

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

**Civil Action No.**

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

Plaintiff,

v.

**JURY TRIAL DEMANDED**

LIGHTNING EMOTORS, INC., TIMOTHY  
RICHARD REESER, and TERESA P.  
COVINGTON,

Defendants.

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

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Plaintiff (“Plaintiff”), individually and on behalf of all others similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants, alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and belief as to all other matters, based upon, inter alia, the investigation conducted by and through Plaintiff’s attorneys, which included, among other things, a review of the Defendants’ public documents, conference calls and announcements made by Defendants, United States (“U.S.”) Securities and Exchange Commission (“SEC”) filings, wire and press releases published by and regarding Lightning eMotors, Inc. (“Lightning eMotors” or the “Company”) f/k/a GigCapital3, Inc. (“GigCapital3”), analysts’ reports and advisories about the Company, and

information readily obtainable on the Internet. Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

### **NATURE OF THE ACTION**

1. This is a federal securities class action on behalf of a class consisting of all persons and entities other than Defendants that purchased or otherwise acquired Lightning eMotors securities between May 7, 2021 and August 16, 2021, both dates inclusive (the “Class Period”), seeking to recover damages caused by Defendants’ violations of the federal securities laws and to pursue remedies under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder, against the Company and certain of its top officials.

2. Lightning eMotors designs, manufactures, and sells electric vehicles. The Company produces electric fleet medium- and heavy-duty vehicles, including delivery trucks, shuttle buses, passenger vans, chassis-cab models, and city transit buses.

3. Prior to its business combination with Lightning eMotors, as described below, GigCapital3 was a special purpose acquisition company (“SPAC”), also known as a blank check company, incorporated for the purpose of entering into a merger, share exchange, asset acquisition, share purchase, recapitalization, reorganization, or similar business combination with one or more businesses or entities.

4. On May 6, 2021, Lightning eMotors consummated a business combination (the “Business Combination”) with Lightning Systems, Inc. (“Lightning Systems”) pursuant to a certain Business Combination Agreement, dated as of December 10, 2020, by and among

GigCapital3, Project Power Merger Sub, Inc. (“Merger Sub”), and Lightning Systems (the “Business Combination Agreement”). In connection with the consummation of the Business Combination, the Company changed its name from GigCapital3, Inc. to Lightning eMotors, Inc. On May 7, 2021, the Company’s common stock and warrants began trading on the New York Stock Exchange (“NYSE”) under the symbols “ZEV” and “ZEV.WS”, respectively.

5. Throughout the Class Period, Defendants made materially false and misleading statements regarding the Company’s business, operations, and compliance policies. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) the Company would record a substantially greater net loss per share in the second quarter of 2021 compared to the second quarter of 2020 and would pull its full year guidance for the remainder of 2021; (ii) accordingly, the Company materially overstated its financial position and/or prospects; and (iii) as a result, the Company’s public statements were materially false and misleading at all relevant times.

6. On August 16, 2021, post-market, Lightning eMotors announced the Company’s financial results for the second quarter of 2021, including a net loss per share of \$0.79 compared to a loss of \$0.10 in the second quarter of 2020. The Company also pulled its full year financial guidance for the remainder of 2021, just days after announcing a multi-year agreement with Forest River, a Berkshire Hathaway company.

7. On this news, Lightning eMotors’s stock price fell \$1.63 per share, or 16.93%, to close at \$8.00 per share on August 17, 2021.

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

### **JURISDICTION AND VENUE**

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

10. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and Section 27 of the Exchange Act, 15 U.S.C. § 78aa.

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

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

### **PARTIES**

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

14. Defendant Lightning eMotors is a Delaware corporation with principal executive offices located at 815 14th Street SW, Suite A100, Loveland, Colorado 80537. Lightning eMotors's common stock and warrants trade in an efficient market on the NYSE under the symbols "ZEV" and "ZEV.WS", respectively.

15. Defendant Timothy Richard Reeser ("Reeser") has served as Lightning eMotors's President, Chief Executive Officer, and as a Director at all relevant times.

16. Defendant Teresa P. Covington ("Covington") has served as Lightning eMotors's Chief Financial Officer at all relevant times.

