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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 \_\_\_\_\_, Individually and On Behalf of  
11 All Others Similarly Situated,

12 Plaintiff,

13 v.

14 EMBARK TECHNOLOGY, INC. f/k/a  
15 NORTHERN GENESIS ACQUISITION CORP.  
16 II, IAN ROBERTSON, KEN MANGET, ALEX  
17 RODRIGUES, and RICHARD HAWWA,

18 Defendants.

Case No.

CLASS ACTION

COMPLAINT FOR VIOLATIONS OF THE  
FEDERAL SECURITIES LAWS

DEMAND FOR JURY TRIAL

19 Plaintiff \_\_\_\_\_ (“Plaintiff”), individually and on behalf of all others similarly situated,  
20 by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants, alleges the  
21 following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and  
22 belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through  
23 Plaintiff’s attorneys, which included, among other things, a review of the Defendants’ public  
24 documents, conference calls and announcements made by Defendants, United States (“U.S.”)  
25 Securities and Exchange Commission (“SEC”) filings, wire and press releases published by and  
26 regarding Embark Technology, Inc. f/k/a Northern Genesis Acquisition Corp. II (“Embark” or the  
27 “Company”), analysts’ reports and advisories 1  
28

CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS

1 about the Company, and information readily obtainable on the Internet. Plaintiff believes that substantial  
2 additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity  
3 for discovery.

#### 4 **NATURE OF THE ACTION**

5  
6 1. This is a federal securities class action on behalf of a class consisting of all persons and  
7 entities other than Defendants that purchased or otherwise acquired Embark securities between January  
8 12, 2021 and January 5, 2022, both dates inclusive (the “Class Period”), seeking to recover damages  
9 caused by Defendants’ violations of the federal securities laws and to pursue remedies under Sections  
10 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5  
11 promulgated thereunder, against the Company and certain of its top officials.

12  
13 2. Embark develops self-driving software solutions for the trucking industry in the U.S.  
14 The Company was originally a special purpose acquisition company (“SPAC”), also called a blank-  
15 check company, which is a development stage company that has no specific business plan or purpose or  
16 has indicated its business plan is to engage in a merger or acquisition with an unidentified company or  
17 companies, other entity, or person.

18  
19 3. On November 10, 2021, the Company consummated a merger transaction with Embark  
20 Trucks Inc., a Delaware corporation (“Legacy Embark”), whereby, among other things, the Company  
21 changed its name from “Northern Genesis Acquisition Corp. II” to “Embark Technology, Inc.” (the  
22 “Business Combination”).

23  
24 4. Throughout the Class Period, Defendants made materially false and misleading  
25 statements regarding the Company’s business, operations, and compliance policies. Specifically,  
26 Defendants made false and/or misleading statements and/or failed to disclose that: (i) the Company had  
27 performed inadequate due diligence into Legacy Embark; (ii) Legacy Embark and the Company  
28

1 following the Business Combination held no patents and an insignificant amount of test trucks; (iii)  
2 accordingly, the Company had overstated its operational and technological capabilities; (iv) as a result  
3 of all the foregoing, the Company had overstated the business and financial prospects of the Company  
4 post-Business Combination; and (v) as a result, the Company’s public statements were materially false  
5 and misleading at all relevant times.  
6

7 5. On January 6, 2022, The Bear Cave published a short report entitled “Problems at  
8 Embark Technology (EMBK)” (the “Bear Cave Report”). The Bear Cave Report alleged, among other  
9 issues, “that Embark appears to lack true economic substance” and that its “current evaluation appears  
10 to be based on puffery rather than actual substance”, noting that “[t]he company holds no patents, has  
11 only a dozen or so test trucks, and may be more bark than bite.”  
12

13 6. On this news, Embark’s stock price fell \$1.37 per share, or 16.75%, to close at \$6.81 per  
14 share on January 6, 2022.

15 7. As a result of Defendants’ wrongful acts and omissions, and the precipitous decline in  
16 the market value of the Company’s securities, Plaintiff and other Class members have suffered  
17 significant losses and damages.

18 **JURISDICTION AND VENUE**

19 8. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the  
20 Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17  
21 C.F.R. § 240.10b-5).  
22

23 9. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §  
24 1331 and Section 27 of the Exchange Act.

25 10. Venue is proper in this Judicial District pursuant to Section 27 of the Exchange Act (15  
26 U.S.C. § 78aa) and 28 U.S.C. § 1391(b). Embark is headquartered in this Judicial District, Defendants  
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1 conduct business in this Judicial District, and a significant portion of Defendants’ activities took place  
2 within this Judicial District.

3 11. In connection with the acts alleged in this complaint, Defendants, directly or indirectly,  
4 used the means and instrumentalities of interstate commerce, including, but not limited to, the mails,  
5 interstate telephone communications, and the facilities of the national securities markets.  
6

7 **PARTIES**

8 12. Plaintiff, as set forth in the attached Certification, acquired Embark securities at  
9 artificially inflated prices during the Class Period and was damaged upon the revelation of the alleged  
10 corrective disclosures.

