UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

_____, Individually and on Behalf of All Others Similarly Situated,

Plaintiff,

v.

Nikola Corporation, Mark A. Russell, Michael Lohscheller, Stephen J. Girsky, Kim Brady, and Anastasiya Pasterick,

Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff _____ ("Plaintiff"), individually and on behalf of all others similarly situated, by Plaintiff's undersigned attorneys, for Plaintiff's complaint against Defendants, alleges the following based upon personal knowledge as to Plaintiff and Plaintiff's own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Plaintiff's attorneys, which included, among other things, a review of the Defendants' public documents, conference calls and announcements made by Defendants, United States ("U.S.") Securities and Exchange Commission ("SEC") filings, wire and press releases published by and regarding Nikola Corporation ("Nikola" or the "Company"), analysts' reports and advisories about the Company, and information readily obtainable on the Internet. Plaintiff believes that substantial, additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a federal securities class action on behalf of a class consisting of all persons and entities other than Defendants that purchased or otherwise acquired Nikola securities between February 24, 2022 and September 7, 2023, both dates inclusive (the "Class Period"), seeking to recover damages caused by Defendants' violations of the federal securities laws and to pursue remedies under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder, against the Company and certain of its top officials.

2. Nikola purports to operate as an integrated zero-emissions transportation systems provider that designs and manufactures battery-electric and hydrogen-electric vehicles, electric vehicle drivetrains, vehicle components, energy storage systems, and hydrogen fueling station

infrastructure. One of the Company's primary products is the Nikola Tre Class 8 truck, a battery-electric vehicle ("BEV") which purportedly "integrates [the Company's] electrified propulsion, technology, controls and infotainment[]" and "is expected to be one of the first zero emission Class 8 trucks to market."

3. Throughout the Class Period, Defendants made materially false and misleading statements regarding the Company's business, operations, and compliance policies. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) the Company maintained deficient safety and structural controls related to its manufacturing of battery components; (ii) the foregoing deficiencies rendered Nikola's vehicles unsafe to operate and thus unusable, thereby raising the likelihood of a product recall; and (iii) as a result, the Company's public statements were materially false and misleading at all relevant times.

4. One June 23, 2023, a Nikola Tre BEV caught fire at the Company's headquarters, with the fire ultimately spreading to four other trucks and prompting Nikola to open an investigation into the incident. That same morning, Nikola posted a tweet in response to the fire, stating, in relevant part, that "[f]oul play is suspected as a vehicle was seen in the area of the affected trucks just prior to the incident and an investigation is underway."

5. Following news of the fire, despite Nikola's suggestion of foul play, the Company's stock price fell $0.09 per share, or 6.52%, to close at $1.29 per share on June 23, 2023.

6. Thereafter, on August 11, 2023, in contrast with the Company's earlier suggestion of foul play, Nikola issued a recall of all 209 battery-electric trucks that it had delivered or built to date after the investigation found that a coolant leak inside a battery pack had caused the fire.

7. Following news of the recall, Nikola's stock price fell $0.13 per share, or 6.67%, to close at $1.82 per share on August 14, 2023.

8. Then, on September 4, 2023, as a result of the same battery pack deficiencies that caused the June 23, 2023 fire, a third Nikola BEV truck caught fire at a warehouse in Tempe, Arizona.

9. Finally, on September 8, 2023, it was reported that a fourth Nikola BEV truck caught fire near the Company's headquarters. In a statement sent to *Electrek.com*, a news website focused on electric transportation and sustainable energy, the Company stated, in relevant part, that "there was a thermal incident with one engineering validation battery-electric truck near Nikola's Phoenix headquarters. No one was injured. This pre-production truck was outside and undergoing battery fire investigation and testing."

10. On this news, Nikola's stock price fell $0.16 per share, or 15.38%, to close at $0.88 per share on September 8, 2023.

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

JURISDICTION AND VENUE

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

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

14. Venue is proper in this Judicial District pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1391(b). Nikola is headquartered in this Judicial District, Defendants conduct business in this Judicial District, and a significant portion of Defendants' actions took place within this Judicial District.

