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Case No. 2021-0679-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

RICHARD DELMAN, Plaintiff, v. GIGACQUISITIONS3, LLC, AVI KATZ, RALUCA DINU, NEIL MIOTTO, JOHN MIKULSKY, ANDREA BETTI-BERUTTO, and PETER WANG, Defendants.	C.A. No. 2021-

VERIFIED CLASS ACTION COMPLAINT

Plaintiff Richard Delman ("Plaintiff"), on behalf of himself and similarly situated current and former stockholders of GigCapital 3, Inc. ("Gig 3"), brings this Verified Class Action Complaint asserting: (i) breach of fiduciary duty claims stemming from Gig3's merger (the "Merger") with Lightning eMotors, Inc. ("Lightning") against (a) Avi Katz, Raluca Dinu, Neil Miotto, John Mikulsky, Andrea Betti-Berutto, and Peter Wang, in their capacities as members of the Gig3's board of directors (the "Board") and/or Gig3 officers, and (b) GigAcquisitions3, LLC ("Sponsor") and Katz, in their capacity as Gig3's controller; and (ii) unjust enrichment of Sponsor and Katz.

The allegations are based on Plaintiff's knowledge as to himself, and on information and belief, including counsel's investigation and review of publicly available information.

NATURE OF THE ACTION

1. Gig3, now renamed Lightning eMotors, Inc. ("New Lightning"), is a Delaware corporation formed as a special purpose acquisition company ("SPAC") by Avi Katz. Gig3 completed its initial public offering ("IPO") of units on May 18, 2020, selling 20 million units to public investors, for proceeds of $200 million. Those units, priced at $10, consisted of one share of common stock and three quarters of a warrant for the purchase of one share of common stock. Beginning 52 days after the IPO, the shares and the warrants could be separated from the units and traded as such.

2. A SPAC is a financial innovation that traces its origin back to the 1990s, but whose current structure was largely standardized about a decade ago. The use of SPACs has skyrocketed in the past year and a half, as a means by which a private company can go public through a reverse merger, rather than an IPO.

3. Gig3's history is part of a disturbing trend of SPAC transactions in which financial conflicts of interest of sponsors and insiders override good corporate governance and the interests of SPAC stockholders. Like many SPAC transactions, which have triggered scrutiny from the SEC relating to financial projections and the

reporting of warrants as equity rather than as liabilities, the Gig3 transaction failed to observe the most basic principle of Delaware corporate governance – namely, that a corporation's governance structure should be designed to protect and promote the interests of public stockholders, not the financial interests of its insiders and controllers.

4. Like all SPAC transactions, Gig3 was formed and taken public as a shell company by a "sponsor," GigAcquisitions3, LLC (the "Sponsor"), through which Katz (1) selected the SPAC's directors, (2) dominated the SPAC's management, (3) made an investment in SPAC shares and/or warrants to cover the SPACs underwriting fees and working capital, and (4) for only a nominal investment received a 20% equity stake in Gig3. Under its charter, Gig3 had an eighteen-month window within which to consummate a merger. Its only asset was the cash it raised in its IPO and proceeds of the Sponsor's investment, which were used to cover the underwriting fee for the IPO and other expenses. If Gig3 failed to complete a deal during that eighteen-month window, Gig3's charter required that it liquidate and return its public stockholders' funds, with interest. A liquidation would have rendered the Sponsor's investment and its 20% stake worthless. Hence, Katz was strongly incentivized to get *any* deal done, even a bad deal for Gig3's public stockholders, rather than liquidate.

5. Although a sponsor can neutralize this inherent conflict of interest by establishing a governance structure that protects the interests of public stockholders – and some sponsors do – many sponsors instead adopt a governance structure for their SPACs that protects their own financial interests. The Gig3 transaction followed the latter approach.

6. Katz owned and controlled the Sponsor and served as the CEO and Executive Chairman of Gig3. The Sponsor, in turn, was the controller of Gig3. This chain of control was cemented through (1) the appointment of Gig3 directors that had multiple, long-standing relationships with Katz and affiliates of his financial enterprise, GigCapital Global ("GigCapital"); (b) compensation of the purportedly independent directors with a combination of "Initial Stockholder Shares" and membership interests in the Sponsor, thereby aligning their interests with those of Katz and the Sponsor, (c) along with other initial stockholders, holding 21.8% of Gig3 outstanding shares, and (d) stating at the time of its IPO that it would not hold an annual stockholders' meeting to elect directors, which it recognized "may not be in compliance with Section 211(b) of the DGCL."

7. Consistent with the general practice among SPACs, Katz caused Gig3 to issue 5 million Initial Stockholder Shares to the Sponsor, an amount that would equal 20% of Gig3's post-IPO equity, for the nominal sum of $25,000 (a price of $.005, or half of one cent, per share). In addition, simultaneously with the

consummation of Gig3's IPO, the Sponsor purchased 650,000 private placement units (consisting of one share of common stock, also referred to in the Proxy Statement as "Initial Stockholder Shares," and three quarters of a warrant), for an aggregate purchase price of $6.5 million, to cover the IPO underwriting fee and working capital.

8. Also consistent with general SPAC practice, the rights of holders of Initial Stockholder Shares differed from the rights of public stockholders in two important respects. First, if Gig3 were to liquidate, the public stockholders would receive, *pro rata*, all proceeds of the IPO plus accrued interest. The IPO proceeds were put in trust for the benefit of the stockholders to ensure they would be available for this purpose. Second, each public stockholder had a right to redeem its shares on those same terms rather than participate in a proposed merger. The redemption price was $10.10 per share. The Sponsor and other holders of Initial Stockholder Shares, by contrast, waived their right to redeem their shares or to participate in a liquidation. Consequently, if Gig3 did not merge, the Initial Stockholder Shares would be worthless in a liquidation. Katz, the Sponsor and others that held Initial Stockholder Shares and membership interests in the Sponsor would get nothing, and the Sponsor would lose its initial investment.

9. Katz served as chairman of the Gig3 Board and, through the Sponsor, selected Gig3's five other Board members. Although Gig3 contends that four of

these directors are independent, each had pre-existing and continuing loyalties to Katz based on numerous lucrative financial and professional ties to Katz, for most extending back more than a decade. Among these financial ties, each purportedly independent director has served and currently serves as a director of one or more Katz-sponsored SPACs.

10. Katz further secured the loyalty of the purportedly independent directors by having them hold membership interests in the Sponsor itself or in GigFounders, LLC, which has an interest in the Sponsor. In addition, Katz caused the Sponsor to transfer Initial Stockholder Shares to Betti-Berutto and Wang. As a result of these holdings, the purportedly independent directors' financial interests were tightly linked to those of Katz and the Sponsor – and poorly aligned with the interests of Gig3's public stockholders.

