



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

BARRY GILBERT, derivatively on
behalf of QUANTUMSCAPE
CORPORATION,

Plaintiff,

v.

JAGDEEP SINGH, FRITZ PRINZ,
TIMOTHY HOLME, KEVIN
HETTRICH, FRANK BLOME, BRAD
BUSS, JOHN DOERR, JÜRGEN
LEOHOLD, JUSTIN MIRRO,
DIPENDER SALUJA, J.B.
STRAUBEL, JENS WIESE, and
VOLKSWAGEN GROUP OF
AMERICA INVESTMENTS, LLC,

Defendants,

and

QUANTUMSCAPE CORPORATION,

Nominal Defendant.

C.A. No. 2022-0751-JTL

Redacted Version

Dated: August 29, 2022

**PUBLIC VERSION OF VERIFIED
STOCKHOLDER DERIVATIVE COMPLAINT**

Barry Gilbert (“Plaintiff”), by and through his attorneys, alleges the following upon information and belief, except as to those allegations concerning himself, which are alleged upon personal knowledge. Plaintiff’s information and belief as to

all other matters is based upon his counsel's investigation, which includes a review and analysis of: (a) documents produced to Plaintiff by QuantumScape Corporation ("QuantumScape" or the "Company") in response to a books and records inspection demand made pursuant to 8 *Del. C.* § 220 ("Section 220"); (b) filings in various proceedings, including a class action lawsuit alleging violations of federal securities laws captioned, *In Re QuantumScape Securities Class Action Litigation*, Case No. 21-cv-00058 (N.D. Cal.) (the "Securities Action") and the decision of the District Court in that case denying defendants' motion to dismiss (ECF No. 153, Order dated January 14, 2022); (c) QuantumScape's filings with the U.S. Securities and Exchange Commission ("SEC"); (d) QuantumScape's press releases, website, corporate governance documents, presentations, and conference calls; and (e) analyst reports and other publicly available information concerning QuantumScape.

NATURE OF THE ACTION

1. This stockholder derivative action is brought on behalf of QuantumScape against its certain members of its current Board of Directors ("Board"), including Jagdeep Singh ("Singh"), Fritz Prinz ("Prinz"), Frank Blome ("Blome"), Brad Buss ("Buss"), Jürgen Lehold ("Lehold"), Dipender Saluja ("Saluja"), J.B. Straubel ("Straubel"), and Jens Wiese ("Wiese", with Singh, Prinz, Blome, Buss, Lehold, Saluja, and Straubel, the "Current Directors"), certain

former members of the Board, including John Doerr (“Doerr”), and Justin Mirro (“Mirro”, with Doerr, the “Former Directors”), and certain current and former QuantumScape executives, including Timothy Holme (“Holme”) and Kevin Hettrich (“Hettrich”) (with Holme, the “Officer Defendants”) and Volkswagen Group of America Investments, LLC (“VGA” and, together with the Director Defendants, the Officer Defendants, and the Former Director Defendants, “Defendants”) for (a) making and/or authorizing false and misleading statements and material omissions regarding the Company’s proprietary battery technology; and (b) failing to establish and/or oversee reasonable information, oversight, and reporting systems concerning mission-critical Company operations, including the adequacy of its public reporting.

2. QuantumScape is a pre-revenue company that is purportedly developing a “solid-state” battery for the use in electronic vehicles – the holy grail in battery development particularly for electric vehicles. If developed with the same capabilities as lithium-ion batteries (the industry’s current gold standard), the inherently lighter, smaller, faster charging, safer and cheaper solid-state battery would by all measure become the superior product in this emerging electric vehicle market.

3. On November 25, 2020, Kensington Capital Acquisition Corp. (“Kensington”) and a separate entity also called QuantumScape Corporation (“Legacy QuantumScape”) completed a business combination which created QuantumScape in its current form (the “Merger”).

4. From the Merger through April 15, 2021 (the “Relevant Period”), Defendants claimed, among other things, to have solved this industry-wide mystery and developed a solid-state battery that performs as well as a lithium-ion battery.

5. Thus, it was eventually revealed that Defendants made and/or authorized repeated and knowing false and misleading statements regarding the Company’s progress in developing the solid-state batteries and its ability to, and its timeline for, commercializing its solid-state battery. For instance, Defendants falsely stated that (1) QuantumScape’s battery exceeded the capabilities of lithium-ion batteries; (2) that the “science risk” of QuantumScape’s technology was behind them; and (3) QuantumScape’s battery was “ready for commercial deployment.” In touting its success in developing a solid-state battery QuantumScape made the bold claim that the “science risk was behind” them. In fact, the claim of having the necessary “science” is, apart from subsequent commercial development and follow through, essentially claiming to have achieved a major breakthrough not achieved by anyone else.

6. In making and/or authorizing these and other false and misleading statements, Defendants failed to disclose, *inter alia*, that (1) QuantumScape’s solid state batteries had nothing more than a prototype which had not been tested under real conditions much less a battery that was ready for commercialization.

7. These statements (detailed herein) – many of which were directly attributable to Singh, the Company’s Chief Executive Officer (“CEO”) and the Chairman of the Board – were held to be actionable violations of the Securities Exchange Act of 1934 by U.S. District Court Judge William H. Orrick in the Securities Action. (Securities Action, ECF No. 153, Order dated January 14, 2022).

8. Indeed, dissemination of these statements caused the artificial inflation of QuantumScape stock throughout the Relevant Period, including in advance of the Company’s December 31, 2020 secondary public stock offering (“SPO”). Notably, certain Defendants, including Defendant VGA, sold Company stock in connection with the SPO at these artificially inflated rates while in possession of material, nonpublic Company information.

9. On February 23, 2022, Plaintiff, through his counsel, served a books and records demand on the Company (the “Demand”), requesting, among other things, minutes, and any other documents at which the Board discussed the

Company's solid-state battery, its progress and commercialization, and the basis for the 26 misleading statements that Judge Orrick found were adequately pled.

10. QuantumScape's counsel replied by letter date March 2, 2022, denying many of the statements made in the Demand and stating that QuantumScape was not obligated to produce documents pursuant to the Demand.

11. While Plaintiff's counsel were preparing to file an action enforcing the Demand, they received a telephone call from QuantumScape's counsel that the Company was agreeable to producing certain book and records.

12. Thereafter, counsel for both parties engaged in negotiations concerning a non-disclosure agreement and the production of documents, that were subsequently produced in April 2022 (the "Document Production").

13. After further negotiation, QuantumScape subsequently produced a log containing explanations of the information that had been redacted from certain of the documents.

14. After an extensive review, Plaintiff's counsel has determined that the documents produced contain significant evidence supporting the claims set forth herein.

15. Based on the documents that were produced and other information publicly available Plaintiff asserts herein that Defendants breached their fiduciary

duties to shareholders by willfully or recklessly (1) making and/or authorizing false and misleading statements and omissions of material fact regarding the Company's technology, its ability to commercialize its technology in a short period of time, and its internal controls; (2) failing to correct and/or causing the Company to fail to correct these false and misleading statements and omissions; and (3) failing to establish, maintain, and/or monitor adequate reporting systems and internal controls.

16. In addition, the Board failed to institute adequate oversight and reporting systems concerning the development of Company's solid-state battery, and its ability to quickly commercialize it, or consciously disregarded red flags related its development. [REDACTED] during Board meetings, indicating [REDACTED] [REDACTED], the Director and Former Director Defendants failed to act throughout the Relevant Period.

17. Plaintiff did not make a demand on the Board because, as further detailed herein, the Books and Records Production and publicly available information confirm that such a demand would be a futile and useless act. A majority of the current Board, the Director Defendants named herein, had a direct financial interest in the dissemination of materially false and misleading statements

about the Company's ability to quickly commercialize its technology, and the circumstances surrounding its testing of its technology, in order to be in a position to sell large quantities of the Company's stock at artificially inflated prices. Therefore, as further discussed below, a majority of the current Board, the Director Defendants named herein, who were privy to the information and Board presentations produced in the Books and Records Production, were not sufficiently independent such that they could consider a pre-suit demand for action.

PARTIES

Plaintiff

18. Plaintiff holds shares of QuantumScape and has been a continuous holder of the Company's common shares since December 21, 2020.

Nominal Defendant

19. Nominal Defendant QuantumScape is a Delaware corporation with its principal executive offices located at 1730 Technology Drive San Jose, California 95110.

Individual Defendants

20. Defendant Singh has been the Company's CEO and Chairman of the Board since November 2020. Defendant Singh co-founded Legacy QuantumScape where he served as CEO and a director from May 2010 until the Merger. As of

December 23, 2020, Defendant Singh beneficially owned 28,818,240 shares of the Company's Class A and Class B common stock, which represented 7.68% of the Company's outstanding common stock as of that date. According to the Company's Prospectus filed with the SEC pursuant to Rule 424(b)(3) on December 31, 2020 (the "Prospectus"), Defendant Singh offered up to 32,608,0501 shares of Company Class A and Class B common stock as part of the SPO.