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

PARTIES

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

17. Defendant Nikola is a Delaware corporation with principal executive offices located at 4141 E. Broadway Road, Phoenix, Arizona 85040. Nikola's common stock trades in an efficient market on the Nasdaq Global Select Market ("NASDAQ") under the ticker symbol "NKLA".

18. Defendant Mark A. Russell ("Russell") served as Nikola's Chief Executive Officer ("CEO") from prior to the start of the Class Period until November 2022.

19. Defendant Michael Lohscheller ("Lohscheller") served as Nikola's CEO from November 2022 until August 2023.

20. Defendant Stephen Girsky ("Girsky") has served as Nikola's CEO since August 2023.

21. Defendant Kim J. Brady ("Brady") served as Nikola's Chief Financial Officer ("CFO") from prior to the start of the Class Period until April 2023.

22. Defendant Anastasiya Pasterick ("Pasterick") has served as Nikola's CFO since April 2023.

23. Defendants Russell, Lohscheller, Girsky, Brady, and Pasterick are sometimes referred to herein as the "Individual Defendants."

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

25. Nikola and the Individual Defendants are collectively referred to herein as "Defendants."

SUBSTANTIVE ALLEGATIONS

Background

26. Nikola purports to operate as an integrated zero-emissions transportation systems provider that designs and manufactures battery-electric and hydrogen-electric vehicles, electric

vehicle drivetrains, vehicle components, energy storage systems, and hydrogen fueling station infrastructure. One of the Company's primary products is the Nikola Tre Class 8 truck, a BEV which purportedly "integrates [the Company's] electrified propulsion, technology, controls and infotainment[]" and "is expected to be one of the first zero emission Class 8 trucks to market."

Materially False and Misleading Statements Issued During the Class Period

27. The Class Period begins on February 24, 2022, when Nikola filed an Annual Report on Form 10-K with the SEC, reporting the Company's its financial and operating results for the year ended December 31, 2021 (the "2021 10-K"). In providing an overview of the Company's business the 2021 10-K stated, in relevant part:

> Our vision is to be the zero-emissions transportation industry leader. We plan to realize this vision through world-class partnerships, groundbreaking research and development, and a revolutionary business model.
>
> ***
>
> We are a technology innovator and integrator, working to develop innovative energy and transportation solutions. We are pioneering a business model that will enable corporate customers to integrate next-generation truck technology, hydrogen fueling and charging infrastructure, and related maintenance. By creating this ecosystem, we and our strategic business partners and suppliers expect to build a long-term competitive advantage for clean technology vehicles and next generation fueling solutions.
>
> Our expertise lies in design, innovation, software, and engineering. We assemble, integrate, and commission our vehicles in collaboration with our business partners and suppliers. Our approach has always been to leverage strategic partnerships to help lower cost, increase capital efficiency and accelerate speed to market. To date, we believe we have assembled world-class partners and we plan to continue to add partners where appropriate.

28. Further, in discussing the Company's battery-electric vehicle competition, the 2021 10-K stated, in relevant part:

Tesla, Daimler, Volvo, as well as other automotive manufacturers, have announced their plans to bring Class 8 BEV trucks to the market over the coming years. Other competitors include BYD, Peterbilt, XOS, Lion, Volvo, Hyliion, and potentially Cummins. We believe all of these competitors are in various stages of rolling out their vehicles, including pilot programs and providing test vehicles to customers. ***We believe that we compete favorably with our competitors as the range of Nikola Tre BEV truck is higher than most of our competitors***.[1]

29. In addition, in discussing the Company's products, the 2021 10-K stated, in relevant part:

As the commercial transportation sector transitions towards zero-emission solutions, we believe there will be a need to offer tailored solutions that meet the needs of each customer. By offering both BEV (for short and medium-haul, city, regional, and drayage deliveries) and FCEV (for medium and long-haul) solutions, we believe we are positioned to change the commercial transportation sector by providing solutions that address the full range of customer needs.

The electrical propulsion of our BEV and FCEV trucks has a modular design which allows the batteries and associated controls to be configured to either a BEV or FCEV propulsion. Our architecture inside the centralized e-axle is configured for the appropriate power needs for the BEV and FCEV for a wide range of applications. Our cab-over design allows us to address both the European and North American markets which provides engineering and manufacturing synergies.

