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15 Attorneys for Plaintiff 1791 Management, LP

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF LOS ANGELES**

18 1791 MANAGEMENT, LP, a Delaware limited
19 partnership,

20 Plaintiff,

21 vs.

22 ENERGY VAULT, INC., a Delaware
23 corporation; and DOES 1 through 25, inclusive,

24 Defendants.

Case No.: 22STCV16538

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR LEAVE TO FILE SECOND
AMENDED COMPLAINT;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
BRANDON S. REIF**

[Filed concurrently with [Proposed] Order]

Hearing

Date: March 23, 2023

Time: 8:30 a.m.

Dept. 74

Reservation ID: 584708845557

Judge: Honorable Michelle Williams Court
Dept.: 74

Action Filed: May 18, 2022

1 **TO THE PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on March 23, 2023, or as soon thereafter as may be heard, in
3 Department 74 of the above-entitled Court, located at 111 N. Hill Street, Los Angeles, CA 90012,
4 Plaintiff 1791 Management, LP (“Plaintiff”) by its undersigned attorneys will move this Court for an
5 Order granting Plaintiff leave to file a Second Amended Complaint (“SAC”) in the captioned action, and
6 deeming the proposed SAC attached hereto as Exhibit A to be filed and served as of the date of the
7 granting of this Motion.

8 This Motion is made pursuant to Code of Civil Procedure §§ 473 and 576, and California Rules
9 of Court, Rule 3.1324 on the grounds that newly discovered evidence supports Plaintiff’s claims in the
10 proposed Second Amended Complaint (“SAC”) adding defendants Zia Huque aka Tahsinul Zia Huque,
11 Henry J. Elkus, Andrea E. Wuttke, Novus Capital Corporation II, Robert J. Laikin, Larry M. Paulson,
12 and Jeffrey D. Foster, adding various factual allegations and adding a cause of action for Violation of
13 California Corporations Code §§ 25110-25118. The interests of justice compel leave to add these
14 defendants, facts and one cause of action, and that defendants will not be prejudiced because the
15 operative First Amended Complaint has not yet been served.

16 This Motion is based on this Notice, the attached memorandum of points and authorities, the
17 attached Declaration of Brandon S. Reif, the accompanying proposed SAC, a strike-through copy of the
18 operative First Amended Complaint showing the proposed changes, the pleadings, records, notices,
19 motions, and orders contained in the Court’s file on this matter, and on such other oral and documentary
20 evidence as may be presented at the hearing of this matter.

21
22 Dated: July 27, 2022

REIF LAW GROUP, P.C.

23
24 *Brandon S. Reif*

25 _____
Brandon S. Reif

26 Attorneys for Plaintiff 1791 Management LP
27
28

1 Dated: July 27, 2022

**LAW OFFICES OF STEVE A.
BUCHWALTER, P.C.**

3 *Steve A. Buchwalter*

4 _____
Steve A. Buchwalter

5 Attorneys for Plaintiff 1791 Management LP

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1 **I. SUMMARY OF ARGUMENTS**

2 Plaintiff respectfully asks leave of this Court to amend its First Amended Complaint (“FAC”) to
3 add several defendants, to add a new cause of action based on violation of Corporations Code §§ 25110-
4 25118, and to add new facts supporting the allegations, all of which is reflected in the proposed Second
5 Amended Complaint (“SAC”) and a strike-through copy of the changes between the FAC and the SAC.
6 This motion should be granted because (1) it was brought as soon as Plaintiff learned of the factual
7 support for the changes; (2) Movant satisfied the requirements of CRC Rule 3.1324; (3) granting the
8 motion will not prejudice the Defendants, none of whom have appeared in this action; and (4) the new
9 cause of action is within the applicable statutes of limitation.

10 **II. FACTS**

11 **A. The Information is Newly Discovered**

12 Plaintiff alleges that it invested in Energy Vault Inc. (“EV”) during February-April 2022, but
13 soon began to suspect that EV was not what it purported to be at the time Plaintiff invested in it. On
14 May 18, 2022, Plaintiff filed its original Complaint, alleging six torts against EV based on Plaintiff’s
15 realization, days earlier, that EV misrepresented its financial condition and future prospects.
16 (Declaration of Brandon S. Reif (“Reif Decl.”) at ¶ 2; Court file). As Plaintiff looked further into the
17 matter, it learned that EV’s officers and directors appear to be liable for EV’s misrepresentations and
18 concealments. It also learned that EV was involved in a purported Special-Purpose Acquisition
19 Company (“SPAC”) plan that did not comply with the regulatory requirements for a SPAC. Plaintiff did
20 not serve its original Complaint. (Reif Decl. at ¶ 3).

21 Accordingly, on June 24, 2022, Plaintiff filed an FAC that included the original complaint’s
22 causes of action but added four of EV’s officers and directors as defendants and also made new SPAC-
23 related allegations. (Reif Decl. at ¶ 4; Court file). Plaintiff then discovered that EV was not itself a
24 SPAC but was the target business of a SPAC put forth by another entity, Novus Capital Corporation II
25 (“Novus”), and Novus’s officers and directors, and that they, along with the original defendants, could
26 be liable under Corp. Code §§ 25110-25118. Plaintiff did not serve its FAC. (Reif Decl. at ¶ 5).

27 Plaintiff now seeks the Court’s leave to file a Second Amended Complaint (“SAC”) that
28 includes, as new defendants, EV directors Zia Huque aka Tahsinul Zia Huque and Henry J. Elkus;

1 former EV officer Andrea E. Wuttke; Novus; Novus CEO Robert J. Laikin; and Novus directors Larry
2 M. Paulson and Jeffrey D. Foster, alleges that these new defendants were involved in an improper
3 SPAC, and alleges a new cause of action of more Corporations Code violations with new factual
4 allegations to support these changes. The proposed SAC is attached hereto as Exhibit A. A strike-
5 through version of the SAC that shows the changes from the FAC is attached hereto as Exhibit B.

6 **B. Plaintiff's Proposed SAC and the Nature of the Proposed Changes to the FAC**

7 Plaintiff seeks leave to file an SAC alleging one additional tort claim arising from the same
8 general set of facts, namely Plaintiff's investment in EV after relying on misrepresentations and
9 concealments about EV's financial condition and prospects and before learning of EV's involvement in
10 an improper SPAC. Plaintiff also wishes to name new, additional defendants. (Reif Decl. at ¶ 8).

11 Plaintiff's proposed additional cause of action is now the Sixth Cause of Action: Violation of
12 Corp. Code §§ 25110-25118. The FAC's Sixth Cause of Action: Violation of Corporations Code §§
13 25400-25550 is now the seventh cause of action. The effect of the proposed SAC is to name additional
14 defendants and to allege additional statutory violations and facts supporting these changes, all deriving
15 from the same underlying matters and involving facts which are within the knowledge of Defendants
16 because they were direct participants and witnesses to those underlying facts when they occurred.

17 The proposed Second Amended Complaint is proper because it furthers the sound public policy
18 of permitting parties to adjudicate cases on the merits.

19 **C. The Deletions, Additions, and Clarifications That Plaintiff Proposes**

20 Because the proposed changes to the FAC are numerous, extensive, and involve many pages of
21 allegations, Plaintiff is providing a strike-through version of the SAC for the Court's reference rather
22 than listing each change verbatim here. (Reif Decl. at ¶ 7 and Ex. B).

23 Allegations to be deleted, by Page, Paragraph, and Line Number:

24 Page 4 at ¶ 7 lines 9-11; Page 7 at ¶ 34 line 17; Page 8 at ¶ 39 lines 18-19; Page 9 at ¶ 40 lines
25 1-3; Page 22 at ¶ 93 lines 12-13; Page 23 at ¶ 128 lines 24-28; Page 24 at ¶ 128 lines 1 and 4-5.