11. Through their holdings of Initial Stockholder Shares and Sponsor membership interests, Katz, the Sponsor, and the Board were strongly incentivized to get *any* deal done, because any deal (even a knowingly bad one) was virtually certain to make them a lot of money. Furthermore, all of the directors also had a strong interest in maintaining their lucrative relationships with Katz. Moreover, Katz, Dinu and Miotto would become directors of New Lightning following the completion of the merger. By contrast, a failure to merge would mean Gig3 would liquidate and return the public stockholders' investment – in which case the Sponsor,

Katz and the other directors would receive nothing, and the Sponsor would lose its $6.5 million investment.

12. Katz and the Board were not about to allow Gig3 to liquidate. So they orchestrated a merger with Lightning financed by a highly dilutive convertible debt instrument, which closed on May 6, 2020 (the "Merger"). As the market would quickly reveal, this transaction was a losing proposition for Gig3 public stockholders. Katz and inside director Raluca Dinu dominated the negotiation with Lightning and with the investors in the convertible debt instrument. The Board provided no meaningful oversight, serving instead as a rubberstamp. There was no fairness opinion and no special committee. The deeply-conflicted members of the Board breached their duty of loyalty by approving the Merger and its financing, and recommending the transaction to stockholders.

13. The Board failed to consider the fact that the transaction it was contemplating was in all likelihood a far worse alternative for public stockholders than a liquidation in which the stockholders would receive $10.10 per share. The Board did not consider how deeply Gig3's pre-merger transactions had diluted the value of the public stockholders' shares. Nor did it consider the extent to which the anticipated convertible debt issuance and transaction costs would further dilute their shares and dissipate cash. At the time of the Merger, Gig3 would have less than $6.00 in cash to contribute to the combined company.

14. Furthermore, with so little cash underlying each share of Gig3 stock, a loyal and diligent board would consider what its stockholders were likely to receive in return from Lightning. By merging with Gig3, Lightning was in effect exchanging its shares for Gig3's cash. Consequently, there was an obvious possibility that Lightning would be willing to exchange no more in value than the amount of cash Gig3 would contribute to the combined company.

15. The merger agreement between the parties valued Gig3 shares at $10, but in reality, there was less than $6.00 in cash underlying those shares. Gig3's $10 per share valuation was severely inflated. It would reasonably follow, therefore, that in negotiating a share exchange, Lightning might well inflate its value commensurately. The Board, however, failed to consider this danger in approving the Merger and recommending it to stockholders.

16. In fact, Lightning did inflate its value and it supported its inflated value with revenue growth projections indicating that Lightning would increase its revenues more than 200-fold within five years. Dinu and Katz, who negotiated the Merger, accepted Lightning's valuation and projections in support of that valuation. Once the merger was completed, however, New Lightning immediately and substantially downgraded its revenue projections, and revealed details about its business model that made its meteoric projected growth implausible.

17. When presented with the deal, the Board simply rubberstamped what Katz requested. Indeed, it appears that none of the independent directors played any meaningful role in the negotiations with Lightning until the Board met on December 9, 2020, at which time it approved the merger agreement, a PIPE agreement and a highly dilutive convertible note agreement (both of which provided additional funding upon which the Merger was conditioned), all without the benefit of a fairness opinion.

18. In addition to breaching its duty of loyalty, the Board breached its duty of candor to Gig3's stockholders by withholding critical information concerning (1) the high degree of dilution of Gig3 shares; and (2) the ability of Lightning to scale its production of medium-duty zero emission vehicles. This information was critical to Gig3 stockholders, who faced a decision both how to vote their shares and whether to redeem their shares for $10, or remain invested in Gig3 through the Merger.

19. Gig3 failed to provide its public investors with a comprehensible description of how deeply its pre-merger transactions and transactions related to the Merger would dissipate the amount of cash it held per share. Based on plaintiff's analysis, the actual cash Gig3 would contribute to the Merger was less than $6.00 per share – not the $10 that the merger agreement and the Proxy Statement attributed to Gig3 shares.

20. The Board further breached its duty of candor by including Lightning's materially misleading revenue projections in Gig3's Proxy Statement for the Merger. In its presentations to investors, and in the Proxy Statement for the merger, Gig3 repeatedly projected that the post-merger company ("New Lightning") would increase its revenues more than 200-fold in just five years, from $9 million in 2020 to more than $2 billion in 2025. Less than a month after the share redemption deadline, however, Gig3 substantially downgraded its FY 2021 revenue guidance, and a few weeks later it revealed that the nature of Lightning's business model would be extremely difficult to scale up, undercutting the credibility of the company's long-term revenue projections.

21. By approving the Merger and retaining their shares, Gig3 stockholders saw their shares decline in price to $7.82 on the day the merger closed, and to $6.57 on August 2, 2021, two-plus months since the merger – a period during which the NYSE composite index rose slightly.

22. Although an abysmal deal for Gig3 public stockholders, the Lightning merger was a financial windfall for Katz, the Sponsor, inside director Dinu, and the purportedly independent directors. Even though Gig3's stock price had fallen to $7.82 per share on May 6, 2021 (the day the merger was completed), Katz and the Sponsor reaped a return of approximately $39 million from the Merger.

23. Due to the conflicts of interest on the part of the Board and the Sponsor, which drove the Board's decision to approve the Merger, the Merger requires judicial review for entire fairness. In light of the conflicts of interest, the fact that Gig3 failed to disclose either (i) the fact that Gig3 had far less cash per share to invest in the Merger than it purported to have; or (ii) the daunting challenge New Lightning would face in scaling up its business model, and the disastrous results for the public stockholders, the Merger cannot meet the exacting entire fairness test.

24. This Court should take this opportunity to affirm that the boards and controllers of SPACs incorporated in Delaware owe the same fiduciary duties to their stockholders as do the boards and controllers of any Delaware corporation, and thus put an end to the money-grabbing SPAC bonanza that has been burgeoning in recent years at the expense of the investing public.

PARTIES

25. Plaintiff Richard Delman purchased Gig3 shares on August 26, 2020, and has held those shares since that date.

26. GigAcquisitions3, LLC (the "Sponsor), is a Delaware limited liability company that served as Gig3's sponsor. The Sponsor's managing member is Avi Katz. For the nominal price of $25,000 ($0.005, or half of one cent, per share), the Sponsor purchased 5 million Gig3 Initial Stockholder Shares. As set forth below, Katz's membership interest in the Sponsor, and indirectly, in the Initial Stockholder

Shares, gave him the opportunity to make tens of millions of dollars as long as Gig3 merged with another business within eighteen months, as opposed to liquidating as its charter required if it did not merge.

