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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF ARIZONA**

John L. Wojichowski, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

Nikola Corporation, Trevor Milton, Mark  
A. Russell, and Kim J. Brady,

Defendants.

Case No. \_\_\_\_\_

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

**CLASS ACTION**

**JURY TRIAL DEMANDED**

Plaintiff, John L. Wojichowski, (“Plaintiff”), by and through his attorneys, alleges upon personal knowledge as to his own acts, and upon information and belief as to all other matters, based upon the investigation conducted by and through his attorneys, which included, among other things, a review of documents filed by Defendants (as defined below) with the United States Securities and Exchange Commission (the “SEC”), news reports, press releases issued by Defendants, and other publicly available documents, as follows:

## NATURE AND SUMMARY OF THE ACTION

1  
2 1. This is a federal securities class action on behalf of all investors who  
3 purchased or otherwise acquired Nikola Corporation (“Nikola” or the “Company”)  
4 common stock between June 4, 2020 and September 9, 2020, inclusive (the “Class  
5 Period”), seeking to recover damages caused by Defendants’ violations of the federal  
6 securities laws and to pursue remedies under §§ 10(b) and 20(a) of the Securities Exchange  
7 Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder by the SEC, 17  
8 C.F.R. § 240.10b-5.  
9  
10

11 2. Nikola purports to be a “vertically integrated zero emissions transportation  
12 systems provider that designs and manufactures state of the art battery electric and  
13 hydrogen electric vehicles, electric vehicle drivetrains, energy storage systems, and  
14 hydrogen fueling stations.” Nikola has stated that its “core product offering includes battery  
15 electric and hydrogen fuel cell electric trucks and hydrogen fuel.” Nikola also purports to  
16 develop electric vehicle solutions for military and outdoor recreational applications.  
17

18 3. The Company was founded in 2015 by Defendant Trevor Milton, and in June  
19 2020, Nikola’s shares began trading publicly on the NASDAQ stock exchange shortly after  
20 the execution of a reverse merger with VectoIQ Acquisition Corp.  
21

22 4. In violation of the Exchange Act, Nikola misled investors as to: (1) the  
23 present capabilities and manufacturability of the Company’s purported fleet of vehicles;  
24 (2) the Company’s professed manufacture of component parts for those vehicles in-house;  
25 (3) the Company’s capacity and costs to produce hydrogen; and (4) Nikola’s financial,  
26 technological, and operational profile. These misrepresentations were intended to, and did,  
27  
28

1 present a materially false image of Nikola's growth and success, and has led to inflated  
2 financial results and the artificial inflation of its stock price.

3  
4 5. Throughout the Class Period, Defendants made materially false and/or  
5 misleading statements, as well as failed to disclose material adverse facts to investors.  
6 Specifically, Defendants misrepresented and/or failed to disclose that the Company was  
7 mischaracterizing: (1) the present capabilities and manufacturability of the Company's  
8 purported fleet of vehicles; (2) the Company's professed manufacture of component parts  
9 for those vehicles in-house; (3) the Company's capacity and costs to produce hydrogen;  
10 and (4) Nikola's financial, technological, and operational profile.

11  
12 6. Prior to the opening of trading on September 10, 2020, analyst Hindenburg  
13 Research published a blistering report entitled "Nikola: How to Parlay An Ocean of Lies  
14 Into a Partnership With the Largest Auto OEM in America." In this report, detailed below,  
15 Hindenburg referred to Nikola as "an intricate fraud built on dozens of lies over the course  
16 of its Founder and Executive Chairman Trevor Milton's career." Hindenburg added that it  
17 "gathered extensive evidence—including recorded phone calls, text messages, private  
18 emails and behind-the-scenes photographs—detailing dozens of false statements by"  
19 Defendant Milton. Hindenburg summarized: "[w]e have never seen this level of deception  
20 at a public company, especially of this size."

21  
22 7. On this news, shares of Nikola common stock fell approximately from their  
23 September 9, 2020 close of \$42.37 per share to a September 11, 2020 close of \$32.13 per  
24 share, a two day drop of approximately 24%.

25  
26 8. On September 14, 2020, after the markets closed, *Bloomberg* reported that  
27 the SEC was investigating Nikola to assess the merits of the Hindenburg Report.  
28



**PARTIES**

16. Plaintiff John L. Wojichowski, as set forth in his Certification filed contemporaneously herewith, acquired shares of Nikola common stock at artificially inflated prices and has been damaged.

17. Defendant Nikola Corporation is incorporated under the laws of the State of Delaware, with its principal place of business at 4141 E. Broadway Road, Phoenix, AZ 85040. Its common stock trades on the NASDAQ stock exchange under the symbol NKLA.