***

The Nikola Tre Class 8 truck is based on the S-WAY platform from Iveco and integrates our electrified propulsion, technology, controls and infotainment. In addition, we redesigned the majority of the high-visibility components and body panels of the S-WAY truck and added several new interior features including a digital cockpit with an infotainment screen, instrument screen and panel, redesigned steering wheel, and new seats. The cab-over design is desirable for city center applications due to shorter vehicle length, improved maneuverability, and better visibility. We are marketing the Nikola Tre BEV for short and medium-haul applications in North America and Europe.

The BEV version of Nikola Tre is expected to be one of the first zero emission Class 8 trucks to market. BEV trucks run on a fully electric drivetrain powered by rechargeable batteries. Our BEV has an estimated range of up to 350

[1] All emphases included herein are added unless otherwise indicated.

miles and is designed to address the short and medium-haul market. During the initial roll-out, most of our customers indicated that they intend to charge at their terminal. To help facilitate this, along with our dealer network and key partners, we plan to provide consulting expertise and, as required, products and services designed to ensure charging is available.

30. Finally, in discussing government regulations, the 2021 10-K stated, in relevant part:

Vehicle Safety and Testing Regulation

Our vehicles are subject to, and are designed to comply with, numerous regulatory requirements established by the National Highway Traffic Safety Administration, or NHTSA, including applicable U.S. federal motor vehicle safety standards, or FMVSS. As a manufacturer, we must self-certify that the vehicles meet or are exempt from all applicable FMVSS before a vehicle can be imported into or sold in the U.S.

***

Our BEV and FCEV trucks are designed to meet specific NHTSA type approvals and we will commence with testing our vehicles for the [European Union Whole Vehicle Type Approval] and following European type approval-process to assure compliance with the [United Nations Economic Commission Europe] requirements.

***

Our BEV and FCEV trucks consist of many electronic and automated components and systems. ***Our vehicles are designed to comply with the International Standards Organization's, or ISO, Functional Safety Standard***. This standard addresses the integration of electrical systems and software and identifies the possible hazards caused by malfunctioning behavior of the safety-related electrical or electronic systems, including the interaction of these systems.

***

Battery Safety and Testing Regulation

Our vehicles are designed to ISO standards for electrically-propelled vehicles in vehicle operational safety specifications and connecting to an external power supply. Additionally, we are incorporating other ISO battery system standards in our vehicles.

Some of these standards include:

- *Conductive Charging*—for on board charge electromagnetic requirements;
- *Battery Pack Enclosure Protection*—degrees of protection of the electrical equipment within an enclosure from the effects due to the ingress of water; and
- *Testing Lithium-ion Traction Battery Packs and Systems*—safety performance requirements during a variety of testing, such as vibration, thermal cycling, overcharge, and loss of thermal control.

Our battery pack conforms with mandatory regulations governing the transport of "dangerous goods," which includes lithium-ion batteries that may present a risk in transportation.

31. Appended to the 2021 10-K as exhibits were signed certifications pursuant to the Sarbanes Oxley-Act of 2002 ("SOX") by Defendants Russell and Brady, attesting that "[t]he information contained in the [2021 10-K] fairly presents, in all material respects, the financial condition and results of operations of the Company."

32. That same day, Nikola hosted an earnings call with investors and analysts to discuss the Company's Q4 2021 results (the "Q4 2021 Earnings Call"). During the scripted portion of the Q4 2021 Earnings Call, Defendant Russell stated, in relevant part:

> [Total Transportation Services ("TTSI")] tells us that no other battery electric truck they have tested has gone thus far on a single charge. The range and reliability of the Tre BEV is a testament to the capability and dedication of the extraordinary engineering and manufacturing teams we have here at Nikola. The official start of our series production is scheduled late next month and we are looking forward to delivering revenue generating trucks starting in Q2. We produced 30 pre-series Tre BEVs on the line in Coolidge, Arizona during the fourth quarter, but because of constraints in the supply of battery components, e-axles, displays or chips, only 11 of these vehicles have been commissioned and released to customers or Nikola's public road test fleet so far. The remaining 19 trucks are staged off the end of the

production line and are waiting for production spec component or for final commissioning.