27. Avi Katz is CEO, Executive Chairman and a director of Gig3, managing member of the Sponsor, and the CEO, Executive Chairman, and a founding managing partner of GigCapital. He also is founder and/or CEO of many other entities affiliated with GigCapital.[1] Katz has been the managing member of the sponsor of at least seven GigCapital-affiliated SPACs. Katz is a director and co-chairman of the New Lightning board. Katz is married to Raluca Dinu.

28. Raluca Dinu was a Gig3 director. Dinu is a founding managing partner of GigCapital. Dinu also was an executive at GigOptix (later renamed GigPeak) from 2008 until it was sold in 2017. According to the Proxy Statement, in this capacity "[s]he was the main partner to [Katz] in the rollup of the company through 10 mergers and acquisitions, and in closing the sale of GigPeak to IDT." She has been a director of GigCapital2 ("Gig2") (another Katz-sponsored SPAC) since March 2019, continuing in that position with UpHealth, Inc., the post-SPAC company, and was its CEO from August 2019 until the closing of the merger in June 2021. She is CEO and a director of Katz-sponsored SPACs GigCapital4, GigCapital5 and GigCapital International1, all of which are currently seeking

[1] https://www.gigcapitalglobal.com/

merger targets, awaiting an announced merger, or awaiting an IPO. Dinu is a director of New Lightning. Dinu is married to Katz.

29. Neil Miotto was a Gig3 director. Miotto is a GigCapital partner. Miotto also was a director of GigPeak from its founding in 2008 until its sale in 2017. Miotto has been a director of GigCapial1 ("Gig1") (another Katz-sponsored SPAC) since October 2017, continuing in that position with Kaleyra, Inc., the post-SPAC company. Miotto has also been a director of Gig2 since March 2019, continuing in that position with UpHealth, Inc., the post-SPAC company, a director of GigCapital4 ("Gig4"), and a director of GigCapital5. On the GigCapital web site, Miotto says "I have been a part of GigCapital group from the beginning, and I still find it thrilling to witness and contribute to the evolution of the tech-fueled IPO culture." Miotto is a director of New Lightning.

30. John Mikulsky was a Gig3 director. Mikulsky is a GigCapital strategic advisor. Mikulsky also was CEO and President of Endwave until it was purchased by GigPeak in 2011. He then served as a director of GigPeak until its sale in 2017. Mikulsky has been a director of Gig1 since December 2017, continuing in that position with Kaleyra, Inc., the post-SPAC merger company. He was a director of Gig2 from March 2019 until the closing of its merger with UpHealth in June 2021.

31. Andrea Betti-Berutto was a Gig3 director. Betti-Berutto is GigCapital CTO for Hardware. Betti-Berutto also was a co-founder and Chief Technology

Officer of GigOptix, and remained in that position until GigPeak's sale in 2017. According to the Proxy Statement, "[t]ogether with Dr. Katz and the rest of the GigPeak executive leadership team, Mr. Betti-Berutto drove the acquisition and integration of 10 companies and technologies." Betti-Berutto is a director of Gig4 and GigInternational1.

32. Peter Wang was a Gig3 director. Wang is GigCapital CTO for Software. Wang also was a director of Gig1 from December 2017 until its de-SPAC merger with Kaleyra in November 2019. Wang is a director of Katz-sponsored SPACs GigCaptial6 and GigInternational1.

33. Defendants Katz, Dinu, Miotto, Mikulsky, Betti-Berutto, and Wang are referred to herein as the "Director Defendants."

34. Defendants Avi Katz and the Sponsor are referred to herein as the "Controller Defendants."

RELEVANT NON-PARTIES

35. Gig3 was a Delaware corporation formed as a special purpose acquisition company ("SPAC") by Avi Katz. A SPAC, often referred to as a "blank check" corporation, is publicly traded but has no operations, and must merge with an operating company or liquidate within a specified period after its initial public offering ("IPO").

36. Lightning was a private operating company. The "de-SPAC" merger of Gig3 and Lightning closed on May 6, 2021. The surviving entity is Lightning eMotors, Inc., a publicly-traded operating company, listed on NYSE ("New Lightning").

SUBSTANTIVE ALLEGATIONS

I. Katz Forms Gig3 and Raises $200 Million in its IPO

37. Avi Katz is a serial founder of SPACs, corporations that by the terms of their charter have a limited period of time within which to either merge with a private company – in a "de-SPAC" transaction – and thereby bring the private company public, or to liquidate.

38. Katz is currently on his seventh SPAC. Three of his SPACs, including Gig3, have closed de-SPAC mergers. None has been a success for stockholders. Gig2 closed its merger in early June 2021 and is currently trading at roughly 40% below its IPO price. Gig1 closed its merger in late November 2019 and is currently trading slightly above its IPO price while the NYSE has risen approximately 30%. Gig3 is trading at 35% below its IPO price. Katz's four other SPACs have not yet merged with a target. Katz's stakes in Gig1 and Gig2 are now worth approximately $30.8 million and $27.9 million, respectively.

39. Katz held a controlling interest in the Sponsor, and on February 3, 2020 caused the Sponsor to incorporate Gig3 under the laws of Delaware. Katz serves as

Gig3's CEO, Executive Chairman and director. Consistent with common practice among SPAC sponsors, before Gig3 went public, Katz caused Gig3 to issue to the Sponsor a number of shares that would equal 20% of Gig3's post-IPO equity for a nominal cost of $25,000. This came to 5 million shares.

40. Gig3 completed its IPO on May 18, 2020, selling 20 million units to public investors for $10 per unit and raising proceeds totaling $200 million. Consistent with common practice among SPACs, each unit consisted of one share of common stock and a warrant for the purchase of common stock at an exercise price of $11.50 per share following an eventual merger. Each Gig3 warrant is for the purchase of three-quarters of a share of common stock. So, for example, the warrants contained in four units allow a holder to purchase three shares at $11.50 per share. Also consistent with common practice, the shares of common stock were redeemable for $10 – the IPO price of the units – plus interest. Investors in units could redeem their shares and keep the warrants. Hence, for a purchaser of units, the warrants were free. As with all SPACs, the funds raised in Gig3's IPO were retained in a trust account for the benefit of the public stockholders. The funds in the trust could be used only to redeem shares, to contribute to a merger, or to return the public stockholders' investment if Gig3 were to liquidate rather than merge.

41. Concurrently with the IPO, the Sponsor purchased 650,000 Gig3 units for $10 each in a private placement. The $6.5 million in proceeds were used for operating expenses and underwriting fees.

II. Katz Packed the Board With Loyalists and Ensured That Their Financial Interests Were Aligned With His

42. Rather than establishing a governance structure that addressed the conflicting interests of the public stockholders, on the one hand, and the Sponsor and Katz, on the other, Katz did the opposite. He built a board with loyalty to himself and hence to the Sponsor. Katz appointed himself chairman of the Gig3 Board, and he appointed his wife and founding managing director of GigCapital, Dr. Raluca Dinu, as the other inside Board member. The purportedly independent Board directors were Neil Miotto, Andrea Betti-Berutto, Peter Wang, and John Mikulsky. As described above, all of these directors have served in multiple capacities in GigCapital-related businesses for years, and they continue to do so today.

