UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, **100 F Street, N.E.** **Washington, DC 20549,** **Plaintiff,** **v.** **STEPHEN SCOTT BURNS,** **Defendant.**	Civil Action No. 1:24-cv-838

COMPLAINT

Plaintiff United States Securities and Exchange Commission ("SEC") alleges for its Complaint as follows:

SUMMARY

1. This action arises from certain inaccurate statements by Defendant Stephen Scott Burns ("Burns"), the former Chairman and Chief Executive Officer ("CEO") of Lordstown Motors Corp. ("Lordstown"), an original equipment manufacturer of electric light duty vehicles focused on the commercial fleet market, concerning Lordstown's progress toward bringing to market a full-size electric pickup truck.

2. Lordstown, founded by Burns in 2019, became publicly traded in October 2020 through a merger with a special purpose acquisition company ("SPAC") called DiamondPeak Holdings Corporation ("DiamondPeak"). During and after the merger, as a result of which Lordstown received over $780 million from investors, Lordstown and Burns made materially

inaccurate statements about Lordstown's business in SEC filings and other public statements, including that Lordstown already had an established base of customer demand evidenced by tens of thousands of "pre-orders" from commercial fleet customers.

3. Burns' statements negligently created an unrealistic and inaccurate depiction of demand for the truck from commercial fleet customers.

4. By engaging in the conduct described in this Complaint, Defendant violated Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§ 77t and 77v].

6. Venue is proper in this judicial district pursuant to Section 22 of the Securities Act [15 U.S.C. § 77v] because certain violations of the securities laws alleged in this Complaint occurred within this district, including Lordstown's filing of false and misleading reports with the SEC. Defendant has consented to personal and subject-matter jurisdiction and waived any objection to venue in this Court.

DEFENDANT

7. Stephen Scott Burns resides in Maineville, Ohio. Burns was the founder, a director, and the CEO of Lordstown from April 2019 to October 2020, when he became Lordstown's Chairman of the Board of Directors and CEO. Defendant resigned from both positions in June 2021.

RELEVANT ENTITIES

8. **Lordstown Motors Corp.** is incorporated in Delaware with its principal place of business in Lordstown, Ohio during the relevant period of this Complaint. Lordstown was an original equipment manufacturer of electric light duty vehicles focused on the commercial fleet market. Lordstown's Class A common stock traded on the Nasdaq Global Stock Market under the symbol "RIDE" from October 26, 2020 until July 7, 2023, when it began trading on the over-the-counter market under the symbol "RIDEQ." Since October 2020, Lordstown's common stock was registered with the SEC under Section 12 of the Exchange Act [15 U.S.C. § 78*l*], and Lordstown was required to file periodic reports with the SEC pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m]. On June 27, 2023, Lordstown commenced voluntary bankruptcy proceedings under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware. *In re Lordstown Motors Corp.*, No. 23-10831 (Bankr. D. Del.). On March 5, 2024, the Bankruptcy Court entered an order confirming Lordstown's bankruptcy plan, and Lordstown emerged from bankruptcy on March 14, 2024 under the name "Nu Ride Inc.," changed its headquarters from Lordstown, Ohio to New York, New York, and changed the ticker symbol of its common stock to "NRDE."

9. **DiamondPeak Holdings Corporation** was a Delaware corporation with its principal place of business in New York, NY, and a SPAC that merged with Lordstown effective October 23, 2020. From March 4, 2019 to October 23, 2020, DiamondPeak's Class A common stock was registered with the SEC under Section 12 of the Exchange Act [15 U.S.C. § 78*l*], and traded on the Nasdaq Capital Market under the symbol "DPHC." During that period, DiamondPeak was required to file periodic reports with the SEC pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m]. DiamondPeak changed its name to Lordstown after the merger.

FACTS

10. Burns founded then-private Lordstown in April 2019 for the purpose of developing and manufacturing light duty electric trucks targeted for sale to fleet customers. Since its inception, Lordstown had been developing its flagship vehicle, the Endurance, an electric full-size pickup truck, for the commercial fleet market. To manufacture the Endurance, in November 2019 Lordstown acquired from General Motors Company an assembly and manufacturing plant in Lordstown, Ohio.

