inverters and critical e-axle components and we
3 provide support for the system design.”

4 548. Specifically, Nikola did not design or develop any functioning inverters in-
5 house. Nikola has used third-party “off the shelf” inverters for all its semi-truck prototypes,
6 and it planned to use third-party inverters for the Nikola Tre vehicle. And, while Nikola
7 entered into an agreement to develop inverters with a supplier in early 2018, that effort was
8 terminated in the spring 2020 due to a lack of progress. On October 1, 2019, in preparation
9 for a meeting of the Board of Directors, Milton, Russell, Brady, Worthen, and Ubben
10 received materials stating that the inverters for the Nikola Tre were “off-the-shelf.”⁶⁹ And,
11 Milton was directly involved in terminating the inverter co-development effort with a
12 supplier, even requesting a refund from the supplier due to lack of success.

13 549. Nikola has since admitted that the Company used third-party inverters for all
14 of its vehicles. According to Lynk, Nikola’s Chief Engineer, “**Nikola has used and**
15 **continues to use off-the-shelf inverters** for demonstration and early phase prototype
16 vehicles” and inverters “aren’t even in production yet.” Varoujan Sarkissian (Global
17 Head, Vehicle Electrical and Controls) admitted, “[e]fforts to develop in-house inverters
18 only ramped up in early 2020, and it will take far more development time (perhaps up to
19 ten years) before the in-house inverters could be used in Nikola production vehicles” and
20 “**Milton knew that Nikola was in the early stages of inverter development** – the company
21 had canceled its contract with ITK for inverter development and was essentially starting
22 over.” According to Varoujan Sarkissian, “**There was no complete in-house inverter or**
23 **software.**”

24 ⁶⁹ *In re Nikola Corp. Derivative Litig.*, C.A. No. 20222-0023-KSJM (Del. Ch. Feb. 15,
25 2022), ¶154(c).

1 550. Similarly, Defendant Brady has admitted “*Nikola does not make its own*
2 *battery in-house.*” A May 11, 2020 internal Company document states “Nikola is not
3 developing a battery in house” and “Nikola does not have a clear plan for battery
4 development.”

5 **B. Nikola’s Fictional Game-Changing Battery Technology**

6 551. As discussed above, Nikola did not make in-house batteries or an electric
7 powertrain at any time. Batteries are critical to an electric vehicle’s operation because they
8 store energy to run the motors. Although Nikola partnered with various companies to try
9 to develop proprietary battery technology, these efforts had not been successful, and Nikola
10 has not successfully developed, at any time relevant to the Class Period, any in-house
11 battery technology. Plus, the batteries it planned to use in its semi-trucks were developed
12 and manufactured by third parties.

13 552. For BEVs and FCEVs, batteries have three main components: cells, modules,
14 and packs. Cells are the smallest component. Cells are contained within modules, and
15 modules are arranged in packs. The design of these modules and packs can have a
16 significant impact on battery performance and safety. Cells, which are considered more of
17 a commodity, are typically purchased from one of a few main worldwide suppliers.

18 553. Milton was deeply involved in, and led all aspects of, Nikola’s battery
19 development projects. Milton was aware that Nikola could not make the Nikola Tre BEV’s
20 batteries in-house and was pursuing a third-party supplier, Romeo, as the only realistic
21 option for supplying the batteries for the Nikola Tre BEV, which Nikola did, in fact, engage
22 to manufacture batteries for the Nikola Tre BEV. Indeed, Nikola does not have the
23 capability to manufacture batteries on its own. Romeo designed the modules for the
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1 batteries that Nikola is using for the Nikola Tre BEV, and Nikola relied on the assistance
2 of Romeo to design the battery pack.

3 554. As Defendant Brady has now admitted “Nikola does not make its own battery
4 in-house.” According to Defendant Russell, “Romeo was the best option, but Milton badly
5 wanted Nikola to own its battery technology.”⁷⁰

6 555. To this end, in May 2019, Milton sent an unsolicited email to a research
7 professor at Drexel University (“Drexel”) concerning research on lithium sulfur batteries
8 that the professor was conducting. A lithium sulfur cell uses different chemistry than a
9 lithium-ion cell, which is the current conventional chemistry for rechargeable battery cells.
10 Milton told the professor that Nikola was “looking at contributing financially and licensing
11 some of your results.” Milton stated that Nikola was “doing some programs with a few
12 universities,” and then asked if the professor would reveal some details of her research.
13 Over the ensuing week in May 2019, Nikola executed a confidentiality agreement with
14 Drexel and obtained access to the results of certain of the professor’s research. This
15 research was in its early stages.

16 556. Milton visited the Drexel professor and, after this visit, directed Nikola in
17 September 2019 to enter into a preliminary term sheet, which contemplated terms of a
18 sponsored research agreement. Nikola executed a sponsored research agreement with
19 Drexel on October 31, 2019 (the “Sponsored Research Agreement”).

20 557. Under the Sponsored Research Agreement, Nikola was to provide a modest
21 amount of funding (\$250,000 initially) to sponsor the lithium sulfur battery technology
22 research that the professor at Drexel was conducting. In exchange, any intellectual
23 property developed with Nikola following entry into the agreement would be shared

24
25 ⁷⁰ USAO Presentation.

1 between Nikola and Drexel. This research pertained to coin size battery cells that were
2 being developed and tested in a controlled lab environment as part of a university research
3 project. To scale coin-size lab-level cells to even a prototype size would require significant
4 further development with no assurance of comparable performance levels. From there,
5 developing cells from prototype pouch size cells to commercial grade quality was a further,
6 significant undertaking, with no assurance of utility for commercial applications.

7 558. According to Jason Roycht (VP, Technology Development and Strategy),
8 these “[d]ime sized ‘coin cells’ were in place at the time with Drexel; these are simplistic
9 and nowhere near the complexity of what goes into a pack cell.” Tony Heaton (Battery
10 Engineer) stated in late 2020 that “Drexel’s work *is still* in the early research and
11 development phase.”

12 559. Milton was aware that the batteries produced for the Nikola Tre BEV would
13 contain Romeo’s modules, because in November 2019, Milton personally signed a multi-
14 million-dollar purchase order for Romeo’s modules. However, once the Sponsored
15 Research Agreement was signed, Milton concocted a plan to conceal the reliance on a third-
16 party for batteries and mislead investors just as VectorIQ and Nikola began to discuss the
17 merger.

18 560. Between November 1 and 4, 2019 Milton emailed Steve Cook (associate
19 Corporate Counsel, Contracts) regarding an agreement with Romeo for its batteries, stating
20 “we need to make sure we have a clause specifically stating they shall never represent their
21 batteries are on our truck without our written permission. Which we will never give. I don’t
22 want the image issue with our investors.” Defendant Worthen has admitted that “Milton
23 worked hard to ensure that Romeo could never say that its batteries were in Nikola’s
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1 trucks.” Similarly, Defendant Russell stated, “Romeo was the best option, but Milton badly
2 wanted Nikola to own its battery technology.”⁷¹

3 561. Then, on November 18, 2019, Milton tweeted from his personal account,
4 teasing a significant announcement the following day: “Tomorrow, it all changes. I finally
5 get to talk about it. The news everyone has been waiting for. Diesel trucks are obsolete
6 for good. We solved what no one else could. It’s time for other OEM’s [sic] to stop
7 producing diesels immediately. See press tomorrow #emissionsgameover.”

8 562. The next day, November 19, 2019, Nikola issued a press release titled
9 “Nikola Corporation to Unveil Game-Changing Battery Cell Technology at Nikola World
10 2020.” The purpose of the press release was for Nikola to “announce details of its new
11 battery.”

12 563. In the press release, Nikola made several unqualified claims about the battery
13 technology, which he is quoted describing as “the biggest advancement we have seen in
14 the battery world.” Nikola claimed the following in the press release about Nikola’s
15 purported “prototype cell”:

- 16 (a) “record energy density of 1,100 watt-hours per kg on the
17 material level and 500 watt-hours per kg on the production
level”;
- 18 (b) “could increase the range of current EV passenger cars from
19 300 miles up to 600 miles with little or no increase to battery
size and weight”;
- 20 (c) “technology is also designed to operate in existing vehicle
conditions”;
- 21 (d) “cycling the cells over 2,000 has shown acceptable end-of-life
performance”;
- 22 (e) “Nikola’s battery electric trucks could now drive 800 miles
23 fully loaded between charges” and “hydrogen-electric fuel cell

24
25 ⁷¹ USAO Presentation.

1 trucks could surpass 1,000 miles between stops and top off in
15 minutes”;

2 (f) “World’s first free-standing electrode automotive battery”; and

3 (g) “40% reduction in weight compared to lithium-ion cells” and
4 “50% material cost reduction per kWh compared to lithium ion
batteries.”

5 564. The same day, Milton took to Twitter, where on his personal account he
6 repeated the substance of the press release, and further misrepresented Nikola’s purported
7 “game-changing” achievement. When a Twitter user asked, “[i]s it actually real though,
8 or is it another Joi Scientific style ‘breakthrough,’” Milton replied to the user, “It’s real.
9 I’ve seen it with my own eyes and watched them cycle.”

10 565. On December 2, 2019, when Milton was asked on the *Shift* podcast to
11 comment on Nikola’s November 19, 2019 battery announcement, he stated “our battery
12 beats the Tesla battery in every metric, in every situation, and it’s half the cost and it’s
13 double the range.”

14 566. On January 1, 2020, Brady texted Russell about a presentation Milton had
15 given: “Spoke with Umran⁷² for a few minutes this afternoon. He said Trevor’s battery
16 presentation was full of misrepresentation.”⁷³

17 567. And, on March 12, 2020, Milton stated on the *Transport Topics Roadshow*
18 podcast that “[w]e can – we’re double the cycle life of a regular lithium-ion, and we’re
19 about half- to one-quarter the cost to produce the lithium-ion and we don’t have any of the
20 expensive metals. . . .we should have productionized cells probably by the years end.”

21 568. Defendant Brady has since admitted “Nikola is ‘years away’ from having the
22 battery technology Milton described. There’s no way he could have known how many
23 miles the trucks could drive between charging. The whole statement was an embellishment

24 ⁷² Nikola’s Global Head of Vehicle Engineering.

25 ⁷³ USAO Presentation.

1 and fiction at the time...” Defendant Worthen stated “Nikola did not and still does not have
2 ‘commercializable’ battery technology. Milton’s statement to the contrary were a ‘terrible
3 and stupid idea’ **and Worthen told him not to make the statement.**” In an early April 2020
4 battery program update sent to Milton, a Nikola Vice President of Technology wrote that
5 “on the basis of Tre timing alone, the only possible considerations would be [Romeo’s]
6 design. . . .” Moreover, a May 11, 2020 internal company document states “Nikola is not
7 developing a battery in house” and “Nikola does not have a clear plan for battery
8 development.”⁷⁴ And a Board presentation made July 23, 2020 to Milton, Russell, Brady,
9 Worthen, Girskey, and Ubben said that Nikola had abandoned any plans to use its own
10 battery for the Nikola Tre BEV and, as of June 9, 2020, was evaluating batteries
11 manufactured by third-party suppliers Kreisel and BorgWarner.⁷⁵

12 569. Nevertheless, Milton continued to deny that Romeo was supplying Nikola’s
13 batteries for fear that it would undermine his false narrative about Nikola’s design
14 capabilities. For example, on June 4, 2020, a Twitter user tweeted at Milton expressing
15 concern that he “heard that Romeo ... supplies the batteries” to Nikola. Milton responded:
16 “We do our own batteries at Nikola and have since day 1. We do however test with
17 everyone and if a supplier builds a better battery we would use them. That goes for all
18 supplied parts on our vehicle.” Similarly, in September 2020, after Nikola had already
19 entered into the battery supply agreement with Romeo, Romeo sought Nikola’s permission
20 to identify it as a customer as part of Romeo’s road show in connection with a go-public
21

22 ⁷⁴ USAO Presentation.

23 ⁷⁵ *In re Nikola Corp. Derivative Litig.*, C.A. No. 20222-0023-KSJM (Del. Ch. Feb. 15,
24 2022), ¶161 (citing NIKOLABR_000075).

1 transaction. Milton opposed the request stating, “[i]t will leak everywhere and hurt our
2 *image.*”

3 **C. False and Misleading Statements About In-House Vehicle Components
4 and Proprietary Battery Technology**

5 1. *Pre-Merger False and Misleading Statements Regarding In-House
6 Vehicle Components and Proprietary Battery Technology*

7 570. On November 18, 2019, Milton tweeted from his personal account, teasing a
8 significant announcement the following day: “Tomorrow, it all changes. I finally get to
9 talk about it. The news everyone has been waiting for. Diesel trucks are obsolete for good.
10 **We solved what no one else could.** It’s time for other OEM’s [sic] to stop producing diesels
11 immediately. See press tomorrow #emissionsgameover.” This statement remained on
12 Milton’s Twitter account and publicly available to investors during the Class Period.

13 571. The next day, November 19, 2019, Nikola issued a press release titled
14 “Nikola Corporation to Unveil Game-Changing Battery Cell Technology at Nikola World
15 2020.” Milton drafted this press release and had ultimate authority over its content. Milton
16 had provided a draft of the press release to Nikola’s Board of Directors (which included
17 Defendants Milton, Russell, Brady (Treasurer), Ubben, and Worthen (Secretary)) on
18 November 15, 2019, and the Board authorized its issuance. The purpose of the press release
19 was for Nikola to “announce details of its new *battery.*” The November 19, 2019 press
20 release was posted to Nikola’s website and, together with the accompanying tweets,
21 remained publicly available to investors throughout the Class Period.⁷⁶

22 572. In the press release, the Nikola Defendants made several unqualified claims
23 about the battery technology, which Milton is quoted describing as “the biggest

24 ⁷⁶ Press Release, Nikola Corporation, *Nikola Unveils the Nikola Badger Pickup* (November
25 19, 2019), available at https://nikolamotor.com/press_releases/nikola-corporation-to-unveil-game-changing-battery-cell-technology-at-nikola-world-2020-67.

1 advancement we have seen in the battery world.” The Company claimed the following in
 2 the press release about what it asserted as *Nikola’s* purported “prototype cell”:

- 3 (a) “record energy density of 1,100 watt-hours per kg on the
 4 material level and 500 watt-hours per kg on the production
 level”;
- 5 (b) “could increase the range of current EV passenger cars from
 6 300 miles up to 600 miles with little or no increase to battery
 size and weight”;
- 7 (c) “technology is also designed to operate in existing vehicle
 8 conditions”;
- 9 (d) “cycling the cells over 2,000 has shown acceptable end-of-life
 performance”;
- 10 (e) “Nikola’s battery electric trucks could now drive 800 miles
 11 fully loaded between charges” and “hydrogen-electric fuel cell
 trucks could surpass 1,000 miles between stops and top off in
 12 15 minutes”;
- 13 (f) “World’s first free-standing electrode automotive battery”; and
- 14 (g) “40% reduction in weight compared to lithium-ion cells” and
 15 “50% material cost reduction per kWh compared to lithium ion
 batteries.”

16 573. These statements remained on Nikola’s website and publicly available to
 17 investors during the Class Period.

18 574. The same day, Milton took to Twitter, where on his personal account he: (i)
 19 quoted the press release, in part, in one tweet, (ii) repeated the same claims as in the press
 20 release in another tweet (“***Nikola has developed the most energy dense, safe battery in the***
 21 ***world It would double the range of every electric vehicle and nearly double the***
 22 ***range of every fuel cell.*** Making it available even to competitors.”), and (iii) in a third
 23 tweet, further misrepresented Nikola’s purported “game-changing” achievement
 24 (“***[y]ou’re talking 600+ mile range in a model 3 Tesla. You’re talking 50% less cost than***
 25 ***Lithium Ion. You’re talking mass adoption of zero emission vehicles. Could be worth***
 26

1 *hundreds of billions if owned by one company but we decided to share it with the*
 2 *competition for greater good.”*). When a Twitter user responded to this last tweet asking,
 3 “[i]s it actually real though, or is it another Joi Scientific style ‘breakthrough,’” Milton
 4 replied to the user, *“It’s real. I’ve seen it with my own eyes and watched them cycle.”*
 5 These statements remained on Milton’s Twitter account and publicly available to investors
 6 during the Class Period.

7 575. On or about December 2, 2019, Milton was asked on the *Shift* podcast to
 8 comment on Nikola’s November 19, 2019 battery announcement having been met with
 9 “some curiosity,” and to address skeptics “who might doubt that such a battery exists.”
 10 Milton responded, in part⁷⁷:

11 *Once we got the technology nailed down, we actually have over 2,000 cycles*
 12 *on our battery, which would mean it would be more than a million-mile*
 13 *battery. It would actually – our battery beats the Tesla battery in every*
 14 *metric, in every situation, and it’s half the cost and it’s double the range.*
 15 So, you know, for us, that was an exciting thing to be able to tell the world,
 16 and I actually appreciate the critics. I’m totally fine with it; I enjoy it. Because
 17 every time I prove them wrong, it drives them absolutely insane and they
 18 have to go back and admit they were wrong. For me, that’s the funnest part
 19 of it.

20 576. The statements identified in ¶¶570-575 were materially false and misleading
 21 because Defendants knew or recklessly disregarded but failed to disclose that (i) these
 22 attributes were applicable to only *coin size* battery cells that were being developed and
 23 tested in a controlled lab environment as part of a university research project, (ii) scaling
 24 these coin-size lab-level cells to even a prototype size—which had not been done at the
 25 time of the press release—would require over a year of significant further development

26 ⁷⁷ Shift: A Podcast About Mobility, *Nikola Motor’s Trevor Milton on electrification, Tesla and a beer delivery* (Episode 21) (2019), available at <https://www.autonews.com/shift-podcast-about-mobility/nikola-motors-trevor-milton-electrification-tesla-and-beer-delivery>. This episode is currently publicly available and was available to investors throughout the Class Period.

1 with was no assurance of comparable performance levels, and (iii) developing the cells
 2 from prototype pouch size cells to commercial grade quality was a further, significant
 3 undertaking, with no assurance of utility for commercial applications. Moreover, the
 4 statements above misled investors that Nikola developed the technology, when Nikola paid
 5 \$250,000 to license coin-size cell technology created by someone else. As detailed in the
 6 USAO Presentation, Jason Roycht (VP, Technology Development and Strategy) stated,
 7 “[d]ime sized ‘coin cells’ were in place at the time with Drexel; these are simplistic and
 8 nowhere near the complexity of what goes into a pack cell.” Tony Heaton (Battery
 9 Engineer) stated “Drexel’s work is still in the early research and development phase, and
 10 it was likely too early to publish this statement in November 2019.” Brady stated “Nikola
 11 is ‘years away’ from having the battery technology Milton described. There’s no way he
 12 could have known how many miles the trucks could drive between charging. ***The whole***
 13 ***statement was an embellishment and fiction at the time...***” Worthen stated “***Nikola did***
 14 ***not and still does not have ‘commercializable’ battery technology. Milton’s statement to***
 15 ***the contrary were a ‘terrible and stupid idea’ and Worthen told him not to make the***
 16 ***statement.***” Joe Pike (CHRO) stated “This statement felt false and misleading; Milton was
 17 essentially saying ‘we got it,’ before they did.” Milton’s knowledge of contradictory facts;
 18 his personal involvement in negotiating, closing, and terminating supplier contracts; and
 19 the specificity of his false and misleading statements all demonstrate that he spoke
 20 knowingly or with deliberate recklessness.

21 577. On or about February 14, 2020, in an interview on *Fox Business*, Milton said:
 22 “[W]e’re probably one of the only companies in the world that ***does everything ourselves.***
 23 ***We do our own batteries***, we do our own frames, ***we do our own vehicles from the ground***
 24 ***up***, our own ***inverters***, our own infotainment, you know, the cool screens. So ultimately,

1 *that entire truck from the ground up is designed by Nikola*, and they do cost a lot of
2 money. . . .”

3 578. The statements referenced in ¶577 were materially false and misleading
4 because Milton knew that Nikola did not and does not design, develop or produce the
5 “entire truck” because Nikola did not design, develop, or produce components such as
6 batteries, inverters, or e-axles. Nikola has used third-party “off the shelf” inverters for all
7 its semi-truck prototypes, and it planned to use third-party inverters for the Nikola Tre.
8 While Nikola entered into an agreement to develop inverters with a supplier in early 2018,
9 Milton terminated that effort in the spring 2020 due to a lack of progress. For an October
10 2019 meeting of the Board of Directors, Milton received materials that referred to inverters
11 for the Nikola Tre as “off-the-shelf.” And, he was directly involved in terminating the
12 inverter co-development effort with a supplier, even requesting a refund from the supplier
13 due to lack of success. In a January 24, 2020 internal Company e-mail, several Nikola
14 executives shared a list of questions forwarded by BlackRock, Inc., one of the world’s
15 largest asset management firms, who was considering investing in the Company.⁷⁸ Among
16 the questions regarding the “Battery – Thermal Cooling,” BlackRock asked, “Who would
17 be your supplier for the flooded technology now that Bosch has curtailed development?”
18 also “Who would provide the cooling plate option?” In a later e-mail, defendant Milton
19 reminded his team that all discussions about the Company’s batteries would go through
20 him and that he would “be handling all the battery discussions from this point on and
21 bringing you guys in when needed.”

22 579. As detailed in the USAO Presentation, Brady has admitted, “Nikola *aspires*
23 to build components in-house but *does not do so at present*” and “Nikola does not make

24 ⁷⁸ *Brown v. Milton*, C.A. No. 2022-0223 (Del. Ch. Mar. 10, 2022), ¶196 (citing
25 NIKOLABR_006502).

1 its own battery in-house.” Kevin Lynk (Chief Engineer) admitted “***Nikola does not***
2 ***currently develop any components*** on its own” and “Nikola has used and continues to use
3 off-the-shelf inverters for demonstration and early phase prototype vehicles” and “aren’t
4 even in production yet.” Varoujan Sarkissian (Global Head, Vehicle Electrical and
5 Controls) admitted “[e]fforts to develop in-house inverters only ramped up in early 2020,
6 and it will take far more development time (perhaps up to ten years) before the in-house
7 inverters could be used in Nikola production vehicles” and “Milton knew that Nikola was
8 in the early stages of inverter development – the company had canceled its contract with
9 ITK for inverter development and was essentially starting over.” According to Varoujan
10 Sarkissian, “[t]here was no complete in-house inverter or software.” Umran Ashraf (Global
11 Head, Vehicle Engineering) stated “Virtually all of the batteries for vehicles are built with
12 partners...(Samsung provides the cell, Romeo makes the module, Nikola builds and owns
13 the pack).” Russell stated “Romeo was the best option, but Milton badly wanted Nikola to
14 own its battery technology.” Between November 1 and 4, 2019 Milton emailed Steve Cook
15 (associate Corporate Counsel, Contracts) regarding an agreement with Romeo for its
16 batteries, stating “we need to make sure we have a clause specifically stating they shall
17 never represent their batteries are on our truck without our written permission. Which we
18 will never give. I don’t want the image issue with our investors.” Britton Worthen (CLO)
19 admitted that “Milton worked hard to ensure that Romeo could never say that its batteries
20 were in Nikola’s trucks. Moreover, a May 11, 2020 internal company document states
21 “Nikola is not developing a battery in house” and “Nikola does not have a clear plan for
22 battery development.” On March 27, 2020, Kevin Lynk emailed Katherine Beebee (project
23 manager, Truck) regarding responsibility for e-axle components: “FPT is responsible for
24 the mechanical design of the e-axle. Iveco is responsible for the vehicle integration of the
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1 e-axle and traction inverters. Nikola is responsible for purchasing the traction inverters and
 2 critical e-axle components and we provide support for the system design.” And a Board
 3 presentation made July 23, 2020 to Milton, Russell, Brady, Worthen, Girskey, and Ubben
 4 said that Nikola had abandoned any plans to use its own battery for the Nikola Tre BEV
 5 and, as of June 9, 2020, was evaluating batteries manufactured by third-party suppliers
 6 Kreisel and BorgWarner.⁷⁹

7 580. On March 4, 2020, Milton and Ubben appeared on *CNBC*’s Sqawk Box to
 8 promote Nikola’s stock and the IPO. Asked “how much of the intellectual property is
 9 actually yours and not [your partners’]?” Milton said:

10 So what we did is we went out to the biggest players in the world, the people
 11 that have access to tens of billions of dollars and we said, “Look, this is what
 12 we need. It doesn’t exist, ***we’ll share the IP with you if you’ll help us build it.***” And we went to Bosch, we went to you know Meritor, we went to
 13 WABCO, we went to Nel, we went to all these different groups, and we said,
 14 “let’s build all this stuff.” ... ***So that’s really what sets us apart is we have a piece of all the IP*** and we have the biggest suppliers in the world paying
 for our research and development so we don’t have to go spend tens of
 billions of dollars.

15 581. Ubben sat next to Milton throughout the more than 20 minute interview,
 16 occasionally interspersing his own thoughts and responses and otherwise nodding along as
 17 Milton spoke, saying nothing to correct Milton’s false and misleading statements.

18 582. Milton’s statements in ¶580 were materially false and misleading and made
 19 knowingly or with reckless disregard for the truth because, as explained in ¶¶578-579,
 20 Nikola did not design, develop, or produce components such as batteries, inverters, or e-
 21 axles, but instead sourced these components from third party suppliers. Ubben’s conduct
 22

23 ⁷⁹ *In re Nikola Corp. Derivative Litig.*, C.A. No. 20222-0023-KSJM (Del. Ch. Feb. 15,
 24 2022), ¶161 (citing NIKOLABR_000075).

1 during the interview served to effectively vouch for Milton's false and misleading
2 statements.

3 583. On or about March 12, 2020, Milton stated on the *Transport Topics*
4 *Roadshow* podcast that "[w]e can – we're double the cycle life of a regular lithium-ion,
5 and we're about half- to one-quarter the cost to produce the lithium-ion and we don't have
6 any of the expensive metals . . . we should have productionized cells probably by the years
7 end."⁸⁰

8 584. The statements Milton made in ¶583 were materially false and misleading
9 and made knowingly or with reckless disregard for the truth for the reasons identified in
10 ¶¶576, 578, and 579.

11 2. *Class Period False and Misleading Statements Regarding In-House*
12 *Vehicle Components and Proprietary Battery Technology*

13 585. On or about June 3, 2020, Milton tweeted out a link to a podcast interview,
14 during which he claimed that Nikola did its "**own powertrains, battery, battery**
15 **management systems, controls . . in-house.**"

16 586. On June 4, 2020, in a tweet, Milton represented, "**We do our own batteries**
17 **at Nikola and have since day 1.** We do however test with everyone and if a supplier builds
18 a better battery we would use them. That goes for all supplied parts on our vehicle."

19 587. On or about June 6, 2020, Milton tweeted, "**All the technology, software,**
20 **controls, E axle, inverters etc. we do internally.**"

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24 ⁸⁰ TransportTopics, *Roadshow: Episode Four Meet Trevor Milton*, YouTube (Mar. 12,
25 2020), available at <https://www.youtube.com/watch?v=ZJWINC1aGLk>. This episode is
currently publicly available and was available to investors throughout the Class Period.

1 588. The statements referenced in ¶¶585-587 were materially false and misleading
 2 and made knowingly or with reckless disregard for the truth for the reasons identified in
 3 ¶¶576, 578, and 579.

4 589. During the same *Raging Bull* podcast, Milton stated:

5 ***So when we built all this technology, we had billions of dollars spent on the***
 6 ***electrification platforms for our big trucks.*** I know I could take that money,
 7 all that technology that's been built, and port it over to the most advanced
 8 pickup truck in the world. . . . Now, we're going to use an existing OEM to
 9 build our Nikola Badgers. ***So we own all the tech. So all the cool stuff you***
 guys want, the design, the inside, the connectivity with your phone . . . all
 the e-axes or, you know the electric motors, the batteries, the controls, all
 that's done by Nikola. . . .

10 590. The statement referenced in ¶589 was materially false and misleading and
 11 made knowingly or with reckless disregard for the truth for the reasons identified in ¶¶501,
 12 576, 578, and 579.

13 591. On the same June 29, 2020 *Raging Bull* podcast, Milton was asked, "who is
 14 the manufacturer of the battery?" Milton replied:

15 The battery is actually done by Nikola. ***We own all the tech and we're***
 16 ***building all the batteries in-house. So it's all owned by Nikola,*** but it will
 17 be done at a big plant. We're going to build a plant next to ours that will
 18 essentially build all the batteries for all of our applications. But we use other
 people's cells. So we use, like, LG, Samsung, Panasonic. We use their cells,
 but 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.

19 592. The statement referenced in ¶591 was materially false and misleading and
 20 made knowingly or with reckless disregard for the truth for the reasons identified in ¶¶576,
 21 578, and 579.

22 593. Moreover, this statement is materially false and misleading because
 23 Defendants failed to disclose that Nikola used a third-party supplier to manufacture
 24 batteries for its first production vehicle, the Nikola Tre BEV, and Nikola does not have the
 25
 26

1 capability to manufacture these batteries on its own. The supplier designed the modules
 2 for the batteries that Nikola is using for the Nikola Tre BEV, and Nikola relied on the
 3 assistance of the supplier to design the battery pack. Indeed, a July 23, 2020 presentation
 4 to the Nikola Board (received by Milton, Russell, Brady, Worthen, and Ubben) stated that
 5 Nikola had abandoned its plans to use its own battery for the Nikola Tre BEV and as of
 6 June 9, 2020 had planned to use a battery manufactured by third-party supplier Kreisel,
 7 and that Nikola was also evaluating using a battery manufactured by third-party supplier
 8 BorgWarner.⁸¹

9 594. On July 1, 2020, Milton tweeted from his personal account in response to a
 10 comment from a Twitter user who asserted that Nikola did not make its batteries: “We
 11 don’t make the cells. ***We make the entire pack*** like the top guys do. ***We do have an OEM***
 12 ***making our truck*** but ***all internals are Nikola’s IP; batteries, inverters, software, ota,***
 13 ***infotainment, controls, etc. We own it all in-house.*** Just not the plant to build the truck.”

14 595. The statement referenced in ¶594 was materially false and misleading and
 15 made knowingly or with reckless disregard for the truth for the reasons identified in ¶¶576,
 16 578, and 579. Milton’s statement “[w]e do have an OEM making our truck” is also
 17 materially false and misleading because Defendants knew or recklessly disregarded but
 18 failed to disclose that as of the date of the statement Nikola had not engaged any OEM to
 19 produce the Badger.

20 596. On July 5, 2020, Milton tweeted from his personal account: “***All major***
 21 ***components are done in house; batteries, inverters, software, controls, infotainment,***
 22 ***over the air, etc.*** you don’t care about the truth you’re just out to be a keyboard warrior.”

24 ⁸¹ *In re Nikola Corp. Derivative Litig.*, C.A. No. 20222-0023-KSJM (Del. Ch. Feb. 15,
 25 2022), ¶¶161 (citing NIKOLABR_000075).

1 597. The statement referenced in ¶596 was materially false and misleading and
 2 made knowingly or with reckless disregard for the truth for the reasons identified in ¶¶576,
 3 578, and 579. Nikola also admitted in its 2020 Form 10-K, filed February 25, 2021, that
 4 the statement “all major components are done in house” was “inaccurate in whole or in
 5 part, when made.”

6 598. On July 14, 2020, Milton stated the following on an Instagram Live video
 7 posted on his personal Instagram account:

8 *One difference of us compared to everyone is we're the – really the only*
 9 *group out there that does full dielectric fluid submersion batteries.* I'm
 10 gonna walk out here and show you that in a second. So what does that mean?
 That means our batteries are actually completely immersed into fluid. Now,
 watch our competitors follow us on that one, too.

11 Why? Because you can cool and heat your batteries much faster, much more
 12 efficiently, and you're also able to stop thermal propagation, something that
 other people cannot do. So, pretty cool.

13 599. In the same video, Milton further stated:

14 So this is to everyone who's questioning what we do. Alright, so first of all,
 15 *who makes our batteries? Who makes Nikola's batteries? Nikola does.* Do
 we make the cells? No, we do not. We buy the cells from either people like
 Samsung, LG, Panasonic, or other groups.

16 ...

17 *We do however, make everything in our battery. All the cooling, the*
 18 *thermal, the battery management system, the software, the hardware,*
 19 *everything except for the cell.* So let that clear up any of the lies and the, the
 fake lies out there about how Nikola doesn't do shit, it's quite interesting.
 You could not build a truck like this if you don't pretty much do everything .

20 ...

21 600. The statements referenced in ¶¶598-599 were materially false and misleading
 22 and made knowingly or with reckless disregard for the truth for the reasons identified in
 23 ¶¶576, 578, and 579. Moreover, the statements regarding a submerged battery technology
 24 were materially false or misleading because Defendants knew or recklessly disregarded but
 25 failed to disclose that these batteries were only being used in two prototypes and had severe
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1 functional limitations and associated safety issues, leading investors and prospective
2 investors to believe that these batteries were viable when, in fact, they were not.
3 Specifically, the third-party supplier who helped Nikola develop the batteries mandated
4 that they could only be run on a vehicle with a state-of-charge limitation of 30 percent, due
5 to safety test failures. Milton knew or was reckless in not knowing that his statements about
6 the submerged batteries were misleading as he learned, at least as of February 2019 or
7 sooner, about the batteries' functional limitations and safety issues first-hand from the
8 third-party supplier. In an email sent on February 5, 2019, Milton wrote, "I will agree to
9 one of two of those [restrictions] but it can not (sic) be my financial penalty as a result of
10 your lack of [] not delivering what was promised. . . . These are test packs, not production.
11 . . . We do not accept your demands on these batteries with exception to the state of charge
12 on vehicle." Further, the statement that Nikola made "everything" in their battery was false
13 and misleading because Nikola had not successfully developed battery technology
14 internally, and the batteries it planned to use in its semi-trucks were developed and
15 manufactured by third parties.

16 601. In the same July 14, 2020 Instagram Live video, Milton stated that Nikola
17 does "***all the e-axle design in-house***, all the gears, the gear reductions, the thermal, the
18 cooling, even the controls that go with it, and ***also the inverters*** as well." Milton further
19 stated, "[A]ll' inverters on the Nikola truck are probably some of the most advanced
20 software systems that . . . I know of anywhere in the automotive world. Why do I know that?
21 It's because ***other OEMs are asking us to use it. . . .***"

22 602. The statement referenced in ¶601 was materially false and misleading and
23 made knowingly or with reckless disregard for the truth for the reasons identified in ¶¶578-
24 579. Moreover, Milton's statements that "other OEMs are asking us to use [Nikola's
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1 inverters] was materially false and misleading because Defendants knew or recklessly
 2 disregarded but failed to disclose that no OEM had ever made such a request. As detailed
 3 in the USAO Presentation, Brady admitted “Milton’s assertion that other OEMs have asked
 4 to use Nikola’s in-house inverters is ‘**complete fiction.**’” Varoujan Sarkissian stated, “[i]t
 5 is not true that OEMs asked to use Nikola’s in-house inverter. There was no complete in-
 6 house inverter or software for OEMs to ask for at the time of Trevor’s statement.” Nikola
 7 also admitted in its 2020 Form 10-K, filed February 25, 2021, that the statements about
 8 Nikola’s inverter software being the most advanced in the world and that other OEMs had
 9 asked to use it were “inaccurate in whole or in part, when made.”

10 603. On or about July 31, 2020, when asked on the *This Week in Startups* podcast,
 11 “[y]ou do make your own battery packs,” Milton replied, “**we do make our own battery**
 12 **packs, that’s the key, that’s the key element because of the cost.**” Milton then went on to
 13 say that the “**battery pack is 30 percent of your vehicle’s cost, or 40. So it’s one of the**
 14 **most important things to actually bring in-house. And so we do make our own battery**
 15 **packs. The whole truck is our design, is our, is our build, but another manufacturer’s**
 16 **gonna actually be spitting it out on their assembly line.**” When the host then asked Milton
 17 if he “is gonna be in the battery business, you are gonna build battery packs,” Milton replied
 18 that “[y]ou’ll never make it as an OEM if you don’t build your own battery. That’s the
 19 most critical part.” Milton also stated during the same podcast: “**the tech is ours. So the**
 20 **battery – like, all the important stuff like software, batteries, or, or e-Axle designs, it just**
 21 **means we use someone else to, to build them in the thousands for us, but we own all the**
 22 **tech.**”

1 604. The statements referenced in ¶603 were materially false and misleading and
 2 made knowingly or with reckless disregard for the truth for the reasons identified in ¶¶578-
 3 579.

4 605. In a YouTube video posted on or about August 24, 2020 on the Tesla Joy
 5 YouTube Channel, Milton stated: “So the things that we do insource is ***all of our controls,***
 6 ***all of our inverters All of that is actually done in-house in Nikola. . . .*** But what we
 7 do not do is manufacture those in mass production. ***So we design and engineer them. . . .***
 8 ***Same thing with our inverter. We designed our own inverter.*** We actually have full
 9 prototypes here.”

10 606. The statements referenced in ¶605 were materially false and misleading and
 11 made knowingly or with reckless disregard for the truth for the reasons identified in ¶¶578-
 12 579.

13 607. On September 14, 2020, Nikola issued an 8-K, in which the Company
 14 responded to the allegations made in the Hindenburg Report. The 8-K was signed by
 15 Worthen, but the whole Nikola Board—including Milton, Russell, Girskey, Brady,
 16 Worthen, and Ubben—was responsible for it and the press release’s content, having met
 17 on September 11, 13, and 14, 2020 to discuss Nikola’s response, and review a draft press
 18 release, and approve a final version.⁸² Nikola said the following:

19 [The Hindenburg Report] *Misrepresents Nikola’s Historic Position on*
 20 *Battery Technology*: The short seller report claims that Founder and
 21 Executive Chairman Trevor Milton made false statements regarding the
 22 Company’s battery technology following the breakdown of its transaction
 discussions with ZapGo Ltd. *In fact the potential battery technology*
advancements are related to an ongoing confidential R&D partnership with

23 ⁸² *Brown v. Milton*, C.A. No. 2022-0223 (Del. Ch. Mar. 10, 2022), ¶¶165-67 (citing
 24 NIKOLABR_000261 and NIKOLA_BR000263); *In re Nikola Corp. Derivative Litig.*,
 25 C.A. No. 2022-0023-KSJM (Del. Ch. Feb. 15, 2022), ¶¶216-17 (citing
 NIKOLABR_000263).

1 a leading academic institution, not ZapGo. *The Company is excited about*
 2 *potential breakthroughs related to its next generation battery technology.*"

3 608. The statements referenced in ¶607 were materially false and misleading and
 4 made knowingly or with reckless disregard for the truth for the reasons identified in ¶¶576,
 5 578, and 579. Indeed, Nikola did not have any useable proprietary battery technology, let
 6 alone battery technology as described in Nikola's November 19, 2019 press release (which
 7 contained the disputed underlying statements about battery technology). Worthen stated
 8 that he knew Milton's statements about Nikola manufacturing its batteries in-house was
 9 false and Worthen "***told him not to make the statement.***"

10 **D. Defendants' False and Misleading Statements About In-House Vehicle**
 11 **Components and Proprietary Battery Technology Caused Investor**
 12 **Losses**

13 609. Class members unknowingly and in reliance upon Defendants' materially
 14 false or misleading statements and/or omissions (prior to and during the Class Period)
 15 regarding Nikola's purported "game changing" battery technology and in-house vehicle
 16 components purchased Nikola common stock at artificially inflated prices, as the market
 17 was misled into believing that Nikola developed and owned valuable intellectual property.
 18 But for Defendants' misrepresentations, omissions, and fraudulent scheme, Lead Plaintiffs
 19 and other Class members would not have purchased Nikola common stock at the artificially
 20 inflated prices at which it traded during the Class Period. The truth regarding Defendants'
 21 fraud was revealed in a series of corrective disclosures and/or materializations of concealed
 22 risk that occurred between September 9, 2020 and July 29, 2021. During this time, the
 23 price of Nikola common stock fell precipitously as the artificial inflation caused by
 24 Defendants' unlawful conduct exited Nikola common stock.

25 610. The decline in the price of Nikola common stock during this period is directly
 26 attributable to the market absorbing information that corrected and/or reflected the

1 materialization of risks concealed by the Defendants' material misrepresentations or
2 omissions prior to and during the Class Period.

3 611. As a result of their purchases of Nikola common stock during the Class
4 Period, Lead Plaintiffs and the other Class members suffered economic loss (*i.e.*, damages)
5 under the federal securities laws. Defendants' materially false and misleading statements
6 had the intended effect and caused Nikola common stock to trade at artificially inflated
7 levels throughout the Class Period and, in certain instances, caused inflation in Nikola's
8 stock price.

9 612. By concealing from investors the adverse facts detailed herein, Defendants
10 presented a false and misleading picture of Nikola's business. As the truth about the
11 Company and the extent of the fraud was revealed to the market, the price of Nikola
12 common stock fell significantly. This decline removed the inflation from the price of
13 Nikola common stock, causing real economic loss to investors who had purchased Nikola
14 common stock during the Class Period.

15 613. Moreover, the market for Nikola common stock was open, well-developed,
16 and efficient at all relevant times. As a result of Defendants' misstatements and material
17 omissions, as alleged herein, Nikola common stock traded at artificially inflated prices.
18 Lead Plaintiffs and other Class members purchased Nikola common stock relying upon the
19 integrity of the market relating to Nikola common stock and suffered economic losses as a
20 result thereof.

21 614. On September 10, 2020, the relevant truth and foreseeable risks concealed
22 by Defendants' misconduct and their false representations and omissions prior to and
23 during the Class Period were partially revealed when Hindenburg Research published the
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1 Hindenburg Report, partially exposing the truth about Nikola’s battery technology and in-
2 house vehicle components, among other subjects.

3 615. The Hindenburg Report asserted that Nikola’s touted revolutionary battery
4 technology never existed; Nikola’s pending acquisition of battery-maker ZapGo fell
5 through when Nikola realized its technology was “vaporware,” and Nikola in fact relied on
6 third-party manufacturers for the batteries to be used in its FCEV and BEV trucks. The
7 Hindenburg Report also revealed that Nikola was using off-the-shelf components in its
8 FCEV and BEV trucks, including inverters sold by Cascadia Motion: “Nikola has regularly
9 used off-the-shelf products from third parties, while claiming to have vast internal
10 proprietary technology and to ‘design’ all the products itself.” Hindenburg based its report
11 in part on “extensive evidence—including recorded phone calls, text messages, private
12 emails and behind-the-scenes photographs” and no market participant had previously
13 compiled and released the information Hindenburg had on Nikola’s hydrogen capabilities.
14 Hindenburg was the first to put together and release these findings.

15 616. Additionally, the September 10, 2020 publication of the Hindenburg Report,
16 and related news coverage reporting on Nikola’s representations about its purported “game
17 changing” battery technology and in-house vehicle components was a foreseeable
18 consequence of, and within the zone of the risk concealed by, the Defendants’
19 misrepresentations and omissions regarding Nikola’s battery technology and in-house
20 vehicle component intellectual property.

21 617. As a direct and proximate result of this corrective disclosure and/or
22 materialization of the foreseeable risks concealed by Defendants’ fraud, the price of Nikola
23 common stock declined \$4.80 per share, or 11.33%, to close at \$37.57 per share on
24 September 10, 2020.

1 618. On September 11, 2020, Nikola’s stock price continued to fall in response to
2 the news, falling another \$5.44 per share, or 14.5%, to close at \$32.13 per share on
3 September 11, 2020.

4 619. The decline in Nikola’s common stock price on September 10, 2020 and
5 September 11, 2020 were direct results of the nature and extent of Defendants’ prior
6 misstatements and omissions being revealed to investors, including Defendants’ statements
7 concerning Nikola’s purported “game changing” battery technology and in-house vehicle
8 components. The timing and magnitude of the Nikola common stock price decline
9 evidences the impact Defendants’ statements had on the Company’s stock price during the
10 Class Period and negate any inference that the loss suffered by Lead Plaintiffs and other
11 Class members was caused by changed market conditions or macroeconomic, industry, or
12 Company-specific factors unrelated to Defendants’ fraudulent conduct. Moreover, various
13 analysts (including those from S3 Analytics, Deutsche Bank Research, and RBC Capital
14 Markets) issued reports attributing Nikola’s stock price decline to the information revealed
15 in the Hindenburg Report.

16 620. As referenced in ¶254, on September 14, 2020, before the market opened,
17 Nikola issued a statement that unequivocally denied the allegations in the Hindenburg
18 Report, asserting that Hindenburg “misrepresents that Nikola is claiming a third-party
19 inverter is the Company’s own technology,” that Hindenburg “Misrepresents Nikola’s
20 Historic Position on Battery Technology,” and concluding that the Hindenburg Report’s
21 assertions about third-party components and battery technology were “false and
22 misleading.”

1 621. On Nikola’s fierce denials of any wrongdoing, Nikola’s stock price increased
2 \$3.66 per share, closing at \$35.79 on September 14, 2020, an 11.39% increase from its
3 previous close on September 11, 2020.

4 ^{622.} On September 14, 2020, the relevant truth and foreseeable risks concealed
5 by Defendants’ misconduct and their false representations and omissions prior to and
6 during the Class Period regarding Nikola’s battery technology and in-house componentry
7 partially materialized when, after the market had closed, Bloomberg reported that the SEC
8 was investigating Nikola in connection with the allegations in the Hindenburg Report.
9 “[T]he announcement of an SEC investigation related to an alleged misrepresentation . . .
10 can serve as a corrective disclosure for the purpose of loss causation.” *Lloyd v. CVB Fin.*
11 *Corp.*, 811 F.3d 1200, 1202 (9th Cir. 2016).

12 623. The next day, on September 15, 2020, during intra-day trading, the Wall
13 Street Journal reported that the DOJ had joined the SEC’s investigation of Nikola. Also,
14 during the trading day, *CNBC* published an article noting explaining that the “SEC and
15 DOJ are reportedly looking into the merits of a short seller’s claims that electric vehicle
16 manufacturer Nikola misled investors.

17 624. The same day, Hindenburg issued also a 25-page rebuttal report, which
18 argued that Nikola had “debunked nothing” and had “either confirmed or sidestepped
19 virtually everything we wrote about, and in some cases raised new unanswered questions.”

20 625. The SEC and DOJ investigations were triggered in part by and focused
21 extensively on Defendants’ statements regarding Nikola’s revolutionary battery
22 technology and in-house component intellectual property, demonstrating that both actions
23 were causally linked to Defendants’ misstatements on these subjects. Nikola would
24 ultimately settle civil fraud charges with the SEC for \$125 million in December 2021. In
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1 announcing the settlement, the SEC stated that Nikola “falsely gave investors the
2 impression that Nikola had reached certain product and technological milestones” and
3 “misled investors about Nikola’s technological advancements [and] in-house production
4 capabilities” Moreover, the SEC and DOJ actions against Milton centered on Nikola’s
5 purported battery technology and in-house componentry. The SEC complaint against
6 Milton confirmed that the SEC’s action had been prompted by statements about Nikola’s
7 “game-changing” battery technology and that Nikola was manufacturing and developing
8 multiple key vehicle components “in-house.” The DOJ indictment, meanwhile, stated that
9 Nikola “had partnered with various companies to try to develop proprietary battery
10 technology,” but “these efforts have not been successful, and Nikola had not successfully
11 developed” battery technology or “produced an inverter in-house;” instead, the batteries
12 and inverters Nikola “planned to use in its semi-trucks were developed and manufactured
13 by third parties.” Accordingly, the SEC and DOJ investigations announced in September
14 2020 were caused, in part, by Defendants’ misstatements and omissions related to battery
15 technology and in-house vehicle components, as the agencies later confirmed.

16 626. The announcement of the DOJ and SEC investigations was also a
17 materialization of the risk concealed by Defendants’ false statements defending Milton in
18 the wake of the Hindenburg Report, including the September 14, 2020 Press Release.
19 Defendants misled investors about the risks related to Milton’s misstatements by insisting
20 that the Hindenburg Report’s claims regarding Milton, including those asserting Milton
21 misrepresented Nikola’s battery technology and in-house production of vehicle
22 components, were “false and misleading” and “defamatory.” These statements masked the
23 risks that Milton had exposed the Company to government action and that Milton may have
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1 to depart Nikola. These obscured risks were partially realized by the announcement of the
2 DOJ's and SEC's investigations.

3 627. As a direct and proximate result of this corrective disclosure and/or
4 materialization of the foreseeable risks concealed by Defendants' fraud, the price of Nikola
5 common stock declined by \$2.96 per share, closing at \$32.83 on September 15, 2020, an
6 8.27% decline from its previous close on September 14, 2020.

7 628. The decline in Nikola's common stock price on September 15, 2020 was a
8 direct result of the nature and extent of Defendants' prior misstatements and omissions
9 regarding Nikola's battery technology and in-house vehicle componentry being revealed
10 to investors. The timing and magnitude of the Nikola common stock price decline
11 evidences the impact Defendants' statements had on the Company's stock price during the
12 Class Period and negate any inference that the loss suffered by Lead Plaintiffs and other
13 Class members was caused by changed market conditions or macroeconomic, industry, or
14 Company-specific factors unrelated to Defendants' fraudulent conduct.

15 629. On Sunday September 20, 2020, the relevant truth and foreseeable risks
16 concealed by Defendants' misconduct and their false representations and omissions prior
17 to and during the Class Period regarding Nikola's battery technology and in-house
18 production of vehicle components materialized when Nikola announced that Defendant
19 Milton had resigned from his position as Executive Chairman and from the Board of
20 Directors.

21 630. Following the Hindenburg Report's release, Nikola's Board of Directors held
22 a flurry of meetings on September 11, 2020, September 13, 2020, September 15, 2020,
23 September 16, 2020, September 18, 2020, and September 20, 2020. The Board discussed
24 Milton's use of social media, the SEC and DOJ investigations, and the Hindenburg Report
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1 at these meetings. Milton tendered his resignation at the last of these meetings, on
2 September 20, 2020. Milton's resignation was directly caused by his false and misleading
3 statements—particularly those made on social media, which frequently misstated Nikola's
4 battery technology and in-house vehicle component development. *CNN* reported on
5 September 21, 2020, that as part of his separation agreement, Milton agreed to "revise any
6 references to the positions he held at Nikola on his social media profiles so it's clear he no
7 longer holds them. He also agreed to check with lawyers for Nikola before posting anything
8 about the company." Milton also surrendered 4.9 million performance-based stock units he
9 had been granted in August 2020 and a two-year consultancy option worth \$20 million.

10 631. The September 20, 2020 resignation, and the widely reported related news
11 coverage was a foreseeable consequence of and within the zone of the risk concealed by
12 Defendants' misrepresentations and omissions.

13 632. Milton's resignation also partially revealed the relevant truth concealed
14 and/or obscured by Defendants' prior misstatements and omissions touting the Company's
15 battery technology and in-house vehicle components as it was the first tacit
16 acknowledgement by the Company that the Hindenburg Report was true. The market
17 therefore understood Milton's resignation to be a revelation of fraud and reacted
18 accordingly. Nikola later admitted that Milton had made misstatements, confirming that
19 the market's understanding was correct. *See Mineworkers' Pension Scheme v. First Solar*
20 *Inc.*, 881 F.3d 750, 753 (9th Cir. 2018) (citing *Lloyd*, 811 F.3d at 1210) (loss causation can
21 be found where market understands event to be caused by fraud even absent
22 contemporaneous admission of fraud when later revelations confirm market's
23 understanding).

1 633. Milton’s resignation was also a materialization of the risk concealed by
2 Defendants’ false statements defending Milton in the wake of the Hindenburg Report,
3 including the September 14, 2020 Press Release. Defendants misled investors about the
4 risks related to Milton’s misstatements by insisting that the Hindenburg Report’s claims
5 regarding Milton, including those asserting Milton misrepresented Nikola’s battery
6 technology and in-house production of vehicle components, were “false and misleading”
7 and “defamatory.” These statements masked the risk that Milton would have to depart
8 Nikola – a risk Nikola explicitly warned could have dire consequences for Nikola in its
9 SEC filings, which stated: “We are highly dependent on the services of Trevor R. Milton,
10 our Executive Chairman, and largest stockholder. Mr. Milton is the source of many, if not
11 most, of the ideas and execution driving Nikola. If Mr. Milton were to discontinue his
12 service to us due to death, disability or any other reason, we would be significantly
13 disadvantaged.” This risk, which Defendants obscured in their unequivocal denials that
14 Milton had engaged in any conduct that could lead to his departure, were partially realized
15 by the announcement of Milton’s resignation just days later. As one analyst stated in a
16 *CNBC* interview: “Let’s call it like it is. Trevor leaving. I mean he’s a key part of the
17 vision.” Another analyst called it a “dark day for Nikola.” A third said: “This will come as
18 a shock to the big crowd of believers in the company and its founder. We expect heavy
19 selling...”

20 634. As a direct and proximate result of this corrective disclosure and/or
21 materialization of the foreseeable risks concealed by Defendants’ fraud, the price of Nikola
22 common stock declined by \$6.60 per share, closing at \$27.58 on Monday September 21,
23 2020, an 19.33% decline from its previous close on Friday September 18, 2020.

1 635. The decline in Nikola’s common stock price on September 21, 2020 was a
2 direct result of Milton’s resignation, which itself was caused in part by his fraud related to
3 Nikola’s battery technology and in-house vehicle components. The timing and magnitude
4 of the Nikola common stock price decline evidences the impact Defendants’ statements
5 had on the Company’s stock price during the Class Period and negate any inference that
6 the loss suffered by Lead Plaintiffs and other Class members was caused by changed
7 market conditions or macroeconomic, industry, or Company-specific factors unrelated to
8 Defendants’ fraudulent conduct.

9 636. On February 25, 2021 the relevant truth and foreseeable risks concealed by
10 Defendants’ misconduct and their false representations and omissions prior to and during
11 the Class Period were partially revealed and/or materialized when, after the close of
12 trading, Nikola filed its Form 10-K for the year ended December 31, 2020. In the filing,
13 Nikola admitted that several of Milton’s statements that were highlighted in the
14 Hindenburg Report were “inaccurate in whole or in part, when made,” including the
15 statements Milton made in June and July 2020 that “all major components are done in
16 house” and that “the inverter software was the most advanced in the world and that other
17 OEMs had asked to use it.”

18 637. This news was widely reported to the market. For example, on February 25,
19 2021, *CNBC* published an article entitled “Nikola admits ousted chairman misled investors
20 as legal costs mount” that went on to explain “Milton and the company previously denied
21 many of the claims in the report.”

22 638. As *CNBC* suggested, the February 25, 2021 10-K revealed not only that
23 Milton’s statements were incorrect, but that Defendants’ unequivocal denials of the
24 Hindenburg Report, including the September 14, 2020 press release, were false and
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1 misleading. In a reversal, Nikola was now acknowledging that the Hindenburg Report had
2 been largely accurate.

3 639. The February 25, 2021 disclosure of the false and misleading nature of
4 Defendants' statements, and the related news coverage reporting on Nikola's
5 misrepresentations about its production capabilities, products, technological
6 advancements, and commercial prospects, was a foreseeable consequence of, and within
7 the zone of the risk concealed by Defendants' misrepresentations and omissions.

8 640. Moreover, the February 25, 2021 disclosures revealed new information that
9 Defendants' misstatements, omissions, and fraudulent course of conduct previously
10 concealed and/or obscured from the market by authoritatively conceding that Nikola did
11 not produce its major vehicle components in house.

12 641. As a direct and proximate result of this corrective disclosure and/or
13 materialization of the foreseeable risks concealed by Defendants' fraud, the price of Nikola
14 common stock declined by \$1.62 per share, closing at \$18.10 on February 26, 2021, an
15 8.22% decline from its previous close on February 25, 2021.

16 642. The decline in Nikola's common stock price on February 26, 2021, was a
17 direct result of the nature and extent of Defendants' prior misstatements and omissions
18 being revealed to investors by the 10-K, including statements about Nikola's battery
19 technology and in-house vehicle componentry. The timing and magnitude of the Nikola
20 common stock price decline evidences the impact Defendants' statements had on the
21 Company's stock price during the Class Period and negate any inference that the loss
22 suffered by Lead Plaintiffs and other Class members was caused by changed market
23 conditions or macroeconomic, industry, or Company-specific factors unrelated to
24 Defendants' fraudulent conduct.

1 643. On July 29, 2021 the relevant truth and foreseeable risks concealed by
2 Defendants' misconduct and their false representations and omissions prior to and during
3 the Class Period were revealed and/or materialized when numerous news outlets reported
4 that Defendant Milton had been indicted on three counts of fraud by the U.S. Attorney's
5 Office in Manhattan for making deceptive and false claims to investors regarding "nearly
6 all aspects of the business." The indictment said that, from November 2019 to September
7 2020, Milton schemed to defraud investors into buying Nikola shares through statements
8 about the Company's product and technology development. The SEC also filed related
9 civil charges. In response to the indictment, Milton stated that they were "false allegations."

10 644. The July 29, 2021 announcement of the indictment and the related news
11 coverage reporting on Nikola's representations about its production capabilities, products,
12 technological advancements, and commercial prospects, was a foreseeable consequence
13 of, and within the zone of the risk concealed by Defendants' misrepresentations and
14 omissions. The DOJ and SEC actions were, to a large degree, premised on Milton's
15 misstatements regarding Nikola's battery technology and in-house vehicle componentry.

16 645. Moreover, the July 29, 2021 disclosures revealed new information that
17 Defendants' misstatements, omissions, and fraudulent course of conduct previously
18 concealed and/or obscured from the market. The SEC complaint revealed that the "detailed
19 claims about [battery] functionality, reduced costs, increased vehicle range, energy density,
20 number of cycles and weight ... were attributable to *coin size* battery cells that were being
21 developed as part of a university research project." (emphasis in original). This fact was
22 significant because to scale these coin-size lab-level cells to even a prototype size – which
23 had not been done at the time of the [November 2019] press release and was, according to
24 the professor, about a year away – would require significant further development with no
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1 assurance of comparable performance levels. From there, developing the cells from
2 prototype pouch size cells to commercial grade quality was a further, significant
3 undertaking, with no assurance of utility for commercial applications.

