

Uvaydov v. Fenwick-Smith et al., C.A. No. 2023-0137 (Del. Ch.)

-and-

Lanham v. Fenwick-Smith, et al., No. 1:23-cv-00507 (D. Colo.)

**STIPULATION AND AGREEMENT OF SETTLEMENT, COMPROMISE, AND
RELEASE**

This Stipulation and Agreement of Settlement, Compromise, and Release (“Agreement” or “Stipulation”) is entered into effective as of the date set forth below by and among: (i) Plaintiffs Zalmon Uvaydov and Kelly Lanham (“Plaintiffs”); (ii) Lightning eMotors, Inc. (“Lightning” or the “Company”); (iii) Defendants Robert Fenwick-Smith, Tim Reeser, Andrew Coors, Craig Huth, Heath Morrison, Glen Perlman, Trent Yang, Bruce Coventry, Thaddeus Senko, Diana Tremblay, Kenneth Jack, Wanda Jackson-Davis, and Teresa P. Covington (together with Lightning, the “Lightning Defendants”); and (iv) Avi Katz, Raluca Dinu, Neil Miotto, John Mikulsky, Andrea Betti-Berutto, Brad Weightman, and Peter Wang (the “Gig3 Defendants,” together with the Lightning Defendants, “Defendants”). Plaintiffs and Defendants are collectively referred to herein as the “Settling Parties.”

I. BACKGROUND

1. On February 22, 2022, Plaintiff Zalmon Uvaydov served certain books and records demands on the Board of Directors of Lightning eMotors, Inc. pursuant to Section 220 of the Delaware General Corporation Law (the “*Uvaydov Demand*”).

2. On February 6, 2023, Plaintiff Uvaydov filed a lawsuit in the Court of Chancery of the State of Delaware (the “State Court”) styled *Uvaydov v. Fenwick-Smith et al.*, No. 2023-0137-LWW (Del. Ch.) asserting claims derivatively on behalf of Lightning (the “*Uvaydov Action*”).

3. On February 24, 2023, Plaintiff Kelly Lanham filed a lawsuit in the U.S. District Court for the District of Colorado (the “U.S. District Court”) styled *Lanham v. Fenwick-Smith et al.*, No. 1:23-cv-00507 (D. Colo.) asserting claims derivatively on behalf of Lightning (the “*Lanham Action*,” together with the *Uvaydov Demand* and the *Uvaydov Action*, the “*Actions*”).

4. The *Actions* allege that Lightning suffered injuries as a result of Plaintiffs’ allegations set forth more specifically in each individual lawsuit (the “*Allegations*”), asserting claims (the “*Claims*”) against each Defendant.

5. The Parties have conducted arms-length negotiations concerning a possible settlement of the *Actions*, including participation in a mediation with David Murphy of Phillips ADR. Plaintiffs believe that a settlement at this juncture on the terms and on the conditions set forth herein (the “*Settlement*”) is fair, reasonable, and adequate, considering the benefits conferred upon Lightning by the *Settlement*, the anticipated significant expense of continued litigation (including to Lightning), and the risks of continued litigation.

6. Plaintiffs believe that the corporate governance reforms set forth in Section II below and Exhibit A hereto will prevent or deter potential future conduct similar to that alleged in the *Actions*.

7. Plaintiff Uvaydov utilized the documents collected and reviewed in connection with the *Uvaydov Demand* to confirm that the terms of the *Settlement* are fair, reasonable, and adequate to the Company’s shareholders.

8. Each Defendant has denied and continues to deny that he or she has committed or attempted to commit any violations of law, any breaches of fiduciary duty owed to Lightning, or any wrongdoing whatsoever, and expressly maintains that, at all relevant times, he or she acted in good faith and in a manner that he or she reasonably believed to be in the best interests of Lightning and its stockholders. Defendants further deny that Plaintiffs, Lightning, or its stockholders suffered

any damage or were harmed as a result of any act, omission, or conduct by the Defendants as alleged in the Actions or otherwise. Defendants further assert, among other things, that Plaintiffs lack standing to litigate derivatively on behalf of Lightning because Plaintiffs cannot properly plead that a demand on the Board of Directors of Lightning would be futile. Lightning believes that the Settlement is fair, reasonable, and in the best interests of the Company, its stockholders, and its employees. Defendants are, therefore, entering into this Settlement for its benefits and to eliminate the uncertainty, distraction, disruption, burden, risk, and expense of further litigation. Pursuant to the terms set forth below, entry into this Agreement, and this Agreement (including the exhibits), shall not be construed as, or deemed to be evidence of, an admission or concession by the Defendants with respect to any claim of fault, liability, wrongdoing, or damage or any defect in the defenses that Defendants have, or could have, asserted.

9. Entry into the Agreement is not an admission to the truth or lack thereof of the Allegations or the merit of any of the Claims asserted in the Actions.

10. The independent members of the Lightning board of directors exercised their business judgment and have unanimously approved the Settlement and each of its terms, including the attorneys' fees and expense provision, and believe that a settlement at this juncture on the terms and conditions set forth herein is desirable and is in the best interests of Lightning and its current shareholders.

11. NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiffs (for themselves and derivatively on behalf of Lightning), the Lightning Defendants, and the Gig3 Defendants, each by and through their respective attorneys of record, that in exchange for the consideration set forth below and the benefits flowing to the Settling Parties from the Settlement, and subject to the approval of the U.S. District Court, the Released Claims (defined

herein) shall be fully, finally, and forever compromised, settled, discharged, relinquished, and released, and the Actions shall be dismissed with prejudice as to all Defendants and claims, with full preclusive effect as to Plaintiffs and all Current Lightning Stockholders,¹ upon and subject to the terms and conditions of the Agreement, as set forth below.