33. On May 5, 2022, Nikola issued a press release announcing the Company's Q1 2022 results. The press release stated, in relevant part:

> Nikola [. . .] today reported financial results for the quarter ended March 31, 2022. "During the first quarter, we reached a significant milestone with the start of serial production for the Nikola Tre BEV at our Coolidge, Arizona manufacturing facility and are currently delivering saleable trucks to dealers for customer deliveries," said [Defendant] Russell[.] "We look forward to scaling production and delivering 300 – 500 production vehicles to customers this year."
>
> **Nikola Tre BEV Update**
> During the first quarter, the final 10 of a total fleet of 40 pre-series Tre BEVs came off the line in Coolidge, Arizona. Pre-series trucks continue to be used in customer pilots, dealer demos, and internal R&D testing. On April 29, we successfully completed our first Tre BEV customer pilot with TTSI. We also successfully completed a 14-day pilot with Univar Solutions (NYSE: UNVR). We are currently undergoing pilot testing with several other customers, including Covenant Logistics (Nasdaq: CVLG).

34. That same day, Nikola hosted an earnings call with investors and analysts to discuss the Company's Q1 2022 results (the "Q1 2022 Earnings Call"). During the Q&A portion of the Q1 2022 Earnings Call, when asked to discuss the uptime of the Company's BEV program, Defendant Russell responded, in relevant part:

> The BEV uptime is critical. Any Class 8 uptime is critical. As you know. These are the machines that our customers base their business on. If they don't operate, they don't make money. And we're very pleased with the results of the pilots we've run so far with TTSI, and others.
>
> We have a lot going on this front that we haven't publicly disclosed. We are working with lots of customers. Our dealers are working with lots of customers, all dealers have trucks at this point, and are running demos and working with customers.
>
> So the demand is pretty seismic. ***If you can get somebody a zero emission trucks [sic] that is reliable and capable, like ours is, then everybody wants one. And then***

becomes a discussion about the terms at this point. So we're very pleased with how we're doing so far.

As you saw in the video, the feedback we're getting so far, it's just tremendous. These trucks are proving very reliable and very capable, and the drivers love them. So in the case of TTSI, they tested more trucks than anybody I know of, more than 20 different zero emission trucks, reduced emission trucks, alternative fuel trucks that they have tested, they say. And as you saw the feedback in the video, those are the leaders of TTSI that we were interviewed on the video.

35. On August 1, 2022, Nikola issued a press release entitled "Nikola Agrees to Acquire Romeo Power, To Bring Battery Pack Engineering and Production In-House." The press release stated, in relevant part:

As Romeo's largest customer, Nikola expects the acquisition will allow for significant operational improvement and cost reduction in battery pack production. The addition of Romeo's battery and battery management system (BMS) engineering capabilities are also expected to support accelerated product development and improved performance for Nikola customers.

"Romeo has been a valued supplier to Nikola, and we are excited to further leverage their technological capabilities as the landscape for vehicle electrification grows more sophisticated. With control over the essential battery pack technologies and manufacturing process, we believe we will be able to accelerate the development of our electrification platform and better serve our customers," said [Defendant] Russell[.] "Given our strong relationship with Romeo and ongoing collaboration, we are confident in our ability to successfully integrate and deliver the many expected strategic and financial benefits of this acquisition. We look forward to creating a zero-emissions future together."

***

Compelling Strategic Rationale

- Vertical integration and single product focus will drive significant operational improvement and cost reduction for one of the most expensive components of the bill of materials

- Integrated commercial vehicle electrification platform is expected to lead to manufacturing excellence and expected annual cost savings of up to $350 million by 2026; reduce non-cell related battery pack costs by 30-40% by the end of 2023

- An important strategic move for Nikola with minimal capital outlay that will bring Romeo's deep battery and BMS engineering capabilities in-house; expected to accelerate Nikola's product development, increase range and charge rates, and improve customer experiences

- Provides Nikola with domestic battery pack manufacturing capability, complementing Nikola's commitment to dual-source battery pack strategy to satisfy capacity needs

- Romeo has proven battery pack technologies and a significant battery cell supply agreement in place

36. On August 4, 2022, Nikola issued a press release announcing the Company's Q2 2022 results. The press release quoted Defendant Russell, stating, in relevant part, "[o]ur momentum continued during the second quarter as we began delivering production vehicles to dealers and recognizing revenue from the sale of our Nikola Tre BEVs," and "[w]e are committed to executing on our second half milestones."