4 646. As a direct and proximate result of this corrective disclosure and/or
5 materialization of the foreseeable risks concealed by Defendants' fraud, the price of Nikola
6 common stock declined by \$2.16 per share, closing at \$12.03 on July 29, 2021, a 15.22%
7 decline from its previous close on July 28, 2021. Nikola's stock continued to steadily
8 decline another \$1.88 per share, or 15.62%, over the next several days to close at \$10.15
9 per share on August 5, 2021, as investors absorbed the lengthy and detailed indictment and
10 SEC complaint, which totaled over 100 pages.

11 647. The decline in Nikola's common stock price on July 29 through August 5,
12 2021 was a direct result of the nature and extent of Defendants' prior misstatements and
13 omissions being revealed to investors, including misstatements regarding Nikola's battery
14 technology and in-house vehicle componentry. The timing and magnitude of the Nikola
15 common stock price decline evidences the impact Defendants' statements had on the
16 Company's stock price during the Class Period and negate any inference that the loss
17 suffered by Lead Plaintiffs and other Class members was caused by changed market
18 conditions or macroeconomic, industry, or Company-specific factors unrelated to
19 Defendants' fraudulent conduct.

20 **VI. Defendants Misled Investors Regarding the Total Cost of Ownership of**
21 **Nikola's Trucks Relative to Diesel**

22 648. Commercial vehicle buying decisions, particularly for large corporate fleets,
23 are driven, in part, by the total cost of ownership ("TCO"), an analysis of the lifetime cost
24 of a truck, from the acquisition through the operating period. To compete with traditional
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1 diesel trucks, Nikola would have to produce and sell hydrogen fuel at a price that would
2 make the TCO of its vehicles comparable to that of diesel semis.

3 649. Prior to March 2019, Nikola touted that the TCO of its FCEV trucks would
4 be up to 20 percent cheaper than diesel trucks. In March 2019, Brady emailed Milton third-
5 party research regarding the TCO of Class 8 semi-trucks. In his email, Brady noted that the
6 third-party firm cited TCO for diesel trucks in the “\$.85-\$.95 range,” and that “for our
7 purposes, we will use \$.95. . . .”

8 650. Also in March 2019, a Nikola financial analyst notified Nikola executives –
9 including Milton – that the TCO cost the company was using for diesel trucks was too high,
10 and that the projected TCO for Nikola would be, at best, on par with diesel. Finally, in
11 April 2019, Nikola’s Head of Business Development sent Milton and other senior
12 executives notes from her discussions with semi-truck fleet representatives who provided
13 feedback regarding Nikola’s TCO. This executive reported that Nikola’s actual and
14 potential customers noted that Nikola’s “**costs are high and not at parity with diesel.**”

15 651. Milton also repeatedly misrepresented that Nikola’s TCO is significantly less
16 than diesel. For example, in an interview on the *Founder Hour* podcast on or about July 6,
17 2020, Milton claimed the following regarding Nikola’s TCO, as compared to diesel: “**we’re**
18 **like 20 to 30 percent sometimes, cheaper. So it’s game over, essentially. If you don’t own**
19 **a Nikola truck, you’re gonna go bankrupt.**”

20 **A. False and Misleading Statements Regarding the Total Cost of**
21 **Ownership**

22 **1. Pre-Merger False Statements Regarding Total Cost of Ownership**

23 652. Defendants made false and misleading statements regarding the TCO for
24 Nikola’s vehicles in the April 6 8-K. On a slide titled “NIKOLA’S ADVANTAGE:
25 BUNDLED FCEV OFFERING SIGNIFICNATLY MORE ATTRACTIVE THAN
26

DIESEL” in the April 6 8-K, Defendants included a chart showing Nikola’s FCEV having a TCO of \$0.95 per mile, less than the \$0.97 TCO per mile stated for traditional diesel trucks. The Slide stated “Nikola’s Bundled Lease offers operators complete cost predictability at cost parity with diesel.”

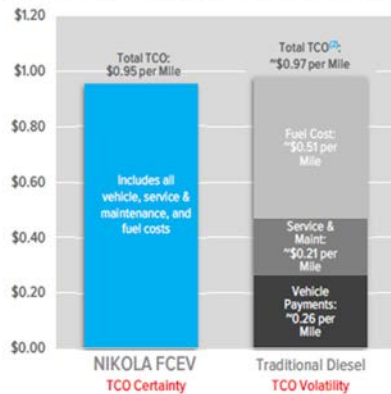
NIKOLA’S ADVANTAGE: BUNDLED FCEV OFFERING

SIGNIFICANTLY MORE ATTRACTIVE THAN DIESEL

THE INDUSTRY’S FIRST-EVER “BUNDLED PRICING”

- 7-year lease/700,000 miles
- Lease includes the cost of truck, hydrogen fuel, repair, and maintenance
- Lease model eliminates payback period and technology risk for customers, enabling more rapid adoption

PROJECTED NIKOLA FCEV VS. DIESEL COST PER MILE



1. Based on prior 7 years' data from ATRI, excluding driver costs

2. Cost per mile data is based on proprietary research from ACT Research and ATRI's 2018 Operational Cost of Trucking; fuel is based on the prior 7 years' average given volatility of input costs

Increasing cost of diesel operations due to tightening emission standards reinforces Nikola’s bundled FCEV TCO advantage vs. traditional diesel truck ownership



TOTAL COST OF OWNERSHIP CERTAINTY

Historically, diesel fuel has comprised anywhere from 40-60% of total ownership costs¹. Nikola’s Bundled Lease offers operators complete cost predictability at cost parity with diesel



BETTER PERFORMANCE

Outperforms diesel and battery trucks in range, horsepower and torque. Shorter recharge time than battery electric trucks



ENHANCED SAFETY

6x2 drive, torque vectoring, faster stopping, lower center of gravity



HYDROGEN SAFER THAN DIESEL

Lower vapor pressure, will not form combustible mixture with air, harder to ignite, hydrogen dissipates into atmosphere
Extensive safety testing performed by third-party experts



ENVIRONMENTALLY FRIENDLY

Zero emissions and nearly silent. Hydrogen stations powered by renewables



AUTONOMOUS READY

Enhanced autopilot, automatic braking, and automatic lane keeping standard on each vehicle



20

(highlighting added)

653. The statements referenced in ¶652 were false and misleading for the reasons identified in ¶¶270–279, 291 and 295. Brady testified that it was openly discussed among management at Nikola that the Company had not achieved the projections in its models. There was no basis for Defendants to claim that Nikola’s bundled leases had achieved or

1 could achieve “cost parity with diesel” and it was misleading to withhold information to
2 the contrary that was within Defendants’ possession.

3 2. *Class Period False and Misleading Statements Regarding Total Cost*
4 *of Ownership*

5 654. In a June 18, 2020 article in the Irish Times titled Nikola Motor Takes a Big-
6 Money Punt on the Hydrogen Future, Milton is quoted as follows: “***We can now produce***
7 ***hydrogen for between \$2 and \$4 a kilogram. We’re now cheaper than diesel to operate***
8 ***per-mile*** and we’re almost at parity with a battery electric per-mile, and ultimately that’s
9 game over for diesel.”

10 655. The statement referenced in ¶654 was false and misleading because Nikola
11 was not capable of producing any hydrogen, much less at the prices represented by Milton,
12 and therefore Nikola’s TCO was not “cheaper than diesel to operate.”

13 656. In the July 6, 2020 Founder Hour podcast, Milton claimed that Nikola’s
14 TCO, as compared to diesel, was “***like 20 to 30 percent sometimes, cheaper. So it’s game***
15 ***over, essentially. If you don’t own a Nikola truck, you’re gonna go bankrupt.***”

16 657. The statement referenced in ¶656 was materially false and misleading for the
17 reasons identified in ¶¶270–279, 291 and 295. Further, Nikola’s TCO was not significantly
18 cheaper than diesel. In March 2019, a Nikola financial analyst notified Nikola executives
19 – including Milton – that the TCO cost the company was using for diesel trucks was too
20 high, and that the projected TCO for Nikola would be, at best, on par with diesel. Finally,
21 in April 2019, Nikola’s Head of Business Development sent Milton and other senior
22 executives notes from her discussions with semi-truck fleet representatives who provided
23 feedback regarding Nikola’s TCO. This executive reported that Nikola’s actual and
24 potential customers noted that Nikola’s “costs are high and not at parity with diesel.”
25
26

1 658. On August 4, 2020, Nikola held its Q2 2020 Earnings Call. Russell, Worthen,
2 and Brady participated in the call. In his opening remarks, Russell stated:

3 Our long-haul commercial transport solution is especially unique with a
4 revolutionary bundled lease or freight-as-a-service model. We provide
5 customers with a fuel cell electric truck, the hydrogen fuel it needs, and all
6 scheduled maintenance for a fixed total cost. All that customer needs to
7 provide is a driver. ***This approach has proven very attractive and many
customers are finding that they will be able to transition to zero-emissions
without an increase in total cost compared to their current fossil fuel
solution.***

8 659. The statements referenced in ¶658 were materially false and misleading for
9 the reasons identified in ¶¶270–279, 291, 295 and 657. As Russell knew, Nikola was not
10 able to offer a lower TCO to customers in August 2020 as compared to fossil fuels such as
11 diesel, and it did not have a clear pathway to do so. Nor did it have any agreements to
12 obtain zero-emission electricity from renewable sources.

13 **B. Defendants’ False and Misleading Statements Regarding Total Cost of
14 Ownership Caused Investor Losses**

15 660. On September 10, 2020, the relevant truth and foreseeable risks concealed
16 by Defendants’ misconduct and their false representations and omissions prior to and
17 during the Class Period were partially revealed when Hindenburg Research published the
18 Hindenburg Report, partially exposing the truth about Nikola’s hydrogen capabilities, and
19 other subjects bearing on the TCO for its trucks. For example, the Hindenburg Report
20 asserted that Nikola had never produced any hydrogen and that Milton’s claims that Nikola
21 could do so at low cost – e.g. that the Phoenix demo station could “produce over 1,000
22 kilograms a day on site,” that Nikola was “down below \$3/kg on our hydrogen now” –
23 were baseless.

24 661. Additionally, the September 10, 2020 publication of the Hindenburg Report,
25 and related news coverage reporting on Nikola’s representations about its hydrogen
26

1 production capabilities and technological advancements to achieve low-cost hydrogen was
2 a foreseeable consequence of, and within the zone of the risk concealed by, the Defendants'
3 misrepresentations and omissions regarding Nikola's TCO.

4 662. As a direct and proximate result of this corrective disclosure and/or
5 materialization of the foreseeable risks concealed by Defendants' fraud, the price of Nikola
6 common stock declined \$4.80 per share, or 11.33%, to close at \$37.57 per share on
7 September 10, 2020.

8 663. On September 11, 2020, Nikola's stock price continued to fall in response to
9 the news, falling another \$5.44 per share, or 14.5%, to close at \$32.13 per share on
10 September 11, 2020.

11 664. As referenced in ¶406, on September 14, 2020, before the market opened,
12 Nikola issued a statement that unequivocally denied the allegations in the Hindenburg
13 Report, asserting that Hindenburg "Intentionally Underestimates Extent of [Nikola's]
14 Hydrogen Production Capabilities" and concluding that the Hindenburg Report's
15 assertions about hydrogen were "false and misleading."

16 665. On Nikola's fierce denials of any wrongdoing, Nikola's stock price increased
17 \$3.66 per share, closing at \$35.79 on September 14, 2020, an 11.39% increase from its
18 previous close on September 11, 2020.

19 666. On September 14, 2020, the relevant truth and foreseeable risks concealed
20 by Defendants' misconduct and their false representations and omissions prior to and
21 during the Class Period regarding Nikola's hydrogen capabilities partially materialized
22 when, after the market had closed, Bloomberg reported that the SEC was investigating
23 Nikola in connection with the allegations in the Hindenburg Report.

1 667. The next day, on September 15, 2020, during intra-day trading, the Wall
2 Street Journal reported that the DOJ had joined the SEC's investigation of Nikola. Also,
3 during the trading day, *CNBC* published an article noting explaining that the "SEC and
4 DOJ are reportedly looking into the merits of a short seller's claims that electric vehicle
5 manufacturer Nikola misled investors.

6 668. The same day, Hindenburg issued also a 25-page rebuttal report, which
7 argued that Nikola had "debunked nothing" and had "either confirmed or sidestepped
8 virtually everything we wrote about, and in some cases raised new unanswered questions."

9 669. As explained in ¶430, The SEC and DOJ investigations were triggered in part
10 by and focused on Defendants' statements regarding the Company's costs of producing
11 hydrogen and Nikola's ability to produce hydrogen at prices comparable to diesel,
12 demonstrating that both actions were causally linked to Defendants' misstatements on these
13 subjects. The SEC's fraud complaint against Milton would ultimately allege that he misled
14 investors about Nikola's TCO being "significantly less" than diesel when it was not, and
15 he knew it was not. The DOJ indictment, meanwhile, stated that "MILTON made false and
16 misleading claims regarding...the current cost of producing hydrogen [and] the cost of
17 electricity needed to produce hydrogen." Accordingly, the SEC and DOJ investigations
18 announced in September 2020 were caused, in part, by Defendants' misstatements and
19 omissions related to the inputs for Nikola's TCO calculations, as the agencies later
20 confirmed.

21 670. As a direct and proximate result of this corrective disclosure and/or
22 materialization of the foreseeable risks concealed by Defendants' fraud, the price of Nikola
23 common stock declined by \$2.96 per share, closing at \$32.83 on September 15, 2020, an
24 8.27% decline from its previous close on September 14, 2020.

1 671. On Sunday September 20, 2020, the relevant truth and foreseeable risks
2 concealed by Defendants' misconduct and their false representations and omissions prior
3 to and during the Class Period regarding Nikola's hydrogen costs and TCO materialized
4 when Nikola announced that Defendant Milton had resigned from his position as Executive
5 Chairman and from the Board of Directors. As discussed in ¶¶435-438, Milton's
6 resignation was caused in part by his false and misleading representations about the cost of
7 hydrogen and partially revealed the truth that Defendants' denials of wrongdoing were
8 hollow.

9 672. As a direct and proximate result of this corrective disclosure and/or
10 materialization of the foreseeable risks concealed by Defendants' fraud, the price of Nikola
11 common stock declined by \$6.60 per share, closing at \$27.58 on Monday September 21,
12 2020, an 19.33% decline from its previous close on Friday September 18, 2020.

13 673. On February 25, 2021 the relevant truth and foreseeable risks concealed by
14 Defendants' misconduct and their false representations and omissions prior to and during
15 the Class Period were partially revealed and/or materialized when, after the close of
16 trading, Nikola filed its Form 10-K for the year ended December 31, 2020. In the filing,
17 Nikola admitted that several of Milton's statements that were highlighted in the
18 Hindenburg Report were "inaccurate in whole or in part, when made," including that "the
19 Company was 'down below' \$3/kg" for producing hydrogen.

20 674. As a direct and proximate result of this corrective disclosure and/or
21 materialization of the foreseeable risks concealed by Defendants' fraud, the price of Nikola
22 common stock declined by \$1.62 per share, closing at \$18.10 on February 26, 2021, an
23 8.22% decline from its previous close on February 25, 2021.

1 675. On July 29, 2021 the relevant truth and foreseeable risks concealed by
2 Defendants' misconduct and their false representations and omissions prior to and during
3 the Class Period were revealed and/or materialized when numerous news outlets reported
4 that Defendant Milton had been indicted on three counts of fraud by the U.S. Attorney's
5 Office in Manhattan for making deceptive and false claims to investors regarding "nearly
6 all aspects of the business." The indictment said that, from November 2019 to September
7 2020, Milton schemed to defraud investors into buying Nikola shares through statements
8 about the Company's product and technology development. The SEC also filed related
9 civil charges. The SEC complaint stated that Milton misled investors by asserting that
10 Nikola's TCO was less than diesel's and the DOJ indictment alleged that Milton had
11 engaged in fraud by stating, among other things, that "hydrogen costs have plummeted"
12 and that Nikola was making hydrogen for "below \$4 a kilogram." In response to the
13 indictment, Milton stated that they were "false allegations."

14 676. As a direct and proximate result of this corrective disclosure and/or
15 materialization of the foreseeable risks concealed by Defendants' fraud, the price of Nikola
16 common stock declined by \$2.16 per share, closing at \$12.03 on July 29, 2021, a 15.22%
17 decline from its previous close on July 28, 2021. Nikola's stock continued to steadily
18 decline another \$1.88 per share, or 15.62%, over the next several days to close at \$10.15
19 per share on August 5, 2021, as investors absorbed the lengthy and detailed indictment and
20 SEC complaint, which totaled over 100 pages.

21 **VII. Defendants Misled Investors Regarding the Nikola Tre and BEV Truck**
22 **Orders**

23 **A. Nikola Was Not Producing Any BEV Trucks**

24 677. In July 2020, Nikola had plans to build the Nikola Tre BEV truck. However,
25 just like the Nikola One and the Badger, the Company had not even completed building a
26

1 prototype. Rather, the company engaged to manufacture the Nikola Tre—Bosch—had not
2 made a single truck. Indeed, as of July 2020, the facility that would contain the assembly
3 line for the Tre itself was still under construction.

4 678. Nevertheless, on July 17, 2020, Milton stated about the Nikola Tre: “We have
5 the most advanced battery electric truck in the world. We have a truck coming into
6 production right now with 720 kwh the largest battery we know of on a truck anywhere in
7 the world coming into production. We have five of them coming off the assembly line right
8 now in Ulm, Germany.”

9 679. During a Board meeting on April 9, 2020, Milton, Russell, Brady, Worthen,
10 and Ubben were informed in a presentation that Nikola’s target date for a production-ready
11 Tre was September 30, 2020 and that, even then, Nikola was experiencing severe delays
12 with the timeline.⁸³ Immediately after Milton’s statement, on July 23, 2020, the same
13 individuals received a Board presentation stating that the assembly line was still being built
14 and Nikola was “at risk of producing ZERO trucks in 2021.”⁸⁴

15 680. Nikola has also since admitted in its SEC filings that these statements were
16 false. In the Company’s 2020 Form 10-K, filed February 25, 2021, Nikola admitted that
17 Milton’s July 2020 statement “that five trucks were ‘coming off the assembly line’ in Ulm,
18 Germany” was “inaccurate in whole or in part, when made.” Umran Ashraf (Global Head,
19 Vehicle Engineering) has stated “Characterization of the trucks as fully built was
20 inaccurate. Nikola was shipping Tre components to Germany for assembly during July
21 2020. There was no ‘assembly line in Ulm; there was a prototype shop.” And Vince
22

23 ⁸³ *In re Nikola Corp. Derivative Litig.*, C.A. No. 20222-0023-KSJM (Del. Ch. Feb. 15,
2022), ¶¶154(d) (citing NIKOLABR_000620).

24 ⁸⁴ *In re Nikola Corp. Derivative Litig.*, C.A. No. 20222-0023-KSJM (Del. Ch. Feb. 15,
25 2022), ¶¶154(d) (citing NIKOLABR_000075).

1 Carmella (Global Head of Marketing) stated, “[t]his statement was premature. The trucks
2 were being built at this time, but none had been completed.”

3 681. On August 10, 2020, Nikola announced that it had entered into a contingent
4 and cancellable agreement with Republic Services (“Republic”), a publicly traded waste
5 collection company, for an order of 2,500 to 5,000 trucks. Milton had personally negotiated
6 the contract. Yet on the same day, Milton tweeted from his personal account a link to
7 Nikola’s press release announcing the order and claimed that it was the “[l]argest class 8
8 zero emission order in the industry 2,500 guaranteed.” In another tweet that same day
9 from his personal account, Milton promoted his upcoming appearance on *CNBC’s Fast*
10 *Money* to discuss “the 2,500 – 5,000 (1-2 billion dollar) **binding** truck order!” Then, when
11 he appeared on *Fast Money* on or about August 10, 2020, Milton again stated that the
12 “contract” was “**worth about, between 1 and 2 billion dollars, um, they have the right –**
13 **or they’re obligated to buy up to 2,500 of these electric trash trucks, and they have the**
14 **option to go up to 5,000.**” Milton later referred to the billion plus dollar value of the
15 Republic order in tweets from his personal account on August 16, 2020, and the *TD*
16 *Ameritrade Network* interview on August 19, 2020, in which he referred to the order as “a
17 couple-billion-dollar contract.”

18 **B. False and Misleading Statements About the Nikola Tre and BEV**
19 **Truck Orders**

20 682. In a *Chartcast* podcast on or about July 17, 2020, which was published by
21 the podcast on or about July 19, 2020, and contemporaneously posted on Nikola’s Twitter
22 account, Milton stated about the Nikola Tre: “We have the most advanced battery electric
23 truck in the world. We have a truck coming into production right now with 720 kwh the
24 largest battery we know of on a truck anywhere in the world coming into production. **We**
25
26

1 ***have five of them coming off the assembly line right now in Ulm, Germany.*** They'll enter
2 production end of next year-ish, somewhere around there."

3 683. The statement referenced in ¶682 was materially false and misleading and
4 made knowingly or with reckless disregard for the truth because Milton knew but failed to
5 disclose that Bosch, the company manufacturing the trucks, had not yet made any trucks.
6 Indeed, the "assembly line" was not in fact operable and the facility was still under
7 construction. During a Board meeting on April 9, 2020, Milton, Russell, Brady, Worthen,
8 and Ubben had been informed in a presentation that Nikola's target date for a production-
9 ready Tre was September 30, 2020 and that, even then, Nikola was experiencing severe
10 delays with the timeline.⁸⁵ Immediately after Milton's statement, on July 23, 2020, the
11 same individuals received a Board presentation stating that the assembly line was still being
12 built and Nikola was "at risk of producing ZERO trucks in 2021."⁸⁶ As detailed in the
13 USAO Presentation, Umran Ashraf (Global Head, Vehicle Engineering) stated,
14 "[c]haracterization of the trucks as fully built was inaccurate. Nikola was shipping Tre
15 components to Germany for assembly during July 2020. There was no 'assembly line in
16 Ulm; there was a prototype shop." Vince Carmella (Global Head of Marketing) stated,
17 "[t]his statement was premature. The trucks were being built at this time, but none had been
18 completed." Elizabeth Freitheim testified at Milton's criminal trial that she contacted and
19 spoke with Russell, Brady, and Worthen multiple times (beginning July 20, 2020) to warn
20 of Milton's false and misleading statements made in the *Chartcast* podcast, which, she also
21
22

23 ⁸⁵ *In re Nikola Corp. Derivative Litig.*, C.A. No. 20222-0023-KSJM (Del. Ch. Feb. 15,
24 2022), ¶¶154(d) (citing NIKOLABR_000620).

25 ⁸⁶ *In re Nikola Corp. Derivative Litig.*, C.A. No. 20222-0023-KSJM (Del. Ch. Feb. 15,
26 2022), ¶¶154(d) (citing NIKOLABR_000075).

1 highlighted, remained on Nikola’s Twitter account.⁸⁷ Russell and Brady confirmed this in
 2 their testimony.⁸⁸ Freitheim testified that Worthen personally listened to the episode, and
 3 that Brady said he, Russell, and Worthen were talking to Milton about his statements in the
 4 podcast. Despite Freitheim’s warnings, none of Russell, Brady, or Worthen caused the
 5 *Chartcast* episode to be taken off Nikola’s social media.

6 684. On August 10, 2020, Milton tweeted from his personal account a link to
 7 Nikola’s press release announcing the Republic order and claimed that it was the “[l]argest
 8 **class 8 zero emission order in the industry 2,500 guaranteed.**” In another tweet that same
 9 day from his personal account, Milton promoted his upcoming appearance on *CNBC’s Fast*
 10 *Money* to discuss “the 2,500 – 5,000 (1-2 billion dollar) **binding** truck order!” Then, when
 11 he appeared on *Fast Money* on or about August 10, 2020, Milton again stated that the
 12 “contract” was “**worth about, between 1 and 2 billion dollars, um, they have the right –**
 13 **or they’re obligated to buy up to 2,500 of these electric trash trucks, and they have the**
 14 **option to go up to 5,000.**” Milton later referred to the billion plus dollar value of the
 15 Republic order in tweets from his personal account on August 16, 2020, and the *TD*
 16 *Ameritrade Network* interview on August 19, 2020, in which he referred to the order as “a
 17 couple-billion-dollar contract.”

18 685. Milton’s statements in ¶684 that the order for 2,500 trucks was “guaranteed”
 19 and binding and that Republic was “obligated” to purchase at least 2,500 trucks for over
 20 \$1 billion were false and misleading, and made knowingly or with reckless disregard for
 21 the truth, because they failed to disclose that under the terms of the agreement, which
 22 Milton personally negotiated, for Republic to incur any obligation, a series of conditions

23 _____
 24 ⁸⁷ Milton Tr. 312:14-313:20, 337:15-338:24, 342:8-22, 386:8-390:4, 413:12-415:13, ECF
 25 Nos. 218, 220.

26 ⁸⁸ Milton Tr. 1094:17-1096:25, 1097:23-1098:15, 1820:5-1822:5, ECF Nos. 226, 232.

1 would have to be met, not all of which were even under Nikola's control. Among the
2 conditions was a requirement for Nikola to achieve multiple development milestones
3 before Republic was obligated to order any trucks. If Nikola did not meet the requirements
4 for the initial phase, Republic had the right to terminate the agreement. Moreover, if the
5 parties could not agree on essential terms (including price, service and parts network,
6 warranties, training program, and more), Republic had the ability to terminate the
7 agreement anytime on 30 days' notice. Finally, even if Nikola could meet all of those
8 obligations, Republic still had the right to cancel its orders without liability or penalty as
9 long as the delivery date was 120 days out. Moreover, the agreement did not have a price
10 term. Rather, the agreement provided that the parties would negotiate the price later. For
11 this reason, Republic specifically made a request to Milton that Nikola not include any
12 reference to price or value of the transaction in any press release announcing the
13 transaction. Accordingly, it was false and misleading for Milton to describe this highly
14 contingent and cancellable order as guaranteed, without any qualification. Milton knew or
15 was reckless in not knowing these terms because he personally negotiated them.

16 **C. Defendants' False and Misleading Statements About the Nikola Tre**
17 **and BEV Truck Orders Caused Investor Losses**

18 686. On September 10, 2020, Hindenburg published the Hindenburg Report,
19 entitled "Nikola: How to Parlay An Ocean of Lies Into a Partnership With the Largest Auto
20 OEM in America." Hindenburg reported that it had identified "dozens of false statements
21 by" Milton, which had led Hindenburg to conclude that Nikola "is an intricate fraud built
22 on dozen of lies over the course of . . . Milton's career." Regarding the Nikola Tre and
23 BEV truck orders, the Hindenburg Report provided evidence that Milton's statement that
24 five Tre trucks were "coming off the assembly line right now" was false. Hindenburg
25 reported that in an interview with a Bosch spokesperson at its headquarters in Germany,
26

1 the spokesperson stated, “No they are not ready yet. I don’t know exactly the year but we’re
2 working on it.” The Hindenburg Report additionally addressed Milton’s misstatements
3 regarding the Republic order, describing Nikola’s order book as “more fluff than
4 substance,” that the trucks in the purported Republic order “would be supplied from the
5 Nikola factory at Coolidge, which has barely begun,” and concluding that “[h]aving a large
6 order book sounds great but having buyers both willing and credibly able to pay is another
7 matter entirely.”

8 687. On this news, Nikola’s stock price fell \$4.80 per share, or 11.33%, to close
9 at \$37.57 per share on September 10, 2020.

10 688. On September 11, 2020, Nikola’s stock price continued to fall, falling \$5.44
11 per share, or 14.5%, to close at \$32.13 per share on September 11, 2020.

12 689. On September 14, 2020, before the market opened, Nikola unequivocally
13 denied the allegations in the Hindenburg Report, asserting that the allegations themselves
14 were “false and misleading,” “false and defamatory,” and “designed to provide a false
15 impression to investors and to negatively manipulate the market in order to financially
16 benefit short sellers, including Hindenburg itself.”

17 690. Also on September 14, 2020, Nikola filed the September 14 8-K, signed by
18 Defendant Worthen.

19 691. In the September 14 8-K, Nikola purported to rebut the Hindenburg Report
20 with statements that doubled down on Milton’s lies regarding the Nikola Tre and the
21 Republic order while in some cases corroborating their falsity. For example, the September
22 14 8-K confirmed that the Tre trucks in Ulm, Germany were in pre-production and were
23 not “coming off the assembly line right now” as Milton stated. Nikola wrote,

24 **Nikola Tre Semi-Truck Production:** The Company expects the Nikola Tre
25 semi-truck, a pioneer battery-electric semi-truck created in collaboration
26

1 with IVECO through a joint venture established in 2019 for the short haul
 2 trucking sector, **to be ready for production and available to customers by**
 3 **the fourth quarter of 2021.** The Nikola/IVECO joint venture has enabled
 dedicated focus toward delivering the Tre in 2021. The Nikola Tre is a zero-
 emission semi-truck with over 720 kWh of battery and an approximately
 300-mile range.

4 **Large Order for Electrified Refuse Truck:** As previously announced,
 5 Nikola has received a minimum order of 2,500 electrified refuse trucks from
 Republic Services, Inc., with on-road testing likely to begin in early 2022
 and full production deliveries expected to begin in 2023.

6 **Short Seller Mischaracterizes Quote by Bosch Employee:** Following the
 7 publication of the short seller report, Bosch stated, “Specific instances in the
 [Hindenburg] report quoting a Bosch employee were taken out of context.”
 8 Bosch has also stated, “The employee spoke only about Bosch’s own plans
 for the IAA industry show and H2Haul project for the European Union.”
 9 Nikola and Bosch are aligned on the product roadmap for the Tre truck. **The**
 10 **five trucks are currently being built and commissioned in Ulm, Germany,**
 and are pre-production builds. Hindenburg either recklessly misunderstands
 or willfully misrepresents the vehicle pre-production process to fit its
 narrative.

11
 12 692. On Nikola’s fierce denials of any wrongdoing, Nikola’s stock price increased
 13 \$3.66 per share, closing at \$35.79 on September 14, 2020, an 11.39% increase from its
 14 previous close on September 11, 2020.

15 693. On September 14, 2020, after the market had closed, *Bloomberg* reported
 16 that the SEC was investigating Nikola in connection with the allegations in the Hindenburg
 17 Report, including those relating to the Tre and BEV truck orders.

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

22 695. Also, on September 15, 2020, during intra-day trading, the *Wall Street*
 23 *Journal* reported that the DOJ had joined the SEC’s investigation of Nikola.

24 696. On this news, Nikola’s stock fell another \$2.96 per share, closing at \$32.83
 25 on September 15, 2020, an 8.27% decline from its previous close on September 14, 2020.

1 697. Both the SEC and DOJ investigations were triggered in part by and focused
2 on Defendants' statements regarding the Nikola Tre and BEV truck orders, demonstrating
3 that both actions were causally linked to Defendants' misstatements on this subject. The
4 SEC complaint would ultimately cite Milton's false statements regarding the Republic
5 order, alleging that "[t]he statements that the order for 2,500 trucks was 'guaranteed' and
6 that [Republic] was 'obligated' to purchase trucks was false and misleading." The DOJ
7 indictment also brought allegations related to Milton's false statements regarding truck
8 reservations. Accordingly, the SEC and DOJ investigations announced in September 2020
9 were caused, in part, by Defendants' misstatements and omissions related to the Nikola
10 One, as the agencies later confirmed.

11 698. On September 20, 2020, Nikola announced that Milton had resigned from
12 his position as Executive Chairman and from the Board of Directors.

13 699. On this news, Nikola's stock fell another \$6.60 per share, closing at \$27.58
14 on Monday September 21, 2020, a 19.33% decline from its previous close on Friday
15 September 18, 2020.

16 700. On December 23, 2020, news organizations reported that Republic had
17 canceled its order for 2,500 battery-powered electric trucks from Nikola which had been
18 announced in August 2020. The cancellation was in direct contradiction to Milton's prior
19 misstatement that Republic was "obligated" to purchase at least 2,500 BEV trucks.
20 Therefore, the undisclosed risk that Republic could cancel the order came to fruition.

21 701. These reports were widely distributed through certain news publications. For
22 instance, *CNBC* reported "Nikola shares slide after deal ends for electric garbage trucks
23 with Republic Services" and *Fortune* reported "It doesn't take much reading between those
24
25
26

1 lines to infer that Nikola may have overpromised what it was capable of. That would align
2 with the company's track record."

3 702. The December 23, 2020 reports about the Republic cancelled order for 2,500
4 trucks suggested that the previously-announced deal was a ploy to inflate Nikola's stock
5 because Nikola was not capable of fulfilling the order, and/or Republic Services was not
6 interested in partnering with a company that had misrepresented its capabilities and
7 prospects. These reports were a foreseeable consequence of, and within the zone of the risk
8 concealed by Defendants' misrepresentations and omissions, and fraudulent scheme.

9 703. As a direct and proximate result of this corrective disclosure and/or
10 materialization of the foreseeable risks concealed by Defendants' fraud, the price of Nikola
11 common stock declined by \$1.80 per share, closing at \$15.03 on December 23, 2020, a
12 10.70% decline from its previous close on December 22, 2020. Nikola's stock declined
13 another \$1.28 per share, closing at \$13.75 on December 24, 2020, an 8.52% drop from its
14 close on December 23, 2020, for a two-day decline of \$3.08 per share, an 18.30% decline
15 from its close on December 22, 2020.

16 704. The February 25, 2021 10-K further revealed the truth about Nikola's
17 misstatements regarding the Nikola Tre and its BEV truck orders. Nikola admitted that
18 Milton's statement, which was highlighted in the Hindenburg Report, that "five trucks were
19 'coming off the assembly line' in Ulm, Germany" was "inaccurate in whole or in part,
20 when made." It also contradicts the representation in the September 14, 2020 8-K that
21 "[t]he five trucks are currently being built and commissioned in Ulm, Germany" as the
22 trucks were not then "currently" being built.

1 705. On this news, the price of Nikola common stock declined by \$1.62 per share,
2 closing at \$18.10 on February 26, 2021, an 8.22% decline from its previous close on
3 February 25, 2021.

4 706. On July 29, 2021, numerous news outlets reported that Milton had been
5 indicted on three counts of fraud by the U.S. Attorney's Office in Manhattan for making
6 deceptive and false claims to investors regarding "nearly all aspects of the business." The
7 indictment said that, from November 2019 to September 2020, Milton schemed to defraud
8 investors into buying Nikola shares through statements about the Company's product and
9 technology development. The SEC also filed related civil charges. As noted, the SEC
10 Complaint and criminal indictment brought allegations related to Milton's false and
11 misleading statements regarding the Nikola Tre and/or BEV truck orders. In response to
12 the indictment, Milton stated that they were "false allegations."

13 707. On this news, Nikola's stock fell another \$2.16 per share, closing at \$12.03
14 on July 29, 2021, a 15.22% decline from its previous close on July 28, 2021. Nikola's stock
15 continued to steadily decline another \$1.88 per share, or 15.62%, over the next several days
16 to close at \$10.15 per share on August 5, 2021, as investors absorbed the lengthy and
17 detailed indictment and SEC complaint, which totaled over 100 pages.

18 **VIII. Defendants Misled Investors Regarding Nikola's Supposedly "Off-Grid"**
19 **Headquarters**

20 708. At no point in time has Nikola's headquarters been "off-grid" or contained
21 solar panels. While Nikola had at one time discussed the possibility of moving to an off-
22 grid headquarters, that plan was quickly abandoned because it was deemed cost prohibitive.
23 Nevertheless, again portraying Nikola as on the cutting edge of technology, Milton asserted
24 in 2019 that Nikola's headquarters was "off-grid" and powered by "hydrogen, battery, and
25 solar."
26

709. As the Company has since admitted in its SEC filings, this statement was false when made. Defendant Brady has stated, “This assertion is ‘completely false.’ Nikola had merely discussed moving to an off-grid headquarters, but it was deemed cost prohibitive.”

A. False Statements Regarding Nikola’s “Off-Grid” Headquarters

710. In a presentation on February 21, 2019, posted to YouTube on April 29, 2019, Defendant Milton claimed:

We have the only off-grid headquarters that we know of, completely off of hydrogen, battery, and solar. We have 3.5 megawatts of solar up on the roof producing about 18 megawatts of energy a day in our headquarters, and we’re storing 10,000 kilograms of hydrogen and using fuel cells as energy backup and batteries as energy sources as well. Our company is truly one of the most innovative companies in the world!

This video remained on YouTube and publicly available to investors throughout the Class Period.⁸⁹

711. The statement referenced in ¶710 was materially false and misleading because Defendants knew or recklessly disregarded but failed to disclose that Nikola’s headquarters did not have solar panels on its roof at this time, and there were still no solar panels on the roof as of November 2020. As detailed in the USAO Presentation, Defendant Brady admitted “***This assertion is ‘completely false.’*** Nikola had merely discussed moving to an off-grid headquarters, but it was deemed cost prohibitive.” Moreover, the USAO Presentation stated: “Interviewees consistently stated that ***Nikola’s headquarters did not have solar panels on its roof at this time, and that there are still no solar panels on the roof.***”

⁸⁹ CleanCitiesSac, 2/21 Fuel Cell Vehicle Workshop: Trevor Milton – Nikola Motor Company, YouTube (April 29, 2019), available at <https://www.youtube.com/watch?v=a9J8jizLI2s&t=603s>.

712. On February 28, 2019, Defendant Nikola posted a photograph of its headquarters on its official Twitter account and represented that it was currently generating solar power and producing hydrogen at its headquarters:

Nikola's new HQ in Phoenix. 150,000 sq. ft. 13 Acres. 300+ employees. ***1,000 kilogram hydrogen production and storage. Zero emissions with up to 3 megawatts of solar and 20 megawatt hour lithium storage.*** Of course we did the impossible. It's like engineering the Nikola Two.

This statement remained on Nikola's Twitter account and publicly available to investors throughout the Class Period.⁹⁰

713. The statement referenced in ¶712 was materially false and misleading for the reasons identified in ¶711.

A. Defendants' False and Misleading Statements Regarding Nikola's "Off-Grid" Headquarters Caused Investor Losses

714. The truth regarding Nikola's headquarters' lack of solar panels first partially came out with the September 10, 2020 publication of the Hindenburg Report. Regarding the "off-grid" claims, the Hindenburg Report stated that "Aerial photos" revealed that there were no solar panels on the roof of Nikola's headquarters. The Hindenburg Report thus directly contradicted Defendants' claims regarding Nikola's headquarters.

715. On this news, Nikola's stock price fell \$4.80 per share, or 11.33%, to close at \$37.57 per share on September 10, 2020.

716. On September 11, 2020, Nikola's stock price continued to fall, falling \$5.44 per share, or 14.5%, to close at \$32.13 per share on September 11, 2020.

717. On February 25-26, 2021, the relevant truth concealed by Defendants' misstatements regarding Nikola's Headquarters was partially revealed when Nikola filed

⁹⁰ @nikolamotor, Twitter (Feb. 28, 2019, 4:05 P.M.), available at <https://twitter.com/nikolamotor/status/1101226897982218240>.

1 its Form 10-K for the year ended December 31, 2020. In the filing, Nikola admitted that
2 Milton's April 2019 statement "that solar panels on the roof of the Company's headquarters
3 produce approximately 18 megawatts of energy per day" was "inaccurate in whole or part,
4 when made."

5 718. On this news, the price of Nikola common stock declined by \$1.62 per share,
6 closing at \$18.10 on February 26, 2021, an 8.22% decline from its previous close on
7 February 25, 2021.

8 **IX. Defendants Misled Investors Regarding Nikola's Ownership of Natural Gas** 9 **Wells**

10 719. As with Nikola's headquarters going "off-grid," Nikola had briefly
11 considered purchasing its own natural gas wells, but the idea never advanced beyond
12 speculation.

13 720. Nevertheless, Nikola stated on its corporate website that the Company could
14 guarantee low fuel prices because "Nikola owns the rights to its own natural gas wells" and
15 on August 30, 2016, Milton proclaimed that the seven (nonexistent) wells were "[u]sed as
16 backup to solar hydrogen production.!"

17 721. Nikola has since admitted in its SEC filings that these statements were false
18 when made. Milton himself has admitted that he once "looked at a property with seven
19 wells on site, but Nikola never purchased the property or any other natural gas wells."

20 **A. False Statements Regarding Natural Gas Wells**

21 722. On July 1, 2016, Nikola stated on its corporate website that the Company
22 could guarantee low fuel prices because "*Nikola owns the rights to its own natural gas*
23 *wells* along with the *Nikola One fleet* that transports the natural gas from the wells to the
24 stations. *With 7 wells on a single property, Nikola can pump out millions of gallons of*
25 *clean natural gas each day.*"

1 723. The statement in ¶722 was materially false and misleading because
2 Defendants knew or recklessly disregarded but failed to disclose that Nikola never at any
3 time owned any natural gas wells. As detailed in the USAO Presentation, Milton admitted
4 that he once “looked at a property with seven wells on site, but *Nikola never purchased*
5 *the property or any other natural gas wells.*” Brady “is unaware of any natural gas wells
6 owned by Nikola.” No one else at Nikola interviewed pursuant to an investigation
7 conducted by Nikola’s counsel was aware of Nikola ever owning any natural gas wells.

8 724. On August 30, 2016, after someone on Twitter asked about the status of the
9 Company’s gas wells, Nikola responded through its corporate Twitter account, “we still
10 have them. Used as backup to solar hydrogen production.! If any production issues arise
11 or systems go down.” This statement remained on Nikola’s Twitter account and publicly
12 available to investors during the Class Period.

13 725. The statement referenced in ¶724 was materially false and misleading for the
14 reasons identified in ¶723.

15 **B. Defendants’ Materially False and Misleading Statements Regarding**
16 **Natural Gas Wells Caused Investor Losses**

17 726. The truth regarding Nikola’s lack of natural gas wells first partially came out
18 with the September 10, 2020 publication of the Hindenburg Report. Regarding the claims
19 that Nikola owned natural gas wells, the Hindenburg Report stated in part: “at one point
20 Nikola claimed to own its own natural gas wells. There is no evidence in company filings
21 to support this.”

22 727. On the news of the Hindenburg Report and the revelations therein, which
23 included information that Nikola lacked any natural gas wells, Nikola’s stock price fell
24 \$4.80 per share, or 11.33%, to close at \$37.57 per share on September 10, 2020.

1 728. On September 11, 2020, Nikola's stock price continued to fall, falling \$5.44
2 per share, or 14.5%, to close at \$32.13 per share on September 11, 2020.

3 729. On February 25-26, 2021, the relevant truth concealed by Defendants'
4 misstatements regarding Nikola's gas wells was partially revealed when Nikola filed its
5 Form 10-K for the year ended December 31, 2020. In the filing, Nikola admitted that the
6 July 2016 statement "that [Nikola] owned rights to natural gas wells, and in August 2016
7 that the wells were used as a backup to solar hydrogen production" were "inaccurate in
8 whole or part, when made."

9 730. On the news of the admissions in Nikola's 2020 Form 10-K, the price of
10 Nikola common stock declined by \$1.62 per share, closing at \$18.10 on February 26, 2021,
11 an 8.22% decline from its previous close on February 25, 2021.

12 **THE INDIVIDUAL DEFENDANTS EMPLOYED DEVICES, SCHEMES, AND**
13 **ARTIFICES TO DEFRAUD INVESTORS PURSUANT TO 10B-5(A) AND (C)**

14 731. Throughout the Class Period, the Individual Defendants knowingly and/or
15 recklessly engaged in acts and courses of business in furtherance of a scheme to defraud
16 investors and artificially inflate the price of Nikola common stock. The scheme itself
17 revolved around defrauding retail investors by encouraging the artificial inflation of
18 Nikola's stock price based largely on the flagrant falsehoods and showmanship of the
19 Company's charismatic CEO, Milton. Each participant in the scheme knew the truth, or
20 acted with reckless disregard for it, as to the actual condition of the Company's vehicles,
21 orders, technology, and infrastructure, but each elected to accept the financial benefit of
22 false statements about those topics rather than publicly contradict claims they knew to be
23 false.

1 732. In furtherance of this scheme, the Individual Defendants employed devices,
2 schemes, and artifices to defraud investors. The Individual Defendants intentional
3 participation in the scheme consisted of: (i) establishing a system that rewarded their fraud;
4 (ii) taking Nikola public through a process that allowed for more promotion with less
5 oversight than a traditional IPO while enabling and encouraging Milton to make false
6 statements in pursuit of a strategy to target retail investors; (iii) engaging in deceptive acts,
7 including approving, disseminating, and making misleading statements and participating
8 in misleading presentations, interviews, and transactions; (iv) knowingly signing false SEC
9 filings; (v) repeatedly suppressing and deflecting efforts to set the record straight on
10 Milton's misrepresentations; and (vi) adopting and carrying out a plan to discredit the
11 Hindenburg Report's allegations, which the Individual Defendants knew to be true.

12 **I. The Individual Defendants Established a System that Rewarded Their Fraud**

13 733. The Individual Defendants were motivated to carry out a scheme that was
14 meant to artificially inflate the price of Nikola common stock, which in turn enriched each
15 of the Individual Defendants. For example, Girskey was slated to receive shares of Nikola
16 stock as a member of the post-merger Nikola Board. Further, as discussed above,
17 Defendants Milton, Russell, Brady, and Worthen all established compensation structures
18 that were directly tied to the price of Nikola common stock and thus designed to reward
19 each Individual Defendant for furthering the scheme. Specifically, following the SPAC
20 merger, the Individual Defendants took nearly all of their compensation as Nikola stock.

21 734. Importantly, this unique compensation structure was established and agreed
22 to by these defendants. Indeed, Russell testified during Milton's criminal trial that he came
23 up with the stock-based compensation structure which Milton, Brady, and Worthen also
24 agreed to. Russell testified: "When we were looking to look forward to the listing [to go
25
26

1 public], I said [to Milton] I would like to be paid no cash, just a symbolic salary of one
2 dollar, and no bonus, and I would like to take compensation as Nikola stock.” Russell
3 explained that he proposed this compensation structure to Milton because “I wanted as
4 much stock in Nikola as I could possibly get.” According to Russell, Milton thought it was
5 “a great idea” and said, “I want to do the same.” Then, Russell and Milton “talked to the
6 other people who would be named executive officers in the securities filings, [and] they all
7 said we’ll all do the same, we’ll all take a dollar salary.”⁹¹ Thus, Milton, Russell, Brady,
8 and Worthen each agreed to receiving essentially all their compensation from the value of
9 Nikola’s stock.

10 735. Milton, Russell, Brady, and Worthen also had significant performance
11 bonuses based on Nikola’s stock price. Critically, the pre-set milestones for awarding
12 RSUs to these defendants were based solely on the share price of Nikola common stock.
13 Thus, the only way these defendants would receive such RSU bonuses was if the stock
14 price reached a certain level. On August 14, 2020, Nikola’s share price achieved the first
15 share price milestone specified in Milton’s, Russell’s, Brady’s, and Worthen’s employment
16 agreements. As such, Milton was awarded 1,069,000 shares of Nikola stock, Russell was
17 awarded 1,069,000 shares, Brady was awarded 570,000 shares, and Worthen was awarded
18 534,000 shares, which combined were worth approximately \$81 million at that time. As
19 Milton wrote in a July 7, 2020 email exchange with one of Nikola’s directors regarding a
20 release from his lock-up agreement, the stock had gained “over 400%” **and he made**
21 **“everyone else millionaires and billionaires.”**

22 736. Russell was additionally entitled to the upside on Nikola shares which Milton
23 placed in T&M—the entity co-owned by Milton and Russell—while Milton retained the

24 _____
25 ⁹¹ Milton Tr. at 1067:1-18, ECF No. 226.

1 base value of those shares. By September 20, 2022, Russell owned these shares outright
2 and testified that the current value of his T&M shares in total were worth \$190–200
3 million.⁹²

4 737. Defendants Girsky and Shindler also greatly benefited from Nikola’s inflated
5 stock price. In exchange for their shares of VectoIQ stock (for which they had paid nominal
6 sums of money), Girsky and Shindler received over 1.7 million and nearly 400,000 shares,
7 respectively, of Nikola common stock at close of the merger. By August 14, 2020, after
8 the Individual Defendants’ false and misleading statements, Nikola shares were trading at
9 \$45.96, making Girsky and Shindler’s Nikola holdings worth approximately \$78 million
10 and \$18 million respectively.

11 738. Additionally, the merger with Nikola allowed Girsky and Shindler to
12 narrowly avoid crossing over VectoIQ’s May 18, 2020 deadline to find a merger partner.
13 Accordingly, Girsky and Shindler were highly motivated to make the deal work so that
14 they would not have to dissolve VectoIQ and return investors’ funds.

15 739. Defendant Ubben also profited handsomely from Nikola’s rapid appreciation
16 in value. Ubben directly or indirectly through Spring Master Fund acquired 20,362,024
17 Nikola common shares ahead of the merger. Spring Master Fund acquired these shares at
18 an average price of \$7.54 per share. When Nikola went public, the value of his holdings
19 skyrocketed. Nikola closed at \$33.75 per share on June 4, 2020, following the merger,
20 driving up the value of Ubben’s holdings to over \$687 million. Significantly, because
21 Nikola was now a publicly traded company, Ubben could sell his previously illiquid shares
22 of Nikola on the open market, although he had to wait 180 days following the merger to
23 sell any stock under the Lock-Up Agreement. Nonetheless, Ubben—a Nikola director in

24
25 ⁹² Milton Tr. at 1189:13-15, ECF No. 226.

1 possession of material, non-public information—sold 1.4 million shares of Nikola stock on
2 August 11, 2020, for a total of \$59,766,000 in violation of the Lock-Up Agreement.

3 740. Based on the Individual Defendants’ compensation structure, each was
4 motivated to enact and perpetuate the scheme to artificially inflate Nikola’s share price and
5 to maintain that inflation until their lock-up periods expired—December 1, 2020 for
6 Milton, Ubben, and Russell, and one-year for Girsky, Shindler—and they could cash out
7 on their holdings. As part of the scheme, the Individual Defendants both: (i) disseminated
8 and made false and misleading statements, including in SEC filings, that both confirmed
9 and echoed Milton’s misleading statements about Nikola’s production and technological
10 capabilities and (ii) allowed and encouraged Milton to make false statements that the
11 Individual Defendants knew were false and misleading.

12 741. The Individual Defendants were further motivated to engage in the scheme
13 by the pressures facing their respective companies. In late 2019, VectoIQ was running short
14 on time required by its governing documents to complete a merger. If it could not find a
15 merger partner by May 18, 2020, it would have to return investors’ money and the venture
16 would have been a failure.

17 742. Nikola was facing a looming crisis in late 2019. The Company was burning
18 through cash and its private funding sources were largely exhausted. A December 11, 2019
19 presentation to Nikola’s Board of Directors stated that Nikola was having a difficult time
20 raising private financing. A slide from the presentation noted that Nikola’s Series D Capital
21 Raise was “at an inflection point due to lack of meaningful traction from traditional
22 financial investors” and that private investors were “reluctant to commit” to Nikola due to
23 substantial risks with its unproven business model:

CAPITAL RAISE UPDATE

Series D Capital Raise is at an inflection point due to lack of meaningful traction from traditional financial investors



LACK OF MEANINGFUL TRACTION FROM TRADITIONAL FINANCIAL INVESTORS POST CNHI/IVECO PARTNERSHIP ANNOUNCEMENT

Morgan Stanley, Cowen, and the Company have reached out and met with a core group of potential lead financial investors and other interested investors; the group included those who are most familiar with and interested in Nikola

Financial investors have been reluctant to commit due to:

- Pre-revenue; a lack of clear visibility to revenue generation
- Capital intensive nature of the business (a green field manufacturing facility and H2 Station Network); preference towards capex lite businesses
- High execution risks associated with building two businesses – manufacturing trucks and building out the H2 station network
- Risks of being the next WeWork, Uber, Lyft (private round valuation being higher than the public valuation)



REMAINING HIGHLY INTERESTED FINANCIAL INVESTORS

Select Transatlantic Limited Partners and HAO Capital appears to be highly interested; however, it is unlikely Nikola will close more than \$150M - \$200M of additional cash in the Series D round

- A group of ultra high net worth family offices (5 to 6 companies) in Norway, led by Klaveness Marine, is seriously looking to make an investment in Nikola's Series D round in early January 2020
- HAO capital based out of Shanghai and Hong Kong is considering an investment and will be on-site December 5th



POTENTIAL CATALYST EXISTS TO RE-ENGAGE FINANCIAL INVESTORS BUT LIKELY THE TIMING WILL BE OFF

An Amazon commercial agreement and a BP JV strategic investment would likely encourage financial investors to re-engage and reconsider their decision

- BP is considering a strategic 50/50 JV investment for 30-40 H2 stations in the US; however, the proposed investment would be in the form of Capex/Opex support of approx. \$300M in the JV, without a direct cash investment into Nikola Corp.
- The BP investment would be viewed by the financial community as de-risking of H2 station roll-out and to help fund Capex/Opex
- An Amazon commercial agreement would provide certainty to revenue visibility in 2021 and give credibility to Nikola Tre BEV as the battery electric truck of choice



28

743. The same presentation noted that Nikola “cannot wait for the financial community to potentially re-engage in late Q1 / early Q2, 2020.” The Company needed access to a new source of capital to continue funding its operations.

II. The Individual Defendants Leveraged Milton’s Misleading Promotional Style to Target Retail Investors

744. In late 2019, the Nikola Defendants had been considering two options for bringing the Company public to meet its urgent need for financing. Nikola could list on the Oslo Børs stock exchange in Norway, or engage in a reverse-merger with a SPAC. Both options would give Nikola a quicker infusion of capital than a traditional IPO and would allow Defendants to sell their shares on an open market much sooner. Both would also let Defendants avoid much of the regulatory scrutiny associated with a traditional IPO.

1 745. During the week of November 18, 2019, with just six months remaining
2 before VectoIQ’s May 18, 2020 deadline, Cowen and Company, LLC (“Cowen”)—an
3 early investor in VectoIQ—proposed Nikola as a potential acquisition target. Cowen had a
4 prior relationship with Nikola, having previously provided financial advisory services to
5 the Company in connection with a 2018 offering of preferred stock. Cowen also pitched
6 Nikola on the idea of a reverse merger with VectoIQ around this same time. Beginning the
7 week of November 25, 2019, members of the management teams of both VectoIQ and
8 Nikola met at Nikola’s headquarters.

9 746. The SPAC option with VectoIQ proved to be more attractive for the Nikola
10 Defendants’ needs. Brady in particular favored the SPAC route over a listing on the Oslo
11 Børs.⁹³ The SPAC route meant access to a larger pool of retail investors, but it also carried
12 an additional advantage because it meant Defendants would not be subject to the “quiet
13 period” mandated by the federal securities laws. In a normal IPO, executives would not be
14 permitted to hype or promote a company’s stock immediately before or after a public
15 listing. Instead, a “quiet period” goes into effect from the time the issuing company
16 discloses information about the issuance in the registration statements and prospectus filed
17 with the SEC until forty days following the IPO. During this time, executives are forbidden
18 from providing any information beyond what was contained in the registration statement
19 and prospectus. The quiet period protects investors by ensuring a level playing field, as all
20 investors have access to the same information, and by preventing executives from taking
21 advantage of the listing to create runaway inflation in a new stock.

22 747. If Nikola went public via SPAC, however, the executives theoretically would
23 not be constrained in their ability to speak publicly and promote Nikola’s stock. Indeed, a

24
25 ⁹³ Milton Tr. at 1852:19-20, ECF No. 232.

1 November 2019 presentation given by VectoIQ to Nikola listed among the “KEY
2 ADVANTAGES” of a SPAC versus a traditional IPO the “Ability to market off of forward
3 projections” and “Completely confidential marketing to public investors with light
4 documentation,” as well as that the total process would take “~4 months to close.”
5 Significantly, the presentation also stated that a SPAC with VectoIQ could give Nikola’s
6 “early investors” such as Milton, Russell, and Ubben, “partial cash liquidity” at close.

7 748. The “light documentation” advantage turned out to be significant to Nikola’s
8 ability to achieve an inflated valuation. As the *Financial Times* observed in a September
9 14, 2020 story, the Hindenburg Report “raised significant questions about Nikola’s own
10 technology that would normally be addressed in a traditional stock market listing process,
11 but which the business largely sidestepped by merging with a [SPAC] this year.”

12 749. VectoIQ sent Nikola a letter of intent on December 19, 2019, and in a
13 December 22, 2019 phone call, Girskey proposed a valuation of approximately \$3 billion
14 on a pre-money basis. Following further negotiations, the two companies agreed to the \$3
15 billion valuation, that VectoIQ would receive one seat on Nikola’s Board of Directors and
16 that VectoIQ would raise at least \$500 million in a PIPE offering. The two companies
17 signed the letter of intent on December 24, 2019.

18 750. The companies further agreed that immediately following the merger, Nikola
19 would effectively make a \$70 million cash payment to Milton by redeeming 7,000,000
20 shares of Nikola common stock from M&M, an entity owned by Milton, at a price of \$10
21 per share.

751. The merger agreement came just in time for Nikola as its financial situation became more dire in early 2020. On April 9, 2020, Nikola's Board of Directors held a telephonic meeting, attended by Milton, Russell, Ubben, Brady, and Worthen, in which the Board was told that there were delays in developing production-ready trucks and hydrogen infrastructure (including blueprints for the stations). Brady then provided an update on the SPAC process and timeline.