11 13. Defendant Embark is a Delaware corporation with principal executive offices located at  
12 424 Townsend Street, San Francisco, California 94107. Embark’s common stock and warrants trade in  
13 an efficient market on the Nasdaq Stock Market (“NASDAQ”) under the ticker symbols “EMBK” and  
14 “EMBKW”, respectively. Before the consummation of the Business Combination, Embark was a  
15 Delaware corporation with principal executive offices located at 4801 Main Street, Suite 1000, Kansas  
16 City, Missouri 64112, and the Company’s units, common stock, and warrants traded on the New York  
17 Stock Exchange (“NYSE”) under the ticker symbols “NGAB.U”, “NGAB”, and “NGAB WS”,  
18 respectively.  
19

20 14. Defendant Ian Robertson (“Robertson”) served as Embark’s Chief Executive Officer  
21 (“CEO”) from before the start of the Class Period until the consummation of the Business Combination.  
22

23 15. Defendant Ken Manget (“Manget”) served as Embark’s Chief Financial Officer (“CFO”)  
24 from before the start of the Class Period until the consummation of the Business Combination.

25 16. Defendant Alex Rodrigues (“Rodrigues”) has served as Embark’s CEO since the  
26 consummation of the Business Combination.  
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- 1 • Predictable revenue and free cash flow to support reinvestment growth;
- 2 • Little material technology, scale-up or market risk and success not premised on
- 3 future capital raises to achieve growth plans;
- 4 • Opportunity to benefit from our management team’s network and expertise to drive
- 5 improved financial performance; and
- 6 • Ability to benefit from access to the public capital markets

7 23. On March 31, 2021, Legacy Embark issued a press release entitled, “Embark Universal  
8 Interface Accelerates Integration of Self-Driving Technology Across Major Truck OEM Platforms.”  
9 The press release stated, in relevant part:

10 Embark [. . .] today launches the Embark Universal Interface (EUI), a set of standardized  
11 self-driving components and the flexible interfaces necessary for major truck OEMs to  
12 more easily and robustly integrate Embark’s autonomous technology onto their vehicle  
13 platforms.

14 The EUI program sets Embark apart as the first autonomous developer to pursue integration  
15 with all four major US OEMs. By focusing on the intersection of four platform  
16 specifications, instead of designing to one OEM platform, Embark is building the  
17 industry’s first universal system that is intentionally designed to integrate into any  
18 platform. Embark has designed its system from the beginning to work across platforms, a  
19 decision that has required an immense amount of upfront investment and thoughtfulness  
20 around cross-platform trade-offs. The EUI effort is the manifestation of this philosophy  
21 into a product.

22 \*\*\*

23 “We absolutely believe that integrating with OEMs is the path to market for self-driving  
24 trucks,” said Alex Rodrigues, co-founder and chief executive officer of Embark. “We also  
25 believe that being cross-compatible and easy to integrate into all OEM’s vehicles as their  
26 level 4 platforms continue to develop gives us a competitive advantage.”

27 24. On April 8, 2021, Legacy Embark issued a press release entitled, “Embark Launches  
28 Partner Development Program to Bring Embark Driver to Market.” The press release stated, in relevant  
part:

“Embark’s commitment to having carriers purchase and operate our autonomous trucks,  
while Embark provides a software subscription and support services, is a win-win because  
it leverages the logistical expertise of the carrier, allows the technology to scale more

1 quickly through existing shipper-carrier relationships and enables Embark to focus on  
2 delivering a safe and reliable autonomous truck,” said Alex Rodrigues, Chief Executive  
3 Officer, and co-founder at Embark. “The learnings Embark has gained from hundreds of  
4 hauls with shippers and carriers over the years has helped us shape this new business model,  
5 and we are excited to announce it today.”

6 25. On April 15, 2021, the Company filed an Annual Report on Form 10-K with the SEC,  
7 reporting the Company’s financial and operating results for the year ended December 31, 2020 (the  
8 “2020 10-K”). The 2020 10-K contained substantively similar descriptions of the Company’s  
9 acquisition process and criteria as discussed in the Offering Documents referenced, *supra*, in ¶ 22.

10 26. Appended to the 2020 10-K as exhibits were signed certifications pursuant to the  
11 Sarbanes-Oxley Act of 2002 (“SOX”) by Defendants Robertson and Manget, attesting that “the  
12 information contained in the [2020 10-K] fairly presents, in all material respects, the financial condition  
13 and results of operations of the Company as of and for the period covered by the [2020 10-K].”

14 27. On May 26, 2021, the Company’s filed a Quarterly Report on Form 10-Q with the SEC,  
15 reporting the Company’s financial and operating results for the quarter ended March 31, 2021 (the “Q1  
16 2021 10-Q”). The Q1 2021 10-Q stated, in relevant part, “[t]he accompanying unaudited condensed  
17 financial statements have been prepared in accordance with accounting principles generally accepted in  
18 the United States of America (“GAAP”) for interim financial information and in accordance with the  
19 instructions to Form 10-Q and Article 8 of Regulation S-X of the SEC.”

20 28. Appended to the Q1 2021 10-Q as exhibits were signed certifications pursuant to SOX  
21 by Defendants Robertson and Manget, attesting that “the information contained in the [Q1 2021 10-Q]  
22 fairly presents, in all material respects, the financial condition and results of operations of the Company.”