18. Defendant Trevor Milton is Nikola's Founder, Executive Chairman, and former Chief Executive Officer.

19. Defendant Mark A. Russell is Nikola's President and Chief Executive Officer.

20. Defendant Kim J. Brady is Nikola's Chief Financial Officer.

21. Defendants Milton, Russell, and Brady are named as Defendants for violations of all counts asserted herein, and are referred to as the "Individual Defendants." The Individual Defendants, because of their positions with the Company, possessed the power and authority to control the contents of the Company's reports to the SEC, press releases and presentations to securities analysts, money and portfolio managers, and the investing public, *i.e.*, the market. The Individual Defendants were provided with copies of the Company's reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material, non-public information available to them, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and

1 that the positive representations that were being made were then materially false and/or  
 2 misleading. The Individual Defendants are therefore liable for the misstatements and  
 3 omissions plead herein.  
 4

### 5 **SUBSTANTIVE ALLEGATIONS**

6 22. Founded in 2015, Nikola purports to be a “vertically integrated zero  
 7 emissions transportation systems provider that designs and manufactures state of the art  
 8 battery electric and hydrogen electric vehicles, electric vehicle drivetrains, energy storage  
 9 systems, and hydrogen fueling stations.” Nikola has stated that its “core product offering  
 10 includes battery electric and hydrogen fuel cell electric trucks and hydrogen fuel.”  
 11

12 23. Nikola operates in three business units: Truck, Energy, and Powersports.  
 13 Nikola has stated that: “[t]he Truck business unit is developing and commercializing BEV  
 14 and FCEV Class 8 trucks that provide environmentally friendly, cost effective solutions to  
 15 the short haul and long haul trucking sector. The Energy business unit is developing and  
 16 constructing a network of hydrogen fueling stations to meet hydrogen fuel demand for our  
 17 FCEV customers. The Powersports business unit is developing electric vehicle solutions  
 18 for military and outdoor recreational applications.”  
 19  
 20

### 21 **DEFENDANTS’ FALSE AND MISLEADING STATEMENTS AND/OR** 22 **OMISSIONS OF MATERIAL FACTS**

23 24. On June 4, 2020, the beginning of the Class Period, Nikola merged with  
 24 VectoIQ Acquisition Corp., an already existing, publicly-listed acquisition (or “blank  
 25 check”) company. Under the terms of the agreement, VCTIQ Merger Sub Corp., a wholly-  
 26 owned subsidiary of VectoIQ, would merge into and with Nikola, with Nikola surviving  
 27 the merger and becoming a wholly-owned direct subsidiary of VectoIQ. At the closing of  
 28

1 the business combination, each outstanding share of Nikola common stock, was canceled  
2 and automatically converted into the right to receive 1.901 shares of VectoIQ.

3       25. On June 2, 2020, VectoIQ's stockholders approved the business  
4 combination, which approval was announced on June 3, 2020. Shares of NKLA stock  
5 began being publicly traded on the NASDAQ stock exchange on June 4, 2020.

6  
7       26. On June 3, 2020, after the markets closed, Nikola issued a press release  
8 announcing the closing of the business combination with VectoIQ. In this release, Nikola  
9 stated that the raised capital, of over \$700 million, would be used to "accelerate Nikola's  
10 production of battery-electric (BEV) and hydrogen fuel-cell electric vehicles (FCEV)," and  
11 that "Nikola's pre-orders represent more than \$10 billion in potential revenue." Nikola  
12 further stated that its "hydrogen network [was] anticipated to cover North America; set to  
13 become the largest hydrogen network in the world."

14  
15  
16       27. On June 6, 2020, several skeptics began questioning what Nikola had ever  
17 actually developed. In a series of tweets, Defendant Milton stated: "[a]ll the technology,  
18 software, controls, E axle, inverters etc we do internally. We joint venture with those that  
19 know the supply chain and manufacturing like Iveco. We outsource autonomy. We  
20 outsource hardware production."<sup>1</sup>

21  
22       28. On June 15, 2020, Nikola filed a Form S-1 Registration Statement with the  
23 SEC for the sale of up to 53,390,000 shares of common stock and up to 23,890,000 shares  
24 of common stock issuable upon the exercise of warrants.  
25  
26  
27

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28 <sup>1</sup> <https://twitter.com/laurisyrjaniemi/status/1269176058768752640> (last visited on  
September 14, 2020).

1           29. On July 1, 2020, again facing questions over what Nikola was actually  
2 developing, Defendant Milton tweeted: “[w]e don’t make the cells. We make the entire  
3 pack like the top guys do. We do have an OEM making our truck but all internals are  
4 Nikola’s IP; batteries, inverters, software, ota, infotainment, controls, etc. We own it all in  
5 house. Just not the plant to build the truck.”<sup>2</sup>

6  
7           30. On July 5, 2020, Defendant Milton reiterated: “All major components are  
8 done in house; batteries, inverters, software, controls, infotainment, over the air, etc, you  
9 don’t care about the truth you’re just out to be a keyboard warrior.”<sup>3</sup>

10  
11           31. Relatedly, on July 14, 2020, Nikola posted a video walking viewers through  
12 the powertrain for the Nikola Two model.<sup>4</sup> Defendant Milton described Nikola’s in-house  
13 inverters and how other OEMs are asking to use Nikola’s proprietary inverter technology,  
14 and said: “[w]e do all the e-axle design in house. All the gears, the gear reductions. . . .  
15 And, also, the inverters as well. All inverters on the Nikola truck are probably some of the  
16 most advanced software systems that I know of anywhere in the automotive world. Why  
17 do I know that? It’s because other OEMs are asking us to use it.”

