IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: Nikola Corp., *et al.*,[1] Reorganized Debtors.	Chapter 11 Case No. 25-10258 (TMH) (Jointly Administered)
Thomas A. Pitta, solely in his capacity as Trustee of the Nikola Liquidating Trust, Plaintiff, v. 3i, LP, Defendant.	Adv. Pro. No. _____

COMPLAINT

Thomas A. Pitta, solely in his capacity as Trustee ("Plaintiff") of the Nikola Liquidating Trust (the "Liquidating Trust"), the successor-in-interest to the claims of Nikola Corporation and its affiliated debtors ("Nikola" or the "Company"), files this complaint (the "Complaint") against 3i, LP ("3i" or "Defendant"). In support of this Complaint, Plaintiff alleges the following:

NATURE OF ACTION

1. Plaintiff brings this action to avoid and recover from Defendant more than $39 million paid to Defendant less than 3 months prior to the Company's bankruptcy filing (defined below as the "Avoidable Transfer"). The Avoidable Transfer allowed Defendant to

[1] The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are: Nikola Corporation (registered to do business in California as Nikola Truck Manufacturing Corporation) (1153); Nikola Properties, LLC (3648); Nikola Subsidiary Corporation (1876); Nikola Motor Company LLC (0139); Nikola Energy Company LLC (0706); Nikola Powersports LLC (6771); Free Form Factory Inc. (2510); Nikola H2 2081 W Placentia Lane LLC (N/A); 4141 E Broadway Road LLC (N/A); and Nikola Desert Logistics LLC (N/A). The Debtors' mailing address is P.O. Box 27028, Tempe, AZ 85285.

receive payment in full on an unsecured convertible note that had been issued to it by the Company only months before, while similarly situated unsecured creditors stand to recover as little as 20% on account of their claims.[2]

2. The Avoidable Transfer is a textbook preferential transfer that may be avoided pursuant to sections 547 and 550 of chapter 5 of title 11 of the United States Code (the "Bankruptcy Code").

JURISDICTION AND VENUE

3. This adversary proceeding (the "Adversary Proceeding") is brought in accordance with Rule 7001 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

4. The Adversary Proceeding relates to the chapter 11 cases jointly administered under the caption *In re Nikola Corp., et al.*, Case No. 25-10258 (TMH) (the "Chapter 11 Cases") by the United States Bankruptcy Court for the District of Delaware (the "Court").

5. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated as of February 29, 2012.

6. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(F).

7. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409 because the Adversary Proceeding arises under and in connection with, and relates to, the Chapter 11 Cases.

8. Pursuant to Rule 7008-1 of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), Plaintiff consents to the entry of a final order in

[2] *See Second Amended Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Nikola Corporation and its Debtor Affiliates* (the "Plan") [Bankr. Dkt. No. 955], at 41 (projecting recoveries to Class 3 general unsecured creditors). References to "Bankr. Dkt. No." herein are to the Court's docket in Case No. 25-10258 (TMH).

connection with this Complaint if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

9. The statutory and legal predicates for the relief sought herein are Bankruptcy Code sections 547 and 550 and Bankruptcy Rule 7001.

10. This Court has personal jurisdiction over Defendant because, on information and belief, Defendant's principal place of business is in the United States.

PROCEDURAL HISTORY

11. On February 19, 2025, the Company and its affiliated debtors and debtors in possession (the "Debtors") filed for chapter 11 bankruptcy.

12. On February 27, 2025, the Office of the United States Trustee (the "U.S. Trustee") appointed the official committee of unsecured creditors (as subsequently reconstituted, the "Committee") pursuant to section 1102 of the Bankruptcy Code [Docket No. 96].

13. On September 12, 2025, the Bankruptcy Court entered an order confirming the Plan [Bankr. Dkt. No. 1036]. The Plan became effective on December 12, 2025 [Bankr. Dkt. No. 1383].