23 29. On June 23, 2021, the Company and Legacy Embark issued a joint press release  
24 announcing “that they have entered into a definitive business combination agreement that will result in  
25  
26  
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1 Embark becoming a publicly listed company.” That press release quoted Defendant Robertson, who  
2 stated, in relevant part:

3 The Northern Genesis team is enthused to partner with Embark as it continues to execute  
4 on its focused mission, a mission that began more than five years ago. Our respective teams  
5 share a conviction that success today demands alignment with the ongoing secular shifts  
6 towards sustainability and social responsibility; Embark’s commitment to autonomous  
7 trucking delivers that alignment through enhanced fuel efficiency, improved driver  
8 working conditions, and safer roads for everyone [. . .] We are committed to leveraging our  
9 deep owner-operator business building experience to assist Embark on its transition from  
10 great private company to great public company.

11 30. The same press release also quoted Defendant Rodrigues, who stated, in relevant part:

12 We have been solely focused on solving the problem of self-driving software for trucking  
13 since Embark’s CTO, Brandon Moak, and I founded the company in 2016 [. . .] This  
14 singular and disciplined focus on the trucking market in the United States has allowed  
15 Embark to achieve many industry-first technology milestones – including the first self-  
16 driving truck to drive coast-to-coast – and positions Embark to be a leader in autonomous  
17 trucking software. The recent accomplishment of key technical milestones – including  
18 handling highway workzones on the fly – and the announcement of our Partner  
19 Development Program mark the start of Embark’s transition from research to  
20 commercialization. After many years of R&D on the world’s most mature self-driving  
21 truck software stack, we plan to enable carrier operation of self-driving trucks in the U.S.  
22 sunbelt beginning in 2024. Following the transaction with Northern Genesis we expect to  
23 have a war chest that fully funds this commercialization plan, and then some.

24 31. That same day, Legacy Embark issued a blog message from Defendant Rodrigues  
25 entitled, “Welcome to the Starting Line,” which stated, in relevant part:

26 Embark going public through this business combination transaction is exciting. It’s  
27 exciting because it validates that the vision of Embark expands far beyond just the people  
28 within our four walls (physical & virtual), it’s exciting because the company is growing to  
size itself against the challenge we have ahead of us, and it’s exciting because we are in  
control of our destiny. That being said, I intend to make clear that we still have a lot of  
unfinished business. This transaction gives us the opportunity to meaningfully accomplish  
our mission. With the resulting capital we intend to deliver the first commercial self-driving  
truck and expand that opportunity across the sun-belt, and even then our work won’t be  
complete. Going public is a means to fulfilling our potential and the starting line for the  
next phase of our journey.

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1 This means every one of us will have to become experts at managing change, tuning out  
2 the noise, and staying laser focused on Embark's mission. I want to take a moment to do  
3 exactly that — focus on the mission. Embark has always been, and continues to be,  
4 singularly focused on commercializing autonomous long-haul trucks. That mission is  
5 rooted in a few core benefits of our technology: safety, jobs, and efficiency. We know we  
6 can build long-haul trucks that will reduce the number of crashes, injuries, and fatalities on  
7 public roads. We know those trucks could create new opportunities for drivers to work  
8 short haul, staying closer to their families and increasing their quality of life. And we know  
9 that the efficiencies those trucks could unlock will make all the things that move on trucks  
10 cheaper across the board while reducing the environmental impact of transportation.

11 32. On July 2, 2021, the Company filed a registration statement on Form S-4 with the SEC,  
12 which stated, in relevant part:

13 *Embark is an early stage company with a history of losses, and expects to incur*  
14 *significant expenses and continuing losses for the foreseeable future.*

15 Embark incurred net losses of \$15.3 million and \$21.5 million for the years ended  
16 December 31, 2019 and 2020, respectively ***and has not recognized a material amount of***  
17 ***revenue to date.*** Embark has successfully shipped freight for shippers and carriers to  
18 utilizing its technology and Transfer Hub network but there is no guarantee that Embark's  
19 partnership model will get traction, grow or otherwise be successful or achieve sufficient  
20 scale for commercial viability. Embark's potential profitability is dependent upon a number  
21 of factors, many of which are beyond its control.

22 \*\*\*

### 23 ***Phased Rollout of Multiple Onboarding Methods***

24 Embark expects to deploy its technology in two phases, Phase 1 targeting the  
25 Sunbelt states (approximately 90 billion semi-truck miles annually, which is estimated  
26 based on the Freight Analysis Framework produced through a partnership between the  
27 Bureau of Transportation Statistics and the Federal Highway Administration) and Phase 2  
28 targeting all of the lower 48 states (approximately 300 billion semi-truck miles annually).  
Embark's coverage map includes the full set of locations Embark Driver equipped trucks  
are able to travel to. Embark is adding two types of locations to its coverage map, enabling  
two route models:

1. Truck stops, which act as ideal transfer points that can be used by all carriers
2. Highway-adjacent shipper locations, which allow Embark Driver-enabled trucks to travel direct-to-customer

With the transfer point model, Embark is able to focus on highway operations, the middle-mile, while Embark's carrier partners conduct the first/last-mile portions with

1 human drivers. These points will be located at existing facilities (e.g., truck stops) to  
2 provide a Day 1 drop-in solution for customers. Embark pioneered the transfer point model  
3 in 2017, partnering with Frigidaire and Ryder to deliver shipments. *Since 2017, Embark  
4 has refined operations and now conducts daily shipments between Los Angeles and  
5 Phoenix.*

6 (Emphasis added.)

7 33. On September 16, 2021, Legacy Embark issued a joint press release with Ryder System,  
8 Inc. entitled, “Embark Partners with Ryder to Launch Nationwide Network of Up to 100 Freight Transfer  
9 Points for Autonomous Fleets.” The press release stated, in relevant part:

10 Through the partnership, Embark plans to establish a network of strategically located  
11 transfer points—where freight is moved from driverless long-haul trucks to driver-enabled  
12 trucks for first- and last-mile delivery.