26 Allegations to be added, by Page, Paragraph, and Line Number:

27 Page 2 at lines 3-5; and at ¶ 2 lines 11-19; Page 3 at ¶ 3 lines 1-4; and at ¶¶ 4-6 lines 5-17; Page
28 4 at ¶ 9 lines 3-5; and at ¶¶ 15-16 lines 21-24; Page 5 at ¶¶ 19-23 lines 3-13; Page 6 at ¶ 26 lines 8-10;

¶ 27 lines 13-14; at line 25; and at ¶ 30 lines 27-28; Page 7 at ¶¶ 30-33 lines 1-16; Page 10 at ¶ 41 lines 8-17; Page 11 at ¶ 45 lines 12-14; Page 12 at ¶ 54 line 26; Page 13 at ¶¶ 54-55 lines 1-13; Page 14 at ¶ 59 lines 22-24; Page 15 at ¶ 60 lines 1-5; Page 16 at ¶ 68 line 10; Page 17 at ¶ 80 lines 15-22; Page 20 at ¶¶ 109-112 lines 10-28; Page 21 at ¶¶ 113-118 lines 1-28; Page 22 at ¶¶ 118-122 lines 1-6; Page 23 at ¶ 126 lines 9-10; and Page 24 at ¶ 128 line 24.

Allegations to be clarified, by Page, Paragraph, and Line Number:

Page 2 at ¶ 3 lines 22-26; Page 3 at ¶¶ 7-8 lines 18-25; Page 4 at ¶ 8 line 1; ¶ 11 line 14; ¶ 12 line 16; ¶ 17 line 26; and at ¶ 18 line 28; Page 5 at ¶ 18 lines 1-2; Page 7 at ¶ 36 lines 27-28; Page 8 at ¶ 36 line 4; Page 10 at ¶¶ 42-43 lines 22-26; Page 11 at ¶ 46 lines 15-16 and at ¶ 47 line 21; Page 12 at ¶ 51 line 12; Page 13 at ¶ 57 lines 18 and 21 and at ¶ 58 lines 22-25; Page 16 at ¶ 73 line 25; Page 25 at ¶ 130 line 2; and at (Prayer) ¶ 1 lines 14-15 and at ¶ 3 line 17.
(Reif Decl. at ¶ 7 and Ex. B).

III. ARGUMENT

Granting Plaintiff leave to file its SAC would further the public policy favoring resolution of cases on the merits. Any judge, at any time before or after commencement of trial, in the furtherance of justice, and upon such terms as may be proper, may allow the amendment of any pleading or pretrial conference order. (CCP § 576). This Motion for Leave to Amend, therefore, should be granted.

A. Applicable Legal Standards

Code of Civil Procedure § 473(a)(1) provides, in pertinent part: "The court may, in furtherance of justice, and on terms as may be proper, allow a party to amend any pleading. . ."

Where there is no unfair prejudice to the defendant in permitting the amendment, the motion should be granted. (*Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 564-565 (absent unfair prejudice, denial of leave is reversible error); *Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939).

Judicial policy supports resolution of all disputes between the parties on the merits and amendment of pleadings to put all such disputes at issue at the time of trial. The policy that "trial courts are to liberally permit" amendments to pleadings "at any stage of the proceeding, has been established policy in this state. . . . resting on the fundamental policy that cases should be decided on their merits." (*Hirsa v. Superior Court (Vickers)* (1981) 118 Cal. App.3d 486, 488-489). Where, as here, clarification

1 and modification of the pleading is appropriate and causes no unfair prejudice, leave to amend must be
2 “liberally granted.” (*Mabie v. Hyatt* (1998) 61 Cal.App.4th 581, 596).

3 **B. Plaintiff Satisfied the Requirements of the Rules of Court**

4 Under California Rules of Court Rule 3.1324, a motion for leave to amend must include:

- 5 1. A copy of the proposed amended pleading, which must be serially numbered to
6 differentiate it from previous pleadings or amendments;
- 7 2. A statement of what allegations in the previous pleading are proposed to be
8 deleted, if any, and where, by page, paragraph, and line number, the deleted
9 allegations are located; and
- 10 3. A statement of what allegations are proposed to be added to the previous
11 pleading, if any, and where, by page, paragraph, and line number, the additional
12 allegations are located.

13 CRC Rule 3.1324(a). Plaintiff satisfied these requirements in the present motion by indicating the
14 proposed additions and deletions, by page, paragraph and line number, above in Facts section Part C.

15 Pursuant to CRC Rule 3.1324(b), a motion for leave to amend must also include a separate
16 declaration which specifies: the effect of the amendment; why the amendment is necessary and proper;
17 when the facts giving rise to the amended allegations were discovered; and the reasons why the request
18 for amendment was not made earlier. These elements are discussed in the Facts section above and
19 supported by the attached declaration. Plaintiff satisfied these conditions.

20 **C. Granting The Motion Will Not Unfairly Prejudice the Defendants**

21 Unfair prejudice exists where the amendment would result in loss of critical evidence or added
22 cost of preparation, increased burden of discovery, etc. Absent prejudice, delay alone is not sufficient
23 ground for denial of leave. (*Higgins, supra*, 123 Cal.App.3d at 564-565). Here, there is no risk of unfair
24 prejudice because:

- 25 (1) No previous version of the Complaint has been served; and
- 26 (2) The proposed FAC changes add legal theories of which Defendants should already be aware
27 because they were direct participants and witnesses to the underlying facts at the time they occurred.

28 A denial of this Motion, given this lack of prejudice, would unfairly deprive Plaintiff of the right

1 to assert crucial facts and legal theories supporting its claims against Defendants for misconduct in
2 which Defendants engaged. The Court should therefore apply its liberal discretion in allowing
3 amendment so that Plaintiff is not unfairly prejudiced in pursuing claims and remedies available to it.

4 **D. The New Claims Are Within the Applicable Statutes of Limitation**

5 CCP § 343 sets the statute of limitations for breach of fiduciary duty at three years. CCP
6 § 338(d) sets the statute of limitations for fraud or mistake at three years, and also codifies the
7 discovery rule: the date a complaining party learns, or at least is put on notice, that a
8 representation was false is the date the statute starts running for fraud. (*Id.*) CCP § 339 set the
9 statute of limitations for negligence and negligent misrepresentation at two years. CCP § 338(a)
10 sets the statute of limitations for violations of the Corporations Code (“a liability created by
11 statute”) at three years.

12 Here, Plaintiff could have learned the facts constituting its causes of action no earlier than April
13 of this year (2022) when it made its final purchases of EV shares. This Motion is being brought less
14 than four months later. Thus, the new proposed cause of action is not untimely.

15 **IV. CONCLUSION**

16 For all these reasons, Plaintiff respectfully requests that this Court grant its motion for leave to
17 amend, and that the proposed Second Amended Complaint be deemed filed and served.

18
19 Dated: July 27, 2022

REIF LAW GROUP, P.C.

Brandon S. Reif

Brandon S. Reif
Attorneys for Plaintiff 1791 Management LP

20
21
22
23 Dated: July 27, 2022

**LAW OFFICES OF STEVE A.
BUCHWALTER, P.C.**

Steve A. Buchwalter

Steve A. Buchwalter
Attorneys for Plaintiff 1791 Management LP

DECLARATION OF BRANDON S. REIF

1
2 1. I am an attorney duly licensed to practice law in the State of California and am the
3 managing shareholder of Reif Law Group, P.C., attorney of record for the Plaintiff in this action. I have
4 personal knowledge of the facts set forth in this declaration; as to those facts declared upon information
5 and belief, I believe them to be true, and if called as a witness to testify, could and would competently
6 do so.

7 2. On May 18, 2022, co-counsel Steven A. Buchwalter prepared and filed Plaintiff’s
8 original Complaint, alleging six torts against EV.