14. Pursuant to the Plan and Confirmation Order, the Liquidating Trust was created and established on the Effective Date pursuant to that certain Liquidating Trust Agreement, dated December 12, 2025, to administer certain assets on behalf of the Debtors' estates, including the prosecution, settlement, and resolution of certain claims and causes of action (the "Preserved Estate Claims"). The Preserved Estate Claims consist of "all Claims or Causes of Action of Debtors and the Estates, including all Litigation Assets . . . that in each case are not specifically waived, relinquished, released, compromised, or settled in the Plan or any Final Order" of the Court, including the cause of action asserted in this Complaint. Plan Arts. I.A, VII.B.4.

15. On the Effective Date, "all Liquidating Trust Assets," including the Preserved Estate Claims, were "immediately vest[ed] in the Liquidating Trust free and clear of all [c]laims, [l]iens, encumbrances, charges, and other interests," and the Debtors were "deemed to have irrevocably transferred, granted, assigned, conveyed, and delivered to the Liquidating Trust" all of the "Liquidating Trust Assets," including the Preserved Estate Claims. Plan Art. VII.B.3. The Liquidating Trust has "standing and the sole authority to investigate, prosecute, settle, or abandon the Preserved Estate Claims" and, as of the Effective Date, is the "successor-in-interest to the Debtors and the Debtors' rights, title, and interest in any Preserved Estate Claim . . . ." Confirmation Order ¶ 76.

THE PARTIES

16. Plaintiff, Thomas A. Pitta, is the Liquidating Trustee for the Nikola Liquidating Trust and sues solely in his capacity as such. Plaintiff was appointed as Liquidating Trustee pursuant to the Plan, the Confirmation Order, and the Liquidating Trust Agreement.

17. On information and belief, Defendant is a Delaware limited partnership. On further information and belief, at all relevant times, Defendant's principal place of business is and was located at 2 Wooster Street, Fl. 2, New York, NY 10013. On further information and belief, Defendant was the holder of certain convertible debt issued by the Company until such debt was repaid by the Company on or about November 27, 2024.

FACTUAL ALLEGATIONS

A. Nikola's Corporate History

18. Prior to its bankruptcy filing, Nikola was an early-stage growth company focused on the design and manufacture of electric trucks, batteries, and related energy infrastructure solutions.

19. In January 2018, the Company (then known as VectoIQ Acquisition Corp) was incorporated in Delaware as a special purpose acquisition company. The Company completed an initial public offering in May 2018, after which shares of its common stock traded on the Nasdaq Capital Market ("NASDAQ").

20. On or about June 3, 2020, the Company acquired the "legacy" Nikola Corporation in a business combination transaction and changed its name to Nikola Corporation.

B. The 3i Note and Resulting "Death Spiral"

21. Like many startups, Nikola was constantly in search of fresh liquidity and frequently raised money through the issuance of stock and unsecured convertible notes. Unsecured convertible notes were seen by many investors as less risky than, and therefore more attractive investments than, common stock.

22. On or about August 19, 2024, Nikola issued that certain Series B-1 Senior Convertible Note due 2025 in the aggregate principal amount of $80,000,000 to Defendant (the "3i Note"). The 3i Note bore compound interest at 5% per annum and was not secured by any collateral.

23. The 3i Note was a type of convertible note often colloquially referred to as a "death spiral" convertible note—so called because the 3i Note could be converted into common stock at a fixed price per share rather than for a fixed number of shares.

24. Specifically, the 3i Note could be converted by Defendant into shares of the Company's common stock at a predetermined price that was guaranteed to be no higher than 95% of the weighted average trading price for the Company's common stock (the "Conversion Price") over the prior three trading days, subject to a "floor" price of $1.62 per share (as may be adjusted based on any stock splits, reverse splits, or similar transactions, the "Floor Price").

25. The number of shares to be issued in connection with a conversion election was determined by dividing the dollar amount of the 3i Note obligations being converted by the Conversion Price. For example, conversion of $500 of the 3i Note at a Conversion Price of $2.00 per share would have resulted in the issuance by the Company of 250 shares of common stock.