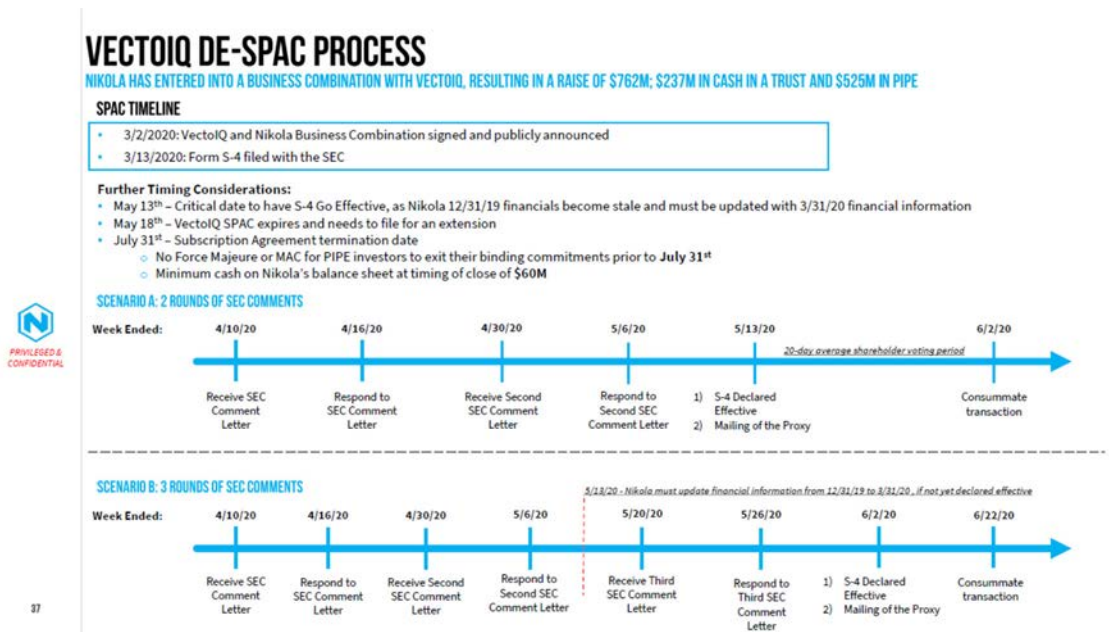
EXECUTIVE GOALS
AN UPDATE ON TREVOR AND MARK'S KEY OBJECTIVES

ACCOUNTABILITY	MEASURE OF SUCCESS	WEIGHT	TARGET	ACTUAL	STATUS
Keep Nikola Employees Safe and Healthy	Recordable Incidents ⁽¹⁾	20	< 2.0	0.0	●
Raise Capital	Series D Capital Raise	20	\$1.0 B	SPAC/PIPE in place	●
Deliver a Production US BEV Truck	Production-ready Vehicle	20	9/30/2020	Minimizing delays	●
Allocate Capital with Discipline	Adherence to FY20 Budget	20	<= 5%	On track	●
Develop Infrastructure	Station Blueprint, Pilot Station Contract, PPA Let, Charging Standard	10	9/30/2020	Minimizing delays	●
Create a World-class Culture	Enterprise Engagement Score	10	70%	Survey to take place Q3 2020 ⁽²⁾	●

1. Any work-related injury or illness is "recordable" if it results in medical treatment beyond first aid (i.e., stitches, referral to MBI or hospital)
2. Changed timing considering recent events

13

752. Documents shared with the Board at this meeting revealed that Nikola expected to deplete 75% of its cash between mid-April 2020 and mid-September 2020 and projected negative cash flow until 2023. The Company was under particular pressure to close a SPAC deal by May 13, 2020, because this was the date Nikola's December 13, 2019 financials would become stale and would need to be updated with information from the first quarter of 2020, which would reflect the further deterioration in Nikola's financial condition at a time when the Company was far from generating revenue because its trucks and hydrogen infrastructure were facing delays:



753. With the SPAC deal in place, the Individual Defendants turned to designing a strategy to promote Nikola's stock that leveraged Milton's innate talents as a salesman. The strategy the Individual Defendants settled on was to intentionally target retail investors, who were less sophisticated than large institutions and would apply less scrutiny to Milton's brash claims. While Milton's style would work to attract retail investors, Russel, Brady, Worthen, and to an extent Girskey would handle conversations with more sophisticated parties, such as analysts.

754. On November 26, 2019, Brady circulated a document entitled "VectoIQ-Nikola discussion materials" in an email to Ubben, copying Milton, Russell, and others, which reported on a meeting with Girskey and VectoIQ regarding the SPAC process. The document stated that the "De-SPAC process requires a marketing effort to shore up financing." The document also used Virgin Galactic as an example of a company that went public through a SPAC, and provided a checklist of items Virgin Galactic reportedly did right, including: "Marketed forward projections: Successfully marketed the deal."

1 755. Milton rose to the challenge by promising in a June 3, 2020 email to the
2 Board of Directors to market Nikola through a “media blitz” strategy to attract retail
3 investors as a means to drive up the Company’s share price. Milton’s media appearances
4 and social media posts often employed embellished or outright false statements about the
5 Company, its vehicles, prospects, and infrastructure. The Individual Defendants
6 understood this, indeed, many of them discussed it repeatedly on various dates both before
7 and during the Class Period, but nonetheless encouraged this strategy. Russell would later
8 testify that he understood perfectly well that Milton’s reference to a “media blitz” in June
9 2020 meant that “once we were public, he was intending to be out there and be very active
10 promoting the company and advocating for it.”⁹⁴ Russell further testified that he was aware
11 that many of Milton’s public statements were false or misleading.

12 756. As part of this media blitz, Milton made numerous false statements to retail
13 investors—including through social media, podcasts, and television appearances—which,
14 as expected, drove up Nikola’s share price. Moreover, according to Russell’s testimony, at
15 the first Board meeting following the Company going public, “[Milton] was talking about
16 his ability to communicate through social media and reach out to retail investors and how
17 that was help[ing] driv[e] the stock price up.”⁹⁵

18 757. The Individual Defendants knew Milton intended to go on this media blitz to
19 attract retail investors and, in fact, encouraged Milton to do it. For example, Russell
20 admitted during Milton’s criminal trial that he, Girskey, and Ubben supported the idea of
21 Milton regularly communicating to the market to attract retail investors. Specifically,
22 according to Russell, “Jeff [Ubben] and Steve [Girskey] and myself did support the idea that
23

24 ⁹⁴ Milton Tr. at 1072:6-9, ECF No. 226.

25 ⁹⁵ Milton Tr. at 1091:7-9, ECF No. 226.

1 we'd communicate to the market,"⁹⁶ which was done to attract investors when the
2 Company went public. That awareness is sufficient to establish their liability for
3 participation in the deceptive scheme alleged herein.⁹⁷

4 758. Russell testified at Milton's criminal trial that he knew, even before he joined
5 Nikola as president, that Milton's promotional style was to misstate facts. Specifically,
6 Russell testified that he knew when joining the Company that Milton "was prone to
7 exaggeration in making public statements In situations where he was trying to persuade
8 somebody, he would sometimes exaggerate, sometimes misstate facts."⁹⁸ Brady also
9 acknowledged in his testimony that he learned long before Nikola went public that "from
10 time to time [Milton] misstated facts."⁹⁹ Brady even emailed Milton on June 4, 2018,
11 copying Worthen, to sending him a news article titled, "Inside the fall of Theranos," and
12 warning Milton that "[t]here are some lessons here for us. As we get closer to
13 commercializing, we need to be absolutely certain that our trucks/stations meet
14 performance specs that we promise to market/customers. Otherwise, we will be exposed to
15 all kinds of product liability and false representation litigations."¹⁰⁰ Russell also testified
16 that he and Defendant Brady exchanged text messages about Milton's strategy and how it
17 worked with retail investors. Specifically, on July 10, 2020, Russell texted Brady that
18 "***Trevor's style works for retail investors***, speculating with a few dollars they should
19

20 ⁹⁶ Milton Tr. at 1171:1-2, ECF No. 226.

21 ⁹⁷ See *Abdo v. Fitzsimmons*, No. 17-CV-00851-TSH, 2021 WL 616324, at *12 (N.D. Cal.
22 Feb. 17, 2021) (finding participation in scheme where directors knew executive had made
23 misstatements to investors but encouraged him "to focus on raising money from investors
24 because the Company desperately needed cash.").

25 ⁹⁸ Milton Tr. at 957:25-958:1, ECF No. 224.

26 ⁹⁹ Milton Tr. at 1789:20-21, ECF No. 232.

¹⁰⁰ Milton Tr. 1788:14-17:89-11, ECF No. 232.

1 probably put in a 401K index fund.”¹⁰¹ Russell’s conscious decision to delegate the
2 authority to communicate to retail investors to an executive known to be dishonest is
3 sufficient to establish his participation in the fraudulent scheme described herein.¹⁰²

4 759. Critically, the Individual Defendants did not merely sit back and watch
5 Milton’s media blitz strategy. Rather, they actively participated in the scheme to inflate
6 Nikola’s stock price by encouraging Milton to continue attracting retail investors.

7 760. For example, in a February 29, 2020 email, Ubben forwarded information
8 about billionaire Richard Branson’s media strategy in anticipation of Virgin Galactic’s de-
9 SPAC IPO to Milton and Girsky and wrote “Here is a template. Branson got a retail
10 following. We should aspire for Trevor to do the same.” Girsky replied in agreement, but
11 suggested that Milton should appear solo for a television appearance. Milton replied on
12 March 2, 2020, requesting the Branson materials and agreeing that Nikola had to “make
13 sure we are getting retail investors on our side. That is what prevents the stock short selling.
14 This is super important to me.”

15 761. A couple days after sending the email referenced above, Ubben sent another
16 email to Russell, Brady, and Milton, stating “big launch on TV, Trevor personality comes
17 through. Then quiet for 2 months. Another round on regular way trading in June.”

18 762. As discussed in ¶¶303, 581, Milton and Ubben did in fact make an
19 appearance together on *CNBC* on March 4, 2020. In that appearance, Milton and Ubben
20 both misstated Nikola’s current capabilities. At one point in the interview, Ubben explained
21

22 ¹⁰¹ Milton Tr. at 1084:12-13, ECF No. 226.

23 ¹⁰² See *Abdo*, 2021 WL 616324, at *12 (finding scheme where “by delegating authority”
24 to an officer known to be dishonest to make “representations and then failing to check
25 that [the officer] and others were not again making misrepresentations to investors, the
[directors] consciously ignored a substantial risk and that their conduct was an extreme
departure from standards of ordinary care.”).

1 that ValueAct was interested in Nikola because it valued “partnering with mission-driven,
 2 brilliant CEOs that have a clean piece of paper, they’re uncompromised, they can run to
 3 the goal, basically” and later called Milton a “courageous CEO.” Ubben also stated that
 4 “Trevor solved the chicken and the egg” problem and created a “de-risked” business model.
 5 At another point in the segment, Ubben nodded in agreement as Milton stated “So we help
 6 the grids buffer their grids, and that’s how we get our energy so cheap to be able to broker
 7 back to the fleets.” Finally, Ubben asserted: “[Nikola] is a hundred billion dollar company.
 8 . . . the next hundred billion dollar company is going to be this.”



(Ubben, left, and Milton, right, on “Squawk Alley,” March 4, 2020)

763. In early June 2020, Girsky sent Milton a screenshot of a chart showing that Nikola was one of the top stocks that had increased in the number of users holding it on Robinhood, a platform largely used by retail investors. Girsky sent this screenshot to Milton and said, “great job getting retail investors.”

1 went on when the host asked him about a *Bloomberg* article which questioned if the Nikola
2 One unveiled in December 2016 could drive:

3 Yeah, it was just really sad. I mean, Bloomberg -- this guy, well, he did a hit
4 job on Nikola and he knew it was a lie because we recorded the whole
5 interview and we're going to post it out there for everyone to actually listen
6 to. He knew it was a lie. There are videos that show that we told people, hey
7 -- I mean, his main claim was that the truck wasn't moving at Nikola World
8 and in 2016 is what?

9 Four or five years ago. Our first prototype we ever built. And ***we told***
10 ***everyone in the audience it was capable of moving, but we didn't want to***
11 ***because of the danger of it. So, all of the parts functioned.*** You had
12 batteries, you had motors, you had the axels, you had inverters. ***You had***
13 ***everything there. It was all there. And instead of you know, taking a risk***
14 ***and possibly hurting or killing someone, we decided to make the truck***
15 ***inoperable on the stage and we never -- you know, we never took it out on***
16 ***the road because it just wasn't safe. . . .***

17 So, it is really sad because like, there was clear evidence what he was saying
18 was a lie. ***It was just a hit job.*** He is a very big Tesla fanatic. He's in Tesla's
19 back pocket, and so his entire job was to hit Nikola and try to stop our growth.

20 And I just -- you know, look, it's bad for all journalists. When one journalist
21 begins to become -- advocating for one company or deceiving people, I am
22 going to call them out. I am not afraid.

23 That same day, Russell texted Milton: "Just caught your *CNN* interview. You have always
24 had a gift for battle in the war of ideas, but you have clearly worked and focused yourself
25 to a whole other level. So cool for me to see it."¹⁰⁵ Russell has since testified that he learned
26 shortly after joining Nikola that the Nikola One was never developed and work on the
project had been abandoned shortly after the vehicle's launch in December 2016.¹⁰⁶

767. Shortly after the merger, the Board rewarded Milton for his part in the
scheme. Milton originally wished not to be locked up from selling his Nikola stock
following the merger for any period of time, but ultimately signed a one-year lock-up
agreement, effective June 3, 2020 (with a carve-out for \$70 million in stock which could

¹⁰⁵ Milton Tr. at 1205:12-15, ECF No. 226.

¹⁰⁶ Milton Tr. at 1134:18-25, ECF No. 226.

1 be sold 6 months after the merger, and which did not effect the separate \$70 million cash
2 payment to M&M). Following the merger, however, as Milton's misstatements drove up
3 the value of the Individual Defendants' holdings, Milton requested that the Board release
4 him from his lock-up agreement. In a July 7, 2020 email exchange with a Nikola director,
5 Milton argued that he should be released from the lock-up because the stock had gained
6 "over 400%" and he had made "everyone else millionaires and billionaires."

7 768. The Board evidently agreed. On July 17, 2020, as Milton was, to their
8 knowledge, defrauding investors to drive up Nikola's stock price, the Board approved an
9 amendment to the lock-up agreement to permit Milton and Russell to sell all of their shares
10 (owned through M&M and T&M) beginning on December 1, 2020, and transfer up to 16%
11 of their shares as collateral to borrow money to buy more Nikola stock through open-
12 market transactions—stock that Milton and Russell could presumably then turn around and
13 sell at any time allowing them a loophole around the lock-up.

14 **III. The Individual Defendants Engaged in Deceptive Acts Including**
15 **Disseminating and Making False and Misleading Statements in Support of**
16 **the Scheme**

17 769. The Individual Defendants, having brought Nikola public through a process
18 designed to obscure from investors the shaky state of the Company's finances and
19 technology while maximizing Milton's opportunities to stoke retail investors' enthusiasm,
20 further participated in the scheme to inflate the price of Nikola stock by actively
21 disseminating false and misleading statements about subjects that Milton believed would
22 attract retail investors, such as batteries and the Badger.

23 770. For example, Defendants approved and disseminated a false and misleading
24 press release on November 19, 2019. The press release, which was titled "Nikola
25 Corporation to Unveil Game-Changing Battery Cell Technology at Nikola World 2020,"
26

1 was sent to Nikola’s Board of Directors November 15, 2019, which included Defendants
2 Russell, Brady, Ubben, and Worthen, before it was disseminated to the investing public.
3 In the press release, Defendants made several unqualified claims about Nikola’s battery
4 technology, which Milton was quoted describing as “the biggest advancement we have
5 seen in the battery world.”

6 771. The Individual Defendants also disseminated false and misleading
7 statements that the Badger was a functioning, production-ready vehicle design when, in
8 truth, it was still merely a concept.

9 772. For example, in the February 10, 2020 press release, the Badger was
10 described as being “engineered to deliver 980 ft. lbs. of torque” and “906 peak HP.” The
11 April 6, 2020 Form 8-K contained slides from the Analyst Day Presentation, the Badger
12 Pickup Truck was described as having a “blended FCEV/BEV” system with a range of
13 “600 miles” or a “300 mile” range on just the BEV, and could switch between an
14 FCEV/BEV and BEV only system “only by touch of button.” Moreover, the June 15, 2020
15 Form S-1, which was signed by Defendants Milton, Girskey, Russell, Brady and Ubben,
16 stated, “Recently we announced the Nikola Badger (the ‘Badger’), an advanced zero-
17 emission FCEV/BEV hybrid pickup truck. Unlike anything on the market, the Badger is
18 designed to target and exceed every electric or fossil fuel pickup in its class.” Finally, the
19 August 4, 2020 Form 10-Q, which was signed by Defendants Russell and Brady, stated
20 that “[o]n June 29, 2020 we began accepting non-binding reservations for the Badger . . .
21 .”

22 773. In fact, the whole idea for the Badger seems to have originated as merely a
23 stunt to generate retail investor enthusiasm. According to Russell’s trial testimony,
24
25
26

1 “[Milton] believed that the Badger, being a retail product, would [] excite those people
2 interested in the Badger to invest in the stock.”¹⁰⁷

3 774. Defendants knew the statements they were disseminating were false and
4 misleading. Leading up to the February 10, 2020 press release, for example, Defendants
5 Milton, Brady, Russell, and Worthen exchanged emails discussing concerns about the press
6 release. According to Russell’s testimony, leading up to the press release, Brady sent an
7 email to Milton, Russell, and Worthen. The subject of the email was “Please review and
8 modify or approve.” The email attached a draft of the February 10, 2020 press release.
9 The email listed various concerns over the press release, including the “[l]ikely criticism
10 that Nikola hasn’t even started serial production of BEV and FCEV, yet we keep
11 announcing new products.” However, despite these concerns, Russell and the rest of the
12 board approved the press release, which they then disseminated to the investing public.¹⁰⁸

13 775. The Badger was not the only decision that hurt Nikola’s business but was
14 done anyway for optics. Milton, Russell, Brady, and Ubben also rushed through a \$31.85
15 million purchase order for electrolyzers to allow Nikola to put out a deceptive press release
16 on June 3, 2020, just as Nikola went public. The purchase order was curious for a number
17 of reasons. Nikola had no immediate use for the electrolyzers, given its lack of land,
18 permits, PPAs, and had not yet even come to a decision as to whether it would produce
19 hydrogen onsite at its stations or liquefy it at a “hub” location.

20 776. As described above, the deal’s only real value was in allowing Nikola to put
21 out a seemingly positive press release on the eve of going public. In the lead up to the deal
22 and the press release announcing it, on May 30, 2020, Milton sent an email to Russell,

24 ¹⁰⁷ Milton Tr. at 1089:5-7, ECF No. 226.

25 ¹⁰⁸ Milton Tr. at 1037:8-1041:18, ECF No. 226.

1 reading: “I’m going to ask you to approve a large purchase order. It is the electrolyzers for
 2 our stations. There are a few reasons why it is coming quickly for approval. I would like to
 3 get it tomorrow from the board.”¹⁰⁹ Later that same day, Russell, in a thread that included
 4 Milton, Brady, and Worthen, emailed Nikola’s head of marketing, Vince Caramella,
 5 requesting that he “start a draft PR for our agreement with Nel to purchase 40 tons of
 6 electrolyzer capacity[.]” Russell added: “Assuming all is in order with PO proposal form
 7 Nel (Trevor has and will forward) we will want to release ASAP.”¹¹⁰

8 777. The next day, May 31, 2020, Milton sent an email to Nikola’s Board of
 9 Directors seeking approval, on one day’s notice, of the over \$31 million purchase order.
 10 As Russell later conceded at Milton’s criminal trial, a one-day turnaround for a transaction
 11 of this magnitude was highly unusual. Major permissions were normally granted at
 12 quarterly Board meetings, or at least with significant advance notice.¹¹¹ Yet the ability to
 13 announce a major deal fit perfectly into the scheme even if it made little business sense. As
 14 Milton justified the accelerated purchase order in his message to the Board:

15 2nd major point. IPO. I am getting ready to go on a *media blitz* and the most
 16 critical item in our business model is that we don’t have stations. I would like
 17 to announce this on Monday as huge news. ***This will help our stock, create***
 18 ***much stronger following and base layers of investors*** and it also will ease
 the criticism I am going to get going into interviews. ***I believe our PIPE and***
SPAC will be veryhappy to hear we are moving on our stations and not
delaying.

19 778. Ubben responded with approval less than twenty minutes after Milton sent
 20 the above message.
 21
 22

23 ¹⁰⁹ Milton Tr. at 1071:1-15, ECF No. 226.

24 ¹¹⁰ Milton Tr. at 875:3-5, ECF No. 224.

25 ¹¹¹ Milton Tr. at 1071:1-15, ECF No. 226.

1 779. The purpose, of course, of the purchase of the electrolyzers and the press
2 release was to allow Milton to back up his claims that Nikola was making its own hydrogen
3 and Defendants’ statements that Nikola was prepared to build out its hydrogen network—
4 which was false—and to provide credibility to the claims that Nikola could make hydrogen
5 at economically feasible prices to support the conversion of its purchase orders into real
6 sales.

7 780. On May 31, 2020, prior to the purchase order or press release being finalized,
8 Dale Prows, Nikola’s Global Head of Infrastructure Development, forwarded to Russell
9 and Brady an email he had received from Milton, attaching terms of the pending Nel deal.
10 Milton had written to Prows: “I just got this from Nel. Let’s take a look. If acceptable, I
11 would like to get this news out on Monday leading up to the merger.” Prows’ email
12 message to Russell and Brady voiced his opposition to the purchase order. Prows stated
13 that it was “ludicrous” that Nel was insisting Nikola buy equipment for hydrogen
14 production stations when “they can’t even make our demo station run even after a full year
15 of pathetic efforts.” Prows wrote: “Doing the deal with Nel this way, i.e., electrolyzers
16 only, and doing it in a rush, will end up costing us millions of dollars. . . . We don’t have
17 PPAs or sites selected yet. We are literally getting the cart before the horse.”¹¹² Prows
18 believed Nikola was not ready for the equipment and objected to doing a deal as a way of
19 falsely signaling to investors on the eve of the IPO that Nikola was prepared to build out
20 its hydrogen network. As Prows would later testify: “we were not ready for \$30 million
21 worth of equipment to be purchased . . . we had not acquired any land. We had not even
22 filed for permitting to get electrolyzer equipment installed, and that process would take
23 many months, potentially years, to accomplish. . . . again, we were just not ready for five

24 _____
25 ¹¹² Milton Tr. at 741:17-744:17, ECF No. 222.

1 stations worth of electrolyzers. . . . this would be way ahead of our skis, so to speak, about
2 the timing and the sequence of events that needed to take place.”¹¹³

3 781. Also on May 31, 2020, Prows emailed Milton, copying other executives. He
4 again voiced his opposition to the Nel deal and listed out some of his concerns. One concern
5 was that the purchase order contained “14 major deviations from our engineering
6 specifications” including that the equipment was “not engineered to operate at temperatures
7 above 104 degrees” and therefore was not suitable for the Phoenix climate.¹¹⁴

8 782. Prows subsequently sent another email to Milton, Russell, Brady, and
9 Worthen, before the purchase order was approved. This message stated: “I’ve also
10 estimated in the attached file that each of the five eight-ton stations will cost \$27.3
11 million.”¹¹⁵ This figure was far higher than the \$16.6 million target CapEx figure the
12 Individual Defendants communicated to investors in the April 6, 2020 Analyst Day
13 Presentation.

14 783. Nonetheless, Nikola’s Board of Directors, including Ubben and Russell,
15 approved the purchase order of the electrolyzers and Nikola issued the June 3, 2020 press
16 release. Brady personally signed off on the purchase order. Again, while Prows was noting
17 the rational business reasons for why purchasing the electrolyzers made no sense, Milton,
18 Russell, Brady, Girskey and Ubben had other reasons for approving the purchase and issuing
19 the press release: create positive buzz with retail investors just before Nikola stock began
20 to publicly trade and inflate the stock price.

21 784. In many cases, Milton’s misstatements followed or were made in tandem
22 with similar representations by the other Individual Defendants. For example, in January

23 ¹¹³ Milton Tr. at 740:23-744:5, ECF No. 222.

24 ¹¹⁴ Milton Tr. at 746:24-747:17, ECF No. 222.

25 ¹¹⁵ Milton Tr. at 748:22-24, ECF No. 222.

2020, just six weeks after Cowen introduced VectoIQ to Nikola, Defendants Russell, Brady, and Girsky gave a presentation to investors using a slide deck similar to the one that would later be contained in the April 6, 2020 8-K. The presentation made many of the same misrepresentations that would later be repeated in the April 6, 2020 Analyst Day Presentation, such as that Nikola had an “industry leading technology portfolio,” the “world’s most advanced Hydrogen (H2) FCEV truck,” a “\$10B+ FCEV order book” with a “2+ year backlog” and “+14,000 FCEV truck reservations to date” with “~\$10B sales value.”

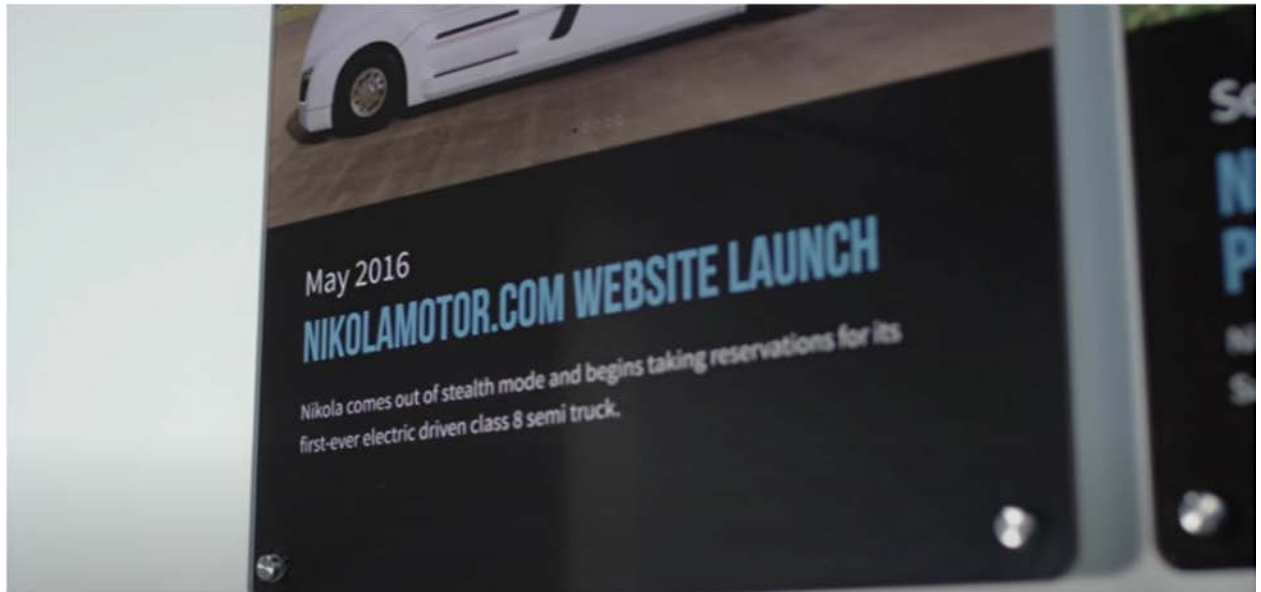
785. On April 6, 2020, for the Company’s “Analyst Day” event ahead of the SPAC merger, Russell, Brady, and Milton appeared together in a promotional video that contained misstatements as well as deceptive acts and imagery. In the Analyst Day Video, which was publicly available on YouTube throughout the Class Period, after a brief introduction, Russell, standing with Brady and Milton, tells the audience the executives have “some really cool stuff to show you,” then turns the tour over to “Trevor[]” who is “going to start upstairs.”



1 (From left to right: Russell, Brady, and Milton at Nikola's Phoenix, Arizona Headquarters
2 in the Analyst Day Video)

3 786. The Analyst Day Video rejoins Milton on the third floor of Nikola's
4 headquarters, where Nikola's C-Suite executives—Milton, Russell, Brady, and Worthen—
5 all had offices in close proximity. Worthen's office was immediately next to Milton's, and
6 both were right down the hall from Russell and Brady. Indeed, Russell testified at Milton's
7 trial that his and Milton's desks "were right next to each other" and, pre-merger, he and
8 Milton spoke "multiple times a day usually" "about the status of Nikola's products and
9 technology."¹¹⁶

10 787. In the Analyst Day Video, Milton shows off a series of placards that adorned
11 the walls of the third floor, purporting to give a timeline of Nikola's history, which the C-
12 Suite executives would have seen whenever they came to work. Using the placards as
13 visual aids, Milton talks through Nikola's history. The camera trains on the first placard,
14 which reads that in "May 2016" Nikola "beg[a]n[] taking reservations for its first-ever
15 electric driven class 8 semi truck." The Nikola One was never electric, was not capable of
16 driving, and was not a real product that could be sold.



25 ¹¹⁶ Milton Tr. 979:20-980:3, ECF No. 224.

1 788. Milton then states, referring to the Nikola One: “We launched the truck in
2 2016 to the world and at that point when it came out we racked up billions of dollars of
3 pre-orders.” At this point, the camera shows another placard that reads “December 2016
4 NIKOLA SURPASSES \$4 BILLION IN RESERVATION PREORDERS[.] Following the
5 Nikola One unveiling, preorders for the hydrogen-electric semi exceed \$4 billion in value.”
6 The Nikola One was never a hydrogen-electric truck, nor a product that could be sold. As
7 Nikola admitted in a February 25, 2021 SEC filing, the Company did not engineer any
8 electric truck in 2016.



18
19 789. Milton continues to discuss the Nikola One unveiling event in the Analyst
20 Day Video. “When we first began no one thought that zero emission trucks would ever
21 work. And that was what was so exciting about this Nikola story from the beginning. And
22 in 2016, in December, we unveiled the Nikola [One].” At this point in the video, a clip
23 plays of the December 2016 Nikola One unveiling event with the Nikola One on stage. As
24 the Company would later admit, the Nikola One shown in the video was an inoperable
25 “pusher” that lacked any hydrogen technology. Milton continues, as footage of the
26

1 unveiling event plays: “It was a big moment in my life. That’s when I realized we really
2 have something.”

3 790. The Analyst Day Video later shifts to Russell, who showcases Nikola’s
4 hydrogen demo station. After speaking in front of a Nikola Two prototype parked at the
5 demo station and representing that the Nikola Two’s only biproduct is water, which was
6 what “we started out with when we made the hydrogen,” Russell leads the camera to the
7 far side of the station to reveal a Nikola employee holding a hydrogen fuel nozzle in the
8 Nikola Two prototype’s fueling port. Russell states: “Over here is Dale Prows. He’s one of
9 our hydrogen experts and he’s getting us some fuel so we can take a ride here in a minute.
10 So I’ll turn it over to Dale.”



21 791. Prows then explains that Nikola has “compression and cooling equipment
22 that takes the gas and brings it over here to this dispenser. This dispenser then loads the
23 high-pressure gas onto the truck and as you can see it’s very similar to a diesel fueling
24 experience and one of our goals is to make sure that the fueling time on this fueling
25
26

1 experience is equal to or better than a diesel fueling experience, so something less than 15
2 minutes per fueling time.” The camera shows a close-up of the nozzle in the truck as Prows
3 speaks. Soon, Prows states “at this point, Mark [Russell], we’re all fueled up. You want to
4 take your first spin?”



14 792. Prows later testified in the course of Milton’s criminal trial that he was not,
15 in fact, fueling the Nikola Two prototype.¹¹⁷ Russell wanted to showcase the fueling
16 process for the Analyst Day Video, but the demo station was notoriously unreliable and
17 even when it was working took 45-80 minutes to refuel a truck. Accordingly, Russell came
18 up with the idea for Prows to simulate fueling, which created the impression that the station
19 was operationally sound and capable of quick, high-pressure fueling. In fact, many of the
20 station’s problems stemmed from the “cooling and compression equipment” touted in the
21 video as making the station capable of loading “high-pressure gas” in a manner comparable
22 to diesel.

24
25 ¹¹⁷ Milton Tr. at 806:23-24, ECF No. 224; 1215:20-1216:3, ECF No. 226.

1 793. At the conclusion of the Analyst Day Video, Russell exits the Nikola Two
2 and rejoins Brady in front of Nikola’s Headquarters. Brady states that he is glad they “got
3 to showcase . . . the demonstration of hydrogen fueling,” then asks Russell if he is “ready
4 for the next segment of the presentation?” Russell responds: “Absolutely. We know
5 everybody wants to look at the numbers and get into the data, so that will be next.” Brady
6 states “Fantastic. Let’s do it,” and the pair walk together into Nikola’s headquarters.

7 794. The “numbers” and “data” Russell was referring to were contained in the
8 slides of the “Analyst Day Presentation,” which were also filed with the SEC in the April
9 6 8-K, subsequently posted to Nikola’s website, and later accepted as exhibits in the course
10 of Milton’s criminal trial. The division of labor described in the Analyst Day Presentation
11 slides perfectly summarizes the overall scheme. While Milton promoted Nikola through
12 his enthusiastic, and often emotive, visionary style, which resonated with retail investors,
13 Russell and Brady handled the more sophisticated, data-driven discussions with analysts,
14 such as the Analyst Day Presentation at the April 6, 2020 event—to which retail investors
15 were not extended an invitation—or the similar presentation Russell and Brady gave in
16 January 2020 along with Girskey. As Russell testified, Milton typically did not participate
17 in Analyst Day presentations or Earnings Calls with analysts—those were left to Russell,
18 Brady, and Worthen.¹¹⁸ As discussed previously in ¶¶215, 307-319, the April 6, 2020
19 Analyst Day Presentation was riddled with false and misleading statements and figures
20 which Russell and Brady knew to be untrue, including because Prows informed Milton,
21 Russell, and Brady in March 2020 that the figures Nikola cited for hydrogen production
22 and CapEx in the presentation were not achievable. Brady’s and Russell’s acts in
23

24
25 ¹¹⁸ Milton Tr. at 1182:6-21, ECF No. 226.

1 connection with Analyst Day—knowingly presenting unachievable figures and appearing
2 in a video containing misleading statements and visuals—were deceptive.

3 795. Brady and Russell also joined Milton in hiding from the market the fact that
4 Nikola was considering a major change in its business model, which could cause it to
5 switch from producing hydrogen onsite at its stations (as it told investors) to producing and
6 liquefying it at a “hub.” Nikola was considering this strategic shift because it was finding
7 energy costs to be too high to allow for onsite hydrogen production. Yet in a March 2020
8 email, Milton asked the other executives to keep the “liquefaction discussions quiet from
9 the market,”¹¹⁹ and Russell and Brady obliged by omitting any mention of liquefaction
10 from their public statements, including SEC filings, and representing that Nikola was
11 executing on its existing business model.

12 **IV. The Individual Defendants Signed Misleading SEC Filings in Support of the** 13 **Scheme**

14 796. While Milton served as the most vocal promotor, each Individual Defendant
15 made their own misstatements in contribution to the scheme, including by signing false
16 and misleading SEC filings that perpetuated Milton’s fraud and conspicuously avoided
17 contradicting what Milton had already said and what was contained in the Analyst Day
18 Presentation. Defendant Russell testified at Milton’s criminal trial that he understood that
19 “[p]ublic companies have to be very careful about their statements being true and correct .
20 . . [b]ecause investors have to be able to rely on those.” Yet Russell, and the other
21 Defendants, signed SEC filings containing material misstatements and omissions.

22 797. For example, the Individual Defendants signed various SEC filings—*e.g.*,
23 the March Form S-4 (signed by Milton, Girskey, and Shindler), the April 6, 2020 Form 8-

24
25 ¹¹⁹ Milton Tr. at 719:17-20, ECF No. 222.

1 K (signed by Shindler), the May 8, 2020 Proxy Statement (signed by Milton and Girsky),
2 the June S-1 (signed by Milton, Girsky, Russell, Brady and Ubben), the July S-1 (signed
3 by Milton, Girsky, Russell, Brady and Ubben), and the Second Quarter 2020 Form 10-Q
4 (signed by Russell and Brady)—all of which misrepresented, among other things: (i)
5 Nikola’s value by referring to the backlog as a list of “pre-orders” or “reservations” when
6 it contained only cancellable expressions of interest for products that were not fully
7 developed or available for purchase and stated the company had 14,000 reservations for
8 the Nikola Two when the overwhelming majority of these so-called reservations were
9 actually for the non-existent Nikola One; (ii) Nikola’s hydrogen dispensing and production
10 capabilities and prospects for economically feasible electricity; and (iii) that the Badger
11 and Nikola One were functioning, production ready vehicle designs when, in reality, they
12 were still merely concepts. These false and misleading statements reaffirmed and echoed,
13 and in some cases preceded, Milton’s several misrepresentations on these very same topics.

14 798. Moreover, accompanying Nikola’s Second Quarter Form 10-Q, Russell and
15 Brady executed SOX certifications attesting to the accuracy of the filing and its contents
16 and the disclosure of all fraud. Specifically, Russell and Brady attested to the fact that
17 “th[e] report does not contain any untrue statement of a material fact or omit to state a
18 material fact necessary to make the statements made, in light of the circumstances under
19 which such statements were made, not misleading with respect to the period covered by
20 th[e] report.” However, Russell and Brady knew that the Form 10-Q contained several false
21 and misleading statements, including misrepresentations regarding the Nikola One,
22 Nikola’s backlog, Hydrogen capabilities, and the Badger. *See* Sections I, II, III, IV, *supra*.

23 799. By signing the SOX Certifications, Russell and Brady further contributed to
24 the scheme by reassuring investors that the Company’s statements (including Milton’s)
25
26

1 were truthful and accurate, which created the false appearance that Milton could be trusted
2 and that his statements were truthful and accurate.

3 **V. The Individual Defendants Deflected and Suppressed Concerns about**
4 **Milton's Misstatements**

5 800. Moreover, the Individual Defendants signaled to investors that Milton should
6 be trusted by telling them he was essential to Nikola and by feeding into his persona as a
7 visionary. For example, the S-4, signed by Shindler and Girsky, as well as the June 15,
8 2020 S-1 and July 17, 2020 S-1, signed by Russell, Brady, Milton, Girsky, and Ubben, and
9 the August 4, 2020 10-Q, signed by Russell and Brady, all contained the following risk
10 disclosure:

11 ***We are highly dependent on the services of Trevor R. Milton, our Executive***
12 ***Chairman.***

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

18 801. The Individual Defendants signed onto these disclosures despite knowing
19 that Milton was actively defrauding investors. *See Abdo*, 2021 WL 616324, at *13 (“A
20 reasonable jury could conclude that one effect—though not the only one—of [the
21 directors’] conduct,” which consisted of “d[oing] nothing to establish controls” over the
22 officer despite knowing he had made false statements to investors, “was to contribute to
23 the false impression that [the officer] was somebody whose representations could be
24 trusted, instead of someone who had just directed fraud by the Company . . . All of this was
25 going on while the [directors] knew that the Company was in a desperate financial situation
26 and was in need of a sudden infusion of cash, which could easily be seen as a motive.”).

1 802. In addition to telling investors to trust in Milton, the Individual Defendants
2 were told that investors were trusting Milton. Defendants knew that the public, including
3 sophisticated analysts, followed Milton's social media postings for accurate news about
4 the Company. When directly given the opportunity to set the record straight by an inquiring
5 analyst, they obfuscated and deflected. Brady and Russell typically handled interactions
6 with analysts, including by presenting and answering their questions during earnings calls,
7 with Worthen serving as a moderator but rarely answering questions. On the August 4,
8 2020 Q2 2020 Earnings Call, Russell and Brady fielded a pair of questions from Cowen
9 analyst Jeffrey Osborne. Osborne's third question, however, which sought further
10 clarification on Nikola's orders, products, and commercial agreements in light of Milton's
11 social media postings, elicited an unusual response:

12 **OSBORNE:** [I]s the intent to communicate all of this [information regarding
13 orders, products, CapEx, and commercial agreements] at Nikola world? **It's**
14 **a bit confusing trying to follow Trevor on his various social media outlets**
about the timing and cadence of communication of the different
variables that you're talking about.

15 Rather than Russell or Brady answering Osborne's question, Worthen, in a rare move,
16 jumped in:

17 **WORTHEN:** Jeff, as you're aware, we have a number of initiatives that we
18 anticipate that we'll be able to announce in the second half of the year, and
19 we'll announce them as we execute them. The goal is not to simply wait until
20 the year end, but we believe that we'll be able to announce several initiatives
21 that we have working on over next six months.

22 803. Other than to give a boilerplate introductory disclaimer and outro, Worthen
23 did not otherwise speak or answer any questions during the August 4, 2020 call, other than
24 to deflect this inquiry regarding the reliability of Milton's social media postings by an
25 analyst who indicated he was relying on them as a source of information.
26

1 804. This was not the first time the Individual Defendants were asked to respond
2 to Milton's false and misleading statements but instead chose to let the market continue to
3 believe them. On July 19, 2020, a high-level officer at Nikola who reported to Russell,
4 Head of Business Development Elizabeth Fretheim, listened to the *Chartcast* podcast
5 released that day featuring an interview with Milton. Fretheim was alarmed by the sheer
6 volume of false statements Milton made during the course of the podcast. Fretheim
7 contacted Nikola's President of Energy, Pablo Koziner, with a list of statements Milton
8 made during the podcast and her concerns. Koziner responded that he had not yet listened
9 to the podcast but that "based on [her] comments," she was "probably not overreacting."¹²⁰

10 805. Seeing that Nikola had posted references and links to the podcast on its social
11 media, including on Nikola's official Twitter account, Fretheim also contacted Nikola's
12 marketing department that day to ask them to remove the posts. As Fretheim testified at
13 Milton's criminal trial, "I was concerned about the accuracy. If we referenced them on our
14 social media, it was like we were saying it was true."¹²¹ The marketing team, however, told
15 Fretheim that they needed approval from a C-Suite executive to take down the postings.
16 As Fretheim testified: "they wanted to make sure that they got our executive approval to
17 remove those first."¹²²

18 806. Accordingly, on July 19, 2020, Fretheim sent text messages to Russell,
19 Brady, and Worthen, stating: "Hi all. I am really worried about what some of what Trevor
20 says on his latest podcast. In particular about contracts with utilities, getting power straight
21 from federal lines, cost of stations, that we've already purchased land for stations and on.
22

23 ¹²⁰ Milton Tr. at 342:5-6, ECF No. 218.

24 ¹²¹ Milton Tr. at 338:22-24, ECF No. 218.

25 ¹²² Milton Tr. at 338:17-20, ECF No. 218.

1 I asked the marketing team to remove references to it until it is properly reviewed by the
2 right people.”¹²³

3 807. Fretheim followed-up separately with Russell by text message, attaching a
4 link to the *Chartcast* podcast. She also sent Russell an email message, listing all of the
5 concerns she had regarding statements Milton made in the first half of the podcast—divided
6 into a chart with her concerns in the left column and timestamps in the right column so
7 Russell could quickly find each misstatement in the podcast. Additionally, Fretheim had
8 an in-person discussion with Russell in which she once again expressed her concerns about
9 the *Chartcast* podcast. In all, Fretheim raised her concerns with Russell at least four
10 separate times. As she testified, Russell was Nikola’s “president and CEO, and so I wanted
11 to make sure he was aware of [the misstatements] and could take action as necessary.”¹²⁴

12 808. Fretheim also followed-up individually with Worthen, sending him an email
13 in which she listed her concerns and provided timestamps for the location of each
14 misstatement Milton made over the course of the entire podcast. Fretheim then had two
15 conversations with Worthen about her concerns, first to confirm he received her email, and
16 second after Worthen had listened to the podcast. As with Russell, Fretheim raised her
17 concerns with Worthen at least four separate times.¹²⁵

18 809. Fretheim testified that she was clear with Russell, Worthen, and Brady that
19 the podcast would remain on Nikola’s Twitter account unless they instructed it to be
20 removed.¹²⁶

21
22 _____
¹²³ Milton Tr. at 338:5-10, ECF No. 218.

23 ¹²⁴ Milton Tr. at 389:20-23, ECF No. 218.

24 ¹²⁵ Milton Tr. at 390:5-11, ECF No. 218, 413:17-414:11, ECF No. 220.

25 ¹²⁶ Milton Tr. at 386:12-16, ECF No. 386.

1 810. Fretheim was not the only high-level officer to raise these concerns. An
2 employee on Dale Prows' infrastructure team flagged Milton's misrepresentations in the
3 podcast regarding Nikola's hydrogen infrastructure for Prows. Prows then brought these
4 concerns to the attention of Brady during a previously scheduled meeting.¹²⁷

5 811. Russell responded to Fretheim by telling her that finance and legal—by
6 which he meant Brady and Worthen—would be following up, and thanking her for raising
7 the issues. Fretheim testified that she did not contact Milton directly because of Russell's
8 assurances that the other C-Suite executives would handle the situation.¹²⁸ However,
9 neither Russell, Brady, nor Worthen ever directed the marketing team to remove references
10 and links to the misleading podcast from Nikola's social media. The references and links
11 to the *Chartcast* podcast remained on Nikola's social media through at least September
12 2020. At Milton's criminal trial, Russell conceded in his testimony that "we should have
13 taken it down."¹²⁹ Thus, despite being specifically informed that Milton had made
14 materially false statements on the *Chartcast* podcast and knowing it was posted on Nikola's
15 own Twitter account and links on its social media to the interview, and conceding that they
16 should have "taken it down," Russell, Worthen, and Brady did nothing to remove it from
17 Nikola's Twitter accounts or links to it, demonstrating they were directly participating in
18 the scheme to defraud investors.

19 812. Girsky did his part to add to the perception of Nikola's and Milton's
20 legitimacy by insisting publicly that VectoIQ thoroughly vetted the Company. In August
21 2020, Girsky—a former VP at General Motors—stated, "[w]e showed up with an army of
22 people to diligence this thing . . . I don't doubt there's gonna be twists and turns here, but

23 ¹²⁷ Milton Tr. at 782:19-21, ECF No. 222.

24 ¹²⁸ Milton Tr. at 342:20-22, 389:9, ECF No. 218.

25 ¹²⁹ Milton Tr. at 1107:25, ECF No. 226.

1 I did put my reputation on the line for this thing. . . . My experience with situations like
2 this though is these guys like to run fast and I don't want to slow them down."

3 813. All the while, the Individual Defendants knew Milton was deceiving
4 investors. In fact, the Individual Defendants decided to transition Milton out of his role as
5 CEO and into his Executive Chairman role once the de-SPAC merger was completed
6 precisely because of his tendency to mislead. Brady testified at Milton's criminal trial that
7 during negotiations with PIPE investors (in which Brady personally participated), the
8 investors demanded that Trevor step down as CEO because "[t]here were a number of
9 concerns by the institutional investors that Trevor was not prepared to be CEO of a public
10 company, and there were comments during due diligence with respect to Trevor and some
11 of his statements."¹³⁰ The Individual Defendants complied, but moved Milton into a role
12 in which he could still be encouraged to speak on behalf of the Company after the de-SPAC
13 merger.

14 814. Moreover, the Individual Defendants were repeatedly provided with
15 information that contradicted Milton's statements. On October 1, 2019, Milton, Russell,
16 Brady, Worthen, and Ubben attended a Board meeting and were informed that Nikola was
17 using "off-the-shelf" inverters for the Nikola Tre. On February 18, 2020, the same
18 Individual Defendants attended a Board meeting to discuss Nikola's inability to develop a
19 working Badger prototype on its own and its need for third-party help to design and build
20 it. On April 9, 2020, the same Individual Defendants attended a Board meeting in which
21 they were warned that Nikola was not able to develop its hydrogen infrastructure and that
22 it would not even have station blueprints until after September 30, 2020 at the earliest. At
23 the same meeting, the Board discussed delays in the manufacture of Nikola's trucks. At a

24
25 ¹³⁰ Milton Tr. 1731:5-1732:19, ECF No. 232.

1 July 23, 2020 Board meeting, the same Individual defendants, with the addition of Girskey,
2 were told that Nikola had not entered into any PPAs, that it would use a battery
3 manufactured by third-party suppliers in the Nikola Tre, that the Company was
4 experiencing significant delays developing the Tre, and that Nikola was at risk of
5 producing “ZERO trucks” even by the end of 2021. The Board was also informed that
6 Nikola was in need of “\$2.9B to fund cash flows for operations and investing activities.”

7 815. Given that Milton’s misleading “media blitz” was working—and the fact that
8 the Individual Defendants were reaping millions, if not billions, of dollars in compensation
9 through Nikola stock—the Individual Defendants took no meaningful action to stop or
10 correct Milton’s false and misleading statements. Instead, they suppressed or deflected
11 when directly called on to set the record straight.

12 816. Russell, Girskey, Shindler, and Ubben in particular would have been
13 motivated not to allow Milton’s misstatements to be uncovered prior to the expiry of their
14 lock-up periods.

15 817. The Nikola Defendants knew of most (if not all) of the many lies Milton told
16 about Nikola. Indeed, their internal acknowledgment of Milton’s problematic use of social
17 media and podcast appearances underscore their knowledge. *See, e.g.*, ¶¶111-118.

18 818. The Individual Defendants have since admitted they knew that Milton’s
19 statements were false and misleading. For example, Worthen admitted “The statement that
20 Nikola can produce 1,000 kg/day [of hydrogen] is not true, and Milton knew it was not
21 true. We discussed this ‘a million times.’” Similarly, in Nikola’s USAO Presentation,
22 Russell stated that any representation that Nikola could produce hydrogen was
23 “**indefensible**,” and Brady admitted “Milton’s assertion that other OEMs have asked to use
24 Nikola’s in-house inverters is ‘complete fiction.’” In his testimony provided during
25
26

1 Milton's criminal trial, Brady said he repeatedly elevated concerns about Milton's social
2 media use to Girsky and Ubben.

3 819. Despite these internal acknowledgements that they monitored Milton's
4 media appearances and knew that his statements were false and misleading, the Individual
5 Defendants consciously—and conspicuously—took no meaningful action to stop Milton
6 or correct the record. Instead, when the truth about Milton's statements started to come out,
7 the Individual Defendants actively worked to discredit it.

8 **VI. The Individual Defendants Attempted to Discredit the Hindenburg Report –**
9 **Until It Became Clear That Milton's Continued Involvement With Nikola**
10 **Threatened Their Stock's Value**

11 820. Defendants continued the scheme to defraud investors after the Hindenburg
12 Report exposed much of the truth they had been concealing. On September 11, 2020, the
13 same day the Hindenburg Report was released, Nikola issued a press release that stated:

14 Yesterday, an activist short-seller whose motivation is to manipulate the
15 market and profit from a manufactured decline in our stock price published
16 a so-called "report" replete with misleading information and salacious
17 accusations directed at our founder and executive chairman. To be clear, this
18 was not a research report and it is not accurate. This was a hit job for short
19 sale profit driven by greed.

20 We have nothing to hide and we will refute these allegations. They have
21 already taken up more time and attention than they deserve. We have retained
22 leading law firm Kirkland & Ellis LLP to evaluate potential legal recourse,
23 including with respect to the activist short seller and any others acting in
24 concert.

25 Nikola also intends to bring the actions of the activist short-seller, together
26 with evidence and documentation, to the attention of the U.S. Securities and
Exchange Commission.

27 821. The Board held a meeting the same day, September 11, 2020, attended by
28 Milton, Russell, Girsky, Ubben, Brady, and Worthen, to discuss the press release and the
29 Company's response to the Hindenburg Report, which was circulated to the Board in
30

1 advance of the meeting. Milton led a discussion, relating that, with the help of Kirkland &
2 Ellis LLP, Nikola would work to prepare a more substantial press release in response to
3 Hindenburg, a draft of which would be circulated for the Board's review with the goal of
4 issuing by Monday morning (September 14, 2020). Kirkland & Ellis also led a discussion
5 regarding "the process and strategy with respect to the SEC, and other legal matters that
6 can be expected to arise in the coming weeks." At no point in the meeting did the Individual
7 Defendants ask to speak outside of Milton's presence and at no point was Milton asked not
8 to participate in the meeting.

9 822. Also on September 11, 2020, Brady attended the Cowen Global
10 Transportation & Sustainable Mobility Conference. Analyst Jeffrey Osborne facilitated a
11 Q&A session with Brady. In his first exchange with Osborne, Brady insisted that the
12 Hindenburg Report was a baseless attack on Milton, despite his earlier repeated efforts to
13 elevate concerns about Milton's statements to Girskey and Ubben:

14 **OSBORNE:** Well, I'd be remiss, Kim, if I didn't bring it up, but certainly
15 the short-seller report has driven a lot of phone calls and emails from
investors. Any thoughts on the report that you can share?

16 **BRADY:** Jeff, as you know, *this is a short sale hit job. It's character*
17 *assassination on our Chairman and Founder, Trevor Milton. There's no*
softness in it. The company will have a response next week.

18 823. Also on September 11, 2020, *CNBC* reported that Brady at an RBC Capital
19 Markets conference reassured investors that Nikola would realize billions of dollars in cost
20 savings from partnerships, including the General Motors partnership, and stated: "I think
21 it's offensive to our strategic partners what you have a short seller who's doing a hack job
22 and essentially pointing fingers at our strategic partners that they don't know what they're
23 doing . . . I would suggest it's ridiculous to think they haven't done a deep dive; much more
24 deep dive than what any third party short seller would be able to perform."

1 824. On September 13, 2020, the Board met again, with the same Individual
2 Defendants once again in attendance. Ahead of the meeting, the Board had received a draft
3 press release and communications plan, which included a top questions list. At the meeting,
4 Individual Defendants Milton, Russell, Girskey, Ubben, Brady, and Worthen approved the
5 communications protocol for responding to the Hindenburg Report, including by issuing
6 the September 14, 2020 press release, titled “Nikola Sets the Record Straight on False and
7 Misleading Short Seller Report.” Tellingly, the Individual Defendants did not resolve to
8 investigate the claims made in the Hindenburg Report prior to issuing a press release
9 denying it.

10 825. The September 14, 2020 press release unequivocally denied the Hindenburg
11 Report’s allegations, calling it “false and defamatory” and stated that Hindenburg’s
12 allegations about Nikola’s in-house components, battery technology, Nikola One, and
13 hydrogen production capabilities were “false and misleading, and designed to manipulate
14 the market.” The press release, approved by each Individual Defendant and signed by
15 Defendant Worthen, also called the Nikola One a “real truck.”

16 826. Ubben too defended Milton’s integrity. On September 15-16, 2020—just as
17 Nikola’s Board began discussing whether Milton would have to leave the Company—
18 Ubben gave interviews to the *Financial Times* and *Bloomberg News* in which he insisted:
19 “we went public way too early and it’s my fault. I pushed Trevor to do it.” Ubben attributed
20 the tumult to a misunderstanding about Nikola’s business model and stated: “How can this
21 be an intricate fraud if you have your three biggest suppliers in the board room working
22 together as partners? I don’t get why there’s so much suspicion.”

23 827. The Individual Defendants’ vehement denials of the Hindenburg Report
24 clash with their knowledge that Hindenburg’s claims were accurate. Indeed, Brady and
25

1 Russell would later testify at Milton's criminal trial that they knew his statements were
2 false.

3 828. It was not until September 15, 2020 that the Board began discussing, outside
4 of Milton's presence, whether Milton would have to leave the Company. At a meeting on
5 that date attended by Milton, Russell, Girskey, Ubben, Brady, and Worthen, the Board
6 discussed the SEC investigation and rumors of a DOJ investigation. After excusing Milton,
7 the remaining Individual Defendants discussed the impact the Hindenburg Report was
8 having on Nikola's conversations with investors, thereby jeopardizing its ability to raise
9 the capital that it still desperately needed, and considered whether Milton should continue
10 to serve in an active role at Nikola.

11 829. The next day, September 16, 2020, the Board met again, with Milton,
12 Russell, Girskey, Ubben, Brady, and Worthen again in attendance. After management left
13 the meeting, the remaining Board discussed Nikola's "cash burn" and "transition
14 considerations should Mr. Milton leave the Company," as well as "stock and lockup
15 considerations moving forward."

16 830. On September 17, 2020, Girskey was quoted in a *Reuters* article defending
17 VectoIQ's due diligence into Nikola during a *Financial Times* conference. Girskey stated:
18 "We were comfortable with the diligence we did . . . We are still comfortable with the
19 diligence we did. . . . We brought an army of people in here. We conducted a thorough
20 process . . . Personally, I've driven those trucks four times. I've driven on electricity. I've
21 driven on hydrogen. I think they're awesome trucks."

22 831. On September 18, 2020, at the next Board meeting, Milton "advised the
23 Board that he desired to resign." The meeting was attended by Milton, Russell, Girskey,
24
25
26

1 Ubben, Brady, and Worthen. After Milton recused himself, the Board authorized Nikola's
2 officers to work with counsel for the Company on separation terms for Milton.

3 832. At a Board meeting on September 20, 2020, attended by Milton, Russell,
4 Ubben, Brady, and Worthen, the Board voted in favor of the proposed terms of Milton's
5 separation from Nikola.

6 833. Milton's separation terms were quite generous, especially considering the
7 circumstances of his departure and the fact that two the executives who approved of the
8 agreement would subsequently testify against Milton at a criminal trial. Although Milton's
9 separation agreement required him to forfeit 4,859,000 RSUs he had been granted the
10 previous month, the Board also approved the accelerated vesting and settlement of 600,000
11 time-vested RSUs, which Milton paid nothing for. Under the agreement, Nikola would also
12 cover the costs of a security inspection of Milton's residence and would reimburse Milton
13 up to \$100,000 for a full-time security detail for three months. Despite knowing that Milton
14 had defrauded Nikola's investors, the Individual Defendants allowed Milton to resign
15 rather than terminating him for cause and gave Milton a golden parachute at a time when
16 the Company desperately needed capital to fund its operations. Over the next several
17 months, the Board would discuss "the impact of the existing investigations in light of the
18 Company's need to raise additional capital."