37. That same day, Nikola hosted an earnings call with investors and analysts to discuss the Company's Q2 2022 results (the "Q2 2022 Earnings Call"). During the scripted portion of the Q2 2022 Earnings Call, Defendant Russell stated, in relevant part, "I'd like to highlight right now, what it takes to actually get zero-emission trucks into commercial service in hauling freight every day. I think this further validates Nikola's longstanding focus and strategy of providing a total solution including service, support, and most importantly in this case, charging and fueling infrastructure."

38. On October 14, 2022, Nikola issued a press release announcing that it had completed its acquisition of Romeo Power, Inc. The press release quoted Defendant Lohscheller, stating, in relevant part, "[t]he acquisition of Romeo will enhance Nikola's capabilities, allowing us to vertically integrate in an effort to accelerate product development and improve performance

for our customers. Today's milestone further solidifies our commitment to transforming the transportation industry."

39. On February 23, 2023, Nikola filed an Annual Report on Form 10-K with the SEC, reporting the Company's financial and operating results for the year ended December 31, 2022 (the "2022 10-K"). The 2022 10-K contained substantively similar descriptions of the Company's business overview, products, and government regulation as discussed, *supra*, in ¶¶ 27-30.

40. Appended to the 2022 10-K as exhibits were signed certifications pursuant to SOX by Defendants Lohscheller and Brady attesting that "[t]he information contained in the [2022 10-K] fairly presents, in all material respects, the financial condition and results of operations of the Company."

41. That same day, Nikola hosted an earnings call with investors and analysts to discuss the Company's Q4 2022 results (the "Q4 2022 Earnings Call"). During the scripted portion of the Q4 2022 Earnings Call, Defendant Lohscheller stated, in relevant part:

> Moving on to our Tre BEV program; we utilized the fourth quarter to improve our product and address customer feedback. This resulted in lower delivery numbers as we worked to make the changes to trucks in Nikola dealer inventory before delivery to end customers. We chose to do this as soon as possible before delivering additional vehicles while we have access to trucks at dealer service centers and our Coolidge manufacturing facility. Some of the changes we implemented include our second major post-production software update and eAxle bearing enhancement and improvements to our battery management software. Our second software update was a significant improvement for us and provided the following improvements.
>
> Increasing the useable battery capacity giving the truck up to 40 miles of increased range, enable 350 kilowatt charging capability allowing 80% of charge in 90 minutes. Introduction of front and rear cameras, improved low-voltage power management resulting in reduced low-voltage power consumption, Bluetooths and mobile app enhancement. We have also worked diligently with customers, dealers,

> and charging infrastructure partners to accelerate the deployment of BEV charging at customer depots.

42. On February 27, 2023, Nikola issued a press release announcing the Company's Q4 and full year 2022 results. The press release stated, in relevant part:

> "During the fourth quarter we strengthened our commercial and sales operations, which is expected to lead to increased sales and accelerated customer deliveries," said [Defendant] Lohscheller. "As a whole, we made significant progress on both the truck and energy infrastructure fronts. The advances we have made on battery charging and hydrogen solutions with strategic partners, and the unveiling of our hydrogen mobile fueler under the HYLA brand, will allow Nikola to provide fully integrated mobility solutions to customers for both the BEV and FCEV."

43. On May 9, 2023, Nikola issued a press release announcing the Company's Q1 2023 results. The press release quoted Defendant Lohscheller, stating, in relevant part, "Nikola had a very solid quarter, building sales momentum with Class 8 battery electric truck deliveries to customers, and orders for 140 hydrogen fuel cell trucks from customers,"[w]e have the right products at the right time, and as we move forward, we will be focusing on the North American market, hydrogen fuel cell trucks, the HYLA hydrogen refueling business, and autonomous technologies[,]" and "[w]e are on the right path with our re-energized management and commercial teams, improved sales strategy, new dealers, and energy partners[.]"