II. CORPORATE GOVERNANCE REFORMS AND MONETARY CONTRIBUTION

12. In consideration of the dismissal of the Actions with prejudice, the releases between the Parties, and other terms contained in this Agreement, the Company will institute, or affirm as documented processes, certain corporate governance reforms with respect to its corporate governance procedures, which are set forth in Exhibit A hereto (the “Corporate Governance Reforms”). Exhibit A is part of and subject to all provisions in this Agreement. If any of the terms of the Corporate Governance Reforms set forth in Exhibit A should conflict with any applicable law(s), rule(s), or regulation(s) (including of any national securities exchange or interdealer quotation system or relating to employee representatives), the Company will comply with such applicable law(s), rule(s), or regulation(s) notwithstanding any provision herein. The Company agrees to implement the Corporate Governance Reforms within no less than one hundred twenty (120) days of the Effective Date. Within thirty (30) days thereafter, the Company, through its undersigned counsel, shall confirm in writing that Lightning has implemented the Corporate Governance Reforms.

13. Defendants, without admitting wrongdoing, acknowledge that the filing, prosecution, and settlement of the Actions were a major factor influencing the Company’s agreement to undertake

¹ “Current Lightning Stockholders” means any Person who owned Lightning common stock as of the date of the execution of this Agreement (which shall be defined by the date of the last signature on the Agreement), excluding the Defendants, the current officers and directors of Lightning, members of their immediate families, and their legal representatives, heirs, successors, or assigns, and any entity in which the Defendants have or had a controlling interest.

implementation of the Corporate Governance Reforms and that the Corporate Governance Reforms confer a substantial benefit on the Company and its current shareholders.

14. Lightning's Board of Directors has approved a resolution reflecting its determination that: (a) the Settlement confers substantial benefits on Lightning and its stockholders; (b) the Settlement is fair, reasonable, and in the best interests of Lightning and its stockholders; and (c) Lightning is authorized, subject to U.S. District Court or State Court approval, to enter into and take all actions necessary to effectuate the Settlement.

15. Within thirty (30) calendar days of the Effective Date or receipt of payee instructions and tax identification information, whichever is later, the Gig3 Defendants agree to pay or cause their insurers to pay \$1.85 million (the "Settlement Payment") into an escrow account managed by a qualified third-party on behalf of Lightning pursuant to written terms that provide for the use of such funds only for the defense or settlement of *Shafer v. Lightning eMotors, Inc.*, Case No. 1:21-cv-02774-RMR-KAS (D. Colo.) (the "Securities Class Action"), and for release on joint instructions from Lightning and the Gig3 Defendants. In the event that the Securities Class Action is dismissed or is otherwise terminated without depletion of the funds in escrow, then any remaining funds in the Settlement Payment shall be available, at the Company's discretion, for use by the Company for any other business purposes.

III. RELEASES

16. In consideration of the releases, promises, and covenants herein and other good and valuable consideration, the sufficiency and receipt of which the Parties hereby acknowledge, the Parties agree as follows:

- (a) Plaintiffs' Releases. Upon Final Approval, Plaintiffs, all Current Lightning Stockholders, and Lightning will release Defendants from all claims and causes of action

of every nature and description, whether known or unknown, whether arising under state, federal, common, or foreign law, that (a) were or could have been asserted by Lightning or by Plaintiffs derivatively on behalf of Lightning; (b) would have been barred by res judicata had the Actions been litigated to final judgment; or (c) that could have been, or could in the future be, asserted derivatively on behalf of Lightning or by Lightning in any forum or proceeding or otherwise against any of the Defendants or any entity with which they are affiliated or in which they have a membership, investment, or other interest, and their respective past, present, and future officers, directors, shareholders, members, partners, managers, agents, attorneys, and insurers, that concern, arise out of or relate, directly or indirectly, in any way to any of the subject matters, allegations, transactions, facts, occurrences, disclosures, non-disclosures, representations, statements or omissions alleged, involved, set forth, or referred to in the Actions, including, but not limited to, claims for breach of fiduciary duty, waste of corporate assets, unjust enrichment, contribution, money damages, disgorgement, any and all demands, actions, damages, claims, rights or causes of action, or liabilities whatsoever, including Unknown Claims (defined herein) except for claims relating to the enforcement of the Settlement (collectively, "Plaintiffs' Released Claims"). For the avoidance of doubt, this release shall not cover, include, or release any direct claims of Plaintiffs or any Lightning stockholder, including without limitation any direct claims asserted under the federal securities laws.

(b) Defendants' Releases. Upon Final Approval, Defendants will release Plaintiffs and their respective attorneys, from all claims and causes of action of every nature and description, whether known or unknown, whether arising under state, federal, common, or foreign law, that arise out of or relate to the institution, prosecution, or settlement of the

claims asserted in the Actions against Defendants (collectively “Defendants’ Released Claims”), except for claims relating to the enforcement of the Settlement.

17. The Parties and each of them further covenant and agree that, after the Effective Date, they shall be forever barred and enjoined from taking any action or asserting any claim, complaint, debt, damage, lien, cause of action, warranty, suit, liability, obligation, or demand, whether in law or in equity, contract or tort, judicially or administratively, against any other Party, or any of their shareholders, owners, members, managers, directors, officers, agents, partners, employees, successors, assigns, parents, subsidiaries, affiliates, or representatives, arising from, or in any way relating to, any act or omission that occurred before the final approval of this Agreement by the U.S. District Court and that relates to, arises out of, or concerns the Claims, the Released Claims,² Unknown Claims, or Plaintiffs’ Allegations. However, for the avoidance of doubt, nothing contained herein shall affect any Defendants’ claims or defenses under any applicable indemnity agreement or undertaking agreement. Nothing in this Agreement nor the fact that the Agreement has been executed shall be construed as an admission or concession by any party regarding the proper interpretation of any applicable indemnity agreement.

IV. PROCEDURE FOR APPROVAL

18. Following the last party’s execution of this Agreement, the Parties shall submit this Agreement together with its exhibits to the U.S. District Court for the District of Colorado and shall jointly file a motion for preliminary approval of settlement, requesting, inter alia, (i) the entry of an order substantially in the form attached hereto as Exhibit B (the “Scheduling Order”); (ii) approval of the form, content, and method of providing notice to Lightning stockholders and

² The term “Released Claims” as used herein shall collectively refer to Defendants’ Released Claims and Plaintiffs’ Released Claims.

approval of the forms of Long-Form Notice and Summary Notice attached as Exhibits C and D hereto; and (iii) a date for a settlement hearing (the “Settlement Hearing”).