19 834. On February 25, 2021, Nikola filed its Form 10-K for the year ended
20 December 31, 2020. In it, the Company admitted that, contrary to the Individual
21 Defendants' September 2020 denials, the Hindenburg Report correctly identified as
22 "inaccurate" Milton's statements related to (a) Nikola's ownership of natural gas wells; (b)
23 Nikola engineering a zero emissions truck in 2016 (the Nikola One); (c) the Nikola One's
24 functionality; (d) the Nikola One "in motion" video; (e) solar panels at Nikola's
25

1 headquarters; (f) Nikola's cost to produce and ability to produce hydrogen; (g) Nikola's
2 "in house" production of components; (h) Nikola's inverter technology; and (i) the trucks
3 being assembled in Ulm, Germany.

4 835. The Individual Defendants' intended to defraud investors in order to increase
5 Nikola's stock price and their own compensation. Without the Individual Defendants'
6 conduct, the scheme would have unraveled before Nikola could go public at its inflated
7 valuation. As a result of their participation in the scheme, the Individual Defendants are
8 liable as primary violators of Rules 10b-5(a) and (c).

9 **ADDITIONAL INDICIA OF SCIENTER**

10 836. Defendants Russell, Brady, Worthen, Ubben, Girsky and Shindler were
11 active and culpable participants in the fraud, as evidenced by their knowing and reckless
12 issuance and/or ultimate authority over Nikola's and Milton's materially false or
13 misleading statements and omissions. Defendants Russell, Brady, Ubben, Worthen, Girsky
14 and Shindler acted with scienter in that they knew or recklessly disregarded that the public
15 statements more specifically set forth above were materially false or misleading when
16 made, and knowingly or recklessly participated or acquiesced in the issuance or
17 dissemination of such statements as primary violators of the federal securities laws.
18 Russell, Brady, Worthen, Ubben, Girsky and Shindler knew Milton was making materially
19 false and misleading statements and failed to correct those statements in any of the filings
20 made with the SEC during the Class Period. In addition to the numerous allegations above
21 setting forth Defendants' knowledge or reckless disregard of the Company's claims about:
22 the Nikola One; the existence of purchase orders for its non-existent products; Nikola's
23 hydrogen production capabilities and network; the supposed cost of owning and operating
24 the Nikola One compared to a traditional diesel powered truck; Nikola's development of
25

1 the Badger One using its own technology and pre-orders for the truck; Nikola's
 2 development of its own proprietary electric battery, Defendants' scienter is further
 3 evidenced by the following facts.

4 **A. Nikola's Production of FCEV/BEV Vehicles and Hydrogen Fuel,**
 5 **Batteries, and Fueling Stations Were Nikola's Core Operations**
 6 **Supporting a Strong Inference of Scienter**

7 837. The Individual Defendants' knowledge (i.e. scienter) of Nikola's inability to
 8 produce or manufacture many of its primary, revenue-generating products can be inferred
 9 because these facts were critical to Nikola's core operations. For example, in the June
 10 2020 S-1, Nikola touted the importance of both their future FCEV/BEV sales and hydrogen
 11 technology and infrastructure as "core" to the Company's ongoing success and a "key
 12 differentiator":

13 ***Our core product offering*** is centered around our battery-electric vehicle
 14 ("BEV") and hydrogen fuel cell electric vehicle ("FCEV") Class 8 semi-
 15 trucks. ***The key differentiator of our business model*** is our planned network
 16 of hydrogen fueling stations. We are offering a revolutionary bundled lease
 17 model, which provides customers with the FCEV truck, hydrogen fuel, and
 18 maintenance for a fixed price per mile, locks in fuel demand and significantly
 19 de-risks infrastructure development.

20 838. Similarly, in a press release on June 3, 2020, the day before the beginning of
 21 the Class Period, Nikola claimed that sales of its purportedly technologically advanced
 22 products would generate billions in revenues in the future thereby serving as a critical
 23 source of income for the Company and its shareholders. Specifically, the June 3, 2020 press
 24 release noted "***pre-orders represent more than \$10 billion in potential revenue***" and that
 25 "***Nikola's hydrogen network anticipated to cover North America; set to become the***
 26 ***largest hydrogen network in the world.***"

839. It was thus critical for Defendants to ensure that the Company's "core
 product"—vehicles that were supposed to generate "\$10 billion in potential revenue"—

1 and “key differentiator”—hydrogen products that would “cover North America and
2 become the largest hydrogen network in the world”— were actually real and operable
3 products. It would be absurd to suggest that Defendants simply did not know about the fact
4 that the FCEV/BEV and hydrogen technology and infrastructure they were touting to the
5 market were in fact non-operable and that the commercial prospects (and revenues)
6 potentially generated from those products were not grounded in reality.

7 840. Because Nikola knew that it faced severe adverse consequences if its “core”
8 vehicle and “key differentiator” hydrogen products did not operate or generate the revenues
9 they promised to investors the operability and viability of those products were vital to
10 Nikola’s continued operational success.

11 841. Defendants repeated false and misleading statements about those products
12 therefore concerned a core operation of Nikola financial services business. Accordingly,
13 knowledge that Nikola’s products were not operational or capable of generating the
14 revenues or sale touted by the Company can be imputed to Defendants Russell, Brady,
15 Worthen, Ubben, Girskey and Shindler.

16 **B. Defendants’ Statements Themselves Support a Strong Inference of**
17 **Scienter**

18 842. As discussed above, prior to and during the Class Period, in addition to
19 speaking at length about the technology and components underlying Nikola’s FCEV/BEV
20 products and hydrogen fuel, batteries, and infrastructure, Defendants also made detailed
21 statements that included mathematical and scientific quantifications about the capabilities
22 of their supposedly operable vehicles and purportedly viable hydrogen products.

23 843. These statements, and others like them, provide a strong inference that
24 Defendants knew they were misleading the market. At all points prior to and during the
25 Class Period, Defendants had an informational advantage over the market as they were the
26

ones involved with the production of Nikola's FCEV/BEV and hydrogen products. Accordingly, Defendants knew that either their statements were false and/or misleading when made, or were reckless in not knowing, because unlike investors, they had access to internal information relating to Nikola's product and indeed knew that they could not achieve the quantifiable metrics they touted because, in reality, they were not operable at the time to the extent touted to the market.

844. For example, prior to and during the Class Period, Defendants quantified the capabilities of its products in real terms stating, for example:

- ***“Nikola’s battery electric trucks could now drive 800 miles fully loaded between charges” and “hydrogen-electric fuel cell trucks could surpass 1,000 miles between stops and top off in 15 minutes***
- ***We have 3.5 megawatts of solar up on the roof producing about 18 megawatts of energy a day in our headquarters . . .***
- ***Nikola's new HQ in Phoenix. 150,000 sq. ft. 13 Acres. 300+ employees. 1,000 kilogram hydrogen production and storage. Zero emissions with up to 3 megawatts of solar and 20 megawatt hour lithium storage.***
- ***(“[y]ou’re talking 600+ mile range in a model 3 Tesla. You’re talking 50% less cost than Lithium Ion. You’re talking mass adoption of zero emission vehicles. Could be worth hundreds of billions if owned by one company but we decided to share it with the competition for greater good.”).***
- ***...***
- ***“It’s real. I’ve seen it with my own eyes and watched them cycle.”***
- ***Once we got the technology nailed down, we actually have over 2,000 cycles on our battery, which would mean it would be more than a million-mile battery. It would actually – our battery beats the Tesla battery in every metric, in every situation, and it’s half the cost and it’s double the range.***
- ***But what Nikola solved was the cost-- was the economics on the trucking. When we first started, hydrogen was \$16 a kilogram. We can now produce it for well under \$4 a kilogram. So we’ve cut – it’s***

one quarter of the cost now than it was just a few years ago. And we're now cheaper to operate per mile than diesel.

- *So we own all the tech. So all the cool stuff you guys want, the design, the inside, the connectivity with your phone . . . all the e-axles or, you know the electric motors, the batteries, the controls, all that's done by Nikola. . .*

845. These statements and others like them which touted concrete, quantifiable performance metrics, when in fact such performance either could not be met or did not even exist demonstrate that Defendants were aware of the Company's inability to manufacture the products it touted to the market or were reckless in not becoming aware of such process prior to speaking publicly to investors about the products.

C. Defendant Milton's Deletion of His Twitter Account Supports a Strong Inference of Scienter

846. On or about September 23, 2020, less than two weeks after the publication of the Hindenburg Report and announcement of investigations by the SEC and DOJ, Defendant Milton deleted his personal Twitter account.

847. Milton's deletion of his Twitter account following the announcement of multiple federal investigations into statements he made on that account further supports an inference of scienter. Dozens of Milton's false and misleading statements were published on his Twitter account. His sudden deletion of his entire account in the wake of accusations of wrongdoing and federal investigations, after being an avid user of Twitter, suggests that Milton deleted the account in an attempt to destroy evidence of his fraud.

D. Defendants Russell and Brady's SOX Certifications Support a Strong Inference of Scienter

848. Finally, accompanying Nikola's Form 10-Q filed with the SEC on August 4, 2020, which contained materially false and misleading statements, Defendants Russell and Brady executed certifications, respectively, pursuant to Sarbanes-Oxley Act of 2002

1 (“SOX”) Section 302 attesting to the accuracy of the filing and its contents and the
2 disclosure of all fraud. Specifically, the certifications required that Defendants Russell and
3 Brady attest to the fact that “th[e] report does not contain any untrue statement of a material
4 fact or omit to state a material fact necessary to make the statements made, in light of the
5 circumstances under which such statements were made, not misleading with respect to the
6 period covered by th[e] report.”

7 849. Defendants Russell and Brady also executed certifications pursuant to SOX
8 Section 906, which accompanied the August 4, 2020 10-Q, attesting that the “[t]he
9 information contained in the [reports] fairly presents, in all material respects, the financial
10 condition and results of operations of the Company.”

11 850. By signing these certifications, Defendants Russell and Brady evidenced
12 their access (and purported review of) Nikola’s operations as well as the materially false
13 and misleading statements set forth above. However, based on the allegations set forth
14 above, it is apparent that such a review would have uncovered the fact that many of the
15 Company’s claims about their FCEV/BEV vehicles and hydrogen technology and
16 production capabilities were false.

17 851. Had Defendants Russell and Brady actually conducted the assessments and
18 evaluations required by SOX, they would have discovered Nikola’s misrepresentations and
19 omissions regarding their FCEV/BEV and hydrogen capabilities. Accordingly,
20 Defendants Russell and Brady, knew, or at the very least, were severely reckless in not
21 knowing of the facts which rendered their public statements materially false and
22 misleading.

CONTROL PERSON ALLEGATIONS

I. Control Person Allegations

852. As detailed above, each of the Individual Defendants was a “controlling person” of Nikola during the Class Period within the meaning of Section 20(a) of the Exchange Act. The Individual Defendants, by virtue of their high-level and controlling positions at Nikola, directly participated in the management of the Company, were directly involved in the day-to-day operations of the Company at the highest levels, and were privy to confidential proprietary information about the Company, its business, operations, internal controls, growth, financial statements, and financial condition as alleged herein. As set forth below, the materially misstated information conveyed to the public was the result of the collective acts and omissions of these individuals.

853. Defendant Milton founded Nikola, served as its CEO until the June 2020 merger, and served as its Executive Chairman until his resignation on September 20, 2020. As detailed throughout this Complaint, Milton was deeply involved in all aspects of Nikola’s day-to-day operations and had a duty to disseminate prompt, accurate, and truthful information with respect to the Company’s business, operations, internal controls, growth, financial statements, and financial condition, and to correct any previously issued statements that had become materially misleading or untrue. As set out above, Milton made numerous statements on behalf of the Company and exercised control over Nikola’s communications. Milton also signed SEC filings that contained false and misleading statements and material omissions, including the March 13, 2020 S-4, the June 15, 2020 S-1, and the July 17, 2020 S-1. Further, as detailed throughout this Complaint, Milton directly participated in, knew of, or recklessly disregarded the misconduct giving rise to liability under Section 10(b) of the Exchange Act.

1 854. Defendant Russell served as President of Nikola from February 2019 to June
2 2020, as a director since July 2019, and as CEO since the June 2020 merger. Russell was
3 deeply involved in all aspects of Nikola's day-to-day operations and had a duty to
4 disseminate prompt, accurate, and truthful information with respect to the Company's
5 business, operations, internal controls, growth, financial statements, and financial
6 condition, and to correct any previously issued statements that had become materially
7 misleading or untrue. Russell made numerous statements on behalf of the Company and
8 exercised control over Nikola's communications. *See e.g.*, ¶¶112, 307, 346, 402, 406, 460,
9 571, and 607. Russell also signed SEC filings that contained false and misleading
10 statements and material omissions, including the June 15, 2020 S-1, the July 17, 2020 S-1,
11 and the August 4, 2020 10-Q. Further, Russell directly participated in, knew of, or
12 recklessly disregarded the misconduct giving rise to liability under Section 10(b) of the
13 Exchange Act, including by failing to correct Milton's repeated misstatements.

14 855. Defendant Brady served as Nikola's CFO and Treasurer from November
15 2017 to June 2020, and as the Company's CFO since the merger. Brady was deeply
16 involved in all aspects of Nikola's day-to-day operations and had a duty to disseminate
17 prompt, accurate, and truthful information with respect to the Company's business,
18 operations, internal controls, growth, financial statements, and financial condition, and to
19 correct any previously issued statements that had become materially misleading or untrue.
20 Brady exercised control over Nikola's communications. *See e.g.*, ¶¶112, 116-117, 165-167,
21 209, 307, 325, 346, 402, 406, 410, 460, 571, and 607. Brady also signed SEC filings that
22 contained false and misleading statements and material omissions, including the June 15,
23 2020 S-1, the July 17, 2020 S-1, and the August 4, 2020 10-Q. Further, Brady directly
24 participated in, knew of, or recklessly disregarded the misconduct giving rise to liability
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1 under Section 10(b) of the Exchange Act, including by failing to correct Milton's repeated
2 misstatements.

3 856. Defendant Worthen served as Nikola's CLO and Secretary since October
4 2015. Brady was deeply involved in all aspects of Nikola's day-to-day operations and had
5 a duty to disseminate prompt, accurate, and truthful information with respect to the
6 Company's business, operations, internal controls, growth, financial statements, and
7 financial condition, and to correct any previously issued statements that had become
8 materially misleading or untrue. As CLO, Worthen was charged with ensuring Nikola's
9 compliance with its legal obligations. Worthen exercised control over Nikola's
10 communications. *See e.g.*, ¶¶112, 117, 409, 460, 478, 571 and 607. Worthen also signed
11 SEC filings that contained false and misleading statements and material omissions,
12 including the September 14, 2020 8-K. Further, Worthen directly participated in, knew of,
13 or recklessly disregarded the misconduct giving rise to liability under Section 10(b) of the
14 Exchange Act, including by failing to correct Milton's repeated misstatements.

15 857. Defendant Girsky served as a director of Nikola and as a member of Nikola's
16 Audit Committee and its Nominating and Corporate Governance Committee following the
17 June 2020 merger. Girsky became Chairman of Nikola in September 2020. Girsky was
18 deeply involved in all aspects of Nikola's day-to-day operations and had a duty to
19 disseminate prompt, accurate, and truthful information with respect to the Company's
20 business, operations, internal controls, growth, financial statements, and financial
21 condition, and to correct any previously issued statements that had become materially
22 misleading or untrue. As a member of the Audit Committee, Girsky was responsible for
23 overseeing the integrity of Nikola's financial statements and its compliance with legal and
24 regulatory requirements. As a member of the Nominating and Corporate Governance
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1 Committee, Girsky was responsible for evaluating Nikola's risk management process and
2 system and the adequacy of the Company's policies and procedures designed to address
3 risk. Girsky also signed SEC filings that contained false and misleading statements and
4 material omissions, including the March 2020 S-4, the Proxy, the June 2020 S-1, and the
5 July 2020 S-1. Further, Girsky directly participated in, knew of, or recklessly disregarded
6 the misconduct giving rise to liability under Section 10(b) of the Exchange Act, including
7 by failing to correct Milton's repeated misstatements.

8 858. Defendant Shindler served as a Nikola director since September 2020 and
9 serves as the Chair of the Audit Committee. Shindler was deeply involved in all aspects of
10 Nikola's day-to-day operations and had a duty to disseminate prompt, accurate, and truthful
11 information with respect to the Company's business, operations, internal controls, growth,
12 financial statements, and financial condition, and to correct any previously issued
13 statements that had become materially misleading or untrue. As Chair of the Audit
14 Committee, Shindler was responsible for overseeing the integrity of Nikola's financial
15 statements and its compliance with legal and regulatory requirements. Shindler also signed
16 SEC filings that contained false and misleading statements and material omissions,
17 including the March 2020 S-4 and the April 2020 8-K. Further, Shindler directly
18 participated in, knew of, or recklessly disregarded the misconduct giving rise to liability
19 under Section 10(b) of the Exchange Act, including by failing to correct Milton's repeated
20 misstatements.

21 859. Defendant Ubben served as a Nikola director and a member of the
22 Nominating and Corporate Governance Committee from the June 2020 merger until his
23 resignation in February 2022. Ubben was deeply involved in all aspects of Nikola's day-
24 to-day operations and had a duty to disseminate prompt, accurate, and truthful information
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1 with respect to the Company's business, operations, internal controls, growth, financial
2 statements, and financial condition, and to correct any previously issued statements that
3 had become materially misleading or untrue. As a member of the Nominating and
4 Corporate Governance Committee, Ubben was responsible for evaluating Nikola's risk
5 management process and system and the adequacy of the Company's policies and
6 procedures designed to address risk. Ubben also signed SEC filings that contained false
7 and misleading statements and material omissions, including the June 2020 S-1 and the
8 July 2020 S-1. Further, Ubben directly participated in, knew of, or recklessly disregarded
9 the misconduct giving rise to liability under Section 10(b) of the Exchange Act, including
10 by failing to correct Milton's repeated misstatements.

11 860. By virtue of their high-level positions with Nikola and its Board, the
12 Individual Defendants had the power to control and did control Nikola's decision-making,
13 including the content and dissemination of the false and misleading statements described
14 in this Complaint and the Company's responses to those false and misleading statements.

15 **APPLICABILITY OF PRESUMPTION OF RELIANCE: FRAUD-ON-THE-**
16 **MARKET DOCTRINE**

17 861. To the extent that Lead Plaintiffs allege that Defendants made affirmative
18 misstatements, Lead Plaintiffs will rely upon the presumption of reliance established by
19 the fraud-on-the-market doctrine in that, among other things:

- 20 (a) Defendants made public misrepresentations or failed to disclose
21 material facts during the Class Period;
- 22 (b) the omissions and misrepresentations were material;
- 23 (c) the Company's securities traded in an efficient market;
- 24 (d) the misrepresentations alleged would tend to induce a reasonable
25 investor to misjudge the value of the Company's securities;

- (e) Lead Plaintiffs and other members of the Class purchased Nikola's securities between the time Defendants misrepresented or failed to disclose material facts and the time the true facts were disclosed, without knowledge of the misrepresented or omitted facts;
- (f) Nikola's common stock met the requirements for listing and was listed and actively traded on the NASDAQ, a highly efficient and automated market;
- (g) as a regulated issuer, Nikola filed periodic public reports with the SEC and the NASDAQ;
- (h) Nikola regularly communicated with public investors via established market communication mechanisms, including regular dissemination of press releases on the national circuits of major newswire services and other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and
- (i) Nikola was followed by numerous securities analysts employed by major brokerage firms including, but not limited to, Cowen, Loop Capital, and Colliers Securities and other financial, tech and automotive websites all of which wrote reports that were distributed to the sales force and certain customers of their respective brokerage firm(s) and that were publicly available and entered the public marketplace.

862. As a result of the foregoing, the market for Nikola's securities promptly digested current information regarding Nikola from publicly available sources and reflected such information in Nikola's securities price(s). Under these circumstances, all persons and entities who or which purchased or otherwise acquired Nikola's common stock during the Class Period suffered similar injuries through their purchase of Nikola at artificially inflated prices and thus, the presumption of reliance applies.

863. The material misrepresentations and omissions alleged herein would tend to induce a reasonable investor to misjudge the value of Nikola common stock.

864. Without knowledge of the misrepresented or omitted material facts alleged herein, Lead Plaintiffs and other members of the Class purchased shares of Nikola's

1 common stock between the time Defendants misrepresented or failed to disclose material
2 facts and the time the true facts were disclosed.

3 865. To the extent that the Defendants concealed or improperly failed to disclose
4 material facts with respect to Nikola's business, Lead Plaintiffs are entitled to a
5 presumption of reliance in accordance with *Affiliated Ute Citizens of Utah v. United States*,
6 406 U.S. 128, 153 (1972).

7 **NO SAFE HARBOR**

8 866. The statutory safe harbor provided by the PSLRA for forward-looking
9 statements under certain circumstances does not apply to any of the materially false and
10 misleading statements alleged in this pleading. First, many of the statements alleged to be
11 false and misleading relate to historical facts or existing conditions. Second, to the extent
12 any of the allegedly false and misleading statements may be characterized as forward-
13 looking, they were not adequately identified as "forward-looking" statements when made.
14 Third, any purported forward-looking statements were not accompanied by meaningful
15 cautionary language because the risks that Defendants warned of had already come to pass.

16 867. To the extent any statements alleged to be false and misleading may be
17 construed to discuss future intent, they are mixed statements of present or historical facts
18 and future intent and are not entitled to PSLRA safe-harbor protection—at least with
19 respect to the part of the statement that refers to the present.

20 868. In addition, the PSLRA imposes an additional burden on oral forward-
21 looking statements, requiring Defendants to include a cautionary statement that the
22 particular oral statement is a forward-looking statement, and that "actual results might
23 differ materially from those projected in the forward-looking statement." 15 U.S.C. § 78u-
24

1 5(c)(2)(A)(i)-(ii). Defendants failed to both identify certain oral statements as forward-
2 looking and include the cautionary language required by the PSLRA.

3 869. Furthermore, Defendants did not accompany their statements with
4 meaningful cautionary language identifying important factors that could cause actual
5 results to differ materially from any results projected. To the extent Defendants included
6 any cautionary language, that language was not meaningful because any potential risks
7 identified by Defendants had already passed or manifested. As detailed herein, Defendants
8 failed to disclose to the market that, throughout the Class Period, Nikola was over-
9 collecting its customer's personal information without their consent, in violation of
10 multiple Chinese regulations.

11 870. In the alternative, to the extent that the statutory safe harbor is determined to
12 apply to any forward-looking statements pleaded herein, Defendants are liable for those
13 false forward-looking statements because at the time each of those forward-looking
14 statements were made, the speaker had actual knowledge that the forward-looking
15 statement was materially false or misleading, or the forward-looking statement was
16 authorized or approved by an executive officer of Nikola who knew that the statement was
17 false when made.

18 **PLAINTIFFS' CLASS ACTION ALLEGATIONS**

19 871. Lead Plaintiffs bring this action as a class action pursuant to Federal Rule of
20 Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased
21 or otherwise acquired Nikola securities during the Class Period (the "Class"); and were
22 damaged upon the revelation of the alleged corrective disclosures. Excluded from the
23 Class are: (i) Defendants; (ii) members of the immediate family of any Defendant who is
24 an individual; (iii) any person who was an officer or director of Nikola during the Class
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1 Period; (iv) any firm, trust, corporation, or other entity in which any Defendant has or had
2 a controlling interest; (v) Nikola's employee retirement and benefit plan(s) and their
3 participants or beneficiaries, to the extent they made purchases through such plan(s); and
4 (vi) the legal representatives, affiliates, heirs, successors-in-interest, or assigns of any such
5 excluded person.

6 872. The members of the Class are so numerous that joinder of all members is
7 impracticable. Throughout the Class Period, Nikola securities were actively traded on the
8 NASDAQ. While the exact number of Class members is unknown to Lead Plaintiffs at
9 this time and can be ascertained only through appropriate discovery, Lead Plaintiffs believe
10 that there are hundreds or thousands of members in the proposed Class. Record owners
11 and other members of the Class may be identified from records maintained by Nikola or
12 its transfer agent and may be notified of the pendency of this action by mail, using the form
13 of notice similar to that customarily used in securities class actions.

14 873. Lead Plaintiffs' claims are typical of the claims of the members of the Class
15 as all members of the Class are similarly affected by Defendants' wrongful conduct in
16 violation of federal law that is complained of herein.

17 874. Lead Plaintiffs will fairly and adequately protect the interests of the members
18 of the Class and has retained counsel competent and experienced in class and securities
19 litigation. Plaintiffs have no interests antagonistic to or in conflict with those of the Class.

20 875. Common questions of law and fact exist as to all members of the Class and
21 predominate over any questions solely affecting individual members of the Class. Among
22 the questions of law and fact common to the Class are:

- 23 • whether the federal securities laws were violated by Defendants' acts as
24 alleged herein;

- whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business, operations and management of Nikola;
- whether the Individual Defendants caused Nikola to issue false and misleading financial statements during the Class Period;
- whether Defendants acted knowingly or recklessly in issuing false and misleading financial statements;
- whether the prices of Nikola securities during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

876. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

COUNT I
(Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder Against All Defendants)

877. Plaintiffs repeat and re-allege each and every allegation contained above as if fully set forth herein.

878. This Count is asserted against Defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

1 879. During the Class Period, Defendants engaged in a plan, scheme, conspiracy
2 and course of conduct, pursuant to which they knowingly or recklessly engaged in acts,
3 transactions, practices and courses of business which operated as a fraud and deceit upon
4 Lead Plaintiffs and the other members of the Class; made various untrue statements of
5 material facts and omitted to state material facts necessary in order to make the statements
6 made, in light of the circumstances under which they were made, not misleading; and
7 employed devices, schemes and artifices to defraud in connection with the purchase and
8 sale of securities. Such scheme was intended to, and, throughout the Class Period, did: (i)
9 deceive the investing public, including Lead Plaintiffs and other Class members, as alleged
10 herein; (ii) artificially inflate and maintain the market price of Nikola securities; and (iii)
11 cause Lead Plaintiffs and other members of the Class to purchase or otherwise acquire
12 Nikola securities and options at artificially inflated prices. In furtherance of this unlawful
13 scheme, plan and course of conduct, Defendants, and each of them, took the actions set
14 forth herein.

15 880. Pursuant to the above plan, scheme, conspiracy and course of conduct, each
16 of the Defendants participated directly or indirectly in the preparation and/or issuance of
17 the quarterly and annual reports, SEC filings, press releases and other statements and
18 documents described above, including statements made to securities analysts and the media
19 that were designed to influence the market for Nikola securities. Such reports, filings,
20 releases and statements were materially false and misleading in that they failed to disclose
21 material adverse information and misrepresented the truth about Nikola's finances and
22 business prospects.

23 881. By virtue of their positions at Nikola and VectoIQ, Defendants had actual
24 knowledge of the materially false and misleading statements and material omissions
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1 alleged herein and intended thereby to deceive Lead Plaintiffs and the other members of
2 the Class, or, in the alternative, Defendants acted with reckless disregard for the truth in
3 that they failed or refused to ascertain and disclose such facts as would reveal the materially
4 false and misleading nature of the statements made, although such facts were readily
5 available to Defendants. Said acts and omissions of Defendants were committed willfully
6 or with reckless disregard for the truth. In addition, each Defendant knew or recklessly
7 disregarded that material facts were being misrepresented or omitted as described above.

8 882. Information showing that Defendants acted knowingly or with reckless
9 disregard for the truth is peculiarly within Defendants' knowledge and control. As the
10 senior managers and/or directors of Nikola, the Individual Defendants had knowledge of
11 the details of Nikola's internal affairs.

12 883. The Individual Defendants are liable both directly and indirectly for the
13 wrongs complained of herein. Because of their positions of control and authority, the
14 Individual Defendants were able to and did, directly or indirectly, control the content of
15 the statements of Nikola. As officers and/or directors of a publicly-held company, the
16 Individual Defendants had a duty to disseminate timely, accurate, and truthful information
17 with respect to Nikola's businesses, operations, future financial condition and future
18 prospects. As a result of the dissemination of the aforementioned false and misleading
19 reports, releases and public statements, the market price of Nikola securities was artificially
20 inflated throughout the Class Period. In ignorance of the adverse facts concerning Nikola's
21 business and financial condition which were concealed by Defendants, Lead Plaintiffs and
22 the other members of the Class purchased or otherwise acquired Nikola securities at
23 artificially inflated prices and relied upon the price of the securities, the integrity of the
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1 market for the securities and/or upon statements disseminated by Defendants, and were
2 damaged thereby.

3 884. During the Class Period, Nikola securities were traded on an active and
4 efficient market. Lead Plaintiffs and the other members of the Class, relying on the
5 materially false and misleading statements described herein, which the Defendants made,
6 issued or caused to be disseminated, or relying upon the integrity of the market, purchased
7 or otherwise acquired shares of Nikola securities at prices artificially inflated by
8 Defendants' wrongful conduct. Had Lead Plaintiffs and the other members of the Class
9 known the truth, they would not have purchased or otherwise acquired said securities, or
10 would not have purchased or otherwise acquired them at the inflated prices that were paid.
11 At the time of the purchases and/or acquisitions by Lead Plaintiffs and the Class, the true
12 value of Nikola securities was substantially lower than the prices paid by Lead Plaintiffs
13 and the other members of the Class. The market price of Nikola securities declined sharply
14 upon public disclosure of the facts alleged herein to the injury of Lead Plaintiffs and Class
15 members.

16 885. By reason of the conduct alleged herein, Defendants knowingly or recklessly,
17 directly or indirectly, have violated Section 10(b) of the Exchange Act and Rule 10b-5
18 promulgated thereunder.

19 886. As a direct and proximate result of Defendants' wrongful conduct, Lead
20 Plaintiffs and the other members of the Class suffered damages in connection with their
21 respective purchases, acquisitions and sales of the Company's securities during the Class
22 Period, upon the disclosure that the Company had been disseminating misrepresented
23 financial statements to the investing public.

COUNT II
(Violations of Section 10(b) of the Exchange Act And Rule 10b-5(a) and (c) Against All Defendants)

887. Lead Plaintiffs repeat and re-allege every allegation set forth above as if fully set forth herein.

888. This Count is brought solely and exclusively under the provisions of Rule 10b-5(a) and (c). Accordingly, Lead Plaintiffs need not allege in this Court nor prove in this case that any of the Defendants made any misrepresentations or omissions of material fact for which they may also be liable under Rule 10b-5(b) and/or any other provisions of law.

889. During the Class Period, Defendants carried out a common plan, scheme, and unlawful course of conduct that was intended to, and did: (i) deceive the investing public, including Lead Plaintiffs and the Class; (ii) artificially inflate the price of Nikola common stock; and (iii) cause Lead Plaintiffs to purchase Nikola common stock at artificially inflated prices.

890. In furtherance of this unlawful plan, scheme and course of conduct, Defendants employed devices, schemes and artifices to defraud, and knowingly and/or recklessly engaged in acts, transactions, practices, and courses of business that operated as a fraud and deceit upon Lead Plaintiffs and the Class in connection with their purchases of Nikola common stock, in violation of Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c) promulgated thereunder.

891. Defendants' fraudulent devices, schemes, artifices and deceptive acts, practices, and course of business included the knowing and/or reckless suppression and concealment of the Company's scheme to defraud investors concerning, among other things, (i) that Nikola had developed a fully operational "zero-emissions" tractor trailer

1 truck powered by hydrogen fuel cell technology—the Nikola One; (ii) that Nikola had, in
2 hand, over 14,000 purchase orders for its trucks, which represented 2 to 3 years of
3 production and billions in revenue; (iii) that Nikola was producing hydrogen at a fraction
4 of the cost industry experts believed was possible and that Nikola was in the process of
5 establishing a nation-wide network of hydrogen refueling stations, which would produce
6 inexpensive hydrogen for the Nikola One and Nikola’s other vehicles to operate on; (iv)
7 that the cost of owning and operating Nikola’s vehicles was significantly less than the cost
8 of owning and operating a traditional diesel powered vehicle; (v) that Nikola had
9 developed, using its own technology, a fully operational BEV pick-up truck, the Badger
10 One, pre-order for which had sold out; (vi) that Nikola had developed all of its vehicles’
11 critical components “in-house,” including a proprietary “game-changing” electric battery,
12 which exceeded the range of then-existing electric batteries; (vii) that commercial
13 “assembly line” production of the Nikola Tre BEV truck had already been completed in
14 Ulm, German; (viii) that Nikola’s headquarters was completely “off-grid” with solar panels
15 on the roof producing 18 megawatts of energy a day; and (ix) that Nikola owned seven
16 natural gas wells that were used as backup to Nikola’s solar hydrogen production.;

17 892. Despite the numerous representations that were made to the market—and
18 ample opportunity to supplement, alter, or correct such misrepresentations—Defendants
19 failed to do so thereby concealing the Company’s scheme to defraud from investors.

20 893. Lead Plaintiffs and the Class reasonably relied upon the integrity of the
21 market in which Nikola’s common stock traded.

22 894. During the Class Period, Lead Plaintiffs and the Class were unaware of
23 Defendants’ fraudulent scheme and unlawful course of conduct and/or the impact of the
24 fraudulent scheme. Had Lead Plaintiffs and the Class known the true extent of Defendants’
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1 unlawful scheme and unlawful course of conduct, they would not have purchased Nikola's
2 common stock, or if they had, would not have done so at the artificially inflated prices paid
3 for such securities.

4 895. As a direct and proximate result of Defendants' scheme to defraud and such
5 unlawful course of conduct, Lead Plaintiffs and the Class suffered damages in connection
6 with their purchases of Nikola common stock during the Class Period.

7 896. By reason of the foregoing, Defendants violated Section 10(b) of the
8 Exchange Act and Rule 10b-5(a) and (c) promulgated thereunder and are liable to Lead
9 Plaintiffs and the Class for damages suffered in connection with their purchases of Nikola
10 common stock during the Class Period.

11 **COUNT III**
12 **(Violations of Section 20(a) of the Exchange Act Against the Individual Defendants)**

13 897. Lead Plaintiffs repeat and re-allege each and every allegation contained in
14 the foregoing paragraphs as if fully set forth herein.

15 898. During the Class Period, the Individual Defendants participated in the
16 operation and management of Nikola, and conducted and participated, directly and
17 indirectly, in the conduct of Nikola's business affairs. Because of their senior positions,
18 they knew the adverse non-public information about Nikola's misstatement of income and
19 expenses and false financial statements.

20 899. As officers and/or directors of a publicly owned company, the Individual
21 Defendants had a duty to disseminate accurate and truthful information with respect to
22 Nikola's financial condition and results of operations, and to correct promptly any public
23 statements issued by Nikola which had become materially false or misleading.

1 B. Requiring Defendants to pay damages sustained by Lead Plaintiffs and the
2 Class by reason of the acts and transactions alleged herein;

3 C. Awarding Lead Plaintiffs and the other members of the Class prejudgment
4 and post-judgment interest, as well as their reasonable attorneys' fees, expert fees and other
5 costs; and

6 D. Awarding such other and further relief as this Court may deem just and
7 proper.

8 **DEMAND FOR TRIAL BY JURY**

9 Lead Plaintiffs hereby demand a trial by jury.
10

11 Dated: April 3, 2023

Respectfully submitted,

12 **KELLER ROHRBACK LLP**

13 /s/ Gary Gotto
14 Gary Gotto (No. 007401)
15 3101 North Central Avenue, Suite 1400
16 Phoenix, AZ 85012
Telephone: (602) 230-6322
ggotto@kellerrohrback.com

17 *Liaison Counsel for Lead Plaintiffs*

18 **POMERANTZ LLP**

19 /s/ Jeremy A. Lieberman
Jeremy A. Lieberman
(admitted *pro hac vice*)
20 Michael J. Wernke
(admitted *pro hac vice*)
21 600 Third Avenue, 20th Floor
22 New York, New York 10016
Telephone: (212) 661-1100
23 Facsimile: (212) 661-8665
jalieberman@pomlaw.com
24 mjwernke@pomlaw.com
25
26

BLOCK & LEVITON LLP

/s/ Jeffrey C. Block

Jeffrey C. Block (admitted *pro hac vice*)
Jacob A. Walker (admitted *pro hac vice*)
Michael Gaines (admitted *pro hac vice*)
260 Franklin Street, Suite 1860
Boston, MA 02110
Telephone: (617) 398-5600
Facsimile: (617) 507-6020
jeff@blockleviton.com
jake@blockleviton.com
michael@blockleviton.com

*Counsel for Lead Plaintiffs and Co-Lead
Counsel for the Class*

LABATON SUCHAROW LLP

Jonathan Gardner (admitted *pro hac vice*)
Michael H. Rogers (admitted *pro hac
vice*)
David J. Schwartz (admitted *pro hac vice*)
James T. Christie (admitted *pro hac vice*)
140 Broadway
New York, NY 10005
Telephone: (212) 907-0700
Facsimile: (212) 818-0477
jgardner@labaton.com
mrogers@labaton.com
dschwartz@labaton.com
jchristie@labaton.com

Additional Counsel for Lead Plaintiffs

Exhibit A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

	X	
	:	
UNITED STATES SECURITIES AND	:	
EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	
	:	Civil Action No. 1:21-cv-6445
v.	:	
	:	JURY TRIAL DEMANDED
TREVOR R. MILTON,	:	
	:	
Defendant.	:	
	:	
	X	

COMPLAINT

Plaintiff United States Securities and Exchange Commission (the “Commission”), for its Complaint against Defendant Trevor R. Milton (“Milton”), alleges as follows:

SUMMARY

1. Trevor R. Milton, the founder, largest stockholder, and former Chief Executive Officer and Executive Chairman of Nikola Corporation (“Nikola”), a publicly traded company, engaged in a fraudulent scheme to deceive retail investors about Nikola’s products, technical advancements, and commercial prospects for his own personal benefit in violation of the federal securities laws. Milton did so primarily by leveraging his social media presence and frequent appearances on television and podcasts to flood the market with false and misleading information about Nikola.

2. Milton founded Nikola in 2015 with the primary goals of manufacturing semi-trucks that run on alternative fuels with low or zero emissions and building an alternative fuel station infrastructure to support those vehicles. To accomplish these goals, Nikola needed to

raise billions of dollars to develop vehicles and infrastructure that had never before been developed or adopted on a commercial scale. Over the course of several private offerings, and then in connection with a business combination with a special purpose acquisition company (“SPAC”), Nikola raised more than \$1 billion dollars, most of it from institutional investors. After entering into a business combination with the SPAC, Nikola began trading on the Nasdaq Global Select Market (“Nasdaq”).

3. Before Nikola had produced a single commercial product or had any revenues from truck or fuel sales, Milton embarked on a relentless public relations blitz aimed at a class of investors he called “Robinhood investors.” Through frequent nationally televised media appearances and a ubiquitous presence on social media (where he garnered over 100,000 followers on Twitter alone), Milton built a significant following for himself and Nikola. In these appearances and on social media, Milton presented himself as a different type of CEO – one who “cared” and was “transparent” with the average investor. As part of his publicity campaign, Milton encouraged prospective investors to follow him on social media to get “accurate information” about the company “faster than anywhere else.” In reality, however, Milton used his platform to mislead investors, which helped inflate and maintain Nikola’s stock price.

4. From approximately November 2019 through September 2020, Milton’s statements in tweets and media appearances, individually and taken together, painted a picture of Nikola that diverged widely from its then-current reality. Milton sold a version of Nikola not as it was – an early stage company with a novel idea to commercialize yet-to-be proven products and technology – but rather as a trail-blazing company that had already achieved many groundbreaking and game-changing milestones. In presenting his version of Nikola to investors,

Milton repeatedly made false and misleading statements about core aspects of Nikola’s products, technological advancements, and commercial prospects, including, among others:

(a) Falsely claiming that Nikola’s first semi-truck prototype, the Nikola One, could be driven under its own power, and using a misleading video to create the false impression that the Nikola One was, in fact, driving under its own power;

(b) Falsely claiming that Nikola was producing hydrogen, that it was doing so at a cost that was four times less than the prevailing market rates, and that it had obtained electricity at costs that made hydrogen production profitable;

(c) Falsely claiming that Nikola had significantly developed or already completed a prototype of an electric pickup truck, the Badger, and that this vehicle used primarily Nikola’s proprietary components;

(d) Falsely claiming that Nikola had obtained “billions and billions and billions and billions” of dollars of committed truck orders;

(e) Falsely claiming that Nikola had developed a “game-changing” battery technology and that Nikola was manufacturing and developing multiple key vehicle components “in-house”; and

(f) Falsely claiming that the total cost of ownership of Nikola’s trucks was 20-30 percent below that of diesel vehicles.

5. At the time he made the misstatements identified above, Milton knew or was reckless in not knowing that Nikola had not accomplished what he claimed. Instead, 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.

As a result, Milton made numerous materially false and misleading statements about critical aspects of Nikola’s business.

6. Milton’s false and misleading statements generated significant interest among many of the retail investors who followed him on social media, watched or listened to his interviews, and purchased Nikola’s stock.

7. Milton had motive to lie about the company’s accomplishments, given his position as Nikola’s largest stockholder and his compensation structure, which provided the opportunity for additional stock awards by maintaining a run-up in Nikola’s stock price. As detailed below, upon the completion of the Business Combination, Milton held approximately 25 percent of Nikola’s stock and further stood to earn millions more shares if Nikola’s stock reached certain price milestones and remained at each milestone for a specified period of time. Milton ultimately reaped tens of millions of dollars in personal benefits as a result of his misconduct.

8. Milton violated Section 17(a) of the Securities Act of 1933 (“Securities Act”) and Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder. The Commission seeks (i) permanent injunctive relief; (ii) disgorgement of ill-gotten gains and prejudgment interest thereon; (iii) civil penalties; (iv) an officer and director bar; and (v) such further relief the Court may deem just and appropriate.

JURISDICTION AND VENUE

9. The Commission brings this action against Milton pursuant to authority conferred upon it by Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. §§ 77t(b) and 77t(d)] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)].

10. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), (e), and 78aa].

11. In connection with the conduct described in this Complaint, Milton, directly or indirectly, made use of the mails or means or instruments of transportation or communication, or of facilities of a national securities exchange, in interstate commerce.

12. Venue is proper in this District pursuant to Section 20 of the Securities Act [15 U.S.C. § 77t] and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Milton transacted business in this District, and certain of the acts, practices, transactions, and courses of business constituting violations of the securities laws alleged in this Complaint occurred within this District. Milton regularly communicated via multiple online platforms with users located in this District. Investors who bought Nikola stock, and were harmed by the conduct alleged herein, reside in this District. Nikola is traded on the Nasdaq, which is headquartered in this District. Trades in Nikola securities were handled and executed by trading personnel located in this District during the relevant period. Nikola’s corporate predecessor, VectoIQ Acquisition Corp., with which Nikola merged to become a public company, was also headquartered in this District.

DEFENDANT

13. Defendant **Trevor R. Milton** is a resident of Oakley, Utah. In 2015, he founded Bluegentech LLC, which in July 2017 converted from a limited liability company to a Delaware corporation and changed its name to Nikola Corporation (“Legacy Nikola”). Milton was Chief Executive Officer (“CEO”) and Chairman of the Board of Directors of Legacy Nikola from its inception until June 3, 2020, when Legacy Nikola entered into the Business Combination (as defined below). From June 3, 2020 until September 20, 2020, Milton was Nikola’s Executive

Chairman. In this executive officer position, Milton supervised Nikola's CEO. According to Nikola's filings with the Commission, Milton resigned as Executive Chairman of Nikola and from Nikola's Board of Directors on September 20, 2020.

RELEVANT ENTITY

14. **Nikola**, incorporated in Delaware and headquartered in Phoenix, Arizona, describes itself as a vertically integrated zero emissions transportation system provider that designs and manufactures battery electric vehicles ("BEV"), hydrogen fuel cell electric vehicles ("FCEV"), and hydrogen station infrastructure. On June 4, 2020, Nikola's common stock and warrants began trading on the Nasdaq under the symbols NKLA and NKLAW, respectively.

15. Nikola was previously known as VectoIQ Acquisition Corp. ("VectoIQ"), a Delaware corporation headquartered in New York, New York. VectoIQ was formed in January 2018 as a SPAC for the purpose of effecting a business combination with one or more businesses. VectoIQ completed an initial public offering in May 2018, at which time its securities began to be quoted on The Nasdaq Capital Market.

16. On June 3, 2020, VectoIQ consummated a business combination with Legacy Nikola pursuant to a Business Combination Agreement, dated March 2, 2020 (the "Business Combination Agreement"). Under the Business Combination Agreement, a wholly-owned subsidiary of VectoIQ merged into Legacy Nikola, with Legacy Nikola remaining as the surviving company and as a wholly-owned subsidiary of VectoIQ, which then changed its name to Nikola Corporation¹ (the "Business Combination").

¹ Unless specified otherwise, references in this Complaint to Nikola refer to, depending on the context, Legacy Nikola prior to the Business Combination and to Nikola Corporation after the Business Combination. References in this Complaint to VectoIQ refer to VectoIQ prior to the Business Combination.

FACTUAL ALLEGATIONS

I. Nikola Background and the Business Combination

17. Milton founded Nikola in 2015 with the primary goals of manufacturing semi-trucks that used alternative fuels with low or zero emissions and building a station infrastructure to support those vehicles. Since approximately 2016, Nikola has focused on producing FCEV Class 8² trucks. Later, Nikola also began to develop Class 8 BEV trucks.

18. Although BEV cars have existed for a number of years, FCEV cars are less common and FCEV Class 8 trucks have never been commercially deployed. The lack of commercial deployment of FCEV trucks thus far is largely due to the high barriers to entry, including, among other things, the high cost of dispensable hydrogen compared to traditional fuels, and the high cost of hydrogen dispensing infrastructure, which is uneconomic to build without vehicles to support it.

19. Milton claimed that Nikola could solve the barriers to entry by, among other things: (i) offering a bundled lease for its trucks that included the cost of hydrogen fuel; (ii) constructing a nationwide network of hydrogen refueling stations around routes of customers who have committed to lease Nikola's trucks; and (iii) obtaining cheap electricity that would enable the company to produce hydrogen at a fraction of current market rates.

20. Nikola's business plan required billions of dollars of capital to finance the development and manufacturing of trucks and station infrastructure, which were not expected to generate profits until years in the future. From 2015 through March 2020, Nikola raised over \$500 million through private offerings directed mostly at institutional investors.

² Class 8 trucks are those with a gross vehicle weight rating exceeding 33,000 pounds. Semi-trucks or "18-wheeler" trucks typically are Class 8 vehicles.

21. In November 2019, VectoIQ targeted Nikola as a potential business combination partner. On March 2, 2020, VectoIQ and Nikola entered into the Business Combination Agreement, as well as certain related agreements, pursuant to which Nikola would merge with a subsidiary of VectoIQ and effectively become the surviving, publicly-traded entity when the transaction closed.

22. In connection with the Business Combination, Legacy Nikola investors had their stock converted to VectoIQ common stock, and VectoIQ raised from institutional investors approximately \$525 million in a private investment in public equity (“PIPE”) offering. Milton participated in the PIPE marketing efforts by, among other things, making presentations at investor meetings.

23. As a result of the Business Combination, Nikola received, according to its filings with the Commission, a net contribution of approximately \$594.5 million from VectoIQ, an amount that excludes a \$70 million payout to Milton made at the closing of the transaction. The parties consummated the Business Combination on June 3, 2020. The following day, Nikola’s stock began trading on the Nasdaq.

24. Between March 2, 2020 when the Business Combination was announced, and June 3, 2020 when it was effected, investors could buy and sell VectoIQ stock based on the reasonable anticipation that upon the completion of the Business Combination, an investor’s ownership of VectoIQ stock would make them an equity owner of Nikola.

II. Milton’s Roles at Nikola and his Control Over the Company

25. Until the Business Combination, Milton served as Nikola’s CEO, was Chairman of its Board of Directors, and was its largest stockholder. Immediately after the Business Combination, Milton held, through a vehicle he wholly owned and controlled, approximately 25

percent of the company's stock, and he remained the company's largest stockholder during the relevant period.

26. Following the Business Combination, Milton switched roles from CEO to Executive Chairman. Milton explained on the *Chartcast* podcast that his change in title was a promotion that allowed him to have nearly unfettered control over the company:

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.

27. Retaining control of Nikola was important to Milton. For example, when a member of Nikola's Board of Directors urged Milton in January 2020 to appoint to Nikola's Board additional independent members with public company experience, Milton responded, in part:

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.

28. Milton personally hired Nikola's CEO, Chief Financial Officer, and Chief Legal Officer.

29. At all relevant times, Milton was Nikola's primary public spokesman, and he had ultimate control and authority over the company's social media posts and press releases. Further, Milton often participated in meetings with prospective investors, industry partners, and potential customers.

30. Milton was a hands-on executive. He engrossed himself in the details of Nikola's technology and product development process. He participated in weekly update

meetings with senior technical and business leaders. During these meetings, and regularly at other times, he received updates on Nikola's product development, technology, and commercial activity directly from Nikola's technical leads. Milton worked with engineers, often huddling with them in front of computer screens to discuss technical matters.

31. In fact, Milton was purportedly so central to Nikola's business that Nikola disclosed in its filings with the Commission in the spring and summer of 2020 the risks associated with its dependence on Milton. Nikola warned in these filings that it is "highly dependent" on Milton's services, because he is "the source of many, if not most, of the ideas and execution driving Nikola." Accordingly, Nikola cautioned that if Milton could not continue employment with the company, it "would be significantly disadvantaged."

32. Milton viewed and touted himself publicly as a technological expert in several aspects of electric vehicles. During a May 5, 2020 appearance on the *Rise of the Young* podcast, Milton claimed:

I'm not trying to ever be too confident or – or brag about things, but this is important to help you understand that answer. There's two people in this world that know EVs better than anyone, and that's Elon and myself. There's no one in this world that – I can go into any meeting with Volkswagen, Daimler, Volvo. You could put 30 PhDs in that room, and I would run circles around every one of them. Because they only know one thing, that's all they know. . . . So there's very few people that know the EV industry or the whole entire vehicle like I do or like Elon does, so we're probably the top two guys in the world that know this shit, and we know it better than anybody.

33. Milton managed in a hard-charging, demanding, and intimidating manner. He frequently operated in a silo, making it difficult for Nikola's technical leads to adjust to decisions he made or projects he initiated. At times, Milton announced company initiatives on Twitter without first consulting with – or even informing – relevant technical or business leads. It was not unusual for Nikola's engineers, executives, and even marketing personnel to find out about

company initiatives, timelines, or product features by reading a Milton tweet or watching him in an interview. For example, on June 25, 2020, Milton sent a series of tweets from his personal account in which he claimed that Nikola would offer a drinking fountain in the Badger. This information came as a complete surprise to Nikola's designers, engineers, and marketing personnel. When informed of the tweets, one engineer questioned whether "this [is] a joke," a marketing employee wrote that his "head is fuzzy," and a designer texted, "[u]hhhhh what."

III. Milton's Social Media Activity and Fixation with Stock Price

34. In the months leading up to and after the Business Combination, Milton pursued a deliberate communications strategy with the intent of creating maximum exposure for himself and Nikola to retail investors to increase and maintain Nikola's stock price. This strategy consisted of a ubiquitous social media presence coupled with frequent podcast and television appearances.

35. Milton used his personal Twitter account (@nikolatrevor) and personal Instagram account (@lakepowelltrevor) to publish material information about Nikola. As of September 15, 2020, more than 104,600 users followed Milton on Twitter and more than 36,500 users followed Milton on Instagram.

36. Milton repeatedly urged television viewers and podcast listeners to follow his social media accounts, claiming he used them to communicate "accurate data" about Nikola in a way that would enable followers to receive information "way faster than you get it anywhere else." Milton's statements on June 30, 2020 during a nationally televised interview on Fox Business encapsulate his view of using social media to interact with Nikola's investors:

Well, I don't think that the market really – this is I think one of the things that many people have missed. The investors around the world right now are tired; they're tired of like an executive sitting in an office behind his chair, making millions of dollars and, you know,

forgetting about the average factory worker or even the consumer. So, there's unparalleled contact between myself, the executive chairman and the founder of Nikola, and all of our fans. I mean, you heard in the previous segment about social media, there's a lot of negative in social media, but there's also a lot of positive that you can create with it. And I took the, uh, I took the decision I wanted to create the positive And through this social media experience, where people can actually feel like they're part of it, they can talk to you, they can ask you questions, the transparency, the, the market they're just tired of the older executive that just don't care. And that's why you see the market evaluation of Nikola do well is because finally there's executives out there that they can talk to, that they can voice their problems, their opinions with and they actually get a response. Go on my Twitter Nikola Trevor and you'll see . . . you'll literally see answers to probably two thirds of every tweet out there.

37. Milton exponentially increased his social media activity in anticipation of and after Nikola became a public company in mid-2020. This is illustrated in the following chart that approximates his activity on his personal Twitter account (@nikolatrevor):

Year	Approximate Number of Tweets (including Replies) Per Year
2016	14
2017	22
2018	52
2019	137
2020	2,283
TOTAL	2,508

38. To further increase investor awareness of Nikola around the time of the Business Combination, Milton embarked on a self-proclaimed “media blitz.” As part of this campaign, he participated in over a dozen nationally televised interviews and appearances and dozens of podcast appearances. As detailed below, Milton made multiple false and misleading statements during these appearances.

39. Milton’s “media blitz” and social media activity was closely connected with his fixation on, and desire to increase and maintain, Nikola’s stock price. Around the time of the

Business Combination, Milton became intensely focused on Nikola's stock price, which was very volatile.

40. On days when Nikola's stock price declined, Milton regularly attempted to direct Nikola's senior executives to take actions to stop the price decline. Senior executives received frantic phone calls or text messages from Milton on such days in which he urged the executives to "do something." Milton also spoke of needing to put out "good news" or some kind of announcement "to get people excited" as a way to counteract price declines or maintain support for the stock price.

41. For example, following a short period of stock price decline in August 2020, Milton sent a text message to a senior Nikola executive requesting to "talk strategy ASAP." Milton went on to say that the "continual stock decline is going to erode any confidence in our stock. We have to do something We can't just sit here and watch it collapse." Another time, in late July 2020, Milton contacted a different Nikola senior executive to discuss the possibility of Milton buying shares of Nikola "for the company's health" because Nikola has had "zero news for two weeks and it's important to prevent our stock from losing credibility."

42. Senior Nikola executives and some members of Nikola's Board of Directors impressed upon Milton in the summer of 2020 that volatility in Nikola's stock price was to be expected, and that his focus should instead be on long-term performance. As the senior executives explained to Milton, Nikola had a relatively small float following the Business Combination due, in part, to a significant portion of the stock being subject to lock-up agreements, resulting in stock price movements being largely driven by retail investors and algorithmic trading firms.

43. However, Milton's focus remained on the stock price and his attempts to influence the retail investors who he viewed as driving it. To that end, Milton tracked the daily number of new Robinhood users who held Nikola stock. On June 8, 2020, Milton 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."

44. Milton's focus on the stock price was not surprising, as he was personally incentivized to push Nikola's stock price higher. First, as the company's largest stockholder, he stood to benefit financially if he could increase Nikola's stock price, and to sustain that increase beyond the six-month period following the Business Combination. During this period, Milton was contractually prohibited, with some exceptions, from transacting in Nikola stock. Second, Milton's employment agreement following the Business Combination tilted heavily toward equity. For example, Milton and Nikola's senior executives (who also held significant amounts of Nikola stock) each earned an annual salary of \$1, but stood to be paid millions of dollars by participating in the company's equity incentive plans.

45. One part of the equity incentive plan provided that Milton could earn, incrementally, up to 4,859,000 restricted stock units ("RSUs") as "Performance Awards" if the company's stock price reached milestones of \$25, \$40, and \$55 per share. Under the employment agreement, the share-price milestones were achieved, and incremental RSU awards were earned, when Nikola's stock traded at or above a share price milestone for at least 20

consecutive trading days during a three-year period. On August 21, 2020, Milton received the maximum award of 4,859,000 RSUs based on reaching these milestones.

IV. Milton's Material Misrepresentations to Investors

46. From approximately November 2019 through September 2020, in his capacity as CEO and later as Executive Chairman of Nikola, Milton made materially false and misleading statements on numerous, critical topics related to Nikola's capabilities, technology, reservations, products, and commercial prospects. The false and misleading statements made during this time period remained in the public domain and accessible to investors and prospective investors through at least September 20, 2020.

47. 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.

48. Milton's tweets and Instagram posts were published instantaneously to his Twitter and Instagram followers, respectively, and also were publicly available. When tweeting or posting material information about Nikola from his personal accounts, Milton did so in his capacity as CEO or as Executive Chairman of Nikola. Beginning at least as early as June 2020 and continuing through September 20, 2020, Milton included the following publicly available bio on his Twitter account: "Founder, Executive Chairman of @nikolamotor Nasdaq traded: NKLA. It's our duty to leave the world a better place and inspire people. Instagram: lakepowelltrevor."

49. At all relevant times, Milton had the authority to publish, and to cause Nikola to publish, material information about Nikola from its corporate Twitter account (@nikolamotor),

without approval from any other person. As of September 15, 2020, more than 81,400 people followed Nikola on Twitter. At all relevant times, Milton also had authority to cause Nikola to publish press releases, and to publish content on Nikola's website.

A. False and Misleading Statements about the Nikola One

(i) Capabilities of the Nikola One Semi-Truck

50. Nikola began its truck development program in 2016, when it unveiled its first truck prototype, the Nikola One. At a December 2016 unveiling event for Nikola One, Milton repeatedly and falsely stated that the Nikola One was fully functioning. In June 2020, in responding to the publication of an article that questioned the accuracy of Milton's December 2016 statements about the Nikola One, Milton re-adopted the 2016 statements, telling the market – again falsely – that the Nikola One could have been driven in 2016.