17. Defendants Reeser and Covington are sometimes referred to herein as the "Individual Defendants."

18. As officers and controlling persons of a publicly held company whose common stock was traded on the NYSE and is governed by the provisions of the federal securities laws, Defendants each had a duty to promptly disseminate accurate and truthful information with respect to the Company's financial condition, performance, growth, operations, financial statements, business, markets, management, earnings and present and future business prospects, and to correct any previously issued statements that had become materially misleading or untrue, so that the market price of the Company's securities would be based upon truthful and accurate information. Defendants' misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

19. Defendants participated in the drafting, preparation and/or approval of the various public, shareholder and investor reports and other communications complained of herein, were aware of, or recklessly disregarded, the misstatements contained therein and omissions therefrom,

and were aware of their materially false and misleading nature. Because of their Board membership and/or executive and managerial positions with Lightning eMotors, Defendants each had access to the adverse undisclosed information about the Company's financial condition and performance as particularized herein and knew (or recklessly disregarded) that these adverse facts rendered the positive representations made by or about Lightning eMotors and its business or adopted by the Company materially false and misleading.

20. Defendants, because of their positions of control and authority as officers and/or directors of the Company, were able to and did control the content of the various SEC filings, press releases and other public statements pertaining to the Company issued during the Class Period. Each defendant was provided with copies of the documents alleged herein to be misleading prior to or shortly after their issuance and/or had the ability and/or opportunity to prevent their issuance or cause them to be corrected. Accordingly, each of the Defendants is responsible for the accuracy of the public reports and releases detailed herein and is therefore primarily liable for the representations contained therein.

21. Defendants are liable for: (i) making false statements; or (ii) failing to disclose adverse facts known to them about Lightning eMotors. Defendants' fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Lightning eMotors securities was a success, as it: (i) deceived the investing public regarding Lightning eMotors's prospects and business; (ii) artificially inflated the price of Lightning eMotors securities; and (iii) caused Plaintiff and other members of the Class (as defined below) to purchase Lightning eMotors securities at artificially inflated prices.

## **SUBSTANTIVE ALLEGATIONS**

### **Background**

22. Lightning eMotors designs, manufactures, and sells electric vehicles. The Company produces electric fleet medium- and heavy-duty vehicles, including delivery trucks, shuttle buses, passenger vans, chassis-cab models, and city transit buses.

23. GigCapital3 was a SPAC, also known as a blank check company, incorporated for the purpose of entering into a merger, share exchange, asset acquisition, share purchase, recapitalization, reorganization, or similar business combination with one or more businesses or entities.

24. On May 6, 2021, Lightning eMotors (f/k/a GigCapital3) consummated a Business Combination with Lightning Systems pursuant to a certain Business Combination Agreement, dated as of December 10, 2020, by and among GigCapital3, Merger Sub, and Lightning Systems. In connection with the consummation of the Business Combination, the Company changed its name from GigCapital3, Inc. to Lightning eMotors, Inc. On May 7, 2021, the Company's common stock and warrants began trading on the NYSE under the symbols "ZEV" and "ZEV.WS", respectively.

### **Materially False and Misleading Statements Issued During the Class Period**

25. The Class Period begins on May 7, 2021, when Lightning eMotors's stock began trading on the NYSE. On May 6, 2021, after the market closed, Lightning eMotors issued a press release entitled, "Lightning eMotors and GigCapital3 Announce Closing of Business Combination." The press release stated, in relevant part:

Lightning eMotors has been providing specialized and sustainable fleet solutions since 2009, deploying complete zero-emission-vehicle (ZEV) solutions for

commercial fleets since 2018 – including Class 3 cargo and passenger vans, Class 4 and 5 cargo vans and shuttle buses, Class 6 work trucks, school buses, Class 7 city buses, and Class A motor coaches. The Lightning eMotors team designs, engineers, customizes and manufactures zero-emission vehicles to support the wide array of fleet customer needs including school buses and ambulances, with a full suite of telematics, analytics and charging solutions to simplify the buying and ownership experience and maximize uptime and energy efficiency.