43. Additionally, all four purportedly independent directors had direct – but largely undisclosed – financial interests aligned with the financial interests of Katz and the Sponsor. Mikulsky, Wang and Betti-Berutto held membership interests of undisclosed quantity or value in the Sponsor itself (which as stated above was an LLC). Miotto held a 10% ownership interest in GigFounders, LLC, which had an undisclosed interest in the Sponsor. Even these clearly material relationships are not

disclosed in the Proxy Statement; they were disclosed in the prospectus for Gig3's IPO. The Proxy Statement is silent with respect to these financial interests of the purportedly independent directors except for a vague statement that "Dr. Avi Katz, Dr. Raluca Dinu, Neil Miotto, John Mikulsky, Peter Wang, Andrea Betti-Berutto and Brad Weightman, also have a direct or indirect economic interest in the private placement units and in the 5,635,000 Initial Stockholder Shares owned by the Sponsor." The only disclosure in the Proxy Statement that provides any indication of the extent to which any independent Board member had a financial interest aligned with the interest of Katz and the Sponsor is a statement that the Sponsor transferred 5,000 of its Initial Stockholder Shares to each of Betti-Berutto and Wang, a statement that is materially incomplete with respect to even those two directors' interests.

44. Despite the Proxy Statement's lack of disclosure, it is clear that the purportedly independent directors lacked independence. Reciting the New York Stock Exchange definition of director independence, the Gig3 Proxy Statement claims that Miotto, Mikulsky, Wang and Betti-Berutto had no relationships that would interfere with their exercise of independent judgment. This was clearly not true.

45. The Gig3 Board, like any SPAC board, has only one decision to make: whether to *merge* or to *liquidate*. In light of the extent to which the Board members

have worked for, and continue to work for, Katz through other GigCapital entities, *and* in light of their direct financial interest in having the Gig3 merge rather than liquidate, the claim that these directors could exercise independent judgment defies belief.

III. **The Merger, PIPE, and Convertible Note**

46. On December 10, 2020, Lightning and Gig3 announced they had entered into a merger agreement under which Lightning stockholders would receive shares in the combined company, New Lightning, plus a right to receive additional shares in an earnout.

47. Concurrently with the Merger announcement, Gig3 entered into an agreement with BP Ventures, for the purchase of 2.5 million Gig3 shares for $25 million in a private investment in public equity (the "PIPE"). Also concurrently with the Merger announcement, Gig3 entered into an agreement with undisclosed investors for the purchase of convertible notes (the "Notes"). Each of these transactions would close concurrently with the Merger and were contingent on the Merger closing. The annual interest rate on the Notes is 7.5%, and their term is three years. The Notes are convertible into 8,695,652 shares of Gig3 common stock at a conversion price of $11.50 per share, with New Lightning having the option to force conversion after one year if Gig3's stock price exceeds $13.80 per share for 20 out of 30 trading days. Under the terms of the convertible note subscription agreement,

if the conversion right is exercised before the Notes mature, future interest payable on the Notes must be paid by Gig3. For example, if New Lightning can force conversion and its stock price is $14 per share at the end of year one, the Note holders will receive nearly $15 million in cash, plus 8,695,652 shares worth $14 for a price of $11.50. In total, they will gain $36,114,130.[2]

48. In addition, the investors in the Notes received, at no additional cost, 8,695,652 warrants with an exercise price of $11.50. Continuing the example above, if the Note holders exercise their warrants along with their conversion rights, they will receive a profit of $2.50 on another 8,695,652 shares – for an additional profit of $21,739,130, and a total profit of $57,853,260. That is roughly a 58% return over three years on the $100 million investment. Gig3's agreement to this enormous windfall underscores how determined the Board and the Sponsor were to see the Merger occur, rather than returning to stockholders their $10 plus interest in a liquidation – or finding a better merger. In agreeing to the terms of the Notes, the Board and the Sponsor created an enormous overhang of interest payments and equity dilution that has surely weighed on the value of the stockholders' shares.

49. On March 26, 2021, Gig3 filed with the SEC and mailed to stockholders a definitive Proxy Statement concerning the Merger, the PIPE and the Notes. The

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[2] This is $2.50 per share profit times 8,695,652 shares, plus 23/34 of $15 million in remaining interest.

Proxy Statement informed stockholders of a special meeting to be held on April 21, 2021, at which stockholders would vote whether to approve or disapprove the Merger. It also informed the stockholders that the deadline for them to redeem their shares was April 19, 2021, two business days before the special meeting.

50. On April 21, 2021, the stockholders approved the merger by a majority vote and redeemed approximately 5.8 million shares. On May 6, 2021, the Merger closed.

IV. <u>The Board Followed a Flawed Process in Approving the Merger</u>

51. The process by which Gig3 negotiated the Merger, the PIPE and the Notes was severely flawed. Katz and inside director Raluca Dinu dominated the negotiations. The Board provided no meaningful oversight, serving as a rubberstamp. There was no special committee – though such committee would have been illusory in light of each purportedly independent director's interest in having the Merger close.

52. Oppenheimer and Nomura served as joint financial advisors to Gig3, and were as conflicted in this transaction as the Sponsor was. First, they had been Gig3's underwriters in its IPO and had deferred two-thirds of their underwriting fees until Gig3 merged. If there were no merger, they stood to lose $8 million in fees. In addition, they purchased 243,479 Initial Stockholder Shares along with the Sponsor

concurrently with the IPO. Oppenheimer and Nomura, like Katz and the Sponsor, would receive nothing if the Merger did not close.

53. There was no fairness opinion because, according to the Proxy Statement, "[t]he officers and directors of the Company have substantial experience in evaluating the operating and financial merits of companies from a wide range of industries and concluded that their experience and background, together with the expertise of Nomura and Oppenheimer, enabled them to make the necessary analyses and determinations regarding the Business Combination." As joint financial advisors having a stake in the Merger of $8 million and 243,479 shares, Nomura and Oppenheimer's advice was not a substitute for a fairness opinion from a bank with no stake in the transaction.

V. <u>The Board Knew or Should Have Known that the Merger Was a Bad Deal for Stockholders</u>

A. <u>Gig3 Had Far Less Than $10 Per Share To Invest in Lightning – And Lightning Knew It</u>

54. The Board knew or should have known that the Merger would be a losing proposition for the Gig3 stockholders, but nevertheless approved and recommended the Merger because it was highly lucrative for the Sponsor, Katz, and the Board members themselves.

