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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

, Individually and On Behalf of
All Others Similarly Situated,

Plaintiff,

v.

FISKER INC., HENRIK FISKER,
GEETA GUPTA-FISKER, and JOHN
FINNUCAN,

Defendants.

Case No.

**CLASS ACTION COMPLAINT
FOR VIOLATIONS OF THE
FEDERAL SECURITIES LAWS**

DEMAND FOR JURY TRIAL

1 Plaintiff _____ (“Plaintiff”), individually and on behalf of all others
2 similarly situated, by and through his attorneys, alleges the following upon
3 information and belief, except as to those allegations concerning Plaintiff, which are
4 alleged upon personal knowledge. Plaintiff’s information and belief is based upon,
5 among other things, his counsel’s investigation, which includes without limitation:
6 (a) review and analysis of regulatory filings made by Fisker Inc. (“Fisker” or the
7 “Company”) with the United States (“U.S.”) Securities and Exchange Commission
8 (“SEC”); (b) review and analysis of press releases and media reports issued by and
9 disseminated by Fisker; and (c) review of other publicly available information
10 concerning Fisker.

11 NATURE OF THE ACTION AND OVERVIEW

12 1. This is a class action on behalf of persons and entities that purchased or
13 otherwise acquired Fisker securities between August 4, 2023 and November 20, 2023,
14 inclusive (the “Class Period”). Plaintiff pursues claims against the Defendants under
15 the Securities Exchange Act of 1934 (the “Exchange Act”).

16 2. Fisker is an electric vehicle company based in California. The Company
17 went public in October 2020 via reverse merger with a special purpose acquisition
18 company called Spartan Energy Acquisition Corp. The Company has one model
19 currently launched, the Fisker Ocean (the “Ocean”), an electric vehicle which was
20 released in the United States in June 2023.

21 3. On November 8, 2023, before the market opened, Fisker announced that
22 the completion of the Company’s financial statements would be delayed due to the
23 appointment of a new chief accounting officer (“CAO”) and the departure of the
24 Company’s former CAO. The Company had previously announced former CAO,
25 Defendant John Finnucan (“Finnucan”) provided notice of intent to resign on
26 September 19, 2023, as effective October 27, 2023. Fisker’s new CAO, Florus
27 Beuting (“Beuting”), was hired effective as of November 6, 2023. The Company
28 advised it “expects to file its Form 10-Q by November 14, 2023.”

1 4. On this news, the Company’s share price fell \$0.38, or 8.7%, to close at
2 \$3.99 per share on November 8, 2023, on unusually heavy trading volume.

3 5. Then, on November 13, 2023, after the market closed, Fisker announced
4 its third quarter 2023 financial results, reporting a loss of \$91.0 million and \$0.27 loss
5 per share. The Company also reported \$78.02 million in selling, general and
6 administrative operating costs and expenses, as well as \$9.42 million for research and
7 development, totaling \$87.44 million for total operating costs and expenses for the
8 three months ended September 30, 2023. The Company also cut its production
9 forecast for the year and disclosed that, though 4,725 Oceans were built in the third
10 quarter, only 1,097 were delivered to customers. The Company also announced it
11 would be unable to timely file the Company’s Quarterly Report on Form 10-Q for the
12 quarter ended September 30, 2023. The Company disclosed, in preparing its results,
13 it had determined “it has material weaknesses” in “internal control over financial
14 reporting.”

15 6. On that same day, the Company held an earnings call wherein
16 Defendants disclosed that the delay in reporting was due to having a “highly complex
17 quarter” including “very complex accounting along with convertible notes and
18 accounting for derivative” and “things like raw material inventory accounting and
19 finished goods inventory accounting[.]” The Company also disclosed that “delivery
20 and the service infrastructure” was limiting deliveries and, as a result, the Company
21 was “in the process of dramatically overhauling our service and delivery
22 infrastructure.”

23 7. On this news, the Company’s share price fell \$0.77, or 18.7%, to close
24 at \$3.34 per share on November 14, 2023, on unusually heavy trading volume.