18  
19  
20           32. On July 15, 2020, Defendant Milton tweeted out a video, with a caption he  
21 wrote: “0-60 in under 5 seconds in the #nikolatwo hydrogen semi truck. Damn that was  
22 fast! . Edited /professional content coming soon for everyone but here’s my raw cell phone  
23

24  
25           <sup>2</sup> <https://twitter.com/moonwalk19691/status/1278359414811099136> (last visited on  
26 September 14, 2020).

27           <sup>3</sup> <https://twitter.com/IsaacTaub56/status/1279654385686102016> (last visited on  
28 September 14, 2020).

<sup>4</sup> <https://www.youtube.com/watch?v=7C2LDmkEmp0> (last visited on September 14,  
2020).



1 behind the scene.”<sup>5</sup> Defendant Milton added that the Company would be “posting Go Pro  
2 video that’s being edited, etc. Be up soon showing 0-60 camera time, outside view and also  
3 side by side against a diesel truck. This is just a teaser shot,” and “[c]oming next month in  
4 the edited professional videos with side by side comparisons to diesel and 0-60 times.” The  
5 Company has not released any such video.  
6

7 33. On July 17, 2020, Nikola filed a Form 424B3 prospectus with the SEC to  
8 offer up to 53,390,000 shares of common stock and up to 23,890,000 shares of common  
9 stock issuable upon the exercise of warrants. The SEC declared this prospectus effective  
10 on the same day. In this prospectus, Nikola stated:  
11

12 We are a vertically integrated zero-emissions transportation solution  
13 provider that designs and manufactures state-of-the-art battery-electric and  
14 hydrogen fuel cell electric vehicles, electric vehicle drivetrains, energy  
15 storage systems, and hydrogen fueling stations. Our core product offering is  
16 centered around our battery-electric vehicle (“BEV”) and hydrogen fuel cell  
17 electric vehicle (“FCEV”) Class 8 semi-trucks. The key differentiator of our  
18 business model is our planned network of hydrogen fueling stations. We are  
19 offering a revolutionary bundled lease model, which provides customers with  
20 the FCEV truck, hydrogen fuel, and maintenance for a fixed price per mile,  
21 locks in fuel demand and significantly de-risks infrastructure development.

22 34. In the same July 17, 2020 Prospectus, Nikola further stated:

23 The Truck business unit is developing and commercializing battery-electric  
24 vehicle (“BEV”) and hydrogen fuel cell electric vehicle (“FCEV”) class 8  
25 trucks that provide environmentally friendly, cost-effective solutions to the  
26 short haul and long-haul trucking sector. The Energy business unit is  
27 developing and constructing a network of hydrogen fueling stations to meet  
28 hydrogen fuel demand for FCEV customers. The Powersports business unit  
is developing electric vehicle solutions for military and outdoor recreational  
applications.

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<sup>5</sup> <https://twitter.com/nikolatrevor/status/1283425947199221761?s=20> (last visited September 14, 2020).



1 Nikola's bundled lease includes maintenance for its vehicles. Service and  
2 maintenance of an electric vehicle is expected to be lower than the traditional  
3 ICE vehicle which has been proven in the electric passenger vehicle market.  
4 Fewer parts and considerably reduced complexity of the key drivetrain  
5 components should result in fewer breakdowns and less preventive  
6 maintenance, leading to better uptime and lower maintenance cost to  
7 operators. Reduced downtime could also lead to increased revenue for fleets  
8 as asset productivity increases.

9 \* \* \*

10 A key requirement for our fleet customers is knowing there is an available  
11 service infrastructure for the maintenance and repair of our vehicles. Nikola  
12 is building a strong network of providers, a robust preventive maintenance  
13 program, as well as several levels of service depending on the complexity  
14 and type of maintenance required.

15 Nikola's plans with respect to the service and maintenance of its vehicles  
16 is expected to include the following:

- 17 • Electric vehicles have a system of sensors and controls that allow for  
18 precise monitoring of the vehicle and component operation  
19 performance. We will use this data to provide smart predictive  
20 maintenance, which will decrease downtime and costs by identifying  
21 a potential problem before it results in a breakdown.
- 22 • Nikola will have the ability to provide over the air updates and  
23 software fixes when the vehicle is stopped. This can significantly  
24 reduce the time for repair and improve uptime.
- 25 • In cases where a customer has their own maintenance infrastructure,  
26 we will identify and provide procedures for items that can be  
27 maintained at their shops. This could include procedures such as tire  
28 changes, wiper and windshield repair and brake servicing.
- In cases where the customer does not have a maintenance  
infrastructure or for more complex items, Nikola is leveraging its  
exclusive partner Thompson Caterpillar for maintenance and warranty  
work. Customers will have access to an already established network  
of 800 service stations as well as the ability to deploy a mobile service  
model. We will also support our partners with technologies like  
augmented reality and web-enabled video to support technicians for  
very complex tasks or newly identified issues.

- If a vehicle requires maintenance of a complex system such as the fuel cell or battery, some of those items can be swapped or replaced with relative ease. This allows us to repair the downed component in the background and minimize vehicle downtime. We are also planning to develop a network of trained technicians that can travel to a customer or service partner site as necessary.