19. The Settling Parties agree to request that the U.S. District Court hold a hearing in the Lanham Action thirty (30) days after notice is given in the manner set forth in Section X, at which time the U.S. District Court will consider and determine whether the final order and judgment, substantially in the form of Exhibit E hereto (the “Judgment”), should be entered: (i) approving the terms of the Settlement as fair, reasonable, and adequate; (ii) dismissing with prejudice the Lanham Action pursuant to the terms of this Stipulation against Defendants; and (iii) ruling upon any application for a Fee and Expense Award.

20. The Scheduling Order shall direct that the Long-Form Notice (defined herein), substantially in the form attached hereto as Exhibit C, be provided to current record holders and beneficial owners of common stock in the manner set forth in Section X. .

21. The Scheduling Order shall approve the form and content of the Notice and find that the giving of notice in the manner set forth in Section X meets the requirements of Rule 23.1 and due process and is the best notice practicable under the circumstances.

V. JUDGMENT

22. At the Settlement Hearing, the Parties shall jointly request that the Judgment be entered substantially in the form attached hereto as Exhibit E. Subject to the U.S. District Court’s approval:

(a) The Judgment shall find that each of the requirements of Rule 23.1 has been satisfied and that the *Lanham* Action has been properly maintained according to the provisions of Rule 23.1.

(b) The Judgment shall approve the Settlement, adjudging the Agreement to be fair, reasonable, adequate, and in the best interests of the Company and its shareholders, and

directing the consummation of the Settlement in accordance with the terms and conditions of this Agreement.

(c) The Judgment shall order dismissal of the *Lanham* Action on the merits with prejudice (subject only to compliance by the Parties with the terms of this Agreement and any Order of the U.S. District Court concerning this Agreement) and shall fully, completely, and forever discharge, settle, release, and extinguish the Released Claims and bar and permanently enjoin the Releasing Persons³ (and any Person acting or purporting to act on any such Releasing Person's behalf) from asserting, commencing, prosecuting, assisting, instigating, or in any way participating in the commencement or prosecution of any action or other proceeding, in any forum, asserting any Released Claims, either directly, representatively, derivatively, or in any other capacity.

(d) The Judgment shall fully, completely, and forever discharge, settle, and release Plaintiffs and Plaintiffs' Counsel from all claims, including Unknown Claims, arising out of or relating to the institution, prosecution, settlement, or resolution of the Actions (provided, however, that the release, relinquishment, and discharge shall not include claims by the Parties hereto to enforce the terms of the Settlement or Agreement).

23. Within five (5) business days of entry of the Judgment, the Parties shall file a stipulation dismissing the *Uvaydov* Action with prejudice.

VI. TERMINATION RIGHTS AND EFFECT OF TERMINATION

24. Prior to the Effective Date, any Party may terminate and withdraw from this Agreement by providing written notice of their election to do so to the undersigned counsel for all other Parties within thirty (30) days after (a) the U.S. District Court declines to approve this Agreement in any

³ The term "Releasing Person" as used herein shall collectively refer to Plaintiffs, Lightning, and Defendants.

material respect; (b) the U.S. District Court declines to enter the Judgment granting final approval to this Agreement in any material respect; (c) the Judgment is modified or reversed in any material respect; or (d) the Actions are not dismissed with prejudice. Neither a modification nor a reversal on appeal of the amount of fees, costs, or expenses awarded by the U.S. District Court to Plaintiffs' Counsel shall be deemed a material modification or reversal of the Judgment or this Agreement. If the Effective Date does not occur, or if this Agreement is disapproved, canceled or terminated in accordance with this Section VI, (i) the Parties shall be restored to their respective litigation positions as of the date on which the Agreement was executed, (ii) except as otherwise expressly provided herein, the Parties shall proceed in all respects as if this Agreement had not been executed and any related orders had not been entered, and in that event all of their respective claims and defenses as to any issue in the Actions shall be preserved without prejudice in any way, (iii) any Fee and Expense Award shall not be paid or, if already paid, shall be refunded; and and (iv) all negotiations, proceedings, documents prepared, and statements made in connection herewith shall be without prejudice to the Settling Parties, shall not be deemed or construed to be an admission by any of the Settling Parties of any act, matter, or proposition, and shall not be used or referred to in any manner for any purpose (other than to enforce the terms remaining in effect) in any subsequent proceeding in the Actions or in any other action or proceeding. In such event, the terms and provisions of this Agreement (other than those set forth this Section VI and paragraphs 26 and 45) shall have no further force and effect with respect to the Settling Parties and shall not be used in the Actions or in any other proceeding for any purpose.

25. It is understood by the Settling Parties that except for matters expressly represented herein, the facts or law with respect to which this Agreement is entered into may turn out to be other than, or different from, the facts now known to each party or believed by such party to be true; each

party therefore expressly assumes the risk of facts or law turning out to be different and agrees that this Agreement shall be in all respects effective and not subject to termination by reason of any such different facts or law.

VII. DENIAL OF WRONGDOING OR LIABILITY

26. This Agreement, whether or not approved by the U.S. District Court, any proceedings conducted pursuant to this Agreement, and any materials created by or received from another Party that were used in, obtained during, or related to settlement discussions, including, but not limited to, all negotiations, documents, and statements in connection therewith, including the exhibits attached hereto, shall not be offered or received against any of the Parties as evidence of or construed as or deemed to be evidence of (a) any liability, negligence, fault, or wrongdoing of any of the Parties, or of the validity of any Released Claims, (b) a presumption, concession, or admission with respect to any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason as against any of the Parties, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement, (c) a presumption, concession, or admission by any of the Parties with respect to the truth of any fact alleged in the Actions or the validity of any of the claims or the deficiency of any defense that was or could have been asserted in the Actions or of any infirmity in the claims asserted, or (d) an admission or concession that the consideration to be given hereunder represents the consideration that could be or would have been recovered at trial.