26. So long as the Company's stock traded above the Floor Price of $1.62, Defendant could always make a profit by electing to convert a portion of the 3i Note (at the below-market Conversion Price) and then immediately selling those shares at the (higher) prevailing market price. As the market price of the Company's common stock fell, so too did the Conversion Price, meaning that the Company would have to issue increasingly large amounts of common stock to satisfy a conversion request. The dilution caused by the issuance of additional common stock to satisfy a conversion request would in turn put further downward pressure on the Company's share price, leading to a so-called "death spiral."

27. On information and belief, over the course of six weeks between August 20, 2024—***only one day*** after the 3i Note was issued—and October 2, 2024, Defendant converted approximately $50 million of the 3i Note into the Company's common stock. Over that same period, the Company's share price cratered by more than a third, from over $7.00 to less than $5.00 per share.

28. Despite the Company's collapsing share price, the "death spiral" feature of the 3i Note ensured that Defendant could reliably profit on each conversion by selling the newly issued stock at prevailing market prices, which were always higher than the Conversion Price. On information and belief, Defendant did in fact sell the converted shares on the secondary market for a profit.[3]

[3] Although at present 3i has not asserted a claim against the Debtors' estates, in the event that the Avoidable Transfer is avoided and recovered, and 3i asserts an unsecured claim pursuant to Bankruptcy Code section 502(h), Plaintiff

29. On information and belief, NASDAQ regulations limited the number of the Company's common shares that could be issued to Defendant on account of conversion of the 3i Note and outstanding at any given time (such limitation, as defined in the 3i Note, the "Exchange Cap"). Under the terms of the 3i Note, if the Company could not satisfy a conversion request due to the Exchange Cap (*i.e.*, the conversion request would result in the issuance of common stock in excess of the Exchange Cap), then Defendant would be entitled to receive cash in an amount calculated based on the market value of the Company's common stock.

30. On information and belief, between September 30 and October 2, 2024, Defendant attempted to convert approximately $35 million of the 3i Note into common stock. Due to the Exchange Cap, the Company could not issue sufficient common stock to satisfy the conversion requests.

31. On information and belief, at the time Defendant made its conversion requests on September 30 and October 2, 2024, Defendant was aware that the Company could not issue sufficient common stock to Defendant to satisfy the requests due to the Exchange Cap.

32. On information and belief, the Company lacked sufficient liquidity to make the cash payments arising under the terms of the 3i Note on account of the conversion requests without jeopardizing its ability to continue operating its business. On further information and belief, Defendant was aware that the Company lacked sufficient liquidity to make such payments.

33. On or about October 11, 2024, the Company and Defendant entered into a limited waiver agreement whereby Defendant agreed to waive any default arising from the failed conversion attempts and the Company's failure to make related cash payments pursuant to the

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believes that 3i's actions with respect to the "death spiral" note were a proximate cause of the precipitous decrease in the Company's share price and, at a minimum, a contributing factor to the Debtors' bankruptcy filing. Accordingly, Plaintiff reserves the right to seek equitable subordination of any claims that may be asserted by 3i, including any claim arising under Bankruptcy Code section 502(h), at the appropriate time.

terms of the 3i Note, provided that the Company paid $39,315,946.98—which, on information and belief, represented the principal, interest, and certain premiums and fees allegedly due and owing on the 3i Note—to Defendant in cash by no later than December 31, 2024.

34. On information and belief, the Company required additional capital to make the foregoing cash payment to Defendant by year end without jeopardizing its ability to continue operating its business.

C. The Antara Equity Raise

35. In or about August 2024, the Company's board of directors (the "Board") established a "Strategic Advisory Committee" to explore various strategic alternatives to address the Company's capital structure and liquidity needs, including refinancing its indebtedness or engaging in a comprehensive restructuring transaction.