11. On August 3, 2020, DiamondPeak and Lordstown announced that they had entered into a proposed business combination transaction via a merger agreement. The merger transaction closed on October 23, 2020. DiamondPeak changed its name to Lordstown, Burns became its Chairman and CEO, and, on October 26, 2020, Lordstown's common stock and public warrants began to trade publicly.

12. In connection with the merger, Lordstown received approximately $675 million in proceeds from DiamondPeak's cash held in trust and from a private investment in public equity ("PIPE") offering to accredited investors. Also in connection with the merger, Lordstown assumed publicly traded and private warrants previously issued by DiamondPeak in its initial public offering in March 2019, and additional private warrants issued for the merger.

13. Burns received over 46 million shares of Lordstown's stock in connection with the merger, making him Lordstown's largest shareholder. The shares were subject to a two-year lockup period and were not sold during the period relevant to this Complaint.

14. On November 12, 2020, Lordstown filed a registration statement and prospectus on Form S-1 to register its common stock, its publicly traded and private warrants, and for resale the shares issued in the PIPE offering. The Form S-1 was declared effective on December 4, 2020.

15. On December 16, 2020, Lordstown issued a redemption notice for the public warrants, and on January 27, 2021 Lordstown redeemed all of the public warrants and received approximately $107 million from investors who exercised the warrants.

16. On December 28, 2020, Lordstown filed a registration statement and prospectus on Form S-8 to register certain of its common stock and stock options issued or to be issued to certain of its directors, officers, and employees under incentive compensation plans.

Disclosure Failures About Pre-Orders for the Endurance

17. From August 3, 2020 to February 6, 2021, in SEC filings and other public statements, Lordstown and Burns made a series of materially inaccurate statements about Lordstown's pre-orders for the Endurance.

Background of Lordstown's Pre-Orders

18. To estimate the demand for the Endurance, Lordstown's sales team contacted potential customers beginning in early 2020, and asked them to sign a form of a non-binding letter of intent and reservation agreement ("LOI") specifying the quantity of Endurance trucks the potential customer wished to reserve. The LOI by its terms was a one-page, form agreement prepared by Lordstown that did not require payment of any kind by the potential customer, and the potential customer was under no obligation to purchase the Endurance.

19. In SEC filings and other public statements, Lordstown described these LOIs as "pre-orders" from or primarily from fleet operators, and generally that the pre-orders were not binding and did not require any deposit. Lordstown further qualified that there could be no assurance that Lordstown will successfully convert the pre-orders into binding orders or sales. During the relevant period, Lordstown and Burns used the terms LOIs, reservations, pre-orders, and "pre-sales" interchangeably as having the same meaning.

20. Pre-orders were an important metric for Lordstown because, as a startup company developing a new product, Lordstown had no orders or sales to report to investors. Because Lordstown's business purpose was to develop and manufacture the Endurance for the commercial fleet market, pre-orders were also important for potential fleet customers, who Burns believed may have been more comfortable buying a truck from a new manufacturer that their peers were also buying. Burns and Lordstown believed that increasing numbers of pre-orders from fleets would create further demand for the Endurance. After the merger with DiamondPeak, Burns directed Lordstown's sales team to obtain additional pre-orders from customers to increase the total amount because pre-orders were "[r]eally important to the investment community and to our prospect[ive] fleet customers."

21. Lordstown did not have any formalized policies or procedures to evaluate pre-order counterparties. Lordstown's sales team, which reported to Burns, was comprised mostly of individuals with no sales experience in the automotive industry, and was not given any instructions or guidance to determine whether a customer was a commercial fleet. In addition, Lordstown did not have policies or procedures for recording, tracking, or maintaining pre-order data.