27. Nothing herein, however, shall prevent any of the Parties from using this Agreement, or any document or instrument delivered hereunder (a) to effect or obtain U.S. District Court approval of this Settlement, (b) to enforce the terms of the Agreement, (c) for the purpose of defending, on the grounds of res judicata, collateral estoppel, release, judgment bar or reduction, or any other

theory of claim preclusion or issue preclusion or similar defense or counterclaim, any of the Released Claims, or (d) as otherwise required by law.

28. The Company and Defendants have denied, and continue to deny, each and all of the claims and contentions alleged in the Actions. The Company and Defendants have denied, and continue to deny, any and all allegations of wrongdoing, fault, liability, or damage and deny that they, any affiliates or entities under their control, or any of the Company's other current or former officers or directors engaged in, committed, or aided or abetted the commission of any wrongdoing or violation of law or breach of duty, deny that the Company or any of its shareholders suffered any damage whatsoever, deny that they acted improperly in any way, believe that they acted properly at all times, and maintain that they diligently and scrupulously complied with their fiduciary and other legal duties. Nonetheless, Company and Defendants wish to settle all disputes on the terms and conditions stated in this Agreement solely to eliminate the uncertainties, burden, and expense of further protracted litigation and to put the claims to be released hereby to rest finally and forever. Each of the Defendants reserves the right to rebut any and all allegations of breach of fiduciary duty, wrongdoing, or liability, whatsoever, against himself or herself or that any valid claim has been asserted against any of them.

29. Plaintiffs' entry into the Settlement is not an admission as to the lack of merit of any of the claims asserted in the Actions. Plaintiffs and Plaintiffs' Counsel believe that the claims asserted in the Actions have merit. Plaintiffs and Plaintiffs' Counsel, however, recognize and acknowledge the expense and length of proceedings necessary to prosecute the Actions against the Defendants through trial and, potentially, through appeals. Plaintiffs and Plaintiffs' Counsel also have taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as the Actions, as well as the difficulties and delays inherent in such litigation. Plaintiffs and

Plaintiffs' Counsel also are mindful of the inherent problems of proof under and possible defenses to the claims asserted in the Actions.

30. The Settling Parties intend this Settlement to be a final and complete resolution of the Actions and the Released Claims. The Settlement compromises claims that are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim, allegation, or defense. The Settling Parties and their respective undersigned counsel agree that at all times during the course of the litigation each has complied with the requirements of the applicable laws and rules of the U.S. District Court. The Settling Parties agree that the Released Claims are being settled voluntarily after consultation with an experienced mediator and competent legal counsel who were fully competent to assess the strengths and weaknesses of their respective clients' claims or defenses.

31. The Settling Parties agree that the terms of the Settlement were negotiated in good faith by the Settling Parties. The Settling Parties will request that the Judgment contain a finding that during the course of the Actions, the Settling Parties complied with the applicable rules of the State of Colorado, State of Delaware, and Federal Rules of Civil Procedure (including, but not limited to, Federal Rule of Civil Procedure 11). The Settling Parties reserve their right to rebut, in a manner that the parties determine to be appropriate, any contention made in any public forum that the Actions were brought or defended in bad faith or without a reasonable basis.

VIII. RELEASE OF UNKNOWN CLAIMS

32. The releases contemplated by this Agreement extend to claims that any of the Releasing Persons do not know or suspect exist in his, her, or its favor at the time of the release of the Released Claims, which if known might have affected the decision to enter into this Settlement

(the “Unknown Claims”). In granting the releases herein, the Parties acknowledge that they have read and understand California Civil Code Section 1542, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Parties stipulate and agree that upon the Effective Date, Plaintiffs and each of the other Releasing Persons shall be deemed to have, and by operation of the Judgment shall have, expressly waived, relinquished and released all provisions, rights and benefits conferred by or under California Civil Code Section 1542 or any law of the United States or any state of the United States or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code Section 1542. The Parties acknowledge that the foregoing waiver, relinquishment, and release and the inclusion of “Unknown Claims” in the definition of “Released Claims” were separately bargained for and key elements of this Settlement and were relied upon by each and all of the Defendants in entering into this Agreement. Plaintiffs acknowledge, and each of the other Releasing Persons by operation of law shall be deemed to have acknowledged, that they may discover facts different from, or in addition to, those which they now know or believe to be true with respect to the Released Claims, and in this event agree, or by operation of law shall be deemed to have agreed, that the releases contained in this Agreement shall be and remain effective in all respects and that it is the intention of the Releasing Persons to completely, fully, finally, and forever extinguish any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden,

which now exist, or heretofore existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Settling Parties and each Current Lightning Stockholder shall expressly, fully, finally and forever settle and release, and upon the Effective Date and by operation of the Judgment shall have settled and released, fully, finally, and forever, any and all Released Claims as applicable without regard to the subsequent discovery or existence of such different or additional facts. The release of Unknown Claims also applies to Plaintiffs' Released Claims as defined in Section III herein.

IX. CONDITIONS AND EFFECTIVE DATE

33. The Effective Date of this Agreement shall be deemed to occur when each and every one of the following conditions shall have occurred:

(e) The U.S. District Court has approved in all material respects the Notice of Pendency of Derivative Action, Proposed Settlement of Derivative Action, and Settlement Hearing ("Long-Form Notice") attached as Exhibit C to this Agreement; the Summary Notice of Pendency of Derivative Action, Proposed Settlement of Derivative Action, and Settlement Hearing ("Summary Notice") attached as Exhibit D to this Agreement; the manner of providing of the Long-Form Notice by Lightning to its shareholders of record and the manner of publication by Lightning of the Summary Notice as described in Section X below;

(f) The U.S. District Court has granted final approval of the Agreement and entered a Final Order and Judgment, in all material respects identical to that attached as Exhibit E hereto, approving the Settlement without awarding costs to any party, except as provided

herein, dismissing with prejudice the Lanham Action pursuant to the terms of this Agreement, and releasing the Settling Parties from the Released Claims;

(g) The State Court has entered a final order and judgment dismissing *Uvaydov v. Fenwick-Smith et al.*, C.A. No. 2023-0137-LWW (Del. Ch.); and

(h) The times to appeal from the Final Orders and Judgments in the Actions have elapsed with no appeal being filed, or, alternatively, if any appeal(s) are taken the underlying orders are affirmed in their entirety in all material respects and are no longer subject to any further appeals or requests for rehearing.