25 8. On November 20, 2023, after the market closed, the Company disclosed
26 that Beuting (the CAO hired November 6, 2023) had provided notice of his intent to
27 resign from the Company on November 14, 2023, effective immediately.

28

1 **Second Quarter 2023 Financial Highlights:**

- 2 • Revenue totaled \$825 thousand compared to revenue of \$10
3 thousand in the second quarter of 2022.
- 4 • Gross margin was 7.5% on a reported basis, and 18.5% excluding
5 discounted early-stage investor deliveries.
- 6 • Loss from operations totaled \$87.9 million, including \$9.0 million
7 of stock-based compensation expense.
- 8 • Net loss totaled \$85.5 million and \$0.25 loss per share. Weighted
9 average shares outstanding totaled 335.9 million for the three
10 months ended June 30, 2023.
- 11 • Net cash used in operating activities totaled \$128.1 million and
12 capital expenditures totaled 91.3 million.
- 13 • Cash and cash equivalents and restricted cash was \$521.8 million
14 as of June 30, 2023; this excludes \$300 million in gross proceeds
15 from the July convertible note offering and \$33.4 million in VAT
16 receivables which we expect to receive as refunds or to monetize
17 against vehicle sales taxes.

18 * * *

19 **2023 Business Outlook**

20 Fisker expects to produce 20,000-23,000 units in 2023, provided Fisker’s
21 suppliers and partners can support this volume and ramp. The following
22 information reflects Fisker’s expectations for key non-GAAP operating
23 expenses and capital expenditures for full-year 2023. Fisker is projecting
24 the total of these items to be within a range of \$565 million to \$640
25 million. Fisker anticipates an 8-12% gross margin range for full year
26 2023, provided input costs do not change dramatically.

27 * * *

28 **Relevant Updates**

- 29 • *1,022 Fisker Ocean vehicles were produced in Q2 2023. A couple
30 of suppliers had challenges ramping to targeted Q2 levels, but
31 the company is intently focused on working with all suppliers to
32 swiftly ramp. In July, 1,009 Fisker Oceans were produced up
33 from 741 units in June while the assembly rate per day reached
34 140 at the end of July, up from 80 per day at the end of June.
35 July had reduced shifts and fewer working days due to the planned
36 Magna Steyr annual summer shutdown.*
- 37 • *Fisker updates 2023 production outlook to 20,000-23,000 units as
38 a key supplier required additional time to ramp their capacity to
39 meet our 2H 2023 timeline.*
- 40 • *The Company began US and European deliveries of the Fisker
41 Ocean One in California, Denmark and Germany with 11*

1 *customer deliveries completed in 2Q* partly due to a later start in
2 the quarter, logistics optimization, and extra time required to
accumulate appropriate quantities for efficient transport.

3 25. On August 9, 2023, the Company filed its second quarter 2023 financial
4 results on Form 10-Q with the SEC (the “2Q2023 10-Q”) which stated in relevant
5 part:

6 **Recent Developments**

7 We achieved several key milestones in May, June, July, and August
8 2023, including (i) the opening of customer facilities in Munich, London,
9 Oslo and Stockholm; (ii) the initiation of the production ramp up phase
10 for the Fisker Ocean; (iii) the achievement by the Fisker Ocean Extreme
11 with 20 inch wheels of an EPA estimated total range of 360 miles; (iv)
12 the receipt by the Fisker Ocean Extreme of both an EPA Certificate of
13 Conformity and a California Air Resources Board Executive Order; (v)
14 *the commencement of deliveries of the limited edition Fisker Ocean*
15 *One in Europe and the United States; (vi) the production of 1,022*
16 *Fisker Oceans during the second quarter for customer deliveries, as*
17 *well as units designated for engineering and marketing use; (vii) the*
18 *production of 1,009 Fisker Oceans in July – reaching an assembly rate*
19 *of 140 vehicles per day at the end of month; (viii) the publishing of our*
20 *inaugural Lifecycle Assessment report; (ix) the investment in additional*
21 *battery pack capacity in July to support higher volumes next year; (x)*
22 *bolstering the balance sheet with a successful offering of \$340 million in*
23 *aggregate principal of 0% senior unsecured convertible notes due in*
24 *2025; (xi) completing Fisker’s first large-scale media event with*
25 *production vehicles in Vienna, Austria where two dozen media*
26 *correspondents test drove Fisker Oceans; and (xii) revealing Fisker's*
27 *future product lineup at the company's inaugural Product Vision Day.*