36. Also on July 17, 2020, in an interview on the *TeslaCharts* podcast, Defendant Milton asserted that Nikola had been able to “chop the cost of hydrogen from \$16/kg down to – we’re down below \$3/kg on our hydrogen now.”<sup>6</sup> In the same podcast, Defendant Milton stated:

We have the most advanced battery electric truck in the world. We have a truck coming into production right now with 720 kwh the largest battery we know of on a truck anywhere in the world coming into production. We have five of them coming off the assembly line right now in Ulm, Germany. They’ll enter production end of next year-ish, somewhere around there.

37. On July 22, 2020, Nikola issued a notice of redemption for its public warrants, through which the Company expected to raise an additional \$264.5 million in cash (23 million outstanding public warrants at an exercise price of \$11.50).

38. On August 1, 2020, Defendant Milton appeared on *Barron’s Roundtable* on the Fox Business Channel. When asked about hydrogen, Defendant Milton stated:

We saw an opportunity to bring the cost of hydrogen down going zero-emission and putting it on parity with diesel, and it’s the first time in history that’s been able to be done, so it went from about \$16/kg and we are down now below \$4/kg. And there’s a lot of reasons for that, but the main one is standardization of a hydrogen station worldwide has allowed us to drive that cost down dramatically. We tell people we’re an energy technology company that happens to build really cool vehicles.<sup>7</sup>

<sup>6</sup> <https://feeds.buzzsprout.com/758369/4605602-episode-35-trevor-milton?play=true> (last visited on September 14, 2020).

<sup>7</sup> <https://www.youtube.com/watch?reload=9&v=nbrgQj4xlbk> (last visited on September 14, 2020).

1           39. On August 4, 2020, Nikola reported its financial results for the second  
2 quarter of 2020. The Company reported a net loss for the quarter of \$86,643,000, and net  
3 loss per share of \$0.33. In the accompanying press release filed on Form 8-K with the SEC,  
4 Defendant Russell stated: “[i]n the second quarter of 2020, Nikola met predetermined  
5 milestones on our journey toward becoming the zero-emissions transportation leader in the  
6 global heavy truck market.”  
7

8           40. In the Form 10-Q filed with the SEC, Defendants stated that:  
9

10           We are a vertically integrated zero emissions transportation systems provider  
11 that designs and manufactures state of the art battery electric and hydrogen  
12 electric vehicles, electric vehicle drivetrains, energy storage systems, and  
13 hydrogen fueling stations. To date, we have been primarily focused on  
14 delivering zero emission Class 8 trucks to the commercial transportation  
sector in the U.S. and in Europe. Our core product offering includes battery  
electric and hydrogen fuel cell electric trucks and hydrogen fuel.

15           We operate in three business units: Truck, Energy and Powersports. The  
16 Truck business unit is developing and commercializing BEV and FCEV  
17 Class 8 trucks that provide environmentally friendly, cost effective solutions  
18 to the short haul and long haul trucking sector. The Energy business unit is  
19 developing and constructing a network of hydrogen fueling stations to meet  
hydrogen fuel demand for our FCEV customers. The Powersports business  
unit is developing electric vehicle solutions for military and outdoor  
recreational applications.

20           In 2019, we partnered with Iveco, a subsidiary of CNHI, a leading European  
21 industrial vehicle manufacturing company. Together, Nikola and Iveco are  
22 jointly developing cab over BEV and FCEV trucks for sale in the European  
23 market which will be manufactured through a 50/50 owned joint venture in  
24 Europe. In April 2020, the Company and Iveco entered into a series of  
25 agreements which established the joint venture, Nikola Iveco Europe B.V.  
26 Our joint venture with Iveco provides us with the manufacturing  
27 infrastructure to build BEV trucks for the North American market prior to  
the completion of our planned greenfield manufacturing facility in Coolidge,  
Arizona. The operations of the joint venture are expected to commence in the  
third quarter of 2020.

28           41. Also in this August 4, 2020 Form 10-Q filing, Nikola stated:

## **Evaluation of Disclosure Controls and Procedures**

We maintain a system of disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934 (the “Exchange Act”) designed to ensure that the information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the Securities and Exchange Commission, and is accumulated and communicated to our management, including our Chief Executive Officer (our principal executive officer) and Chief Financial Officer (our principal financial officer), as appropriate, to allow timely decisions regarding required disclosure.

Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures under the Exchange Act as of June 30, 2020, the end of the period covered by this Quarterly Report on Form 10-Q. Based on such evaluation, our Chief Executive Officer and our Chief Financial Officer have concluded that, as of such date, our disclosure controls and procedures were effective.

## **Changes in Internal Control over Financial Reporting**

There were no changes in our internal control over financial reporting, as identified in connection with the evaluation required by Rule 13a-15(d) and Rule 15d-15(d) of the Exchange Act, that occurred during the three months ended June 30, 2020 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

42. Defendants Russell and Brady signed certifications accompanying Nikola’s Second Quarter 2020 Form 10-Q, pursuant to § 302 of the Sarbanes-Oxley Act of 2002, in which they certified that “[b]ased on [their] knowledge,” the Second Quarter 2020 Form 10-Q “does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report.”