34. The Parties agree, and agree to cause their respective counsel, to (i) use their best efforts to effectuate the terms and conditions of the Agreement in as expeditious a manner as possible; (ii) cooperate in preparing any and all necessary papers to pursue and effectuate the terms and conditions of the Agreement; and (iii) cooperate with one another in seeking the necessary approvals and orders to effectuate the conditions described in Section IV.

35. Should any of the foregoing conditions fail to occur, including if the U.S. District Court should decline to grant a requested approval, or if any of the conditions set forth in Section IV above have failed to occur by the date of the final Settlement Hearing, this Agreement shall terminate, and, with the exception of this Section IX, be null and void and of no force and effect for all purposes, and all negotiations, transactions, and proceedings connected with the Agreement shall be without prejudice to the rights of any party in the Actions, who shall be restored to their respective positions immediately prior to the execution of the Agreement.

36. No court order (including by the U.S. District Court), or modification or reversal on appeal of any court order, concerning any Fee and Expense Award and interest awarded by a court shall

constitute grounds for cancellation or termination of the Agreement, affect the enforceability of the Agreement, or delay the Judgment from becoming final.

X. NOTICE

37. Notice of the terms set forth in this Agreement shall be provided to current record holders and beneficial owners of common stock of Lightning pursuant to Order of the U.S. District Court as follows:

(a) Lightning shall be responsible for causing the Short-Form Notice (in the form substantially shown in Exhibit D) to be published in PR Newswire. The Long-Form Notice (in the form substantially shown in Exhibit C) will be accessible via a link on the “Investor Relations” page of <https://lightningemotors.com/>; and

(b) Until after the U.S. District Court approves the Final Order and Judgment (Exhibit E), Lightning’s website (<https://lightningemotors.com/>) will provide access to the content of the Long-Form Notice (Exhibit C). The investor homepage on the Lightning website will contain a statement or heading identifying the Settlement, along with a hyperlink that brings users directly to a web page containing the content of the Long-Form Notice.

38. Lightning shall bear the cost of publishing the Long-Form Notice as described in Paragraph 37(a) above. Lightning shall also bear the cost of the Long-Form Notice and Summary Notice set forth in Paragraph 37 above. None of the other Defendants shall be responsible for any costs associated with the notice of this Agreement.

XI. ATTORNEYS’ FEES AND EXPENSES, AND SERVICE AWARD

39. Defendants agree that as a result of the Settlement Payment and Corporate Governance Reforms obtained by Plaintiffs’ Counsel, Lightning and its public shareholders received material and substantial benefits. In light of benefits produced for Lightning by Plaintiffs’ attorneys in connection with this Agreement and the litigation leading up to it, Lightning or its insurers agree

to pay, from separately available funds, Plaintiffs' Counsel's attorneys' fees and expenses of \$500,000.00, subject to Court approval ("Fee and Expense Award"). For the avoidance of doubt, the payment of the Fee and Expense Award will not reduce the amount of the Settlement Payment payable to the Company. Plaintiffs and Plaintiffs' Counsel agree not to request that any greater aggregate amount be awarded to Plaintiffs' Counsel by the U.S. District Court or State Court, not to seek payment of attorneys' fees and expenses from any person or entity other than Lightning or its insurer, and that no other or greater payments or awards shall be requested from the U.S. District Court or State Court. The Parties agree that any Court order requiring payments or providing awards of fees and expenses that is not consistent with the agreed limitations provided within the first two sentences of this paragraph shall be deemed an unagreed material alteration of the terms of this Agreement and a failure to grant the approvals required by Section IV hereof. Defendants agree not to object to the agreed-upon amount of the \$500,000 Fee and Expense Award.

40. Plaintiffs' Counsel may apply to the Court for service awards of up to one thousand five hundred dollars (\$1,500.00) for each of the Plaintiffs to be paid from the Fee and Expense Award in recognition of Plaintiffs' participation and effort in the prosecution of the Actions (the "Service Awards"). Defendants shall not object to the application for the Service Awards.

41. Within thirty (30) calendar days of (i) the Effective Date, and (ii) Plaintiffs providing complete payment information, whichever comes later, Lightning shall pay such fees and expenses as may be awarded by the U.S. District Court to be deposited into the account designated by Plaintiffs' Counsel. Failure of the U.S. District Court to approve a request for attorneys' fees and expenses in whole or in part shall have no effect whatsoever on the Settlement set forth in this Agreement. Final resolution of any such request for attorneys' fees and expenses and/or service award shall not be a condition to the dismissal of the Actions.

XII. MISCELLANEOUS

42. Intent to Settle. The Parties and their respective counsel of record (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree to act in good faith and cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of, and to obtain all necessary approvals of the U.S. District Court required by, the Agreement (including, but not limited to, using their best efforts to resolve any objections raised to the Settlement).

43. Further Disputes. Except as provided in Paragraphs 16 and 17, any disputes arising out of the finalization of the Settlement documentation will be resolved by the U.S. District Court unless Lightning's Board of Directors believes approving such resolution would be in violation of their fiduciary duties.

44. Discovery Material. Within sixty (60) days of the Effective Date, Plaintiffs' Counsel will return all confidential documents and other materials they received from Defendants in connection with the Actions (including but not limited to documents Lightning provided in connection with the mediation, and all documents and materials produced pursuant to Section 220 of the Delaware General Corporation Law) (collectively, "Discovery Material") or destroy all such Discovery Material and certify to that fact; provided, however, that Plaintiffs' Counsel shall be entitled to retain all filings, court papers, mediation statements, and attorney-work product containing or reflecting Discovery Material, subject to the requirement that Plaintiffs' Counsel shall not disclose any information contained or referenced in the Discovery Material to any person except, following reasonable advance notice to Lightning, pursuant to a validly issued subpoena not subject to a motion to quash, court order, or agreement with Lightning.