55. The Gig3 stockholders had the option of redeeming their shares for $10.10 per share in lieu of participating in the Merger. Alternatively, they could

invest far less in the Merger. After accounting for, *inter alia*, the issuance of the Initial Stockholder Shares at a nominal price, the warrants included in the units that the Sponsor purchased concurrently with the IPO, the warrants issued for free in the IPO, the convertible Notes with warrants attached, and transaction costs that Gig3 would pay in connection with the Merger, Gig3 had less than $6.00 per share to invest in the Merger.

56. Despite the Board's knowledge of these costs associated with the Merger, there is no indication in the Proxy Statement that, in approving the Merger, the Board took them into account. Furthermore, there is no indication that the Board considered the very real possibility that the pre-Merger Lightning equity holders would take this dilution into account in negotiating how many New Lightning shares they would demand be issued to them in the Merger. The merger agreement and the Proxy Statement attributed an inflated value of $10 to each Gig3 share. That was materially false. Gig3's only asset was cash, and it would contribute to the Merger less than $6.00 per share in cash.

57. It should have been apparent to the Board that Lightning could well inflate its value to match the depleted cash and inflated value of Gig3 shares in order to arrive at what it viewed as a fair exchange. If it did that, the Gig3 stockholders would not receive $10 per share in value from the merger, and would therefore see their shares fall below $10 following the Merger. A recent study found that, on

average, pre-merger cash per share is highly correlated with post-merger share value.[3] The danger should have been particularly apparent in light of the much lower valuations Lightning's board had attributed to the company prior to the Merger.

58. It appears that Lightning did in fact inflate its value to match Gig3's inflated value of $10 per share, and the Board accepted that inflated value. As explained below, the inflated valuation of the New Lightning shares was built on inflated 2020-2025 revenue projections. The result was predictable: following the Merger, as it became clear that New Lightning would not reach its revenue projections, New Lightning's share price fell.

59. The Board also knew that large, sophisticated investors did not believe the post-merger company, New Lightning, would be worth $10 per share. Nonetheless, in explaining the basis for the Board's approval of the Merger, including the $10 share value, the Proxy Statement states that the Board "considered the extensive feedback obtained as part of the PIPE financing process as well as in engaging with potential Convertible Note Investors and in entering into the Convertible Note Subscriptions Agreements and PIPE Subscription Agreement with the strategic PIPE Investors."

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[3] Klausner, Ohlrogge & Ruan, *A Sober Look at SPACs* (forthcoming Yale Journal of Regulation 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3720919.

60. What the Board should have learned from Gig3's interactions with potential PIPE investors and the ultimate Note investors is precisely the opposite: that the terms of the Merger were not in the interests of the public stockholders, that shares in the combined company would not be worth \$10, and that the public stockholders would have been better served by a liquidation in which they would receive \$10.10 per share.

61. Gig3 initially tried to raise additional cash for the Merger through private investments in public equity ("PIPE") financing that would be made concurrently with, and contingent upon, the Merger. The price Gig3 sought for a PIPE was \$10 per share, roughly the price public stockholders would, in effect, pay by forgoing their redemption rights. PIPE financing at such a price is a common feature of SPAC mergers, and is sometimes considered a validation of a deal. Gig3 met with 46 potential PIPE investors, with the goal of raising at least \$100 and up to \$150 million in the PIPE financing at \$10 per share. Initial feedback from these investors indicated that Gig3 would have to improve the share exchange – that is, reduce the valuation of Lightning – to justify a \$10 investment in common stock. Ultimately, it could not attract anything close to \$100 to \$150 million in PIPE financing at \$10 per share. The PIPE raised only \$25 million PIPE, from a single investor, BP Ventures. BP Ventures, an affiliate of British Petroleum, was the

largest owner of Lightning's pre-merger equity, and its motivation (like that of the Sponsor, Katz and the Board) was to see the deal happen.

62. With the failure of the PIPE, Gig3 instead issued the costly and highly-dilutive Notes, described above. Among the investors that indicated an interest in the Notes were 20 parties that had declined to invest in the cash PIPE. Sophisticated investors were thus telling the Board that New Lightning was not worth $10 per share, and that the Notes were a cheaper investment.

63. The Board and its financial advisors knowingly turned a blind eye to the dilution of Gig3's shares and the dissipation of its cash, and it accepted an inflated valuation of Lightning. The Board failed to consider how much better off the stockholders would be with $10.10 per share in a liquidation compared to a merger in which it could invest less than $6.00 per share. But neither the Board, nor the Sponsor, nor Katz would be better off with a liquidation. To the contrary, they made tens of millions of dollars from the Merger. The Board thus breached its duty of loyalty, and approved the Merger at the expense of Gig3 stockholders.

B. The Board Accepted Lightning's Inflated Projections and Unrealistic Plan To Meet Them

64. As stated above, for Lightning to match its valuation to the inflated $10 per share valuation of Gig3, Lightning would have to inflate its own value. And since at the time of the Merger, Lightning had no profits and FY 2020 revenues of

only $9.1 million, it could support a purported value of $10 per share only with projections of future revenues and profits. This is precisely what it did. And the Board was more than happy to go along with the charade.

65. Lightning's primary business is manufacturing zero emission medium duty vocational vehicles (Classes 3-7) and shuttle buses. Lightning is a small company today, with a value proposition for Gig3 investors that it will grow explosively over the next five years. The projections reported to stockholders in the Proxy Statement are as follows:

Lightning Systems Key Financials

($ in million, unless otherwise noted)	**2020**	**2021**	**2022**	**2023**	**2024**	**2025**
Revenue	$ 9	$ 63	$ 354	$ 640	$ 1,165	$ 2,012
Gross Growth	*NM*	*NM*	*462%*	*81%*	*82%*	*73%*
Gross Profit	$ 0	$ 9	$ 68	$ 140	$ 296	$ 528
Gross Margin	*3%*	*14%*	*19%*	*22%*	*25%*	*26%*
Adjusted EBITDA	($ 11)	($ 17)	$ 15	$ 50	$ 155	$ 315
Adjusted EBITDA Margin	*(122%)*	*(27%)*	*4%*	*8%*	*13%*	*16%*

Source: Lightning Systems' Management Projections.

66. Gig3 and Lightning told Gig3 stockholders that Lightning would increase its revenues from $9 million in 2020 to $2 billion in 2025. Over the same

period, it stated that annual gross profit would increase from zero to more than half a billion dollars.

67. Lightning had delivered a total of 97 vehicles in 2019 and 2020 combined, and built an additional 12 demonstration and test vehicles.

68. In the Proxy Statement, and in investor presentations, Gig3 and Lightning informed investors that Lightning was projected to ramp up production capacity from 1,000 vehicles a year in 2021 to 20,000 vehicles a year by 2025, thanks to Lightning's scalable modular architecture, and that the total addressable market was $67 billion.