51. In or around June 2016, Milton began to promote an unveiling event for the Nikola One scheduled for December 1-2, 2016. Nikola invited potential investors, suppliers, and potential customers to the event, and publicized that it would live-stream the event on its website. In the weeks leading up to the event, Milton represented that the Nikola One would be “working” or “functioning.” For example, on October 16, 2016, in response to a question from a Twitter user about whether the December 1, 2016 event would be a “[d]esign unveiling or a functional prototype,” Milton responded, via Nikola's corporate Twitter account, “functioning. Fully built truck at event.”

52. In or about August 2016, however, Milton had pivoted the Nikola One from the original CNG-powered concept to a hydrogen fuel cell vehicle. A fuel cell converts hydrogen to electricity. This fundamental design change ensured that the prototype to be shown at the unveiling event in December would not be operable, as integrating and testing FCEV

components would require significant additional time. A few weeks before the event, Nikola's chief engineer informed Milton that the truck would not be functioning at the unveiling event unless the event was postponed. Milton made the decision to proceed as scheduled with the knowledge that the vehicle to be unveiled would not be functioning.

53. The unveiling event was live-streamed on Nikola's website. In his remarks at the December 1, 2016 event, Milton said, despite full knowledge of facts to the contrary, that the Nikola One "fully functions and works which is really incredible." He went on to tell the audience that "you're going to see that this is a real truck, this is not a pusher." The following day, Milton recorded an interview with Roadshow, a website focused on the auto industry, from inside the Nikola One. A video of the interview was posted to YouTube and was available publicly to investors and prospective investors. As of August 2020, this video was viewed on YouTube approximately 280,000 times. In the interview, Milton repeated the claim that the Nikola One displayed at the event was fully functioning:

This isn't just a pusher like a lot of vehicles that they unveil or just vehicles that don't actually function. . . . This is a fully functioning, you know, vehicle, which is really incredible. You can go through, you can, you know, we can change out pretty much everything we want, all the temperatures. I mean this is a fully functioning vehicle. It's not just a not just a pusher. It's what they call in the automotive world a vehicle that they just push and it doesn't move. . . .

54. On June 17, 2020, Bloomberg published an article titled *Nikola Founder Exaggerated the Capability of His Debut Truck*. The article reported, among other things, that Milton made statements at the December 2016 unveiling event that implied the Nikola One was drivable, which alarmed people at the event who were familiar with the truck's capabilities, or lack thereof.

55. That same day, Milton responded to the article on his personal Twitter account, in aggressive and highly personal terms. He doubled down on his prior deceptions, tweeting:

“Everyone at the event knew we didn’t drive it because it wasn’t safe, although it could be driven if we wanted to with safety and time put into it without the fuel cell. The truck built could have been driven w/testing.” Later that day, Milton texted a member of Nikola’s Board of Directors, boasting, in reference to his tweets earlier in the day, that “[s]hare value went up after my response.” Then, on or about June 26, 2020, Milton made a similarly deceptive statement in an interview on CNBC’s *Fast Money*: “I mean, the answer was is every part of that truck was functional. We just didn’t feel safe driving it at that time. That was our first truck what, four or five years ago. It was all operable, but it wasn’t really that safe, like it could’ve killed someone in the audience.”

56. Milton’s June 2020 statements were categorically false. The two reasons Milton proffered for why the Nikola One was not driven in 2016 – safety concerns and lack of testing – were false. Rather, in the words of one Nikola engineer, in December 2016, the truck was “not even remotely ready to operate.” The Nikola One was not operable at the time because, among other reasons:

- (a) all electrical components were powered through a cord running from an external power source, rather than the truck’s battery;
- (b) neither the fuel cell nor the hydrogen gas storage tanks had been installed;
- (c) the air compressor and the turbine had not been commissioned;
- (d) the gearboxes had not been assembled, and certain parts necessary for assembly of the gear boxes had not arrived;
- (e) the vehicle-level controls had not been completed; and
- (f) the human-machine interface, which Milton touted, consisted simply of off-the-shelf tablets set into a dashboard and were not integrated with the truck’s systems.

57. At the time of his June 2020 statements, Milton knew or was reckless in not knowing that the Nikola One he presented at the unveiling event as “a fully functioning vehicle” was not, in fact, fully functioning. At the time of the unveiling event, Nikola was a small start-up company and many of its engineers reported directly to Milton. A mechanical engineer who had a key role in the Nikola One’s development updated Milton often, such that Milton was intimately aware of the status and progress of the prototype. According to one engineer, Milton worked on the truck with the engineers, and as a result was aware that the truck had not been driven before the event and could not be driven at the event. When told by engineers that the truck would not be functioning by the scheduled date of the event, Milton nevertheless decided to proceed as scheduled, and went on to tout the truck as fully functioning – in 2016 and again in 2020.

58. When Milton made the statements in his June 2020 tweets and during the CNBC interview, Nikola’s stock was publicly traded. These statements were material because an investor would consider whether Nikola’s first prototype was functioning to be important to their investment decision.

(ii) *The Nikola One “In Motion” Video*

59. After the December 2016 unveiling event, Nikola did not perform any further work on the Nikola One. Yet, Milton continued to misrepresent the Nikola One to investors and potential investors through a video posted to the company’s website and its social media accounts.

60. In or about early 2018, Nikola participated in a commercial shoot for a leading supplier and manufacturer of parts for the trucking industry (“Company 1”). For the commercial shoot, the non-functioning Nikola One prototype truck was hauled to the shooting location by a

“lowboy” semi-truck trailer. At this time, and more than a year after the unveiling event, the Nikola One still could not run under its own power. It was towed to the top of an inclined stretch of road and then filmed rolling down the incline. This towing-and-rolling process was repeated three times to have sufficient footage for Company 1’s commercial.

61. Milton attended the commercial shoot. He then obtained raw video footage shot that day. Milton provided the footage to a Nikola digital media employee, whom he instructed to create a short clip of a rolling Nikola One for the purpose of posting the clip on social media. The employee created the clip and showed it to Milton, who directed certain edits to be made. Milton ultimately approved a final version of the clip, which had been sped up two- to-three times. This had the effect of making the Nikola One appear to move faster than it was.

62. On or about January 25, 2018, Milton posted, or directed the posting of, the edited video clip to Nikola’s Twitter and Facebook accounts. And at Milton’s direction, the digital media employee posted the clip to Nikola’s YouTube account. The video embedded in Nikola’s tweet and on its YouTube post shows the Nikola One moving on a road, seemingly at a high rate of speed. The video does not have any narration or text. The text of the tweet in which the video was embedded states: “Behold, the Nikola One in motion. Pre-production units to hit fleets in 2019 for testing. The Nikola Hydrogen Electric trucks will take on any semi-truck and outperform them in every category: weight, acceleration, stopping, safety and features – all with 500-1,000 mile range!”

63. Milton drafted the text of this tweet. The video posted on YouTube had similar text accompanying it: “Behold, the 1,000 HP, zero-emission Nikola One semi-truck in motion. Get ready for the pre-production units to hit fleets next year in 2018 for testing”

64. The video and the caption on the January 25, 2018 tweet and YouTube post were misleading because the video showed the Nikola One moving down a road with text that told viewers to “behold” the Nikola One “in motion,” while omitting the fact that the truck was rolling down an incline due to gravity rather than under its own power. The “In Motion” video thus left viewers with the false impression that the Nikola One was capable of moving under its own power. However, Milton knew then that the Nikola One could not be driven under its own power. In addition to knowing, as described above, that the Nikola One was not functioning, Milton attended the filming of the commercial and was aware that the Nikola One was towed up an incline from which it was filmed rolling down.

65. The “In Motion” video remained posted on Nikola’s corporate Twitter, Facebook, and YouTube accounts, as well as on its website, and was available for viewing by investors and prospective investors until at least September 2020. The misleading video, as presented on Nikola’s social media accounts and website, was material to investors during the period that VectoIQ and Nikola were publicly traded because it purported to show that as early as January 2018, Nikola had a truck that could drive. Nikola took down the video from its social media accounts and website after the Commission initiated the investigation that preceded this litigation.

B. False and Misleading Statements about Hydrogen Production, Costs, and Capabilities

(i) Background on Nikola’s Hydrogen Production Plans

66. A key aspect of Nikola’s business plan is its planned development of hydrogen production and fueling station infrastructure to support its FCEV trucks. In order to support the trucks that it projects to put on the road, Nikola needs to produce tens of millions of kilograms of hydrogen each year. To do so, Nikola represented to investors that it intends to produce

hydrogen via electrolysis, a process that uses electricity to split water into hydrogen and oxygen. However, producing Nikola's projected amount of hydrogen via electrolysis would require a massive amount of electricity. In fact, Nikola has projected that, when its hydrogen station network is fully built out, this network would annually consume approximately 5 percent of all electricity consumed in the U.S. today.

67. According to Nikola's projections, the price of electricity comprises 75-85 percent of the cost of producing hydrogen via electrolysis. For purposes of its projections, which Nikola has disclosed to the public, it assumed it could obtain electricity at an average of \$0.035 per kilowatt-hour ("kWh") – a rate significantly cheaper than prevailing industrial rates – based on its expected large consumption and its goal of obtaining lower-cost renewable electricity during non-peak hours or sourcing it "behind the meter" (i.e., from a source other than the grid). Nikola disclosed that if it is not able to obtain electricity at a significant discount to prevailing rates, it would not be profitable. Accordingly, Nikola's ability to produce hydrogen – and do it cost effectively – is a critical component of the company's overall business model.

(ii) *Misrepresentations about Nikola's Hydrogen Production Capabilities*

68. During the time period that Milton was CEO and Executive Chairman (2015-September 2020), Nikola: (i) never produced a single kilogram of hydrogen, (ii) did not have a station permitted to produce hydrogen, and (iii) did not have any contracts signed with any electricity providers. Instead, during this time, Nikola developed internal financial models that included electricity price targets required to reach future profitability.

69. Yet, when it came to hydrogen production, Milton misrepresented aspects of Nikola's business that it had *planned* or *modeled* as something that had *already* happened. As detailed below, Milton made several false and misleading representations about: (i) Nikola's

then-current ability to produce hydrogen; (ii) Nikola's then-current cost to produce hydrogen; and (iii) the cost at which Nikola had already obtained electricity and the methods by which Nikola obtained its electricity for hydrogen production.

a) Nikola's Hydrogen Production Capability

70. Concerning Nikola's then-current ability to produce Hydrogen, Milton made the following material misrepresentations:

(a) On December 2, 2019, at an event with Nikola's original equipment manufacturer ("OEM") partner that was live-streamed on Nikola's website, Milton stated:

We're building out the hydrogen station right now globally. In America we've already got the largest hydrogen station in the western hemisphere at our headquarters. Can produce over 1,000 kilograms a day on site, we're planning to expand that up to, up to essentially eight tons, which is about 8,000 kilograms a day. That'll be done in Phoenix, Arizona. The station's already up and operational for pumping right now.

(b) In an interview on the *Tesla Daily* podcast on or about June 3, 2020, Milton said:

But one thing that's really interesting about hydrogen is that you can create hundreds of megawatt hours of energy into hydrogen in times of the day where it would all be wasted anyways. And so it's one of those – and energy is so cheap now that this is one point I've told people. If you pull energy out on your car in California you're gonna pay – you can pay anywhere from 12 to 30 cents a kilowatt hour in California for energy. Depends on where you're at. *When I produce hydrogen I'm paying under 4 cents everywhere I go. And that's because we're doing it behind the grid in large quantities and that's where people fill up.* So what we're able to do is really drive down the cost of energy. It might be less efficient; that's true. But it's actually cheaper per mile. (Emphasis added).

(c) In an interview on the *Autoline After Hours* podcast on or about June 11, 2020, Milton had the following exchange with the host:

MILTON: And we just ordered \$30 million worth of equipment two days – or three days ago for our electrolyzer. So, it’s – all it takes is just electricity, clean energy from hydro, wind, or solar. And we can produce it all 24 hours of the day, never paying peak rates, never buying dirty energy, all zero emission. So, if you really love zero emissions –

HOST: You make it on site?

MILTON: We do. We make it on site.

HOST: You make it on site at the station?

MILTON: Yes. And that’s why it’s so – this is – you know, people don’t get Nikola . . . we have the largest hydrogen station in the western world at our headquarters. So, we’ve already proven it Now we’re down two, three bucks a kilogram and it’s pretty awesome.”

71. All of these claims about Nikola’s current ability to produce hydrogen were false.

At the time of Milton’s statements, Nikola had not produced, and was not capable of producing, any hydrogen.

b) Nikola’s Cost to Produce Hydrogen

72. Concerning Nikola’s current cost to produce hydrogen, Milton made the following misrepresentations:

(a) On January 23, 2020, Milton tweeted from his personal account:

“Hydrogen costs have plummeted through @nikolamotor efforts not other OEM’s [sic]. Our costs are below \$3 per kg. Diesel parity is \$4/kg. Game is over for diesel. . . .”

(b) The same day, a Twitter user tweeted at Milton asking him to “confirm that is compressed green electrolytic hydrogen at \$3/kg, today? How soon will that be available for public purchase, any update on that timeline?” Milton replied “Yes.”

(c) On or about March 12, 2020, Milton stated on the *Transport Topics Roadshow* podcast: “Up until Nikola came in the market, hydrogen was around \$16 a

kilogram, U.S. dollars. Now Nikola is producing it well below \$4 a kilogram. We have driven the cost down times almost four times. That's how – you know, one-fourth the cost of normal hydrogen production, Nikola is now at.”

(d) In a June 4, 2020 interview that appeared on the *Yahoo! Finance* website, Milton stated: “When we first started, hydrogen was \$16 a kilogram. We can now produce it for well under \$4 a kilogram. So we’ve cut – it’s one quarter of the cost now than it was just a few years ago. And we’re now cheaper to operate per mile than diesel.”

(e) On June 9, 2020, Milton replied on his personal Twitter account to another user, who appeared to have been citing a source projecting dispensed hydrogen to be priced at \$6.00 to \$8.50 per kilogram by 2025, “[w]e are already under \$4 working on \$3.”

(f) On June 10, 2020, Milton tweeted from his personal account in reply to a user who asked, “[w]ondering if I could get your thoughts on how you intend to lower the cost/kg of hydrogen?” Milton responded: “We are now below \$4 per kg which is the lowest in the world. We started at \$16 and now we are at \$4. We plan on reducing that again. The key is to order tons of equipment, scale it and buy clean energy cheap.”

(g) In a June 18, 2020 article in the Irish Times titled *Nikola Motor Takes a Big-Money Punt on the Hydrogen Future*, Milton is quoted as follows: “We can now produce hydrogen for between \$2 and \$4 a kilogram. We’re now cheaper than diesel to operate per-mile and we’re almost at parity with a battery electric per-mile, and ultimately that’s game over for diesel.”

(h) On or about July 6, 2020, Milton stated on the *Founder Hour* podcast: “We drove hydrogen down from 16 dollars a kilogram down below four dollars a

kilogram now. So why is that? Well, why is that important? Because now, I can provide zero emission to a truck cheaper than diesel. We've now won the game."

(i) On the *Chartcast* podcast recorded on or about July 17, 2020 and published by the podcast on or about July 19, 2020, Milton stated that Nikola has been able to "chop the cost of hydrogen from \$16 per kilogram down to – we're down below \$3 per kilogram on our hydrogen right now. . . ."

(j) On or about July 14, 2020, the Observer.com posted on YouTube a video of an interview with Milton. Milton stated in this interview: "We build all of our hydrogen through clean energy directly from the energy source. So we go contract with like wind farms or solar farms or whatever. And with that, what we do, is we take that energy and we produce hydrogen 24 hours a day with it. And then we can produce that very cheap like you know like \$2, \$3 a kilogram. We're under \$4 a kilogram for hydrogen. . . ."

(k) In an interview on the *This Week in Startups* podcast on or about July 31, 2020, Milton claimed that "what we did is we've been able to drive hydrogen to under \$4 a kilogram, we're about \$3 a kilogram on hydrogen now." When asked by the host how Nikola got "from 14 to 3 – is there some special sauce there," Milton replied, "[y]eah, very simple. It's all about – it's about standardization. . . . So in America right now, there's no two hydrogen stations that were actually developed on the same platform, they're all engineered from the ground up separately So we, we developed the first ever standard hydrogen station that can be produced in the thousands."

(l) In an interview on the *Barron's Roundtable* show on Fox Business on or about August 1, 2020, Milton was asked by the anchor: "right now hydrogen, which

powers those cells is about four times as expensive as diesel. Why do you like fuel cells and how can you make this actually work?” Milton responded:

Yeah, that’s, uh, that was a big problem we tackled. That’s why we came into the market. We saw an opportunity to bring the cost of hydrogen down going zero emission and putting it on parity or lower than diesel. And that’s the first time in history that’s been able to be done. So it went from about \$16 a kilogram, we’re down now below \$4 a kilogram and there’s lots of reasons for that. But the main one is standardization of a hydrogen station worldwide has allowed us to drive that cost down dramatically.

73. Milton’s claims that Nikola had either “solved,” “driven down,” or otherwise achieved this cost of production were false and they grossly misled investors and prospective investors, as Nikola did not have the ability to produce hydrogen, much less at the prices that Milton represented. As an initial matter, any claims about Nikola’s current cost to produce hydrogen were false simply because Nikola had not then produced *any* hydrogen – a fact Milton knew. Further, and as discussed in more detail below, at that time Nikola did not have *any* agreements with electricity providers that would have enabled it to produce hydrogen at Milton’s claimed cost – a fact Milton also knew. Given that electricity costs make up 75-85 percent of hydrogen production costs, Milton’s claims about Nikola’s supposed ability to produce hydrogen at the specified costs – without Nikola having any agreements in place to lock in electricity costs – were false.

74. The figures that Milton cited as Nikola’s current costs were, in reality, Nikola’s *projections* at which future production, if it ever occurred, could be profitable. Once again, Milton presented to investors something Nikola hoped to do as something it had already achieved.

75. Finally, contrary to Milton’s claims, Nikola had not achieved cost reductions from the “standardization” of its hydrogen stations. Instead, it had installed only one demonstration

station, which at times dispensed, but never produced, hydrogen, and was still evaluating various design and production options for its future stations.

76. Milton knew or was reckless in not knowing that his claims about Nikola's actual production of hydrogen, its ability to produce hydrogen, and the cost at which Nikola was purportedly producing it were false and misleading.

77. Milton was personally involved in numerous discussions and email exchanges within the company about Nikola's inability to produce hydrogen. For example, on December 2018, Milton was informed that the City of Phoenix denied Nikola a permit to install electrolyzers (which are used to produce hydrogen through electrolysis) at Nikola's Phoenix headquarters, making it impossible to produce hydrogen there. Instead, the City of Phoenix only permitted storage and dispensing at this location. Then, in February 2020, Milton asked employees to create plans to install electrolyzers at Nikola's headquarters because "this will give us a complete system that works on site we can show investors." Nikola personnel notified Milton via email in March 2020 that installing electrolyzers "will take 5-6 months to get the site permitted for hydrogen production plus another 5-6 months to get the electrical supply and construction completed." As a result, and as Milton knew, Nikola had to purchase hydrogen from other suppliers for use in testing at its headquarters station. Nikola still, to this day, does not produce any hydrogen at its headquarters, or at any location. Further, Milton was aware that Nikola had not standardized the design of its hydrogen station because he had participated in the internal evaluation process for station design.

78. Milton was also aware that Nikola was not producing any hydrogen because, in May 2020, he asked an employee on Nikola's hydrogen infrastructure team to accelerate a previously planned purchase order for electrolyzers for Nikola's first five planned stations. As

with certain other corporate actions he directed, Milton appeared principally concerned with investor perception. As Milton explained to the employee, “[t]his [accelerated purchase order] will give us great news to disclose leading up to the merger.” On May 31, 2020, Milton sent an email to Nikola’s Board of Directors seeking approval, on one day’s notice, of a nearly \$31.5 million purchase order for electrolyzers. Milton justified the purchase order, in part, as follows:

2nd major point. IPO. I am getting ready to go on a media blitz and the most critical item in our business model is that we don’t have stations. I would like to announce this on Monday as huge news. This will help our stock, create much stronger following and base layers of investors and it also will ease the criticism I am going to get going into interviews. I believe our PIPE and SPAC will be very happy to hear we are moving on our stations and not delaying.

c) Nikola’s Cost to Obtain Electricity

79. Concerning the costs at which Nikola had supposedly obtained electricity and the methods it used to do so, Milton made the following misrepresentations:

(a) On May 30, 2020, Milton tweeted from his personal account in response to a user’s question about “where the electricity comes from.” Milton stated: “Wind solar and hydro for most. That’s all we really touch is non carbon energy. Creating it on site under contracts give us 3 or 4 cents per kWh clean energy making hydrogen very competitive and cheaper than diesel.”

(b) On June 9, 2020, Milton tweeted from his personal account: “We source energy directly with either wind farms, solar or hydro electricity. 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.”

(c) On June 9, 2020, Milton also tweeted from his personal account: “I am the biggest supporter of BEV and FCEV. We take all energy behind the meter which allows us to get below \$.04 per kWh and guaranteed clean energy. Once you go post meter, you

can't control the energy, you get 50% dirty energy. I am trying to help and educate. Not hurt BEV."

(d) Again on June 9, 2020, Milton tweeted from his personal account: "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."

(e) On June 10, 2020, Milton tweeted from his personal account:

I love both BEV & Hydrogen. Here's the breakdown to combat all the lies. A loaded truck w/full weight & average weather conditions. H2 is now under \$4 per kg and working on sub \$3 per kg. . . . 15 min full [sic] time & 10,000 lbs lighter 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. That's why hydrogen makes sense for long haul. You're not fighting utilities and rates.

(f) 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."

(g) On June 21, 2020, Milton published on LinkedIn an article he wrote titled *Trevor Milton: Hydrogen vs Battery Electric-Why Nikola is the Leader-Reality Sets In*, 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."

(h) On the *Chartcast* podcast recorded on or about July 17, 2020 and published by the podcast on or about July 19, 2020, Milton claimed:

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 claimed that “[w]e 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.” Milton also asserted that “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.”

(i) In an interview with Jessica Meckmann published on LinkedIn on or about July 17, 2020, 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.”

(j) On August 3, 2020, a Twitter user asked Milton to share how he reduced the price of hydrogen in a way that was “more technical than standardized stations.” Milton replied: “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.”

80. Milton’s assertions that Nikola was already procuring electricity for hydrogen production from renewable or “clean” sources was false, because it had not, at that time, secured any electricity from any source, including from any of the sources that Milton claimed.

81. Similarly, Milton’s assertions linking Nikola’s cheaper electricity costs along freeways with its ability to “tap” into federal electricity transmission lines also was false, because Nikola had not tapped into federal lines for purposes of hydrogen production, and had not secured any rights to do so (along freeways or elsewhere).

82. Milton’s assertions regarding procuring electricity at specified rates or through Power Purchase Agreements (“PPAs”) also were false, as at the time Nikola had neither contracted for any specific electricity rates nor entered into any PPAs for purposes of hydrogen production. Here, as elsewhere, Milton took electricity rates that Nikola *modeled* as targets and presented them in public statements as rates that Nikola had already *achieved*.

83. Finally, Milton’s comments about Nikola “gobbling up” station locations and its stations “going up in Canada” were flatly false, as Nikola had not secured any locations and had not built any stations, other than installing a demonstration dispensing station at its headquarters.

84. Milton knew or was reckless in not knowing that his claims on these topics were false. As detailed above, Milton was aware that Nikola was not producing any hydrogen at all. Milton was also aware that Nikola had not entered into any PPAs.

85. On June 9, 2020 – the day Milton tweeted multiple misrepresentations about electricity prices – Nikola’s Global Head of Infrastructure Development forwarded Milton an email from an electrolyzer supplier concerning costs and delivery. This employee sought Milton’s input on the delivery schedule for the accelerated purchase order, noting that “we don’t have PPA’s [sic] executed yet to support these electrolyzers.” Further, Milton attended a July

2020 Board of Directors meeting at which Nikola's hydrogen infrastructure team apprised the Board that the company had not yet entered into any PPAs and that rate negotiations with electricity providers were ongoing at the time. In fact, the only rate agreement that the company has entered into to-date occurred *after* Milton left Nikola in September 2020.

86. Because Milton was aware, at the time he made these statements, that Nikola had not entered into any PPAs or other rate agreements with any providers and that it was not producing any hydrogen, Milton was also necessarily aware that Nikola: (i) had not sourced any "clean" or renewable electricity, (ii) was not acquiring cheaper electricity along freeways by tapping into federal lines, and (iii) was not acquiring electricity at specified rates.

87. Further, Milton was aware that Nikola was not "gobbling up" station locations and was not in the process of building any stations in Canada. Because Milton was kept apprised of Nikola's station development efforts, he knew that these efforts had not even remotely progressed to the point he represented publicly.

88. All of the false and misleading statements detailed above were material. Given the importance of hydrogen production at economic costs to Nikola's business, an investor would consider it important in making an investment decision that Nikola was not, in fact, already producing hydrogen, much less at a cost that would be profitable. An investor also would consider it important that Nikola was neither able to obtain the electricity rates that Milton represented nor to do so from renewable sources.

C. False and Misleading Statements about the Badger Pickup Truck

89. On February 10, 2020, Nikola published a press release titled "Nikola Unveils the Nikola Badger Pickup." The press release touted the Badger as the "World's Most Advanced Zero-Emission FCEV/BEV Pickup with an Estimated 600 mile Range."

90. Milton's unveiling of the Badger was straight out of his Nikola One playbook. That is, Milton continued his pattern of touting capabilities of vehicles that, in the case of the Nikola One, was not functioning, and in the case of the Badger, simply did not exist beyond a computer-generated imagery (CGI) rendering of an illustration created by a Nikola employee many months before.

91. Having decided, in or around February 2020, that Nikola would develop a pickup truck he called the Badger, Milton went on to make misrepresentations about the Badger's timeline for development and Nikola's proprietary contributions to its design.

92. Milton made the following statements regarding the timing of the Badger's development:

(a) The February 10, 2020 press release (which Milton drafted, over which he had ultimate authority for its content, and authorized its distribution) stated that the Badger "is engineered to deliver 980 ft. lbs. of torque, 906 peak HP and 455 continuous HP," "was designed to handle 0-100 mph launches with minimal loss of performance and to operate on grades up to 40% through advanced software blending of batteries and fuel-cell," and was "engineered to outperform all electric pickup trucks on the market in both continuous towing, HP and range."

(b) The same day, on February 10, 2020, a Twitter user replied to a tweet from Milton's personal account that promoted the prior day's press release, commenting that "the spec sheet looks ridiculously exaggerated" Milton responded: "Specs are dead on actually."

(c) On or about April 20, 2020, Milton stated on the *Truck Show Podcast*, referring to the Badger: "We built the thing to be a true vehicle."

(d) On or about May 30, 2020, Milton stated on the *JMac Investing* podcast:

Soon I'll be announcing when we're going to show off the Badger to the whole world. And this thing is insanity. It is the most beautiful truck I think the world has ever seen. It's a fully functioning vehicle inside and outside, HVAC, and everything, windows, all of it works. I shouldn't say all of it – I'll probably have a couple of pieces that'll break on me, but hey, that's part of the process of building the truck, but it's a real real [sic] truck. It's not just some mock up thing that other people have done. This is a real, real truck.

(e) On June 8, 2020, Milton tweeted from his personal account in reply to a user who asked, "when will the first prototype be produced?" Milton replied: "Already."

(f) In an interview on the *Raging Bull* podcast on or about June 29, 2020, Milton stated regarding the Badger: "So together we literally built the most badass pickup truck the world had ever seen, and it's the reason why Nikola is on the front page of almost every news organization out there around the world right now."

(g) On July 1, 2020, Milton tweeted from his personal account in response to a user who questioned "how are you able to get the truck ready in 4 months." Milton replied: "Exactly, which means it's not fake. Truck is real. It's going to be fun releasing teaser videos leading up to #nikolaworld2020 of the #nikolabadger."

(h) On or about July 19, 2020, Milton stated on the *Jimmy Rex Show* podcast: "So we . . . had been working on it [the Badger] for a while. I decided to put my teams on it. We got it done."

93. The statements that Nikola had "designed" or "engineered" the Badger to meet particular specifications misled investors regarding the state of Badger's development at the time of its announcement. When Milton announced the truck in February 2020, there was no Badger. At that time, Nikola had not performed any engineering work or any design work, other than CGI renderings of the Nikola employee's prior illustrations. An OEM engineer, who visited

Nikola's offices in February 2020 to conduct diligence in connection with a potential partnership to build the Badger, summed up the Badger's state at the time as "vaporware."

94. Milton's subsequent statements asserting that a prototype was already completed were false and misleading, because the Badger prototypes were not delivered until December 2020 – nearly three months *after* Milton resigned from Nikola. When Milton made the statement in April 2020 that Nikola "built this thing to be a true vehicle," the truck was in early stages of conceptual development. Moreover, the third-party suppliers Nikola had contracted to build the Badger prototypes used some show car technology for the vehicles, which were not engineered or intended to be used for production. Similarly, in June and July 2020, when Milton again touted the Badger as being "built," "done," "real," and a "fully functioning vehicle inside and outside," the third-party suppliers were then only completing computer-aided design (CAD) and beginning tooling. In the same month, Nikola's Vice President of Technology referred to the Badger in an internal email as "vapor ware" [sic] "with no technical plan."

95. Milton made other, similarly misleading statements in which he asserted that the Badger could perform up to certain estimated specifications, including a 600-mile range on the FCEV model and a 300-mile range on the BEV model, a 0-60 mph time of approximately 2.9 seconds, 906 horsepower, and 980 ft. lbs of torque. Milton cited one or more of these specifications in: (i) the February 10, 2020 press release, (ii) a February 10, 2020 tweet in which he confirmed the specifications cited in the press release, (iii) a February 13, 2020 Instagram Live post on his personal account, (iv) a June 15, 2020 interview on CNBC's *Fast Money* program, (v) a June 29, 2020 appearance on the *Raging Bull* podcast, (vi) a July 1, 2020 interview on the *Mark Haney Show* podcast, (vii) a July 19, 2020 interview on the *Jimmy Rex Show* podcast, and (viii) a July 31, 2020 interview on the *Stockcast* podcast. These performance

specifications were, at best, misleading, because Milton omitted to disclose that they were based entirely on models and simulations conducted by Nikola's engineers using aggressive assumptions provided to them by Milton – except the range, which, on information and belief, was not based on *any* modeling or simulations.

96. At the time he made the statements regarding the timing of the Badger's development detailed above, Milton knew or was reckless in not knowing that his statements were false and misleading. The Badger was Milton's project from the beginning. It was his idea to produce the truck, and he personally pushed the project forward. By virtue of regularly interfacing with the Badger's designers, engineers, and suppliers that constructed the Badger prototypes, Milton was at all times aware of the status of the Badger's development.

97. Further, in early June 2020, a Nikola employee who led the Badger's design informed Milton that one third-party supplier was six to eight weeks from beginning tooling. And at a meeting of Nikola's Board of Directors on July 23, 2020, at which Milton was present, Nikola provided to the Board materials indicating that the prototypes would not be completed until at least November. Ultimately, two Badger prototypes were delivered to Nikola in December 2020. Finally, Milton was aware that the performance specifications he cited were based on simulations and models only, because he was the one who requested this work to be performed.

98. All of the false and misleading statements detailed above were material, as an investor would consider it important in making an investment decision that Nikola had not already designed, engineered, or completed a prototype of the Badger.

99. Milton made the following statements regarding the proprietary nature of the Badger:

(a) On or about April 20, 2020, Milton stated on the *Truck Show Podcast*:
 “We spent a billion dollars essentially on our hydrogen program . . . with our semi-truck and we’re the leaders in hydrogen technology around the world. . . . We took that billion dollars in knowledge and put it into this pickup truck.”

(b) On or about June 11, 2020, Milton stated in an appearance on Cheddar News: “We’ve made it very clear that we don’t want to build this [Badger] on our own. So we developed all the tech. We’ve built the whole truck, and now what we want to do is partner with a big OEM.”

(c) On or about June 29, 2020, Milton stated on the *Raging Bull* podcast:

So when we built all this technology, we had billions of dollars spent on the electrification platforms for our big trucks. I know I could take that money, all that technology that’s been built, and port it over to the most advanced pickup truck in the world. . . . Now, we’re going to use an existing OEM to build our Nikola Badgers. So we own all the tech. So all the cool stuff you guys want, the design, the inside, the connectivity with your phone . . . all the e-axles or, you know the electric motors, the batteries, the controls, all that’s done by Nikola. . . .

(d) On September 9, 2020, one day after Nikola and General Motors announced a strategic partnership pursuant to which General Motors would engineer and manufacture the Badger, Milton engaged on his personal Twitter account with a user who commented that the Badger is “[n]ot Nikola, but a General Motors Badger. The unveiling at Nikola World will not even be the truck being sold, only the dream of what could have been. . . .” Milton replied: “Actually it is the truck being sold. It’s all Nikola. Sharing parts has nothing to do with who’s [sic] truck it is. . . .”

(e) On or about September 9, 2020, Milton stated on the TD Ameritrade Network: “So this is how it works, we actually build the Nikola Badger from the ground

up ourselves, the whole thing” In response to a question about “what’s the important IP that’s coming from you guys,” Milton stated:

Yeah, the battery supply from the sale comes from GM, the cells and the module. The rest of the vehicle, like the over-air updating, the software, the controls, the infotainment, the design of the vehicle, the cab, the interior of the cab, even the, even the driver profile, we’ve been all the way down to suspension, that all comes from Nikola, with some support of GM’s integration team, but GM’s gonna handle the, they’ve already built a multi-billion dollar platform for their electric truck platform, so we’ve, we’ve took our technology and our existing Badger, we overlaid it on theirs, used what we could, implemented theirs, and then we built the rest around, um, around ours. So it’s probably 70 percent Nikola 30 percent GM when it comes to, um, the parts that are really important to us

100. Milton misrepresented the nature of the Badger prototypes that Nikola was building. Contrary to Milton’s statements, Nikola did not “put” or “port” a billion dollars of semi-truck technology into the Badger. Nikola never developed a Badger FCEV prototype, and little, if any, of Nikola’s technology was used on the Badger BEV prototype. Nikola retained two third-party suppliers to build the BEV prototype using “donor” vehicles manufactured by another OEM. The upper body was built by a supplier in Europe, while the chassis was built by a supplier in Michigan, and then the two parts were integrated. For these same reasons, Milton’s statements that the Badger was being built “from the ground up” and Nikola “own[s] all the tech” and “developed all the tech” in the Badger were false and misleading.

101. Further, Milton falsely claimed that the versions of the Badger that GM had agreed to build for Nikola were full of technology and components proprietary to Nikola. Contrary to Milton’s assertion that the Badger would be “70 percent Nikola,” GM planned to use nearly all of its own parts and components to build the Badger.

102. Milton knew or was reckless in not knowing that the statements regarding the proprietary nature of the Badger detailed above were false. Milton was a key point of contact in

dealing with both third-party suppliers and approving their scopes of work and purchase orders, which referenced, among other things, that the suppliers would use donor vehicles. As such, he understood that they were developing prototypes using donor vehicles sourced from another OEM. He also made the decision to build the prototypes only in the BEV version (and not the FCEV version). Finally, Milton was substantially involved in negotiations with GM and was aware that GM would be using primarily its own parts and technology to manufacture the Badger. Prior to making the statements relating to GM, Milton received documents reflecting the proposed allocation of responsibilities for the Badger between GM and Nikola. These documents showed that nearly all technology and parts on the Badger would be GM's responsibility.

103. The false and misleading statements about Nikola's purported proprietary technology detailed above were material, as an investor would consider it important in making an investment decision that Nikola had not successfully leveraged its proprietary technology to build the Badger, and that the Badger did not, in fact, contain proprietary Nikola technology.

D. False and Misleading Statements about Truck Reservations and Orders

104. As a pre-revenue company, Nikola consistently emphasized to potential investors that its pre-order book, which it characterized as a "backlog of interest," was a sign that the company was primed for profitability in the near future based on interest in its flagship FCEV semi-truck product. The company represented in its filings with the Commission and other public statements that it had over 14,000 FCEV truck pre-orders projected to fill at least 2-3 years of production and representing billions of dollars in future revenue. Nikola's public filings disclosed that all but 800 of the reservations represented indications of interest and were cancellable at any time.

105. On or about July 31, 2020, Milton had the following exchange on the *This Week in Startups* podcast regarding Nikola's truck reservations:

MILTON: Our margins are gigantic, and we have ten billion doll – ten – over ten billion dollars in preorder reservations like, like customers signed ready for us to deliver them trucks and it's –

HOST: Letters of intent.

MILTON: – it's just a great.

HOST: – these are people who want to have -- what -- and why do those trucks – why do those shippers want to switch off diesel? Is it because of – they have goals in terms of greenhouse gases or is it they see this as the future and they wanna invest in it or is it cost?

MILTON: No, real quick, I wanna correct something. Not letter of intents, they're actually contracts. We've got –

HOST: Contracts, got it.

MILTON: Yeah, billions and billions of dollars with the contracts. So I want to be clear about that 'cause a lot of people have thought that it's just like, a non-committal thing, it's not. These are like, sign on the dotted line, billions and billions and billions and billions of dollars in orders. Now, we have to deliver, and they can get out if we don't deliver, but that's how it is with any contract you do in life, like –

HOST: Right.

106. Milton's statements that there were "billions and billions of dollars with contracts" that are different from a "non-committal thing" and are "sign on the dotted line, billions and billions and billions of dollars in orders" were false and misleading. In reality, and as the company disclosed in its own filings, at the time Milton made these statements Nikola had only one customer whose order for 800 FCEV trucks could be characterized as binding. There were not billions and billions of dollars in binding orders.

107. Milton further clouded the true nature of the reservations by touting that the company's production facilities were "sold out" for many years. For example, in an interview on

Cheddar News on or about August 5, 2020, in response to a question about how the pandemic impacted Nikola's order list, Milton claimed:

Actually, as a matter of fact, you seen them increase. And I think they're – which is really strange. At first I thought, oh, man, I wonder what this is going to do to – to – you know, to the – to everything. I had no idea. I don't think anyone knew, right? And the orders actually came in – they've come in bigger and stronger, and we've had to turn a lot of people away. So for our hydrogen truck, we – we essentially have to pick and choose who we can work with because we're sold out for so many years.

108. This statement was false and misleading because Nikola was not “sold out,” as all of the reservations except for an 800-truck order were non-binding, fully cancellable indications of interest. By stating that Nikola was “sold out,” Milton created the misleading impression that Nikola's capacity for truck production had already been filled.

109. Milton knew or was reckless in not knowing that his reservations-related assertions were false. Milton was personally involved in soliciting reservations from several potential customers. He communicated to potential customers that the reservations were cancellable for any reason at any time. For example, on May 9, 2016, as part of his efforts to secure the largest reservation Nikola had received to-date, Milton wrote to a potential customer, “[y]ou have full ability to cancel at any time before the options, color and major deposit is made” He went on to note to the same reservation holder on three separate occasions that the reservation was cancellable, even going so far to note “you can cancel at any time and get [the deposit] back all the way up to the final order” Another time, Milton cited the non-binding nature of the reservations in an attempt to convince a potential customer to *double* the amount of reservations in which the customer was originally interested. Milton wrote to this party, “[y]ou had asked for 50 trucks that would have been \$500 for each deposit. What I did since it is fully

refundable at any time, is put you down for 100 at \$250. You can cancel at anytime any of those.”

110. Milton’s statements about the nature of the non-binding reservations were material as an investor would consider it important in making an investment decision whether Nikola actually had binding orders in the billions of dollars for its flagship product.

111. Milton also made false and misleading statements regarding a different order for refuse trucks. On August 10, 2020, Nikola announced that it had entered into an agreement with a publicly-traded waste collection company (“Customer A”) for an order of 2,500 to 5,000 trucks. On the same day, Milton tweeted from his personal account a link to Nikola’s press release announcing the order and claimed that it was the “[l]argest class 8 zero emission order in the industry 2,500 guaranteed.” In another tweet that same day from his personal account, Milton promoted his upcoming appearance on CNBC’s *Fast Money* to discuss “the 2,500 – 5,000 (1-2 billion dollar) binding truck order!” Then, when he appeared on *Fast Money* on or about August 10, 2020, 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 2,500 of these electric trash trucks, and they have the option to go up to 5,000.” Milton later referred to the billion plus dollar value of the Customer A order in tweets from his personal account on August 16, 2020 and the TD Ameritrade Network interview on August 19, 2020, in which he referred to the order as “a couple-billion-dollar contract.”

112. The statements that the order for 2,500 trucks was “guaranteed” and that Customer A was “obligated” to purchase trucks were false and misleading. Under the terms of the agreement, which Milton personally negotiated, for Customer A to incur any obligation a series of conditions would have to be met, not all of which were even under Nikola’s control.

Among the conditions was a requirement for Nikola to achieve multiple development milestones before Customer A was obligated to order any trucks. If Nikola did not meet the requirements for the initial phase, Customer A had the right to terminate the agreement. Moreover, if the parties could not agree on essential terms (including price, service and parts network, warranties, training program, and more), Customer A had the ability to terminate the agreement anytime on 30 days' notice. Finally, even if Nikola could meet all of those obligations, Customer A still had the right to cancel its orders without liability or penalty as long as the delivery date was 120 days out. Accordingly, it was false and misleading for Milton to describe this highly contingent and cancellable order as guaranteed, without any qualification.

113. Milton's statements that valued the transaction with Customer A at \$1-2 billion also were misleading because they created the false impression that the parties had agreed on the price of the trucks. But the agreement with Customer A did not have a price term. Rather, the agreement provided that the parties would negotiate the price later. For this reason, Customer A specifically made a request to Milton that Nikola not include any reference to price or value of the transaction in any press release announcing the transaction. While Nikola abided by this request, Milton immediately and repeatedly claimed, as detailed above, that the value of the deal was \$1-\$2 billion.

114. Milton knew or was reckless in not knowing the truth about the contractual terms of the agreement with Customer A, because he personally negotiated it. The statements Milton made about this transaction were material because an investor would consider it important in making an investment decision to understand the true nature of what Nikola claimed was one of its largest orders for trucks.

E. False and Misleading Statements about Game-Changing Battery Technology

115. In November 2019, Milton directed Nikola to issue a press release claiming that Nikola “has achieved” a significant breakthrough in battery technology that would result in enormous performance gains for Nikola’s vehicles. As described further below, this press release and Milton’s subsequent similar claims misled investors about the true status of this technology.

116. For BEVs and FCEVs, batteries have three main components: cells, modules, and packs. Cells are the smallest component. Cells are contained within modules, and modules are arranged in packs. The design of these modules and packs can have a significant impact on battery performance and safety. Cells, which are considered more of a commodity, are typically purchased from one of a few main worldwide suppliers.

117. In May 2019, Milton sent an unsolicited email to a research professor at a U.S.-based university (“University 1”) concerning research on lithium sulfur batteries that the professor was conducting. A lithium sulfur cell uses different chemistry than a lithium-ion cell, which is the current conventional chemistry for rechargeable battery cells. Milton told the professor that Nikola was “looking at contributing financially and licensing some of your results.” Milton lied to the professor by stating that Nikola was “doing some programs with a few universities,” and then asked if the professor would reveal some details of her research. Over the ensuing week in May 2019, Nikola executed a confidentiality agreement with University 1 and obtained access to the results of certain of the professor’s research. This research was in its early stage.

118. Milton visited the University 1 professor and, after this visit, directed Nikola in September 2019 to enter into a preliminary term sheet, which contemplated terms of a sponsored

research agreement. Nikola executed a Sponsored Research Agreement with University 1 on or about October 31, 2019.

119. Under the Sponsored Research Agreement, Nikola was to provide a modest amount of funding (\$250,000 initially) to sponsor the lithium sulfur battery technology research that the professor at University 1 was conducting. In exchange, any intellectual property developed with Nikola following entry into the agreement would be shared between Nikola and University 1.

120. Approximately 18 days after executing the Sponsored Research Agreement, Milton tweeted from his personal account, teasing a significant announcement the following day: “Tomorrow, it all changes. I finally get to talk about it. The news everyone has been waiting for. Diesel trucks are obsolete for good. We solved what no one else could. It’s time for other OEM’s [sic] to stop producing diesels immediately. See press tomorrow #emissionsgameover.”

121. The next day (November 19, 2019), Nikola issued a press release titled “Nikola Corporation to Unveil Game-Changing Battery Cell Technology at Nikola World 2020.” Milton drafted this press release, had ultimate authority over its content, and authorized its distribution. The purpose of the press release was for Nikola to “announce details of its new *battery*.” (Emphasis added.)

122. In the press release, Milton made several unqualified claims about the battery technology, which he is quoted describing as “the biggest advancement we have seen in the battery world.” Milton claimed the following in the press release about what he asserted as *Nikola’s* purported “prototype cell”:

- (a) “record energy density of 1,100 watt-hours per kg on the material level and 500 watt-hours per kg on the production level”;

- (b) “could increase the range of current EV passenger cars from 300 miles up to 600 miles with little or no increase to battery size and weight”;
- (c) “technology is also designed to operate in existing vehicle conditions”;
- (d) “cycling the cells over 2,000 has shown acceptable end-of-life performance”;
- (e) “Nikola’s battery electric trucks could now drive 800 miles fully loaded between charges” and “hydrogen-electric fuel cell trucks could surpass 1,000 miles between stops and top off in 15 minutes”;
- (f) “World’s first free-standing electrode automotive battery”; and
- (g) “40% reduction in weight compared to lithium-ion cells” and “50% material cost reduction per kWh compared to lithium ion batteries.”

123. The same day, Milton took to Twitter, where on his personal account he: (i) quoted the press release, in part, in one tweet, (ii) repeated the same claims as in the press release in another tweet (“Nikola has developed the most energy dense, safe battery in the world It would double the range of every electric vehicle and nearly double the range of every fuel cell. Making it available even to competitors.”), and (iii) in a third tweet, further misrepresented Nikola’s purported “game-changing” achievement (“[y]ou’re talking 600+ mile range in a model 3 Tesla. You’re talking 50% less cost than Lithium Ion. You’re talking mass adoption of zero emission vehicles. Could be worth hundreds of billions if owned by one company but we decided to share it with the competition for greater good.”). When a Twitter user responded to this last tweet asking, “[i]s it actually real though, or is it another Joi Scientific style ‘breakthrough,’” Milton replied to the user, “It’s real. I’ve seen it with my own eyes and watched them cycle.”

124. On or about December 2, 2019, Milton was asked on the *Shift* podcast to comment on Nikola's November 19, 2019 battery announcement having been met with "some curiosity," and to address skeptics "who might doubt that such a battery exists." Milton responded, in part:

Once we got the technology nailed down, we actually have over 2,000 cycles on our battery, which would mean it would be more than a million-mile battery. It would actually – our battery beats the Tesla battery in every metric, in every situation, and it's half the cost and it's double the range. So, you know, for us, that was an exciting thing to be able to tell the world, and I actually appreciate the critics. I'm totally fine with it; I enjoy it. Because every time I prove them wrong, it drives them absolutely insane and they have to go back and admit they were wrong. For me, that's the funnest part of it.

125. On or about March 12, 2020, Milton stated on the *Transport Topics Roadshow* podcast that "[w]e can – we're double the cycle life of a regular lithium-ion, and we're about half- to one-quarter the cost to produce the lithium-ion and we don't have any of the expensive metals . . . we should have productionized cells probably by the years end."

126. The statements in the November 19, 2019 press release, the press release as a whole, Milton's November 19, 2019 tweets, and his statements on podcasts on December 2, 2019 and March 12, 2020 were all false and misleading. The November 19, 2019 press release was posted to Nikola's website and, together with the accompanying tweets, remained accessible to the public through at least September 2020.

127. While these statements contained detailed claims about functionality, reduced costs, increased vehicle range, energy density, number of cycles, and weight, they failed to disclose that these attributes were applicable to *coin size* battery cells that were being developed and tested in a controlled lab environment as part of a university research project. This fact was significant because to scale these coin-size lab-level cells to even a prototype size – which had

not been done at the time of the press release and was, according to the professor, about a year away – would require significant further development with no assurance of comparable performance levels. From there, developing the cells from prototype pouch size cells to commercial grade quality was a further, significant undertaking, with no assurance of utility for commercial applications. Having omitted these critical facts, Milton created the misleading impression that Nikola was in possession of a breakthrough technology that was on the verge of being deployed into its vehicles where it would perform in accordance with the represented specifications. Moreover, Milton deliberately misled investors that Nikola developed the technology, when, in reality, Nikola paid \$250,000 to license coin-size cell technology created by someone else.

128. Milton knew or was reckless in not knowing that his statements in the November 19, 2019 press release, the accompanying tweets, and the podcasts detailed above were misleading, because he knew the true state of University 1’s battery technology. Milton was deeply involved in battery development issues at Nikola, working directly with technical leads on various initiatives. With respect to this technology in particular, Milton introduced the University 1 professor to Nikola, was present at meetings about the technology with the University 1 professor, and, as such, was fully aware of the current state of technology, who was actually developing it, and the remaining challenges to operationalize it. Indeed, when Milton described the technology to Nikola’s Board of Directors in an email sent a few days prior to publishing the November 19, 2019 press release, Milton referred to the cycling of “sample” cells, noted that the technology “has worked on sample size batteries,” and disclosed that “nothing is certain” when it comes to scaling. The press release and accompanying tweets and podcast statements (detailed below) omitted even these bare qualifications.

129. All of the misleading statements detailed above were material, as an investor would consider it important in making an investment decision that Nikola was (or was not) in possession of a significant breakthrough in battery technology, which technology is critical to increasing the adoption and market appeal of electric vehicles.

F. False and Misleading Statements about In-House Components

130. Milton held a strong view that Nikola should design and manufacture key semi-truck components “in-house,” similar to other high-tech OEMs that were perceived as having created significant value and competitive advantage by designing and manufacturing their own components, in particular, batteries. Milton also responded strongly to suggestions that Nikola was solely an “integrator” and perhaps not as valuable as an OEM that designed and manufactured its own key components.

131. In 2020, Milton repeatedly stated that “all major components” were designed or made by Nikola “in-house.” But what Milton presented to the public about Nikola’s in-house design and manufacturing programs, capabilities, and achievements relating to the battery and the inverter, and the true state of those programs, diverged widely.

132. At the time Milton made these statements, Nikola already had unveiled its second generation prototype, the Nikola Two, an FCEV for long-haul applications. According to its filings with the Commission, Nikola intends to produce this vehicle beginning in the second half of 2023 or in 2024. In 2019, Nikola began to work with an OEM partner on the Nikola Tre, a shorter-haul truck that Nikola and its OEM partner intend to begin producing in a BEV version in 2022 and in an FCEV version in 2023 or 2024.

133. On or about February 14, 2020, in an interview on Fox Business, Milton said: “[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”

134. On or about June 29, 2020, Milton was asked on the *Raging Bull* podcast “who is the manufacturer of the battery?” Milton replied:

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, but it will be done at a big plant. We’re going to build a plant next to ours that will essentially build all the batteries for all of our applications. But we use other people’s cells. So we use, like, LG, Samsung, Panasonic. We use their cells, but 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.

135. On July 1, 2020, Milton tweeted from his personal account in response to a comment from a Twitter user who asserted that Nikola did not make its batteries: “We don’t make the cells. We make the entire 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.”

136. On July 5, 2020, Milton tweeted from his personal account: “All major components are done in house; batteries, inverters, software, controls, infotainment, over the air, etc. you don’t care about the truth you’re just out to be a keyboard warrior.”

137. On July 14, 2020, Milton stated the following on an Instagram Live video posted on his personal Instagram account:

One difference of us compared to everyone is we’re the – really the only group out there that does full dielectric fluid submersion batteries. I’m gonna walk out here and show you that in a second. So what does that mean? That means our batteries are actually completely immersed into fluid. Now, watch our competitors follow us on that one, too.

Why? Because you can cool and heat your batteries much faster, much more efficiently, and you're also able to stop thermal propagation, something that other people cannot do. So, pretty cool.

138. In the same video, Milton further stated:

So this is to everyone who's questioning what we do. Alright, so first of all, who makes our batteries? Who makes Nikola's batteries? Nikola does. Do we make the cells? No, we do not. We buy the cells from either people like Samsung, LG, Panasonic, or other groups.

...

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. So let that clear up any of the lies and the, the fake lies out there about how Nikola doesn't do shit, it's quite interesting. You could not build a truck like this if you don't pretty much do everything. . . .

139. On or about July 31, 2020, when asked on the *This Week in Startups* podcast, "[y]ou do make your own battery packs," Milton replied, "we do make our own battery packs, that's the key, that's the key element because of the cost." Milton then went on to say that the "battery pack is 30 percent of your vehicle's cost, or 40. So it's one of the most important things to actually bring in-house. And so we do make our own battery packs. The whole truck is our design, is our, is our build, but another manufacturer's gonna actually be spitting it out on their assembly line." When the host then asked Milton if he "is gonna be in the battery business, you are gonna build battery packs," Milton replied that "[y]ou'll never make it as an OEM if you don't build your own battery. That's the most critical part." Milton also stated during the same podcast: "the 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."

140. In a YouTube video posted on or about August 24, 2020 on the Tesla Joy YouTube Channel, 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.”

141. All of these statements detailed in paragraphs 133 to 140 were false and misleading. Nikola did not design or develop any functioning inverters in-house. In reality, Nikola has used third-party “off the shelf” inverters for all its semi-truck prototypes, and it planned to use third-party inverters for the Nikola Tre. And, while Nikola entered into an agreement to develop inverters with a supplier in early 2018, that effort was terminated in the spring 2020 due to a lack of progress. Finally, Nikola’s own in-house inverter program, which would take years to complete, was only in its nascence at the time Milton made the misleading statements detailed above in paragraphs 133, 135 to 136, and 140.

142. The statements above relating to batteries in paragraphs 133 to 136 and 138 to 139 were also false and misleading. Some of these statements created the misleading impression that Nikola manufactured its own batteries. In truth, Nikola uses a third-party supplier (“Supplier 1”) to manufacture batteries for its first production vehicle, the Nikola Tre BEV, and Nikola does not have the capability to manufacture these batteries on its own. Similarly, other claims created the misleading impression that Nikola designed the entire battery. But, Supplier 1 designed the modules for the batteries that Nikola is using for the Nikola Tre BEV, and Nikola relied on the assistance of Supplier 1 to design the battery pack.

143. The statements in paragraph 137 regarding a submerged battery technology were further misleading because they omitted to disclose that these batteries were only being used in

two prototypes and had severe functional limitations and associated safety issues, leading investors and prospective investors to believe that these batteries were viable when, in fact, they were not. Specifically, the third-party supplier who helped Nikola develop the batteries mandated that they could only be run on a vehicle with a state-of-charge limitation of 30 percent, due to safety test failures. Milton knew or was reckless in not knowing that his statements about the submerged batteries were misleading as he learned, at least as of February 2019 or sooner, about the batteries' functional limitations and safety issues first-hand from the third-party supplier. In an email sent on February 5, 2019, Milton wrote, "I will agree to one of two of those [restrictions] but it can not (sic) be my financial penalty as a result of your lack of [] not delivering what was promised. . . . These are test packs, not production We do not accept your demands on these batteries with exception to the state of charge on vehicle."

144. Milton knew or was reckless in not knowing that Nikola was using and planned to continue to use "off the shelf" third-party invertors. For an October 2019 meeting of the Board of Directors, Milton received materials that referred to inverters for the Nikola Tre as "off-the-shelf." And, he was directly involved in terminating the inverter co-development effort with a supplier, even requesting a refund from the supplier due to lack of success.

145. Milton knew or was reckless in not knowing the true state of Nikola's battery manufacturing and design capabilities. Milton was deeply involved in, and led aspects of, Nikola's battery development projects. Milton was aware that Nikola could not make the Nikola Tre BEV's batteries in-house and was pursuing Supplier 1 as the only realistic option for supplying the batteries for the Nikola Tre BEV. In an early April 2020 battery program update sent to Milton, a Nikola Vice President of Technology wrote that "on the basis of Tre timing alone, the only possible considerations would be [Supplier 1's] design. . . ." Milton was also

aware the batteries produced for the Nikola Tre BEV would contain Supplier 1's modules, because in November 2019, Milton personally signed a multi-million dollar purchase order for Supplier 1's modules. He was further aware that Nikola was negotiating a battery supply contract – ultimately entered into in August 2020 – with Supplier 1, which specified that Supplier 1's modules would be used.

146. Tellingly, Milton sought to conceal Nikola's relationship with Supplier 1 for fear that it would undermine his false narrative about Nikola's design capabilities.

(a) In November 2019, Milton sent an email to a Nikola employee instructing him to negotiate, as part of one of Nikola's agreements with Supplier 1, the ability for Nikola to approve any disclosure of the companies' relationship. Milton wrote that Nikola "will never give" such approval because he "did not want the image issue with our investors."

(b) On June 4, 2020, a Twitter user tweeted at Milton expressing concern that he "heard that [Supplier 1] ... supplies the batteries" to Nikola. The user was concerned because he saw negative views of Supplier 1's battery testing process on a public website. Milton provided an evasive response to this user, stating: "We do our own batteries at Nikola and have since day 1. We do however test with everyone and if a supplier builds a better battery we would use them. That goes for all supplied parts on our vehicle."

(c) In September 2020, after Nikola had already entered into the battery supply agreement with Supplier 1, Supplier 1 sought Nikola's permission to identify it as a customer as part of Supplier 1's road show in connection with a go-public transaction. Milton opposed the request stating, "[i]t will leak everywhere and hurt our image."

147. All of the misleading statements detailed in paragraphs 133 to 140 above were material, as an investor would consider it important in making an investment decision whether Nikola manufactured its own inverters and batteries, and had capabilities to and did fully design batteries in-house. These statements, taken together, also furthered the impression that Nikola's in-house design program was more robust and further along than it actually was. As reflected by his statement on the *This Week in Startups* podcast, Milton recognized the potential value to Nikola of manufacturing and designing the entirety of the battery.