18 * * *

19 As outlined earlier this year, our production forecasts are linked to
20 supply chain readiness and receipt of multiple regulatory homologation
21 approvals across our launch markets. The timing of these approvals
22 shifted in the first half of this year, which impacted our 2023 volume
23 forecasts and supplier ramp readiness. Based on our current supplier
24 capacity expectations, we currently forecast we will produce 20,000 to
25 23,000 vehicles during 2023.

26 26. The 2Q2023 10-Q reported the following, in relevant part, concerning
27 revenues and the cost of revenues:

28 In the second quarter of 2023, we began producing vehicles for deliveries
to our customers and, accordingly, we are recognizing vehicle revenues
from the sale of initial Fisker Ocean SUVs. Merchandise sales and home
charging solutions are not intended to comprise a significant portion of
the Company's revenues. *Over the course of the second half of 2023,*
we will ramp production volumes at a measured pace to ensure the

1 *supplier base can delivery high-quality components in line with our*
2 *serial production run-rate.*

3 *During the six month period ended June 30, 2023, the Company*
4 *delivered 11 vehicles and recognized net revenue of \$712 thousand*
5 *with related cost of revenues totaling \$665 thousand resulting in gross*
6 *profit of \$47 thousand.* Gross profit from vehicle sales is lower due to
discounts on vehicles sold to certain investors who held rights to a free
SUV based on Fisker's based trim level. The Company had no vehicle
sales during the corresponding six month period ended June 30, 2022.

7 27. The 2Q2023 10-Q reported the following inventory as of June 30, 2023,
8 in thousands:

	As of June 30, 2023
Raw materials	<u>109,090</u>
	\$
Work in progress	<u>61,886</u>
Finished goods	<u>2,020</u>
Total	<u>172,996</u>
	\$

14 28. The 2Q2023 10-Q reported 33,891,845 convertible senior notes and
15 36,936,742 stock options and warrants which were excluded from the computation of
16 diluted net loss per share of common stock as of June 30, 2023.

17 29. The above statements identified in ¶¶ 24-28 were materially false and/or
18 misleading, and failed to disclose material adverse facts about the Company's
19 business, operations, and prospects. Specifically, Defendants failed to disclose to
20 investors: (1) that Fisker had a material weakness in its internal control over financial
21 reporting; (2) that Fisker had incorrectly accounted for certain costs; (3) that as a result
22 the Company was likely to delay filing its quarterly report; (4) that Fisker's
23 infrastructure was limiting its ability to deliver its production; and (5) that, as a result
24 of the foregoing, Defendants' positive statements about the Company's business,
25 operations, and prospects were materially misleading and/or lacked a reasonable
26 basis.
27
28

1 **Disclosures at the End of the Class Period**

2 30. On November 8, 2023, before the market opened, Fisker announced that
3 the completion of the Company's financial statements would be delayed due to the
4 appointment of Beuting as CAO and the departure of Defendant Finnucan, the former
5 CAO. The Company had previously announced Defendant Finnucan provided notice
6 of intent to resign on September 19, 2023, effective October 27, 2023. Fisker's new
7 CAO was hired effective as of November 6, 2023. The Company advised it "expects
8 to file its Form 10-Q by November 14, 2023."

9 31. On this news, the Company's share price fell \$0.38, or 8.7%, to close at
10 \$3.99 per share on November 8, 2023, on unusually heavy trading volume.