69. With respect to production capacity, the Proxy Statement states:

> We currently operate a single labor shift with a capacity to manufacture and assemble 500 ZEV vehicles and/or powertrain units per year in a facility with approximately 70,000 square feet of manufacturing space. In November of 2020, Lightning Systems built out 20,000 square feet in our current building and executed a lease for an additional 107,000 square feet of manufacturing space in the adjacent building. The campus has a total of nearly 1 million square feet, of which over 500,000 is still available. Lightning Systems also has a first right of refusal to lease the remaining 500,000 square feet in the campus over the next 4 years. With the additional space added this year, along with additional labor, automation, and larger batch manufacturing, we have capacity to manufacture and assemble 3,000 ZEV vehicles and/or powertrain units per year, on a single labor shift.

70. In the Proxy Statement and in investor presentations before the stockholder vote, Gig3 and Lightning told investors that Lightning had existing purchase orders that would keep Lightning's factory operating at projected capacity

through 2021. If projected 2021 capacity is 1,000 vehicles per year (as the company has repeatedly stated, although it also stated in the Proxy Statement that then-current capacity was 500 vehicles per year, as quoted in the preceding paragraph), then revenues should easily reach or exceed its $63 million projection this year.

71. In short, Gig3 stockholders were told to expect tremendous growth in vehicle production and revenue for the next five years, with rapidly expanding profit margins – and to accept a valuation at least commensurate with $10 per share.

72. On May 17, 2021, less than two weeks after the merger closed, and less than two months after filing the Proxy Statement, New Lightning issued a press release announcing 1Q 2021 financial results and FY 2021 projections.[4] It announced quarterly revenues of $4.6 million, and stated: "Based on current business conditions, business trends and other factors, for the full year 2021 ending Dec. 31, 2021, the Company expects: . . . Revenues to be in the range of $50 million to $60 million."

73. This is a substantial downward revision. Taking the midpoint ($55 million), it is a downward revision of 12.7% from the projection of $63 million

[4] Press Release, May 17, 2021 (available at https://www.businesswire.com/news/home/20210517005933/en/Lightning-eMotors-Reports-4.6-million-of-Revenue-in-First-Quarter-of-2021-From-Sales-of-31-Commercial-Electric-Vehicles-and-Provides-2021-Outlook)

included in the Proxy Statement. More importantly, it suggests that the aggressive vehicle production and revenue projections for future years were not realistic.

74. If, as Gig3 and Lightning told investors, Lightning had production orders sufficient to keep its plant at full capacity through 2021, then the only logical reason revenue would miss so significantly is difficulty increasing production. The repeated projections that Lightning would increase vehicle production capacity 20-fold, from 1,000 to 20,000, presupposes that *current* production capacity is 1,000.

75. On June 17, 2021, New Lightning hosted its first post-merger Investor Day.[5] It began with a video introduction, narrated by New Lightning CEO Tim Reeser. His remarks suggest the challenge of scaling production:

> You'll see in our factory a lot of customized vehicles, like shuttle buses with wheelchair lifts, like large Class 6 trucks with refrigerators, or with custom lifts on the back. Our ability to deliver a very wide variety of technologies, order sizes, configurations, and customizations in a very cost-effective manner to our customers makes us highly unique and specialized in this space.
>
> * * *
>
> What you won't see in our factory is commodity, one-size-fits-all, pickup trucks, small vans, or tractor-trailers.

76. Another thing missing from the Lightning factory, as shown in the video, is an assembly line. Instead, the video shows vehicles being custom designed, critical components being custom-built, and each vehicle assembled in one spot on

[5] The video of the Analyst Day presentation and Q&A is available on the New Lightning web site at https://ir.lightningemotors.com/news-events/upcoming-events/detail/9761/lightning-emotors-analyst-day---video

the factory floor. Instead of automated, repetitive tasks – the kind that are well suited for ramping up capacity – Lightning's heavily customized vehicles are more akin to bespoke tailoring.

77. Throughout the presentation, Reeser emphasized repeatedly that New Lightning's line of business is highly customized and non-commodity. As an example of this customization, Reeser discussed the need to custom design, manufacture, install and test wire harnesses for specialized medium duty vehicles like ambulances, food trucks, mobile cranes, refrigerated trucks, etc.

78. In the scripted part of the investor presentation, Reeser stated "[w]e build the electric vehicles nobody else is building. We also build the electric vehicles nobody else wants to build."

79. No matter how good Lightning's vehicles are, and no matter how big its total addressable market, it must increase its actual production more than 200-fold (from fewer than 100 vehicles delivered in 2019 and 2020 combined, to 20,000 vehicles by 2025), in order to meet its more than 200-fold projected revenue increase (from $9 million in 2020 to more than $2 billion in 2025). Gig3 and Lightning told investors that Lightning would be able to do so with its "scalable modular architecture," aided by its "strong capital structure to invest in capacity expansion." Put more simply, Gig3 was telling its stockholders that Lightning's production was scalable, and that the SPAC investment (coupled with the PIPE and the Notes) would

provide sufficient funds to do it. Gig3 was not telling its investors that for the type of vehicles Lightning built (highly specialized vehicles, custom-built in small batches) it would be very difficult to scale production.

80. In short, the Gig3 Board accepted Lightning's inflated projections that supported its inflated valuation. In light of Gig3's inflated valuation of $10 per share when it had less than $6.00 underlying each of its shares, this inflation should have been expected. The Board nonetheless moved forward, approved the Merger, and recommended that Gig3 stockholders vote in favor and roll their investment into New Lightning.

VI. <u>The Board Failed to Inform the Stockholders' Vote on the Merger and Their Decision to Redeem Their Shares or Remain Invested in the Merger</u>

81. Just as the Board breached its duty of loyalty by (i) ignoring the effect of dilution on the value of the Merger for stockholders and (ii) accepting Lightning's inflated valuation and projections, it breached its duty of candor by failing to inform stockholders of these regrettable aspects of the Merger.

82. First, instead of disclosing the amount of cash underlying Gig3 shares prior to the Merger – and hence the amount of cash it could contribute to a combined company, the Proxy Statement affirmatively misled Gig3's stockholders by attributing a value of $10 to their shares. Due to the dilution and cash dissipation discussed above, this was demonstrably false. The only respect in which Gig3 shares

were worth $10 is that the publicly traded shares – and only those shares – could be redeemed for that amount (plus interest) by stockholders that chose *not* to participate in the Merger.

83. Second, as explained above, the Proxy Statement misstated New Lightning's prospects, and hence its value, by overstating its revenues and profits – even for the year immediately following the Merger.