43. In their certifications, Defendants Russell and Brady further certified that “[b]ased on [their] knowledge, the financial statements, and other financial information

1 included in this report, fairly present in all material respects the financial condition, results  
2 of operations and cash flows of the registrant as of, and for, the periods presented in this  
3 report.”  
4

5 44. Also on August 4, 2020, Defendants Russell and Brady participated in the  
6 Company’s earnings call with analysts. During this call, Defendant Russell stated that  
7 Nikola’s “fuel-cell electric truck reservation book exceeded 14,000 units or approximately  
8 \$10 billion in potential revenue some time ago. . . . Rolling out our hydrogen station  
9 network along corporate customers’ dedicated routes, or milk runs, allows us to guarantee  
10 a high degree of hydrogen station utilization and avoid speculative investments in fueling  
11 infrastructure.”  
12

13 45. On this call, a Deutsche Bank analyst asked: “I think that if there’s one area  
14 maybe of questions or a little bit of skepticism is around some of the assumptions around  
15 your cost of electricity in the future when supplying hydrogen. Can you maybe give us  
16 some elements around – have you had discussions with electricity companies yet? Any sort  
17 of strong indication that this kind of input cost is actually realistic? Or that you would have  
18 partners who are willing to work with you on this?”  
19  
20

21 46. Defendant Russell responded that: “we can make hydrogen for about a  
22 decimal move [sic] or better on the cost of electricity. So, if we can get electricity to \$0.035,  
23 then we should be able to make hydrogen at 350 a kilo or better, given our current  
24 technology and the current design of our stations. So, the key for us to have our target  
25 hydrogen cost is for us to get the electricity at the right cost.”  
26

27 47. An analyst from RBC Capital Markets asked on the August 4, 2020 call:  
28 “Can I squeeze in one more on Europe? IVECO talked about the JV you set up with them.”



1 Is everything you're going to do in Europe through this JV – I think it's for both battery  
 2 and fuel cells. They also talked about this sort of complete turnkey offering for customers.  
 3 Is that similar to your fuel-cell lease solution in the United States?"

4  
 5 48. Defendant Russell responded:

6 [T]he joint venture with IVECO is to produce trucks in Europe. So, we have  
 7 a facility that's being modified for mass production of our trucks in Europe.  
 8 It will start with the Tre battery electric vehicle first and then it'll eventually  
 9 add the fuel-cell version over there. And if we build those two versions of  
 10 our vehicles out of the Ulm, Germany facility that we are just about to finish.  
 11 We actually have the first five prototypes coming off the end of the facility  
 at this point. And they'll go on the test track here in the next couple of  
 months. And we'll go from there. So, that's the plan for Europe.

12 49. The statements in ¶¶ 26-27, 29-36, and 38-48 were materially false and  
 13 misleading and omitted to disclose material information. Specifically, Defendants  
 14 misrepresented and/or failed to disclose to investors that the Company was overstating  
 15 and/or mischaracterizing: (1) the present capabilities and manufacturability of the  
 16 Company's purported fleet of vehicles; (2) the Company's professed manufacture of  
 17 component parts for those vehicles in-house; (3) the Company's capacity and costs to  
 18 produce hydrogen; and (4) Defendants' public statements were materially false and  
 19 misleading at all relevant times.

20  
 21 50. Defendants knew, or in reckless disregard for the truth should have known,  
 22 that at the time the statements in ¶¶ 26-27, 29-36, and 38-48 were made, they were false  
 23 and/or misleading, and/or failed to disclose material information to investors.  
 24

### 25 **THE TRUTH BEGINS TO EMERGE**

26 51. On September 10, 2020, prior to the commencement of trading in Nikola's  
 27 stock, analyst Hindenburg Research published a scathing report entitled "Nikola: How to  
 28



1 Parlay An Ocean of Lies Into a Partnership With the Largest Auto OEM in America.”<sup>88</sup> In  
2 this report, Hindenburg referred to Nikola as “an intricate fraud built on dozens of lies over  
3 the course of its Founder and Executive Chairman Trevor Milton’s career.”  
4

5 52. Hindenburg stated that it “gathered extensive evidence—including recorded  
6 phone calls, text messages, private emails and behind-the-scenes photographs—detailing  
7 dozens of false statements by Nikola Found Trevor Milton. *We have never seen this level*  
8 *of deception at a public company, especially of this size.*” (Emphasis added).  
9

10 53. Hindenburg detailed that “Nikola staged a video called ‘Nikola One in  
11 Motion’ which showed the semi-truck cruising on a road at a high rate of speed. Our  
12 investigation of the site and text messages from a former employee reveal that the video  
13 was an elaborate ruse—Nikola had the truck towed to the top of a hill on a remote stretch  
14 of road and simply filmed it rolling down the hill.”  
15

16 54. Hindenburg stated that in October 2019, Nikola “announced that it would  
17 revolutionize the battery industry. This was to be done through a pending acquisition, but  
18 the deal fell through when Nikola realized (a) the technology was vaporware and (b) the  
19 President of the battery company had been indicted months earlier over allegations that he  
20 conned NASA by using his expense account to procure numerous prostitutes.”  
21

22 55. Hindenburg continued: “Nikola has never walked back the claims relating to  
23 its battery technology. Instead, Trevor continued to publicly hype the technology even after  
24 becoming aware of the above issues. The revolutionary battery technology never existed –  
25 now, Nikola plans to use GM’s battery technology instead.”  
26  
27

28  
<sup>88</sup> <https://hindenburesearch.com/nikola/> (last visited September 14, 2020).