11 32. Then, on November 13, 2023, after the market closed, Fisker announced
12 its third quarter 2023 financial results, reporting a loss of \$91.0 million and \$0.27 loss
13 per share. The Company also reported \$78.02 million in selling, general and
14 administrative operating costs and expenses, as well as \$9.42 million for research and
15 development, totaling \$87.44 million for total operating costs and expenses for the
16 three months ended September 30, 2023. The Company also cut its production
17 forecast for the year and disclosed that though 4,725 Oceans were built in the third
18 quarter, only 1,097 were delivered to customers.

19 33. The Company also announced it would be unable to timely file the
20 Company's Quarterly Report on Form 10-Q for the quarter ended September 30,
21 2023. The Company filed a Form NT 10-Q, which stated:

22 As previously disclosed, the timing of the appointment of a new chief
23 accounting officer effective November 6, 2023 and the departure of the
24 former chief accounting officer effective October 27, 2023 delayed the
25 completion of the Company's financial statements and related
26 disclosures, and delayed the completion of the Company's quarterly
27 assessment of the effectiveness of its disclosure controls and procedures.

28 In the course of completing the preparation of the Report, the Company
determined that it has material weaknesses in the Company's internal
control over financial reporting. These material weaknesses will be
discussed in the Report.

1 34. The Company’s Form NT 10-Q also shows it responded “Yes” to the
2 question:

3 Is it anticipated that *any significant change in results of operations*
4 *from the corresponding period for the last fiscal year will be reflected*
5 *by the earnings statements* to be included in the subject report or portion
6 thereof?

7 35. On that day same, the Company held an earnings call. During that call,
8 CFO Gupta-Fisker stated the delay and issues were related to having a “highly
9 complex quarter.” Specifically, Defendant Gupta-Fisker stated:

10 Went from \$800,000 of revenue to \$71 million of revenue. In multiple
11 countries, For ex., *very complex accounting along with convertible*
12 *notes and accounting for derivatives*. So we experienced quite a lot of
13 complexity in the business, and as you rightly pointed out, personnel
14 changes as well. We, of course, continue to understand all these different
15 areas. We are continuing to hire. . . . Some other areas that were
16 extremely complex were because of contract manufacturing, *things like*
17 *raw material inventory accounting and finished goods inventory*
18 *accounting, things that we had not done before and extremely complex*
19 *as you look at IT integrations with Magna, in-house integrations*. So
20 these unfortunately growing pains and we are addressing all these
21 different areas so we can also mature our systems, hire more people, hire
22 more talent to address all these different areas, and it's a work in progress.
23 We are working tirelessly, very hard to get the queue done, so more to
24 come on that.

25 36. In the earnings call, the Company also disclosed that the “delivery and
26 the service infrastructure” was limiting deliveries and, as a result, the Company was
27 “in the process of dramatically overhauling our service and delivery infrastructure.”
28 Specifically, Defendant Gupta-Fisker stated:

Neither our production nor demand are limiting our deliveries, but
rather it's the delivery and the service infrastructure. We have a great
product and our customers want the product. We are in the process of
dramatically overhauling our service and delivery infrastructure to keep
up with the demand until the delivery process has reached our goal,
which we expect later this year.

 37. On this news, the Company’s share price fell \$0.77, or 18.7%, to close
at \$3.34 per share on November 14, 2023, on unusually heavy trading volume.

 38. Then, on November 20, 2023, after the market closed, the Company
disclosed that Beuting, the CAO hired November 6, 2023, had, on November 14,

1 2023, provided notice of his intent to resign from the Company effective immediately.

2 Specifically, the Company stated:

3 On November 14, 2023, Florus Beuting, the chief accounting officer of
4 Fisker Inc. (the “Company”), provided notice of his intent to resign from
the Company effective immediately.

5 39. On this news, the Company’s share price fell \$0.35, or 15%, to close at
6 \$2.00 per share on November 21, 2023 on unusually heavy trading volume.