9 3. As Plaintiff, co-counsel, and my office continued to thoroughly investigate the matter in
10 this complex series of transactions and involving various parties, witnesses, and documentary records, it
11 was discovered that EV’s officers and directors reasonably appear, in good faith, to be liable for the
12 defendant corporation’s misrepresentations and concealments. It was also discovered that EV was
13 involved in a purported Special-Purpose Acquisition Company (“SPAC”) plan that did not comply with
14 the regulatory requirements for a SPAC. Plaintiff did not serve its original Complaint.

15 4. On June 24, 2022, Plaintiff filed a First Amended Complaint (“FAC”) that included the
16 original complaint’s causes of action and added four of EV’s officers and directors as defendants and
17 also alleged the new SPAC-related allegations.

18 5. Plaintiff and its counsel then made the further discovery that EV was not itself a SPAC
19 but was the target business of a SPAC being put forth by another business entity, Novus Capital
20 Corporation II (“Novus”), and Novus’s officers and directors, and that these defendants, along with the
21 original defendants, could be liable under Corporations Code §§ 25110 - 25118. Plaintiff did not serve
22 its FAC.

23 6. Attached hereto as **Exhibit A** is a true and correct copy of the proposed Second Amended
24 Complaint in this matter, as prepared jointly by my office and Mr. Buchwalter’s office.

25 7. Attached hereto as **Exhibit B** is a true and correct copy of a strike-through version of the
26 Second Amended Complaint which shows the differences between it and the First Amended Complaint.

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Exhibit A

1 Brandon S. Reif (SBN 214706)
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13 Attorneys for Plaintiff 1791 Management, LP

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF LOS ANGELES**

16 1791 MANAGEMENT, LP, a Delaware limited
17 partnership,

18 Plaintiff,

19 vs.

20 ENERGY VAULT, INC., a Delaware
21 corporation; ROBERT A. PICONI, an
22 individual; WILLIAM T. GROSS, an
23 individual; ZIA HUQUE aka TAHSINUL ZIA
24 HUQUE, an individual; HENRY J. ELKUS, an
25 individual; ANDREA S. PEDRETTI aka
26 ANDREA PEDRETTI RODI, an individual;
27 ANDREA E. WUTTKE, an individual;
28 NOVUS CAPITAL CORPORATION II, a
Delaware corporation; ROBERT J. LAIKIN, an
individual; LARRY M. PAULSON, an
individual; JEFFREY D. FOSTER, an
individual; and DOES 1 through 25, inclusive,

Defendants.

Case No. 22STCV16538

[Assigned to the Hon. Michelle Williams, in
Dept. 74]

**PLAINTIFF'S SECOND AMENDED
COMPLAINT FOR:**

1. **BREACH OF FIDUCIARY DUTY**
2. **COMMON LAW FRAUD**
3. **NEGLIGENT MISREPRESENTATION**
4. **NEGLIGENCE**
5. **CONSTRUCTIVE FRAUD**
6. **VIOLATION OF CORPORATIONS
CODE §§ 25110-25118**
7. **VIOLATION OF CORPORATIONS
CODE §§ 25400-25550**

DEMAND FOR JURY TRIAL

Complaint Filed: May 18, 2022
First Am. Complaint Filed: June 24, 2022

1 Plaintiff 1791 Management, LP (“Plaintiff” or “1791”), by its undersigned attorneys, brings this
2 Second Amended Complaint against Defendants Energy Vault, Inc. (“EV”), Robert A. Piconi, William
3 T. Gross, Zia Huque aka Tahsinul Zia Huque, Henry J. Elkus, Andrea S. Pedretti aka Andrea
4 Pedretti Rodi, Andrea E. Wuttke, Novus Capital Corporation II (“Novus”), Robert J. Laikin, Larry M.
5 Paulson, Jeffrey D. Foster, and Does 1 through 25, inclusive (collectively “Defendants”), alleging the
6 following:

7 **OVERVIEW**

8 1. In late 2021, Defendants solicited Plaintiff to invest in Defendant entity EV.
9 Defendants’ solicitation focused on disseminating to Plaintiff a press release on October 27, 2021, and
10 a presentation titled Investor Presentation (“Presentation”) in November 2021.

11 2. On information and belief, Plaintiff alleges that each Defendant here falls within the
12 scope of liability set out in California Corp. Code section 25504: every person who directly or
13 indirectly controls a person liable under Section 25501 or 25503 , every partner in a firm so liable,
14 every principal executive officer or director of a corporation so liable, every person occupying a
15 similar status or performing similar functions, every employee of a person so liable who materially aids
16 in the act or transaction constituting the violation, and every broker-dealer or agent who materially aids
17 in the act or transaction constituting the violation, are also liable jointly and severally with and to the
18 same extent as such person, unless the other person who is so liable had no knowledge of or reasonable
19 grounds to believe in the existence of the facts by reason of which the liability is alleged to exist.

20 3. On information and belief, Plaintiff alleges that Defendants’ statements to Plaintiff, a
21 potential investor, were rife with false statements, misleading statements and omissions of material
22 facts. To induce the Plaintiff to invest in EV, Defendants misrepresented to Plaintiff that Novus met
23 the definition of a Blank Check Company, otherwise known as a Special-Purpose Acquisition
24 Company (“SPAC”). A SPAC is a shell company, with nominal or no assets, which raises money
25 through an “IPO”, otherwise known as an initial public offering, in order to acquire an operating
26 private business (the “target business”) and take it public. Investors participate in the IPO by
27
28

1 purchasing warrants¹, which they can use to buy stock at a pre-negotiated price in the target business
2 once that business is identified and other conditions are met.

3 4. The SPAC process makes it easier for a target business to go public than it would
4 otherwise be. If it were not for the SPAC, the target business could not go public in the streamlined
5 fashion that federal law permits for SPACs. It would instead have to go through a typical underwriting
6 process which is time-consuming and costly, and to give more information and disclosures to the
7 business's investors and potential investors than a SPAC IPO requires.

8 5. Federal regulations require that a SPAC cannot have identified a target business when it
9 issues its IPO. Defendant Novus and its officers and directors purported to comply with this
10 requirement in the documents they filed with the SEC.

11 6. On information and belief, Plaintiff alleges that Novus had already identified EV as its
12 target business for the SPAC IPO. Therefore, Novus was not a lawfully compliant SPAC, EV was not
13 properly registered with the SEC as a public company, and its shares did not meet SEC conditions for
14 sale to the public.

15 7. Defendants, on information and belief, falsely claimed that Novus is a SPAC in order to
16 register the warrants and make EV's shares more attractive to the Plaintiff.

17 8. On information and belief, Plaintiff alleges that Defendants: misrepresented EV's
18 financial status and expected revenue; concealed key material facts that potential and actual investors
19 have a right to know, such as the fact that EV had invested in DG Fuels, LLC (a Colorado limited
20 liability company) via a million-dollar promissory note when it announced a \$737 million sales
21 agreement with DG Fuels. Defendants also made knowingly untrue inflated claims about EV's ability
22 to generate revenue in 2022 and future years.

23 9. Plaintiff relied on Defendants' misrepresentations and concealments or omissions in
24 purchasing EV warrants in February to April 2022, and Defendants' misrepresentations and
25 concealments or omissions were a substantial factor in Plaintiff's purchase of the interest in EV.

26 _____
27 ¹ A warrant is a security as defined by California Corporations Code § 25019. It is a derivative contract between
28 a public company and an investor which allows the investor, as a warrant holder, to convert the warrant into
shares of stock in the company at a later date.

1 10. Due to these misrepresentations and concealed or omitted material facts, Plaintiff's
2 investment in EV is now worthless or near worthless and, at best, only worth a fraction of what it was
3 worth at the time of the IPO, and Plaintiff has been damaged in an amount of no less than \$1,000,000.

4 **THE PARTIES**

5 11. Plaintiff 1791 Management, LP is a limited partnership formed in Delaware. Its
6 principal place of business is in Nevada. It has an office in Laguna Niguel, Orange County, California.