1           56. The Hindenburg report further provided that “[i]nexpensive hydrogen is  
2 fundamental to the success of Nikola’s business model. Trevor has claimed in a  
3 presentation to hundreds of people and in multiple interviews to have succeeded at cutting  
4 the cost of hydrogen by ~81% compared to peers and to *already be producing hydrogen*.  
5 Nikola has not produced hydrogen at this price or at *any* price as he later admitted when  
6 pressed by media.” (Emphasis in original).

7  
8           57. Hindenburg continued that “[c]laims of owning energy producing assets is  
9 not new for Nikola. Trevor claimed that Nikola’s headquarters has 3.5 megawatts of solar  
10 panels on its roof producing energy. Aerial photos of the roof and later media reports show  
11 that the supposed panels don’t exist.” Moreover, “[a]t one point Nikola claimed to own its  
12 own natural gas wells. There is no evidence in company filings to support this. The claims  
13 were eventually quietly removed from Nikola’s website.”  
14  
15

16           58. In addition, Hindenburg “debunk[ed] Trevor’s claims regarding [Nikola’s]  
17 semi-truck that ‘this thing fully functions and works . . . this is a real truck.’”  
18

19           59. Moreover, although Defendants had stated that Nikola had five Nikola Tre  
20 models “coming off the assembly line right now in Ulm, Germany,” on September 9, 2020,  
21 Hindenburg spoke with Thorsten Schoenfeld, spokesman for Bosch’s electro-mobility unit  
22 headquarters in Germany, who Hindenburg reported as having said “[n]o they are not ready  
23 yet. I don’t know exactly the year but we’re working on it.” Mr. Schoenfeld added, when  
24 asked what exactly Nikola had planned to show at the Hannover trade fair (which was  
25 canceled due to the COVID-19 pandemic): “[w]e would have shown different innovations  
26 and a kind of truck but not a real truck but a showcase.”  
27  
28

1           60. Hindenburg also wrote that it “learned through emails and interviews with  
2 former partners that Trevor had an artist stencil “H2” and “Zero Emission Hydrogen  
3 Electric” on the side of the Nikola One despite it having no hydrogen capabilities  
4 whatsoever; it was built with natural gas components.”

5  
6           61. Hindenburg flagged that “Nikola’s key partners and backers have been  
7 cashing out aggressively. Worthington, Bosch and ValueAct have all sold shares.  
8 Worthington sold \$237 million shares over a 2-day span in July and another \$250 million  
9 in August.” Hindenburg also noted that Defendant Milton “cashed out \$70 million around  
10 the IPO and amended his share lock-up from 1-year to 180 days. If he is fired, his equity  
11 awards immediately vest and he is entitled to collect \$20 million over two years.”

12  
13           62. The Hindenburg report also contradicted Nikola’s statements about “major  
14 components,” including inverters, being “done in house.” Specifically, Hindenburg noted  
15 that in the July 14, 2020 video the Company released (referenced above), there was a green  
16 piece of masking tape on the inverter, and that the “inverter is not proprietary to Nikola.  
17 Cascadia Motion, a small company in Portland, offers such inverters off the shelf. The tape  
18 is covering the label which would normally show the product description and other  
19 specifications that make clear who built the component.”

20  
21  
22           63. The Hindenburg report also questioned Nikola’s report of 14,000 cancelable  
23 reservations for its trucks, flagging multiple issues with the Company’s purported large  
24 agreements. For example, Hindenburg asserted that the Company’s agreement with  
25 Anheuser Busch for 800 trucks allows Budweiser to cancel anytime with 1-year notice, if  
26 a 90-day road test does not perform up to expectations, or if the products are not delivered  
27 at all. Moreover, Hindenburg wrote that Nikola’s reported deal with Arizona-based trash  
28

1 company Republic Services for 2,500 refuse trucks appear to be for battery electric  
2 vehicles, and not for hydrogen-powered models.

3 64. On this news, Nikola's stock price plummeted, closing at \$32.13 on  
4 September 11, 2020, down approximately 24% over two days from its September 9, 2020  
5 closing price of \$42.37 per share.