21. Defendant Prinz has served as a Company director since November 2020. Defendant Prinz co-founded Legacy QuantumScape where he served as a director from December 2010 until the Merger. As of December 23, 2020, Defendant Prinz beneficially owned 13,484,541 shares of the Company's Class B common stock, representing 3.70% of all outstanding common stock. The Prospectus listed Defendant Prinz as offering up to 13,484,451 shares of Company Class B stock in the SPO.

22. Defendant Holme has served as the Company's CTO since November 2020. Defendant Holme co-founded Legacy QuantumScape where he has served as CTO since January 2011. As of December 23, 2020, Defendant Holme beneficially owned 14,859,424 shares of Company Class A and Class B common stock, representing 4.07% of the Company's outstanding common stock. The Prospectus listed Defendant Holme as offering up to 15,222,385 shares of Company Class A

and Class B common stock in the SPO. Defendant Hettrich has served as the Company's CFO since November 2020.

23. Defendant Hettrich served as CFO of Legacy QuantumScape from September 2018 until the Merger, and served in various other executive positions at Legacy QuantumScape since January 2012. As of December 23, 2020, Defendant Hettrich beneficially owned 2,594,023 shares of the Company's common stock. The Prospectus listed Defendant Hettrich as offering up to 2,594,023 shares of Company Class A and Class B common stock in the SPO.

24. Defendant Blome has served as a Company director since November 2020. Prior to the Merger, Blome served as a director on the board of Legacy QuantumScape from September 2020 until the Merger. In addition, Defendant Blome serves as the Head of the Battery Center of Excellence at Volkswagen Aktiengesellschaft ("Volkswagen") and, as such, is an affiliate of VGA, which is a Volkswagen subsidiary.

25. Defendant Buss has served as a Company director since November 2020. Defendant Buss served as a director on the board of Legacy QuantumScape from August 2020 until the Merger. As of December 23, 2020, Defendant Buss beneficially owned 304,426 shares of the Company's Class A common stock. The

Prospectus listed Defendant Buss as offering up to 1,712,038 shares of the Company's Class A common stock in the SPO.

26. Defendant Doerr served as a Company director from November 2020 until February 2022. Defendant served as a director on the board of Legacy QuantumScape from December 2010 until the Merger.

27. Defendant Leohold has served as a Company director since November 2020. Defendant Leohold served as a director on the board of Legacy QuantumScape from May 2015 until the Merger. In addition, he served in various leadership positions including at Volkswagen from April 2006 until May 2019. As of December 23, 2020, Defendant Leohold beneficially owned 341,858 shares of the Company's Class A common stock. According to the Prospectus, Defendant Leohold offered up to 804,350 shares of Company's Class A stock in the SPO.

28. Defendant Mirro served as a Company director from November 2020 until May 2022. Defendant Mirro served as the Chairman and CEO of the Company's predecessor, Kensington, from April 2020 until November 2020. As of December 23, 2020, Defendant Mirro beneficially owned 1,744,898 shares of the Company's Class A common stock. The Prospectus listed Defendant Mirro as offering up to 1,744,898 shares of Class A common stock and 879,357 warrants for Class A common stock as part of the SPO.

29. Defendant Saluja has served as a Company director since November 2020. Defendant Saluja served as a director on the board of Legacy QuantumScape from August 2012 until the Merger.

30. Defendant Straubel has served as a Company director since November 2020. Defendant Straubel served as a director on the board of Legacy QuantumScape from December 2019 until the Merger. As of December 23, 2020, Defendant Straubel beneficially owned 636,772 shares of the Company's Class A and Class B common stock. According to the Prospectus, Defendant Straubel offered up to 1,407,611 shares of Company Class A and Class B common stock in the SPO.

31. Defendant Wiese has served as a Company director since January 2021.

32. Defendant VGA is a Delaware limited liability company based in Herndon, Virginia. As of December 23, 2020, VGA beneficially owned 70,995,205 shares of the Company's Class A and Class B common stock, representing 19.51% of the Company's outstanding Common Stock and 13.15% of total voting power, making VGA a controlling shareholder of QuantumScape as of that date. Moreover, VGA exercised the power to nominate two directors to the Company's Board, Defendants Blome and Wiese, who are affiliated with VGA through employment with Volkswagen. According to the Prospectus, VGA offered up to 70,995,205 shares of the Company's Class A and Class B common stock in the SPO.

DEFENDANTS' FIDUCIARY DUTIES

33. By reason of their positions as officers, directors, and/or fiduciaries of QuantumScape, and because of their ability to control the business and corporate affairs of the Company, at all relevant times, Defendants owed QuantumScape and its shareholders fiduciary obligations of good faith, loyalty, and candor, and were required to use their utmost ability to control and manage the Company in a fair, just, honest, and equitable manner.

34. The Defendants were required to act in furtherance of the best interests of QuantumScape and its shareholders so as to benefit all shareholders equally and not in furtherance of their own personal interest or benefit.

35. Each director and officer of the Company owes to QuantumScape and its shareholders a fiduciary duty to exercise good faith and diligence in the administration of the affairs of the Company and in the use and preservation of its property and assets, and the highest obligations of fair dealing.

36. The Defendants, because of their positions of control and authority as directors and/or officers of QuantumScape, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein. Because of their advisory, executive, managerial, and directorial positions with QuantumScape, each of the Defendants had knowledge of material non-public

information regarding the Company. To discharge their duties, the officers and directors of QuantumScape were required to exercise reasonable and prudent supervision over the management, policies, practices, and controls of the Company. By virtue of such duties, the officers and directors of QuantumScape were required to, among other things:

- (a) Exercise good faith to ensure that the affairs of the Company were conducted in an efficient, business-like manner so as to make it possible to provide the highest quality performance of their business;
- (b) Exercise good faith to ensure that the Company was operated in a diligent, honest, and prudent manner and complied with all applicable district and state laws, rules, regulations and requirements, and all contractual obligations, including acting only within the scope of its legal authority;
- (c) Exercise good faith to ensure that the Company's communications with the public and with shareholders are made with due candor in a timely and complete fashion; and
- (d) When put on notice of problems with the Company's business practices and operations, exercise good faith in taking appropriate action to correct the misconduct and prevent its recurrence.

37. The Defendants, because of their positions of control and authority, were able to and did, directly or indirectly, exercise control over the wrongful acts complained of herein, as well as the contents of the various public statements issued by QuantumScape.

38. Each of the Defendants breached his or her fiduciary duties as alleged herein, both individually and in concert with the other Defendants.

CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION

39. In committing the wrongful acts alleged herein, the Defendants have pursued, or joined in the pursuit of, a common course of conduct, and have acted in concert with and conspired with one another in furtherance of their wrongdoing. The Defendants caused the Company to conceal the true facts as alleged herein. The Defendants further aided and abetted and/or assisted each other in breaching their respective duties.

40. The purpose and effect of the conspiracy, common enterprise, and/or common course of conduct was, among other things, to facilitate and disguise the Defendants' violations of law, including breaches of fiduciary duty and unjust enrichment.

41. The Defendants accomplished their conspiracy, common enterprise, and/or common course of conduct by causing the Company purposefully, recklessly, or negligently to conceal material facts, fail to correct such misrepresentations, and violate applicable laws.

42. In furtherance of this plan, conspiracy, and course of conduct, the Defendants collectively and individually took the actions set forth herein. Because the actions described herein occurred under the authority of the Board, each of the Defendants, who are directors and/or were officers of QuantumScape, was a direct,

necessary, and substantial participant in the conspiracy, common enterprise, and/or common course of conduct complained of herein.

43. Each of the Defendants aided and abetted and rendered substantial assistance in the wrongs complained of herein. In taking such actions to substantially assist the commission of the wrongdoing complained of herein, each Defendant acted with actual or constructive knowledge of the primary wrongdoing, either took direct part in, or substantially assisted the accomplishment of that wrongdoing, and was or should have been aware of his or her overall contribution to and furtherance of the wrongdoing.

44. At all times relevant hereto, each of the Defendants was the agent of each of the other Defendants and of QuantumScape and at all times acted within the course and scope of such agency.

QUANTUMSCAPE'S CORPORATE GOVERNANCE GUIDELINES

45. QuantumScape's Corporate Governance Guidelines ("Governance Guidelines"), effective November 25, 2020, specifically state that it is "[t]he Board's principal duty" to "exercise its powers in accordance with its fiduciary duties to the Company and in a manner it reasonably believes to be in the best interests of the Company and its stockholders."