7 12. Defendant Energy Vault, Inc. is a Delaware corporation with its principal place of
8 business in Westlake Village, Los Angeles County, California.

9 13. Defendant Robert A. Piconi is the CEO of EV and, on information and belief, is, and at
10 all times relevant was, a resident of Thousand Oaks, Ventura County, California.

11 14. Defendant William T. Gross is a Director of EV and, on information and belief, is, and
12 at all times relevant was, a resident of Pasadena, Los Angeles County, California.

13 15. Defendant Zia Huque aka Tahsinul Zia Huque is a Director of EV and, on information
14 and belief, is, and at all times relevant was, a resident of Jackson, Teton County, Wyoming.

15 16. Defendant Henry J. Elkus is a Director of EV and, on information and belief, is, and at
16 all times relevant was, a resident of City of Los Angeles, Los Angeles County, California.

17 17. Defendant Andrea S. Pedretti aka Andrea Pedretti Rodi is EV's Chief Technology
18 Officer and, on information and belief, is, and at all times relevant was, a resident of Thousand Oaks,
19 Ventura County, California.

20 18. Defendant Andrea E. Wuttke is a former Chief Financial Officer of EV and, on
21 information and belief, is, and at all times relevant was, a resident of Park City, Summit County, Utah.

22 19. Defendant Novus is a Delaware corporation with its principal place of business in
23 Indianapolis, Marion County, Indiana.

24 20. Defendant Robert J. Laikin is the CEO of Novus and, on information and belief, is, and
25 at all times relevant was, a resident of the city of Los Angeles, Los Angeles County, California.

26 21. Defendant Larry M. Paulson is Chairman of the Board of Novus and, on information
27 and belief, is, and at all times relevant was, a resident of Rancho Santa Fe, San Diego County,
28 California.

1 22. Defendant Jeffrey D. Foster is a Member of the Board of Novus and, on information and
2 belief, is, and at all times relevant was, a resident of the city of West Lake Hills, Travis County, Texas.

3 23. Plaintiff is informed and believes, and based thereon alleges, that each Defendant was
4 the agent, principal, officer, director, partner, servant, representative, employer, employee, partner,
5 joint venturer, co-conspirator, subsidiary, affiliate, aider and abettor, enabler, and/or alter ego of each
6 and every other Defendant, and in doing the actions or inactions alleged herein, acted within the course
7 and scope of their authority as the agent, principal, servant, representative, employer, employee,
8 partner, joint venturer, co-conspirator, subsidiary, affiliate, aider and abettor, enabler, and/or alter ego,
9 and with the full knowledge and consent of each of the other Defendants, except where otherwise
10 specifically described, and with an awareness of their wrongdoing, and knew that their conduct would
11 substantially assist in the accomplishment of the harm and damage to Plaintiff.

12 24. Plaintiff is unaware of the true names and capacities, whether individual, corporate,
13 agent, representative, or otherwise, of the Defendants sued herein as DOES 1 through 25, inclusive,
14 and therefore sues these Defendants by such fictitious names. Plaintiff will amend this Complaint to
15 allege the true names and capacities of Does 1 through 25, inclusive, when Plaintiff ascertains the
16 identity of such Defendants. Plaintiff is informed and believes, and thereon alleges, that each of these
17 Defendants is responsible in some manner for the acts and omissions which damaged Plaintiff, and that
18 Plaintiff's damages as alleged herein were proximately caused by Defendants' actions or omissions.

19 25. Plaintiff is informed and believes and thereon alleges, that at all times herein mentioned,
20 each of the Defendants, and Does 1 through 25, and each of them, were the agents and/or employees of
21 each of the remaining Defendants, and in doing the things herein alleged, were acting within the course
22 and scope of said agency and/or employment, in that the actions of each Defendant as herein alleged
23 were authorized, approved, and/or ratified by each of the other Defendants as principals and/or
24 employers.

25 **JURISDICTION AND VENUE**

26 26. This action arises under the laws of the State of California and is within the subject
27 matter jurisdiction of this Court. As to the securities law portion of this action, under Corporations
28 Code §§ 25008, 25165, and 25550 the offer and sale of the warrant shares described here is conduct

1 that falls within the jurisdiction of the State of California.

2 27. Venue is proper in the Superior Court of California, County of Los Angeles, under Code
3 of Civil Procedure § 395 because Defendant EV’s principal place of business is in Los Angeles
4 County, and Los Angeles County is also the county of residence of defendants William T. Gross,
5 Henry J. Elkus, and Robert J. Laikin.

6 28. Plaintiff filed this civil action here in Los Angeles County to ensure that all the liable
7 Defendants are prosecuted herein, rather than different states or counties, to avoid inconsistent
8 outcomes and to address, if necessary, any issue of apportionment.

9 29. This case cannot be removed to federal court based on diversity of citizenship because
10 EV’s principal place of business is located within the County of this lawsuit.

11 **STATEMENT OF MATERIAL FACTS**

12 **a. Defendants’ False Statements and Concealment of Facts About EV and Novus To**
13 **Induce Plaintiff to Invest**

14 30. Novus claims to be a SPAC. Novus sponsored EV’s move from private to public
15 business, based on Defendants’ claim that Novus is a SPAC and is therefore permitted to take private
16 businesses public under certain federal laws regarding SPACs.

17 31. Federal regulations require that a SPAC cannot have identified a target business when it
18 issues its IPO. Defendant Novus, in seeming compliance with this requirement, filed an S-4 statement
19 with the SEC, dated January 21, 2022, stating:

20 “On February 8, 2021, Novus completed its initial public offering. Prior to the
21 consummation of the IPO, neither Novus, nor anyone on its behalf, contacted any
22 prospective target business or had any discussions, formal or otherwise, with respect to
23 a transaction with Novus.”

24 32. However, Novus had already identified EV as its target business for the SPAC IPO.
25 Unknown to Plaintiff at the time it invested in EV, Novus identified EV as its target business no later
26 than February 5, 2021. The IPO went public on Feb 8, 2021, at which time Novus had already
27 identified EV as its target business. Therefore, Novus was not a lawfully compliant SPAC, EV was not
28 properly registered with the SEC as a public company, and its shares were not SEC-approved for sale

1 to the public.

2 33. On information and belief, Plaintiff alleges that Defendants falsely claimed Novus is a
3 SPAC in order to make EV's shares more attractive to the Plaintiff.

4 34. EV purports to be in the business of energy storage. On information and belief, Plaintiff
5 alleges that EV and the other Defendants materially misrepresented EV's financial condition, track
6 record, ongoing business, and expected revenue in order to induce investors such as Plaintiff to invest
7 in EV.

8 35. In the Presentation that Defendants distributed to potential investors in late 2021,
9 Defendants contend that EV has: "one of the most efficient, commercially viable and safe energy
10 storage solutions [with a] developed pipeline of customers with >361 engagements representing ~\$32
11 bn in potential Energy Vault projects over the next 5-10 years" with Energy Vault stockholders rolling
12 100% of their equity; ~\$458mm cash on balance sheet after proceeds and net of transaction fees to
13 fund growth".

14 36. Defendants also claimed that EV's balance sheet cash (presumably excluding that of
15 EV's target business(es)) is \$116 million as of June 30, 2021. Defendants further claimed that EV is
16 valued at approximately \$1.1 billion, and is "[b]acked by reputable and long-term investors". These
17 figures are all stated prominently on page 7, entitled "Transaction Summary", of EV's Presentation.
18 On information and belief, Plaintiff alleges that EV actually had no binding sale agreements with any
19 viable customers at that time, and a portion of cash on its balance sheet was from duped investors
20 conned by the Defendants ahead of Plaintiff.

21 37. On page 34 of the Presentation, in a section entitled "Customers and Growth Visibility",
22 Defendants claim that EV has "customer engagements" with scores of businesses, including such well-
23 known firms as De Beers, Duke Energy, Hewlett Packard, SoftBank, Minnesota Power, Saudi Aramco,
24 and Siemens. On information and belief, Plaintiff alleges that EV actually had no binding sale
25 agreement with any viable customers at that time.