The Truth Begins to Emerge

44. One June 23, 2023, a Nikola Tre BEV caught fire at the Company's headquarters, with the fire ultimately spreading to four other trucks and prompting Nikola to open an investigation into the incident. That same morning, Nikola posted a tweet in response to the fire, stating:

45. Following news of the fire, despite Nikola's suggestion of foul play, the Company's stock price fell $0.09 per share, or 6.52%, to close at $1.29 per share on June 23, 2023.

46. On August 4, 2023, Nikola issued a press release announcing the Company's Q2 2023 results. The press release stated, in relevant part:

> "Nikola has turned the corner and is well on the way to executing our business plan and achieving profitability," said [Defendant] Lohscheller. "We have nearly doubled our unrestricted cash position while also substantially reducing our spending. We continue to drive forward in our mission to decarbonize heavy-duty trucking and ensure Nikola is successful for the long haul."
>
> "Our management team is highly focused on delivering trucks to customers at scale and making the most of our first mover advantage in the hydrogen refueling ecosystem" [Defendant] Lohscheller continued.
>
> ***
>
> **Battery-Electric Truck**
> During the second quarter we continued to build sales momentum on the battery-electric trucks, wholesaling 45 to dealers with 66 retail sales. We expect sales momentum to continue building as customers realize the total cost of ownership benefits of zero-emissions trucks and additional government support is introduced to accelerate the transition to zero-emissions.
>
> ***
>
> **Coolidge, Arizona Manufacturing Facility**
> In Coolidge, the Phase 2 assembly expansion has been completed and the new mixed-model line capable of building both battery-electric and hydrogen fuel cell

> electric trucks has been installed. The current production capacity of the facility is 2,400 trucks / year on three (3) shifts.
>
> Progress continued on the fuel cell power module assembly line. We expect the fuel cell power module assembly line to be completed in Q4 of this year. Fuel cell power modules utilized in hydrogen fuel cell electric trucks in 2023 will be built and shipped to Coolidge by Bosch.
>
> Progress also continued on the battery pack line installation in Coolidge. When we resume battery-electric truck production, the battery packs utilized will be built at our facility in Coolidge.

47. That same day, Nikola hosted an earnings call with investors and analysts to discuss the Company's Q2 2023 results (the "Q2 2023 Earnings Call"). During the scripted portion of the Q2 2023 Earnings Call, Defendant Lohscheller stated, in relevant part:

> Let's talk about the fire of our battery electric truck at our headquarters in late June. First of all, we are thankful that no one was hurt. Secondly, it has been determined that only one truck started the fire and spread to the other four. We have two investigations ongoing, one with our technical and safety staff and one being conducted by a third party and we will share more when we know more. ***We want everyone to know Nikola's trucks are designed with safety as the first priority and are rigorously tested prior to release. These tests include front, side and rear crash testing, battery coolant leakage monitoring and battery thermal runaway detection***.
>
> Our trucks meet and exceed federal motor vehicle safety standards and United Nations Global Technical Regulations 20 standards as well as meet the industry best practices including the Society of Automobile Engineers, the International Organization for Standardization and the Underwriters Laboratories.

48. The statements referenced in ¶¶ 27-44 and 46-47 were materially false and misleading because Defendants made false and/or misleading statements, as well as failed to disclose material adverse facts about the Company's business, operations, and compliance policies. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) the Company maintained deficient safety and structural controls related to its manufacturing of battery components; (ii) the foregoing deficiencies rendered Nikola's vehicles

unsafe to operate and thus unusable, thereby raising the likelihood of a product recall; and (iii) as a result, the Company's public statements were materially false and misleading at all relevant times.