45. Designations. All designations and agreements made and orders entered during the course of the Actions relating to the confidentiality of documents or information shall survive this Settlement. Nothing in this Agreement, or the negotiations relating thereto, is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including, without limitation, the attorney-client privilege, the joint defense privilege, or work product protection.

46. Warranty of Stock Ownership. Plaintiffs and their Counsel represent and warrant that Plaintiffs are shareholders of Lightning and were shareholders of Lightning at all relevant times for the purposes of maintaining standing in the Actions.

47. Enforcement. Prior to taking any action (including but not limited to commencing a lawsuit or serving a demand upon Lightning's board of directors) to enforce this Agreement or the Corporate Governance Reforms, Plaintiffs, in both their personal and derivative capacity, agree to provide Defendants with written notice of any alleged violations of this Agreement or the Corporate Governance Reforms. Defendants shall then have a period of sixty (60) days in which to cure any such alleged violations, during which Plaintiffs shall not take any legal action against them.

48. Notice. All notices, requests, demands, claims, and other communications hereunder shall be in writing by personal delivery or reputable overnight courier as set forth below:

If to Plaintiffs, to:

William M. Alleman, Jr. (No. 5449)
Sean A. Meluney (No. 5514)
Matthew D. Beebe (No. 5980)
MELUNEY ALLEMAN & SPENCE, LLC
1143 Savannah Road, Suite 3-A
Lewes, DE 19958
(302) 551-6740

Aaron T. Morris
Leo Kandinov
Andrew W. Robertson
MORRIS KANDINOV LLP
1740 Broadway, 15th Floor
New York, NY 10019
(877) 216-1552

Counsel for Plaintiff Zalmon Uvaydov

Rusty E. Glenn
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Denver, CO 80202
Telephone: (303) 861-3003
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Seth D. Rigrudsky
Timothy J. MacFall
Vincent A. Licata
RIGRODSKY LAW, P.A.
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Telephone: (516) 683-3516
Facsimile: (302) 654-7530
sdr@rl-legal.com
tjm@rl-legal.com
vl@rl-legal.com

Counsel for Plaintiff Kelly Lanham

If to Defendants or Lightning, to:

Melanie Walker
DLA Piper LLP (US)
2000 Avenue of the Stars,
Suite 400 North Tower
Los Angeles, CA 90067
Telephone: (310) 595-3000
melanie.walker@us.dlapiper.com

Ronald N. Brown, III (I.D. No. 4831)
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ronald.brown@dlapiper.com

Counsel for Defendants Avi S. Katz, Raluca Dinu, Neil Miotto, Brad Weightman, John J. Mikulsky, Andrea Betti-Berutto and Peter Wang

Boris Feldman
Doru Gavril
Freshfields Bruckhaus Deringer US LLP
855 Main Street
Redwood City, CA 94063
(650) 618-9250
boris.feldman@freshfields.com
doru.gavril@freshfields.com

Counsel for Defendants Lightning eMotors, Inc., Defendants Robert Fenwick-Smith, Tim Reeser, Andrew Coors, Craig Huth, Heath Morrison, Glen Perlman, Trent Yang, Bruce Coventry, Thaddeus Senko, Diana Tremblay, Kenneth Jack, Wanda Jackson-Davis, and Teresa P. Covington

Any Party hereto may change its address set forth above by giving notice to the other Parties in the manner set forth above.

49. Severability. The failure by any particular Defendant or by Lightning to comply with any term of this Agreement or the U.S. District Court Order approving this Agreement shall not give rise to a claim against any other Defendants or Parties who have complied. Nor shall the failure by any Defendant or by Lightning to comply with any term of this Agreement or the U.S. District Court Order approving this Agreement affect the releases of other Defendants or Parties who have

complied. In the event that any portion of the Settlement is found to be unlawful, void, unconscionable, or against public policy by a court of competent jurisdiction, the remaining terms and conditions of the Settlement shall remain intact.

50. Sophisticated Parties; No Construction Against Drafter. Each Party hereto received independent legal advice from attorneys of his, her, or its choosing with respect to the advisability of entering this Agreement, the releases provided for in this Agreement, and with respect to the terms and conditions of this Agreement. This Agreement has been negotiated by the Parties and counsel. It is not to be construed against any party as the drafting party. In the event that the U.S. District Court or any other court is called upon to interpret this Agreement, no one party or group of parties shall be deemed to have drafted the Agreement.

51. Entire Agreement. This Agreement in the form as finally approved by the U.S. District Court embodies the entire agreement of the Parties. There are no further or other promises, agreements, understandings, terms, conditions, or obligations other than those contained herein. This Agreement supersedes all previous communications, representations, or agreements, either verbal or written, between the Parties or their attorneys, and no parol or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Settling Parties or their counsel, or the circumstances under which the Agreement was made or executed. The Settling Parties expressly acknowledge that, in entering into this Agreement, they are not relying upon any statements, representations, or warranties by any Settling Party except as expressly set forth herein. Plaintiffs agree that they intend to confer on Defendants the benefit of all releases and other protections set forth in Paragraph 16(a) above. Defendants agree that they intend to confer on Plaintiffs the benefit of all releases and other protections set forth in Paragraph 16(b) above.

52. **No Warranties.** No representations, warranties, or inducements have been made to any of the Settling Parties concerning the Agreement or its exhibits other than the representations, warranties, and covenants contained and memorialized in such documents.

53. **No Rights of Subrogation.** Plaintiffs represent and warrant that no person, entity, firm, corporation, or insurance company has received any rights of subrogation, or substitution to the claims made, or which could have been asserted by Plaintiffs in the Actions, and that there are no liens, voluntary, involuntary, statutory, or otherwise, relating to Plaintiffs' Claims in the Actions, or this Agreement. Defendants and Lightning represent and warrant that no person, entity, firm, corporation, or insurance company has received any rights of subrogation, or substitution to the claims, if any, which could have been asserted by Defendants and/or Lightning in the Actions, and that there are no liens, voluntary, involuntary, statutory, or otherwise relating to such claims or this Agreement.