26 38. On page 37 of the Presentation, Defendants claim that EV has seven projects under
27 discussion "underpinned by executed agreements or letters of intent with 8 customers representing
28 1.223 MWh and \$368 million in potential sales". On information and belief, Plaintiff alleges that EV

1 actually had no viable customers and no binding sale agreement with any viable customers at that time.

2 39. On page 38 of the Presentation, Defendants claim that EV had \$96 million in bookings
3 during the fourth quarter of 2020 and \$67 million in 2021. Defendants also claim that EV’s bookings
4 would climb to \$263 million in 2022 with revenue of \$148 million that year, followed by \$962 million
5 in 2023 with revenue of \$535 million that year. On information and belief, Plaintiff alleges that EV’s
6 bookings and revenue projections for 2022 and 2023 had no basis in reality and were unrealistically
7 high. The Presentation is available online at:

8 [https://s29.q4cdn.com/892648123/files/doc_presentations/archive/2021/EVIP-](https://s29.q4cdn.com/892648123/files/doc_presentations/archive/2021/EVIP-202111_Investor_Presentation_Nov-2021.pdf)
9 [202111_Investor_Presentation_Nov-2021.pdf](https://s29.q4cdn.com/892648123/files/doc_presentations/archive/2021/EVIP-202111_Investor_Presentation_Nov-2021.pdf).

10 40. On information and belief, Plaintiff alleges that the preceding representations by
11 Defendants are materially false and/or misleading and/or omitted to state material facts to render the
12 representations true because Defendants misrepresented and failed to disclose material adverse facts
13 pertaining to EV’s business, operational, and financial results, which were known to Defendants or
14 recklessly disregarded by them. Those false and/or misleading statements and/or material omissions
15 by Defendants include that: (1) EV had no viable customers at that time; (2) EV had no binding sale
16 agreements or letters of intent with any viable customers at that time; (3) EV’s projections for bookings
17 and revenue in future years had no basis in reality and were unrealistically high; (4) Defendants’ claim
18 that Novus was a SPAC was false, because Novus had already identified its target business before
19 issuing its IPO; and (5) as a result, Defendants’ statements about EV’s operations, performance, and
20 expected revenue were wholly false and misleading.

21 41. On information and belief, Plaintiff alleges that Defendants misrepresented fundamental
22 facts to Plaintiff about EV’s purported partnership with DG Fuels. On October 27, 2021, Defendants
23 issued on the EV website a press release stating, falsely, that EV had formed a lucrative, multi-million-
24 dollar partnership with DG Fuels LLC:

25 “ENERGY VAULT ANNOUNCES ENERGY STORAGE AGREEMENT WITH DG
26 FUELS TO PROVIDE 1.6 GWH OF ENERGY STORAGE CAPACITY IN
27 SUPPORT OF SUSTAINABLE AVIATION FUEL PROJECTS
28 Energy Vault . . . has entered into an energy storage system agreement with DG Fuels

1 LLC (“DG Fuels”).

2 Under the terms of the agreement, Energy Vault agreed to provide 1.6 gigawatt hours
3 (GWh) of energy storage to support DG Fuels across multiple projects, with the first
4 project slated for 500 megawatt hours (MWh) in Louisiana. This initial project will be
5 followed by additional projects in British Columbia and Ohio. . . . DG Fuels will
6 deploy Energy Vault’s gravity storage systems to provide green electricity in
7 conjunction with photovoltaic solar to firm and shape the renewable energy to match
8 the demand load of the green hydrogen production. The renewable power will be used
9 to power HydrogenPro water electrolysis for both hydrogen and oxygen feedstock
10 production. . . .

11 Energy Vault systems are intended to minimize environmental and supply chain risks,
12 which was a critical factor in the final selection by DG Fuels. . . .

13 Energy Vault expects this agreement to provide up to \$520 million in revenue across
14 the three projects, the first of which [is] expected to commence in mid-2022. Robert
15 Piconi, CEO and Co-Founder of Energy Vault, commented, “We are proud to
16 collaborate with DG Fuels and its partners to economically enable 24/7 renewable
17 power, supporting DG Fuels to execute against their plans to efficiently deliver green
18 fuel to the aviation industry. . . . These projects will play a critical role in reducing our
19 reliance on fossil-based fuels while further advancing our country’s decarbonization
20 goals.”

21 Energy Vault previously announced an agreement for a business combination with
22 Novus Capital Corporation II (NYSE: NXU, NXU.U, NXU WS), which is expected to
23 result in Energy Vault becoming a public company listed on the New York Stock
24 Exchange in the first quarter of 2022 . . . Novus is a special purpose acquisition
25 company organized for the purpose of effecting a merger, share exchange, asset
26 acquisition, stock purchase, recapitalization, reorganization, or other similar business
27 combination with one or more businesses or entities. Novus Capital is led by Robert J.
28 Laikin, Jeff Foster, Hersch Klaff, Larry Paulson, Heather Goodman, Ron Sznaider and

1 Vince Donargo, who have significant hands-on experience helping high-tech
2 companies optimize their existing and new growth initiatives“.

3 See [https://www.businesswire.com/news/home/20211027005554/en/Energy-Vault-Announces-
4 Energy-Storage-Agreement-with-DG-Fuels-to-Provide-1.6-GWh-of-Energy-Storage-Capacity-
5 In-Support-of-Sustainable-Aviation-Fuel-Projects](https://www.businesswire.com/news/home/20211027005554/en/Energy-Vault-Announces-Energy-Storage-Agreement-with-DG-Fuels-to-Provide-1.6-GWh-of-Energy-Storage-Capacity-In-Support-of-Sustainable-Aviation-Fuel-Projects).

6 42. The press release was published by the Defendants through the Business Wire press
7 release media portal. On information and belief, Plaintiff alleges that the press release’s author is EV
8 with the endorsement of the Defendants and in furtherance of their conspiracy. It quotes EV’s CEO
9 Robert Piconi and DG Fuels’ CEO Michael C. Darcy.

10 43. On information and belief, Plaintiff alleges that the press release is false, misleading
11 and/or omits to state material facts to render the statement true, because the EV - DG Fuels partnership
12 described in the press release was based on fake news. Plaintiff alleges that EV did not reasonably
13 expect to see any significant revenue from the projects the press release described, because neither EV
14 nor DG Fuels had any business income at that time and DG Fuels was a non-operating company that
15 lacked the capacity and resources to perform under the described agreement. Plaintiff alleges that
16 Defendants’ preceding misrepresentations are materially false and/or misleading and induced the
17 Plaintiff to invest in EV.

18 **b. Plaintiff’s Reliance and Harm**

19 44. Plaintiff first saw Defendants’ misrepresentations in EV’s October 2021 press release
20 and the Presentation on EV’s website <https://investors.energyvault.com> on February 5, 2022. The
21 press release was also quoted in news articles by investor-related online publications such as
22 StartUpTicker (“US - Client to Bring Energy Vault \$500 Million Revenues”). EV caused and/or
23 intended the fake news to be disseminated through public and/or reliable channels to induce the
24 Plaintiff’s reliance on the viability of EV as an investment vehicle.

25 45. Because EV went public through a SPAC, Plaintiff did not have the benefit of the
26 factual information and disclosures that EV would have had to produce in order to go public through
27 other means.

28 46. Plaintiff reviewed the information about EV that was available, which included the

1 misrepresentations in EV’s October 2021 press release and Presentation, regarded them as being true
2 factual statements, and, based on them, purchased 397,000 EV warrant shares from February 2022 to
3 April 2022 at an average price of \$2.77 each, investing a total of \$1,099,690 in EV warrants.