6 65. On September 14, 2020, after the markets closed, *Bloomberg* reported that  
7 the SEC was investigating Nikola to assess the merits of the Hindenburg Report.  
8

9 66. The *Wall Street Journal* reported on September 15, 2020, during intraday  
10 trading, that the United States Department of Justice was investigating whether Nikola  
11 misled their investors.  
12

13 67. Also, on September 15, 2020 Nikola issued a detailed press release  
14 attempting to refute the Hindenburg Report's allegations. Specifically, Nikola attempted  
15 to defend the video it released of one of its trucks rolling down a hill, and criticized by  
16 Hindenburg, claiming Nikola "never said the truck was driving under its own propulsion"  
17 even though Nikola titled the video "In Motion."  
18

19 68. Nikola's stock price closed at \$32.83 on September 15, 2020, down from its  
20 September 14, 2020 closing price of \$35.79, an 8% decline.  
21

22 69. As a result of Defendants' wrongful acts and omissions, and the precipitous  
23 decline in the market value of Nikola's common stock, Plaintiff and other members of the  
24 Class have suffered significant losses and damages.  
25

#### 26 **CLASS ACTION ALLEGATIONS**

27 70. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal  
28 Rules of Civil Procedure on behalf of a class of all persons and entities who purchased or

1 otherwise acquired Nikola common stock between June 4, 2020 and September 9, 2020,  
2 inclusive, seeking to recover damages caused by Defendants' violations of the federal  
3 securities laws and to pursue remedies under §§ 10(b) and 20(a) of the Securities Exchange  
4 Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder by the SEC, 17  
5 C.F.R. § 240.10b-5. Excluded from the Class are Defendants, directors and officers of the  
6 Company, as well as their families and affiliates.  
7

8         71. The members of the Class are so numerous that joinder of all members is  
9 impracticable. The disposition of their claims in a class action will provide substantial  
10 benefits to the parties and the Court.  
11

12         72. There is a well-defined community of interest in the questions of law and fact  
13 involved in this case. Questions of law and fact common to the members of the Class which  
14 predominate over questions which may affect individual Class members include:  
15

- 16             a. Whether the Exchange Act was violated by Defendants;
- 17             b. Whether Defendants omitted and/or misrepresented material facts;
- 18             c. Whether Defendants' statements omitted material facts necessary to make  
19                 the statements made, in light of the circumstances under which they were  
20                 made, not misleading;
- 21             d. Whether Defendants knew or recklessly disregarded that their statements  
22                 were false and misleading;
- 23             e. Whether the price of the Company's stock was artificially inflated; and  
24             f. The extent of damage sustained by Class members and the appropriate  
25                 measure of damages.  
26  
27  
28

1           73. Plaintiff's claims are typical of those of the Class because Plaintiff and the  
2 Class sustained damages from Defendants' wrongful conduct alleged herein.

3           74. Plaintiff will adequately protect the interests of the Class and have retained  
4 counsel who are experienced in class action securities litigation. Plaintiff has no interests  
5 that conflict with those of the Class.  
6

7           75. A class action is superior to other available methods for the fair and efficient  
8 adjudication of this controversy.  
9

### 10                                   **FRAUD ON THE MARKET**

11           76. Plaintiff will rely upon the presumption of reliance established by the fraud-  
12 on- the-market doctrine that, among other things:

- 13                   a. Defendants made public misrepresentations or failed to disclose material  
14 facts during the Class Period;  
15                   b. The omissions and misrepresentations were material;  
16                   c. The Company's common stock traded in efficient markets;  
17                   d. The misrepresentations alleged herein would tend to induce a reasonable  
18 investor to misjudge the value of the Company's common stock; and  
19                   e. Plaintiff and other members of the class purchased the Company's common  
20 stock between the time Defendants misrepresented or failed to disclose  
21 material facts.  
22  
23

24           77. At all relevant times, the markets for the Company's stock were efficient for  
25 the following reasons, among others: (i) the Company filed periodic public reports with the  
26 SEC; and (ii) the Company regularly communicated with public investors via established  
27 market communication mechanisms, including through regular disseminations of press  
28

1 releases on the major news wire services and through other wide-ranging public disclosures  
2 such as communications with the financial press, securities analysts, and other similar  
3 reporting services. Plaintiff and the Class relied on the price of the Company's common  
4 stock, which reflected all information in the market, including the misstatements by  
5 Defendants.  
6

### 7 **NO SAFE HARBOR**

8 78. The statutory safe harbor provided for forward-looking statements under  
9 certain conditions does not apply to any of the allegedly false statements pleaded in this  
10 Complaint. The specific statements pleaded herein were not identified as forward-looking  
11 statements when made.  
12

13 79. To the extent there were any forward-looking statements, there were no  
14 meaningful cautionary statements identifying important factors that could cause actual  
15 results to differ materially from those in the purportedly forward-looking statements.  
16

### 17 **SCIENTER ALLEGATIONS**

18 80. As alleged herein, Defendants acted with scienter since Defendants knew that  
19 the public documents and statements issued or disseminated in the name of the Company  
20 were materially false and/or misleading; knew that such statements or documents would  
21 be issued or disseminated to the investing public; and knowingly and substantially  
22 participated or acquiesced in the issuance or dissemination of such statements or  
23 documents as primary violations of the federal securities laws. As set forth elsewhere  
24 herein in detail, the Individual Defendants, by virtue of their receipt of information  
25 reflecting the true facts regarding Nikola, their control over, and/or receipt and/or  
26 modification of Nikola's allegedly materially misleading misstatements and/or their  
27  
28

1 associations with the Company which made them privy to confidential proprietary  
2 information concerning Nikola, participated in the fraudulent scheme alleged herein.