46. It further states that Board members are required to actively oversee management, stating, “[t]o satisfy this responsibility, the Board expects its members to take a proactive approach to their duties and function as active monitors of corporate management.”

47. The Board is required to “ensure that management carries out their day-to-day operational duties in a competent and ethical manner and consistent with high standards of responsible conduct and ethics.”

48. The Governance Guidelines further provide that Board and directors “shall at all times have direct, independent and confidential access to the Company’s executive officers, management and personnel”

QUANTUMSCAPE’S CODE OF BUSINESS CONDUCT

49. QuantumScape’s Code of Business Conduct and Ethics (the “Code of Conduct”), effective November 25, 2020, “is designed to deter wrongdoing and to promote:”

1. fair and accurate financial reporting;
2. compliance with applicable laws, rules and regulations including, without limitation, full, fair, accurate, timely and understandable disclosure in reports and documents that QuantumScape Corporation (together with any subsidiaries, collectively the “Company”) files with, or submit to, the U.S. Securities and Exchange Commission and in the Company’s other public communications;

3. the prompt internal reporting of violations of this Code as set forth in this Code;
4. honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest; and
5. a culture of honesty and accountability.

Code of Conduct, at 1.

50. The Code of Conduct “applies to all directors, officers and employees...of the Company, as well as Company contractors, consultants and agents.” *Id.*

51. In the Section titled, “**FINANCIAL REPORTS AND OTHER RECORDS – DISCLOSURE**” (emphasis in original), the Code of Conduct states:

Employees are responsible for the accurate and complete reporting of financial information within their respective areas and for the timely notification to senior management of financial and non-financial information that may be material to the Company to ensure full, fair, accurate, timely and understandable disclosure in reports and documents that the Company files with government agencies or releases to the general public.

Each employee involved in the Company’s disclosure process must familiarize themselves with the disclosure requirements applicable to the Company and the business and financial operations of the Company, and must not knowingly misrepresent, or cause others to misrepresent, facts about the Company to others, whether within or outside the Company, including to the Company’s independent auditors, governmental regulators and self-regulatory organizations.

Employees must maintain all of the Company’s books, records, accounts and financial statements in reasonable detail, and reflect the matters to which they relate accurately, fairly and completely.

Furthermore, employees must ensure that all books, records, accounts and financial statements conform both to applicable legal requirements and to the Company's system of internal controls. Employees must carefully and properly account for all assets of the Company. Employees may not establish any undisclosed or unrecorded account or fund for any purpose. Employees shall not make any false or misleading entries in the Company's books or records for any reason, or disburse any corporate funds or other corporate property without adequate supporting documentation and authorization. Employees shall not misclassify transactions related to accounts, business units or accounting periods. Each employee bears responsibility for ensuring that they are not party to a false or misleading accounting entry.

Id., at 1-2.

52. In the Section titled, **“PROTECTION OF ASSETS, CONFIDENTIALITY AND COMMUNICATIONS”** (emphasis in original), the

Code of Conduct states:

All employees should endeavor to protect the Company's assets and ensure their efficient use. Any suspected incident of fraud or theft should be reported immediately to the employee's manager, the Compliance Officer or Human Resources for investigation.

In carrying out the Company's business, employees may learn confidential or proprietary information about the Company, its customers, suppliers or business partners. Confidential or proprietary information of the Company, and of other companies, includes any nonpublic information that would be harmful to the relevant company or useful to competitors if disclosed.

Employees must maintain the confidentiality of information about the Company and other companies entrusted to them by the Company, use the information only for permissible business purposes and in accordance with any restrictions imposed by the disclosing party, and limit dissemination of the confidential information, both inside and outside the Company, to people who need to know the

information for business purposes and who are bound by similar obligations of confidentiality, unless disclosure is authorized or legally mandated.

Id. at 3.

53. In the Section titled, “**FAIR DEALING**” (emphasis in original), the Code of Conduct states:

The Company does not seek competitive advantages through illegal or unethical business practices. Each employee should endeavor to deal fairly with the Company’s customers, service providers, suppliers, competitors, business partners and employees. No employee should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts or any unfair dealing practice.

Id. at 4.

54. In the Section titled, “**COMPLIANCE WITH LAWS, RULES AND REGULATIONS**” (emphasis in original), the Code of Conduct states:

All employees must respect and obey all laws when carrying out responsibilities on behalf of the Company and refrain from illegal conduct.

Employees have an obligation to be knowledgeable about specific laws, rules and regulations that apply to their areas of responsibility. If a law conflicts with a policy in this Code, employees must comply with the law.

5. Insider Trading. Under federal and state securities laws, it is illegal to trade in the securities of a company while in possession of material non-public information about that company. Because employees will have knowledge of specific confidential information

that is not disclosed outside the Company which will constitute material nonpublic information, trading in the Company's securities or in the securities of those companies with which the Company does business by employees or persons employees provide material nonpublic information to could constitute insider trading, violating the law. It is an employee's responsibility to comply with these laws and not to share material nonpublic information.

10. Keeping the Audit Committee Informed. The Audit Committee of the Board (the "Audit Committee") plays an important role in ensuring the integrity of the Company's public reports. If an employee believes that questionable accounting or auditing conduct or practices have occurred or are occurring, they should notify the Audit Committee. In particular, any employee should promptly bring to the attention of the Audit Committee any information of which they may become aware concerning:

- a. the accuracy of material disclosures made by the Company in its public filings;
- b. material weaknesses or significant deficiencies in internal control over financial reporting;
- c. any evidence of fraud that involves an employee who has a significant role in the Company's financial reporting, disclosures or internal controls or procedures; or
- d. any evidence of a material violation of the policies in this Code regarding financial reporting.

Id., at 5, 7.

55. In the Section titled, "**COMPLIANCE AND REPORTING**" (emphasis in original), the Code of Conduct states:

2. Reporting Violations. If an employee knows of or suspects a violation of this Code, or of applicable laws and regulations (including complaints or concerns about accounting, internal accounting controls or auditing matters), or an employee has concerns about a situation that they believe does not reflect the Company's culture and values, the employee must report it immediately to their manager, the Compliance Officer or Human Resources. An employee may also report concerns anonymously at www.quantumscape.ethicspoint.com. All reports will be kept confidential, to the extent practical, except where disclosure is required to investigate a report or mandated by law. The Company does not permit retaliation of any kind for good faith reports of violations or possible violations.

3. Investigations. Reported violations will be promptly and thoroughly investigated. As a general matter, the Board will oversee investigations of potential violations by directors or executive officers, and the Compliance Officer will oversee investigations of potential violations by other employees. However, it is imperative that the person reporting the violation not conduct an investigation on their own. Employees are expected to cooperate fully with any appropriately authorized investigation, whether internal or external, into reported violations. Employees should never withhold, tamper with or fail to communicate relevant information in connection with an appropriately authorized investigation.

In addition, employees are expected to maintain and safeguard the confidentiality of an investigation to the extent possible, except as otherwise provided below or by applicable law. Making false statements to or otherwise misleading internal or external auditors, investigators, legal counsel, Company representatives, regulators or other governmental entities may be grounds for immediate termination of employment or other relationship with the Company and also be a criminal act that can result in severe penalties.

4. Sanctions. Employees who violate this Code may be subject to disciplinary action, up to and including termination of employment. Moreover, employees who direct or approve of any conduct in violation of this Code, or who have knowledge of such conduct but do not immediately report it may also be subject to disciplinary action, up to and including termination of employment. A director who violates this Code or directs or approves conduct in violation of this Code shall be subject to action as determined by the Board.

Id. at 8.

SUBSTANTIVE ALLEGATIONS

56. Founded in 2010, QuantumScape is a developer of solid-state batteries intended for use in electric vehicles.

57. In September 2020, QuantumScape announced that it had entered into an agreement to go public through a reverse merger with Kensington, a publicly listed special purpose acquisition company. The Merger was completed on November 25, 2020 and, on November 27, 2020, QuantumScape was taken public.

58. Prior to the Merger, Legacy QuantumScape was a developer of solid-state lithium metal batteries.

59. When lithium metal is used in batteries, liquid electrolytes frequently cause the formation of “dendrites” – metallic growths on the batteries’ surface during the charging process, which cause the battery to fail.

60. To prevent dendrite formation, scientists converted lithium from a metallic form to an ionic form. Although lithium-ion batteries represent the industry's current gold standard, solid-state batteries are, in theory, superior because they are notably lighter and less expensive than lithium-ion batteries. Solid-state batteries also charge fast enough for wide-spread adoption.

61. Lithium-ion batteries can also experience what is known as “thermal runaway,” which occurs when a battery cell's temperature increases and causes the liquid electrolyte to ignite, creating risks of dangerous and toxic battery fires. Solid-state batteries, on the other hand, do away with the flammable liquid electrolyte that is inside lithium-ion batteries and are therefore considered safer.