4 47. EV’s stock value then dropped from approximately \$15 per share in April 2022 to
5 \$10.86 per share as of June 21, 2022. Its warrant share price dropped even more precipitously, from an
6 average price of \$2.77 per share when Plaintiff purchased the warrants in February-April 2022 to its
7 current \$1.73 per share as of June 21, 2022. These declines could be associated with skepticism about
8 EV’s claims which was expressed online during that period, for example the May 9, 2022 online article
9 by Michael Barnard, “Energy Vault Has Lawsuit Problem To Go Along With Bad Physics, CO2 Debt,
10 & Stock Price Drop”, at <https://cleantechnica.com/2022/05/09/energy-vault-has-lawsuit-problem-to-go-along-with-bad-physics-co2-debt-stock-price-drop/>.
11

12 48. EV’s warrant agreement sets out two conditions actionable here. One allows warrant
13 shareholders to convert their shares from warrants to Class A shares if stock trades at or above \$11.50
14 per share for a certain amount of time. Another condition is that warrants cannot be exercised until EV
15 filed an effective S-1 form.²

16 49. On information and belief, Plaintiff alleges that from March 11, 2022 to May 6, 2022,
17 Defendants deliberately delayed filing EV’s S-1 form with the SEC, thereby preventing warrant-
18 holders from exercising their warrants during that period. Defendants did this in order to reduce the
19 exercise or sale of warrants by Plaintiff and other warrant holders, in hopes of keeping EV’s stock
20 value artificially inflated.

21 50. Defendants eventually filed an S-1 form, but EV’s stock value thereafter never reached
22 the \$11.50 minimum price, again preventing warrants from becoming convertible to more salable Class
23 A shares and rendering them effectively worthless.

24 51. Plaintiff was never able to convert its warrants into marketable stock. As a result,
25 Plaintiff can only sell its shares as warrants, which are much less liquid than stocks and, additionally,
26 have dropped dramatically in value since April 5, 2022.

27 _____
28 ² Form S-1, entitled Registration Statement Under the Securities Act of 1933, is an SEC form required for U.S. companies that want to be listed on a national stock exchange.

1 52. In an effort to minimize its losses as warrant prices plummeted, Plaintiff sold all but
2 141,000 of its warrants, resulting in a net realized and unrealized, calculable loss of \$329,292 as of
3 June 15, 2022, caused by Defendants' wrongful conduct.

4 53. Plaintiff's additional, consequential damages in lost profit were greater than this, and
5 were primarily the result of its inability to exercise its EV warrants from March 11, 2022 to May 6,
6 2022 as described above. During that period, EV's stock price rose as high as \$22 per share. If EV
7 warrants had been exercisable then, Plaintiff could have exercised its warrants to purchase 397,000
8 shares of stock at the contractual price of \$11.50 per share and then immediately sold them at \$22 per
9 share, for a net return of \$3,068,810 (i.e. sale at \$22 per share (\$8,734,000) minus cost at \$11.50 per
10 share (\$4,565,500) minus the warrants' original purchase price of \$1,099,690). Plaintiff was prevented
11 from realizing this \$3,068,810 profit, or other amount of damages according to proof at trial, by
12 Defendants' wrongful conduct.

13 54. On July 1, 2022, EV announced warrant redemption. EV's warrant agreement, at
14 section 6.2, states:

15 "6.2 Redemption of Warrants when the price per share of Common Stock equals or
16 exceeds \$10.00. Subject to Sections 6.5 and 6.6 hereof, not less than all of the outstanding
17 Warrants may be redeemed, at the option of the Company, commencing **ninety (90) days**
18 **after they are first exercisable** and prior to their expiration, at the office of the Warrant
19 Agent, upon notice to the Registered Holders of the Warrants . . .".

20 (emphasis added).

21 55. Based on warrant agreement section 6.2 above, Plaintiff's outstanding warrants were
22 exercisable 90 days before the first day of warrant redemption, which was July 1, 2022. Ninety days
23 before July 1, 2022 was April 2, 2022, a Saturday. Accordingly, the warrants were exercisable since
24 April 2, 2022, and Plaintiff should have been able to exercise its warrants as early as Monday, April 4,
25 2022 and Tuesday, April 5, 2022, to obtain stocks worth \$22 per share. Defendants prevented this
26 from happening through their wrongful conduct.

27 c. **Defendants Continue to Perpetrate the Misconduct After Plaintiff Invested in EV**

28 56. In mid-April 2022, after investing in EV based on Defendants' actionable

1 misrepresentations, Plaintiff learned that DG Fuels had only been formed within a year of EV's
2 October 2021 press release, and that neither DG Fuels nor EV had any income.

3 57. On May 3, 2022, Defendants disclosed in an SEC amendment that in November of
4 2021, EV invested \$1,000,000 in DG Fuels by entering into a promissory note in that amount with DG
5 Fuels. On information and belief, Plaintiff alleges that EV took this action because DG Fuels had no
6 other significant financial support at that time.

7 58. Defendants further misrepresented fundamental facts to Plaintiff about EV's purported
8 partnership with DG Fuels. Specifically, on May 12, 2022, Defendants issued on the EV website a
9 press release falsely stating that EV had up to an additional \$217 million in revenue from its
10 partnership with DG Fuels LLC, that the projects which Defendants described as part of the EV-DG
11 Fuels partnership had more than doubled in scope, and that the EV-DG Fuels partnership was now
12 worth up to \$737 million:

13 "ENERGY VAULT AND DG FUELS MORE THAN DOUBLE SIZE AND INCREASE
14 SCOPE OF INITIAL ENERGY STORAGE PROJECT TO SUPPORT THE PRODUCTION
15 OF GREEN HYDROGEN FOR SUSTAINABLE AVIATION FUEL

16 *First project site in Louisiana upsized and expended to a potential of 1,168 MWh, which*
17 *reflects a capacity increase versus previous scope of 500 MWh for behind-the-meter green*
18 *hydrogen production*

19 *Adds up to \$217 million of potential project revenue to the previously announced revenue*
20 *opportunity of \$520M over all three projects for a total of up to \$737M*

21 Energy Vault . . . today announced an increase in scope for its initial energy storage project
22 with DG Fuels . . . in Louisiana. . . .

23 Under the terms of the project expansion, the SAF [Sustainable Aviation Fuel] project is being
24 developed to support up to 73 megawatts (MW) for 16 hours, reflecting a total of 1,168 MWh
25 in storage capacity. The companies plan to follow the Louisiana project with additional
26 projects in British Columbia and Ohio, with an opportunity for total storage capacity of 2.234
27 MWh overall and up to \$737 million in potential project revenue over time. . . .

28 "This first-of-its kind project is a game changer for the production of sustainable aviation fuels .

1 . . . “ said Robert Piconi, Chairman, Co-Founder and CO, Energy Vault. “The partnership and
2 collaboration with DG Fuels has been outstanding.“

3 [https://investors.energyvault.com/news/news-details/2022/Energy-Vault-and-DG-Fuels-More-than-
4 Double-Size-and-Increase-Scope-of-Initial-Energy-Storage-Project-to-Support-the-Production-of-
5 Green-Hydrogen-for-Sustainable-Aviation-Fuel/default.aspx](https://investors.energyvault.com/news/news-details/2022/Energy-Vault-and-DG-Fuels-More-than-Double-Size-and-Increase-Scope-of-Initial-Energy-Storage-Project-to-Support-the-Production-of-Green-Hydrogen-for-Sustainable-Aviation-Fuel/default.aspx).

6 59. On information and belief, Plaintiff alleges that these claims are false, misleading or
7 omit material facts to render them truthful because Defendants did not reasonable expect EV to receive
8 any significant amount of revenue from the projects the press release described, the EV - DG Fuels
9 partnership was actually based on fake news, and because neither EV nor DG Fuels had any income
10 and DG Fuels was a non-operating company that lacked the capacity and resources to perform under
11 the partnership agreement.