13 \*\*\*

14 “A fully developed transfer point has to include autonomous truck maintenance services  
15 and efficient yard operations,” says Alex Rodrigues, CEO of Embark. “By working with  
16 Ryder to offer best-in-class truck services throughout our transfer point network, we’re  
17 laying the groundwork for seamless coast-to-coast operations of Embark-equipped trucks.”

18 Embark pioneered the transfer point model in 2019 when the company unveiled its first  
19 sites in Los Angeles and Phoenix. Since then, Embark has conducted hundreds of hauls  
20 through these sites, refining required transfer point capabilities and evaluating a range of  
21 service providers to fulfill those capabilities.

22 34. On September 22, 2021, Legacy Embark issued a press release entitled, “Embark  
23 Announces Advisory Board to Accelerate the Commercialization of its Self-Driving Technology.” The  
24 press release stated, in relevant part:

25 Embark [. . .] today announced the formation of its strategic advisory board, a committee  
26 of distinguished trucking and supply chain executives that will guide Embark’s rapid  
27 business expansion. The board will advise Embark’s overall business strategy and bolster  
28 Embark’s ranks with some of the best and brightest minds in the transportation industry.

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“Our new advisory board equips Embark with a brain trust that will help us navigate a  
complex and dynamic industry as we target commercial driver-out operations in 2024,”  
said Alex Rodrigues, CEO of Embark. “These thought leaders bring extraordinary

1 experience to Embark and will be instrumental in our ability to execute against our business  
2 goals. We are privileged to have them on board and look forward to their contributions.”

3 35. On October 14, 2021, Legacy Embark issued a press release entitled, “Embark Opens  
4 Reservations to Partner Development Program Carriers Ahead of 2024 Commercial Launch, Securing  
5 14,200 Reservations.” The press release stated, in relevant part:

6 Embark [. . .] today announced that carriers participating in Embark’s Partner Development  
7 Program (PDP) have placed a combined 14,200 reservations for Embark-equipped  
8 autonomous trucks. These non-binding reservations – which reflect the results of  
9 customized in-depth demand planning analyses – cover reservations over a 5-year period,  
10 securing priority access to Embark-equipped trucks commencing upon the expected 2024  
11 commercial launch of the Embark Driver software through the end of 2028. This  
12 remarkable interest from fleet partners is the initial result of extensive strategic planning,  
13 operational evaluation, and autonomous commercial hauling, which Embark believes  
14 demonstrates a commitment from both Embark and its partners to safely and rapidly deploy  
15 commercial autonomous trucks in the US Sunbelt beginning in 2024.

16 The 14,200 trucks reserved by PDP members, if purchased, represent a projected 10 billion  
17 billable Embark Driver miles over their lifetimes.<sup>1</sup> By comparison, in 2024, Embark and  
18 its carrier partners plan to begin rapidly deploying the confirmed trucks on high-priority  
19 lanes across the country over time. These reservations, and the associated licensed miles,  
20 demonstrate that Embark’s commercial preparation activities today should establish a base  
21 that enables Embark to meet its early year revenue targets.

22 “With these reservations, Embark is providing a competitive advantage to fleet partners  
23 who have invested the time and energy in preparing to deploy first,” said Alex Rodrigues,  
24 CEO of Embark. “In just a few years, we believe our partners will be able to operate with  
25 a next-generation product that is safer, more efficient, and more sustainable, enabling them  
26 to utilize autonomous trucks to grow their business while retaining their existing driver  
27 workforce to serve on shorter routes.”

28 36. On October 19, 2021, the Company filed a prospectus on Form 424B3 with the SEC in  
connection with the Business Combination (the “October 19, 2021 Prospectus”). In providing an  
overview of Legacy Embark, the October 19, 2021 Prospectus stated, in relevant part:

Embark develops technologically advanced autonomous driving software for the  
truck freight industry and offers a carefully constructed business model that is expected to  
provide the industry with the most attractive path to adopting autonomous driving.  
Specifically, Embark has developed a Software as a Service (“SaaS”) platform designed to  
interoperate with a broad range of truck OEM platforms, forgoing complicated and  
logistically challenging truck building or hardware manufacturing operations in favor of

1 focusing on a superior driving technology. At scale, domestic shippers and carriers will be  
2 able to access Embark technology via a subscription software license selected as an option  
3 at the time they specify the build of new semi-trucks.

4 \*\*\*

5 Embark has also spent considerable time and effort refining its business model.  
6 Embark is initially deploying its leading-edge technology in a very focused manner,  
7 targeting freight highway miles between transfer points located next to metropolitan areas  
8 in the lower “Sunbelt” region of the United States ( the “U.S.”), leaving the “last mile” of  
9 driving to and from the transfer points to the industry’s highly skilled human drivers.  
10 Embark’s strategy is distinct from other industry players which seek to provide more  
11 complicated “end to end” autonomous driving that would entirely displace human drivers  
12 and potentially place these companies in competition with the industry’s carriers. Unlike  
13 those competitors, Embark anticipates working with the industry’s existing players to help  
14 them bring autonomous driving technology to market on their own terms. In addition,  
15 Embark believes its solution will be the safest and most reliable in the industry because of  
16 its disciplined geographic focus and emphasis on software development, which stands in  
17 contrast to Embark’s competitors that focus on multiple domestic markets simultaneously,  
18 manufacturing autonomous trucks and/or competing directly with semi-truck OEMs or  
19 legacy carriers.