62. In order to use lithium-metal without the drawback of dendrite formation, *a solid-state separator* is used instead of a liquid electrolyte, theoretically suppressing dendrite formation. Making the battery solid-state as opposed to liquid state supposedly achieves the benefits of a solid-state battery without the drawbacks of dendrite formation.

63. Notably, current solid-state batteries have not found effective solid-state electrolytes to suppress dendrites. Indeed, to date, no company has been able to develop a commercially viable solid-state battery along these lines although there are a number of companies around the world attempting to do so.

64. QuantumScape, however, claimed to have developed a solid-state lithium-metal battery that was safer, charged faster, had greater range and improved cycle life when compared to conventional lithium-ion battery technology. It also claimed and/or gave the misleading impression that this technology was close to commercialization and that the Company was ready to ramp up production, when in fact, it merely had a prototype of only a few layers.

65. Despite the significant challenges in creating a solid-state battery for commercialization and real world use, Defendants claimed throughout the Relevant Period that their battery (1) has a lithium-ion conductivity similar to or better than today's liquid electrolytes; (2) is chemically and electrochemically stable to lithium metal; (3) resists the formation of lithium-metal dendrites; and (4) that the Company was in a position to scale up production and commercialize the technology relatively soon.

66. Defendants claimed further that the Company's battery charged more quickly (up to 80% capacity in roughly 15 minutes) and retained more than 80% of its capacity after 800 charging cycles, and that its testing was not performed in compromised conditions.

67. Defendants also led the public to believe that QuantumScape's battery was more advanced and capable than competing lithium-ion batteries, that the

“fundamental science risk” was behind it and, as a result, QuantumScape was ready to “ramp[] up production” and move on to the “final automotive qualification process.”

68. In a November 27, 2020 interview on CNBC’s “Squawk Box” Singh stated publicly, “What we are confident about is that the fundamental science risk is behind us.” Singh also stated, “The time between now and first revenue is really spent doing two things. One is ramping up production. Batteries take time to build and scale up. And two is to do the final automotive qualification process, which also takes some time.” The same day, the Company issued a press release stating, “Through its elegant ‘anode-less’ design, QuantumScape’s solid-state lithium-metal batteries are designed to be safer, and to deliver greater range, faster charge times and improved cycle life, than today’s conventional lithium-ion battery technology.”

69. At the time these statements were made, however, as the Document Production indicates, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See QS_22-_0000717.

70. In Board minutes from September 30, 2022, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

71. The Board presentation from February 11, 2021 [REDACTED]

[REDACTED]

[REDACTED] QS_220_0000717.

72. On December 3, 2020, the Company announced that it would hold a public showcase, resembling Tesla’s popular “Battery Day,” releasing new results and specifications from its battery tests. On December 8, 2020, Defendants held their showcase, filed a press release and slide deck with the SEC, and streamed a live presentation on “YouTube.” The presentation made several claims about its battery’s technological ability, including that the science risk was behind them. QuantumScape also claimed that their data demonstrated that “its technology addresses fundamental issues holding back widespread adoption of high-energy

density solid-state batteries, including charge time (current density), cycle life, safety, and operating temperature.”

73. QuantumScape further stated that its “solid-state battery is designed to enable up to 80% longer range compared to today’s lithium-ion batteries,” “[s]olid state separator resists dendrites even at very high current density,” data performance results show its “solid-state separators are capable of working at very high rates of power, enabling a 15-minute charge to 80% capacity, faster than either conventional battery or alternative solid-state approaches are capable of delivering,” and that “the data shows QuantumScape battery technology is capable of lasting hundreds of thousands of miles, and is designed to operate at a wide range of temperatures, including results that show operation at -30 degrees Celsius.”

74. During the presentation, the Company made representations about its battery’s energy density compared to current lithium-ion batteries. Singh stated during the presentation, “you can see that the solid-state, the lithium metal anode case is much more energy dense than the conventional lithium-ion battery because it doesn’t have all the space and mass and volume required for the carbon or carbon silicon anode. That’s the core, the reason for the advantage that solid-state batteries provide over lithium-ion.” Singh continued, “And if you do the math, it turns out that you can end up with on the order of a thousand-watt hours per liter with this

solid-state architecture, which compares with energy density of around the 700s, in terms of watt hours per liter for conventional lithium-ion technologies.”

75. Defendants also represented that QuantumScape’s charging capabilities vastly outweigh those of lithium-ion. For example, during the December 8, 2020 presentation, Defendants represented that QuantumScape’s battery cell achieves 80% charge in under 15 minutes, versus current lithium-ion batteries that take 40 minutes. Defendant Singh states, “The gray curve at the bottom is today’s fast charge capability of conventional lithium-ion batteries used in EVs. You can see that they can charge to a hundred percent in about an hour or 80 percent in about 40 minutes. . . . With the QuantumScape technology, the solid-state separator already prevents dendrites, so there’s no reason to slow down the rate of charge. You can start charging it at a really high rate and continue charging it at that really high rate until it gets all the way up to 80 percent in less than 15 minutes. This is not only better than any of the solid-state technology, but it’s better than you can achieve with conventional lithium-ion batteries, which always have to manage this potential dendriting issue at higher rates of charge.” Singh also stated, “It turns out you can now get a 15-minute charge, which you cannot do with conventional batteries.”

76. Defendants also claimed QuantumScape’s battery “resists dendrites.” Commenting on a slide shown during the December 8, 2020 presentation, Defendant

Singh stated: “This is a test that tries to look at how much current density the separator can handle without dendriting. And what you see is on the axis on the left, that’s the current density and by way of comparison, conventional solid-state efforts under these conditions really can’t get much above a few single digit milliamps per centimeter squared before they fail. . . This is a really remarkable result. It blows away any previous demonstration in the world of solid-state separators. This was done at a lithium/lithium symmetric cell, which is a material level test at 45 degrees Celsius, and you can see here that it -- you know, there’s a lot of headroom between what the application requirement is for fast charge and the capability of this material.”

77. Defendants’ statements during the December 8, 2020 presentation were materially false and misleading for the following reasons:

- a. They were based upon and understated the performance of lithium-ion batteries, and given that QuantumScape’s solid state battery will not be ready for commercialization for years, failed to take into account improvements in lithium-ion batteries and were based on outdated information;
- b. Claims respecting the charging of QuantumScape’s Solid State batteries failed to take into account the fact that that it had only

tested lab cells under very narrow conditions and not real-world conditions and had no third party back up or testing, and that its batteries were only in their earliest stages;

- c. The testing was limited to testing “materials”, that is, the solid-state electrolyte and not an actual battery;
- d. The battery cell was only tested at extreme temperatures, where ceramic separators do well, but omitted any testing at room temperature, where lithium-ion batteries do well; and
- e. The chart shown were configured to be misleading to the investing public.

78. Defendants also claimed during the December 8, 2020 presentation that the Company’s cell has an “aggressive automotive power profile,” showing a simulation of a cell powering a car on a track. Defendant Singh states, “Now what you see with this aggressive test is that the cell goes well over a thousand laps, which corresponds to more than a hundred cycles of charge/discharge at these aggressive conditions, with minimal degradation of capacity. By contrast, today’s best lithium-ion cells start degrading within a few tens of cycles. So again, this result is really remarkable. Not only is it better than any previous solid-state result, but it actually blows away even today’s best lithium-ion technologies.”

79. This was materially misleading as there is no indication that the battery cell had been tested in real world conditions or a track and misleadingly implied that single charge and discharge cycles replicate the real-world circumstances of a real track, where there are vibrations and other differences which would likely have killed the battery cell and the Defendants knew that the battery had not been tested in a real track under real world conditions.

80. Defendants also claimed that its battery performs better in low temperatures than today's lithium-ion, stating "[o]perability shown at lower end of automotive temperature range", which was materially false and misleading. Commenting on a slide shown during the December 8, 2020 presentation, Defendant Singh stated: "Another limitation that solid-state batteries sometimes have is they only operate at elevated temperatures. To address -- to demonstrate that we don't have that limitation, we have taken our material and tested it all the way down to negative 30 degrees and you still get substantial capacity out of the cell, even at negative 30. By contrast, lithium-ion technologies would have less capacity than we have, even at negative 25 degrees."

81. However, solid state batteries are known to operate well at extremes.



[REDACTED]

[REDACTED]

82. Defendants knew [REDACTED]

[REDACTED]

[REDACTED]

QS_220_0000720.