7 40. Finally, on November 22, 2023, the Company filed its Form 10-Q
8 quarterly report for the period ended September 30, 2023 which disclosed that the
9 Company had “identified approximately \$20 million of expenses” which were
10 “incorrectly recorded primarily as selling, general and administrative expenses in our
11 preliminary earnings results, but were later determined to be associated with
12 production set-up activities” and that “other inventory adjustments were recorded
13 resulting in a \$4.0 million increase in net loss subsequent to the preliminary earnings
14 results.” The Company therefore reported a net loss of \$95.22 million and – loss per
15 share for the three months ended September 30, 2023 and a net loss of \$298.38 million
16 for the nine months ended September 30, 2023. The Company also reported \$67.65
17 million in selling, general and administrative operating costs and expenses, as well as
18 \$13.42 million for research and development, totaling \$71.08 million for total
19 operating costs and expenses for the three months ended September 30, 2023.

20 **CLASS ACTION ALLEGATIONS**

21 41. Plaintiff brings this action as a class action pursuant to Federal Rule of
22 Civil Procedure 23(a) and (b)(3) on behalf of a class, consisting of all persons and
23 entities that purchased or otherwise acquired Fisker securities between August 4, 2023
24 and November 20, 2023, inclusive, and who were damaged thereby (the “Class”).
25 Excluded from the Class are Defendants, the officers and directors of the Company,
26 at all relevant times, members of their immediate families and their legal
27 representatives, heirs, successors, or assigns, and any entity in which Defendants have
28 or had a controlling interest.

1 42. The members of the Class are so numerous that joinder of all members
2 is impracticable. Throughout the Class Period, Fisker's shares actively traded on the
3 NYSE. While the exact number of Class members is unknown to Plaintiff at this time
4 and can only be ascertained through appropriate discovery, Plaintiff believes that
5 there are at least hundreds or thousands of members in the proposed Class. Millions
6 of Fisker shares were traded publicly during the Class Period on the NYSE. Record
7 owners and other members of the Class may be identified from records maintained by
8 Fisker or its transfer agent and may be notified of the pendency of this action by mail,
9 using the form of notice similar to that customarily used in securities class actions.

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

13 44. Plaintiff will fairly and adequately protect the interests of the members
14 of the Class and has retained counsel competent and experienced in class and
15 securities litigation.

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

19 (a) whether the federal securities laws were violated by Defendants'
20 acts as alleged herein;

21 (b) whether statements made by Defendants to the investing public
22 during the Class Period omitted and/or misrepresented material facts about the
23 business, operations, and prospects of Fisker; and

24 (c) to what extent the members of the Class have sustained damages
25 and the proper measure of damages.

26 46. A class action is superior to all other available methods for the fair and
27 efficient adjudication of this controversy since joinder of all members is
28 impracticable. Furthermore, as the damages suffered by individual Class members

1 may be relatively small, the expense and burden of individual litigation makes it
2 impossible for members of the Class to individually redress the wrongs done to them.
3 There will be no difficulty in the management of this action as a class action.

4 **UNDISCLOSED ADVERSE FACTS**

5 47. The market for Fisker's securities was open, well-developed and
6 efficient at all relevant times. As a result of these materially false and/or misleading
7 statements, and/or failures to disclose, Fisker's securities traded at artificially inflated
8 prices during the Class Period. Plaintiff and other members of the Class purchased or
9 otherwise acquired Fisker's securities relying upon the integrity of the market price
10 of the Company's securities and market information relating to Fisker, and have been
11 damaged thereby.

12 48. During the Class Period, Defendants materially misled the investing
13 public, thereby inflating the price of Fisker's securities, by publicly issuing false
14 and/or misleading statements and/or omitting to disclose material facts necessary to
15 make Defendants' statements, as set forth herein, not false and/or misleading. The
16 statements and omissions were materially false and/or misleading because they failed
17 to disclose material adverse information and/or misrepresented the truth about
18 Fisker's business, operations, and prospects as alleged herein.