12 **d. Common Course of Conduct**

13 60. In committing the wrongful acts complained of herein, Defendants EV, Robert A.
14 Piconi (CEO of EV), William T. Gross (EV Director), Zia Huque (EV Director), Henry J. Elkus (EV
15 Director), Andrea S. Pedretti (EV’s Chief Technology Officer), and Andrea E. Wuttke (EV’s former
16 Chief Financial Officer) pursued or joined in the pursuit of a common course of conduct and acted in
17 concert with one another in furtherance of a common plan, design, or conspiracy. In addition to the
18 wrongful conduct complained of herein giving rise to primary liability, Defendants further aided and
19 abetted and/or assisted each other in breach of their fiduciary duties.

20 61. Each of the Defendants aided and abetted and rendered substantial assistance in the
21 wrongs complained of herein. In taking such action to substantially assist the commission of the
22 wrongdoing complained of herein, each defendant acted with knowledge of the primary wrongdoing,
23 substantially assisted the accomplishment of that wrongdoing, and was aware of his or her overall
24 contribution to and furtherance of the wrongdoing.

25 62. Each Defendant substantially harmed Plaintiff by way of undisclosed conflicts of
26 interest, and false statements about Defendants’ track records, prior performance, operations, and
27 expected revenue.

28 63. Each Defendant further harmed Plaintiff by abusing the trust and confidence Plaintiff

1 placed in them, thus causing Plaintiff further harm.

2 64. Each Defendant committed wrongful acts and omissions as either a corporation, or as
3 officers, directors, or managing agents of the various entities that they controlled, such that each of the
4 Defendants are liable for punitive damages based on their employer's, agents', or employees' conduct.

5 **FIRST CAUSE OF ACTION**

6 **BREACH OF FIDUCIARY DUTY**

7 **(AGAINST ALL DEFENDANTS and DOES 1-25)**

8 65. Plaintiff incorporates and references all allegations as though fully set forth herein.

9 66. Defendants, as directors, officers, and executives of EV, are fiduciaries and owe duties
10 of care to potential and actual shareholders. During the time that Plaintiff considered investing in EV,
11 and then in February 2022 to April 2022 purchased EV warrants, Plaintiff and Defendants had a direct,
12 consensual relationship wherein Defendants undertook to act on behalf of and for the benefit of
13 Plaintiff.

14 67. By reason of Plaintiff's position beginning in late 2021 as a potential investor, and later
15 as a warrant shareholder beginning on or about February 5, 2022, and continuing from those times to
16 the present, Defendants owed Plaintiff a fiduciary duty to act at all times in good faith, use their best
17 judgment, and do their best to promote the corporation's interests. Toward this end, Defendants owed
18 a fiduciary duty of care to Plaintiff to (1) avoid misrepresentations and concealment of material facts
19 regarding EV's operations, financial condition, and its value on the market, and (2) permit EV's
20 shareholders to freely buy and sell their shares to the extent practicable. Both of these duties served
21 not only Plaintiff, but the corporate interest in lawfully maximizing EV's share value.

22 68. Defendants should have disclosed to Plaintiff the material facts they were concealing,
23 including that the investment did not qualify as a SPAC, EV had no viable customers, no binding sale
24 agreements with any viable customers, and no bookings in 2020 or 2021, that its bookings and revenue
25 projections for 2022 and 2023 had no basis in reality and were unrealistically high, that DG Fuels had
26 only been formed within a year of EV's October 2021 press release, and that neither DG Fuels nor EV
27 had any income. Defendants breached their fiduciary duties to Plaintiff.

28 69. Defendants' fiduciary duties to Plaintiff also require them to disseminate only truthful

1 and accurate statements regarding EV so that EV's shareholders, potential and actual, can make
2 informed share transactions based on EV's true financial condition at any given time.

3 70. Plaintiff reasonably reposed its trust and confidence in Defendants at that time.

4 71. Defendants controlled the EV warrants which they induced Plaintiff to purchase.

5 72. Had Defendants complied with their fiduciary duties to Plaintiff, they would not have
6 misrepresented EV's financial condition, its relationship with DG Fuels, customer contracts, ongoing
7 projects, and expected revenue, as they did.

8 73. Had Defendants complied with their fiduciary duties to Plaintiff, they would not have
9 delayed filing EV's S-1 form with the SEC, thereby preventing Plaintiff from exercising its EV
10 warrants to receive registered stock during that time.

11 74. Defendants' breaches of fiduciary duty proximately caused Plaintiff's harm.

12 75. Defendants engaged in the alleged conduct with malice, oppression, and/or fraud as
13 those terms are defined in California Civil Code § 3294 and, thus, an award of exemplary and/or
14 punitive damages is warranted. EV authorized, subsequently adopted, ratified, and/or approved
15 Defendants' misconduct.

16 76. Defendants' breaches of fiduciary duty proximately caused Plaintiff's harm.

17 77. Defendants engaged in the aforementioned conduct with malice, oppression, and/or
18 fraud as those terms are defined in California Civil Code § 3294 and, thus, warrant an award of
19 exemplary and/or punitive damages. Defendants' personnel, agents, and representatives committed
20 these wrongful acts and omissions as agents of EV, which authorized, adopted, ratified, and/or
21 approved Defendants' misconduct.

22 **SECOND CAUSE OF ACTION**

23 **COMMON LAW FRAUD**

24 **(AGAINST ALL DEFENDANTS AND DOES 1 - 25)**

25 78. Plaintiff incorporates and references all allegations as though fully set forth herein.

26 79. Defendants defrauded Plaintiff through intentional misrepresentation, deception, and/or
27 concealment, inducing Plaintiff to purchase over a million dollars in EV warrants.

28 80. Corporations Code § 25504 provides that "Every person who directly or indirectly

1 controls a person liable under Section 25501 or 25503, every partner in a firm so liable, every principal
2 executive officer or director of a corporation so liable, every person occupying a similar status or
3 performing similar functions, every employee of a person so liable who materially aids in the act or
4 transaction constituting the violation, and every broker-dealer or agent who materially aids in the act or
5 transaction constituting the violation, are also liable jointly and severally with and to the same extent as
6 such person, unless the other person who is so liable had no knowledge of or reasonable grounds to
7 believe in the existence of the facts by reason of which the liability is alleged to exist.”

8 81. Because of Defendants’ deception, intentional misrepresentation or concealment,
9 Plaintiff did not know those misrepresented and concealed facts. Plaintiff would not have made its
10 investments in EV had it known the truth that was misrepresented and concealed by Defendants.

11 82. Plaintiff purchased over a million dollars in EV warrants in reliance on Defendants’
12 false representations and concealments.

13 83. Defendants continued to deceive Plaintiff after Plaintiff purchased the EV warrants, to
14 discourage and prevent Plaintiff from selling or otherwise liquidating its EV warrants as warrant values
15 continued to decrease over time.

16 84. Plaintiff was harmed by Defendants’ fraud in an amount to be determined at trial but not
17 less than \$1 million.

18 85. Defendants engaged in the aforementioned conduct with malice, oppression, and/or
19 fraud as those terms are defined in California Civil Code § 3294 and, thus, warrant an award of
20 exemplary and/or punitive damages. Defendants’ personnel, agents, and representatives committed
21 these wrongful acts and omissions as agents of EV, which authorized, adopted, ratified, and/or
22 approved Defendants’ misconduct.

23 **THIRD CAUSE OF ACTION**

24 **NEGLIGENT MISREPRESENTATION**

25 **(AGAINST ALL DEFENDANTS and DOES 1-25)**

26 86. Plaintiff incorporates and references all allegations as though fully set forth herein.

27 87. Defendants represented to Plaintiff that certain facts were true.

28 88. Defendants’ representations were not true.

1 89. To the extent Defendants did not know that their misrepresentations were false, they
2 made the misrepresentations without a reasonable basis for believing that they were true when they
3 made them.

4 90. Defendants intended that Plaintiff would rely on the misrepresentations.

5 91. Plaintiff invested in EV in reliance on Defendants' misrepresentations.