83. Defendants also represented that its battery was safer than lithium-ion. For example, in its December 8, 2020 presentation, QuantumScape stated, “Solid state separator is not combustible and has high thermal stability . . . Lithium anode is chemically stable with separator and foil, even when molten.” Defendant Singh stated in combination with the slide, “to address the safety issue, this is a test called the DSC test, which stands for differential scanning calorimetry, and really all it is, is you take lithium metal, put it in direct contact with either a liquid electrolyte or in our case a solid-state separator and heat up the pair of materials, and what you see is with the liquid plus lithium scenario, when you get to lithium metallic temperatures of about 180 degrees Celsius, you see a massive exothermic reaction which corresponds to a fire. And in the case of solid-state separator with lithium, even at lithium melting temperature, you see no exotherm, in fact you see a small endotherm, which represents lithium essentially absorbing energy in order to melt,

and no reaction. So this demonstrates the material is in fact inherently stable, even to molten lithium, which is a very encouraging result.”

84. [REDACTED]

85. During the presentation, Singh indicated that its technology was ready for commercial deployment stating, “[s]o this really demonstrates that this technology is in fact ready for commercial deployment as soon as we can scale up production and make multilayer versions of these cells. A super exciting result.”

86. During the December 8, 2020 presentation, Singh made the following statements regarding the Company’s solid-state batteries:

Okay, so the quick summary is if you have a material that doesn’t have the fundamental entitlement to serve as a solid-state separator, you can still make batteries out of that material but they only work under severely compromised test conditions and the main compromises that people use are either very low current densities, which ends up not being useful for real applications like driving a car, or the cycle efforts are being very short or the cells can only work at an elevated temperature or they require excess lithium, which lowers the energy density of the cell. These are the problems that QuantumScape has addressed.

[T]he solid-state separator already prevents dendrites, so there's no reason to slow down the rate of charge. You can start charging it at a really high rate and continue charging it at that really high rate until it gets all the way up to 80 percent in less than 15 minutes. This is not only better than any of the solid-state technology, but it's better than you can achieve with conventional lithium-ion batteries, which always have to manage this potential dendriting issue at higher rates of charge.

They are not sort of a compromised test conditions.

So this really demonstrates that this technology is in fact ready for commercial deployment as soon as we can scale up production and make multilayer versions of these cells.

[T]he data we presented today makes clear that the QuantumScape technology can address the fundamental issues.

87. For the reasons set forth in paragraphs 77 through 84, these statements were materially false and misleading [REDACTED]

[REDACTED]

[REDACTED]

88. Given how preliminary and narrow the testing was, any statements about the formation of dendrites were similarly premature and misleading and there

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED] which is not contained in the Board presentations.

89. Statements about the ability to commercialize were also misleading.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] QS_220_0000617.

90. On December 8, 2020, the Company filed a Form 8-K Press Release with the SEC, stating in pertinent part:

[It] has released performance data demonstrating that its technology addresses fundamental issues holding back widespread adoption of high-energy density solid-state batteries, including charge time (current density), cycle life, safety, and operating temperature.

QuantumScape's solid-state battery is designed to enable up to 80% longer range compared to today's lithium-ion batteries. Previous attempts to create a solid-state separator capable of working with lithium metal at high rates of power generally required compromising other aspects of the cell (cycle life, operating temperature, safety, cathode loading, or excess lithium in the anode).

QuantumScape's newly-released results, based on testing of single layer battery cells, show its solid-state separators are capable of working at very high rates of power, enabling a 15-minute charge to 80% capacity, faster than either conventional battery or alternative solid-state approaches are capable of delivering.

Unlike conventional lithium-ion batteries or some other solid-state designs, this architecture delivers high energy density while enabling lower material costs and simplified manufacturing.

In addition to eliminating the carbon or carbon/silicon anode, QuantumScape's solid-state design further increases energy density because it uses no excess lithium on the anode.

QuantumScape's solid-state separator is noncombustible and isolates the anode from the cathode even at very high temperatures — much higher than conventional organic separators used in lithium-ion batteries.

91. In its Form S-1 filed on December 17, 2020, the Company commented on its solid-state batteries, stating, in pertinent part:

In addition, we believe our battery technology may provide significant improvements in energy density compared to today's conventional lithium-ion batteries, as shown in the figure below.

Our latest single layer prototype cells have been tested to over 800 cycles (under stringent test conditions, including 100% depth-of-discharge cycles at one-hour charge and discharge rates at 30 degrees Celsius with commercial-loading cathodes) while still retaining over 80% of the cells' discharge capacity.

Our battery technology, and specifically our solid-state separator material, has been tested to demonstrate the ability to charge

to approximately 80% in 15 minutes, faster than commonly used high energy EV batteries on the market.

Our battery technology eliminates the anode host material and the associated manufacturing costs, providing a structural cost advantage compared to traditional lithium-ion batteries.

92. These statements were false and misleading for the reasons stated in paragraphs 77 through 84 above.

93. On January 4, 2021, prior to the market opening, *Seeking Alpha* published a research report by Dr. Brian Morin titled “QuantumScape’s Solid State Batteries Have Significant Technical Hurdles to Overcome.” Dr. Morin concluded QuantumScape’s batteries “will likely never achieve the performance they claim,” that the batteries likely “will only last for 260 cycles or about 75,000 miles of aggressive driving,” and that the batteries’ “energy density [target for] 2028 will not beat today’s state of the art, and will not be state of the art when it is achieved.”

94. Dr. Morin’s report revealed to investors that QuantumScape had overstated a number of data points, including (1) power, (2) range, (3) low temperature operation, (4) low temperature life, and (5) energy density, and omitted materially information related to (6) dendrites, (7) safety, and (8) cost.

95. The report also revealed that QuantumScape manipulated some of its tests to overstate its data. For example, Dr. Morin’s report revealed that during the

power test, the Company heated up the battery to 45 degrees Celsius in order to charge the battery 80% in 15 minutes. It also noted that based on these conditions, the battery would only be able to last for about 75,000 miles. Similarly, Dr. Morin noted that in order to achieve a 240,000-mile range, QuantumScape ran a significantly gentler test, charging the battery over 1 hour. As stated by Dr. Morin, this is not better than vehicles on the road today.

96. Dr. Morin also revealed that QuantumScape's battery life only performed well at low temperatures when charging at 5% in 15 minutes, rather than the 80% in 15 minutes that QuantumScape promoted its battery as being capable of.

97. On news of this report, the Company's share price declined by approximately 40.8%, or \$34.49 by closing on January 4, 2021.

98. But rather than disclose the full truth, Defendants doubled down on their false and misleading statements.

99. On January 4, 2021, after the *Seeking Alpha* Article was published, Singh appeared on CNBC's "Closing Bell" defending the December presentation, stating, "[w]e have something that has never been shown to the world before, a solid-state system that delivers levels of performance that are really record breaking not only in comparison to other solid-state efforts, but even in comparison to conventional lithium-ion technology."

100. On January 15, 2021, Defendant Holme published an article on LinkedIn reiterating the performance data revealed at the December 8, 2020, presentation in order to respond to “the surge in interest” and elaborated on the data. In pertinent part, Holme provided “Additional Key Points” relating to dendrites, energy density, and cost.

101. The testing as shown to the Board however, demonstrated:

- a. [REDACTED]
- b. [REDACTED]
- c. [REDACTED]

[REDACTED]
[REDACTED] QS_22-_0000726.

102. On February 16, 2021, QuantumScape published its Shareholder Letter for the Fourth Quarter of 2020, signed by Defendants Singh and Hettrich, again telling investors that its battery was superior to lithium-ion, stating, “The lithium metal anode enables higher energy density than is possible with conventional anodes (as high as 1,000 Wh/L compared with approximately 711 Wh/L for conventional cells used in today’s best-selling EVs), enabling longer driving range, while simultaneously delivering high rates of power (for fast charge), long cycle life, and improved safety, addressing the fundamental issues holding back widespread adoption of battery electric vehicles.”

103. Discussing the December 8, 2020, presentation, Defendants Singh and Hettrich stated in the letter, “In addition to enabling high energy density, the data we shared, based on the testing of single layer battery cells, shows that, unlike previous solid-state efforts, our solid-state separators can work at very high rates of power, enabling a 15-minute charge to 80% capacity, faster than either conventional batteries or alternative solid-state approaches can deliver without rapidly losing capacity. Both conventional solid-state efforts and the commercial lithium-ion energy cells used in automotive applications typically fail from dendrite (needle-

like crystals of lithium metal which can grow across the separator and short-circuit the cell) formation or impedance growth during charge at these rates of power.”

104. The Company’s 2020 fourth quarter shareholder letter, dated February 16, 2021, stated in pertinent part:

The lithium-metal anode enables higher energy density than is possible with conventional anodes (as high as 1,000 Wh/L compared with approximately 711 Wh/L for conventional cells used in today’s bestselling EVs), enabling longer driving range, while simultaneously delivering high rates of power (for fast charge), long cycle life, and improved safety, addressing the fundamental issues holding back widespread adoption of battery electric vehicles.