84. The Proxy Statement purports to address dilution in two places. First, it states obliquely: "The issuance of the Common Stock in the Business Combination and in the PIPE Investment, as well as the conversion of the Convertible Notes, will dilute the equity interest of our existing stockholders and may adversely affect prevailing market prices for our public shares and/or public warrants." By way of explanation, it then goes on to state what the Gig3 stockholders' percentage ownership in the post-merger company would be. In contrast to the dilution in *value* caused by the issuance of free shares and free warrants, this sort of dilution has no impact on the value of shares. A smaller percentage of a larger pie is not financial dilution, and it is financial dilution that is not disclosed to stockholders.

85. With respect to the public warrants issued in Gig3's IPO, the Proxy Statement explains that the issuance of shares in connection to the exercise of a warrant will result in dilution because it will "increase the number of shares eligible

for resale in the public market," and that "[s]ales of such shares in the public market could adversely affect the market price of our Common Stock." This statement may be true, but it fails to disclose the true dilution caused by warrants, which is the reduction in the value of outstanding shares due to the ability of a warrant holder to buy shares at less than market price. Moreover, this dilution does not only occur when a warrant is exercised. It occurs when the warrants are issued because of the prospect of exercise. The trading price of a warrant reflects that prospect and is a measure of value extracted from stockholders at any point in time prior to the exercise of the warrants. Alternatively, as the SEC has recently stated, warrants can be viewed as a liability at the time of issue and, therefore, reduce the value of public shares *before* they are exercised.[6]

86. These barely relevant statements in the Proxy Statement are an exercise in misdirection. The relevant dilution was in the prior issuance of essentially free shares and warrants, and in the issuance of the convertible Notes and attached warrants concurrently with the Merger. The issuance of those securities, and the transaction costs associated with the Merger, reduced the cash-per-share value of the public stockholders' shares, not just the public stockholders' percentage of shares

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[6] SEC Public Statement, *Staff Statement on Accounting and Reporting Considerations for Warrants Issued by Special Purpose Acquisition Companies ("SPACs")*, April 12, 2021 (available at https://www.sec.gov/news/public-statement/accounting-reporting-warrants-issued-spacs).

outstanding. The Proxy Statement failed to inform the stockholders of this fact or its importance in terms of what those shares might buy in a merger with Lightning. This was a material omission that violated the Board's duty of candor and prevented the stockholders from making informed decisions in voting their shares or exercising their redemption rights.

87. The Board further breached its duty of candor in presenting the stockholders the choice between merging and redeeming or liquidating. As stated above, the Board had one decision to make: *to merge or to liquidate*. As stated above, it breached its duty of loyalty by choosing to merge. Each stockholder had a parallel right: to invest in the Merger by retaining its shares, or to redeem their shares for $10.10. The Board breached its duty of candor by failing to provide the stockholders with the information they needed to make that decision. The reason behind the Board's failure to do so is clear. The Board had no interest in seeing stockholders redeem their shares and drain cash from Gig3. Under the terms of the merger agreement, if Gig3 had less than $150 million in cash, Lightning could walk away from the deal. Neither the Board, the Sponsor nor Katz wanted that to happen.

88. To dissuade public investors from redeeming their shares, the Proxy Statement raised the specter of there being insufficient funds available to pay the redemption price:

> If we fail to complete an initial business combination by the applicable deadline, then we will: (i) cease all operations except for the purpose

> of winding up; (ii) as promptly as reasonably possible but not more than ten business days thereafter, redeem our public shares, at a per-share price, payable in cash, equal to the aggregate amount then on deposit in the Trust Account, including interest not previously released to the Company to pay its franchise and income taxes (less up to $100,000 of interest to pay dissolution expenses), divided by the number of then outstanding public shares, which redemption will completely extinguish our public stockholders' rights as stockholders (including the right to receive further liquidating distributions, if any), subject to applicable law; and (iii) as promptly as reasonably possible following such redemption, subject to the approval of our remaining stockholders and our Board, dissolve and liquidate, subject in each case to our obligations under Delaware law to provide for claims of creditors and the requirements of other applicable law. In the event of such distribution, *it is possible that the per share value of the residual assets remaining available for distribution (including Trust Account assets) will be less than the initial public offering price per unit in the IPO.*

This is simply a description of the liquidation scenario required by the Gig3 charter, but stated in ominous terms designed to lure stockholders into supporting the Merger for fear that they might get less in liquidation than the $10 they were promised, even though the proceeds of the sale of those units in the IPO had been held in trust precisely to assure public stockholders that there would be cash available for redemptions or liquidation.

89. A few pages later, the Proxy Statement again explains that the redemption price could be less than $10 if there were creditor claims against Gig3 that reduced the value of the trust below $10. But, as the Proxy Statement

recognizes, the Sponsor had agreed to indemnify the stockholders against such claims – as SPAC sponsors typically do.

90. The Proxy Statement then explains that "[t]he Sponsor may not have sufficient funds to satisfy its indemnity obligations," because "[Gig3] has not asked the Sponsor to reserve for such indemnification obligations." Although the Board's failure to have asked the Sponsor to reserve for this purpose could well be a breach of the duty of loyalty in itself, the more important point is that the likelihood that stockholders would not receive the $10 plus interest that they were promised was extremely low.

91. The Proxy Statement goes to great lengths to explain the vanishingly unlikely possibility of third-party claims reducing the redemption price below $10 and the sponsor failing to pay those claims. Public sources indicate that this has never occurred in a SPAC. Especially in light of how poorly it informed the stockholders of the merits of the Merger, the Proxy Statement manifestly misleading with respect to the danger of opting to redeem their shares.

VII. New Lightning's Post-Merger Performance

92. The redemption deadline was April 19, 2021. As a practical matter, shares had to purchased well before that, in order for the transactions to clear and then be submitted before the redemption deadline. On April 15, 2021, two trading days before the redemption deadline, Gig3's stock price closed at $10.07 per share.

By the April 19, 2021 redemption deadline, the share price had fallen to $8.40 per share.

93. By the May 6, 2021 date the Merger closed, New Lightning's stock price had fallen to $7.82 per share.

94. By August 2, 2021, New Lightning's stock price had fallen to $6.57 per share.

95. Gig3's post-redemption and post-Merger performance confirms the unfairness of the Merger to the legacy Gig3 stockholders. Since April 15, 2021 – approximately the date on which public stockholders gave up their redemption option – Gig3's stock has *lost* 35% of its value (while the NYSE composite index has risen slightly).

96. As bad as the Merger has been was for the Gig3 public stockholders, it was lucrative for the Sponsor, Katz, and his hand-picked Board members. When the Merger closed, the Initial Stockholders Shares– which the Sponsor had purchased a year earlier for a mere $25,000 – were worth more than $39 million. Even at today's deflated share price, those Initial Stockholder Shares are worth approximately $32.7 million.

97. Had no merger occurred, the Sponsor, Katz, and the other directors would have received nothing. The public stockholders, however, would have received $10.10 per share.