20 37. Further, with respect to Legacy Embark’s business model and go-to-market strategy, the  
21 October 19, 2021 Prospectus stated, in relevant part:

22 Embark’s business model offers meaningful operational savings to carriers and  
23 shippers and collaborates rather than competes with carriers. To date, while not generating  
24 any revenue, Embark has completed hundreds of hauls with many major companies and  
25 has leveraged that experience into designing its business model and commercialization  
26 plans. Embark intends to make its technology available as a SaaS subscription on an OEM  
27 platform-agnostic basis, meaning that carriers will be able to subscribe to the Embark  
28 software for any new vehicles from any truck brand in their fleets. Embark believes this  
model will deliver compelling benefits across the entire trucking ecosystem by:

- Improving economics and alleviating driver shortages for carriers;
- Increasing fuel economy, reducing emissions and improving reliability, sustainability and safety for shippers;
- Providing an attractive cost of entry to autonomous vehicle technology without disrupting shippers’ or carriers’ truck preferences or supply chains;
- Permitting Embark to focus on its area of expertise — autonomous driving development — while the rest of the ecosystem can specialize on the areas they excel in, including logistics and manufacturing.

1 38. Finally, with respect to Legacy Embark’s technology, the October 19, 2021 Prospectus  
2 stated, in relevant part:

3 Embark’s technology solutions are designed to support the seamless integration of  
4 autonomous trucks into existing carrier fleets with the goal of alleviating the driver  
5 shortage, improving competitiveness for shippers, and improving unit economics for  
6 ecosystem participants. Its technology stack consists of three critical components including  
7 the Embark Driver, the Embark Universal Interface, and Embark Guardian. Together, these  
8 products make for a comprehensive, performant, and reliable freight solution from  
sourcing, to driving, and support. Embark aims to showcase a L4 driverless solution in  
2023 followed by plans to scale commercial operations throughout the Southwestern  
United States in 2024.

9 39. On November 10, 2021, Legacy Embark issued a press release entitled, “Embark Trucks,  
10 America’s Longest-Running Self-Driving Truck Program, To List at a Valuation of Approximately \$5  
11 Billion on Nasdaq Under the Ticker ‘EMBK.’” The press release stated, in relevant part:

12 Embark [. . .] today announced that it has completed its previously announced business  
13 combination with Northern Genesis Acquisition Corp. II (“Northern Genesis 2”) (NYSE:  
14 NGAB) to take Embark public. The combined company has been renamed “Embark  
15 Technology, Inc.” and its shares will commence trading on the Nasdaq Capital Market on  
November 11, 2021.

16 \*\*\*

17 The closing of the business combination caps a momentous year for Embark as the  
18 company seeks to continue to develop industry-leading autonomous truck technology.  
Since March 2021, Embark marked milestones across key business priorities:

- 19 • **Technology Progress:** Embark unveiled the Embark Universal Interface, a set of  
20 standardized self-driving components and the flexible interfaces necessary for  
21 major truck OEMs to more easily and robustly integrate Embark’s autonomous  
technology onto their vehicle platforms.
- 22 • **Technical Partnerships:** Embark announced partnerships and collaborations with  
23 Tier 1 suppliers and technology providers including Cummins, NVIDIA, Luminar,  
24 and ZF to accelerate integration of the Embark Universal Interface within OEM  
vehicle platforms.
- 25 • **Partner Development Program (PDP) & Reservations:** Embark launched its  
26 Partner Development Program with members including Werner Enterprises,  
27 Mesilla Valley Transportation, Bison Transport, AB Inbev, HP, and DHL, among  
28

1 others. Carriers in the PDP have placed a combined 14,200 non-binding  
2 reservations for Embark-equipped autonomous trucks to date.

- 3 • **National Transfer Point Network:** Embark partnered with Ryder to launch a  
4 nationwide network of up to 100 Embark transfer points, where Ryder will provide  
5 yard operations, maintenance, and fleet management to support a seamless coast-  
6 to-coast autonomous network for Embark fleet partners.
- 7 • **Sustainability:** Embark worked with PDP member HP, Inc. to kick off the  
8 industry’s first electric truck drayage program. The two are piloting first- and last-  
9 mile deliveries between transfer points and HP’s distribution facilities using  
10 human-operated electric trucks in combination with autonomous trucks.
- 11 • **Management and Leadership:** Embark expanded its executive leadership team,  
12 adding Richard Hawwa as Chief Financial Officer, Sid Venkatesan as Chief Legal  
13 Officer, and Stephen Houghton as Chief Operations and Fleet Officer. Embark also  
14 added former U.S. Secretary of Transportation Elaine L. Chao to its Board of  
15 Directors. Additionally, Embark announced the formation of an industry advisory  
16 board, composed of six storied executives from companies like Cummins, Knight  
17 Transportation, Navistar, and others.
- 18 • **Policy:** Embark signed a joint MOU with the Arizona Department of Transportation  
19 to collaborate and share data on highway work zone safety. Embark also joined the  
20 board of the Self-Driving Coalition to strengthen the Coalition’s position as the  
21 leading organization representing all facets of the AV industry.