26. On May 17, 2021, Lightning eMotors issued a press release entitled, “Lightning eMotors Reports \$4.6 million of Revenue in First Quarter of 2021 From Sales of 31 Commercial Electric Vehicles and Provides 2021 Outlook.” The press release stated, in relevant part:

Q1 2021 Highlights:

- *Despite supply chain headwinds, Lightning Systems reported Q1 sales of 31 purpose-built, commercial zero emission vehicles.*
- *First quarter 2021 revenue of \$4.6 million, up from the first quarter 2020 revenue of \$0.7 million. This is in line with the quarterly growth required to meet the 2021 revenue guidance below. The Company incurred a loss from operations of \$5.3 million during the quarter.*
- *Vehicle sales for the quarter included electric shuttles buses, delivery vehicles, refrigerated trucks, ambulances and RVs across Classes 3, 4 and 5, shipped to customers including DHL Express, Fluid Truck, ABC Companies, Meals on Wheels and others, all with 1 Hz telematics providing big-data information on commercial electric vehicles’ range, payload, efficiency and reliability.*
- *Backlog at quarter end of \$169 million and sales pipeline of \$807 million respectively.*

Tim Reeser, chief executive officer of Lightning eMotors said, “We are delivering purpose-built commercial zero-emission vehicles today from a factory that is already in production, continuing to add to our two years of customer on-the-road experience, validation and data. Q1 2021 continued the fast sales and delivery growth that started in 2020. As our production capacity, supply chain diversification, automation implementation, and marketing efforts increased, so did our abilities to execute deliveries at a record pace. As a result, Lightning eMotors is well-positioned to achieve its 2021 forecast of over 500 purpose-built zero-emission commercial vehicles. Our results, and the head start that our data, production experience and customer validation provide us, demonstrates the value of real purchase orders and real deliveries.”

Reeser further noted, “We have spent the last 12 years developing our proprietary modular hardware and software platforms. We have partnered with fleets all over the U.S. to build best-in-class, purpose-built, zero-emission battery-electric and fuel-cell-electric commercial solutions to meet the high-level of customization required by fleets. In the past year, we have added nearly 100 employees with a large focus on our engineering and manufacturing teams, and in the short period since announcing our merger with GigCapital3, Lightning eMotors has bolstered our executive team with a distinguished chief financial officer, chief procurement officer, and chief revenue officer and announced several commercial partnerships and new large fleet customers. The capital raised in the merger transaction will enable Lightning eMotors to accelerate its growth plans and fulfill significant demand from our customers, including some of the most recognizable transportation, public safety and e-commerce companies in the U.S. We are excited to begin our next chapter as a public company.”

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#### Full Year 2021 Revenue, Gross Margin, Operating Loss and Vehicle Sales Outlook

Based on current business conditions, business trends and other factors, for the full year 2021 ending Dec. 31, 2021, the Company expects:

- ***Revenues to be in the range of \$50 million to \$60 million.***
- Vehicle and powertrain sales of 500 units.
- Extreme supply chain shortages will have a significant impact on short-term margin and operating costs, resulting in a small, negative gross margin for the full year. However, margins are expected to progressively improve over the next three quarters from the -16% in Q1 as the Company ramps production and benefits from operating leverage. Operating losses will also be impacted and are expected to be higher each quarter than the first quarter loss of \$5.3 million with public company costs as well as higher investments in research and development and sales, general and administrative costs to scale the business.

(Emphasis added.)

27. The same day, Lightning eMotors filed a Quarterly Report on Form 10-Q with the SEC, reporting the Company’s financial and operating results for the quarter ended March 31, 2021 (the “Q1 2021 10-Q”). The Q1 2021 10-Q stated, in relevant part:

Disclosure controls and procedures are controls and other procedures that are designed to ensure that information required to be disclosed in our reports filed

or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. ***Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, to allow timely decisions regarding required disclosure.***

*Evaluation of Disclosure Controls and Procedures*

As required by Rules 13a-15 and 15d-15 under the Exchange Act, our Chief Executive Officer and Chief Financial Officer carried out an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures as of March 31, 2021. ***Based upon their evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) were effective.***

(Emphasis added.)