105. During the Company’s QuantumScape’s 2020 fourth quarter earnings call, a questioner asked, and Singh responded:

Q: “[W]hat makes you feel like you’ll have a sustainable cost advantage over the rest of the industry?”

A: “[A]s a result, given we believe our separator will be in the same order of magnitude and cost as conventional separators, we expect that the quantitative approach, what should be lower cost than conventional ion cells at any given manufacturing scale.”

106. During a February 17, 2021, television interview, Singh stated: “One of the reasons why we went public last year – it was precisely because we thought most of the science -- most of the chemistry risk is behind us.”

107. In its Form 10-K filed with the SEC on February 23, 2021, the Company stated, in pertinent part: “Our battery technology eliminates the anode

host material and the associated manufacturing costs, providing a structural cost advantage compared to traditional lithium-ion batteries.” The Form 10-K also stated, “Our battery technology, and specifically our solid-state separator material, has been tested to demonstrate the ability to charge to approximately 80% in 15 minutes, significantly faster than commonly used high-energy EV batteries on the market.”

108. In an interview on February 25, 2021, Singh said: “For the first time in 45 years, someone was able to show a solid-state cell that was capable of performing under uncompromised test conditions—high rates of power—long cycle lives—unelevated temperatures.”

109. On April 15, 2021, a research firm called *Scorpion Capital* published a 188-page report, titled “QuantumScape (NYSE: QS) A Pump and Dump SPAC Scam by Silicon Valley Celebrities, That Makes Theranos Look Like Amateurs.” *Scorpion Capital* revealed to the market that QuantumScape had used a number of compromises during its testing, including cell size, elevated temperatures, and “pulse tests” to promote and publish six “[p]hony claim[s]” relating to its battery technology.

110. According to the report, QuantumScape falsely claimed that its batteries resisted dendrites, performed well in low temperatures, reached 80%

charge in fifteen minutes, and had long life. The report included interviews with former QuantumScape employees and several experts. Following the report, QuantumScape's stock price declined by 12.24 percent.

111. The statements detailed herein were materially false and misleading when made because Defendants represented that QuantumScape's battery addressed the "fundamental issues" of energy, fast charge, life, and safety [REDACTED]

[REDACTED]

[REDACTED] Consequently, Defendants materially overstated the development of QuantumScape's solid-state battery and its capabilities related to today's lithium-ion batteries.

112. [REDACTED] in the Board presentation dated April 22, 2021 (QS_220_0000744-803) [REDACTED]

[REDACTED] (QS_220_00007660).

113. The Board presentation further shows [REDACTED]

[REDACTED]

See QS_220_0000777.

114. Around this time, the Securities Action was filed against the Company, Defendants Singh, Hettich, the Company’s Chief Financial Officer (“CFO”), and Holme, the Company’s co-founder and Chief Technology Officer (“CTO”) (the “Securities Defendants”) alleging violations of the Securities Exchange Act of 1934 (the “Exchange Act”).

115. On January 14, 2022, U.S. District Court Judge William H. Orrick denied the Securities Defendants’ motion to dismiss and found twenty-six statements sufficient to state a claim for securities fraud under the heightened pleading standards of the Private Securities Litigation Reform Act (“PSLRA”). (See Securities Action, ECF No. 153). Among other things, Judge Orrick found (1) “it is reasonable to think that investors were entitled to rely on the unequivocal representation that testing results were not ‘compromised.’” (*Id.* at 18); (2) “it is reasonable to think that investors were entitled to rely on the unequivocal representation that the fundamental risks facing solid-state batteries were addressed by QuantumScape’s technology.” (*Id.*); and (3) “if this is all taken as true, it would mean that QuantumScape falsely stated that it was ready for commercialization with

the only remaining steps being ramping up production and layering the cells.” (*Id.* at 19).

116. With respect to scienter, Judge Orrick concluded that,

On the plaintiffs’ theory—and taking as true the allegations in the Seeking Alpha article and Scorpion Capital report—the defendants must at least have intended to deceive investors. The reason is that the statements that the defendants made over and over were, according to the plaintiffs’ allegations, verifiable falsehoods. QuantumScape insisted many times, for instance, that it used uncompromised testing conditions. According to the disclosures, however, it used compromised testing conditions and reported that data. If that is true, the defendants must have known they were not reporting the truth—there is no middle ground between the two positions. The most cogent inference that can be drawn, therefore, is that the defendants acted with scienter.” (*Id.* at 28).

117. The Board either failed to institute an oversight system concerning the development of Company’s solid-state battery or consciously disregarded a series of red flags related to development of its solid-state battery. Despite being made aware of these red flags warning of technology and public-reporting related deficiencies throughout the Relevant Period, the Board failed to act. Plaintiff incorporates by reference and realleges each and every allegation contained above as though fully set forth herein.

DAMAGE TO QUANTUMSCAPE

118. As a direct and proximate result of Defendants' misconduct, the Company has incurred and will continue to incur significant financial losses, including but not limited to, the costs of defending and potentially paying class wide liability in the Securities Action. These damages also include the costs of remediating deficiencies in the Company's internal controls, compensation and benefits paid to the Individual Defendants, who breached their duties to QuantumScape, and reputational harm and loss of goodwill.

DERIVATIVE ALLEGATIONS

119. Plaintiff brings this action derivatively for the benefit of QuantumScape to redress injuries suffered and to be suffered as a proximate result of the Defendants' breaches of fiduciary duties and other violations of law.

120. Plaintiff will adequately and fairly represent the interests of QuantumScape and its stockholders in enforcing and prosecuting its rights.

DEMAND FUTILITY ALLEGATIONS

121. Plaintiff incorporates by reference and realleges each and every allegation contained above as though fully set forth herein.

122. At the time this action was commenced, Defendants Singh, Prinz, Blome, Buss, Leohold, Saluja, Straubel, and Wiese or the "Director Defendants",

comprised the majority of the eleven-member Board. Accordingly, Plaintiff is only required to show that six Directors cannot exercise independent objective judgment about whether to bring this action or whether to vigorously prosecute this action. As set forth below, at least the eight Director Defendants, are incapable of making an independent and disinterested decision to institute and vigorously prosecute this action, including because they face a substantial likelihood of liability, and so demand on the Board to institute this action is not necessary because such a demand would have been a futile act.

123. The Director Defendants, together and individually, violated and breached their fiduciary duties of candor, good faith, and loyalty. Specifically, the Director Defendants knowingly approved and/or permitted the wrongs alleged herein and participated in efforts to conceal those wrongs. The Director Defendants authorized and/or permitted the false statements to be disseminated directly to the public and made available and distributed to shareholders, authorized and/or permitted the issuance of various false and misleading statements, and are principal beneficiaries of the wrongdoing alleged herein, and thus, could not fairly and fully prosecute such a suit even if they instituted it.

124. The Director Defendants either knowingly or recklessly issued or caused the Company to issue the materially false and misleading statements alleged

herein. The Director Defendants knew of the falsity of the misleading statements at the time they were made. As a result of the foregoing, the Director Defendants breached their fiduciary duties, face a substantial likelihood of liability, are not disinterested, and demand upon them is futile, and thus excused.

125. As members of the Board charged with overseeing the Company's affairs, each of the Director Defendants had knowledge, or the fiduciary obligation to inform themselves, of information pertaining to the Company's core operations and the material events giving rise to these claims. Specifically, as Board members of QuantumScape, the Director Defendants knew, or should have known, the material facts surrounding the development and manufacturing challenges, and promotion of the Company's mission critical battery technology.

126. Moreover, the Director Defendants willfully ignored, or recklessly failed to inform themselves of, the obvious problems with the Company's internal controls, practices, and procedures, and failed to make a good faith effort to correct the problems or prevent their recurrence.

127. Defendant Buss is not disinterested or independent, and therefore, is incapable of considering demand because he serves as a member of the Audit Committee and, pursuant to the Audit Committee Charter, was specifically charged with the responsibility to assist the Board in fulfilling its oversight responsibilities

related to, *inter alia*, regulatory, and public disclosure requirements. Throughout the Relevant Period, however, Defendant Buss breached his fiduciary duty to the Company by failing to prevent, correct, or inform the Board of, the issuance of material misstatements and omissions regarding its battery technology and the adequacy of the Company's internal controls as alleged above. Therefore, the Defendant Buss cannot independently consider any demand to sue himself for breaching his fiduciary duties to the Company, as that would expose him to substantial liability and threaten his livelihood.

128. Additionally, each of the Directors received payments, benefits, stock options, and other emoluments by virtue of their membership on the Board and their control of the Company. Indeed, all of the Director Defendants benefitted directly from the wrongdoing alleged herein. Specifically, the Director Defendants benefitted from the artificial inflation of the price of the Company's stock and the resulting increase in the value of QuantumScape stock and stock options they held.