3  
4 **LOSS CAUSATION**

5 81. On September 10, 2020, analyst Hindenburg Research issued its highly  
6 critical research report, as alleged herein. On this news, Nikola common stock plummeted  
7 closing at \$32.13 on September 11, 2020, down approximately 24% over two days from  
8 its September 9, 2020 closing price of \$42.37 per share and an 8% drop on September 15,  
9 2020.

10  
11 **CAUSES OF ACTION**

12 **COUNT ONE**

13 **Violations of § 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder**

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

16 83. During the Class Period, Defendants disseminated or approved the false  
17 statements specified above, which they knew or deliberately disregarded were misleading  
18 in that they contained misrepresentations and failed to disclose the material facts necessary  
19 to make the statements made, in light of the circumstances under which they were made,  
20 not misleading.

21  
22 84. Defendants violated § 10(b) of the Exchange Act and Rule 10b-5 in that they:  
23 (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of  
24 material fact and/or omitted to state material facts necessary to make the statements not  
25 misleading; and (iii) engaged in acts, practices, and a course of business which operated as  
26  
27  
28



1 a fraud and deceit upon those who purchased or otherwise acquired the Company's  
2 securities during the class period.

3 85. Plaintiff and the Class have suffered damages in that, in reliance on the  
4 integrity of the market, they paid artificially inflated prices for the Company's common  
5 stock. Plaintiff and the Class would not have purchased the Company's common stock at  
6 the price paid, or at all, if they had been aware that the market prices had been artificially  
7 and falsely inflated by Defendants' misleading statements.  
8

9  
10 **COUNT TWO**  
11 **Violations of § 20(a) of the Exchange Act**  
12 **(Against the Individual Defendants)**

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

15 87. The Individual Defendants acted as controlling persons of the Company  
16 within the meaning of § 20(a) of the Exchange Act as alleged herein. By virtue of their  
17 high-level positions at the Company, the Individual Defendants had the power and  
18 authority to cause or prevent the Company from engaging in the wrongful conduct  
19 complained of herein. The Individual Defendants were provided with or had unlimited  
20 access to the documents described above which contained statements alleged by Plaintiff  
21 to be false or misleading both prior to and immediately after their publication, and had the  
22 ability to prevent the issuance of those materials or to cause them to be corrected so as not  
23 to be misleading.  
24

25  
26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff prays for relief and judgment as follows:  
28

- 1 a) determining that this action is a proper class action pursuant to Rule 23(a)  
2 and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the Class  
3 as defined herein, and a certification of Plaintiff as class representative  
4 pursuant to Rule 23 of the Federal Rules of Civil Procedure and appointment  
5 of Plaintiff's counsel as Lead Counsel;  
6  
7 b) awarding compensatory and punitive damages in favor of Plaintiff and the  
8 other class members against all Defendants, jointly and severally, for all  
9 damages sustained as a result of Defendants' wrongdoing, in an amount to  
10 be proven at trial, including pre-judgment and post-judgment interest  
11 thereon.  
12  
13 c) awarding Plaintiff and other members of the Class their costs and expenses  
14 in this litigation, including reasonable attorneys' fees and experts' fees and  
15 other costs and disbursements; and  
16  
17 d) awarding Plaintiff and the other Class members such other relief as this Court  
18 may deem just and proper.  
19

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff hereby demands a trial by jury in this action of all issues so triable.

22 Dated: September 17, 2020

Respectfully submitted,

23 By: /s/ Gary Gotto

24 Gary Gotto (No. 007401)

**KELLER ROHRBACK L.L.P.**

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*Counsel for Plaintiff*

**PLAINTIFF'S CERTIFICATION**

I, John L. Wojichowski, hereby certify that the following is true and correct to the best of my knowledge, information, and belief:

1. I have reviewed the facts and allegations against **Nikola Corporation** (the "Company"), and have authorized the filing of a complaint on my behalf.
2. I did not purchase the securities that are the subject of this lawsuit at the direction of counsel or to participate in any private action arising under the federal securities laws.
3. My transactions in the Company's common stock during the Class Period are as follows:

Date	Transaction Type (Buy/Sell)	Quantity of Shares	Price Per Share (USD)
September 8, 2020	Buy	843	\$49.26
September 9, 2020	Buy	256	\$45.99
September 9, 2020	Buy	273	\$43.85
September 10, 2020	Buy	245	\$38.00
September 11, 2020	Sell	1,617	\$33.71

4. I am willing to serve as a representative party on behalf of the class in this action, including providing testimony at deposition and trial, if necessary.
5. During the three-year period preceding the date of my signing this Certification, I have never sought to be appointed, nor ever been appointed, as lead plaintiff or class representative in any class action arising under the securities laws of the United States.
6. I will not accept any payment for serving as a representative party on behalf of the Class beyond each of our *pro rata* shares of any possible recovery, except for an award, as ordered or approved by the Court, for reasonable costs and expenses (including lost wages) directly relating to my representation of the Class.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: 09 / 16 / 2020



John L. Wojichowski