28. Appended to the Q1 2021 10-Q as exhibits were signed certifications pursuant to the Sarbanes-Oxley Act of 2002 (“SOX”) by the Individual Defendants, attesting that “[t]he information contained in [Q1 2021 10-Q] fairly presents, in all material respects, the financial condition and results of operations of the Company.”

29. On May 24, 2021, Lightning eMotors issued a press release entitled, “Lightning eMotors’ CEO and Leadership Team Ring Opening Bell at New York Stock Exchange.” The press release stated, in relevant part:

“Trading on the exchange and ringing the bell on Wall Street are big milestones for our company,” said Tim Reeser, CEO of Lightning eMotors. “However, we remain focused on the task at hand. In the past six months, we’ve added 22 new fleet customers, giving us an overall total of 46 fleet customers. We have vehicles on the road in 17 different market segments, including corporate and educational campus transit, micro and mass transit, middle-mile and last-mile delivery, airport shuttles, food trucks, postal delivery, and electrical services. Many of our customers also are placing repeat orders after successful initial deployments.

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Last week, Lightning eMotors reported first quarter revenue of \$4.6 million, having delivered vehicles across five specialty vehicle applications despite global supply chain challenges.

30. On July 8, 2021, Lightning eMotors filed a prospectus on Form 424B3 with the SEC (the “July 8, 2021 Prospectus”). The July 8, 2021 Prospectus stated, in relevant part:

We believe we are the only full-range manufacturer of Class 3 to 7 BEV and FCEV in the United States and provide end-to-end electrification solutions including advanced analytics software, charging solutions (which we refer to as “*Energy-as-a-Service*”) and financing (which we refer to as “*EV-as-a-Service*”). We combine optimized modular software with a customized hardware design that allows us to address the diversified opportunities in the markets in which we operate in a cost-effective manner with a significant time-to-market advantage. We have also built an extensive ecosystem of supply-chain partners and specialty vehicle partners which are instrumental to our growth.

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We optimize our supply chain for quality, reliability, and cost. We believe our long-term relationships with supply chain partners will be a key driver in our ability to scale without unduly sacrificing quality or delivery times and serve as a foundation for our growth. Because we have relationships with multiple suppliers for each core component of our vehicles, we are able to build and maintain a high degree of resilience in our supply chain, which will assist us with mitigating delays. We also partner with battery pack manufacturers allowing us to keep the latest battery technology in our vehicles at the time of manufacturing. To this end, we have recently entered into a three-year contract with our primary battery supplier, Romeo Power Technology, that will secure battery inventory without significant fluctuations in cost. We believe, that through careful supply chain management and the cultivation of long-term relationships with our suppliers, we can reduce our cost-of-goods-sold by up to 50% over the next 18 months. Continuous communication and partnerships with all of our suppliers has enabled us to maintain cutting-edge technology in our vehicles at the lowest possible cost.

31. In addition, with respect to market opportunity, the July 8, 2021 Prospectus stated, in relevant part:

Our large and growing Total Addressable Market (“*TAM*”) is comprised of Class 3 to 7 medium-duty commercial vehicles, including shuttle buses, ambulances, delivery vans & trucks, bucket trucks, food trucks and coaches, among others.

Regulatory tailwinds and a rapidly improving cost structure have accelerated the pace of adoption for electric vehicles, allowing operators to transition fleets to zero-emission standards in accelerated timelines. Our modular software and hardware solution enables us to serve a variety of attractive niche markets in a cost-effective and efficient manner. While other manufacturers and OEMs have focused on one or two classes of vehicles, we are currently the only company in the United States that is focused on delivering reliable, zero-emission vehicles—in both battery electric and fuel-cell electric designs—across Classes 3 to 7. By leveraging, and in some cases modifying, existing components, we have built a complete modular software and hardware solution that can be installed in medium-duty vehicles across classes and types, thus broadening and strengthening our TAM.