54. **No Transfer or Assignment of Claims.** Plaintiffs represent and warrant that they have not assigned, transferred, or conveyed, nor purported to assign, transfer, or convey, to any person, entity, firm, corporation, or insurance company, any rights, claims, or causes of action (or any portion thereof) they may have, or have had, against any or all of the Defendants, with respect to Plaintiffs' Claims in the Actions or any matters described in the Actions. The Defendants and Lightning represent and warrant they have not assigned, transferred, or conveyed, nor purported to assign, transfer, or convey, to any person, entity, firm, corporation, or insurance company, any rights, claims, or causes of action (or any portion thereof) they may have, or have had, against the Plaintiffs, with respect to the claims, if any, which could have been asserted by Defendants and/or Lightning in the Actions.

55. Further Cooperation. The Parties agree to cooperate fully and execute any and all supplementary documents that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

56. Authority to Execute; Counterparts. The individuals executing this Agreement on behalf of the Parties represent and warrant that they have the authority to act on behalf of their principal and execute this document on their principal's behalf. This Agreement may be executed in counterparts, including electronic signatures, each of which shall be deemed an original, and when taken together with the other signed counterparts, shall constitute one and the same instrument. This Agreement shall be deemed to be executed as of the date that all counsel for the Parties have executed a counterpart, even though no single counterpart is executed by all counsel for the Parties.

57. Limited Right to Appeal. The Parties covenant and agree not to appeal the Final Order and Judgment. Nothing in this paragraph should be construed to grant or confer any right of appeal to any party or nonparty to the Actions, other than as already exists and as provided by applicable law, if any. With respect to any other action that is not listed above as part of the Actions and that is currently pending or is later filed in any state or federal court asserting claims that are related to the subject matter of the Actions prior to Final Approval of the Settlement, Plaintiffs shall provide supporting documentation as is reasonably requested by Defendants in order to obtain the dismissal, stay, or withdrawal of such related litigation, including where appropriate joining in any motion to dismiss or stay such litigation.

58. Stay of Proceedings. Pending U.S. District Court approval of the Agreement, the Parties agree to stay any and all proceedings and discovery in the Actions other than those incident to the Agreement itself. The Parties shall agree to extensions of time with respect to pleadings and other court deadlines and filings as are appropriate in the context of this Agreement. Without further

order of the U.S. District Court or State Court, the Parties may agree to reasonable extensions of time not expressly set by the U.S. District Court or State Court in order to carry out any of the provisions of this Agreement. The Parties also agree not to initiate any other proceedings other than those related to the Settlement itself. The Parties shall not file, prosecute, instigate, or in any way participate in the commencement or prosecution of any of the Released Claims.

59. Third-Party Beneficiaries. No third parties are intended beneficiaries of this Agreement and the promises contained therein, with the exception of those non-Parties who are among the Released Parties to whom the Releases contained in Section III extend.

60. Exhibits. The Exhibits to this Agreement are a material and integral part hereof and are fully incorporated herein by this reference. In the event that there exists a conflict or inconsistency between the terms of this Agreement and the terms of any exhibits hereto, the terms of this Agreement shall prevail.

61. Amendments; Waiver. This Agreement may be amended or any of its provisions waived only by a written instrument executed by all Parties or by attorneys authorized to act on their behalf. Any failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Agreement to be performed by such other Party. Waiver by any Party of any breach of this Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement, and failure by any Party to assert any claim for breach of this Agreement shall not be deemed to be a waiver as to that or any other breach and will not preclude any Party from seeking to remedy a breach and enforce the terms of this Agreement.

62. Governing Law. This Agreement, including the rights and obligations of the Settling Parties to the Agreement, shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of Delaware, without regard to conflict of laws principles. The Agreement and the exhibits attached hereto shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of Delaware.

63. Headings. The section headings used throughout this Agreement are for convenience only and shall not affect the construction or interpretation of the Agreement.

64. Disparaging Remarks. None of the Parties, nor any of the Parties' respective attorneys or representatives, shall issue any press release or make any other public statement describing this Agreement which disparages any Party or accuses any Party of any wrongdoing.

65. Jurisdiction. The U.S. District Court shall retain jurisdiction over the implementation and enforcement of this Agreement.

66. Binding Effect. The Stipulation and the Settlement shall be binding upon, and inure to the benefit of, the Settling Parties.

67. Execution. Each counsel executing the Agreement or its exhibits on behalf of any of the Settling Parties hereby warrants that such counsel has the full authority to do so.

68. Extensions of Time. Without further order of the U.S. District Court, the Settling Parties may agree to reasonable extensions of time to carry out any of the provisions of this Agreement.

Agreed to and executed by:

<p>Dated September 18, 2023</p>	<p>DocuSigned by: <u>William M. Alleman, Jr.</u> William M. Alleman, Jr. (No. 5449) Sean A. Meluney (No. 5514) Matthew D. Beebe (No. 5980) MELUNEY ALLEMAN & SPENCE, LLC 1143 Savannah Road, Suite 3-A Lewes, DE 19958 (302) 551-6740</p> <p>Aaron T. Morris Leo Kandinov Andrew W. Robertson MORRIS KANDINOV LLP 1740 Broadway, 15th Floor New York, NY 10019 (877) 216-1552</p> <p><i>Counsel for Plaintiff Zalmon Uvaydov</i></p>
<p>Dated September 18, 2023</p>	<p>DocuSigned by: <u>Rusty E. Glenn</u> Rusty E. Glenn SHUMAN, GLENN & STECKER 600 17th Street, Ste. 2800 South Denver, CO 80202 Telephone: (303) 861-3003 Facsimile: (303) 536-7849 rusty@shumanlawfirm.com</p> <p>Seth D. Rigrodsky Timothy J. MacFall Vincent A. Licata RIGRODSKY LAW, P.A. 825 East Gate Blvd., Suite 300 Garden City, NY 11530 Telephone: (516) 683-3516 Facsimile: (302) 654-7530 sdr@rl-legal.com tjm@rl-legal.com vl@rl-legal.com</p> <p><i>Counsel for Plaintiff Kelly Lanham</i></p>