19 49. At all relevant times, the material misrepresentations and omissions
20 particularized in this Complaint directly or proximately caused or were a substantial
21 contributing cause of the damages sustained by Plaintiff and other members of the
22 Class. As described herein, during the Class Period, Defendants made or caused to
23 be made a series of materially false and/or misleading statements about Fisker's
24 financial well-being and prospects. These material misstatements and/or omissions
25 had the cause and effect of creating in the market an unrealistically positive
26 assessment of the Company and its financial well-being and prospects, thus causing
27 the Company's securities to be overvalued and artificially inflated at all relevant
28 times. Defendants' materially false and/or misleading statements during the Class

1 Period resulted in Plaintiff and other members of the Class purchasing the Company's
2 securities at artificially inflated prices, thus causing the damages complained of herein
3 when the truth was revealed.

4 **LOSS CAUSATION**

5 50. Defendants' wrongful conduct, as alleged herein, directly and
6 proximately caused the economic loss suffered by Plaintiff and the Class.

7 51. During the Class Period, Plaintiff and the Class purchased Fisker's
8 securities at artificially inflated prices and were damaged thereby. The price of the
9 Company's securities significantly declined when the misrepresentations made to the
10 market, and/or the information alleged herein to have been concealed from the market,
11 and/or the effects thereof, were revealed, causing investors' losses.

12 **SCIENTER ALLEGATIONS**

13 52. As alleged herein, Defendants acted with scienter since Defendants knew
14 that the public documents and statements issued or disseminated in the name of the
15 Company were materially false and/or misleading; knew that such statements or
16 documents would be issued or disseminated to the investing public; and knowingly
17 and substantially participated or acquiesced in the issuance or dissemination of such
18 statements or documents as primary violations of the federal securities laws. As set
19 forth elsewhere herein in detail, the Individual Defendants, by virtue of their receipt
20 of information reflecting the true facts regarding Fisker, their control over, and/or
21 receipt and/or modification of Fisker's allegedly materially misleading misstatements
22 and/or their associations with the Company which made them privy to confidential
23 proprietary information concerning Fisker, participated in the fraudulent scheme
24 alleged herein.

25 **APPLICABILITY OF PRESUMPTION OF RELIANCE**

26 **(FRAUD-ON-THE-MARKET DOCTRINE)**

27 53. The market for Fisker's securities was open, well-developed and
28 efficient at all relevant times. As a result of the materially false and/or misleading

1 statements and/or failures to disclose, Fisker's securities traded at artificially inflated
2 prices during the Class Period. On September 15, 2023, the Company's share price
3 closed at a Class Period high of \$6.98 per share. Plaintiff and other members of the
4 Class purchased or otherwise acquired the Company's securities relying upon the
5 integrity of the market price of Fisker's securities and market information relating to
6 Fisker, and have been damaged thereby.

7 54. During the Class Period, the artificial inflation of Fisker's shares was
8 caused by the material misrepresentations and/or omissions particularized in this
9 Complaint causing the damages sustained by Plaintiff and other members of the Class.
10 As described herein, during the Class Period, Defendants made or caused to be made
11 a series of materially false and/or misleading statements about Fisker's business,
12 prospects, and operations. These material misstatements and/or omissions created an
13 unrealistically positive assessment of Fisker and its business, operations, and
14 prospects, thus causing the price of the Company's securities to be artificially inflated
15 at all relevant times, and when disclosed, negatively affected the value of the
16 Company shares. Defendants' materially false and/or misleading statements during
17 the Class Period resulted in Plaintiff and other members of the Class purchasing the
18 Company's securities at such artificially inflated prices, and each of them has been
19 damaged as a result.

20 55. At all relevant times, the market for Fisker's securities was an efficient
21 market for the following reasons, among others:

22 (a) Fisker shares met the requirements for listing, and was listed and
23 actively traded on the NYSE, a highly efficient and automated market;

24 (b) As a regulated issuer, Fisker filed periodic public reports with the
25 SEC and/or the NYSE;

26 (c) Fisker regularly communicated with public investors via
27 established market communication mechanisms, including through regular
28 dissemination of press releases on the national circuits of major newswire services

1 and through other wide-ranging public disclosures, such as communications with the
2 financial press and other similar reporting services; and/or

3 (d) Fisker was followed by securities analysts employed by brokerage
4 firms who wrote reports about the Company, and these reports were distributed to the
5 sales force and certain customers of their respective brokerage firms. Each of these
6 reports was publicly available and entered the public marketplace.