We estimate our TAM across Class 3 to 7 vehicles is roughly \$67 billion annually worldwide based on 2018 data from the U.S. Department of Energy. The US market is approximately \$22 billion, while the global offshore market is approximately \$45 billion, resulting in a total addressable market of approximately \$67 billion. In the United States, we estimate that a total of 539,000 vehicles are sold annually in the U.S. across these 5 classes, with Class 3 accounting for the greatest portion of the total, at 301,000 vehicles. Globally, we estimate that an additional 993,000 vehicles across these classes are sold annually.

32. Next, with respect to the Company’s “competitive advantages,” the July 8, 2021

Prospectus stated, in relevant part:

We believe the following strengths will allow us to maintain and extend our leadership position.

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- **First-mover advantage in the rapidly growing commercial ZEV space.** We believe that we are ahead of our peers in customer validation with \$169 million of backlog as of December 31, 2020 and a 36% market share across Class 3 to 6 ZEVs in 2020. Our two-year head start in the commercial ZEV space led to significant progress in customer validation. Commercial fleet customers require high reliability and a full-service network. In addition, they must factor TCO to validate the economic viability of the solution. The total sales cycle therefore typically ranges from 3 to 24 months and requires significant time and effort as well as deep engagement with customers throughout the process. Benefiting from our head start in the market, we already have 121 vehicles on the road as of February 22, 2021 (including 12 demonstration and test vehicles) and 30 fleets who have placed purchase orders, 10 of which have placed repeat orders. Through years of effort and cumulative customer validation, we have now reached the tipping point of

an accelerated sales cycles which is expected to fuel our next phase of growth.

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- **Established strategic partnerships to optimize procurement and go-to-market strategy.** Since 2008, we have built an extensive ecosystem of supply-chain partners and specialty vehicle partners. Our suppliers are instrumental to the performance and reliability of our vehicles and enable us to scale in a relatively asset light and cost-effective manner. Our key suppliers include Ford, BorgWarner, Romeo Power, Hino and Delta Electronics, among others, all of which are industry leading manufacturers of critical components like chassis, bodies, batteries and chargers. Plug Power, a leading hydrogen solution manufacturer, is one of our key supply chain partners with which we have established a multidimensional strategic partnership. We work with Plug Power to manufacture fuel cell-powered vehicles. We also leverage their extensive hydrogen fueling infrastructure and collaborate in the go-to-market strategy to sell class 3 through class 7 FCEVs.

Our specialty vehicle partners are also critical to our rapid growth strategy and enable us to apply our modular technology to an expanding range of markets including recreational vehicles, ambulances, coaches etc. We work closely with OEMs including Winnebago, Rev Group and ABC Companies to electrify vehicles in their target markets that they manufacture. For example, we are the exclusive motor-coach RePower electrification solution provider to the leading motor-coach company, ABC Companies. Our electric RePower solution (replacing ICE with EV in older buses) has a 18-month shorter delivery time and is economically competitive (approximately half the price) compared to many new electric buses and coaches manufactured by other OEMs. Given our demonstrated capabilities, we received a \$48 million purchase order from ABC Companies in September 2020.

33. Finally, with respect to growth strategy, the July 8, 2021 Prospectus stated, in relevant part:

- **Acquire new customers.** By leveraging our strategic partners including Plug Power and ABC Companies, we will continue to win new customers and expand into new markets. In addition, despite a relatively small sales staff, we have been able to generate strong revenue growth and a large

pipeline of customers. We also intend to bolster our sales staff as we grow to help improve our pipeline and acquire new customers for our business.

- **Continue executing land-and-expand.** Once customers sign initial contract and purchase orders, we can significantly shorten the sales cycle to win repeat orders from them as we don't have to repeat the technical and TCO validation periods. We have \$169 million of backlog as of December 31, 2020, and we believe clear path to \$1.

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- **Expand our global channel relationships.** We intend to continue building partnerships to accelerate the development and production of our solutions. Lightning eMotors' strategic, engineering, production and technology partners augment our internal resources and we intend to leverage their capabilities and infrastructure to bring our solutions to market more quickly and to meet industry standards, without requiring us to invest substantial amounts of capital.