G. False and Misleading Statements about Total Cost of Ownership

148. Commercial vehicle buying decisions, particularly for large corporate fleets, are driven, in part, by the total cost of ownership ("TCO"), an analysis of the lifetime cost of a truck, from the acquisition through the operating period.

149. Prior to March 2019, Nikola touted that the TCO of its FCEV trucks would be up to 20 percent cheaper than diesel trucks. In March 2019, Nikola's CFO emailed Milton third-party research that Nikola had recently obtained regarding, among other metrics, the TCO of Class 8 semi-trucks. In his email to Milton, the CFO noted that the third-party firm cited TCO for diesel trucks in the "\$.85-\$.95 range," and that "for our purposes, we will use \$.95 . . ."

150. Also in March 2019, a Nikola financial analyst notified Nikola executives – including Milton – that the TCO cost the company was using for diesel trucks was too high, and that the projected TCO for Nikola would be, at best, on par with diesel. Finally, in April 2019, Nikola's Head of Business Development sent Milton and other senior executives notes from her discussions with semi-truck fleet representatives who provided feedback regarding Nikola's TCO. This executive reported that Nikola's actual and potential customers noted that Nikola's "costs are high and not at parity with diesel."

151. Having learned this information, Nikola's Finance department removed the claimed TCO cost savings, as compared to diesel, from its private offering documents in or around March 2019. More than a year later, Nikola claimed in presentations that were attached to its filings with the Commission that its projected TCO costs were at parity with, but not significantly less than, diesel.

152. Despite knowing that Nikola's projected TCO was – at best – on par with diesel, Milton repeatedly made false statements about Nikola's truck being cheaper, on a TCO basis, than diesel trucks:

(a) In an interview on the *Founder Hour* podcast on or about July 6, 2020, Milton claimed that Nikola's TCO, as compared to diesel, "we're like 20 to 30 percent sometimes, cheaper. So it's game over, essentially. If you don't own a Nikola truck, you're gonna go bankrupt."

(b) In a July 14, 2020 Instagram Live video posted to his personal Instagram account, Milton stated "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 – that is, um, that is – that's it how would – that's how it's built out and that's much – it's 20 to 30 percent less than diesel."

(c) In an interview on the *Chartcast* podcast on or about July 17, 2020, which was published by the podcast on or about July 19, 2020, Milton stated: "You have essentially 30, you know, you're almost, you, you're 25, 30% less than a diesel engine to operate, um, which is game over for diesel."

(d) In an interview on the *Stockcast* podcast on or about July 31, 2020, 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 so 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.”

153. As detailed above, all of these statements in paragraph 152 were false because Nikola’s projected TCO was not significantly cheaper than diesel, as Milton knew or was reckless is not knowing. Milton’s misrepresentations about TCO were material, because an investor would consider it important in making an investment decision that Nikola’s flagship FCEV product, which faced adoption barriers, was not actually cheaper to own than its diesel competitors.

V. Additional Indicia of Milton’s Scienter

154. As alleged throughout this Complaint, Milton knew or was reckless in not knowing that his statements detailed herein were false and misleading, and Milton made these statements with the intent to influence investors, prospective investors, and Nikola’s stock price. Milton engaged in additional conduct, described below, that indicates his scienter.

155. In 2019 and 2020, Nikola’s senior executives had repeated conversations with Milton about his misuse of social media. Milton’s relentless social media activity, and his associated fixation on Nikola’s stock price and efforts to affect it, became a concern to these senior executives. Among other things, these senior executives were concerned that Milton’s statements in these forums were not accurate, and some senior executives advised Milton to be accurate when making public statements on social media and other contexts. Some members of

senior management viewed Milton's social media activity as his means for pumping up Nikola's stock.

156. In or around 2019, Nikola's Chief Legal Officer advised Milton about the perils of inaccurate tweets, specifically referencing the Commission's then-recent charges against another auto company executive arising from certain allegedly misleading statements he made in tweets from his personal account relating to material information about the company. In or around early 2019, a senior Nikola executive explained to Milton that tweets from his personal account were the legal equivalent of a company press release, as Milton would be viewed as speaking on behalf of the company in any format.

157. Then, in a series of ongoing conversations in 2019 and 2020, Nikola's then-President advised Milton to let Nikola's Chief Legal Officer pre-screen any tweets that Milton planned on posting from Nikola's corporate account. With few exceptions, Milton did not have anyone pre-screen any of his tweets. And throughout 2020, senior executives continued to urge Milton to be accurate in his public statements and to reduce his social media presence.

158. Further, senior Nikola executives attempted other tactics in the spring and summer of 2020 to try to rein in Milton's social media presence, to no avail. On at least one occasion, they enlisted the help of a member of Nikola's Board of Directors who they believed could influence Milton. And they scheduled media training for all senior executives with a third-party service provider, but Milton did not attend.

159. In general, Milton responded to feedback about his social media presence and his public statements about Nikola by asserting that these senior executives did not understand current capital market dynamics or what he was trying to accomplish with retail investors, and that he needed to be on social media to put out good news about Nikola to support its stock price.

160. As alleged above in paragraphs 44 and 45, Milton had a financial incentive to increase and support the price of Nikola's stock, based on the shares he held and the shares he was entitled to earn if Nikola reached and sustained certain stock price milestones. During negotiations of the Business Combination, Milton resisted the inclusion of provisions that would have required him to be locked up from transacting in Nikola securities for any period of time, and, when that became infeasible, sought to negotiate as short of a lock-up period as possible. Ultimately, Milton agreed to a one-year lock-up pursuant to a Registration Rights and Lock-up Agreement.

161. Carved out from the lock-up was Milton's \$70 million cash-out at the time of the Business Combination and up to an additional \$70 million in stock that could be sold six months after the Business Combination. Despite these lucrative carve-outs from the lock-up, Milton almost immediately sought to shorten his lock-up. In a July 7, 2020 email exchange with a member of Nikola's Board of Directors, Milton justified being released from the lock-up by citing the "over 400% gain" that he delivered, making "everyone else millionaires and billionaires." Lifting the lock-up, according to Milton's reasoning, would "allow us to manage our estates and finances the right way."

162. Milton's efforts bore fruit almost immediately. On July 17, 2020, just over a month after entering into the Registration and Lock-up Agreement, Milton, Nikola, and the other parties to the agreement agreed to amend it. Under the terms of the amendment, which Milton specifically requested, (i) Milton's lock-up period was shortened from one year to just under six months, and (ii) Milton was permitted to transfer up to 16 percent of his shares solely to the extent necessary to pledge such shares as collateral in connection with indebtedness incurred by him for the purpose of purchasing additional shares of Nikola stock.

VI. Relevant Securities Offerings and Filings

163. In connection with the Business Combination, on March 13, 2020, VectoIQ filed with the Commission a Registration Statement on Form S-4, which included a Preliminary Proxy Statement, Prospectus, and Information Statement. On May 8, 2020, this Registration Statement was declared effective and VectoIQ filed a Prospectus, a Notice of Meeting, and Proxy Statement.

164. On June 15, 2020, Nikola filed with the Commission a Registration Statement on Form S-1 relating to (i) the issuance of Nikola common stock issuable upon the exercise of warrants originally issued by VectoIQ, and (ii) the offer and sale from time to time of Nikola common stock held primarily by the PIPE investors, VectoIQ's sponsor, and certain of its affiliates. This Registration Statement was declared effective on July 17, 2020.

165. On July 17, 2020, Nikola filed with the Commission a Registration Statement on Form S-1 relating to the offer and sale from time to time of Nikola common stock held by the founding shareholders of VectoIQ and by certain pre-Business Combination investors in Nikola (including entities controlled by Milton). This Registration Statement was declared effective on July 27, 2020.

166. Many of Milton's false and misleading statements alleged in this Complaint were made at the time securities were being offered and sold pursuant to these registration statements.

VII. Events Leading to Milton's Resignation from Nikola

167. On September 10, 2020, a financial research firm that represented that it had taken a short position in Nikola published a report asserting, among other things, that Milton made misrepresentations about Nikola's business. Nikola's stock price fell approximately 24 percent on news of the report. Nikola disclosed in its filings with the Commission that on September 20, 2020, Milton resigned from his position as Executive Chairman.

168. On February 25, 2021, Nikola filed its Form 10-K for the year ended December 31, 2020. In the filing, Nikola admitted that certain statements Milton made that were highlighted in the report released by the financial research firm were “inaccurate in whole or in part, when made.” Nikola’s stock price fell further on the filing of the Form 10-K and dropped a total of approximately 57 percent during the time period between the date of the research firm’s report and the day after the release of the Form 10-K.

FIRST CLAIM FOR RELIEF

Violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)]

169. The Commission re-alleges and incorporates paragraphs 1-168 by reference as if fully set forth herein.

170. Milton, directly or indirectly, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, has:

- a. employed a device, scheme, or artifice to defraud; and/or
- b. obtained money or property by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or
- c. engaged in a transaction, practice, or course of business which operated or would operate as a fraud or deceit upon the purchaser.

171. By reason of the foregoing, Milton has violated, and unless enjoined will continue to violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

SECOND CLAIM FOR RELIEF

**Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)]
and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]**

172. The Commission re-alleges and incorporates paragraphs 1-168 by reference as if fully set forth herein.

173. By engaging in the acts and conduct alleged herein, Milton, directly or indirectly, singly or in concert with others, in connection with the purchase or sale of securities, by use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange:

- a. employed a device, scheme, or artifice to defraud; and/or
- b. made untrue statements of material facts, or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or
- c. engaged in acts, practices, or courses of business which operated, or would operate, as a fraud or deceit upon any person.

174. By reason of the foregoing, Milton has violated, and unless enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court enter a Final Judgment:

I.

Finding that Defendant violated the provisions of the federal securities laws alleged herein;

II.

Permanently restraining and enjoining Defendant from violating Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;

III.

Ordering Defendant to disgorge, with prejudgment interest, all ill-gotten gains received as a result of the violations alleged herein;

IV.

Ordering Defendant to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)];

V.

Ordering, pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], that Defendant be prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)];

VI.

Ordering that Defendant be permanently restrained and enjoined from directly or indirectly, including but not limited to, through any entity owned or controlled by him, participating in the issuance, purchase, offer or sale of any security; provided however that such injunction shall not prevent him from purchasing or selling securities for his own personal account; and

VII.

Granting such other and further relief as this Court may deem just, equitable, or necessary.

Dated: July 29, 2021

Respectfully submitted,

/s/ Nikolay V. Vydashenko

Nikolay V. Vydashenko

Keefe M. Bernstein*

Rebecca R. Fike*

Sarah S. Mallett*

*Application for admission *pro hac vice*
pending

U.S. Securities and Exchange Commission
801 Cherry Street, Suite 1900
Fort Worth, Texas 76102
Tel: (817) 900-2638 (Vydashenko)
vydashenkon@sec.gov
Tel: (817) 900-2607 (Bernstein)
bernsteink@sec.gov
Tel: (817) 978-1420 (Fike)
malletts@sec.gov
Tel: (817) 978-6447 (Mallett)
fiker@sec.gov

Exhibit B

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE RAMOS

UNITED STATES OF AMERICA

SEALED INDICTMENT

- v. -

21 Cr.

TREVOR MILTON,

21 CRIM 478

Defendant.

COUNT ONE
(Securities Fraud)

The Grand Jury Charges:

Overview

1. From at least in or about November 2019 up through and including at least in or about September 2020, TREVOR MILTON, the defendant, engaged in a scheme to defraud investors by inducing them to purchase shares of Nikola Corporation ("Nikola"), the electric- and hydrogen-powered vehicle and energy company that MILTON founded, through false and misleading statements regarding Nikola's product and technology development. MILTON's scheme targeted individual, non-professional investors - so-called "retail investors" - by making false and misleading statements directly to the investing public through social media and television, print, and podcast interviews.

2. 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.

3. TREVOR MILTON, the defendant, made these false and misleading statements regarding Nikola's products and capabilities to induce retail investors to purchase Nikola stock. Among the retail investors who ultimately invested in Nikola were investors who had no prior experience in the stock market and had begun

trading during the COVID-19 pandemic to replace or supplement lost income or to occupy their time while in lockdown. The value of Nikola's stock, including stock held by retail investors, plummeted after certain of MILTON's statements were revealed to be false and misleading. As a result, some of the retail investors that MILTON's fraudulent scheme targeted suffered tens and even hundreds of thousands of dollars in losses, including, in certain cases, the loss of their retirement savings or funds that they had borrowed to invest in Nikola.

4. TREVOR MILTON, the defendant, was motivated to engage in the fraudulent scheme in order to enrich himself and elevate his stature as an entrepreneur. Indeed, during 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 a publicly traded special-purpose acquisition company ("SPAC"), 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.

Trevor Milton and Nikola

5. At all times relevant to this Indictment, TREVOR MILTON, the defendant, was the founder and largest single owner of Nikola's stock. MILTON is a serial entrepreneur from Utah with no formal background in engineering. MILTON founded Nikola in or about 2015. He was the Chief Executive Officer ("CEO") of Nikola from its founding until in or about June 2020, when Nikola's stock became publicly traded, and MILTON became the Executive Chairman of Nikola's Board of Directors. MILTON served as Executive Chairman of Nikola until his resignation on or about September 20, 2020.

6. At all times relevant to this Indictment, Nikola was a corporation that described itself as a designer and manufacturer of zero-emission battery-electric and hydrogen-electric vehicles, electric vehicle drivetrains, vehicle components, energy storage systems, and hydrogen station infrastructure.

7. Nikola described its primary intended products as battery- and hydrogen fuel cell-powered semi-trucks, including, as is relevant to this Indictment, Nikola's first model, the Nikola One, and its later designs, the Nikola Two and Tre. Nikola also marketed itself as vertically integrated, in that it would not only manufacture hydrogen-electric vehicles, but it would also produce hydrogen at a low cost at a network of hydrogen fueling stations that it was developing.

8. At all times relevant to this Indictment, Nikola was a "pre-revenue company," meaning that it had yet to sell any vehicles or to produce a production-ready version of any of its products, or to produce or sell any hydrogen fuel. Indeed, as of July 22, 2021, according to Nikola's most recent quarterly report filed with the United States Securities and Exchange Commission ("SEC") Nikola remained a pre-revenue company.¹

Background on Special Purpose Acquisition Companies

9. An initial public offering ("IPO") is the process by which a company first issues shares to be sold to the public on a stock exchange. Under federal securities laws, a company seeking to go public through an IPO must file a registration statement and prospectus with the SEC that describe in detail the business of the company, its financial condition, and the nature of the securities offering.

10. Among other things, and generally in order to create fairness in the market and protect retail investors, federal securities laws impose what is commonly referred to as a "quiet period" in connection with IPOs. Among the purposes of a quiet

¹ In or about 2019 and 2020, Nikola generated a small amount of revenue by installing solar panels, including for TREVOR MILTON, the defendant. Nikola considered the amount of this revenue to be immaterial, and solar panel installation is not part of Nikola's business model nor is Nikola continuing to engage in any solar panel installation projects.

period is to create a level playing field by ensuring that all investors have the same access to information at the same time and to prevent executives from hyping or inflating the stock price. The quiet period lasts from the time the company issuing the stock discloses information about the issuance in its registration statement and prospectus until forty days after the new stock begins trading. During the quiet period, executives of the company generally may not provide to anyone any information about the company other than what was previously disclosed in the registration statement and prospectus.

11. A SPAC provides an alternative method for a private company to become a publicly traded company - that is, for a company's stock to be sold to the public on a stock exchange. A SPAC is a publicly traded company with no business of its own that is formed for the purpose of merging with a private company so that the private company may become publicly traded. To accomplish this goal, SPACs issue shares through an IPO with the plan to identify a promising company with which to merge. After its IPO, a SPAC seeks to combine with an operating company. Once the SPAC has identified such an opportunity, it negotiates with the operating company and, if approved by the SPAC shareholders, merges with the private operating company. After the deal is complete, the shares of the SPAC become the shares of the operating company, which then can be bought and sold by the public on a stock exchange.

12. Unlike an IPO, a SPAC transaction is not subject to a quiet period. Therefore, unlike when shares are first issued through an IPO, when a private company becomes publicly traded through a merger with a SPAC, its executives are not limited in their ability to speak publicly about the business of the company.

Nikola's Going Public Combination with VectoIQ

13. The SPAC through which Nikola went public was VectoIQ Acquisition Corporation ("VectoIQ"). VectoIQ was founded in or about 2018 and based in Mamaroneck, New York. VectoIQ was formed to raise capital for the purpose of acquiring a private company in the transportation industry. VectoIQ itself had no business.

14. In or about November 2019, VectoIQ and Nikola began negotiating a potential business combination that would result in Nikola's stock being publicly traded by Nikola merging with VectoIQ. During the course of negotiations over the business combination, and before that combination was consummated, VectoIQ and its principal shareholders, who were large investment management firms, had access to detailed, non-public information on which to conduct diligence. As a result, the VectoIQ shareholders were able to review Nikola's books and records, tour Nikola's facilities, and ask questions of Nikola's engineers and management.

15. On March 3, 2020, Nikola announced that its stock would become publicly traded following a business combination with VectoIQ. At that time, VectoIQ's shares were already publicly traded on the Nasdaq stock exchange, in New York, New York, under the ticker "VTIQ." That same day, Nikola announced that it had obtained an additional \$525 million in funding through a private investment in public equity ("PIPE"), in which investors purchased VectoIQ stock for \$10 per share. The PIPE investors were largely investment management firms. Like the VectoIQ shareholders, the PIPE investors had the ability to review Nikola's books and records, tour Nikola's facilities, and ask questions of Nikola's engineers and management.

16. On or about June 3, 2020, the business combination between Nikola and VectoIQ was completed, at which time the resulting company was named Nikola Corporation and VectoIQ's shares on the Nasdaq become Nikola shares, trading under the ticker "NKLA." Because investors could purchase shares of what would become NKLA stock after on or about March 3, 2020, but before on or about June 3, 2020, by purchasing VTIQ stock, NKLA and VTIQ are referred to together in this Indictment as "Nikola stock."

17. As a result of the scheme to defraud undertaken by TREVOR MILTON, the defendant, many retail investors purchased Nikola stock based, at least in part, on false and misleading information promoted publicly by MILTON. By contrast, early strategic

investors, VectoIQ shareholders, and PIPE investors who had invested prior to the completion of the business combination between Nikola and VectoIQ had access to more complete and accurate information during their prior due diligence periods. Those investors were able to sell their Nikola stock for a profit at a time when retail and other investors were purchasing stock based, at least in part, on the false and misleading information provided by MILTON and described below.

Milton's Stock Ownership and Compensation

18. Pursuant to the terms of the combination between Nikola and VectoIQ, upon its completion, TREVOR MILTON, the defendant, owned, through M&M Residual, approximately 91,602,734 shares in Nikola, representing approximately 25.4% of the total ownership of the company. On or about June 3, 2020, when the business combination between Nikola and VectoIQ was completed, Nikola shares opened the day trading at approximately \$33.69 per share, resulting in a value for MILTON's shares of approximately \$3,086,096,108.

19. Also pursuant to the terms of the combination between Nikola and VectoIQ, TREVOR MILTON, the defendant, was able to sell back to Nikola \$70 million in additional shares in or about June 2020 when the business combination between Nikola and VectoIQ was consummated. MILTON's right to sell the \$70 million in shares back to the company at that point in time was the result of a negotiation

between VectoIQ and its investors and MILTON on the issue, among other things, of whether MILTON would be subject to a "lock-up" that would prevent MILTON from selling any shares for a specified period of time following the consummated merger, and which MILTON did not want. Generally, one purpose of such a lock-up is to keep management invested in delivering on the business's plan rather than cashing out for short-term gain.

20. TREVOR MILTON, the defendant, was ultimately subject to a six-month lock-up, which he negotiated down from an initial agreement of a one-year lock-up. Accordingly, the lock-up restricted MILTON from selling his remaining shares for the six-month period beginning June 3, 2020. During that six-month period, MILTON expressed his intention within the company to sell shares once the lock-up period ended.

21. At the time of the business combination between Nikola and VectoIQ, TREVOR MILTON, the defendant, also entered into a new compensation agreement with Nikola. Except for an annual salary of \$1, MILTON's compensation was entirely in the form of stock units that would vest over time, including bonus stock units that MILTON would receive if certain stock price milestones were achieved.

The Scheme to Defraud

22. From at least in or around November 2019 up through and including at least in or about September 2020, TREVOR MILTON, the defendant, sought to fraudulently induce retail and other investors to purchase Nikola's stock by making false and misleading statements about Nikola's products and milestones on social media and in television and podcast interviews. MILTON's false and misleading claims were intended to drive demand for Nikola's stock among retail investors, including at times when early strategic investors and other sophisticated investors were selling their stock, which might otherwise tend to cause the stock price to decrease.

23. Beginning at least in or about March 2020 when Nikola announced that its stock would become publicly listed through Nikola's combination with VectoIQ, TREVOR MILTON, the defendant, became increasingly preoccupied with Nikola's stock price, and with keeping Nikola's stock price high.

24. In order to generate popular demand for Nikola's stock, TREVOR MILTON, the defendant, used social media and television and podcast interviews to communicate directly with potential retail investors. For example, on or about March 2, 2020, which was the day before Nikola publicly announced that it would combine with VectoIQ, MILTON wrote in an email to a member of the board of directors of Nikola, that we "need to make sure we are getting

retail investors on our side. That is what prevents the stock short selling. This is super important to me."

25. Accordingly, TREVOR MILTON, the defendant, appeared for numerous interviews on podcasts and on television, and in print and online media, beginning immediately following the announcement of Nikola's going public combination with VectoIQ. MILTON was able to do so because Nikola went public by means of a SPAC combination, rather than an IPO, and MILTON was therefore not subject to the restrictions of a quiet period. MILTON himself explained on a podcast in or about June 2020 that the advantage of a SPAC was that he could "communicate with the market," and instead of "bankers . . . trying to tell people what your company is like," "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."

26. As set forth below, in order to encourage retail investors to purchase Nikola stock, and thereby to increase and support Nikola's stock price, TREVOR MILTON, the defendant, made false and misleading claims about Nikola's business, including false and misleading claims regarding:

a. The company's early purported success in creating a functioning semi-truck prototype known as the "Nikola One";

b. The development of an electric- and hydrogen-powered pickup truck known as "the Badger";

c. Nikola's ability to produce hydrogen for the purpose of fueling its vehicles;

d. Nikola's in-house development of technology and components; and

e. The nature of the reservations for future delivery of Nikola's semi-trucks.

False and Misleading Claims Regarding the Nikola One

27. Throughout in or about 2020, TREVOR MILTON, the defendant, promoted a false and exaggerated narrative that Nikola was a first mover in the zero-emissions-trucking business. Specifically, MILTON emphasized that Nikola had defied expectations as a young, disruptive company when it managed to build its prototype Nikola One, which Nikola unveiled on or about December 1, 2016, at a large event that was filmed and broadcast on the internet. An image of the Nikola One at the unveiling event appears below:



28. During that event and later, TREVOR MILTON, the defendant, claimed that the prototype Nikola One was a fully functioning truck, and emphasized that early purported success as a defining event for Nikola. For example, MILTON stated during the March 3, 2020 pre-recorded merger announcement conference call for Nikola's merger with VectoIQ: "I founded the company to completely disrupt the energy and transportation market. When our company first announced the Nikola One Semi truck in 2016, most other brands said zero emission would never work. WOW, were they wrong." Similarly, in a podcast that was recorded in or about January 2020, and broadcast on the internet on or about March 12, 2020, MILTON denied that the Nikola One was "vaporware," i.e. a product that is marketed but does not yet exist, and stated regarding the Nikola One, "what we did is we came out and we proved to everyone that we really did have what we promised, and that was a humongous kind of drop the mic moment for the industry. Every OEM [Original Equipment Manufacturer²] around the world now is spending billions just to catch up because they thought that Nikola was not legitimate, and now they're terrified." In podcasts recorded in or about July 2020, MILTON repeatedly stated that "Nikola was the first company to actually launch the zero emission semi-truck back in 2016." As

² Although the term OEM can have several different meanings, as used here and elsewhere by MILTON, OEM refers, in substance, to established automakers.

discussed below, these claims were false and misleading.

29. Contrary to what TREVOR MILTON, the defendant, claimed, Nikola had not successfully reached the milestone of creating a fully functioning prototype at the Nikola One launch event on December 1, 2016. In fact, the Nikola One prototype was not completed, let alone tested and validated, by the time of the unveiling event.

30. Indeed, the prototype was wholly missing significant parts, including gears and motors, and the control system (i.e., the system that communicates the driver's directions to the vehicle) was incomplete. The infotainment system in the cab was also incomplete. Instead, for the purpose of the unveiling event, tablet computers or other computer screens were mounted into the areas where the screens for the infotainment would be, and the screens were set to display images created to have the appearance of infotainment screens, with speedometers, maps, and other information displayed. Further, the truck was towed onto the stage at night prior to the event, and the screens and lights were powered by an external battery and a power cord running under the truck to the wall, which had to be manually disconnected as the stage spun. Similarly, an air line had to be connected to the vehicle to keep the truck's air suspension and air brakes working, because there was a slow leak in the truck's air supply. Nikola personnel operated the truck's headlights at the event by remote

control.

31. Notwithstanding the actual state of the Nikola One prototype, the unveiling of the Nikola One occurred on or about December 1 and 2, 2016, under the direction of TREVOR MILTON, the defendant. On the first evening MILTON hosted an event at which the Nikola One was "unveiled" on a stage in front of a crowd. Individuals who had made reservations to purchase a Nikola One, potential business partners, and current and potential investors were invited.

32. During the evening event on or about December 1, 2016, TREVOR MILTON, the defendant, falsely claimed that the Nikola One was fully functioning and could be driven. For example, MILTON stated, "We will have a chain on the -- on the seats to prevent people from coming in just for the safety . . . so we're going to try to keep people from driving off, but this thing fully functions and works, which is really incredible." A video of MILTON's presentation was posted on Nikola's YouTube channel, and the video was viewed over 1,450,000 times by in or about September 2020.

33. On or about December 2, 2016, TREVOR MILTON, the defendant, was interviewed sitting in the Nikola One cab by an editor of a large technology and science website. The video of the interview was posted publicly online. During the interview, MILTON stated again that the Nikola One was a "fully functioning vehicle."

34. Following the 2016 unveiling of the Nikola One, TREVOR MILTON, the defendant, determined not to complete the prototype, and no further substantial engineering was undertaken. The truck was never completed and has never been operable.

35. In or about 2017, a representative of a large multinational corporation approached Nikola and asked to use the Nikola One in a commercial celebrating innovation. The concept for the video included a shot of the Nikola One coming to a stop in front of a stop sign. In order to accomplish this feat with a vehicle that could not drive, the Nikola One was towed to the top of hill, at which point the "driver" released the brakes, and the truck rolled down the hill until being brought to a stop in front of the stop sign. For additional takes, the truck was towed to the top of the hill and rolled down the hill twice more. Additionally, the Nikola One's door, which had been constructed using minivan parts, had to be taped up during the shoot to prevent it from falling off. Moreover, because the Nikola One had not been tested and was not safe (and indeed could not operate), certain precautions were taken before towing the vehicle to the commercial shoot. In particular, the turbine, which was designed to run on natural gas, and batteries were entirely removed from the vehicle to mitigate risk of fire, explosion, or damage. TREVOR MILTON, the defendant, attended the shoot.

36. Following the commercial shoot, TREVOR MILTON, the defendant, directed a Nikola employee to make a condensed video of the Nikola One truck moving using raw footage from the shoot. MILTON further directed that the resulting video be uploaded to Nikola's YouTube channel. On or about January 25, 2018, at MILTON's direction, Nikola's Twitter account tweeted the following:



Nikola Motor Company @nikolamotor · Jan 25, 2018

Behold, the Nikola One in motion. Pre-production units to hit fleets in 2019 for testing. The Nikola Hydrogen Electric trucks will take on any semi-truck and outperform them in every category; weight, acceleration, stopping, safety and features - all with 500-1,000 mile range!



Embedded in the tweet is the video created from the raw commercial footage. In the video, the Nikola One appears to be driving down a road with no incline. In other words, the Nikola One appears to be driving on its own power, notwithstanding that the Nikola One could not do so and has never done so. Similarly, that same day, Nikola's Facebook account, also pursuant to MILTON's direction,

posted: "Behold, the 1,000 HP, zero emission Nikola semi-truck in motion," along with the same video.

37. At least certain retail investors who purchased publicly traded Nikola stock between in or about June and September 2020 watched one or more of the above-described video presentations in which TREVOR MILTON, the defendant, made repeated false statements about the operability of the Nikola One. Although several years later, in or about April 2019, Nikola did complete two prototypes of a different model of semi-truck known as the Nikola Two, as a result of MILTON's statements, these retail investors purchased Nikola stock with the incorrect belief that Nikola had successfully created a fully functioning Nikola One in or about 2016.

38. On or about June 17, 2020, approximately two weeks after Nikola's business combination with VectoIQ closed and Nikola was listed publicly on the Nasdaq stock exchange, an article was published in a widely read business magazine reporting, in substance, that the Nikola One was not functioning at the December 1, 2016 unveiling event. TREVOR MILTON, the defendant, who was interviewed prior to the publication of the article, conceded that the truck did not drive under its own power, but claimed that this was because the motors and gears were removed from the truck for safety reasons and that he "never deceived anyone."

39. On or about June 17, 2020, following the publication of the article correctly and accurately reporting that TREVOR MILTON,

the defendant, had falsely stated that the Nikola One prototype was fully functional when it was not, MILTON published several tweets criticizing the article, accusing its author of lying, and threatening legal action. MILTON then texted a member of Nikola's board of directors regarding the article, and stating, among other things, "Share value went up after my response."

40. In or about June and July 2020, TREVOR MILTON, the defendant, participated in several television and social media appearances, during which he stated, in substance and in part, that the Nikola One was operable, but that parts were removed and the prototype was not actually driven because of safety concerns. These statements were false and misleading because the Nikola One prototype was not functional or operable at the time of the unveiling, and never has been.

False and Misleading Claims Regarding the Badger

41. In or about February 2020, TREVOR MILTON, the defendant, announced publicly that Nikola was making a pickup truck called the Badger, which he claimed would out-pace its rivals and be unveiled at an event in or about late 2020. Many of Milton's statements contained false representations about the Badger truck. In particular, in order to give investors a false impression of the status of the Badger's engineering and development, Milton repeatedly stated that Nikola engineered and built the Badger from the "ground up" as a "clean sheet" vehicle using Nikola's in-house

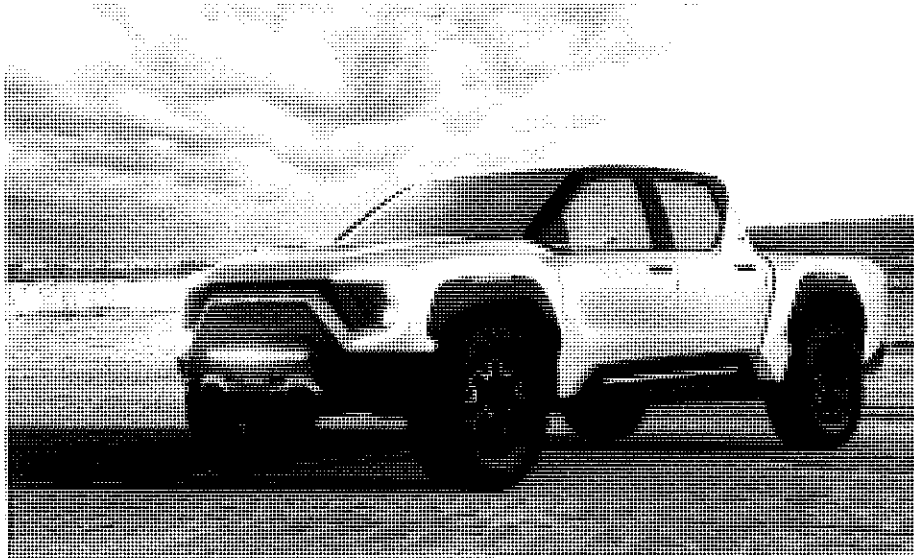
components and intellectual property; that the company had been working on the program for years and had tapped into billions of dollars in Nikola engineering; that the building of prototype vehicles was complete and they were "real" trucks; and that an OEM partner (the "OEM Partner") would mass-produce the vehicle using Nikola's prototype design and engineering.

42. In truth and in fact, at the time TREVOR MILTON, the defendant, announced the Badger, Nikola had little more than concept sketches and renderings, and that remained the case for several months. When Nikola started working on a "prototype," it did not engineer the vehicle from the ground up, but rather hired third party vendors to build a show truck by modifying pickup trucks manufactured by a large automobile company and employing third-party components. And under the terms of Nikola's agreement with the OEM Partner, very little, if any, of Nikola's design, engineering, or intellectual property were to be used in the production of the Badger. The OEM Partner never saw the "prototype" vehicles MILTON had claimed Nikola was working on, and the OEM Partner had no plan to use those vehicles in its development of a pickup truck. MILTON also boosted interest in the Badger and gave the misleading impression that the Badger was far along in development with additional deceptive statements, including that Nikola would start taking reservations on the truck, that certain

reservation packages were sold out, and that the truck had particular capabilities or technical features.

43. More specifically, in or about November 2019, TREVOR MILTON, the defendant, tweeted a rendering of a pickup truck in response to the public announcement by a large electric vehicle manufacturer that it would be producing an electric pickup truck. In or about January 2020, MILTON approached other executives at Nikola with a proposal to develop a pickup truck based on the image that he had previously tweeted. Although the executives were reluctant to agree to the plan, which they understood to be distracting from and potentially harmful to Nikola's core business plan, MILTON insisted on creating a pickup-truck line based on, among other things, his perception of the interest the pickup truck had generated on social media. MILTON agreed, however, that Nikola would only move forward with the pickup truck if he found an OEM partner to produce the vehicle. MILTON reached out to at least one OEM for potential partnership in or about January 2020 but did not secure a deal at that time.

44. In early February 2020, Nikola was working toward finalizing and announcing its deal with VectoIQ. On or about February 10, 2020, at the direction of TREVOR MILTON, the defendant, Nikola announced the pickup truck, named the Nikola Badger, in a press release and on social media. The next day, Nikola tweeted the following rendering of the Badger:



45. On or about February 14, 2020, MILTON appeared on television and stated regarding the Badger, among other things, "we are building it from the ground up 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 the entire truck from the ground up is designed by Nikola"

46. Nevertheless, in or about February 2020, TREVOR MILTON, the defendant, continued to seek an OEM partner to develop the Badger, for which Nikola had performed no significant engineering. Through the first quarter of 2020, however, MILTON's efforts to secure an OEM partnership for the Badger were not successful.

47. In the absence of an OEM partner, in or about March 2020, TREVOR MILTON, the defendant, directed a small group of Nikola employees to build Badger prototypes. However, because the Nikola employees were focused on other Nikola development projects, the

production of Badger prototypes was outsourced, at MILTON's direction, to third parties, with one vendor contracted to create the upper body of the vehicles, and another to build the chassis. Neither component was being built from the ground up. Rather, Nikola purchased several Ford F-150 pickup trucks - a highly popular model to which MILTON had claimed his Badger would compare favorably - to use as "donor" or "surrogate" vehicles, and used the vehicles' chasses and bodies as the base for constructing the Badger prototypes. At MILTON's direction and with his approval, engineers working on the Badger prototypes took steps to hide from the public that Ford donor vehicles were used to produce the prototypes.

48. Furthermore, even though MILTON had announced that there would be both a battery-electric version of the Badger and hydrogen fuel cell version of the Badger, MILTON directed, in order to make the construction of the prototypes easier, that both prototypes be battery-electric. Although neither of the prototypes was designed to operate on hydrogen fuel, MILTON directed that they be fitted with hydrogen fueling ports to make it appear as though they were.

49. As of in or about June and July 2020, Nikola was still working on finalizing engineering plans for the prototypes, at which point Nikola only had renderings of the vehicles and concept sketches. In or about August 2020, Nikola began tooling, which means making the tools needed to make the parts of the vehicle

that Nikola's subcontractors were fabricating. The interior and exterior of the body, as well as the chassis, were not completed until in or about September or October 2020. Many of the parts coming from third parties - including, as discussed below, the batteries, inverters, and controls - were also not ready for installation until in or about October 2020. The prototypes were not finished until in or about November or December 2020.

50. Notwithstanding the above, after Nikola announced its plans to go public through its merger with VectoIQ on or about March 3, 2020, TREVOR MILTON, the defendant, made false and misleading public statements describing the Badger as "real" and "fully functioning," despite the fact that Nikola had not yet built anything. For instance, during a podcast interview on or about April 20, 2020, a link to which MILTON subsequently tweeted, MILTON stated, "we built this thing to be a true vehicle," it is based on a "billion dollars of knowledge" from Nikola's semi-truck program, the "truck can go 700 miles in a real environment," and it can "whoop a Ford F-150 . . . whoop a Silverado . . . whoop a Dodge Ram." MILTON promised that at the truck's unveiling he would show off a "real truck" that is "fully functioning," not one of those "pushers everyone puts out there as a fake vehicle to show everyone what they're doing." Similarly, during an interview broadcast on YouTube on or about June 1, 2020, MILTON described the Badger as a "fully functioning vehicle inside and outside, HVAC [heating

ventilation and air conditioning], and everything, windows, all of it works . . . a real, real truck . . . not just some mock-up thing that other people have done."

51. Once Nikola's stock was officially publicly traded, on or about June 3, 2020, TREVOR MILTON, the defendant, increased the number of public comments he made about the Badger. Many of those statements concerning the engineering of the Badger and the status of the truck were false and misleading, giving the impression that the truck's development or engineering was more advanced than it really was.

52. On or about June 7, 2020, in the evening, TREVOR MILTON, the defendant, announced on Twitter that Nikola was going to start taking reservations for the Badger on June 29, 2020. On or about June 9, 2020, in response to a question about when the "first prototype [will] be produced," Milton tweeted, "Already." As noted, in truth and in fact, as of June 8, 2020, Nikola only had renderings of the vehicles and concept sketches.

53. On or about June 8, 2020, the morning following the announcement by TREVOR MILTON, the defendant, that Nikola would take reservations for the Badger, Nikola's stock opened at \$42 per share, \$7 above where it had closed the prior day, and \$9 above the price when it went public less than a week prior. On or about June 9, 2020, following the additional tweets referenced above, Nikola's stock price opened at \$93.13 per share.

54. During in or about June 2020, TREVOR MILTON, the defendant, continued to make false and misleading statements regarding the Badger on television and podcast interviews, including statements claiming, in substance and in part, that Nikola had built the Badger.

55. On or about June 25, 2020, TREVOR MILTON, the defendant, issued several tweets making claims about how the Badger would use the water created as a by-product of the hydrogen fuel cell. In particular, MILTON tweeted that the Badger uses "most all of it for our windshield washer fluid and . . . a little bit for clean, pure, drinking water." Approximately several minutes later, MILTON 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." In fact, at that point, MILTON had not discussed with Nikola's engineers the idea of using fuel cell by-product as washer fluid or drinking water, and several days later attempted to determine if it was even possible by searching on the internet, "can you drink water from a fuel cell?" Nonetheless, MILTON instructed that the Badger prototypes be built with drinking fountains, even though neither prototype was actually a fuel cell truck. MILTON continued to promote the Badger's drinking water system on television and social media in or about June and July 2020.

56. On or about June 29, 2020, as TREVOR MILTON, the defendant, had previously announced, Nikola began taking deposits for the Badger truck with three differently priced reservations packages. Within days of Nikola starting to take reservations for the Badger, MILTON tweeted that the most expensive reservation was "sold out," thereby creating the misleading impression that Badger sales were going well, which they were not. In fact, on or about the day reservations opened, Nikola received approximately 2,411 preorders. Nikola received approximately 249 additional orders on or about June 30, 2020; approximately 87 on or about July 1, 2020; and approximately 124 on or about July 2, 2020. On or about July 2, 2020, after online speculation that reservation numbers were not being released because they were low, MILTON tweeted that the "\$5,000 #nikolabadger deposit package [had] sold out." No one at Nikola knew of MILTON's plans to announce that the package had been sold out, and after he tweeted, Nikola employees had to scramble to remove the package from the company's website.

57. During in or about July and August 2020, TREVOR MILTON, the defendant, continued to issue false and misleading statements regarding the status of the Badger. For example, on or about July 14, 2020, on an Instagram Live video - a link to which was tweeted by MILTON - MILTON stated that the Badger was "a real truck, comes from a billion dollar program," and is "legitimate." MILTON then asked rhetorically, in an apparent reference to the criticism he

was receiving on social media, "Why do I not show the Badger right now?" Answering his own question, MILTON stated, "Because I don't have to. And why else? Because it's marketing. So go get a degree in marketing, learn what it's like, even negative press brings great press. With every hater comes great followers and great investors."

58. During in or about June, July, and August 2020, TREVOR MILTON, the defendant, continued to seek an OEM partner for the Badger. In or about August 2020, Nikola, at MILTON's direction, entered into an agreement with the OEM Partner, pursuant to which the OEM Partner would produce the Badger.

59. On or about September 8, 2020, Nikola and the OEM Partner announced a strategic partnership. In tweets following the announcement on or about September 8 and 9, 2020, TREVOR MILTON, the defendant, stated that Nikola had "designed the Badger from a clean sheet," "built the [B]adger from the ground up," and that the OEM Partner "will use Nikola's design, and engineer it to fit on the existing [OEM Partner] modular EV platform." On or about September 9, 2020, during a television interview, MILTON stated that Nikola "built the Nikola Badger from the ground up ourselves, the whole thing" and that the vehicle is "pretty close" to the "final car" that the OEM Partner would be manufacturing. According to MILTON, while the OEM Partner would manufacture the truck and help with certain parts, "it's probably 70 percent Nikola 30

percent [the OEM Partner]" and 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."

60. In truth and in fact, and as TREVOR MILTON, the defendant, well knew, Nikola had not built a Badger from "the ground up" using Nikola IP and parts and the OEM Partner in fact planned to build the Badger based on one of its own electric vehicle platforms. Moreover, the OEM Partner was responsible for all components of the Badger truck, except for the general aesthetic and potentially the infotainment system. With the possible exception of the infotainment system, there was no plan to use any parts over which Nikola had intellectual property rights. No one at the OEM Partner ever saw the Badger prototypes that Nikola had been working on and they were not part of the OEM Partner's engineering or development plans.

61. Furthermore, the two prototype Badgers built were little more than show cars and not real consumer vehicles. For example, the Badger prototypes could not be driven on roads because some of the parts of the body were carbon fiber composite and because they had not undergone safety testing. The Badger prototypes also lacked certain parts, such as airbags and an operable HVAC. Similarly, many of the lights in the interior of the Badger prototypes were

not operable and were merely backlit. Moreover, even though the prototypes were battery-electric trucks, TREVOR MILTON, the defendant, directed that they be built with hydrogen fueling ports as well as drinking fountains (which were simply connected to water reservoirs, as there was no fuel cell or system for converting fuel cell by-product to drinking water). For these reasons, among others, the statements made by MILTON that claimed in substance that the Badger was a real truck, that it had been completed, and it would be based on Nikola's technology and engineering were false and misleading.

False and Misleading Claims Regarding Hydrogen Production

62. Since in or about 2016, a key component to the success of Nikola's business model has been the ability to produce, store, and dispense hydrogen efficiently and economically. This is because, as Nikola has stated publicly and in investor materials, Nikola has planned to construct a network of hundreds of hydrogen fueling stations along trucking routes and to include the cost of hydrogen as part of a bundled lease for its trucks. Furthermore, because the cost of electricity is the most significant cost input for operating the machines that create hydrogen (which are called "electrolyzers"), the profitability of Nikola's business model has been and is highly dependent on Nikola's ability to acquire electricity at a price that would permit Nikola to produce hydrogen

cheaply enough to make its leases economically viable for customers.

63. At all times relevant to this Indictment, Nikola had never obtained a permit for, let alone constructed, a hydrogen production station, nor had it produced any hydrogen. Although Nikola did complete a dispensing-only hydrogen fueling station at its Phoenix, Arizona headquarters in or about April 2019, that station has been plagued with problems because many components of the station were not built to withstand the extreme heat in Phoenix. Moreover, the hydrogen that was used to stock that station was not produced by Nikola, but was instead acquired from an outside vendor. An image of the dispensing-only station being stocked by the outside hydrogen vendor appears below:



Moreover, and contrary to public statements that TREVOR MILTON, the defendant, repeatedly made, at no time relevant to this

Indictment was the station permitted for hydrogen production, nor did it have an electrolyzer installed, or produce any hydrogen. Furthermore, at least by the time of MILTON's resignation, in or about September 2020, Nikola had not purchased land for any hydrogen production stations, nor had it reached any pricing agreements with utilities for electricity to power its electrolyzers.

64. TREVOR MILTON, the defendant, recognized that if retail investors were aware that Nikola had not made material progress in developing its hydrogen production and fueling network they would doubt the company's success. Notably, on or about May 30, 2020, which was four days before Nikola's stock was officially listed and publicly traded on the Nasdaq stock exchange, MILTON sent an email to Nikola's board of directors seeking permission for Nikola to purchase five electrolyzers for \$95 million. MILTON explained that, with Nikola going public, he was "getting ready to go on a media blitz and the most critical item in our business model is that we don't have stations." MILTON further explained that announcing the purchase publicly would allow him to boost the stock price and appeal to retail investors: "I would like to announce this on Monday as huge news. This will help our stock, create much stronger following and base layers of investors and it also will ease the criticism I am going to get going into interviews." MILTON made this request to the Board despite the fact that Nikola had

not procured any land for hydrogen stations, had nowhere to install the electrolyzers, and was still in the process of designing and troubleshooting its plans for hydrogen production facilities.

65. To further his scheme to create demand for Nikola's stock, TREVOR MILTON, the defendant, also made false and misleading statements concerning Nikola's hydrogen business. Specifically, and among other things, MILTON made false and misleading claims regarding the status of Nikola's production of hydrogen; the current cost of producing hydrogen; the cost of electricity needed to produce hydrogen; Nikola's ability to produce hydrogen using clean energy; and the status of permits related to hydrogen production.

66. For example, MILTON tweeted the following on January 23, 2020: "Hydrogen costs have plummeted through @nikolamotor efforts not other OEM's. Our costs are below \$3 per kg." As another example, in a podcast that was recorded in or about January 2020, and broadcast on the internet on or about March 12, 2020, TREVOR MILTON, the defendant, stated, "Up until Nikola came in the market, hydrogen was around \$16 a kilogram, U.S. dollars. Now Nikola is producing it well below \$4 a kilogram." In truth and in fact, Nikola had neither secured electricity pricing sufficient to set the cost of hydrogen production at \$4 per kilogram, nor had it produced any hydrogen at all.

67. Similarly, in a podcast on or about June 11, 2020, TREVOR MILTON, the defendant, stated, "when we produce hydrogen, we produce it on freeways," and, when asked whether Nikola makes hydrogen on site, MILTON responded, "We do. We make it on site." In an article published by MILTON on a social media networking website, on or about June 21, 2020, MILTON stated,

Most hydrogen that Nikola makes is on the freeway. This is near the main federal transmission lines where the voltage is incredibly high allowing for continuous output. . . . 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 per kWh 20-year agreements on the freeways.

In truth and in fact, Nikola had not produced hydrogen anywhere, including on freeways or near main federal transmission lines; nor had Nikola purchased any energy for producing hydrogen, let alone energy transmitted on the federal transmission lines, clean energy from wind, solar, and hydroelectric facilities directly, or energy at less than \$.04 per kWh.

68. In another podcast on or about July 17, 2020, TREVOR MILTON, the defendant, stated, among other things,

We tap directly into the main federal transmission lines and we contract directly with groups . . . an example would be . . . like a Tennessee Valley Authority or . . . one of those where you're where you have a huge hydro plan. . . . We're dealing directly with the generation group . . . all of our hydrogen's produced on the freeways

We only look at areas where we can get this energy for sub three or 4 cents a kilowatt hour, guaranteed 24 hours a day. And we've been able to do that. And almost every one of our major locations that we're going up, and we're gobbling up those locations cause once Nikola takes them, they're almost impossible to get. And so we're just, we're just gobbling them up. . . . We get the prime location, we get the prime rate, we get a prime contract, 20 years lock them up.

In truth and in fact, Nikola had not tapped directly into main federal transmission lines, nor had Nikola contracted with Tennessee Valley Authority or any other energy provider for the purpose of hydrogen production, nor had Nikola purchased land or permitted for hydrogen production or produced any hydrogen, on freeways or otherwise.

69. In that same July 17, 2020 podcast, TREVOR MILTON, the defendant, also stated, among other things, that when Nikola first started, hydrogen production stations "were going to be 50 to 60 million," but now Nikola is "down to, you know, 14, 14 million bucks" due to the "standardization of a hydrogen station." In truth and in fact, Nikola had not built a single hydrogen production station, much less "standardized" hydrogen production stations. At the time, due to the high cost of electricity in California, Nikola was seriously considering moving away from its plan to produce hydrogen on-site at all of its fueling stations, and instead was considering producing hydrogen at a central location through liquefaction. MILTON was well aware of the issues with Nikola's

hydrogen station plan, but directed that Nikola employees "[k]eep the liquefaction discussions quiet from the market."

False and Misleading Claims Regarding In-House Technology

70. Semi-trucks like the Nikola One, Two, and Tre must be constructed from thousands of parts, including motors, batteries, transmissions, drive shafts, axles, steering components, brakes, the chassis frame, the metal body, lighting, HVAC, and wheels, to name a few. Most truck and car manufacturers outsource production of many of the parts of a vehicle to third-party vendors. Some large manufacturers, however, produce some components in-house because it is cheaper due to economies of scale, or because technology is proprietary.

71. Since at least in or about 2016, TREVOR MILTON, the defendant, has claimed that Nikola has intellectual property rights over important components of its semi-truck line. While MILTON has stated that Nikola outsources many parts of the trucks, like tires or windshields, MILTON has also repeatedly stated that Nikola makes the most important parts of the semi-trucks "in-house." MILTON has done so, among other reasons to claim that Nikola has valuable intellectual property, to support his claims that Nikola's trucks outperform competitors, and to differentiate the company from other electric vehicle manufacturers and startups. However, in order to induce retail investors to buy the stock, thereby supporting the stock price, MILTON exaggerated

Nikola's in-house development of batteries and other components, and falsely stated that the company made parts in-house when it did not.

72. The components that are relevant to this Indictment include batteries, which are critical to an electric vehicle's operation because they store energy to run the motors, and the powertrain, which provides power to the wheels so that a truck can move. An electric vehicle, like Nikola's planned semi-trucks, has an electric powertrain, which is sometimes called an e-axle. An electric powertrain or e-axle is an electro-mechanical propulsion system, or traction motor system, containing an axle structure housing an electric motor, an inverter (which receives electricity from a battery or other electrical source, such as a fuel cell, and converts that electricity from direct current to alternative current to power the motor), and gears (also referred to as reducers).

73. Since in or about the time that Nikola's stock started trading publicly, TREVOR MILTON, the defendant, has repeatedly claimed that Nikola makes important components of its semi-trucks in-house, including batteries and the powertrain. For example, on or about June 3, 2020, the same day that Nikola officially started trading on the Nasdaq, MILTON tweeted out a link to a podcast interview, during which he claimed that Nikola did its "own powertrains, battery, battery management systems, controls . . .

in-house." On or about June 4, 2020, 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." On or about June 6, 2020, MILTON tweeted, "All the technology, software, controls, E axle, inverters etc. we do internally." On or about July 1, 2020, MILTON tweeted, "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." On or about July 6, 2020, MILTON tweeted, "All major components are done in-house; batteries, inverters, software, controls, infotainment, over the air, etc."

74. On or about July 14, 2020, TREVOR MILTON, the defendant, broadcast on social media a live video of him showing and discussing component parts of Nikola's trucks. During a portion of the video, MILTON stated that Nikola does "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." MILTON further stated, "[A]ll inverters on the Nikola truck are probably some of the most advanced software systems that . . . I know of anywhere in the automotive world. Why do I know that? It's because other OEMs are asking us to use it. . . ." MILTON further stated regarding the batteries to be used in Nikola trucks, that Nikola does not manufacture the battery cell, which

is a part within a vehicle's battery system, but does "make everything in our battery. All the cooling, the thermal, the battery management system, the software, the hardware, everything except for the cell."

75. These statements, and other, similar statements that TREVOR MILTON, the defendant, made in interviews and on social media, were false and misleading. In truth and in fact, although Nikola has partnered with various companies to try to develop proprietary battery technology, these efforts have not been successful, and Nikola had not successfully developed at any time relevant to this Indictment battery technology internally, and the batteries it planned to use in its semi-trucks were developed and manufactured by third parties. At all times relevant to this Indictment, Nikola also had not produced an inverter in-house and the inverters it planned to use in its semi-trucks were developed and manufactured by third parties.

False and Misleading Claims Regarding Reservations for
Nikola's Semi-Trucks

76. Beginning in or about May 2016, in connection with the announced development of the Nikola One, Nikola began taking reservations for the delivery of its semi-truck. Although Nikola at first required a deposit to make a reservation, which could range from \$1 to \$1,500, in or about April 2018, Nikola refunded all deposits and ceased requiring deposits for reservations.

Nikola has stated publicly, including in public filings, that it has approximately 14,000 such reservations. The majority of the reservations were made for the Nikola One, which Nikola marketed as a hydrogen-powered "sleeper" truck capable of handling long-haul trucking routes. With the exception of a reservation for approximately 800 semi-trucks, which is binding provided that Nikola meets certain conditions, these reservations are non-binding and cancellable at any time for any reason. Nevertheless, and notwithstanding that Nikola now plans first to produce a battery-powered truck intended for short-haul routes (the Nikola Tre) and has no timeline for the production of a hydrogen-powered sleeper truck as the Nikola One was purported to be, Nikola and TREVOR MILTON, the defendant, have pointed to these reservations as demonstrating interest in Nikola's planned semi-trucks.

77. Moreover, TREVOR MILTON, the defendant, has repeatedly misstated the nature of Nikola's reservations to suggest that the reservations are firm and binding. These statements are inconsistent with the fact that approximately 13,200 of the approximately 14,000 reservations are non-binding and cancellable at any time, and with Nikola's own statements in SEC filings.

78. For example, on or about June 1, 2020, in a podcast interview, TREVOR MILTON, the defendant, stated,

We don't build on speculation; we build on orders. We're very similar to like Airbus or Boeing where we're sold out for many, many

years. We're the only company in the world that is sold out for many, many years . . . It's all based on orders. I think that's the reason Nikola is worth so much money today.

On or about July 31, 2020, during a podcast interview, the host referred to Nikola's reservations as "letters of intent." MILTON stated that he wanted to correct that characterization and that the reservations were "not letter of intents, they're actually contracts." MILTON further stated:

Yeah, billions and billions of dollars with the contracts. So I want to be clear about that 'cause a lot of people have thought that it's just like, a non-committal thing, it's not. These are like, sign on the dotted line, billions and billions and billions and billions of dollars in orders.

79. The statements of TREVOR MILTON, the defendant, were false and misleading, and designed to give an exaggerated and inaccurate impression that Nikola had a predictable and committed future stream of revenue. In truth and in fact, as noted above, 13,200 out of the 14,000 reservations were not commitments, nor was Nikola "sold out" of any trucks, nor was Nikola building to fulfill orders.

Milton's False and Misleading Statements Induced Retail Investors to Purchase Nikola Stock

80. After TREVOR MILTON, the defendant, made false and misleading statements regarding Nikola's products and capabilities, tens of thousands of retail investors purchased Nikola stock, between in or around March and September 2020, and

many ultimately suffered significant financial losses. The value of Nikola's stock plummeted after the fact that certain of MILTON's statements had been false and misleading was disclosed to the market in or around September 2020. For example, on or about Friday, September 18, 2020, Nikola's stock closed at approximately \$34.19 per share. On or about Sunday, September 20, 2020, when the market was not open, Nikola announced that MILTON would be resigning as Executive Chairman of Nikola's Board of Directors. On or about Monday, September 21, 2020, *The New York Times* ran a story indicating that MILTON'S resignation was related to claims that he had deceived investors about Nikola's technology, including by producing the video of the Nikola One described in paragraphs 35 and 36 above. By on or about Friday, September 25, 2020, Nikola's stock closed at approximately \$19.46 per share. Thus, between September 18, 2020 and September 25, 2020, Nikola's market capitalization dropped approximately 43%. As a result, investors, including thousands of retail investors who were the targets of MILTON's fraudulent scheme, suffered substantial losses, in some case totaling in the tens or hundreds of thousands of dollars and compromising their financial security or retirement savings.

81. During the same time period that many retail investors were purchasing Nikola stock at least in part on the basis of false and misleading claims by TREVOR MILTON, the defendant, certain institutional investors who received Nikola shares as part of the

SPAC transaction or the PIPE and had access to more complete information regarding Nikola's products and technology were able to sell their stock for a significant profit.

Statutory Allegations

82. From at least in or about November 2019 through at least in or about September 2020, in the Southern District of New York and elsewhere, TREVOR MILTON, the defendant, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails and of the facilities of national securities exchanges, used and employed, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, MILTON engaged in a scheme to defraud investors in Nikola through false and misleading statements regarding the company's product and technology development.

(Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.)

COUNT TWO
(Securities Fraud)

The Grand Jury further charges:

83. The allegations contained in paragraphs 1 through 81 of this Indictment are repeated and realleged as if fully set forth herein.

84. From at least in or about November 2019 through at least in or about September 2020, in the Southern District of New York and elsewhere, TREVOR MILTON, the defendant, willfully and knowingly executed a scheme and artifice to (a) defraud persons in connection with securities of an issuer with a class of securities registered under Section 12 of the Securities Exchange Act of 1934 and that was required to file reports under Section 15(d) of the Securities Exchange Act of 1934, and (b) obtain, by means of false and fraudulent pretenses, representations, and promises, money and property in connection with the purchase and sale of securities of an issuer with a class of securities registered under Section 12 of the Securities Exchange Act of 1934 and that was required to file reports under Section 15(d) of the Securities Exchange Act of 1934, to wit, MILTON engaged in a scheme to defraud investors in Nikola through false and misleading statements regarding the company's product and technology development.