7 56. As a result of the foregoing, the market for Fisker's securities promptly
8 digested current information regarding Fisker from all publicly available sources and
9 reflected such information in Fisker's share price. Under these circumstances, all
10 purchasers of Fisker's securities during the Class Period suffered similar injury
11 through their purchase of Fisker's securities at artificially inflated prices and a
12 presumption of reliance applies.

13 57. A Class-wide presumption of reliance is also appropriate in this action
14 under the Supreme Court's holding in *Affiliated Ute Citizens of Utah v. United States*,
15 406 U.S. 128 (1972), because the Class's claims are, in large part, grounded on
16 Defendants' material misstatements and/or omissions. Because this action involves
17 Defendants' failure to disclose material adverse information regarding the Company's
18 business operations and financial prospects—information that Defendants were
19 obligated to disclose—positive proof of reliance is not a prerequisite to recovery. All
20 that is necessary is that the facts withheld be material in the sense that a reasonable
21 investor might have considered them important in making investment decisions.
22 Given the importance of the Class Period material misstatements and omissions set
23 forth above, that requirement is satisfied here.

24 **NO SAFE HARBOR**

25 58. The statutory safe harbor provided for forward-looking statements under
26 certain circumstances does not apply to any of the allegedly false statements pleaded
27 in this Complaint. The statements alleged to be false and misleading herein all relate
28 to then-existing facts and conditions. In addition, to the extent certain of the

1 statements alleged to be false may be characterized as forward looking, they were not
2 identified as “forward-looking statements” when made and there were no meaningful
3 cautionary statements identifying important factors that could cause actual results to
4 differ materially from those in the purportedly forward-looking statements. In the
5 alternative, to the extent that the statutory safe harbor is determined to apply to any
6 forward-looking statements pleaded herein, Defendants are liable for those false
7 forward-looking statements because at the time each of those forward-looking
8 statements was made, the speaker had actual knowledge that the forward-looking
9 statement was materially false or misleading, and/or the forward-looking statement
10 was authorized or approved by an executive officer of Fisker who knew that the
11 statement was false when made.

12 **FIRST CLAIM**

13 **Violation of Section 10(b) of The Exchange Act and**
14 **Rule 10b-5 Promulgated Thereunder**
15 **Against All Defendants**

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

18 60. During the Class Period, Defendants carried out a plan, scheme and
19 course of conduct which was intended to and, throughout the Class Period, did: (i)
20 deceive the investing public, including Plaintiff and other Class members, as alleged
21 herein; and (ii) cause Plaintiff and other members of the Class to purchase Fisker’s
22 securities at artificially inflated prices. In furtherance of this unlawful scheme, plan
23 and course of conduct, Defendants, and each defendant, took the actions set forth
24 herein.

25 61. Defendants (i) employed devices, schemes, and artifices to defraud; (ii)
26 made untrue statements of material fact and/or omitted to state material facts
27 necessary to make the statements not misleading; and (iii) engaged in acts, practices,
28 and a course of business which operated as a fraud and deceit upon the purchasers of

1 the Company's securities in an effort to maintain artificially high market prices for
2 Fisker's securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5.
3 All Defendants are sued either as primary participants in the wrongful and illegal
4 conduct charged herein or as controlling persons as alleged below.

5 62. Defendants, individually and in concert, directly and indirectly, by the
6 use, means or instrumentalities of interstate commerce and/or of the mails, engaged
7 and participated in a continuous course of conduct to conceal adverse material
8 information about Fisker's financial well-being and prospects, as specified herein.

9 63. Defendants employed devices, schemes and artifices to defraud, while in
10 possession of material adverse non-public information and engaged in acts, practices,
11 and a course of conduct as alleged herein in an effort to assure investors of Fisker's
12 value and performance and continued substantial growth, which included the making
13 of, or the participation in the making of, untrue statements of material facts and/or
14 omitting to state material facts necessary in order to make the statements made about
15 Fisker and its business operations and future prospects in light of the circumstances
16 under which they were made, not misleading, as set forth more particularly herein,
17 and engaged in transactions, practices and a course of business which operated as a
18 fraud and deceit upon the purchasers of the Company's securities during the Class
19 Period.