34. On August 10, 2021, Lightning eMotors issued a press release entitled, "Lightning eMotors and Forest River Inc. Reach Multiyear Agreement for up to \$850M in Zero-Emission Bus Technology Plus Charging Products and Services." The press release stated, in relevant part:

Lightning eMotors [...], a leading provider of specialty commercial electric vehicles for fleets, and Forest River, Inc., a Berkshire Hathaway company [...], today announced they have entered into a strategic partnership agreement to deploy up to 7,500 zero-emission shuttle buses.

The agreement, with a potential estimated value of up to \$850 million, calls for Lightning eMotors to build fully electric powertrains and provide charging products, and services for Forest River over the next four and a half years. Lightning eMotors will manufacture the zero-emission-vehicle ("ZEV") powertrain systems at their 231,000 square foot facility in Loveland, Colorado and ship the powertrains to Forest River's factory in Goshen, Indiana, for final assembly of the Class 4 and 5 all-electric passenger buses. Forest River is the leading shuttle bus market leader in North America, with eight manufacturing buildings and more than 500,000 square feet of production space. The Elkhart, Indiana-based company has plans to dedicate 100,000 square feet to install Lightning eMotors' powertrains.

"This has the potential to be the largest contract ever in the electric shuttle bus market, and we believe it will be the catalyst for other large commercial vehicle OEMs and fleets to accelerate their adoption of commercial electric vehicles," said

Tim Reeser, CEO of Lightning eMotors. “Forest River’s family of shuttle bus companies, including top name brands like Starcraft, Glaval, and Champion, maintain a dominant market position selling over 10,000 units per year in the Class 4 to 6 shuttle-bus space. Forest River’s sales volumes allow us to provide a price point to their dealers and customers that results in a very compelling ROI. We believe this commitment from the largest shuttle bus manufacturer in the U.S. demonstrates that they believe that commercial vehicle customers are now demanding Lightning eMotors’ zero-emission vehicles over ICE vehicles.”

35. The statements referenced in ¶¶ 25-34 were materially false and misleading because Defendants made false and/or misleading statements, as well as failed to disclose material adverse facts about the Company’s business, operations, and compliance policies. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) the Company would record a substantially greater net loss per share in the second quarter of 2021 compared to the second quarter of 2020 and would pull its full year guidance for the remainder of 2021; (ii) accordingly, the Company materially overstated its financial position and/or prospects; and (iii) as a result, the Company’s public statements were materially false and misleading at all relevant times.

### **The Truth Emerges**

36. On August 16, 2021, post-market, Lightning eMotors issued a press release announcing the Company’s financial results for the second quarter of 2021, including a net loss per share of \$0.79 compared to a loss of \$0.10 in the second quarter of 2020. Specifically, the press release stated, in relevant part:

Gross loss was \$1.1 million compared to \$0.6 million in the prior-year period. Gross margin improved to -19.0% from -63.4% in the prior year period. The improvement in gross margin was largely driven by an increase in revenues, improved product mix, fixed cost leverage, and reductions in direct manufacturing cost through technology and process improvements.

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Loss from operations was \$17.9 million, compared to \$2.7 million during the same period in the prior year

Net loss was \$46.1 million, compared to net loss of \$2.8 million during the prior-year period. Basic and diluted net loss per share was \$0.79, compared to \$0.10 in the prior year period.

Adjusted loss from operations was \$8.7 million, compared to \$2.7 million during the same period in the prior year. Adjusted net loss was \$12.6 million and \$2.8 million during the same period in the prior year.

Moreover, the press release indicated that the Company was pulling its prior guidance for the 2021 year, stating, in relevant part:

**Guidance**

Primarily because of unexpected chassis production disruptions and COVID related delays, Lightning is withdrawing its prior guidance for the 2021 year. Although the Company no longer expects to meet full year guidance, and is only providing guidance for one quarter out at this time, no orders have been cancelled and the Company expects to fulfill those orders in future quarters. Based on current business conditions, business trends and other factors, for the quarter ending September 30, 2021, the Company expects:

- Revenues of \$4 million to \$6 million.
- Vehicle and powertrain sales of 28 units to 40 units.
- Loss from operations of \$12.5 million to \$13.6 million.
- Adjusted loss from operations of \$12 million to \$13 million.