22 Alex Rodrigues [. . .] added, “We are thrilled to reach this important milestone and become  
23 a public company to further our mission of evolving the trucking industry, and using  
24 autonomous software to create a safer, more efficient, and more sustainable freight  
25 ecosystem. Embark’s co-founder and CTO, Brandon Moak, and I are incredibly proud of  
26 what our team has achieved, and we remain focused on delivering against key strategic  
27 initiatives to commercialize our technology and achieve key technical milestones. We  
28 remain differentiated as America’s longest running self-driving truck program with an  
asset-light go-to-market strategy, our proprietary patent-pending Vision Map Fusion  
technology, and our carrier-friendly, platform- agnostic Embark Universal Interface  
approach. We believe that the capital raised in this transaction will help us achieve our  
commercialization plans to bring self-driving trucks to the U.S. Sunbelt in 2024.”

“Embark has a strong group of shareholders who are excited to support its mission to create  
a better trucking industry,” said Ian Robertson, Director and CEO of Northern Genesis 2.  
“I look forward to being a member of the Board of Directors and working with management  
of Embark as it starts this next stage of its life as a public company.”

40. The statements referenced in ¶¶ 22-39 were materially false and misleading because  
Defendants made false and/or misleading statements, as well as failed to disclose material adverse facts

1 about the Company’s business, operations, and compliance policies. Specifically, Defendants made  
2 false and/or misleading statements and/or failed to disclose that: (i) the Company had performed  
3 inadequate due diligence into Legacy Embark; (ii) Legacy Embark and the Company following the  
4 Business Combination held no patents and an insignificant amount of test trucks; (iii) accordingly, the  
5 Company had overstated its operational and technological capabilities; (iv) as a result of all the  
6 foregoing, the Company had overstated the business and financial prospects of the Company post-  
7 Business Combination; and (v) as a result, the Company’s public statements were materially false and  
8 misleading at all relevant times.  
9

### 10 **The Truth Emerges**

11 41. On January 6, 2022, The Bear Cave published a short report entitled “Problems at  
12 Embark Technology (EMBK)”. Specifically, the Bear Cave Report alleged, in relevant part:  
13

14 Embark [. . .] describes itself as “an autonomous vehicle company building the software  
15 powering autonomous trucks” and merged with a SPAC in November. The company’s 26-  
16 year-old CEO projects no revenue in 2022 and 2023, but \$867 million in revenue in 2024  
17 and \$2.7 billion in 2025. Embark’s current valuation appears to be based on puffery rather  
18 than actual substance. The company holds no patents, has only a dozen or so test trucks,  
19 and may be more bark than bite.

20 \*\*\*

21 More troubling is that Embark appears to lack true economic substance. For example, a  
22 July 2021 article titled, “Who’s set to win Big Tech’s ‘insanely hot’ race to self-driving  
23 trucks?” by the Commercial Carrier Journal didn’t even mention Embark. One reason may  
24 be that the company “holds no patents on its products” and instead “relies heavily on trade  
25 secrets [and] proprietary know-how” according to Embark’s SEC filings.

26 For comparison, Embark competitor TuSimple has 357 issued patents and Aurora  
27 Innovation has over 1,100 awarded and pending patents. In its risk factors, Embark  
28 discloses it “may become subject to litigation brought by third parties claiming  
infringement, misappropriation or other violation by Embark of their intellectual property  
rights.”

Embark reassures investors about its plans by promoting its industry partnerships and  
14,200+ “reservations” through its Partner Development Program. Those may be less than  
meet the eye.



1 For example, Embark launched its Partner Development Program in April 2021 with large  
2 trucking companies Werner Enterprises and DHL among its initial members. Those  
3 partnerships may not be that valuable because Werner Enterprises is an investor in  
4 competitor TuSimple and DHL went on to order autonomous trucks built by TuSimple and  
5 Navistar. In podcasts, media appearances, and investor presentations Embark also touts  
6 over 14,200+ “reservations” from its partners, but rarely mentions those reservations are  
7 fully-refundable \$500 deposits for software to be delivered in 2024-2028, and Embark’s  
8 equity partners have the \$500 deposit waived. Embark does not break down reservations  
9 by customer or disclose the percent that have paid \$500 refundable deposits.

7 The SEC Division of Corporate Finance sent Embark a comment letter asking the company  
8 to “clarify the extent to which your estimates for miles driven for 2024 and 2025 are based  
9 on your existing agreements with your existing transportation partners.” In response the  
10 company said it would revise its filings to “clarify that Embark’s estimates for miles driven  
11 for 2024 and 2025 are not based on either Embark’s existing agreements with its existing  
12 transportation partners or acquiring new customers for which Embark currently does not  
13 have a relationship.” Instead, the company’s estimates are “a penetration target of 1.1% in  
14 2024 and 3.3% by 2025” for its trucking market.

12 \*\*\*

13 In its August 2021 letter, the SEC wrote Embark:

14 “We note that you have not generated revenue from principal operations through  
15 March 31, 2021; however, some of your disclosures do not appear to clearly convey  
16 this fact... Please revise throughout, including the summary, to ensure your  
17 disclosures are clear that the company is still in the process of developing and  
18 testing your technology, you have not earned revenue to date, and all products,  
19 route models, and partners are related to operations you expect to begin in the future  
20 but have not yet begun.”