20 64. Each of the Individual Defendants' primary liability and controlling
21 person liability arises from the following facts: (i) the Individual Defendants were
22 high-level executives and/or directors at the Company during the Class Period and
23 members of the Company's management team or had control thereof; (ii) each of
24 these defendants, by virtue of their responsibilities and activities as a senior officer
25 and/or director of the Company, was privy to and participated in the creation,
26 development and reporting of the Company's internal budgets, plans, projections
27 and/or reports; (iii) each of these defendants enjoyed significant personal contact and
28 familiarity with the other defendants and was advised of, and had access to, other

1 members of the Company's management team, internal reports and other data and
2 information about the Company's finances, operations, and sales at all relevant times;
3 and (iv) each of these defendants was aware of the Company's dissemination of
4 information to the investing public which they knew and/or recklessly disregarded
5 was materially false and misleading.

6 65. Defendants had actual knowledge of the misrepresentations and/or
7 omissions of material facts set forth herein, or acted with reckless disregard for the
8 truth in that they failed to ascertain and to disclose such facts, even though such facts
9 were available to them. Such defendants' material misrepresentations and/or
10 omissions were done knowingly or recklessly and for the purpose and effect of
11 concealing Fisker's financial well-being and prospects from the investing public and
12 supporting the artificially inflated price of its securities. As demonstrated by
13 Defendants' overstatements and/or misstatements of the Company's business,
14 operations, financial well-being, and prospects throughout the Class Period,
15 Defendants, if they did not have actual knowledge of the misrepresentations and/or
16 omissions alleged, were reckless in failing to obtain such knowledge by deliberately
17 refraining from taking those steps necessary to discover whether those statements
18 were false or misleading.

19 66. As a result of the dissemination of the materially false and/or misleading
20 information and/or failure to disclose material facts, as set forth above, the market
21 price of Fisker's securities was artificially inflated during the Class Period. In
22 ignorance of the fact that market prices of the Company's securities were artificially
23 inflated, and relying directly or indirectly on the false and misleading statements made
24 by Defendants, or upon the integrity of the market in which the securities trades,
25 and/or in the absence of material adverse information that was known to or recklessly
26 disregarded by Defendants, but not disclosed in public statements by Defendants
27 during the Class Period, Plaintiff and the other members of the Class acquired Fisker's
28 securities during the Class Period at artificially high prices and were damaged thereby.

1 unlimited access to copies of the Company's reports, press releases, public filings,
2 and other statements alleged by Plaintiff to be misleading prior to and/or shortly after
3 these statements were issued and had the ability to prevent the issuance of the
4 statements or cause the statements to be corrected.

5 72. In particular, Individual Defendants had direct and supervisory
6 involvement in the day-to-day operations of the Company and, therefore, had the
7 power to control or influence the particular transactions giving rise to the securities
8 violations as alleged herein, and exercised the same.

9 73. As set forth above, Fisker and Individual Defendants each violated
10 Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint.
11 By virtue of their position as controlling persons, Individual Defendants are liable
12 pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of
13 Defendants' wrongful conduct, Plaintiff and other members of the Class suffered
14 damages in connection with their purchases of the Company's securities during the
15 Class Period.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

18 (a) Determining that this action is a proper class action under Rule 23 of the
19 Federal Rules of Civil Procedure;

20 (b) Awarding compensatory damages in favor of Plaintiff and the other
21 Class members against all defendants, jointly and severally, for all damages sustained
22 as a result of Defendants' wrongdoing, in an amount to be proven at trial, including
23 interest thereon;

24 (c) Awarding Plaintiff and the Class their reasonable costs and expenses
25 incurred in this action, including counsel fees and expert fees; and

26 (d) Such other and further relief as the Court may deem just and proper.

27 **JURY TRIAL DEMANDED**

28 Plaintiff hereby demands a trial by jury.

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