37. On this news, Lightning eMotors’s stock price fell \$1.63 per share, or 16.93%, to close at \$8.00 per share on August 17, 2021.

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

**PLAINTIFF’S CLASS ACTION ALLEGATIONS**

39. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons and entities that purchased

or otherwise acquired Lightning eMotors securities during the Class Period (the “Class”). Excluded from the Class are Defendants and their families; the officers, directors and affiliates of Lightning eMotors and members of their immediate families; the legal representatives, heirs, successors or assigns of any of the foregoing; and any entity in which any defendant has or had a controlling interest.

40. The members of the Class are so numerous that joinder is impracticable. Lightning eMotors common stock previously traded on the NYSE and had millions of shares outstanding. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through discovery, Plaintiff believes there are hundreds, if not thousands, of members in the Class. Record owners and other Class members may be identified from records procured from or maintained by the Company or its transfer agent and may be notified of the pendency of this action using a form of notice similar to that customarily used in securities class actions.

41. Common questions of law and fact exist as to all Class members and predominate over any questions solely affecting individual Class members, including:

- (a) whether Defendants violated the Exchange Act, as alleged herein;
- (b) whether the statements made by Defendants misrepresented material facts about the business, operations and assets of Lightning eMotors; and
- (c) whether and to what extent Class members have sustained damages, as well as the proper measure of damages.

42. Plaintiff’s claims are typical of the claims of the Class, as all Class members were similarly affected by Defendants’ conduct in violation of the Exchange Act as complained of herein.

43. Plaintiff will fairly and adequately protect the interests of Class members and has retained counsel competent and experienced in securities class actions.

44. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Because the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it exceedingly difficult, if not impossible and impracticable, for Class members to individually redress the wrongs alleged. There will be no difficulty in managing this action as a class action.

### **LOSS CAUSATION AND ECONOMIC LOSS**

45. As detailed herein, Defendants engaged in a scheme to deceive the market and a course of conduct that artificially inflated the price of Lightning eMotors securities and operated as a fraud or deceit on purchasers or acquirers of Lightning eMotors securities. As detailed above, when the truth about Defendants' misconduct was revealed, the value of Lightning eMotors securities declined precipitously as the prior artificial inflation no longer propped up the price of Lightning eMotors securities. The declines in the price of Lightning eMotors securities were the direct result of the nature and extent of Defendants' fraud finally being revealed to investors and the market. The timing and magnitude of the share price declines negate any inference that the loss suffered by Plaintiff was caused by changed market conditions, macroeconomic or industry factors or Company-specific facts unrelated to Defendants' fraudulent conduct. The economic loss, *i.e.*, damages, suffered by Plaintiff, was a direct result of Defendants' fraudulent scheme to artificially inflate the price of Lightning eMotors securities and the subsequent significant decline in the value of Lightning eMotors securities when Defendants' prior misrepresentations and other fraudulent conduct were revealed.

46. At all relevant times, Defendants' materially false and misleading statements or omissions alleged herein directly or proximately caused the damages suffered by Plaintiff. Those statements were materially false and misleading through their failure to disclose a true and accurate picture of the Company's business and operations, as alleged herein. Before and during the time of Plaintiff's purchases or acquisitions of Lightning eMotors securities, Defendants issued materially false and misleading statements and omitted material facts necessary to make Defendants' statements not false or misleading, causing the price of Lightning eMotors securities to be artificially inflated. Plaintiff and the Class purchased or otherwise acquired Lightning eMotors securities at artificially inflated prices, causing them to suffer damages as complained of herein.

**APPLICABILITY OF PRESUMPTION OF RELIANCE:**  
**FRAUD-ON-THE-MARKET DOCTRINE**

47. At all relevant times, the market for Lightning eMotors securities was an efficient market for the following reasons, among others:

(a) Lightning eMotors's stock met the requirements for listing, and was listed and actively traded on NYSE, a highly efficient and automated market;

(b) as a regulated issuer, the Company filed periodic public reports with the SEC;

(c) Defendants regularly communicated with public investors via established market communication mechanisms, including the regular dissemination of press releases on national circuits of major newswire services, the Internet and other wide-ranging public disclosures; and

(d) unexpected material news about the Company was rapidly reflected in and incorporated into the price of the Company's securities.