Dated September 18, 2023

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Dated September 18, 2023

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Dinu, Neil Miotto, Brad Weightman, John J.
Mikulsky, Andrea Betti-Berutto and Peter Wang*

EXHIBIT A

1. THE BOARD'S OVERSIGHT FUNCTIONS

(a) Any prospective financial guidance to be provided to the market and/or publicly disclosed by the Company, including projected revenue, income, expenses, liabilities, losses, or margins, will be reviewed by the Board (or a committee designated by the Board) prior to disclosure. The Board and/or its designated committee shall review the detailed basis for each element of the financial guidance with the Company's management and approve the issuance of such financial guidance prior to public dissemination. The Board shall memorialize its approval of the financial guidance prior to its release in the Board's minutes and in a resolution finding that the guidance has a good faith basis.

(b) Any and all operational information, projections or non-financial metrics to be provided to the market or otherwise publicly disclosed by the Company, including order backlog, pipeline, units manufactured, and inventory, will be reviewed by the Board (or a committee designated by the Board) prior to disclosure. The Board and/or its designated committee shall review the detailed basis for each element of the operational information and/or projections with the Company's management and approve the issuance of such operational information and/or projections prior to public dissemination. The Board shall memorialize its approval of the operational information and/or projections prior to its release in the Board's minutes and in a resolution finding that the guidance has a good faith basis.

(c) If, subsequent to issuance or public dissemination, the Board becomes aware of information or events that materially affect or alter any financial guidance, operational information, projections, or non-financial metrics provided by the Company, the Board shall ensure that a corrective statement or disclosure is promptly issued and publicly disseminated.

(d) Any transactions by the Company with Gig3 or any of its affiliates or investors shall be subject to prior unanimous approval by the Board. In providing such approval, the Board shall state, and the Board's minutes shall reflect, the reasons for the Board's decision regarding the approval.

(e) The Board will ensure that no person affiliated with Gig3 or any of its affiliates or investors exerts managerial control over the Company going forward.

(f) Any acquisition proposals received by the Company or the Board shall be referred to the Finance and Investment Committee. The Finance and Investment Committee will make a recommendation to the Board regarding such proposal.

(g) The Board, or a Committee designated by the Board, will evaluate the internal controls related to approval of material contracts and adopt new policies, if needed, with respect to which contracts should be submitted to the Board for its approval.

2. CREATION OF A MANAGEMENT DISCLOSURE COMMITTEE

The Company shall create a management-level Disclosure Committee responsible for ensuring that the Company's significant public statements, including SEC filings, press releases and other public statements, are reviewed for accuracy, integrity, and compliance with applicable laws and regulations, as well as GAAP and non-GAAP protocols and procedures. The Disclosure Committee members shall consist of, at least, the Company's CEO, CFO, and one additional senior officer with day-to-day oversight in a key functional area. The Disclosure Committee shall implement written policies and procedures so as to accomplish its mandate and will report to the Board periodically.

3. INTERNAL AUDIT

The Board shall retain an independent consultant to conduct an analysis regarding appropriate steps the Company should take to test and strengthen its internal audit and control functions, including, but not limited to, material contracts and the accuracy of public disclosures and compliance with laws and regulations. The consultant shall prepare a written report with recommended changes to the Company's CCO, Nominating and Corporate Governance Committee, and Audit Committee. As to each recommendation contained in the report, the Board shall decide whether to implement the recommendation and shall prepare minutes setting forth the specific reason(s) for the decision.

4. EXECUTIVE REPORTS

At each regularly scheduled Board meeting, the Company's CFO (or designee) shall provide a written report regarding the Company's financial condition and prospects, including discussion of the cause of material increases in expenses and liabilities, if any, or material decreases in revenues and earnings, if any. The report shall address outstanding financial guidance, the effect of the Company's current financial condition on any such guidance, and the specific reasons, if applicable, why the Company may fail or has failed to meet such guidance.

5. WHISTLEBLOWER POLICY

The Company's Code of Business Conduct and Ethics provides that the Company does not tolerate retaliation against whistleblowers. To protect and incentivize employees with legitimate concerns regarding the Company's management, the Board shall require management to adopt a written whistleblower policy (the "Whistleblower Policy") that will:

- i. Encourage interested parties to bring forward ethical and legal violations and/or a reasonable belief that ethical and legal violations have occurred to the Audit Committee, the Disclosure Committee, the CCO, Human Resources, the Legal Department, and/or a whistleblower telephone number or website to be established by the Company so that action may be taken to resolve the problem. These complaints shall be reviewed by the CCO and Disclosure Committee and, in the case of complaints raising issues material to the Company's operations or financial condition, the Audit Committee, in consultation with and under the supervision of the Company's legal counsel, and presented to the full Board.

ii. Effectively communicate that Lightning is serious about adherence to its corporate governance policies and that whistleblowing is an important tool in achieving this goal.

The Whistleblower Policy must require periodic notification to employees, independent contractors and vendors of Lightning of the following:

iii. Executives are subject to criminal penalties, including imprisonment, for retaliation against whistleblowers;

iv. Whistleblower complaints may be directed to the Audit Committee, CCO, Disclosure Committee, in addition to Human Resources, the Legal Department, and the whistleblower telephone number or website, and the complaints will be handled by these parties anonymously and in confidence;

v. If a whistleblower brings their complaint to an outside regulator or other governmental entity, they will be protected by the terms of the Whistleblower Policy just as if they directed the complaint to the Audit Committee, CCO, Disclosure Committee, Human Resources, Legal Department, and/or the whistleblower phone number or website;

vi. If an employee is subject to an adverse employment decision as a result of whistleblowing, the employee may file a complaint with the Department of Labor within ninety (90) days of the alleged violation (a failure to report such claims within the 90-day window does not foreclose any other available legal remedy); and

vii. It is both illegal and against Lightning's policy to discharge, demote, suspend, threaten, intimidate, harass, or in any manner discriminate against whistleblowers.