98. In sum, the Board breached its duties of loyalty and candor by turning a blind eye to the Merger's dilution of the public stockholders and the inflated value of Lightning – and leaving the public stockholders in the dark as well. The Board's abdication of its duties stemmed from the desire of Katz, the Sponsor and the Board to consummate any deal, even a value-destroying deal. In light of these conflicts and the windfall reaped by the Defendants at the public stockholders' expense – the Merger cannot meet the test of entire fairness.

CLASS ACTION ALLEGATIONS

99. Plaintiff, a stockholder in Gig3, brings this action individually and as a class action pursuant to Rule 23 of the Rules of the Court of Chancery of the State of Delaware on behalf of himself and all record and beneficial holders of Gig3 common stock (the "Class") who held such stock during the time period from the Record Date through the Closing Date (except the Defendants herein, and any person, firm, trust, corporation, or other entity related to or affiliated with any of the Defendants) and who were injured by the Defendants' breaches of fiduciary duties and other violations of law, and their successors in interest.

100. This action is properly maintainable as a class action.

101. A class action is superior to other available methods of fair and efficient adjudication of this controversy.

102. The Class is so numerous that joinder of all members is impracticable. The number of Class members is believed to be in the thousands, and they are likely scattered across the United States. Moreover, damages suffered by individual Class members may be small, making it overly expensive and burdensome for individual Class members to pursue redress on their own.

103. There are questions of law and fact which are common to all Class members and which predominate over any questions affecting only individuals, including, without limitation:

a. whether Defendants owed fiduciary duties to Plaintiff and the Class;

b. whether the Controller Defendants controlled Gig3;

c. whether "entire fairness" is the applicable standard of review;

d. which party or parties bear the burden of proof;

e. whether Defendants breached their fiduciary duties to Plaintiff and the Class;

f. the existence and extent of any injury to the Class or Plaintiff caused by any breach;

g. the availability and propriety of equitable re-opening of the redemption period; and

h. the proper measure of the Class's damages.

104. Plaintiff's claims and defenses are typical of the claims and defenses of other Class members, and Plaintiff has no interests antagonistic or adverse to the interests of other Class members. Plaintiff will fairly and adequately protect the interests of the Class.

105. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature.

106. Defendants have acted in a manner that affects Plaintiff and all members of the Class alike, thereby making appropriate injunctive relief and/or corresponding declaratory relief with respect to the Class as a whole.

107. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants; or adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interest of other members or substantially impair or impede their ability to protect their interests.

COUNT I

(Direct Claim for Breach of Fiduciary Duty Against the Director Defendants)

108. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

109. As directors of Gig3, the Director Defendants owed Plaintiff and the Class the utmost fiduciary duties of care and loyalty, which subsume an obligation to act in good faith, and to make accurate material disclosures to Gig3's stockholders.

110. These duties required them to place the interests of Gig3 stockholders above their personal interests and the interests of the Controller Defendants.

111. Through the events and actions described herein, the Director Defendants breached their fiduciary duties to Plaintiff and the Class by prioritizing their own personal, financial, and/or reputational interests and approving the Merger, which was unfair to Gig3's public stockholders.

112. The Director Defendants also breached their duty of candor by issuing the false and misleading Proxy Statement.

113. As a result, Plaintiff and the Class were harmed by being deprived of the information they needed to exercise, or to choose not to exercise, their redemption rights in an informed manner prior to the Merger.

114. In addition, by virtue of misstatements and omissions in the Proxy Statement, members of the Class could not exercise their vote in an informed manner and approved the acquisition of Lightning based on false and misleading information.

115. Plaintiff and the Class suffered damages in an amount to be determined at trial.

COUNT II

(Direct Claim for Breach of Fiduciary Duty Against the Controller Defendants)

116. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

117. The Controller Defendants were Avi Katz and the Sponsor. The Sponsor – and Katz through the Sponsor – elected (and could remove at any time) the members of the Board, had deep personal and financial ties to the members of the Board they selected – through grants of Initial Stockholder Shares, membership interests in the Sponsor, and ownership of GigFounders, which had an ownership interest in the Sponsor, and through positions in other business, including other SPACs, affiliated with GigCapital.

118. As such, the Controller Defendants owed Plaintiff and the Class fiduciary duties of care and loyalty, which include an obligation to act in good faith, and to provide accurate material disclosures to Gig3 stockholders.

119. At all relevant times, the Controller Defendants had the power to control, influence, and cause—and actually did control, influence, and cause—Gig3 to enter into the Merger.

120. The Merger was unfair, reflecting an unfair price and unfair process.

121. Through the events and actions described herein, the Controller Defendants breached their fiduciary duties to Plaintiff and the Class by agreeing to and entering into the Merger without ensuring that it was entirely fair to Plaintiff and the Class, thereby breaching their duty of loyalty to Plaintiff and the Class. As a result, Plaintiff and the Class were harmed.

122. Further, by failing to inform shareholders, and allow them to make an informed redemption decision, Defendants breached their duty of candor. As a result, Plaintiff and the Class were harmed by not exercising their redemption rights prior to the Merger.

123. In addition, members of the Class approved the acquisition of Lightning based on false and misleading information.

124. Plaintiff and the Class suffered damages in an amount to be determined at trial.

COUNT III

(Direct Claim for Unjust Enrichment Against Sponsor and Director Defendants)

125. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

126. As a result of the conduct described above, the Sponsor and the Director Defendants breached their fiduciary duties to Gig3 public stockholders and were

disloyal by putting their own financial interests above those of Gig3 public stockholders.

127. Defendants were unjustly enriched by their disloyalty.

128. All unjust profits realized by the Sponsor and the Director Defendants should be disgorged and recouped by the affected stockholders.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment and relief in his favor and in favor of the Class, and against Defendants, as follows:

A. Declaring that this Action is properly maintainable as a class action;

B. Finding the Director Defendants liable for breaching their fiduciary duties owed to Plaintiff and the Class;

C. Finding the Controller Defendants liable for breaching their fiduciary duties, in their capacity as the controllers of Gig3, owed to Plaintiff and the Class;

D. Finding that the Sponsor and the Director Defendants were disloyal fiduciaries that were unjustly enriched;

E. Certifying the proposed Class;

F. Awarding Plaintiff and the other members of the Class damages in an amount which may be proven at trial, together with interest thereon;

G. Ordering disgorgement of any unjust enrichment to the plaintiff class;

H. With respect to Class members who had the right to seek redemption and still hold their shares, equitably re-opening the redemption window to allow them to redeem their shares, as per the terms of Gig3's foundational documents;

I. Awarding Plaintiff and the members of the Class pre-judgment and post-judgment interest, as well as their reasonable attorneys' and experts' witness fees and other costs; and

J. Awarding Plaintiff and the Class such other relief as this Court deems just and equitable.

Dated: August 4, 2021

GRANT & EISENHOFER P.A.

/s/ Michael J. Barry

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