19 \*\*\*

20 Despite not having any revenue, Embark has had some accounting issues. In November  
21 2021, the company announced that its audited balance sheet for January 2021 and its  
22 financial statements ending March 2021 “should no longer be relied upon” due to a  
23 reclassification of some share types. Embark’s prospectus also discloses: “Embark has  
24 identified deficiencies that together constitute a material weakness in its internal control  
25 over financial reporting as of December 31, 2019 and 2020.”

24 None of these issues have deterred retail investors from Embark. The company has gained  
25 some favorable coverage on WallStreetBets due to its “extreme meme potential” because  
26 the CEO’s “name is literally A-Rod.”

26 Embark’s largest outside investor is DCVC, which owns 17% of the company. On its  
27 website, DCVC’s featured portfolio company is Zymergen (NASDAQ: ZY), a synthetic  
28

1 biology company that has fallen over 80% since its April 2021 IPO after the company  
2 acknowledged its timeline to start reaching revenue “encountered technical issues.” Other  
3 public DCVC portfolio companies include AbCellera Biologics (NASDAQ: ABCL),  
4 which has fallen over 75% since its December 2020 IPO, Desktop Metal (NYSE: DM),  
5 which has fallen nearly 50% since its December 2020 SPAC merger, Recursion  
6 Pharmaceuticals (NASDAQ: RXXR), which has fallen over 40% since its April 2021 IPO,  
7 Rocket Lab USA (NASDAQ: RKLB), which is up around 20% since its August 2021  
8 SPAC merger, and SentinelOne (NYSE: S), which is flat since its July 2021 IPO.

6 After recording their interview with Embark’s CEO, the hosts of “Pounding the Table”  
7 discussed the company and why they were bullish. One host said, “This is a company that  
8 is not making tons of revenue obviously... Are they making money today? In short,  
probably no.”

9 42. On this news, Embark’s stock price fell \$1.37 per share, or 16.75%, to close at \$6.81 per  
10 share on January 6, 2022.

11 43. As a result of Defendants’ wrongful acts and omissions, and the precipitous decline in  
12 the market value of the Company’s securities, Plaintiff and other Class members have suffered  
13 significant losses and damages.  
14

### 15 **PLAINTIFF’S CLASS ACTION ALLEGATIONS**

16 44. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure  
17 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired  
18 Embark securities during the Class Period (the “Class”); and were damaged upon the revelation of the  
19 alleged corrective disclosures. Excluded from the Class are Defendants herein, the officers and directors  
20 of the Company, at all relevant times, members of their immediate families and their legal  
21 representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling  
22 interest.  
23

24 45. The members of the Class are so numerous that joinder of all members is impracticable.  
25 Throughout the Class Period, Embark securities were actively traded on the NASDAQ and NYSE.  
26 While the exact number of Class members is unknown to Plaintiff at this time and can be ascertained  
27  
28

1 only through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members  
2 in the proposed Class. Record owners and other members of the Class may be identified from records  
3 maintained by Embark or its transfer agent and may be notified of the pendency of this action by mail,  
4 using the form of notice similar to that customarily used in securities class actions.  
5

6 46. Plaintiff's claims are typical of the claims of the members of the Class as all members of  
7 the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is  
8 complained of herein.

9 47. Plaintiff will fairly and adequately protect the interests of the members of the Class and  
10 has retained counsel competent and experienced in class and securities litigation. Plaintiff has no  
11 interests antagonistic to or in conflict with those of the Class.  
12

13 48. Common questions of law and fact exist as to all members of the Class and predominate  
14 over any questions solely affecting individual members of the Class. Among the questions of law and  
15 fact common to the Class are:

- 16 • whether the federal securities laws were violated by Defendants' acts as alleged herein;
- 17 • whether statements made by Defendants to the investing public during the Class Period  
18 misrepresented material facts about the business, operations and management of  
19 Embark;
- 20 • whether the Individual Defendants caused Embark to issue false and misleading  
21 financial statements during the Class Period;
- 22 • whether Defendants acted knowingly or recklessly in issuing false and misleading  
23 financial statements;
- 24 • whether the prices of Embark securities during the Class Period were artificially  
25 inflated because of the Defendants' conduct complained of herein; and
- 26 • whether the members of the Class have sustained damages and, if so, what is the proper  
27 measure of damages.  
28

1           49.     A class action is superior to all other available methods for the fair and efficient  
2 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the  
3 damages suffered by individual Class members may be relatively small, the expense and burden of  
4 individual litigation make it impossible for members of the Class to individually redress the wrongs  
5 done to them. There will be no difficulty in the management of this action as a class action.  
6

7           50.     Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-  
8 the-market doctrine in that:

- 9           • Defendants made public misrepresentations or failed to disclose material facts during  
10 the Class Period;
- 11           • the omissions and misrepresentations were material;
- 12           • Embark securities are traded in an efficient market;
- 13           • the Company's shares were liquid and traded with moderate to heavy volume during  
14 the Class Period;
- 15           • the Company traded on the NASDAQ and NYSE and was covered by multiple  
16 analysts;
- 17           • the misrepresentations and omissions alleged would tend to induce a reasonable  
18 investor to misjudge the value of the Company's securities; and
- 19           • Plaintiff and members of the Class purchased, acquired and/or sold Embark securities  
20 between the time the Defendants failed to disclose or misrepresented material facts and  
21 the time the true facts were disclosed, without knowledge of the omitted or  
22 misrepresented facts.