129. The Director Defendants, as members of the Board, were and are subject to the Company's Code of Corporate Governance and Conduct. The Code of Corporate Governance and Conduct goes well beyond the basic fiduciary duties required by applicable laws, rules, and regulations, requiring the Director Defendants to also adhere to QuantumScape's standards of business conduct. The

Director Defendants violated the Codes because they knowingly or recklessly engaged in and participated in making and/or causing the Company to make the materially false and misleading statements alleged herein. Because the Director Defendants violated the Code of Conduct, they face a substantial likelihood of liability for breaching their fiduciary duties, and therefore demand upon them is futile.

130. Furthermore, demand, in this case, is excused because the Director Defendants derive substantial revenue from the Company, control the Company, and are indebted to each other. The Director Defendants have longstanding business and personal relationships with each other and with other Defendants that preclude them from acting independently and in the best interests of the Company and the shareholders. Specifically, Defendant Singh began serving as Chairman of Legacy QuantumScape's board, and served as CEO, since May 2010. Shortly thereafter, he was joined on Legacy QuantumScape's board by Defendants Prinz and Doerr, in December 2010. Defendant Holme then joined Legacy QuantumScape as CTO in January 2011, a role he continues to hold at the Company. Defendant Hettrich joined Legacy QuantumScape a year later in January 2012, serving in various managerial and executive positions culminating in his being named CFO in September 2018, a role he continues to hold with the Company. Shortly after Defendant Hettrich joined

Legacy Quantum Scape, Defendant Saluja, joined as a director, in August 2012. In May 2015, Defendant Leohold joined the board of Legacy QuantumScape while he was still working at Volkswagen. He would continue to work at Volkswagen while serving on the Board for four more years. Defendant Straubel was added to the board of Legacy QuantumScape in December 2019, followed by Defendant Buss in August 2020. They all survived through the merger to work at the Company now. Defendants Singh, Prinz, Doerr, and Holme have worked together for a decade or more, and Defendants Hettrich, and Saluja have worked with them for almost as long. These conflicts of interest precluded the Director Defendants from adequately monitoring the Company's operations and internal controls and calling into question the Defendants' conduct. Thus, any demand for the Director Defendants would be futile.

131. Significantly, the Director Defendants have taken no remedial action to redress the conduct alleged herein.

132. Additional reasons that demand on Defendant Singh is futile to follow. As CEO, Defendant Singh was responsible for all of the false and misleading statements and omissions that were made during the Relevant Period, including the Registration Statement, which he signed. Defendant Singh is not an independent director, and the Company provides Defendant Singh with significant

compensation. As the Company's highest officer and a Company director, Defendant Singh conducted little, if any, oversight of the scheme to cause the Company to make false and misleading statements, consciously disregarded his duties to monitor such controls over reporting and engagement in the scheme, and consciously disregarded his duties to protect corporate assets. In addition, Defendant Singh sold shares at inflated prices in the SPO. Moreover, Defendant Singh is a defendant in the Securities Action. Additionally, he and Defendants Prinz, Holme, Hettrich, Blome, Buss, Doerr, Lehold, Saluja, and Straubel all served simultaneously at Legacy QuantumScape, in various capacities. For these reasons, Defendant Singh breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon him is futile and, therefore, excused.

133. Additional reasons that demand on Defendant Prinz is futile to follow. Defendant Prinz signed the Registration Statement and the two subsequent amendments thereto, rendering him personally responsible for the false and misleading statements contained therein. As a Company director, Defendant Prinz conducted little, if any, oversight of the scheme to cause the Company to make false and misleading statements, consciously disregarded his duties to monitor such controls over reporting and engagement in the scheme, and consciously disregarded

his duties to protect corporate assets. Defendant Prinz receives significant compensation from the Company. In addition, Defendant Prinz sold shares at inflated prices in the SPO. Moreover, Defendant Prinz is a defendant in the Securities Action. Additionally, Defendant Prinz and Defendants Singh, Holme, Hettrich, Blome, Buss, Doerr, Leohold, Saluja, and Straubel all served simultaneously at Legacy QuantumScape, in various capacities, as is detailed further below. For these reasons, Defendant Prinz breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon him is futile and, therefore, excused.

134. Additional reasons that demand on Defendant Blome is futile to follow. Defendant Blome is an affiliate of Defendant VGA, having been nominated to the Board by VGA and having served as Head of Volkswagen's Battery Center of Excellence since January 2018. As a result, Defendant Blome is beholden to Defendant VGA and cannot independently or disinterestedly consider an action against it. Defendant Blome receives significant compensation from the Company. Defendant Blome signed the Registration Statement and the two subsequent amendments thereto, rendering him personally responsible for the false and misleading statements contained therein. As a Company director, Defendant Blome conducted little, if any, oversight of the scheme to cause the Company to make false

and misleading statements, consciously disregarded his duties to monitor such controls over reporting and engagement in the scheme, and consciously disregarded his duties to protect corporate assets. Moreover, Defendant Blome and Defendants Singh, Prinz, Holme, Hettrich, Buss, Doerr, Leohold, Saluja, and Straubel all served simultaneously at Legacy QuantumScape, in various capacities, as is detailed further below. For these reasons, Defendant Blome breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon him is futile and, therefore, excused.

135. Additional reasons that demand on Defendant Buss is futile to follow. Defendant Buss signed the Registration Statement and the two subsequent amendments thereto, rendering him personally responsible for the false and misleading statements contained therein. Defendant Buss receives significant compensation from the Company. As a Company director, Defendant Buss conducted little, if any, oversight of the scheme to cause the Company to make false and misleading statements, consciously disregarded his duties to monitor such controls over reporting and engagement in the scheme, and consciously disregarded his duties to protect corporate assets. In addition, Defendant Buss is listed in the Prospectus as offering shares of Company common stock in the SPO. Moreover, Defendant Buss and Defendants Singh, Prinz, Holme, Hettrich, Blome, Doerr,

Leohold, Saluja, and Straubel all served simultaneously at Legacy QuantumScape, in various capacities, as is detailed further below. For these reasons, Defendant Buss breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon him is futile and, therefore, excused.

136. Additional reasons that demand on Defendant Doerr is futile to follow. Defendant Doerr signed the Registration Statement and the two subsequent amendments thereto, rendering him personally responsible for the false and misleading statements contained therein. As a Company director, Defendant Doerr conducted little, if any, oversight of the scheme to cause the Company to make false and misleading statements, consciously disregarded his duties to monitor such controls over reporting and engagement in the scheme, and consciously disregarded his duties to protect corporate assets. Defendant Doerr receives significant compensation from the Company. Moreover, Defendant Doerr and Defendants Singh, Prinz, Holme, Hettrich, Blome, Buss, Leohold, Saluja, and Straubel all served simultaneously at Legacy QuantumScape, in various capacities, as is detailed further below. For these reasons, Defendant Doerr breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon him is futile and, therefore, excused.

137. Additional reasons that demand on Defendant Leohold is futile to follow. Defendant Leohold has served in various executive positions with Volkswagen from April 2006 to May 2019. Defendant Leohold receives significant compensation from the Company. Defendant Leohold signed the Registration Statement and the two subsequent amendments thereto, rendering him personally responsible for the false and misleading statements contained therein. As a Company director, Defendant Leohold conducted little, if any, oversight of the scheme to cause the Company to make false and misleading statements, consciously disregarded his duties to monitor such controls over reporting and engagement in the scheme, and consciously disregarded his duties to protect corporate assets. In addition, Defendant Leohold is listed in the Prospectus as offering shares of Company common stock in the SPO. Moreover, Defendant Leohold and Defendants Singh, Prinz, Holme, Hettrich, Blome, Buss, Doerr, Saluja, and Straubel all served simultaneously at Legacy QuantumScape, in various capacities, as is detailed further below. For these reasons, Defendant Leohold breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon him is futile and, therefore, excused.

138. Additional reasons that demand on Defendant Saluja is futile to follow. Defendant Saluja signed the Registration Statement and the two subsequent

amendments thereto, rendering him personally responsible for the false and misleading statements contained therein. Defendant Saluja receives significant compensation from Company. As a trusted Company director, Defendant Saluja conducted little, if any, oversight of the scheme to cause the Company to make false and misleading statements, consciously disregarded his duties to monitor such controls over reporting and engagement in the scheme, and consciously disregarded his duties to protect corporate assets. Moreover, Defendant Saluja and Defendants Singh, Prinz, Holme, Hettrich, Blome, Buss, Doerr, Leohold, and Straubel all served simultaneously at Legacy QuantumScape, in various capacities, as is detailed further below. For these reasons, Defendant Saluja breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon him is futile and, therefore, excused.