36. As the Company's liquidity situation continued to erode, the Company retained advisors to market the Company's assets, develop a sale and restructuring strategy, and negotiate the terms of a potential refinancing or recapitalization transaction involving the Company and its subsidiaries.

37. In or about November 2024, the Company's advisors proposed to the Board a capital-raising transaction (the "Antara Equity Raise") with Antara Capital LP ("Antara"), a holder of certain unsecured toggle convertible notes. Under the proposed Antara Equity Raise, the Company would issue up to $65 million of common stock through an "at-the-market" stock offering to Antara. On information and belief, Antara did not impose any requirements regarding the Company's use of the proceeds of the Antara Equity Raise, nor did it demand that the Company use such proceeds to pay Defendant on account of the 3i Note.

D. The Company Pays Defendant in Full on Account of the 3i Note

38. On information and belief, the Company concluded that section 13(j) of the 3i Note prohibited the Company from issuing any securities (other than certain "Excluded Securities" or "Permitted Subsequent Securities" described therein) without Defendant's consent for so long as the 3i Note remained outstanding.

39. On information and belief, the Company determined that breach of this covenant would trigger an event of default under Section 4(a)(xiii) of the 3i Note, purportedly giving Defendant the right to require the Company to redeem the 3i Note. On further information and belief, the Company determined that the issuance of additional common stock that did not constitute Excluded Securities or Permitted Subsequent Securities would give Defendant the contractual right to require that 20% of the gross proceeds from such issuance be used to redeem its note.

40. On information and belief, the Company determined that the common stock to be issued to Antara as part of the Antara Equity Raise did not qualify as either Excluded Securities or Permitted Subsequent Securities under the 3i Note.

41. On November 13, 2024, Nikola executed a second limited waiver with Defendant, which temporarily waived certain provisions of the 3i Note. Specifically, Defendant waived the above-listed covenants under the 3i Note in order to permit the Antara Equity Raise, in exchange for the Company's agreement to pay $39,414,980.01 in cash to Defendant on account of all amounts allegedly outstanding on the 3i Note.

42. Because the 3i Note was unsecured, Defendant did not have any lien or property rights that it could have asserted against the Company or its property in the event that the Company breached the covenants contained in the 3i Note. Instead, the consequence of any breach would

have been an event of default, giving rise to an unsecured claim in favor of Defendant for breach of contract.

43. On information and belief, on or about November 27, 2024, the Company paid 3i $39,414,980.01 via wire transfer.

44. On December 3, 2024, Nikola noted in an 8-K filing that it had received $65 million in gross proceeds from the sale of common stock to Antara. On information and belief, the 3i Note was repaid in full prior to the completion of the Antara Equity Raise. On further information and belief, the proceeds of the Antara Equity Raise were not placed into a controlled or segregated account, and Antara did not place any limitations on the use of the proceeds of the Antara Equity Raise.

E. The Company Files for Bankruptcy and Makes Demand on Defendant

45. The limited funds raised by the Company through the Antara Equity Raise were woefully insufficient to fund the Company's business plan and avoid the need for a comprehensive restructuring transaction.

46. As a result, on February 19, 2025, the Debtors commenced the Chapter 11 Cases.

47. On May 5, 2025, the Company sent Defendant's Controller a letter demanding that Defendant return the payment made to Defendant within 90 days of Nikola's bankruptcy filing. The Company informed Defendant that it would otherwise seek avoidance of the entirety of the payment as a preference pursuant to Bankruptcy Code section 547(b).

48. Subsequently, on July 18, 2025, the Committee sent a follow-up letter to Quinn Emanuel Urquhart & Sullivan, LLP, counsel to Defendant, stating the Committee's intent to demand that the Company file a complaint seeking to avoid the payment to Defendant as a

preference and, if the Company refused, that the Committee would seek standing to bring such a claim on behalf of the Debtors' estates.

49. On December 12, 2025, the Effective Date occurred, and, in accordance with the terms of the Plan, the Confirmation Order, and the Liquidating Trust Agreement, the Preserved Estate Claims, including the causes of action set forth herein, vested in the Liquidating Trust.