21           51.     Based upon the foregoing, Plaintiff and the members of the Class are entitled to a  
22 presumption of reliance upon the integrity of the market.  
23

24           52.     Alternatively, Plaintiff and the members of the Class are entitled to the presumption of  
25 reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*,  
26 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants omitted material information in their Class Period  
27 statements in violation of a duty to disclose such information, as detailed above.  
28

1 **COUNT I**

2 **(Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder**  
3 **Against All Defendants)**

4 53. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set  
5 forth herein.

6 54. This Count is asserted against Defendants and is based upon Section 10(b) of the  
7 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

8 55. During the Class Period, Defendants engaged in a plan, scheme, conspiracy and course  
9 of conduct, pursuant to which they knowingly or recklessly engaged in acts, transactions, practices and  
10 courses of business which operated as a fraud and deceit upon Plaintiff and the other members of the  
11 Class; made various untrue statements of material facts and omitted to state material facts necessary in  
12 order to make the statements made, in light of the circumstances under which they were made, not  
13 misleading; and employed devices, schemes and artifices to defraud in connection with the purchase  
14 and sale of securities. Such scheme was intended to, and, throughout the Class Period, did: (i) deceive  
15 the investing public, including Plaintiff and other Class members, as alleged herein; (ii) artificially  
16 inflate and maintain the market price of Embark securities; and (iii) cause Plaintiff and other members  
17 of the Class to purchase or otherwise acquire Embark securities and options at artificially inflated prices.  
18 In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each of them, took  
19 the actions set forth herein.  
20  
21

22 56. Pursuant to the above plan, scheme, conspiracy and course of conduct, each of the  
23 Defendants participated directly or indirectly in the preparation and/or issuance of the quarterly and  
24 annual reports, SEC filings, press releases and other statements and documents described above,  
25 including statements made to securities analysts and the media that were designed to influence the  
26 market for Embark securities. Such reports, filings, releases and statements were materially false and  
27  
28

1 misleading in that they failed to disclose material adverse information and misrepresented the truth about  
2 Embark's finances and business prospects.

3         57. By virtue of their positions at Embark, Defendants had actual knowledge of the  
4 materially false and misleading statements and material omissions alleged herein and intended thereby  
5 to deceive Plaintiff and the other members of the Class, or, in the alternative, Defendants acted with  
6 reckless disregard for the truth in that they failed or refused to ascertain and disclose such facts as would  
7 reveal the materially false and misleading nature of the statements made, although such facts were  
8 readily available to Defendants. Said acts and omissions of Defendants were committed willfully or  
9 with reckless disregard for the truth. In addition, each Defendant knew or recklessly disregarded that  
10 material facts were being misrepresented or omitted as described above.  
11

12         58. Information showing that Defendants acted knowingly or with reckless disregard for the  
13 truth is peculiarly within Defendants' knowledge and control. As the senior managers and/or directors  
14 of Embark, the Individual Defendants had knowledge of the details of Embark's internal affairs.  
15

16         59. The Individual Defendants are liable both directly and indirectly for the wrongs  
17 complained of herein. Because of their positions of control and authority, the Individual Defendants  
18 were able to and did, directly or indirectly, control the content of the statements of Embark. As officers  
19 and/or directors of a publicly-held company, the Individual Defendants had a duty to disseminate timely,  
20 accurate, and truthful information with respect to Embark's businesses, operations, future financial  
21 condition and future prospects. As a result of the dissemination of the aforementioned false and  
22 misleading reports, releases and public statements, the market price of Embark securities was artificially  
23 inflated throughout the Class Period. In ignorance of the adverse facts concerning Embark's business  
24 and financial condition which were concealed by Defendants, Plaintiff and the other members of the  
25 Class purchased or otherwise acquired Embark securities at artificially inflated prices and relied upon  
26  
27  
28



1           64.     During the Class Period, the Individual Defendants participated in the operation and  
2 management of Embark, and conducted and participated, directly and indirectly, in the conduct of  
3 Embark’s business affairs. Because of their senior positions, they knew the adverse non-public  
4 information about Embark’s misstatement of income and expenses and false financial statements.

5           65.     As officers and/or directors of a publicly owned company, the Individual Defendants had  
6 a duty to disseminate accurate and truthful information with respect to Embark’s financial condition and  
7 results of operations, and to correct promptly any public statements issued by Embark which had become  
8 materially false or misleading.

9           66.     Because of their positions of control and authority as senior officers, the Individual  
10 Defendants were able to, and did, control the contents of the various reports, press releases and public  
11 filings which Embark disseminated in the marketplace during the Class Period concerning Embark’s  
12 results of operations. Throughout the Class Period, the Individual Defendants exercised their power and  
13 authority to cause Embark to engage in the wrongful acts complained of herein. The Individual  
14 Defendants, therefore, were “controlling persons” of Embark within the meaning of Section 20(a) of the  
15 Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially  
16 inflated the market price of Embark securities.

17           67.     Each of the Individual Defendants, therefore, acted as a controlling person of Embark.  
18 By reason of their senior management positions and/or being directors of Embark, each of the Individual  
19 Defendants had the power to direct the actions of, and exercised the same to cause, Embark to engage  
20 in the unlawful acts and conduct complained of herein. Each of the Individual Defendants exercised  
21 control over the general operations of Embark and possessed the power to control the specific activities  
22 which comprise the primary violations about which Plaintiff and the other members of the Class  
23 complain.  
24  
25  
26  
27  
28