22. After Lordstown announced in August 2020 that it had secured 27,000 pre-orders for the Endurance from fleet customers, Lordstown, at Burns' direction, continued to solicit potential fleet customers to assess eventual production capacity and to increase the number of pre-orders to highlight to potential investors and customers. Throughout the fall of 2020, Lordstown and Burns made numerous public statements touting increasing numbers of pre-orders from fleet customers. On January 11, 2021, Lordstown issued a press release stating it had received 100,000 pre-orders from commercial fleets, which Burns described as "unprecedented in automotive history."

23. On March 12, 2021, however, a third-party research firm, which had taken a short position in Lordstown's stock, published a report that alleged, among other things, that Lordstown's 100,000 pre-orders were largely fictitious and nonbinding, and from customers that generally did not even have fleets of vehicles. Shortly after the report was published, Lordstown's Board of Directors formed a Special Committee to investigate its allegations.

24. On June 14, 2021, the Special Committee issued a public statement addressing the allegations, and stated that certain statements by Lordstown concerning pre-orders were "in certain respects, inaccurate." The Special Committee determined that, while Lordstown had stated on several occasions that its pre-orders were from, or "primarily" from commercial fleets, in fact many pre-orders were obtained from (i) fleet management companies or other end users that indicated interest in purchasing Endurance trucks, similar to commercial fleets, and (ii) so-called "influencers" or other potential strategic partners that committed to attempt to secure pre-orders from other entities, but did not intend to purchase Endurance trucks directly. The Special Committee also stated that one entity that provided a large number of pre-orders did not appear to have the resources to complete large purchases of trucks. It also found that other entities provided commitments that appeared too vague or infirm to have been appropriately included in the total number of pre-orders disclosed by Lordstown.

<u>Lordstown's Pre-Orders Were Not All From or Primarily From Fleet Customers</u>

25. On September 21, 2020, DiamondPeak filed a preliminary proxy statement to solicit votes for its merger with Lordstown. In the proxy statement Lordstown stated it had "received pre-orders primarily from fleet operators to purchase over 38,000 Endurance vehicles." In fact, according to the Special Committee's analysis, pre-orders from intermediaries or influencers, and not fleets, comprised over 40% of the 38,000 amount, including pre-orders from

customers that Burns and Lordstown reasonably should have understood lacked apparent resources or intent to buy large quantities of the Endurance.

26. On October 26, 2020, the first day of trading for Lordstown's common stock, Burns stated in an interview by The Detroit News that Lordstown had "pre-sold 40,000 of [the Endurance] to fleet customers already." On November 12, 2020, Lordstown filed a Form S-1, signed by Burns, stating it currently had "pre-orders primarily from fleet operators to purchase over 44,000 vehicles[.]" According to the Special Committee's analysis, 48% of the 40,000 amount was from intermediaries or influencers.

27. On November 16, 2020, Lordstown issued a press release stating it had "received approximately 50,000 non-binding production reservations from commercial fleets…." On the same date, Burns stated in a capital markets-oriented forum that Lordstown had "50,000 pre-sales already, all from fleets." On November 17, 2020, Burns stated in an interview by CNBC that Lordstown had received "50,000 preorders," sold to "fleets," and described the pre-orders as "very serious orders." Lordstown's Form S-1/A, signed by Burns and filed on December 1, 2020, stated it had "received pre-orders primarily from fleet operators to purchase approximately 50,000 Endurance vehicles." According to the Special Committee's analysis, however, 50% of the 50,000 amount was from intermediaries or influencers. On December 2, 2020, Burns stated in an investor conference, "[w]e have 50,000 pre-orders already, well in advance of what we thought we would have[,] … almost $3 billion in pre-orders already."

28. On December 21, 2020, at Burns' direction, Lordstown posted on social media and filed a Form 8-K stating it had received "80,000 non-binding reservations for the Endurance to date." Although the statements did not specify whether the pre-orders were from or primarily from fleets, they implied that the pre-orders were from or primarily from fleets, consistent with prior

statements. The 80,000 amount also included a pre-order for 5,000 trucks (representing $263 million in potential revenue) by a customer who later canceled the pre-order due to a misunderstanding, but Lordstown's sales team continued to count it towards the total amount. According to the Special Committee's analysis, 67% of the 80,000 amount at this time was from intermediaries or influencers.