CAUSE OF ACTION

COUNT 1
Avoidance and Recovery of Preferential Transfer
11 U.S.C. §§ 547(b), 550

50. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 50 hereof.

51. On or about August 19, 2024, the Company issued the 3i Note to Defendant.

52. At all times relevant to the Complaint, Defendant was a creditor of the Company by virtue of its holding the 3i Note.

53. On or about November 27, 2024, the Company paid Defendant $39,414,980.01 to retire the 3i Note (the "Avoidable Transfer").

54. The Company and its affiliated Debtors filed these Chapter 11 Cases on February 19, 2025, less than 90 days after making the Avoidable Transfer.

55. Pursuant to Bankruptcy Code section 547(f), the Company is presumed to have been insolvent as of November 27, 2024, the date on which it made the Avoidable Transfer.

56. On information and belief, the Company was in fact insolvent as of such date because the fair value of its assets was dwarfed by the Company's liabilities. On further information and belief, the Company's own contemporaneous financial forecasts projected

significant negative free cash flow in the years ahead, and the Company lacked sufficient capital to operate its business and satisfy its debts as they came due in the ordinary course of business.

57. The Avoidable Transfer allowed Defendant to receive payment in full on account of the 3i Note. On the other hand, the Plan projects that holders of Class 3 general unsecured claims will receive recoveries of between 20.7% and 75.3% of the face amount of such claims.

58. Accordingly, the Avoidable Transfer (a) was made to or for the benefit of a creditor, (b) was made on account of an antecedent debt, (c) was made while the Company was insolvent, (d) was made within 90 days before the Petition Date, and (e) enabled Defendant to receive more than it would have received if the Avoidable Transfer had not been made and Defendant had received payment on account of the 3i Note in accordance with the provisions of chapter 7 of the Bankruptcy Code.

59. Plaintiff has conducted reasonable diligence regarding the facts and circumstances surrounding the Avoidable Transfer, as well as any known or reasonably knowable affirmative defenses that could be asserted by Defendant under Bankruptcy Code section 547(c). Plaintiff has determined that it may avoid the Avoidable Transfer notwithstanding any alleged affirmative defenses that could be asserted by Defendant.

60. On information and belief, the Company's obligations under the 3i Note were not secured by any liens or collateral in favor of Defendant.

61. On information and belief, Antara was not jointly liable with the Company to Defendant on account of the 3i Note.

62. On information and belief, Antara did not require that the Company use the proceeds of the Antara Equity Raise to pay Defendant or otherwise satisfy the 3i Note.

63. On information and belief, the Company did not hold the proceeds of the Antara Equity Raise in a restricted or segregated account.

64. On information and belief, Defendant did not provide the Company with money or money's worth in goods or services contemporaneously with or after the Company made the Avoidable Transfer.

65. On information and belief, the Avoidable Transfer is not a transaction subject to the "safe harbor" provisions of Bankruptcy Code section 546(e) or otherwise.

66. Plaintiff is entitled to avoid the Avoidable Transfer as a preference pursuant to Bankruptcy Code section 547(b).

67. Defendant was the initial transferee of the Avoidable Transfer.

68. Plaintiff is entitled pursuant to Bankruptcy Code section 550(a) to recover from Defendant the Avoidable Transfer, plus (a) pre- and post-judgment interest thereon from the date of demand to the date of payment or other satisfaction of such order and judgment and (b) the costs of this Adversary Proceeding.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter an order:

(a) Avoiding and recovering $39,414,980.01 paid to Defendant on account of the 3i Note as a preferential transfer;

(b) Awarding costs, including, but not limited to, attorneys' fees;

(c) Awarding pre-judgment and post-judgment interest; and

(d) Granting such other relief as the Court may deem just and proper.

[Signature page follows]

Dated: April 13, 2026
Wilmington, Delaware

Respectfully submitted,

MORRIS JAMES LLP

/s/ Brya M. Keilson

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