The Truth Fully Emerges

49. On August 11, 2023, Nikola issued a press release entitled "Nikola Announces Preliminary Results of Battery Investigations, Voluntarily Recalls 209 Class 8 Battery-Electric Trucks." In contrast with the Company's earlier suggestion of foul play, the press release stated, in relevant part:

> The safety of customers, dealers and team members are Nikola's top priority. Nikola [. . .] today provides the preliminary results of its battery pack investigations and as a precautionary measure, announces a voluntary recall of approximately 209 Class 8 Tre battery-electric vehicles (BEVs). Nikola is currently in the process of filing this voluntary recall with the National Highway Traffic Safety Administration (NHTSA) and is placing a temporary hold on new BEV sales until a resolution is in place.
>
> These actions do not affect the hydrogen fuel cell electric vehicle (FCEV) currently in production as the truck's battery pack has a different design.
>
> Following an August 10 presentation of preliminary findings from Exponent, a reputable third-party investigator, a coolant leak inside a single battery pack was found to be the probable cause of the truck fire at the company's headquarters in Phoenix, Ariz. on June 23, 2023. The findings were further corroborated by a minor thermal incident that impacted one pack on an engineering validation truck parked at the company's Coolidge, Ariz. plant on Aug. 10. No one was injured in either incident.
>
> Internal investigations from Nikola's safety and engineering teams indicate a single supplier component within the battery pack as the likely source of the coolant leak and efforts are underway to provide a field remedy in the coming weeks.
>
> *Tre BEV trucks may remain in operation, but for optimal performance and safety, the Nikola team encourages all customers and dealers to immediately take the following actions:*

- Place the Main Battery Disconnect (MBD) switch into the "ON" position at all times to enable real-time vehicle monitoring and safety systems operation
- Consider parking trucks outside to allow for over-the-air updates and better connectivity with Fleet Command, Nikola's truck monitoring system

> The company's software systems are being used in real-time to monitor trucks in the field closely and continually assess risks. Thus far, only two (2) battery packs have experienced a thermal event, out of more than 3,100 packs on trucks produced to date (less than 0.07%).
>
> ***
>
> "At Nikola we take safety very seriously," said [Defendant] Girsky[.] "We stated from the beginning that as soon as our investigations were concluded we would provide an update, and we will continue our transparency as we learn more."
>
> The company's initial statement on June 23 alluded to foul play as a possible cause of the incident, based on video footage showing a vehicle parked next to the impacted trucks and quickly pulling away after a bright flash and the commencement of the fire. Extensive internal and third party-led hypothesis testing, employee and contractor interviews, and hours of video footage review has since suggested foul play or other external factors were unlikely to have caused the incident.

50. Following news of the recall, Nikola's stock price fell $0.13 per share, or 6.67%, to close at $1.82 per share on August 14, 2023.

51. Then, on September 4, 2023, as a result of the same battery pack deficiencies that caused the June 23, 2023 fire, a third Nikola BEV truck caught fire at a warehouse in Tempe, Arizona.

52. Finally, on September 8, 2023, it was reported that a fourth Nikola BEV truck caught fire near the Company's headquarters. In a statement sent to *Electrek.com*, a news website focused on electric transportation and sustainable energy, the Company stated:

> On Friday September 8 at approximately 8:30 am, there was a thermal incident with one engineering validation battery-electric truck near Nikola's Phoenix headquarters. No one was injured. This pre-production truck was outside and

> undergoing battery fire investigation and testing. We thank the Phoenix first responders for their quick action. We will share more information as we learn more.

53. On this news, Nikola's stock price fell $0.16 per share, or 15.38%, to close at $0.88 per share on September 8, 2023.

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

PLAINTIFF'S CLASS ACTION ALLEGATIONS

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

56. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Nikola securities were actively traded on the NASDAQ. While the exact number of Class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Nikola or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

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

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

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

- whether the federal securities laws were violated by Defendants' acts as 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.

60. 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.

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

- Defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- the omissions and misrepresentations were material;
- Nikola securities are traded in an efficient market;
- the Company's shares were liquid and traded with moderate to heavy volume during the Class Period;
- the Company traded on the NASDAQ and was covered by multiple analysts;
- the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and
- Plaintiff and members of the Class purchased, acquired and/or sold Nikola securities between the time the Defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.

62. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

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

COUNT I

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

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

65. 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.

66. During the Class Period, Defendants engaged in a plan, scheme, conspiracy and course of conduct, pursuant to which they knowingly or recklessly engaged in acts, transactions, practices and courses of business which operated as a fraud and deceit upon Plaintiff and the other members of the Class; made various untrue statements of material facts and 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 employed devices, schemes and artifices to defraud in connection with the purchase and sale of securities. Such scheme was intended to, and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of Nikola securities; and (iii) cause Plaintiff and other members of the Class to purchase or otherwise acquire Nikola securities and options at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each of them, took the actions set forth herein.