139. Additional reasons that demand on Defendant Straubel is futile to follow. He signed the original Registration Statement and the two subsequent amendments thereto, rendering him personally responsible for the false and misleading statements contained therein. As a Company director, Defendant Straubel conducted little, if any, oversight of the scheme to cause the Company to make false and misleading statements, consciously disregarded his duties to monitor such controls over reporting and engagement in the scheme, and consciously

disregarded his duties to protect corporate assets. Defendant Straubel receives significant compensation from the Company. In addition, Defendant Straubel is listed in the Prospectus as offering shares of Company common stock in the SPO. Moreover, Defendant Straubel and Defendants Singh, Prinz, Holme, Hettrich, Blome, Buss, Doerr, Leohold, and Saluja all served simultaneously at Legacy QuantumScape, in various capacities, as is detailed further below. For these reasons, Defendant Straubel breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon him is futile and, therefore, excused.

140. Additional reasons that demand on Defendant Wiese is futile follow. Defendant Wiese is one of two appointees to the Board made by Defendant VGA. Defendant Wiese is a VGA affiliate and currently Head of Volkswagen Group M&A, Investment Advisory, and Partnerships since January 2020. Prior to this he had numerous roles at Volkswagen over an extended period going back to 2016, including Head of Industrial Cooperations and Partnerships from June 2018 to December 2019, Head of Group Battery Strategy from June 2016 to December 2019, and Corporate Strategy/Head of Performance Improvement from March 2016 to May 2018. In light of this longstanding relationship and his being appointed by VGA, Wiese is beholden to Defendant VGA and cannot independently or

disinterestedly consider an action against it. Therefore, demand upon him is futile and thus excused.

141. Additional reasons that demand on the Board is futile follow.

142. The Director Defendants' conduct described herein and summarized above could not have been the product of legitimate business judgment as it was based on bad faith and intentional, reckless, or disloyal misconduct. Thus, none of the Directors can claim exculpation from their violations of duty pursuant to the Company's charter (to the extent such a provision exists). As a majority of the Directors face a substantial likelihood of liability, they are self-interested in the transactions challenged herein. They cannot be presumed to be capable of exercising independent and disinterested judgment about whether to pursue this action on behalf of the shareholders of the Company. Accordingly, demand is excused as being futile.

143. The acts complained of herein constitute violations of fiduciary duties owed by QuantumScape's officers and directors, and these acts are incapable of ratification.

144. The Directors may also be protected against personal liability for their acts of mismanagement and breaches of fiduciary duty alleged herein by directors' and officers' liability insurance if they caused the Company to purchase it for their

protection with corporate funds *i.e.*, monies belonging to the stockholders of QuantumScape. If there is a directors' and officers' liability insurance policy covering the Directors, it may contain provisions that eliminate coverage for any action brought directly by the Company against the Directors, known as, *inter alia*, the "insured-versus-insured exclusion." As a result, if the Directors were to sue themselves or certain officers of QuantumScape, there would be no directors' and officers' insurance protection. Accordingly, the Directors cannot be expected to bring such a suit. On the other hand, if the suit is brought derivatively, as this action is brought, such insurance coverage, if such an insurance policy exists, will provide a basis for the Company to effectuate a recovery. Thus, demand on the Directors is futile and, therefore, excused.

145. If there is no directors' and officers' liability insurance, then the Directors will not cause QuantumScape to sue the Defendants named herein, since, if they did, they would face a large uninsured individual liability. Accordingly, demand is futile in that event, as well.

146. Thus, for all of the reasons set forth above, all of the Directors, and, if not all of them, certainly at least seven of them, cannot consider a demand with disinterestedness and independence. Consequently, a demand upon the Board is excused as futile.

COUNT I

Breach of Fiduciary Duty Against the Defendants

147. Plaintiff incorporates by reference and realleges each and every allegation set forth above as though fully set forth herein.

148. Defendants owe the Company fiduciary obligations. By reason of their fiduciary relationships, Defendants owed and owe the Company the highest obligations of good faith, candor, loyalty, and due care.

149. Defendants willfully ignored the obvious deficiencies in the Company's internal controls, practices, and procedures and failed to make a good faith effort to correct the problems or prevent their recurrence.

150. Defendants, together and individually, violated and breached their fiduciary duties of good faith, candor, loyalty, and due care. Specifically, the Defendants made and/or authorized false and misleading statements concerning the Company's battery technology and the adequacy of the Company's financial reporting and internal controls, because, *inter alia*, they failed to disclose that (1) QuantumScape's solid-state batteries did not have the advertised power, longevity, or energy density; (2) the Company could not adapt their batteries to be readily usable in electric vehicles; (3) the Company failed to maintain adequate internal

controls; (4) QuantumScape's testing was very preliminary ; and (5) it was nowhere near being able to commercialize a solid state battery.

151. Defendants further breached their fiduciary duties by failing to ensure that a reasonable information and reporting system existed with respect to the mission critical regulatory compliance and development of the Company's battery and battery technology.

152. The Board either failed to institute an oversight system concerning the development of Company's solid-state battery, and with regard to the adequacy of the Company's public reporting, or consciously disregarded a series of red flags related to development of its solid-state battery. Despite being made aware of these red flags warning of technology and public-reporting related deficiencies throughout the Relevant Period, the Board failed to act.

153. The Former Directors are liable for the same reasons.

154. The Officer Defendants are liable for having disseminated false and misleading statements which has resulted in the Company having claims upheld against it.

155. Defendants also breached their fiduciary duties to Company shareholders by failing to take remedial action against the other Defendants and by concealing the other Defendants' fraudulent statements and material omissions.

156. As a direct and proximate result of the Defendants' breaches of their fiduciary obligations, QuantumScape has sustained significant damages as alleged herein. As a result, the Defendants are liable to the Company.

157. Plaintiff, on behalf of QuantumScape, has no adequate remedy at law.

COUNT II

Unjust Enrichment Against the Defendants

158. Plaintiff incorporates by reference and realleges each and every allegation set forth above as though fully set forth herein.

159. By their wrongful acts and omissions, Defendants were unjustly enriched at the expense of and to the detriment of QuantumScape.

160. Defendants were unjustly enriched by their receipt of compensation and with respect to insider sales of Company stock.

161. Plaintiff, as a stockholder and representative of the Company, seeks restitution from Defendants, and seeks an order of this Court disgorging all profits, benefits, and other compensation obtained by the Defendants as a result of their wrongful conduct and fiduciary breaches.

162. As a direct and proximate result of Defendants' misconduct, the Company has suffered significant damages, as alleged herein.

163. Plaintiff, on behalf of QuantumScape, has no adequate remedy at law.

COUNT III

Aiding and Abetting Breaches of Fiduciary Duty Against the Defendants

164. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

165. By encouraging and accomplishing the illegal and improper transactions alleged herein and concealing them from the public, Defendants have each encouraged, facilitated and advanced their breaches of their fiduciary duties. In so doing, Defendants have each aided and abetted, conspired, and schemed with one another to breach their fiduciary duties, waste the Company's corporate assets, and engage in the *ultra vires* and illegal conduct complained of herein.

166. Plaintiff, on behalf of QuantumScape, has no adequate remedy at law.

COUNT IV

Waste of Corporate Assets Against the Defendants

167. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

168. Defendants breached their fiduciary duties by failing to properly supervise and monitor the adequacy of QuantumScape's internal controls, by

issuing, causing the issuance of, and/or failing to correct the false and misleading statements identified herein, and by allowing the Company to engage in an illegal, unethical, and improper course of conduct, which was continuous, connected, and ongoing at all relevant times.

169. Defendants wasted corporate assets by, among other things: incurring and paying defense costs in connection with the Securities Action; and approving performance-based compensation linked to the Company's perceived battery-related successes.

170. As a result of the waste of corporate assets, Defendants are liable to the Company.

171. As a direct and proximate result of defendants' breaches of fiduciary duties, the Company has suffered significant damages, as alleged herein.

172. Plaintiff, on behalf of QuantumScape, has no adequate remedy at law.

PRAYER FOR RELIEF

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

A. Declaring that Plaintiff may maintain this derivative action on behalf of QuantumScape and that Plaintiff is a proper and adequate representative of the Company;

B. Awarding the amount of damages sustained by the Company as a result of Defendants' breaches of fiduciary duties and unjust enrichment;

C. Directing QuantumScape to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with applicable laws and to protect QuantumScape and its stockholders from a repeat of the damaging events described herein, including, but not limited to,

- strengthening the Board's supervision of operations and compliance with applicable state and federal laws and regulations;
- strengthening the Company's internal reporting and financial disclosure controls;
- developing and implementing procedures for greater shareholder input into the policies and guidelines of the Board; and
- strengthening the Company's internal operational control functions.

D. Awarding to QuantumScape restitution from the Defendants; Awarding to Plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

E. Granting such other and further relief as the Court deems just and proper.

Dated: August 29, 2022

BIGGS AND BATTAGLIA

/s/Robert D. Goldberg

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