48. As a result of the foregoing, the market for Lightning eMotors securities promptly digested current information regarding the Company from publicly available sources and reflected such information in the price of Lightning eMotors securities. Under these circumstances, a presumption of reliance applies to Plaintiff's purchases or acquisitions of Lightning eMotors securities.

49. A presumption of reliance is also appropriate in this action under the Supreme Court's holding in *Affiliated Ute Citizens v. United States*, 406 U.S. 128 (1972), because Plaintiff's claims are based, in significant part, on Defendants' material omissions. Because this action involves Defendants' failure to disclose material adverse information regarding the Company's business and operations, positive proof of reliance is not a prerequisite to recovery. All that is necessary is that the facts withheld be material in the sense that a reasonable investor might have considered them important in making investment decisions. Given the importance of Defendants' material misstatements and omissions set forth above, that requirement is satisfied here.

#### **NO SAFE HARBOR**

50. Defendants' false or misleading statements alleged to be actionable herein were not forward-looking statements, or were not identified as such by Defendants, but rather, were statements of historical and present fact, and thus did not fall within any "Safe Harbor."

51. Defendants' verbal "Safe Harbor" warnings accompanying any of their oral forward-looking statements failed to provide meaningful cautionary statements regarding the

specific facts and circumstances facing the Company, and thus were ineffective to shield those statements from liability.

52. Defendants are also liable for any false or misleading forward-looking statements pleaded because, at the time each forward-looking statement was made, the speaker knew the forward-looking statement was false or misleading and the forward-looking statement was authorized and/or approved by an executive officer of Lightning eMotors who knew that the forward-looking statement was false. Further, none of the historic or present tense statements made by Defendants were assumptions underlying or relating to any plan, projection or statement of future economic performance, as they were not stated to be such assumptions underlying or relating to any projection or statement of future economic performance when made.

### **COUNT I**

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

53. Plaintiff incorporates the foregoing paragraphs by reference.

54. Defendants disseminated or approved the false or misleading statements specified above, which they knew or recklessly disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

55. These Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 in that they:

- (a) Employed devices, schemes and artifices to defraud;

(b) Made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) Engaged in acts, practices and a course of business that operated as a fraud or deceit upon Plaintiff and Class members in connection with their purchases or acquisitions of Lightning eMotors securities.

56. Plaintiff has suffered damages in that, in reliance on the integrity of the market, Plaintiff paid artificially inflated prices for Lightning eMotors securities. Plaintiff would not have purchased or acquired Lightning eMotors securities at the price paid, or at all, if Plaintiff had been aware that the market price had been artificially and falsely inflated by Defendants' misleading statements.

57. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the Class suffered damages in connection with their purchases of Lightning eMotors securities.

## **COUNT II**

### **(Violations of Section 20(a) of the Exchange Act Against All Defendants)**

58. Plaintiff incorporates the foregoing paragraphs by reference.

59. Defendants were control persons within the meaning of Section 20(a) of the Exchange Act.

60. By virtue of their high-level positions, and their ownership and contractual rights, participation in and/or awareness of the Company's operations and/or intimate knowledge of the false and misleading statements filed by the Company with the SEC and disseminated to the investing public, Defendants had the power to influence and control and did influence and control,

directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements Plaintiff contends are false and misleading. Defendants were provided with, or had, unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by Plaintiff to be misleading before and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

### **PRAYER FOR RELIEF**

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

- A. Determining that this action is a proper class action, designating Plaintiff as Lead Plaintiff and certifying Plaintiff as class representative under Rule 23 of the Federal Rules of Civil Procedure and Plaintiff's counsel as Lead Counsel;
- B. Awarding Plaintiff and the Class compensatory damages at an amount to be determined at trial and pre-judgment and post-judgment interest thereon;
- C. Awarding Plaintiff's reasonable costs and expenses, including attorneys' fees; and
- D. Awarding such other relief as the Court may deem just and proper.

### **JURY DEMAND**

Plaintiff hereby demands a trial by jury.