29. On January 11, 2021, Lordstown issued a press release stating that Lordstown "has received more than 100,000 non-binding production reservations from commercial fleets…." The press release quoted Burns as saying, "[r]eceiving 100,000 pre-orders from commercial fleets for a truck like the Endurance is unprecedented in automotive history…." According to the Special Committee's analysis, however, by that time 71% of the 100,000 amount was from intermediaries or influencers. The 100,000 amount also included a verbal indication of interest from a customer who would agree to an "influencer" memorandum of understanding, which, as Burns knew or should have known, was not executed at the time. This memorandum of understanding was not a pre-order agreement or an LOI to buy Lordstown's Endurance, but rather an understanding "to assist Lordstown in generating leads to support the sale of up to 15,000 Endurance trucks by December 31, 2023." This customer expressly informed Lordstown that it did not have a fleet and did not intend to buy any trucks. In interviews with a research analyst and on media outlets in January and February 2021, Burns stated that the 100,000 pre-orders were submitted by "fleets," and described the pre-orders as "sticky."

30. Lordstown and Burns' statements about the increasing numbers of pre-orders from 27,000 to 100,000 were materially inaccurate. First, as Burns knew or should have known, the pre-orders were not all from or primarily from fleet customers, a market Lordstown had described in SEC filings as "commercial or governmental organizations with three or more trucks." As the

Special Committee found, 40% to 71% of the pre-orders during this period were from intermediaries or influencers who indicated they would encourage, facilitate, or influence the purchase of the Endurance and did not intend to buy it for their own use. Second, Burns' statements that the pre-orders were "very serious orders" or "sticky" were inaccurate because Burns knew the pre-orders were non-binding and customers were not obligated to purchase any trucks. Third, the pre-orders included large quantities from customers who, as Burns knew or should have known, had no apparent ability or intent to buy such quantities of the truck. As a result, Lordstown and Burns, who knew or should have known that certain pre-orders were not from or primarily from fleets, inaccurately reflected the true nature of the demand for the Endurance.

CLAIMS FOR RELIEF

First Claim

Violations of Section 17(a)(2) of the Securities Act, 15 U.S.C. § 77q(a)(2)

31. The SEC re-alleges and incorporates by reference paragraphs 1 through 30 as though fully set forth herein.

32. Burns has, by engaging in the conduct set forth above, directly or indirectly, in the offer or sale of securities, by use of means or instrumentalities of interstate commerce or of the mails, obtained money or property by means of untrue statements of material fact or by omitting 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.

33. By reason of the foregoing, Burns violated, and unless restrained and enjoined, will continue to violate, Section 17(a)(2) of the Securities Act [15 U.S.C. § 77q(a)(2)].

Second Claim

Violations of Section 17(a)(3) of the Securities Act, 15 U.S.C. § 77q(a)(3)

34. The SEC re-alleges and incorporates by reference paragraphs 1 through 30 as though fully set forth herein.

35. Burns has, by engaging in the conduct set forth above, directly or indirectly, in the offer or sale of securities, by use of means or instrumentalities of interstate commerce or of the mails, engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon purchasers of securities.

36. By reason of the foregoing, Burns violated, and unless restrained and enjoined, will continue to violate, Section 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(3)].

PRAYER FOR RELIEF

WHEREFORE, the SEC respectfully requests that this Court:

A. Find that Defendant committed the violations alleged in this Complaint;

B. Enter an injunction, in a form consistent with Rule 65 of the Federal Rules of Civil Procedure, permanently restraining and enjoining Defendant from violating, directly or indirectly, the laws Defendant is alleged to have violated in this Complaint;

C. Order Defendant to pay a civil money penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)];

D. Issue an order, pursuant to Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u] and this Court's inherent equitable powers, prohibiting Defendant from serving 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. § 78*l*], or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)], as appropriate or necessary for the benefit of investors;

E. Grant, pursuant to Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u], any other equitable relief that may be appropriate or necessary for the benefit of investors; and

F. Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

Respectfully submitted,

Date: March 22, 2024.

s/Mark M. Oh

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