(Title 18, United States Code, Sections 1348 and 2.)

COUNT THREE
(Wire Fraud)

The Grand Jury further charges:

85. The allegations contained in paragraphs 1 through 81 are repeated and realleged as if fully set forth herein.

86. From at least in or about November 2019 through at least in or about September 2020, in the Southern District of New York and elsewhere, TREVOR MILTON, the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, transmitted and caused to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, MILTON engaged in a scheme to defraud investors in Nikola through false and misleading statements regarding the company's product and technology development, including through interstate wires.

(Title 18, United States code, Sections 1343 and 2.)

FORFEITURE ALLEGATION

87. As a result of committing one or more of the offenses charged in Counts One through Three of this Indictment, TREVOR MILTON, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and Title

28, United States Code, Section 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of said offenses, including but not limited to a sum of money in United States currency representing the amount of proceeds traceable to the commission of said offenses that the defendant personally obtained.

Substitute Assets Provision

88. If any of the above-described forfeitable property, as a result of any act or omission by the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), and Title 28, United States Code Section 2461, to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described above.

(Title 18, United States Code, Sections 981(a)(1)(C); Title 21, United States Code, Section 853(p); Title 28, United States Code, Section 2461.)



FOR PERSON



AUDREY STRAUSS
United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

TREVOR MILTON,

Defendant.

SEALED INDICTMENT

21 Cr. _____

(Title 15, United States Code, Sections
78j(b) and 78ff; Title 17, Code of Federal
Regulations, Section 240.10b-5; Title 18,
United States Code, Sections 2, 1343, and
1348.)

AUDREY STRAUSS
United States Attorney

A TRUE BILL


Foreperson

SEALED INDICTMENT FILED
7/28/21 USMJ SARAH
NETBURN
ARREST WARRANT

Exhibit C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x
:
UNITED STATES OF AMERICA :
:
- v. - :
:
TREVOR MILTON, :
:
Defendant. :
:
- - - - - x

SUPERSEDING INDICTMENT

S1 21 Cr. 478 (ER)

COUNT ONE
(Securities Fraud)

The Grand Jury Charges:

1. From at least in or about November 2019 through at least in or about September 2020, in the Southern District of New York and elsewhere, TREVOR MILTON, the defendant, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails and of the facilities of national securities exchanges, used and employed, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by:

(a) employing devices, schemes, and artifices to defraud;

(b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of

business which operated and would operate as a fraud and deceit upon persons, to wit, MILTON engaged in a scheme to defraud investors in Nikola through false and misleading statements regarding the company's product, technology, and business development.

(Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.)

COUNT TWO
(Securities Fraud)

The Grand Jury further charges:

2. From at least in or about November 2019 through at least in or about September 2020, in the Southern District of New York and elsewhere, TREVOR MILTON, the defendant, willfully and knowingly executed a scheme and artifice to (a) defraud persons in connection with securities of an issuer with a class of securities registered under Section 12 of the Securities Exchange Act of 1934 and that was required to file reports under Section 15(d) of the Securities Exchange Act of 1934, and (b) obtain, by means of false and fraudulent pretenses, representations, and promises, money and property in connection with the purchase and sale of securities of an issuer with a class of securities registered under Section 12 of the Securities Exchange Act of 1934 and that was required to file reports under Section 15(d) of the Securities Exchange Act of 1934, to wit, MILTON engaged in a scheme to defraud investors in

Nikola through false and misleading statements regarding the company's product, technology, and business development.

(Title 18, United States Code, Sections 1348 and 2.)

COUNT THREE
(Wire Fraud)

The Grand Jury further charges:

3. From at least in or about November 2019 through at least in or about September 2020, in the Southern District of New York and elsewhere, TREVOR MILTON, the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, transmitted and caused to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, MILTON engaged in a scheme to defraud investors in Nikola through false and misleading statements regarding the company's product, technology, and business development, including through interstate wires.

(Title 18, United States code, Sections 1343 and 2.)

COUNT FOUR
(Wire Fraud)

4. From at least in or about April 2020 through at least in or about March 2021, in the Southern District of New York and elsewhere, TREVOR MILTON, the defendant, willfully and knowingly,

having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, transmitted and caused to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, MILTON engaged in a scheme to defraud the sellers of a property known as Wasatch Creeks Ranch through false and misleading statements regarding Nikola's product, technology, and business development, and, as part of that scheme, engaged in conduct designed to lull the sellers and postpone actions by the sellers that would bring Milton's false and misleading statements to light, including through the use of interstate wires.

(Title 18, United States code, Sections 1343 and 2.)

FORFEITURE ALLEGATION

5. As a result of committing one or more of the offenses charged in Counts One through Four of this Indictment, TREVOR MILTON, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and Title 28, United States Code, Section 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of said offenses, including but not limited to

a sum of money in United States currency representing the amount of proceeds traceable to the commission of said offenses.

Substitute Assets Provision

6. If any of the above-described forfeitable property, as a result of any act or omission by the defendant:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;

c. has been placed beyond the jurisdiction of the court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), and Title 28, United States Code Section 2461, to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described above.

(Title 18, United States Code, Sections 981(a)(1)(C); Title 21, United States Code, Section 853(p); Title 28, United States Code, Section 2461.)


FOREPERSON


DAMIAN WILLIAMS
United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

TREVOR MILTON,

Defendant.

SUPERSEDING INDICTMENT

S1 21 Cr. 478 (ER)

(Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; Title 18, United States Code, Sections 2, 1343, and 1348.)

DAMIAN WILLIAMS
United States Attorney

A TRUE BILL

Brian Conn

Foreperson

6/22/22 - FILED SUPERSEDING INDICTMENT

USMJ
GORENSTEIN

CF

Exhibit D

Subject to FRE 408 and 410

FOIA Confidential Treatment Requested by Nikola Corporation

KIRKLAND & ELLIS LLP



PRESENTATION TO:

U.S. Department of Justice and U.S. Securities & Exchange Commission

Nikola Phase I Investigation Report

November 12, 2020 | Asheesh Goel and Zachary Brez

- ▶ Nikola Corporation (“Nikola” or the “Company”) requests that the contents of this presentation be accorded confidential treatment and not be disclosed in response to any request under the Freedom of Information Act.
- ▶ By providing this report, Nikola does not intend to waive the attorney client privilege, work product doctrine, or any other privilege applicable as to third parties.
- ▶ Any facts we may relate today are necessarily based on our preliminary understanding at this stage, and may change as we learn more.

Agenda

▶ Executive Summary

- ▶ Assessment of Current State
- ▶ Factual Background of Investigation
- ▶ Investigative Process to Date
- ▶ Review of Hindenburg Allegations
- ▶ Review of Registration Statement
- ▶ Trevor Milton's Character
- ▶ Integrity of Current Leadership
- ▶ Next Steps

Executive Summary

- ▶ Nikola retained Kirkland & Ellis LLP (“Kirkland”) to investigate claims by Hindenburg Research regarding (1) the state of Nikola’s technology, (2) certain statements made by Trevor Milton and the Company, and (3) certain statements identified by Ernst & Young (“EY”) in Nikola’s S-4.
- ▶ **Technology.** Hindenburg’s claims regarding the state of Nikola’s technology are unfounded. Independent industry experts from AlixPartners, LLP (“AlixPartners”) have concluded that Nikola has a defined product and a maturity level consistent with an emerging OEM.
- ▶ **Milton Statements.** Hindenburg is correct in describing a number of statements by Trevor Milton as misleading and/or false.
- ▶ Statements by Milton to other Nikola executives suggest that Milton used social media to appeal to “Robinhood investors” and hype Nikola to potential investors. This is corroborated by the oftentimes exaggerated nature of Milton’s comments.
- ▶ Senior leadership took steps to limit Trevor’s exposure to investors, despite Milton’s controlling interest in Nikola and position within the Company.

Executive Summary

- ▶ **S-4 Statements.** Statements made by Nikola in its S-4 are largely accurate. Management and the Board of Directors appear to have taken their obligations to investors seriously and are dedicated to providing accurate information about the Company.
- ▶ While there is more work to be done, Nikola has resolved its most significant impediments by separating from Milton.

Agenda

- ▶ Executive Summary
- ▶ **Assessment of Current State**
- ▶ Factual Background of Investigation
- ▶ Investigative Process to Date
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- ▶ Review of Registration Statement
- ▶ Trevor Milton's Character
- ▶ Integrity of Current Leadership
- ▶ Next Steps

Assessment of Current State by AlixPartners

- ▶ We retained a team of leading automotive experts at consulting firm AlixPartners to conduct an independent assessment of the current state of technology development at Nikola.
- ▶ Contrary to the Hindenburg Report's conclusion that "Nikola is a Massive Fraud," AlixPartners concluded that:
 - Nikola's maturity level is consistent with that of an emerging OEM.
 - Nikola's technological contributions and development are consistent with other OEMs at similar stages of development.
 - Nikola's workforce is led by technical and engineering leads that have deep industry experience and expertise.

Assessment of Current State by AlixPartners

- ▶ **AlixPartners** conducted a focused assessment of Nikola's technology capabilities with respect to (i) technology development, and (ii) OEM systems integration and industrialization.
 - The AlixPartners team was led by investigation and automotive experts with at least 25 years of experience in OEM operations and electrification. The team's clients include OEMs and suppliers, such as General Motors, Audi, Ferrari, Bosch, and Cooper Tire & Rubber Company.
- ▶ As a part of their review, AlixPartners:
 - Conducted **interviews of 14** Nikola employees and secondees;
 - **Toured** Nikola's facilities in Phoenix, Arizona, including the battery lab and the engineering fabrication lab;
 - **Rode** in the Nikola Two prototype and conducted **walk-arounds** of the Nikola One, Nikola Tre, and Nikola NZT; and
 - **Reviewed key documents** including vehicle technical specifications and requirements; sub-system requirements and design verification plans; supplier quotations and SOWs; and documents related to manufacturing and program project plans.

Agenda

- ▶ Executive Summary
- ▶ Assessment of Current State
- ▶ **Factual Background of Investigation**
 - ▶ Investigative Process to Date
 - ▶ Review of Hindenburg Allegations
 - ▶ Review of Registration Statement
 - ▶ Trevor Milton's Character
 - ▶ Integrity of Current Leadership
 - ▶ Next Steps

Factual Background of Investigation

- ▶ On September 10, 2020, Hindenburg Research LLC (“Hindenburg”) issued a report (the “Hindenburg Report”) alleging that Nikola and its founder and then-Executive Chairman Trevor Milton had engaged in various fraudulent practices.
- ▶ Hindenburg, founded by 36-year-old Nathan Anderson, is a financial research firm that publishes critical reports of publicly traded companies after taking short positions in the companies’ stock.

Factual Background of Investigation

- ▶ The day the Hindenburg Report was released (September 10, 2020), the Board of Directors of Nikola engaged Kirkland to conduct an internal investigation into the facts and circumstances alleged in the Hindenburg Report.
- ▶ The following day (September 11, 2020), Kirkland proactively reported the matter to the staff of the Securities and Exchange Commission (the “SEC” or the “Staff”).

Factual Background of Investigation

- ▶ Three entities have issued subpoenas related to the allegations raised in the Hindenburg Report:
 - The SEC Division of Enforcement, Fort Worth Regional Office;
 - U.S. Attorney's Office for the Southern District of New York ("SDNY"); and
 - N.Y. County District Attorney's Office ("NY DA").
 - ▶ *The NY DA has since stayed its investigation.*
- ▶ Other regulators have contacted the Company:
 - Nasdaq has sent a voluntary information request letter.
 - FINRA has initiated a review of trading in Nikola's common stock surrounding the announcement of the Company's agreement with General Motors.
- ▶ Various civil litigation has been filed against the Company.
 - Five securities complaints (three D. Ariz.; E.D.N.Y.; C.D. Cal);
 - Two derivative complaints (both D. Del.); and
 - Four Delaware Section 220 Books and Records demands.

Key Events


Sept. 10, 2020

Hindenburg Report

Sept. 21, 2020

Bateman allegations re: extortion / misconduct

Sept. 14, 2020

Nikola responds to Hindenburg Report

Sept. 15, 2020

Securities complaint filed (D. Ariz.)

Sept. 15, 2020

Hindenburg responds to Nikola rebuttal

Sept. 16, 2020

Securities complaint filed (E.D.N.Y.)

Sept. 17, 2020

Securities complaint filed (D. Ariz.)

Sept. 23, 2020

Derivative complaint filed (D. Del.)

Sept. 29, 2020

220 Books and
Records demand

Oct. 5, 2020

220 Books and
Records demand

Week 1: 9/10 to 9/16

Week 2: 9/17 to 9/23

Week 3: 9/24 to 9/30

Week 4: 10/1 to 10/7

Investigation Timeline

Sept. 11, 2020

Company self-
reports to SEC

Sept. 17, 2020

NASDAQ contacts
Company

Sept. 14, 2020

SEC issues five subpoenas

Sept. 19, 2020

SDNY grand
jury subpoena

Sept. 28, 2020

FINRA contacts Company

Sept. 21, 2020

- SEC issues three subpoenas
- NY DA issues subpoena

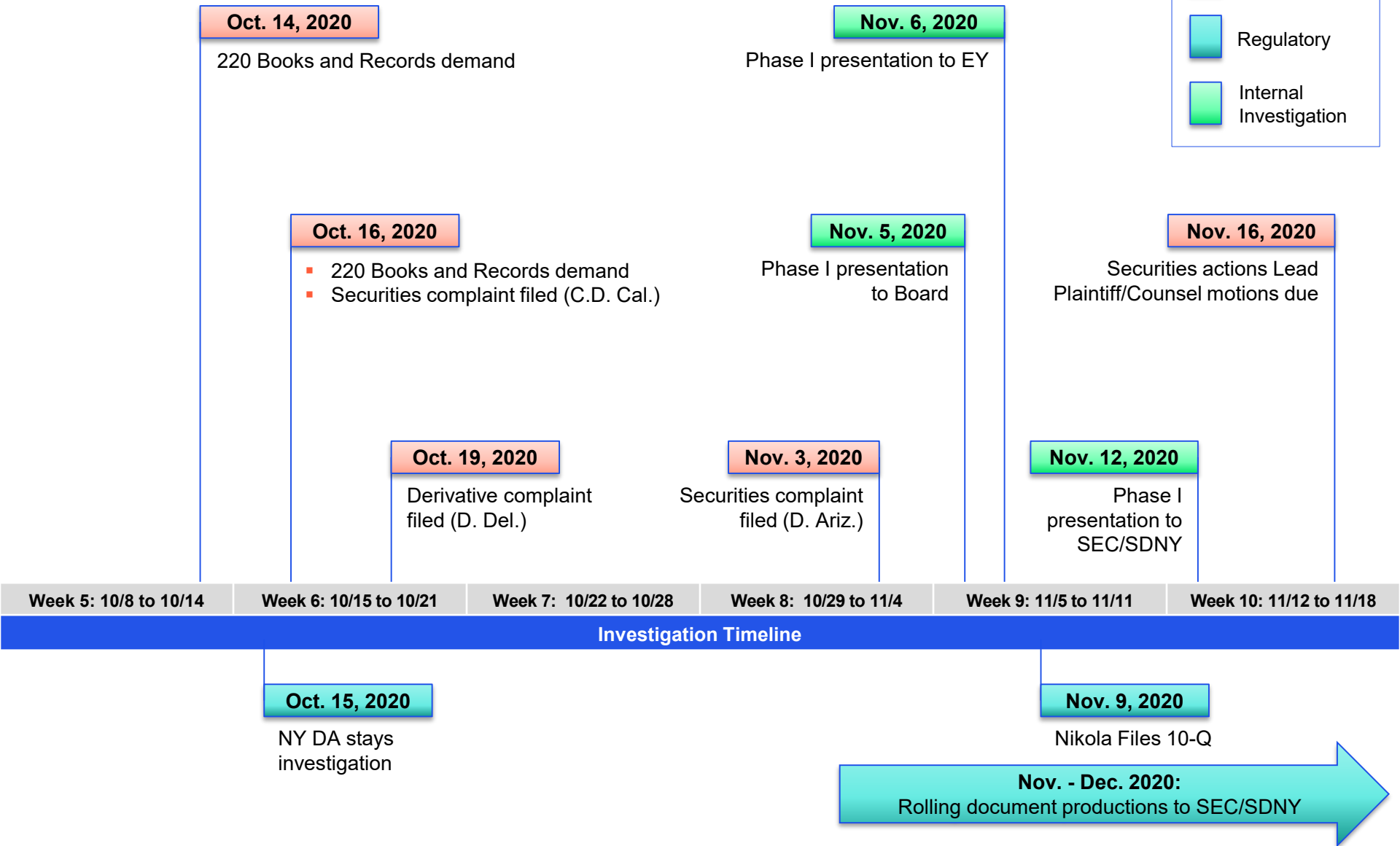
Key Events

Allegations

Civil Litigation

Regulatory

Internal Investigation



Securities Offerings

Offering	Start Date	End Date
Series A	December 2015	December 10, 2016
Series B	February 2017	December 4, 2017
Series C	February 2018	December 13, 2018
Series D	February 2019	March 4, 2020
VectoIQ / SPAC	March 13, 2020	June 30, 2020
Am. No. 1 to S-4	April 15, 2020	N/A
Am. No. 2 to S-4	May 1, 2020	N/A
PIPE	June 3, 2020	N/A

Scope of Investigation

Phase I

- ▶ The accuracy of statements featured in the Hindenburg Report that pertain to Nikola and that Hindenburg alleges are false.
- ▶ The accuracy of twenty-four technology-related statements made in Nikola's SEC registration statements, as identified by the Company's external auditor, EY.

Agenda

- ▶ Executive Summary
- ▶ Assessment of Current State
- ▶ Factual Background of Investigation
- ▶ **Investigative Process to Date**
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- ▶ Review of Registration Statement
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- ▶ Integrity of Current Leadership
- ▶ Next Steps

Investigative Process to Date

Legend



Internal
Investigation

Sept. 10, 2020

Hindenburg Report

Sept. 14, 2020

Nikola responds to
Hindenburg Report

Sept. 14, 2020

Company issues hold notice to
all employees and the Board

Sept. 15, 2020

Hindenburg responds
to Nikola rebuttal

Sept. 20, 2020

Company revises hold notice,
expanding relevant time frame

Sept. 21, 2020

Bateman allegations re:
extortion / misconduct

Sept. 22-25, 2020

Kirkland conducts 20 scoping
interviews of Company
employees and secondees

Sept. 29, 2020

Company makes first rolling document
production to SEC/SDNY

Week 1: 9/10 to 9/16

Week 2: 9/17 to 9/23

Week 3: 9/24 to 9/30

Week 4: 10/1 to 10/7

Investigation Timeline

Sept. 11, 2020

Company self-
reports to SEC

Sept. 17, 2020

NASDAQ contacts
Company

Sept. 14, 2020

- SEC issues five subpoenas
- EDNY grand jury subpoena to Spira

Sept. 21, 2020

- SEC issues three subpoenas
- NY DA issues subpoena

Sept. 19, 2020

SDNY grand jury subpoena

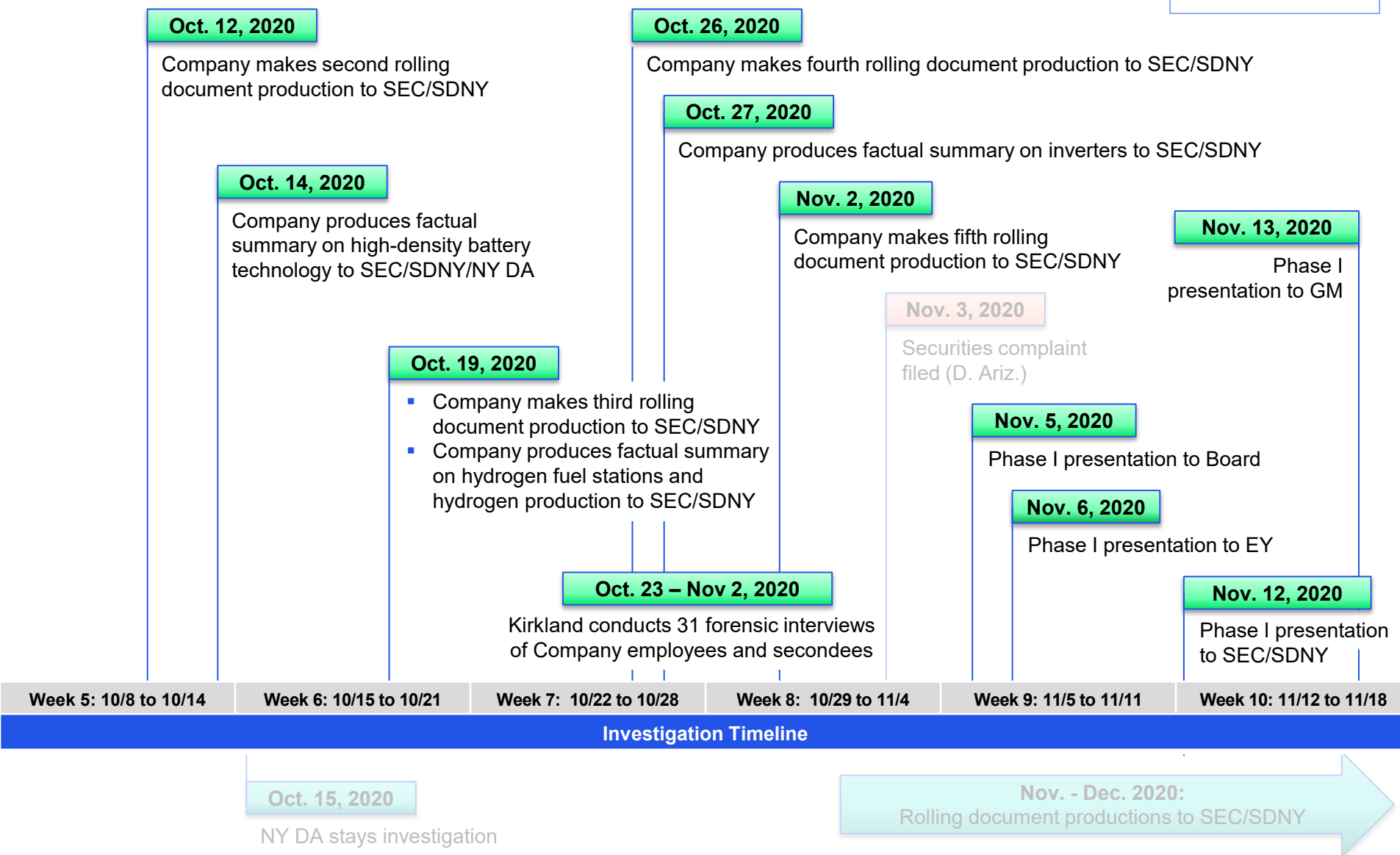
Sept. 28, 2020

FINRA contacts Company

Investigative Process to Date

Legend

 Internal Investigation



Preservation / Collection

- ▶ Kirkland developed an investigative work plan with feedback from the SEC and SDNY.
- ▶ Kirkland engaged Legility and Deloitte to assist with document preservation and collection, and Legalpeople to assist with document review.

Preservation

- ▶ On **Sept. 14**, the Company sent a preservation notice to all employees and the Board.
- ▶ On **Sept. 20**, the Company sent a revised preservation notice to the same recipients, expanding the required timeframe.
- ▶ The Company is preserving data from a number of systems, including GSuite (Gmail, Google Drive, Google Chat, Google Calendar), Slack, and Dropbox, as well as the Company's social media accounts.

Custodial Collection

- ▶ Kirkland engaged Legility to collect email from a total of **35 custodians**.
- ▶ Kirkland engaged Legility and Deloitte to image mobile devices and laptops for certain custodians, including all of those served with SEC subpoenas.

Preservation / Collection

#	Name	Title	GSuite Collected	Mobile Collected	Laptop Collected
1	Christian Appel **	Head of Fuel Cell & Storage Systems	Yes		Yes
2	Umran Ashraf	Global Head, Vehicle Engineering	Yes	Yes	Yes
3	Kim Brady *	Chief Financial Officer	Yes	Yes	Yes
4	Vince Caramella	Global Head, Marketing	Yes		
5	Mike Chaffins	Sr. Director, Supply Chain and Purchasing	Yes		
6	Dane Davis *	Chief Technology Officer	Yes	Yes	Yes
7	Mark Duchesne	Global Head, Manufacturing	Yes	Yes	Yes
8	Tony Epperson	Sr. Manager, FP&A	Yes	Yes	Yes
9	Michael Erickson	President, Powersports	Yes	Yes	Yes
10	Stephanie Fleck	Social Media/Digital Marketing Manager	Yes		
11	Elizabeth Fretheim	Global Head, Business Development	Yes		
12	Alain Hadorn	Sr. Director, Program Management & Quality	Yes		
13	Tony Heaton	Battery Engineer	Yes	Yes	Yes
14	Joseph Kiessig	Director, Corporate Finance	Yes	Yes	Yes
15	Pablo Koziner	President, Nikola Energy	Yes	Yes	Yes
16	Kevin Lynk *	Chief Engineer	Yes	Yes	Yes
17	Paul Maack	Head of Talent Acquisition	Yes		
18	Morgan Mackelprang	Hardware Lead Developer	Yes	Yes	Yes

* Received SEC subpoena.

** Seconded

Preservation / Collection

#	Name	Title	GSuite Collected	Mobile Collected	Laptop Collected
19	Travis Milton *	Special Projects	Yes	Yes	Yes
20	Trevor Milton *	Former Executive Chairman	Yes	Yes	Yes
21	Nha Nguyen	Head of Safety	Yes		
22	Stasy Pasterick	Vice President, Corporate Controller	Yes		
23	Matt Peterson	Executive Assistant	Yes	Yes	Yes
24	Joseph Pike *	Chief Human Resources Officer	Yes	Yes	Yes
25	Dale Prows	Global Head, Infrastructure Development	Yes	Yes	Yes
26	Jordan Rich	Art Director	Yes	Yes	Yes
27	Nicole Rose	Director, Public Relations & Corporate Communications	Yes		
28	Jason Roycht	VP, Technology Development and Strategy	Yes	Yes	Yes
29	Mark Russell *	Chief Executive Officer	Yes	Yes	Yes
30	Varoujan Sarkissian	Global Head, Vehicle Electrical and Controls	Yes	Yes	Yes
31	Jesse Schneider *	Head of Fuel Cell Development and Hydrogen Infrastructure	Yes	Yes	Yes
32	Isaac Sloan	Chief Software Architect	Yes	Yes	Yes
33	Stewart Somerville	Former Director, Solar Sales	Yes		
34	Erik Tuft	Director, Design Studio	Yes		
35	Britton Worthen	Chief Legal Officer	Yes	Yes	Yes

* Received SEC subpoena.

Document Review

- ▶ Kirkland has begun an extensive document review process in order to respond to governmental subpoenas and investigate the allegations.

Targeted Review

- ▶ Kirkland collected and reviewed targeted electronic documents from Legal, Investor Relations, and Human Resources.
- ▶ Examples: Organizational charts, personnel files, policies and procedures, Board minutes and materials, investor presentations, and SEC filings.

Email and Messaging Review

- ▶ Kirkland engaged Legalpeople to conduct a review of:
 - ▶ Company emails – Kirkland used search term and date filters (January 1, 2016 to September 21, 2020).
 - ▶ Text messages (including WhatsApp)
 - ▶ Data room documents – Series D, GM, SPAC, Investor Reporting
 - ▶ Corporate Documents – Policies, Board minutes and materials, etc.
- ▶ Kirkland conducted second level review and additional targeted searching as necessary.

Document Review

- ▶ Kirkland prioritized documents for review based on key time periods and Brainspace analytics.
- ▶ To date, Kirkland and Legalpeople have made extensive progress in the document review:
 - **Emails:** 245,302 reviewed
 - **Text messages:** 128,969 daily transcripts reviewed
 - **Data room documents:** 2,679 reviewed
 - **Corporate documents:** 136 reviewed
- ▶ Kirkland has made eight productions totaling 12,464 documents and 134,348 pages.
- ▶ Kirkland expects to produce tens of thousands of additional documents to the SEC and SDNY in the following weeks.

Interviews

- Kirkland conducted **20 scoping interviews** and **31 forensic interviews** of Nikola employees / secondees.

#	Name	Title	Scoping	Forensic
1	Christian Appel	Head of Fuel Cell & Storage Systems	Yes	Yes
2	Umran Ashraf	Global Head, Vehicle Engineering	Yes	Yes
3	Kim Brady	Chief Financial Officer	Yes	Yes
4	Vince Caramella	Global Head, Marketing	Yes	Yes
5	Mike Chaffins	Sr. Director, Supply Chain and Purchasing	Yes	Yes
6	Dane Davis	Chief Technology Officer	Yes	Yes
7	Mark Duchesne	Global Head, Manufacturing	Yes	Yes
8	Tony Epperson	Sr. Manager, FP&A		Yes
9	Michael Erickson	President, Powersports	Yes	Yes
10	Stephanie Fleck	Social Media/Digital Marketing Manager		Yes
11	Elizabeth Fretheim	Global Head, Business Development	Yes	Yes
12	Alain Hadorn	Sr. Director, Program Management & Quality		Yes
13	Tony Heaton	Battery Engineer		Yes
14	Joseph Kiessig	Director, Corporate Finance	Yes	Yes
15	Pablo Koziner	President, Nikola Energy	Yes	Yes
16	Kevin Lynk	Chief Engineer	Yes	Yes
17	Paul Maack	Head of Talent Acquisition		Yes

Interviews

#	Name	Title	Scoping	Forensic
18	Morgan Mackelprang	Hardware Lead Developer		Yes
19	Travis Milton	Special Projects	Yes	Yes
20	Nha Nguyen	Head of Safety		Yes
21	Stasy Pasterick	Vice President, Corporate Controller		Yes
22	Joseph Pike	Chief Human Resources Officer	Yes	Yes
23	Dale Prows	Global Head, Infrastructure Development	Yes	Yes
24	Jordan Rich	Art Director		Yes
25	Nicole Rose	Director, Public Relations & Corporate Communications		Yes
26	Jason Roycht	VP, Technology Development and Strategy	Yes	Yes
27	Mark Russell	Chief Executive Officer	Yes	Yes
28	Varoujan Sarkissian	Global Head, Vehicle Electrical and Controls	Yes	Yes
29	Isaac Sloan	Chief Software Architect	Yes	Yes
30	Erik Tuft	Director, Design Studio	Yes	Yes
31	Britton Worthen	Chief Legal Officer		Yes

* Trevor Milton's attorneys have not yet agreed to make him available for an interview.

Reporting

► **The Board and the Company**

- We have had regular, almost daily, communications with the Chairman of the Board.
- We have had frequent communications with the full Board.
- We have had frequent communications with the company's Chief Legal Officer.
- We reported our Phase I findings to the Board on Thursday, November 5, 2020.

► **Company's Auditor – EY**

- Kirkland has had near-weekly meetings with the Company's external auditor, EY, to update them on the status of our investigation.
- We reported our Phase I findings to EY on Friday, November 6, 2020.
- EY has since signed off on the Company's 10-Q filing.

Factual Summaries

- ▶ Kirkland proactively proposed to provide the SEC with factual summaries on subpoena topics the SEC identified as high priority.
- ▶ The SEC agreed, and Kirkland provided the SEC and SDNY three factual summaries:
 - **High-Density Battery Technology** (October 14, 2020)
 - **Hydrogen Fuel Stations and Hydrogen Production** (October 19, 2020)
 - **Inverters** (October 27, 2020)
- ▶ Kirkland worked closely with Company personnel to gather information used in the factual summaries.

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Overview of Statements

#	Category	Statement / Allegation
1	HQ Power Sources	Milton said that solar panels on the roof of Nikola HQ produce approximately 18 megawatts of energy per day .
2	Natural Gas Wells Battery Development	The Company website stated that Nikola owns rights to natural gas wells. Tweets from Nikola Motor Company stated that the wells were used as a backup to solar hydrogen production .
3	Hydrogen Production	Milton said that Nikola can produce over 1,000 kg of hydrogen on site . Milton also said that the cost of producing hydrogen was less than \$3 / kg.
4	Development of Major Components	Milton said that all major components are “done” in house .
5	Inverter Development	Milton said that inverters are “done” in house . Milton also said that the inverter software is advanced and has been requested by other OEMs.
6	Battery Development	Milton said that batteries are “done” in house and that Nikola makes the entire battery pack .
7	Game-Changing Battery Technology	A Nikola press release announced a “game-changing battery cell technology” and the acquisition of a world-class battery engineering team.
8	Zero Emissions Truck	In a press release, Milton said Nikola had engineered a zero emissions truck .
9	Nikola Unveiling	Milton stated that the Nikola One is “a fully functioning vehicle .”
10	Nikola One In Motion Video	A Nikola video of the Nikola One gave the impression that the truck was driven .
11	Refund of Deposits	The Hindenburg Report implies a connection between the refund and former CFO Spira’s departure .
12	Production Timeline	Milton said that five trucks were coming off the assembly line in Ulm, Germany.

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7. Game-Changing Battery Technology
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10. Nikola One In Motion Video
11. Refund of Deposits
12. Production Timeline

1. HQ Power Sources

Statements

Apr. 19, 2019 | In a video from a fuel cell vehicle workshop, Trevor Milton states, “We have 3.5 megawatts of solar up on the roof producing about 18 megawatts of energy a day in our headquarters.”

Interviews



Kim Brady
CFO

This assertion is “**completely false**.” Nikola had merely discussed moving to an off-grid headquarters, but it was deemed cost prohibitive.



**Several
Employees**

- ▶ Interviewees consistently stated that Nikola’s headquarters **did not have solar panels on its roof at this time, and that there are still no solar panels on the roof.**
- ▶ Many employees also noted that the employee parking lot has solar panels, and that Nikola has purchased solar panels and plans to install them on the headquarters building.

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5. Inverter Development

6. Battery Development

7. Game-Changing Battery Technology

8. Zero Emissions Truck as of 2016

9. Nikola One Unveiling

10. Nikola One In Motion Video

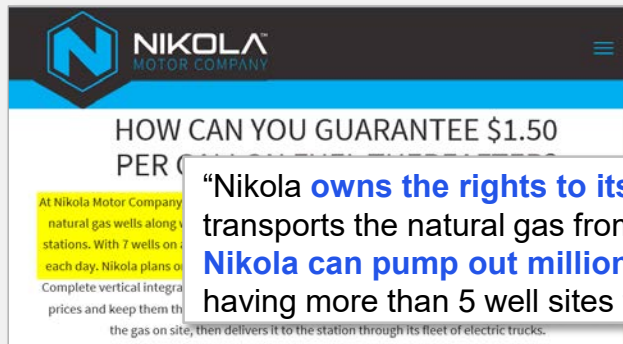
11. Refund of Deposits

12. Production Timeline

2. Natural Gas Wells

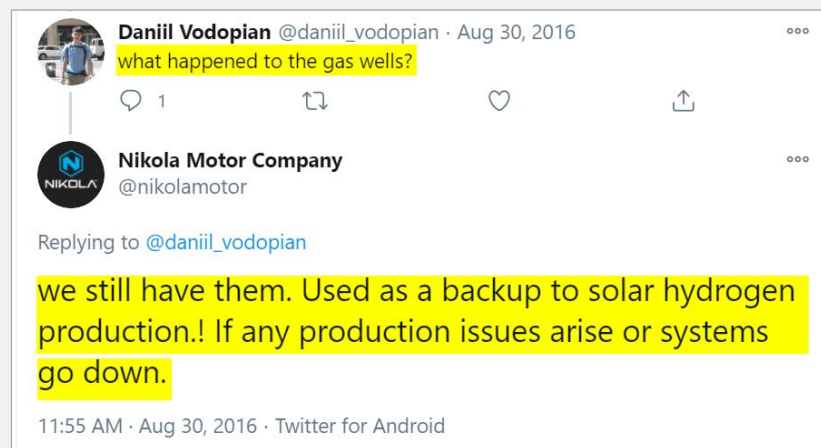
Statements

Jul. 1, 2016 | Wayback Machine snapshot of Nikola Motor Company's website.



"Nikola **owns the rights to its own natural gas wells** along with the Nikola One fleet that transports the natural gas from the wells to the stations. **With 7 wells on a single property, Nikola can pump out millions of gallons of clean natural gas each day.** Nikola plans on having more than 5 well sites for redundancy throughout the United States."

Aug. 1, 2016 | Tweets from Nikola Motor Company.



2. Natural Gas Wells

Interviews



Travis Milton
Special Projects

Travis Milton looked at a property with seven wells on site, but **Nikola never purchased the property or any other natural gas wells.**



Britton Worthen
CLO

Milton had an agreement with a well owner that gave him the **option** to buy gas wells. Milton's assertions were likely tied in some way to that agreement, but are "**potentially misleading or just misleading.**"



Kim Brady
CFO

Brady is **unaware** of any natural gas wells owned by Nikola.



Morgan Mackelprang
Hardware Lead Developer

Milton was referring to his **contemplated discussions** with Brayton Energy for a micro-turbine, which produces both heat and electricity on a relatively small scale.



Tony Epperson
Sr. Manager, FP&A



Anthony Heaton
Battery Engineer



Dane Davis
CTO

With respect to Nikola owning gas wells, **Milton pursued agreements and interviewees vaguely heard of those discussions** in the early Nikola days, although most did not know any details.

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3. Hydrogen Production

Statements

Dec. 2, 2019 | In a live-streamed Nikola and IVECO event, Trevor Milton states: “We’re building out the hydrogen station right now globally. In America we’ve already got the largest hydrogen station in the western hemisphere at our headquarters. **Can produce over 1,000 kilograms a day on site.** ... The station’s already up and operational for pumping right now.”

Jul. 17, 2020 | Trevor Milton is featured on the TC’s Chartcast podcast. Regarding hydrogen fuel, Milton says Nikola has been able to “chop the cost of hydrogen from \$16/kg down to – **we’re down below \$3/kg on our hydrogen now**” and that “the standardization of the hydrogen station was the most important aspect” of cost-saving. The Hindenburg Report alleges this would amount to an 81.25% reduction in the cost of hydrogen.

3. Hydrogen Production

Interviews



Several Employees

- ▶ Nikola **has never produced** hydrogen.
- ▶ The headquarters station can **dispense** (not produce) 1,000 kg/day.
- ▶ The headquarters station can **store** (not produce) 1,000 kg/day. Nikola has **hydrogen pricing models** pursuant to which they can produce hydrogen at a price of less than \$3/kg.
- ▶ A price of \$4/kg is **aggressive, but feasible**. It depends on acquiring electricity for less than or equal to 3.5 cents per kilowatt hour.
- ▶ Nikola's discussions with energy providers show that the **electricity cost assumptions** in the pricing models presented to investors are **well-founded**.



Jason Roycht
VP, Technology Development
and Strategy

Milton tends to mix up “we plan to have” with “we have” when speaking in public.



Mark Russell
CEO

This statement is “**indefensible**.” The headquarters station is for storage and dispensing, not production.



Kim Brady
CFO

It is a “**false statement**” that Nikola is producing 1,000 kg/day of hydrogen at headquarters.



Britton Worthen
CLO

The statement that Nikola can produce 1,000 kg/day **is not true**, and Milton knew it was not true. We discussed this “a million times.” Milton states future plans as if they are a present reality.



Dale Prows
Global Head, Infrastructure
Development

It is “**false**” for Milton to say “we’re down below \$3/kg on our hydrogen now.” **There is no “our hydrogen**” — Nikola is not producing any.

3. Hydrogen Production

Documents

Jul. 20, 2020 | Elizabeth Fretheim emails Mark Russell, Kim Brady, Britton Worthen, Pablo Koziner, and the communications teams listing her concerns regarding Trevor Milton's July 17 podcast interview, where he stated that "**we're down below \$3/kg on our hydrogen now.**"



Elizabeth Fretheim
Global Head,
Business
Development

On Jul 20, 2020, at 1:54 PM, Elizabeth Fretheim <elizabeth.fretheim@nikolamotor.com> wrote:

If you haven't had a chance to listen to the podcast yet, below is the list of my concerns **ranging from things I just wish he wouldn't say to inaccuracies.**

Concern

cost of hydrogen below \$3/kg

trucking is a mess

- we're going to make it so OO's can compete with big fleets

standardizing the stations is how we lower cost of H2 (cost of stations \$14M)

- cost of station went from \$50-60M to \$14M

figured out how to stabilize the load balance

solved the grid and load balance

- to get below \$10M for a station w/in a few years

mix of Alkaline and PEM electrolyzers

Timing

11:50 - 12:00

10:45 - 11:30

12:25 - 12:30

25:00-30:00 28-29:15

and at 32:18

31:00-31:15

31:45-32:24

32:13-32:24

32:42



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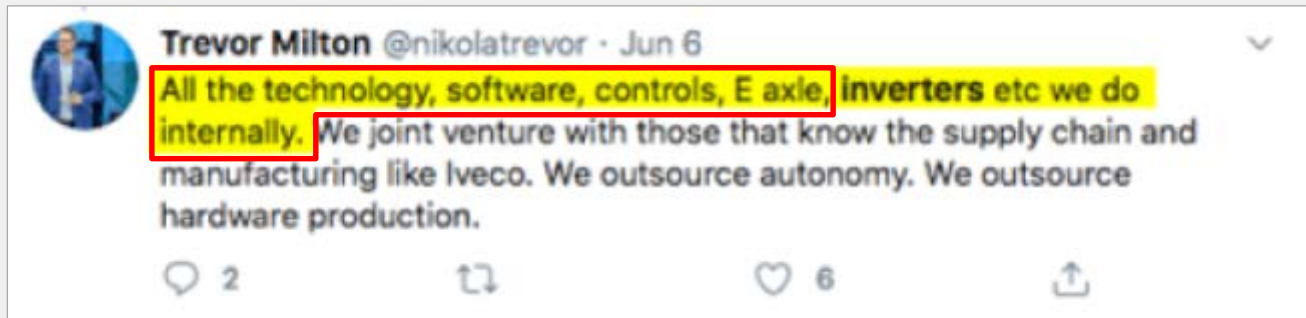
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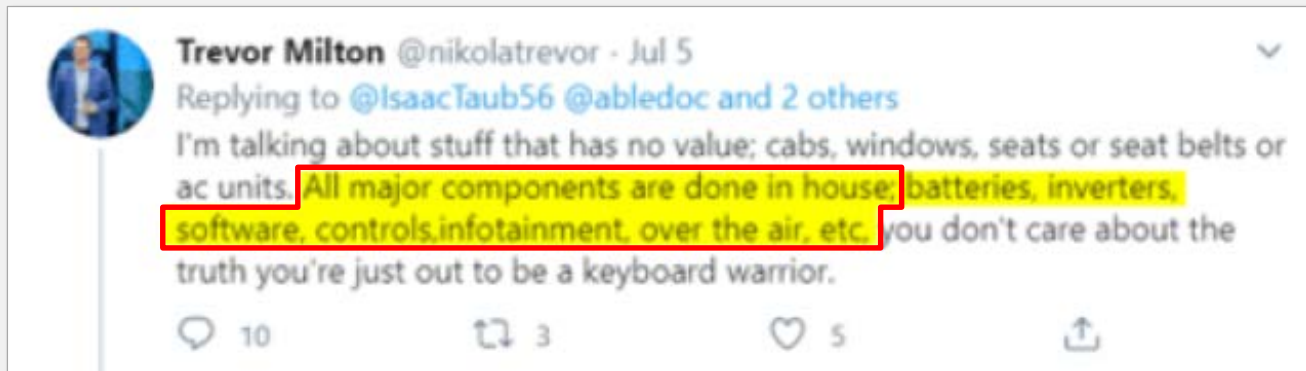
4. Development of Major Components

Statements

Jun. 6, 2020 |



Jul. 5, 2020 |



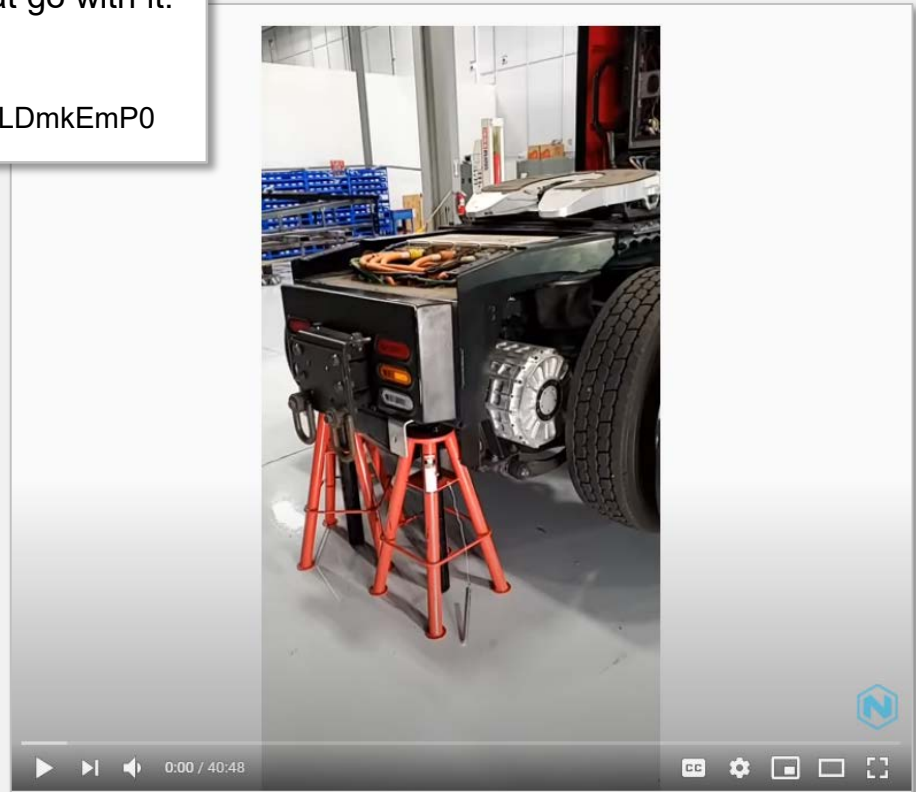
4. Development of Major Components

Statements

Jul. 14, 2020 |

“We do **all the e-axis design in house**. All the gears, the gear reductions. The thermal the cooling. Even the controls that go with it.”

<https://www.youtube.com/watch?v=7C2LDmkEmP0>



4. Development of Major Components

Interviews



Kim Brady
CFO

Nikola **aspires** to build components in-house but **does not do so at present**.



Dane Davis
CTO

Nikola **designs components, coordinates with third parties to manufacture those components, and sometimes leverages off of third parties'** pre-existing technology.



Michael Erickson
President, Powersports

Nikola performs a lot of design and development in house, but **most components are manufactured by third-party suppliers**, as is typical for the industry.



Kevin Lynk
Chief Engineer

Nikola **does not currently develop any components** on its own. In some cases, it uses contract engineering teams to develop the technology for Nikola's ultimate ownership.



Britton Worthen
CLO

Nikola writes **"a lot of the controls software"** for its vehicles.

4. Development of Major Components

Interviews



**Several
Employees**

- ▶ Nikola was heavily involved in the **design** of its components.
- ▶ Responsibility for a particular component was sometimes **divided** amongst Nikola and its suppliers.
- ▶ Nikola sometimes ran **parallel paths** to develop outsourced components in-house.
- ▶ Milton's statements **needed additional context** and clarification.
- ▶ Milton was **overzealous** regarding what Nikola eventually would build versus what the Company currently builds in-house.



Mark Russell
CEO

Once Milton gave the order, he considered that task done. That is why, for example, he would say we had the best battery pack in the world right after hiring AVL. The battery pack was not finished in reality, but it was done in his mind because he had set it in motion.

4. Development of Major Components

Documents

Mar. 27, 2020 | Kevin Lynk emails Katherine Beebee (Project Manager, Truck) regarding responsibility for e-axle components.



**Kevin
Lynk**
Chief
Engineer

FPT is responsible for the mechanical design of the e-axle. Iveco is responsible for the vehicle integration of the e-axle and traction inverters. Nikola is responsible for purchasing the traction inverters and critical e-axle components and we provide support for the system design.



**Katherine
Beebee**



**Grant
Compton**

4. Development of Major Components

Documents

- ▶ The Company accurately disclosed the use of several component suppliers in its Amendment No. 1 to Form S-4 (Apr. 15, 2020):
 - EDAG – cab and chassis engineering services
 - WABCO – braking control components and air management systems
 - Meritor – suspension and related components
 - Mahle – thermal management systems

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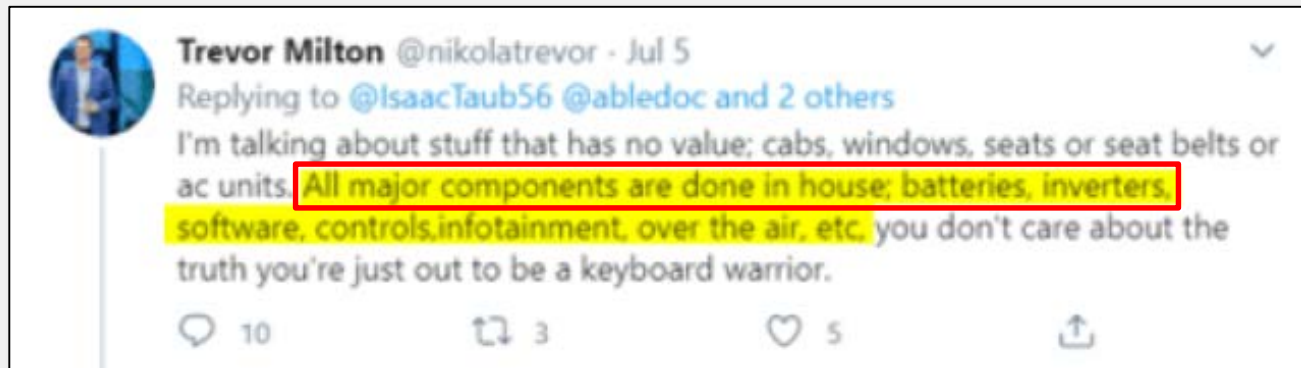
5. Inverter Development

Statements

Jul. 1, 2020 |



Jul. 5, 2020 |



5. Inverter Development

Statements

Jul. 14, 2020 |

“We do all the e-axle design in house. . . . 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. Why do I know that? It is because **other OEMs are asking us to use it...**”

<https://www.youtube.com/watch?v=7C2LDmkEmP0>

Reality: Nikola Buys Inverters from a Third-Party Supplier. A July Video Shows the Inverter, but the Label of the Manufacturer is Covered with Masking Tape



Nikola Motor Company - BTS with Trevor Milton showing the Nikola Two Powertrain

85,581 views • Jul 14, 2020

1.2K 345 SHARE SAVE

5. Inverter Development

In-House Program

Interviews



Kevin Lynk
Chief Engineer

- ▶ Nikola has used and continues to use off-the-shelf inverters for **demonstration** and **early phase prototype vehicles**.
- ▶ It was **Milton's vision to bring components, including inverters, in-house**. His idea was that developing in-house components would ensure that Nikola was not beholden to suppliers.
- ▶ It is "**grandiose**" for Milton to state that the inverters are "advanced software systems" when they "**aren't even in production yet.**"



Varoujan Sarkissian
*Global Head,
Vehicle Electrical
and Controls*

- ▶ **Efforts to develop in-house inverters only ramped up in early 2020**, and it will take **far more development time** (perhaps up to ten years) **before the in-house inverters could be used** in Nikola production vehicles.
- ▶ Milton knew that Nikola was in the **early stages of inverter development** — the Company had canceled its contract with ITK for inverter development and was essentially **starting over**.



Tony Epperson
Sr. Manager, FP&A

- ▶ Milton's comments "**may have been true in his mind**, because Nikola was starting to build out its in-house inverter research and development team."

5. Inverter Development

In-House Program

Interviews



Kevin Lynk
Chief Engineer

- ▶ For the **Nikola One** prototype, Nikola used **RMS-built 250 kW-series inverters**. Six of the RMS inverters, along with six Remy motors, were designed for use in the Nikola One prototype vehicle.
- ▶ For the **Nikola Two** prototype, the Company used **300 kW-series RMS inverters** with different housings, and switched from six Remy motors to four Bosch motors. Nikola has **not made a final decision** regarding the inverter to use for the Nikola Two production vehicles.



Jason Roycht
VP, Technology Development and Strategy



Tony Epperson
Sr. Manager, FP&A



Christian Appel
Head of Fuel Cell & Storage Systems

For the **Nikola Tre**, Nikola is **using Bosch inverters**, but there is **also an ongoing in-house inverter research and development project** under the direction of Varoujan Sarkissian.



Dane Davis
CTO

In 2018, **ITK** was tasked with building a custom inverter for the Nikola NZT (UTV), but ITK did not have the capability to finish the project.

5. Inverter Development

Requests from OEMs

Interviews



Kim Brady
CFO

Milton's assertion that other OEMs have asked to use Nikola's in-house inverter is "**complete fiction**."



Varoujan Sarkissian
*Global Head, Vehicle
Electrical and Controls*

It is **not true** that OEMs asked to use Nikola's in-house inverter. There was no complete in-house inverter or software for OEMs to ask for at the time of Trevor's statement. Only a few power inverter boards had been developed.



Kevin Lynk
Chief Engineer

It is **possible** that IVECO asked to use the Nikola Tre inverters, but **those inverters are owned by Bosch**, so IVECO (or any other OEM) would have to secure them through Bosch.

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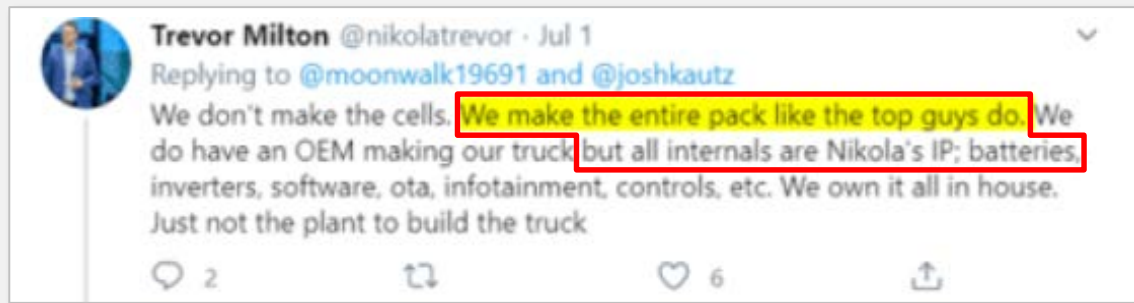
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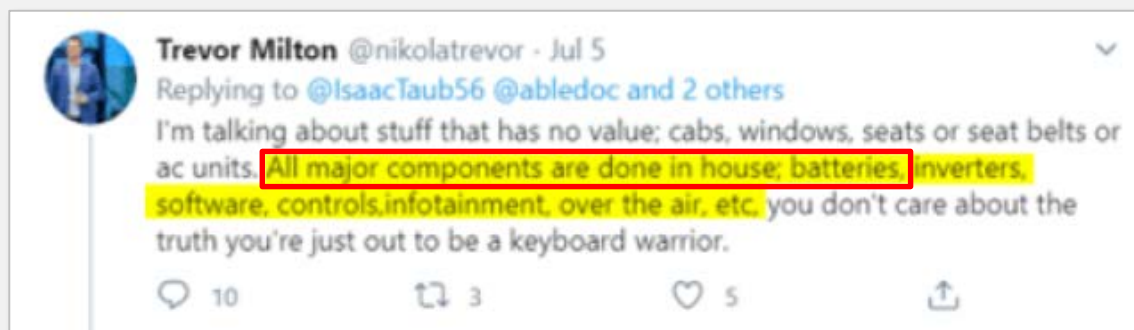
Jun. 6, 2020 |



Jul. 1, 2020 |



Jul. 5, 2020 |



6. Battery Development

Statements

Jul. 14, 2020 |

“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**.”

<https://www.youtube.com/watch?v=7C2LDmkEmP0>



6. Battery Development

Interviews



Umran Ashraf
Global Head, Vehicle
Engineering

Virtually all of the batteries for vehicles are built with partners. The battery for the Nikola Tre is a result of a tri-party effort (Samsung provides the cell, Romeo makes the module, Nikola builds and owns the pack).



Kim Brady
CFO

Nikola does not make its own battery in-house. “No one can say they have their own battery other than *maybe* Tesla.” **Nikola “never told” institutional investors that it makes its own batteries.** Rather, it told them the truth, namely that Nikola buys cells and works with third parties to build its modules. Milton “had **paranoia** about investors knowing that” even after numerous attempts to explain to him that investors understood it already. He “always played a bit of **cloak and dagger**” regarding battery technology. For example, he did not want to disclose Nikola’s relationship with Romeo.



Britton Worthen
CLO

Milton **worked hard** to ensure that Romeo could **never say** that its batteries were in Nikola’s trucks.



Mark Russell
CEO

Romeo was the best option, but Milton **badly wanted Nikola to own its battery technology.** He edged everyone else (including Umran Ashraf) out of the discussions with battery partners.

6. Battery Development

Documents

Nov. 1-4, 2019 | Trevor Milton emails Steve Cook (Associate Corporate Counsel, Contracts) regarding an agreement with Romeo Power Technology.



Trevor Milton

We need to make sure we have a clause specifically stating they shall never represent their batteries are on our truck without our written permission. Which we will never give.

I don't want the image issue with our investors. Please make sure we have a clause in there. Also, are there any penalties for being late in this? What if they don't meet their timelines?



Steve Cook

Jan. 1, 2020 | Kim Brady texts Mark Russell about a battery presentation given by Trevor Milton.

BegDoc	Time	From	Message Body
Russel_Mark_MOB_00065404	00:53:21	Kim Brady (NEW):+18479107460	Spoke with Umran for a few minutes this afternoon. He said Trevor's battery presentation was full of misrepresentation. In addition, he believes a flooded module makes thermal propagation worse and not better. Who is right?