67. Pursuant to the above plan, scheme, conspiracy and course of conduct, each of the Defendants participated directly or indirectly in the preparation and/or issuance of the quarterly and annual reports, SEC filings, press releases and other statements and documents described

above, including statements made to securities analysts and the media that were designed to influence the market for Nikola securities. Such reports, filings, releases and statements were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about Nikola's finances and business prospects.

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

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

70. The Individual Defendants are liable both directly and indirectly for the wrongs complained of herein. Because of their positions of control and authority, the Individual Defendants were able to and did, directly or indirectly, control the content of the statements of Nikola. As officers and/or directors of a publicly-held company, the Individual Defendants had a duty to disseminate timely, accurate, and truthful information with respect to Nikola's

businesses, operations, future financial condition and future prospects. As a result of the dissemination of the aforementioned false and misleading reports, releases and public statements, the market price of Nikola securities was artificially inflated throughout the Class Period. In ignorance of the adverse facts concerning Nikola's business and financial condition which were concealed by Defendants, Plaintiff and the other members of the Class purchased or otherwise acquired Nikola securities at artificially inflated prices and relied upon the price of the securities, the integrity of the market for the securities and/or upon statements disseminated by Defendants, and were damaged thereby.

71. During the Class Period, Nikola securities were traded on an active and efficient market. Plaintiff and the other members of the Class, relying on the materially false and misleading statements described herein, which the Defendants made, issued or caused to be disseminated, or relying upon the integrity of the market, purchased or otherwise acquired shares of Nikola securities at prices artificially inflated by Defendants' wrongful conduct. Had Plaintiff and the other members of the Class known the truth, they would not have purchased or otherwise acquired said securities, or would not have purchased or otherwise acquired them at the inflated prices that were paid. At the time of the purchases and/or acquisitions by Plaintiff and the Class, the true value of Nikola securities was substantially lower than the prices paid by Plaintiff and the other members of the Class. The market price of Nikola securities declined sharply upon public disclosure of the facts alleged herein to the injury of Plaintiff and Class members.

72. By reason of the conduct alleged herein, Defendants knowingly or recklessly, directly or indirectly, have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

73. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases, acquisitions and sales of the Company's securities during the Class Period, upon the disclosure that the Company had been disseminating misrepresented financial statements to the investing public.

COUNT II

(Violations of Section 20(a) of the Exchange Act Against the Individual Defendants)

74. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

75. During the Class Period, the Individual Defendants participated in the operation and management of Nikola, and conducted and participated, directly and indirectly, in the conduct of Nikola's business affairs. Because of their senior positions, they knew the adverse non-public information about Nikola's misstatement of income and expenses and false financial statements.

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

77. Because of their positions of control and authority as senior officers, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which Nikola disseminated in the marketplace during the Class Period concerning Nikola's results of operations. Throughout the Class Period, the Individual Defendants exercised

their power and authority to cause Nikola to engage in the wrongful acts complained of herein. The Individual Defendants, therefore, were "controlling persons" of Nikola within the meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of Nikola securities.

78. Each of the Individual Defendants, therefore, acted as a controlling person of Nikola. By reason of their senior management positions and/or being directors of Nikola, each of the Individual Defendants had the power to direct the actions of, and exercised the same to cause, Nikola to engage in the unlawful acts and conduct complained of herein. Each of the Individual Defendants exercised control over the general operations of Nikola and possessed the power to control the specific activities which comprise the primary violations about which Plaintiff and the other members of the Class complain.

79. By reason of the above conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act for the violations committed by Nikola.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

A. Determining that the instant action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class representative;

B. Requiring Defendants to pay damages sustained by Plaintiff and the Class by reason of the acts and transactions alleged herein;

C. Awarding Plaintiff and the other members of the Class prejudgment and post-judgment interest, as well as their reasonable attorneys' fees, expert fees and other costs; and

D. Awarding such other and further relief as this Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury.

Dated:

Respectfully submitted,

_____