6. Battery Development

Documents

May 11, 2020 | Employee performance review for Anirban Niyogi (Lead Battery Module Designer):

Review:

Anirban has been performing well and providing good work for Umran, but Anirban job responsibilities are more of a Project Engineer than a Battery Module Design Engineer. Shortly after Anirban's

Umran cannot provide a detailed performance review on Anirban for any battery development responsibilities since Nikola is not developing a battery in house.

Umran cannot provide a detailed performance review on Anirban for any battery development responsibilities since Nikola is not developing a battery in house.

Umran is not clear what career advancement or opportunities exist internally for Anirban in the future because Nikola does not have a clear plan for battery development. Since Anirban was hired as a Battery

Module Engineer/Lead—is this something are we intending to do? OR if we don't maybe we can transfer him to other roles but Umran is not sure how those direct managers will be happy with Anirban's performance.

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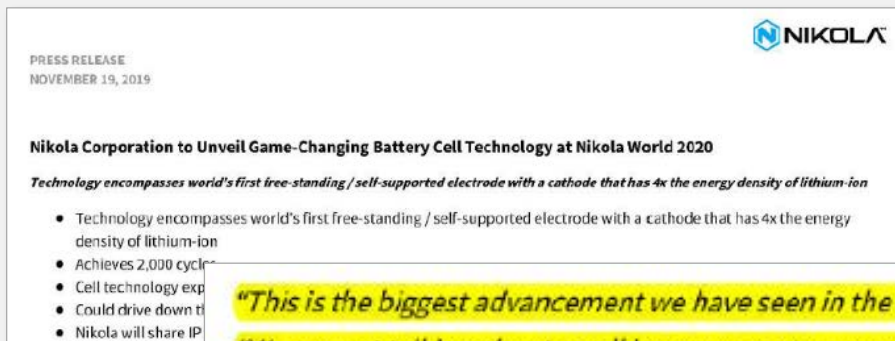
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7. Game-Changing Battery Technology

Statements

Nov. 19, 2019 | Nikola announces its plan to reveal “**game-changing battery cell technology**” at the Nikola World 2020 event. The announcement also references Nikola’s October 2019 letter of intent to acquire a “world-class battery engineering team” from ZapGo, Ltd., without naming ZapGo.



“This is the biggest advancement we have seen in the battery world,” said Trevor Milton, CEO, Nikola Motor Company.

“We are not talking about small improvements; we are talking about doubling your cell phone battery capacity. We are talking about doubling the range of BEVs and hydrogen-electric vehicles around the world.”

7. Game-Changing Battery Technology

Drexel

Documents

Nov. 15, 2019 | Trevor Milton informs Nikola's Board of Directors of Drexel University's lithium sulfur battery research and attaches a draft of the November 19, 2019 press release.

New battery technology optional board call

Sent: Fri, 15 Nov 2019 16:53:43 -0700

From: Trevor Milton

To: Sophia Jin

CC: Britton Worthen, William Milton, Mark Russell, Lon Stalsberg, Jeff Ubben, Mansuetti Mike (RBNA/P), MARX Gerrit (CNH)

 Nikola Battery Annou
17.1 KB

Hello Nikola Board M
This email is sensitive

As you know we enter
UK. On top that techn
lithium ion batteries th
if I would actually be a
searching university re



Trevor Milton



I spent years researching a very narrow window of technology; lithium sulphur. It is the holy grail of lithium batteries but no one has figured out how to prevent the sulphur from degrading. It holds 4x that of lithium-ion and costs 1/2 the cost of lithium ion to produce. Until now:)

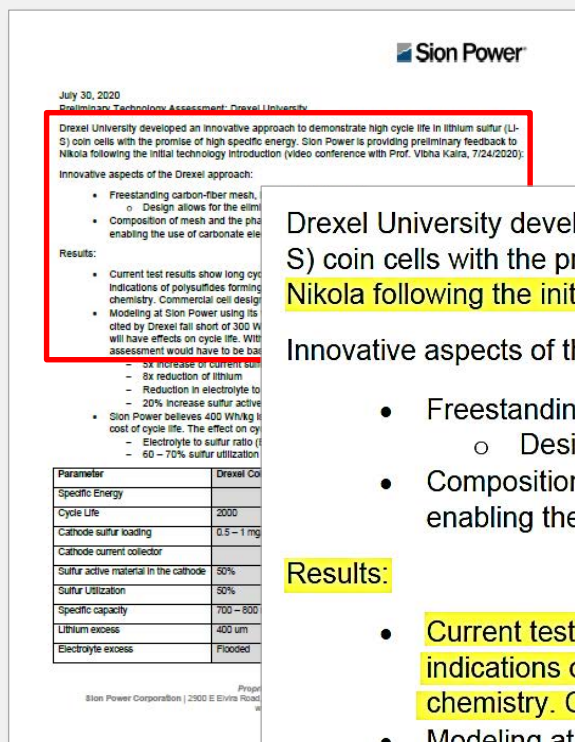
I found a brilliant Indian professor at Drexel University (Vibha Kalra) that claimed to have a coating figured out that would enable Lithium Sulfur to successfully be charged and discharged without major harm. I spent part of the last year lining up meetings, looking into the technology, validating it, seeing it cycle and beginning the due diligence on it. Vibha's team has now been able to cycle the sample cells over 2,000 times and have better results than lithium ion. That was the point in which I knew that we had it.

7. Game-Changing Battery Technology

Drexel

Documents

Jul. 30, 2020 | Sion Power, an Arizona battery technology company, conducted an independent review of Drexel University's research and provided Nikola with preliminary findings.



Drexel University developed an innovative approach to demonstrate high cycle life in lithium sulfur (Li-S) coin cells with the promise of high specific energy. Sion Power is providing preliminary feedback to Nikola following the initial technology introduction (video conference with Prof. Vibha Kalra, 7/24/2020):

Innovative aspects of the Drexel approach:

- Freestanding carbon-fiber mesh, impregnated with sulfur
 - Design allows for the elimination of the current collector/substrate
- Composition of mesh and the phase of sulfur deposited suppress polysulfides formation enabling the use of carbonate electrolyte

Results:

- Current test results show long cycle life (exceeding 2000 cycles) in coin cells, with no indications of polysulfides forming. Questions remain about the scalability of electrochemistry. Commercial cell design targets 400 – 500 Wh/kg and the same long cycle life.
- Modeling at Sion Power using its verified Li-S cell model shows that the design parameters cited by Drexel fall short of 300 Wh/kg. Several of the scale-up assumptions are risky and will have effects on cycle life. Without experimental verification of the cycle life, our

7. Game-Changing Battery Technology

Drexel

Interviews



Jason Roycht
VP, Technology
Development and
Strategy

There is a lot of risk on early coin cell samples and actual productionized battery cells; Milton likely did not understand that difference. **Dime sized “coin cells” were in place at the time with Drexel; these are simplistic and nowhere near the complexity of what goes into a pack cell.**



Tony Heaton
Battery Engineer

Drexel's projections showed the potential to double battery capacity vs. lithium-ion batteries, but this assumes all testing goes according to plan. **Drexel's work is still in the early research and development phase, and it was likely too early to publish this statement in November 2019.**



Kim Brady
CFO

Nikola is “**years away**” from having the battery technology Milton described. There's no way he could have known how many miles the trucks could drive between charging. The whole statement was an embellishment and fiction at the time, but it may be true in 10 years if everything goes perfectly.



Britton Worthen
CLO

Nikola did not and still **does not have** “commercializable” battery technology. Milton's statements to the contrary were a “**terrible and stupid idea**” and Worthen told him not to make the statement.

7. Game-Changing Battery Technology

Drexel

Interviews



Dane Davis
CTO

Drexel's battery research was confined to doubling battery capacity at the cell level; **their cell research still needs to go through scalability and viability testing** for production. If Drexel can achieve what was described in the press release, it would indeed be game changing.



Joe Pike
CHRO

This statement felt false and misleading; Milton was essentially saying "we got it," before they did.



Joseph Kiessig
Director, Corporate Finance

The Company **told investors they should ignore the press release** because the technology was very far from commercialization. Information on this subject was never included in investor presentations.

7. Game-Changing Battery Technology

ZapGo

Interviews



Jason Roycht

*VP, Technology
Development and
Strategy*

Roycht discovered the tax fraud and other allegations against Charles Resnick of ZapGo about a week after Roycht began at Nikola in November 2019. But the ZapGo arrangement was cancelled because ZapGo's product was **not feasible**.

The announcement touting game-changing technology had nothing to do with ZapGo. Although the release was admittedly sloppily-worded, it was referring to the Drexel University presentation of coin cell samples.

7. Game-Changing Battery Technology

ZapGo

Documents

Feb. 14, 2020 | ZapGo reports that delays will prevent it from completing the promised technology improvements within the contemplated budget and timeline.

Lol & Technical Due Diligence

- **Current Lol:** *The Company shall develop a Generation 4 (Gen 4) Carbon-Ion (C-Ion) cell designed to be used in the Nikola hydrogen and charging stations ("Development Product"). The Gen 4 cells will be delivered against the milestones in Exhibit B:*
 - Nov 1, 2019: Development Product phase begins (subject to agreement with Panasonic)
 - Feb 14, 2020: Milestone 1 – Trial iteration 10 samples – verified by Purchaser
 - Mar 30, 2020: Development Product delivered, 50 samples of Gen 4
- The delays in completing the agreement with Panasonic mean the dates for these milestones need to be amended. As work is still progressing for the Gen 4 development, alternative technical due diligence milestones are proposed below to allow the acquisition to complete in advance of the Panasonic trials.

Feb. 21, 2020 | Jason Roycht expresses concerns about ZapGo's reported delays.

From: Jason Roycht <jason.roycht@nikolamotor.com>
Subject: Re: SPA & JDA
Sent: Fri, 21 Feb 2020 06:58:31 +0100
Cc: Britton Worthen <britton@nikolamotor.com>, Trevor Milton <trevor@nikolamotor.com>, Tim Walder <tim.walder@zapgo.com>, CFO Kim Brady <kim.brady@nikolamotor.com>
To: Stephen Voller <stephen.voller@zapgo.com>



Although we recognize and accept a delay of the LOI timing due to trials at Panasonic, there seems to be significant development and therefore risk afterwards in order to demonstrate a viable product for Gen4. Furthermore, Zapgo is representing now a GENX development requirement 2 yrs later which raises some concerns that the Gen4 may not be adequate for the companies targets. We will need to ensure a mutual understanding and set the next steps accordingly.

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12. Production Timeline

8. Zero Emissions Truck as of 2016

Statements

Aug. 1, 2016 | Nikola issues a press release entitled, “Nikola One Truck Achieves Zero Emissions.”



“R&D team **has achieved 100% zero emissions** on the Nikola One commercial class 8 truck.”

“Nikola has engineered **the holy grail** of the trucking industry.”

NIKOLA ONE TRUCK ACHIEVES ZERO EMISSIONS

Working electric truck prototype to be unveiled on

Published August 01, 2016

Working electric truck prototype to be unveiled on December 2 in Salt Lake City

SALT LAKE CITY, UT August 1, 2016 – Nikola (pronounced Neek-oh-la) Motor Company's advanced R&D team has achieved 100% zero emissions on the Nikola One commercial class 8 truck.

“While other companies have recently announced battery electric trucks, they are restricted to a range of only a couple hundred miles between stops,” said Founder and CEO Trevor Milton. “Nikola has engineered the holy grail of the trucking industry. We are not aware of any zero emission truck in the world that can haul 80,000 pounds more than 1,000 miles and do it without stopping. The Nikola One requires only 15 minutes of downtime before heading out for the next 1,000 miles.”

SALT LAKE CITY, UT August 1, 2016 – Nikola (pronounced Neek-oh-la) Motor Company's advanced R&D team has achieved 100% zero emissions on the Nikola One commercial class 8 truck.

8. Zero Emissions Truck as of 2016

Interviews



Kim Brady
CFO

As of August 1, 2016, the Nikola One was running on natural gas and thus was “**not zero emissions.**” Milton’s statements to the contrary are **false**.



Britton Worthen
CLO

The assertion that Nikola had “achieved 100% zero emissions on the Nikola One” by August 1, 2016 is “**just not true.**”



Several Employees

Nikola **did not have a functioning hydrogen truck** at the time the press release was issued.

Interviewees interpreted the press release in various ways.

- ▶ Some believed the press release was accurate if it was referring to the Nikola Two, which only emits water. Nikola had designed a 100% zero emissions vehicle as an engineering model, although it was not yet built.
- ▶ **Others found it inaccurate if referring to the Nikola One.**



Tony Epperson
Sr. Manager, FP&A

The intention of the press release was to announce Nikola’s **vision** to obtain zero emissions through hydrogen fuel cell technology.



Mark Russell
CEO

Milton’s **true dream** from the beginning was to build a hybrid semi-truck—the “truck of the future.” He was convinced that hydrogen would get him to the ultimate goal of zero emissions.

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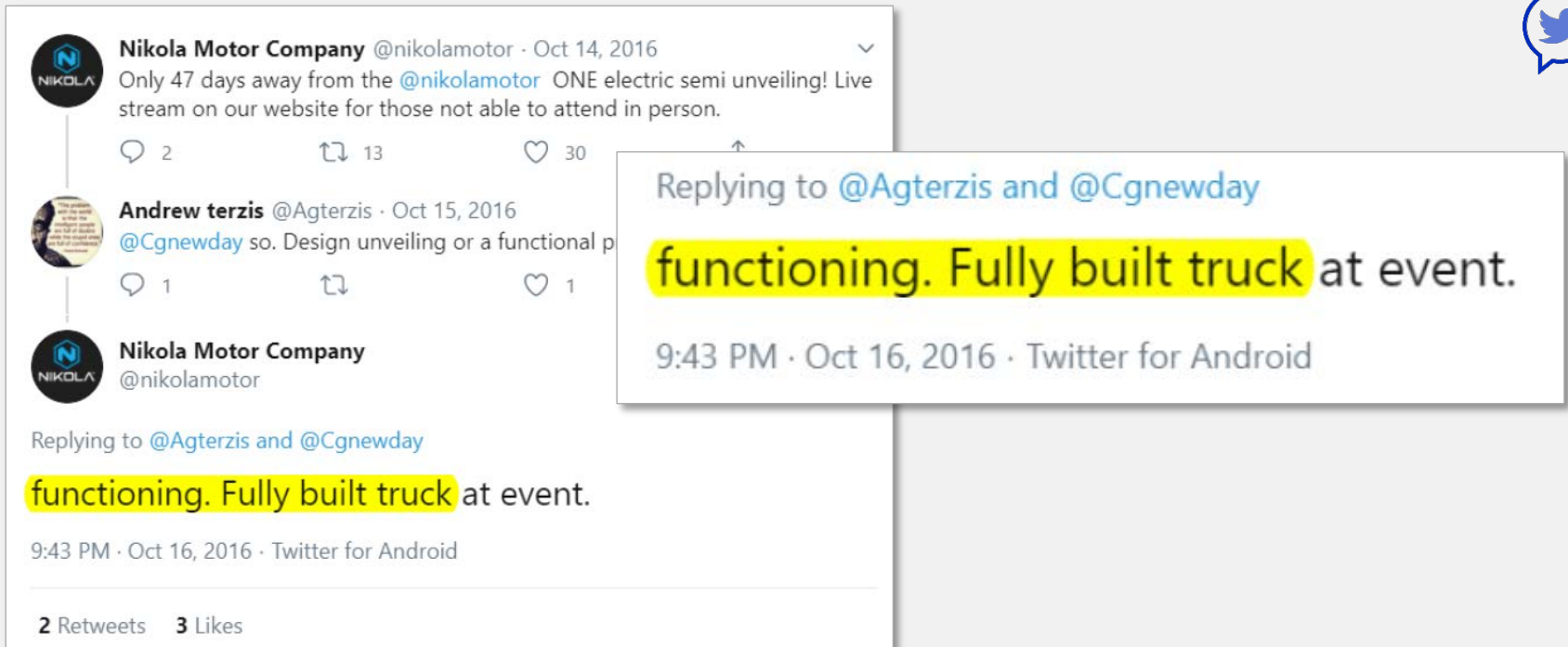
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10. Nikola One In Motion Video
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9. Nikola One Unveiling

Statements

Oct. 14-16, 2016 | Tweets from Nikola Motor Company regarding a truck to be shown at the December unveiling of the Nikola One electric semi-truck.



9. Nikola One Unveiling

Statements

Dec. 1, 2016 | During the Nikola One unveiling event, Trevor Milton says:

17:49
expens
17:50
jet wi
17:52
thing
17:54
people
17:55
fully
17:57
really incredible this will take a few
17:58
years of rollout this is not like
18:00
overnight thing
18:01
this will take testing it'll take
18:03
it'll take great partners that we
18:04
but soon we'll be passing billion
18:06
dollars of Freight through our systems

39:00
this truck will come to market I can
3
ise you that for every doubter out
4
e that said that there's no way this
6
rue absolute how can that be
8
possible we've done it it's my pleasure

39:14
feel how sturdy it is you're going to
39:16
see that this is a real truck this is
39:17
not a pusher thank you so much everyone this is
not a pusher thank you so much everyone

9. Nikola One Unveiling

Statements

Dec. 2, 2016 | During an interview with Roadshow, Trevor Milton states:

00:45
announced some of the the
00:47
this big event but it took ye
00:48
years to get here this isn't ju
00:50
pusher like a lot of vehicles
00:52
unveil are just vehicles that
00:53
actually function is a fully fu
00:55
uh you know vehicle which i
00:57
incredibly can go through yo
00:58
know we can change out a pr
01:00
everything we want all the te
01:02
I mean this is a fully functio
01:03
vehicle it's not just a not just
01:05
pusher that's what they call i
01:06
automotive world the vehicle
01:08
just push and it doesn't move all right

00:45
announced some of the the lead up to
00:47
this big event but it took years and
00:48
years to get here this isn't just a
00:50
pusher like a lot of vehicles that the
00:52
unveil are just vehicles that don't
00:53
actually function is a fully functioning
00:55
uh you know vehicle which is really
00:57
incredibly can go through you can you

00:58
know we can change out a pretty much
01:00
everything we want all the temperatures
01:02
I mean this is a fully functioning
01:03
vehicle it's not just a not just a
01:05
pusher that's what they call in the
01:06
automotive world the vehicle that they
01:08
just push and it doesn't move all right

9. Nikola One Unveiling

Statements

Jun. 17, 2020 | After a Bloomberg article was published alleging the truck shown at the unveiling was not functional, Trevor Milton tweeted:



9. Nikola One Unveiling

Interviews



**D. Davis, K. Lynk,
T. Epperson, V.
Caramella, K. Brady**

The Nikola One unveiled in December 2016 **was not “fully functional.”**



Kim Brady
CFO

The Nikola One unveiled in December 2016 **was a pusher.**



**A. Hadorn, K. Lynk,
I. Sloan, J. Rich**

The Nikola One unveiled in December 2016 **was “not a pusher”** because it was built to drive but it was also **not “fully functional”** at the time.



Kevin Lynk
Chief Engineer

There was an instruction (potentially from legal) to Nikola employees before the event that they should be careful **not to say the vehicle was “fully functioning,” “driving,” or an “H2 vehicle.”**



**K. Lynk
& J. Roycht**

At the second day of the event, Nikola discussed that although they were working toward hydrogen, the **truck on stage was designed around a natural gas turbine.**



**C. Appel,
T. Epperson, J.
Roycht**

Bosch, which invested not long after the event, **knew that the Nikola One was a natural gas turbine truck**, that Nikola wanted to switch to hydrogen, and that **it was not a running truck.**



Jason Roycht
*VP, Technology
Development and Strategy*

Once attendees were allowed on stage to look at the truck, it was obvious there was not a fuel cell in it. **Bosch attendees saw it as a “concept truck”**; they were told the second day of the event that it was a natural gas truck.

The initial presentation, especially a slide about fuel efficiency, was “very aggressive” or “unrealistic.”

9. Nikola One Unveiling

Interviews



Joseph Kiessig
*Director, Corporate
Finance*

The Nikola One unveiled in December 2016 was “fully functional” and “fully built” (at least under an industry understanding) because every component had been designed and tested.



Isaac Sloan
*Chief Software
Architect*

Not all of the parts were assembled due to additional safety testing needed but the Company could have made the truck functional if it wanted to.



Nicole Rose
*Director, PR & Corp.
Comms*

It is **standard practice to remove “parts, engines, and batteries”** from any vehicle that is going to be shown inside a building.



Britton Worthen
CLO

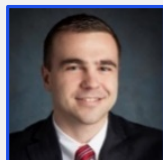
Milton’s statements that the truck was “fully built” **undermined** all the hard work and sacrifice by Nikola employees who did make something really special for the unveiling.

9. Nikola One Unveiling

Documents

Jun. 18, 2018 | Kim Brady sent Carnegie (Swedish investment bank) a draft response to a question from Statkraft regarding whether the Nikola truck depicted on a stage in an investor presentation was a shell or fully equipped.

Jul. 27, 2018 | Joseph Kiessig responded to Statkraft's question with a response was identical to Brady's draft response on June 18, 2018.



Joseph Kiessig
Director, Corporate
Finance

In the investor presentation on page 5 there is a picture of Nikola truck on the stage. Is this just a shell or is it actually fully equipped with batteries and FC? If so, is it running and how is the experience?

Prior to starting Nikola, Founder and CEO, Trevor Milton sold his previous company, DHybrid Systems, to Worthington Industries. DHybrid Systems focused on producing natural gas, back of cab storage systems, which is the black storage unit that you see on the back of the Nikola One, which was unveiled in December of 2016. This truck also featured a natural gas turbine as the range extender for the electric drivetrain, rather than a hydrogen FC system. Nikola decided to change from natural gas to hydrogen in August of 2016. By that time, it was too late to perform a complete system change on the truck that was to be unveiled only a four months later.

The primary subsystems (battery, motor drives, turbine, brake system, suspension) of the truck were all tested separately and mechanically integrated into the truck chassis. Rather than focusing additional time and resources towards the controls, calibration, and optimization of the turbine system, Nikola steered its attention towards the FC drivetrain that is now being incorporated on the alpha trucks. Also, the vehicle level controls and overall safety of the vehicle were not mature enough to risk driving on open roads.

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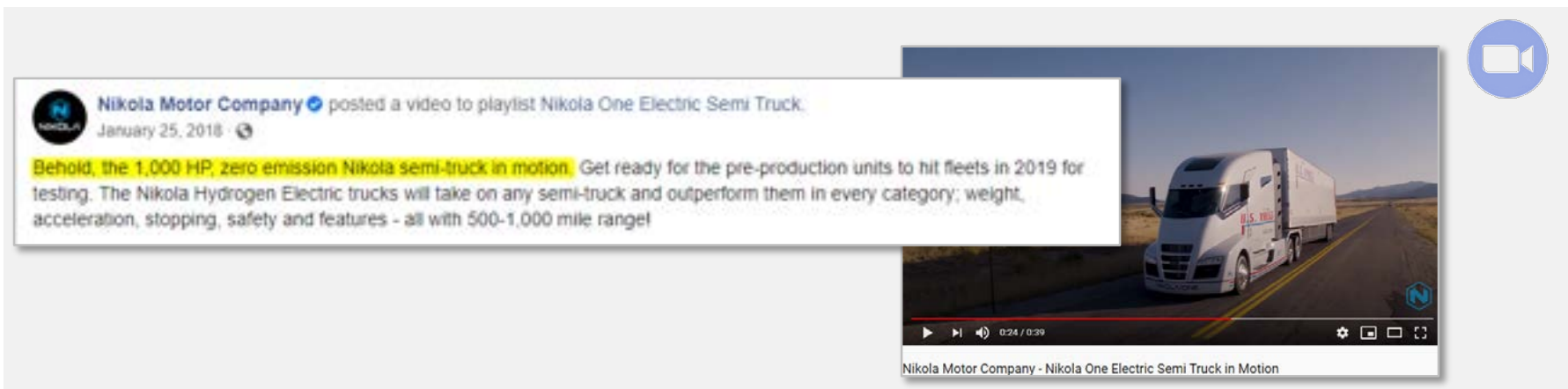
Statements

Oct. 6, 2017 |



Jan. 25, 2018 |

Nikola releases a video on its YouTube and Facebook pages. The YouTube video is entitled “Nikola One Electric Semi Truck in Motion”; the Facebook video states that the truck is “in motion.” The video shows the truck driving on an apparently level road at a high rate of speed, then stopped at a stop sign in another shot.



10. Nikola One In Motion Video

In Motion vs. Phillips Video

- ▶ On January 24, 2020, Nikola posted a separate video on YouTube entitled “Nikola One Helps Phillips Celebrate 90 Years of Innovation.” Both videos were compiled using footage filmed by Phillips.



10. Nikola One In Motion Video

Interviews



Vince Caramella
*Global Head,
Marketing*

The video is misleading because it leads the viewer to believe the truck is operating under its own power.



Stasy Pasterick
*VP,
Corporate Controller*

Tony Epperson told Pasterick that the video did not originally show the vehicle moving at all. However, the plan was changed because **Trevor Milton really wanted to show the truck in motion**. Epperson also told Pasterick that there had been internal discussions regarding whether it should be clearly stated when posting the video that the truck was not moving under its own propulsion.



Tony Epperson
Sr. Manager, FP&A

Regarding whether Trevor Milton made the decision to show the truck in motion, Epperson said that **"Trevor drove all of the decisions"** at the time."



Tony Heaton
Battery Engineer

At the time, a number of employees were **uncomfortable saying the truck was "in motion"** when they knew it was not driving.

10. Nikola One In Motion Video

Interviews



Isaac Sloan
Chief Software Architect

Everyone inside and outside the Company knew the truck was rolled. If the video was released without any caveat indicating that it was not driving on its own, then the video could be classified as misleading. However, other major automotive companies do this in marketing campaigns all the time.



Mark Duchesne
*Global Head,
Manufacturing*

If rolling a truck down a hill is a fabrication, **then every OEM in the world is a liar because they also show early prototype vehicles driving** under similar pretenses as rolling down a hill.



Joe Kiessig
*Director, Corporate
Finance*

The video is not necessarily misleading because **it does show the truck in motion.**



Christian Appel
*Head of Fuel Cell &
Storage Systems*

Bosch understood that the truck was pushed and not driving under its own power.



Mark Russell
CEO

Russell saw the video while he was still at Worthington, and thought it **“smelled funny.”**

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11. Refund of Deposits

Statements

Apr. 4, 2018 | Nikola tweets about refunding customer reservations.



Sept. 10, 2020 | Hindenburg Report suggests that former CFO Jonathan Spira's departure and lawsuit was connected to Nikola's refunding of deposits.

11. Refund of Deposits

Interviews



Britton Worthen
CLO

Former CFO Jonathan Spira left the Company for reasons **unrelated to the refunds**.



Stasy Pasterick
VP, Corporate Controller

Nikola was **not able to access the underlying deposit funds** because they were restricted by its merchant account provider (ProPay), and therefore Nikola had no use for them.



Stasy Pasterick
VP, Corporate Controller



Joseph Kiessig
Director, Corporate Finance

Nikola had to pay **fees** to ProPay to hold the deposits.



Joseph Kiessig
Director, Corporate Finance

Nikola planned to pursue a dedicated route model that **prioritized large volume corporate customers**, so there was little benefit to the reservation system.

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12. Production Timeline

Statements

Jul. 17, 2020 | On a podcast, Trevor Milton discusses the Nikola Tre: “We have the most advanced battery electric truck in the world. We have a truck coming into production right now with 720 kwh the largest battery we know of on a truck anywhere in the world coming into production. **We have five of them coming off the assembly line right now in Ulm, Germany.** They’ll enter production end of next year-ish, somewhere around there.”

Interviews



Umran Ashraf
Global Head, Vehicle
Engineering

Characterization of the trucks as fully built was inaccurate. Nikola was shipping Tre components to Germany for assembly during July 2020. There was no “assembly line” in Ulm; there was a prototype shop.



Tony Epperson
Sr. Manager, FP&A

This was a “**poor choice of words.**” Five prototype trucks were and are still being built in an IVECO prototype shop.



Vince Caramella
Global Head of Marketing

This statement was premature. The trucks were being built at this time, but **none had been completed.**

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Overview

- ▶ We evaluated eight categories of statements identified by EY in the Company's S-4 (and amendments thereto).

#	Category	Statement
1	FCEV Reservations	Nikola has 14,000 reservations for Nikola Two FCEV trucks.
2	Third-Party Contracts	Nikola has contracts with certain industry partners, as well as a contract to lease trucks to Anheuser-Busch LLC.
3	Hydrogen Stations and Cost	Nikola plans to rollout hydrogen stations in California in 2022-2023. Each station is expected to cost \$15 – \$20 million.
4	Production Timing	Nikola Tre BEV sales are expected to begin in 2021 and sales of the Tre FCEV are expected to start in 2023.
5	Vehicle Range	The range of the BEV and FCEV will be up to 400 – 700 miles.
6	Batteries	The battery packs in Nikola's trucks will use lithium-ion cells.
7	Beer Delivery Event	A Nikola Two prototype delivered approximately 15,000 pounds of Bud Light. With the trailer, the total load was 27,000 pounds.
8	Patents	Nikola describes its U.S. and foreign patent and trademark portfolio, including applications.

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1. FCEV Reservations

2. Third-Party Contracts
3. Hydrogen Stations and Cost
4. Production Timing
5. Vehicle Range
6. Batteries
7. Beer Delivery Event
8. Patents

1. FCEV Reservations

Statements

Form S-4
(Mar. 13, 2020) “At times we have indicated that if we are able to sell or lease every truck which has been reserved, we would have sales of \$10 billion in projected revenues.”

Amendment No.
1 to Form S-4
(Apr. 15, 2020) Statements regarding reservations.

As of December 31, 2019, we had reservations for 14,000 Nikola Two FCEV trucks, all of which are subject to cancellation by the customer until the customer enters into a lease agreement. At times

Nikola’s current fuel cell electric vehicle reservations, currently representing over \$10 billion in potential orders, evidence how strongly the market is seeking Nikola’s solution.

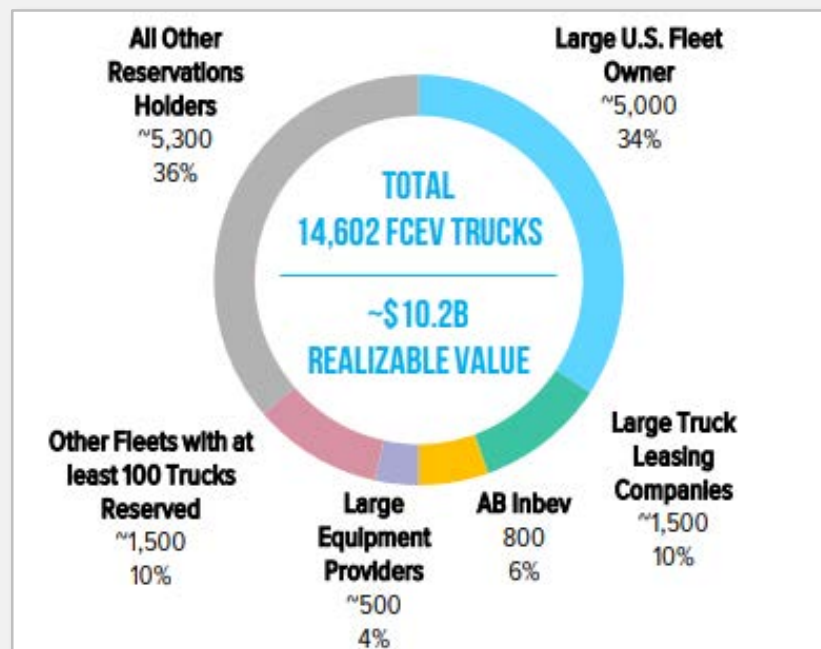
The current backlog of over 14,000 FCEVs non-binding reservations represents more than two years of production and over \$10 billion of potential revenue. The FCEV reservation book was frozen in the fall of 2019 in order for Nikola to focus on negotiating with strategic fleet partners for launch. Nikola does not hold deposits related to the FCEV orderbook. Nikola believes a significant portion of the existing backlog will be converted to binding orders, once we have fixed production dates for FCEV trucks as the majority of order book represents large corporate customers with over 100 or more trucks reserved. Additionally, Nikola will likely require a significant deposit to secure final orders at least six months prior to delivery.

As of December 31, 2019, we had approximately 14,000 reservations for our FCEV trucks.

1. FCEV Reservations

Statements

March 3, 2020 | Nikola Investor Presentation includes reservation data.



- AB Inbev pre-order for 800 trucks represents a binding order
- Majority of FCEV reservations (~50%) reflect large corporate customers with investment grade credit ratings

1. FCEV Reservations

Overview

- ▶ In early 2016, the Company began accepting reservations for the Nikola One.
- ▶ From that time onward, reservations could be made in two ways.

Nikola Website

- ▶ Reservations could be placed via Nikola's website for the One, Two, Tre, Badger, NZT, and Wav.
- ▶ Customers had to accept Terms and Conditions as part of the reservation process.
- ▶ The Terms and Conditions for reserving the One, Two, Tre, Badger, NZT, and Wav specify:
 - *The specific type of vehicle that is being reserved; and*
 - *That the order in which reservations will be fulfilled is up to the Company.*
- ▶ The reservations are stored in a database.

Manual Entry

- ▶ Reservations could be manually entered into the reservation database by a limited group of Nikola employees.
- ▶ Approximately 20 reservations were recorded this way.
- ▶ For seven of these reservations, the Company entered into written contracts with the customers.

1. FCEV Reservations

Cancellable Reservations

- ▶ The Company's registration statement states that all of the reservations are cancellable by the customer.
- ▶ The Nikola reservation website's terms and conditions permit cancellation of reservations.

Terms and Conditions: Nikola One, Two, Tre

While this Reservation secures the approximate delivery priority of your Nikola Two™, it does not constitute the purchase or order of a vehicle. When the start of production for your Reservation nears, we will ask you to configure your Nikola Two™. At that time, Nikola™ will create an order for your vehicle and you will receive a Purchase Agreement indicating the purchase price of the vehicle, plus estimates of any applicable taxes, duties, transport and delivery charges, and any other applicable fees. If you decide not to go through with your order at that time, your priority position and any benefits that come from that position will be forfeited.

Terms and Conditions: Nikola Badger, NZT, Wav

3.1 Your Reservation Payment is fully refundable should you choose to cancel your Reservation. You are under no obligation to purchase the Nikola Badger\ from Nikola, and Nikola is under no obligation to supply you with a vehicle. Nikola reserves the right to cancel your Reservation and refund your Reservation Payment at any time.

1. FCEV Reservations

Cancellable Reservations

- ▶ The Company's written contracts permit cancellation of reservations.
 - Exception: The AB InBev contract permits termination under certain conditions.

2. When the start of production for the Trucks approaches, Lessor will contact Lessee so that Lessee may specify the configuration (color, options, wheelbase, cab type, etc.) for its Trucks. At that time, Lessor will deliver to Lessee a Lease Agreement which will indicate the lease price of the Trucks ordered pursuant to Lessee's specifically chosen configuration and options, plus estimates of any applicable taxes, duties, transport and delivery charges, and any other applicable fees (the "Truck Price"). If Lessee decides to proceed with its order, Lessor will apply Lessee's Lease Order Payment towards the Truck Price owed by Lessee.

3. If Lessee decides not to go through with its Lease Order prior to making the 50% Truck Price, Lessee is entitled to a 100% refund of all money paid toward the Trucks. However, once Lessee's money is returned, Lessee acknowledges that its priority position and any benefits that come from that position will be forfeited.

1. FCEV Reservations

Number of Reservations

- ▶ The Company's registration statement states that Nikola has a "backlog" of over 14,000 reservations.
- ▶ The reservation book shows 14,602 reservations that correspond to the following categories. This matches the breakdown of reservations in Nikola's investor presentations.

Classification	Trucks Reserved	% of Reservations
Large US Fleet Owner	5,000	34%
Large Truck Leasing Company	1,500	10%
AB InBev	800	5%
Large Equipment Provider	500	3%
Other Fleets with at least 100 Trucks Reserved	1,500	10%
All Other Reservation Holders	5,302	36%
Total	14,602	100%

1. FCEV Reservations

Reservation-Related Revenue

- ▶ The Company's registration statement states that the backlog of reservations represents \$10 billion in projected revenue.
 - In the April 2020 amendment to the registration statement, the Company stated that the backlog represents over \$10 billion of potential revenue.
- ▶ The reservation book estimates that 14,602 reservations could result in approximately \$9.9 billion of revenue.

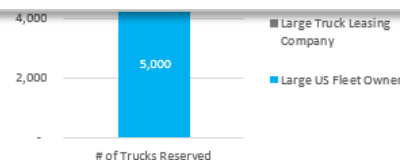
TRUCK RESERVATIONS - REVENUE POTENTIAL

Model	Reservations	\$ / Mile	Miles per Reservation	\$ if Actualized
Nikola Truck	13,802	\$0.95	700,000	\$9,178,330,000
AB inBev Contract	800	\$0.85 (1)	1,000,000	\$680,000,000
Total Nikola Truck Reservations	14,602	\$0.94	1,000,000	\$9,858,330,000 (2)

Model	Reservations	\$ / Mile	Miles per Reservation	\$ if Actualized
Nikola Truck	13,802	\$0.95	700,000	\$9,178,330,000
AB inBev Contract	800	\$0.85 (1)	1,000,000	\$680,000,000
Total Nikola Truck Reservations	14,602	\$0.94	1,000,000	\$9,858,330,000 (2)

(1) Does not include fuel surcharge (for every \$0.065 the national avg. of diesel exceeds \$2.90/gal Nikola has the right to charge an additional \$0.01/mile)

(2) Does not include any surcharge for miles driven autonomously



1. FCEV Reservations

Large Corporate Customers with 100 or More Trucks

- ▶ The Company's registration statement states that the majority of the reservation book represents large corporate customers with 100 or more trucks reserved.
- ▶ The reservation book shows a majority (57.6%) of reservations as received from large corporate customers for over 100 trucks.

Customer Name	Trucks Reserved	% of Reservations
US Xpress	5,001	34.2%
Ryder	1,500	10.3%
AB InBev	800	5.5%
Thompson Truck Center, LLC	500	3.4%
Helios Air	200	1.4%
Tajja Trucking	102	0.7%
Total Transportation Services, Inc.	101	0.7%
Paul Terry Trucking	100	0.7%
Southeast Management Group, Inc.	100	0.7%
Total	8,404	57.6%

1. FCEV Reservations

Large Corporate Customers with Investment Grade Credit Ratings

- ▶ Nikola investor presentations state that the majority of the reservations reflect large corporate customers with “investment grade credit ratings.”
- ▶ Company personnel noted that this statement was only meant to apply to the three largest customers: US Xpress, Ryder, and AB InBev.

Classification	Credit Rating	Top 3 Largest Customers
US Xpress	No ratings since 2016; rated B2 in 2016 (not investment grade)	
Ryder	Baa2 (Moody's 6/30/2020)	
AB InBev	Baa1 (Moody's 3/2020)	Baa1 and Baa2 are investment grade ratings
Thompson Truck Center, LLC	Private company	
Helios Air	Not found	
Tajja Trucking	Not found	
Total Transportation Services, Inc.	Private company	
Paul Terry Trucking	Private company	
Southeast Management Group, Inc.	Not found	

1. FCEV Reservations

Conversion of Backlog

- ▶ The Company's registration statement states that a significant portion of the existing backlog will be converted to binding orders.
- ▶ Company personnel report that this statement is based on the Company's frequent communications with its large corporate customers, which represent a majority of the reservations.
- ▶ The Company has contracts with the following large corporate customers:
 - US Xpress (5,000 trucks),
 - Ryder (1,500 trucks),
 - Anheuser-Busch (AB InBev) (800 trucks), and
 - Thompson Truck Center (500 trucks).

1. FCEV Reservations

Integrity of the Reservation Book

Customer	No. Trucks	Description
<i>Large Corporate Customers</i>		
Helios Air	200	Unclear if company exists
Tajja Trucking	102	Unclear if company exists
Southeast Management Group, Inc.	100	Unclear if company exists
Paul Terry Trucking	100	Projected 2020 revenue \$7.29 million
<i>Employees</i>		
Isaac Sloan	17	Chief Software Architect
Jordan Rich	11	Art Director
Brad Hintze	5	Lead Software Engineer
<i>Local Companies</i>		
JT Forestry Commerce	2	Forestry and logging company in Pennsylvania with a predominantly Amish harvesting crew

1. FCEV Reservations

Integrity of the Reservation book

Interviews



Kim Brady
CFO

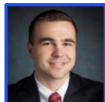


Tony Epperson
Sr. Manager FP&A



Joseph Kiessig
Director, Corporate
Finance

- ▶ Nikola conducted a “**data cleansing**” of its reservation list to remove reservations entered on the website that were **bogus on their face**. The **14,602 figure excludes the reservations deemed bogus**.
- ▶ However, there were **no attempts to contact each reservation-holder** to determine the legitimacy of individual reservations.



Joseph Kiessig
Director, Corporate
Finance

Nikola has contracts with **five customers**. No other documentation exists.



Tony Epperson
Sr. Manager FP&A

- ▶ **Large corporate orders are generally based on Trevor Milton’s personal relationships** with individuals at those companies.
- ▶ It is **doubtful** that US Xpress (over 35% of reservation book) planned to buy 5,000 FCEV trucks as a **bulk order**; Epperson was unsure how delivery would work.
- ▶ The finance team identified “large corporate customers” **based on “eyeballing” the customer names**.



Mark Russell
CEO

If U.S. Xpress is “junk,” then the investor presentation statement regarding customers with investment-grade credit ratings is **problematic**.

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8. Patents

2. Third-Party Contracts

Statements

**Amendment No. 1 to
Form S-4
(Apr. 15, 2020)**

“On February 22, 2018, Nikola entered into the Master Agreement—Tractors with **AB** (the “Master Agreement”) whereby AB agreed to lease from Nikola hydrogen fueled tractors and related equipment to be used by AB for transportation and related services at certain AB locations.”

**Amendment No. 1 to
Form S-4
(Apr. 15, 2020)**

“On March 2, 2020, Nikola entered into a Commercial Letter Agreement with **Nimbus**, whereby Nikola agreed to use Nimbus’ affiliates’ autonomous driving components on Nikola’s autonomy equipped trucks, subject to certain conditions, negotiate inverter development, fuel cell power module development and part supply with Nimbus, and obligate Nikola to receive services resulting in a minimum payment to Nimbus and its affiliates. Nimbus also agreed to terminate the Nimbus Redemption Letter Agreement as of the Effective Time of the Merger. Nikola believes the terms of this agreement are generally no less favorable to Nikola than those that could be obtained in similar transactions with unaffiliated third parties.”

2. Third-Party Contracts

Statements

**Amendment No. 1 to
Form S-4
(Apr. 15, 2020)**

“While we currently have a contract with **Anheuser-Busch LLC** (“AB”), to lease up to 800 Nikola Two FCEV trucks, if we are unable to deliver our trucks according to the vehicle specifications and delivery timelines set forth in the contract, AB has the right to cancel its order for trucks.”

**Amendment No. 1 to
Form S-4
(Apr. 15, 2020)**

“**EDAG** is a global engineering service provider to the commercial vehicle industry. EDAG provides Nikola cab and chassis engineering services.”

**Amendment No. 1 to
Form S-4
(Apr. 15, 2020)**

“**WABCO** is a leading global supplier of braking control components and air management systems to medium- and heavy-duty trucks. WABCO provides Nikola with industry-leading safety technologies including electronic braking systems, as well as traction and stability control technologies.”

**Amendment No. 1 to
Form S-4
(Apr. 15, 2020)**

“**Meritor** is a leading global supplier of suspension and related components for heavy-duty trucks. Meritor provides Nikola with industry leading suspension technologies.”

**Amendment No. 1 to
Form S-4
(Apr. 15, 2020)**

“**Mahle** is a leading global supplier of thermal management systems for heavy-duty trucks. Mahle provides Nikola with industry leading thermal management system technologies.”

2. Third-Party Contracts

- The Company has signed contracts with all six of the parties EY identified in the registration statement.

Party	Description in Registration Statement	Status
Anheuser-Busch	Lease up to 800 trucks from Nikola	Contract allows for lease of up to 800 trucks
EDAG	Provide cab and chassis engineering services to Nikola	► Nikola stopped using EDAG for semi-trucks after Iveco deal ► Until October 2020 Nikola had continued to use EDAG for work on the NZT
WABCO	Provide safety technologies, including electronic braking systems, to Nikola	Nikola is still using WABCO for braking systems
Meritor	Provide Nikola with suspension and related components for heavy-duty trucks	Nikola has used Meritor in the past but has not sourced any products from Meritor for about 18 months
Mahle	Provide Nikola with thermal management systems for heavy-duty trucks	Nikola is still using Mahle for thermal systems
Nimbus Holdings	Provide Nikola with autonomous driving components	Nikola is not currently developing an autonomous vehicle

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3. Hydrogen Stations and Cost

Statements

Form S-4
(Mar. 13, 2020)

“Through 2024 we expect to incur up to **\$1.0 billion in capex** related to hydrogen stations. Hydrogen station construction is expected to begin in 2021. Each station is expected to take 1.5 to 2 years to complete, and the average total cost per station to be \$15 to \$20 million, depending on station location.”

Form S-4
(Mar. 13, 2020)

“Our initial **plan for the station rollout** begins with an eight-ton pilot station accessible to the AB brewery in Van Nuys, California. From there, we then plan to build up to 10-12 additional stations in California. These stations will supply fuel for our launch customers in those geographies that have dedicated routes in California. California is offering incentives to build out our hydrogen fueling infrastructure and deploy zero-emissions vehicles, including opportunities for funding along major freeway corridors. We expect to rollout these stations in 2022-2023.”

Form S-4
(Mar. 13, 2020)

“Construction of an **8-ton pilot station** accessible to AB’s brewery in Van Nuys, California is **expected to begin** in the fourth quarter of 2020 and be completed by the fourth quarter of 2022.”

Amendment No. 1 to
Form S-4
(Apr. 15, 2020)

“We **intend to produce the hydrogen needed** for these stations on site through electrolysis.”

3. Hydrogen Stations and Cost

Interviews

- ▶ The CAPEX numbers quoted in the March 13, 2020 Form S-4 were ambitious but generally accurate, forward-looking estimates at the time they were made.
- ▶ At present, Nikola is revisiting its hydrogen production and distribution model, making it difficult to estimate CAPEX on any hydrogen infrastructure build-out.



Joseph Kiessig
*Director, Corporate
Finance*

The CAPEX numbers were “**accurate and vetted.**” The numbers came from cost projections in Nikola’s financial model.



Pablo Koziner
*President
Nikola Energy*

We “**still don’t know**” what it will cost to build a hydrogen station.

- ▶ There will be a “**big variation**” in costs, depending on the type of stations built and the locations of the stations.
- ▶ Nikola “needed a lot more structure, analysis, and information on cost.” Why build an 8,000 kg station when you only have a few trucks?

We have not purchased or leased specific plots of land and obtained permits to build stations.

- ▶ The only thing we have determined is that our first station will be a dispensing-only station.

3. Hydrogen Stations and Cost

Interviews



Dale Prows

*Global Head,
Infrastructure
Development*

Although it will be difficult to build the first few stations for less than \$30 million, **there is a path** for getting CAPEX down to \$16.5 million per 8-ton station at scale.



Nha Nguyen

Head of Safety

The statement on the proposed Van Nuys station “**was accurate at the time it was made.**”



Tony Epperson

Sr. Manager, FP&A

Construction on the first hydrogen station **has not yet started**; they have not even determined whether the station will be in Van Nuys or somewhere along I-10.

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4. Production Timing

Statements

Form S-4
(Mar. 13, 2020) “Sales of the Nikola Tre BEV are expected to begin in 2021, addressing the near-term market opportunity, while sales for the European Nikola Tre FCEV is expected to start in 2023.”

Form S-4
(Mar. 13, 2020) “The Nikola Two will be marketed in the North American market, with initial production expected in the first quarter of 2023.”

Interviews



Kim Brady
CFO

This was **accurate when written**; COVID has caused delays. Nikola will likely be able to deliver the Tre BEV in Q4 2021. No longer confident that Nikola will get the Tre FCEV out in 2023.



Christian Appel
Head of Fuel Cell & Storage
Systems

Confident that the **Tre BEV can be released by the 2023 target and is on track to do so.**



Tony Epperson
Sr. Manager, FP&A

Tre BEV sales are expected to begin in **2021** and Tre FCEV sales are expected to begin in **2023**.



Mark Duchesne
Global Head, Manufacturing

The plan is to start building Tre BEV trucks in mid-2021 and to deliver them to customers by the end of 2021. **There is no reason to believe the 2023 date will not hold.**

4. Production Timing

Interviews



Jason Roycht
*VP, Technology
Development and
Strategy*

In March 2020, the timing was **optimistic or not possible**.

At this time, it is likely not possible to have the Nikola Two produced in North America at this time. The Company does not have the resources to build vehicles with two different chassis at the same time.



Tony Epperson
Sr. Manager, FP&A

This was the plan for the Nikola Two at the time of filing, but COVID may have since impacted the timeline.



Mark Duchesne
*Global Head,
Manufacturing*

The target for producing the Nikola Two is **now 2024 or 2025**.



Paul Maack
*Head of Talent
Acquisition*

Mark Russell **very recently changed** this plan. The production timeline is still 2023, but the fuel cell truck we intend to market in North America is now the Nikola Tre, not the Nikola Two.

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5. Vehicle Range

Statements

Form S-4
(Mar. 13, 2020)

Risk Factors

“We anticipate the range of our BEV and FCEV vehicles to be up to 400 to 700 miles before needing to refuel, but that range will decline over time as the battery deteriorates. We currently expect a 3-4% decline in the battery life per year, which will decrease the range of our trucks over 5 years by approximately 20%.”

Amendment No. 1 to
Form S-4
(Apr. 15, 2020)

Risk Factors

“We anticipate the range of our BEV and FCEV vehicles to be up to 400 to 700 miles before needing to refuel, but that range will decline over time as the battery deteriorates.”

Form S-4
(Mar. 13, 2020)

Company Outlook

Amendment No. 1 to
Form S-4
(Apr. 15, 2020)

- ▶ “Nikola’s BEV has an estimated range of 250-300 miles and is designed to address the short-haul market.”
- ▶ “Nikola’s FCEVs have an estimated range of 400-700 miles, designed to address the medium and long-haul market.”

5. Vehicle Range

Interviews



Kim Brady
CFO

This **statement is accurate for the FCEV but not the BEV**. This mistake resulted from **poor drafting** rather than an intentional error.



Jason Roycht
*VP, Technology
Development and
Strategy*

The BEV has a range of roughly **300 miles** and the FCEV has a range of roughly **600 miles**. These ranges depend on many assumptions, such as whether the truck carries light or heavy loads.



Mark Duchesne
*Global Head,
Manufacturing*

BEV range is expected to be around **300 miles**. Tre FCEV range is expected to be around 500 miles. The Nikola Two range may be 800 to 1000.

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6. Batteries

Statements

**Amendment No. 1 to
Form S-4
(Apr. 15, 2020)**

“The battery packs within our trucks will make use of lithium-ion cells.”

Interviews



Jason Roycht

*VP, Technology Development and
Strategy*

This is **correct**.



Morgan Mackelprang

Hardware Lead Developer

From my understanding, **this is the current path**.



Alain Hadorn

*Sr. Director, Program Management
& Quality*

Correct.



Mark Duchesne

Global Head, Manufacturing

We are planning to use **lithium-ion batteries** for the trucks.

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7. Beer Delivery Event

Statements

**Amendment No. 1 to
Form S-4
(Apr. 15, 2020)**

“In November 2019, Nikola completed AB’s first ever zero-emissions beer-run. The Nikola Two prototype FCEV delivered six pallets of Bud Light weighing approximately 15,000 pounds. The total load hauled, including the trailer, was approximately 27,000 pounds. The delivery was made on city streets and was a true commercial order where the beer was delivered to one of AB’s distributors. AB’s distributor then delivered the beer to the St. Louis Blues arena for consumption at that night’s game.”

Interviews



Kim Brady
CFO

This is factually **accurate**.



Jason Roycht
*VP, Technology Development
and Strategy*

This sounds fairly **accurate**.



Elizabeth Fretheim
*Global Head, Business
Development*

This is **accurate**.

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8. Patents

Statements

**Amendment No. 1 to
Form S-4
(Apr. 15, 2020)**

“As of March 1, 2020, Nikola owns or co-owns 11 issued U.S. patents, 5 issued foreign patents and has 55 pending or allowed patent applications. In addition, Nikola has 32 pending U.S. trademark applications and 32 pending foreign trademark applications. Nikola’s patents and patent applications are directed to, among other things, vehicle and vehicle powertrain (including battery and fuel cell technology), hydrogen fueling, off-road vehicle, and personal watercraft technologies.”

8. Patents

Review

- ▶ Nikola accurately disclosed the total number of U.S. and foreign patents.
- ▶ Nikola has one more pending patent application than disclosed (56, not 55).
- ▶ Nikola accurately disclosed the total number of U.S. and foreign trademark applications. However, the breakdown of these U.S. and foreign trademarks was listed incorrectly.
 - As of March 1, 2020, there were 41 (rather than 32) pending U.S. trademark applications.
 - There were 23 (rather than 32) pending foreign trademark applications.

S-4 Statement	Actual Numbers as of March 1, 2020
11 Issued U.S. Patents	Confirmed
5 Issued Foreign Patents	Confirmed
55 Pending or Allowed Patent Applications	56 Pending or Allowed Patent Applications
32 Pending U.S. Trademark Applications	41 Pending U.S. Trademark Applications
32 Pending Foreign Trademark Applications	23 Pending Foreign Trademark Applications

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Trevor Milton's Character



Trevor Milton
@nikolatrevor

Founder, Executive Chairman of @nikolamotor Nasdaq traded: NKLA. It's our duty to leave the world a better place and inspire people. Instagram: lakepowelltrevor

📍 Phoenix, AZ

🌐 [nikolamotor.com](https://www.nikolamotor.com)

📅 Joined February 2014

#249 Trevor Milton



PHOTO BY TIM PANNELL

REAL TIME NET WORTH

\$1.9B as of 10/31/20

▼ \$136 M | 6.82%

Reflects change since 5 PM ET of prior trading day

ON FORBES LISTS

#249 **Forbes 400 2020**

#1851 **Billionaires 2020**

STATS

AGE **38**

SOURCE OF WEALTH **electric vehicles, Self Made**

SELF-MADE SCORE **9**

PHILANTHROPY SCORE **1**

Trevor Milton's Character

- ▶ Visionary Struggling with Execution
- ▶ Manic Behavior
- ▶ Desire for Control and Difficulty Tolerating Challengers
- ▶ Desire to Lead a Billionaire Lifestyle
- ▶ Trading Stock for Assets
- ▶ Focus on Stock Price
- ▶ Preoccupation with Social Media
- ▶ Distorted Perception of the Truth

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Management Team

- ▶ The Company is in the hands of a strong, well-credentialed management team.



Mark Russell
CEO

Russell has over 20 years of experience in the industry, including executive experience at Worthington, Alcoa, and other companies.



Kim Brady
CFO

Brady has over 20 years of experience in various finance-related roles, including serving as CFO of a division of PrimeCare.



Britton Worthen
CLO

Worthen has been practicing for 20 years, with extensive experience advising on corporate governance, litigation, and other matters.

- ▶ The Company also has numerous senior technical and engineering leads with deep experience in the automotive industry and other related trades.
- ▶ Nikola's leads in corporate and other business support functions likewise have extensive experience, including in government agencies and at blue-chip companies.

Board

- ▶ The Company is also in the hands of an experienced Board. For example:



Steve Girsky
Chair of the Board

Girsky has over 30 years of experience with corporate executives, OEM leaders, and others. Girsky served on GM's Board for seven years.



Steve Shindler
*Chair of the Audit
Committee*

Shindler has substantial executive and financial experience, including 15 years as CEO of a Nextel affiliate. He is also the CFO of VectoIQ.



Bruce Smith
*Newest Board
Member*

Smith has 30 years of leadership experience in manufacturing operations, and extensive experience in the automotive sector, including as the current Chair and CEO of Detroit Manufacturing Systems.

- ▶ The Company's remaining six Board members are leaders in a variety of industries related to Nikola's core business, including key automotive suppliers, energy companies, automotive OEMs, and manufacturing.

Employees

- ▶ The Hindenburg Report raised concerns regarding the qualifications of certain individuals:
 - **Dale Prows (Global Head, Infrastructure Development).** While the Report correctly notes that, prior to joining Nikola, Prows was the CEO of a residential golf course: (1) he has many years of supply chain experience, (2) we found him to be capable and well-regarded, and (3) he has assembled a qualified team (including individuals with PhDs) to provided technical expertise.
 - **Kevin Lynk (Chief Engineer).** The Report correctly noted that Lynk's prior experience included repairing pinball machines. However, Lynk was the fourth employee to join Nikola—he had engineering experience, and has proven himself to be a capable engineer and has learned quickly. Nonetheless, as the Company has grown, he is no longer suitable as a chief engineer and is being transitioned to a more limited role.

Employees

- ▶ In addition to Prows and Lynk, the Hindenburg Report criticized Nikola for employing Trevor Milton's brother, Travis, ostensibly to assist in "hydrogen production" and "infrastructure," per his LinkedIn title. The Hindenburg Report correctly notes that Travis has a construction/renovation background.
 - However, Travis has not been actively involved with the Company in recent months and has been **formally terminated** by Nikola, effective November 6, 2020.

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- ▶ Integrity of Current Leadership
- ▶ **Next Steps**

Next Steps

- ▶ Phase II of our investigation will focus on follow up from Phase I and other relevant issues identified in the course of our review.
- ▶ We will continue to make rolling document productions to the SEC and SDNY.