6 92. Plaintiff suffered damages of no less than \$1,000,000.

7 93. Plaintiff's reliance on Defendants' representations was a substantial factor in causing
8 Plaintiff's harm.

9 **FOURTH CAUSE OF ACTION**

10 **NEGLIGENCE**

11 **(AGAINST ALL DEFENDANTS and DOES 1-25)**

12 94. Plaintiff incorporates and references all allegations as though fully set forth herein.

13 95. Defendants owed Plaintiff a duty to act in a reasonably careful manner as one should act
14 who solicits and accepts investment monies from the public in the same or similar circumstances, i.e.,
15 by engaging in truthful advertising, making truthful disclosures pertaining to EV, and fully disclosing
16 all relevant material facts.

17 96. Defendants failed to act in that reasonably careful manner.

18 97. As a direct and proximate result of Defendants' negligent conduct, Plaintiff was
19 harmed.

20 98. Defendants' negligent conduct was a substantial factor in causing that economic harm.

21 99. As a proximate result of Defendants' negligent actions, Plaintiff sustained direct,
22 indirect, consequential and incidental damages in the sum of no less than \$1,000,000.

23 **FIFTH CAUSE OF ACTION**

24 **CONSTRUCTIVE FRAUD**

25 **(AGAINST ALL DEFENDANTS and DOES 1-25)**

26 100. Plaintiff incorporates and references all allegations as though fully set forth herein.

27 101. Defendants are liable for constructive fraud because they breached a duty which gained
28 them, or persons claiming under them, an advantage by misleading Plaintiff to his prejudice.

1 102. Each Defendant on the one hand, and Plaintiff on the other hand, were in a confidential
2 or fiduciary relationship, and each Defendant was obligated to disclose to Plaintiff and not conceal
3 from Plaintiff the material facts pertaining to EV.

4 103. Each Defendant intentionally withheld important and material relevant facts from
5 Plaintiff that were known only to that Defendant.

6 104. Plaintiff did not know those concealed facts and would not have made the investments
7 in EV had it known the truth concealed by Defendants.

8 105. Plaintiff purchased over a million dollars in EV warrants in reliance on Defendants'
9 concealments.

10 106. After Plaintiff purchased the EV warrants, each Defendant continued to withhold
11 important and material relevant facts from Plaintiff that were known only to that Defendant, to
12 discourage and prevent Plaintiff from selling or otherwise liquidating its EV warrants as warrant values
13 continued to decrease over time.

14 107. Plaintiff was harmed by Defendants' wrongdoing in an amount to be determined at trial
15 but not less than \$1 million.

16 108. Defendants engaged in the alleged misconduct with malice, oppression, and/or fraud as
17 those terms are defined in California Civil Code § 3294 and, thus, warrant an award of exemplary
18 and/or punitive damages. Defendants' personnel, agents, and representatives committed these
19 wrongful acts and omissions as agents of EV, which authorized, adopted, ratified and/or approved
20 Defendants' misconduct.

21 **SIXTH CAUSE OF ACTION**

22 **VIOLATION OF CORPORATIONS CODE §§ 25110-25118**

23 **(AGAINST ALL DEFENDANTS and DOES 1-25)**

24 109. Plaintiff incorporates and references all allegations as though fully set forth herein.

25 110. The warrants that are the subject of this lawsuit are securities as defined by
26 Corporations Code § 25019.

27 111. Corporations Code § 25110 prohibits the offer or sale of unregistered securities. It
28 provides that "It is unlawful for any person to offer or sell in this state any security in an issuer

1 transaction (other than in a transaction subject to Section 25120), whether or not by or through
2 underwriters, unless such sale has been qualified under Section 25111, 25112 or 25113 (and no order
3 under Section 25140 or subdivision (a) of Section 25143 is in effect with respect to such qualification)
4 or unless such security or transaction is exempted or not subject to qualification under Chapter 1
5 (commencing with Section 25100) of this part. The offer or sale of such a security in a manner that
6 varies or differs from, exceeds the scope of, or fails to conform with either a material term or material
7 condition of qualification of the offering as set forth in the permit or qualification order, or a material
8 representation as to the manner of offering which is set forth in the application for qualification, shall
9 be an unqualified offer or sale.”

10 112. Section 25110 allows rescission of a sale of shares where the seller did not qualify as a
11 SPAC when it offered the shares because its target entity was pre-designated, leaving the share offering
12 unqualified and hence ineffective.

13 113. Corporations Code § 25503 sets forth the liability for a violation of Section 25110.
14 Under Section 25503, “Any person who violates Section 25110, 25130, or 25133, or a condition of
15 qualification under Chapter 2 (commencing with Section 25110)” may sue for “the consideration they
16 paid for that security with interest thereon at the legal rate, and reasonable attorney’s fees, less the
17 amount of any income received therefrom, upon the tender of that security, or for damages, if they no
18 longer own the security, or if the consideration given for the security is not capable of being returned.
19 Damages, if the plaintiff no longer owns the security, shall be equal to the difference between (a) the
20 purchase price plus interest at the legal rate from the date of purchase, plus reasonable attorney’s fees,
21 and (b) the value of the security at the time it was disposed of by the plaintiff plus the amount of any
22 income received therefrom by the plaintiff.”

23 114. Corporations Code § 25504 provides that “Every person who directly or indirectly
24 controls a person liable under Section 25501 or 25503, every partner in a firm so liable, every principal
25 executive officer or director of a corporation so liable, every person occupying a similar status or
26 performing similar functions, every employee of a person so liable who materially aids in the act or
27 transaction constituting the violation, and every broker-dealer or agent who materially aids in the act or
28 transaction constituting the violation, are also liable jointly and severally with and to the same extent as

1 such person, unless the other person who is so liable had no knowledge of or reasonable grounds to
2 believe in the existence of the facts by reason of which the liability is alleged to exist.”

3 115. Pursuant to Corporations Code § 25017, both offers to sell a security and the actual sale
4 of a security can be the basis of liability under this section, as the legislature intended to protect actual
5 shareholders as well as potential ones.

6 116. Defendants violated Corporations Code § 25110 by offering to sell, in California, EV
7 warrants to Plaintiff while claiming Novus to be a SPAC though Novus was not actually qualified as a
8 SPAC, making the offers unqualified and hence ineffective.

9 117. Defendants also violated Corporations Code § 25110 by selling, in California, EV
10 warrants to Plaintiff while claiming Novus to be a SPAC though Novus was not actually qualified as a
11 SPAC, making the sales unqualified and hence ineffective.

12 118. Defendants made these misrepresentations to induce persons such as Plaintiff to invest
13 in EV and to continue to invest in EV.

14 119. As set forth above, the statements made and the facts omitted were material. EV either
15 knew or had reasonable grounds to believe that the statements were false.

16 120. Plaintiff relied on these foregoing material misrepresentations when it invested in EV.

17 121. Defendants’ violations of Corporations Code § 25110 proximately caused Plaintiff’s
18 harm, and Plaintiff is entitled to rescission and/or damages in an amount according to proof.

19 **SEVENTH CAUSE OF ACTION**

20 **VIOLATION OF CORPORATIONS CODE §§ 25400-25550**

21 **(AGAINST ALL DEFENDANTS and DOES 1-25)**

22 122. Plaintiff incorporates and references all allegations as though fully set forth herein.

23 123. Corporations Code § 25400(d) provides that “It is unlawful for any person, directly or
24 indirectly, in this state: (d) If such person is a broker-dealer or other person selling or offering for sale
25 or purchasing or offering to purchase the security, to make, for the purpose of inducing the purchase or
26 sale of such security by others, any statement which was, at the time and in the light of the
27 circumstances under which it was made, false or misleading with respect to any material fact, or which
28 omitted to state any material fact necessary in order to make the statements made, in the light of the

1 circumstances under which they were made, not misleading, and which he knew or had reasonable
2 ground to believe was so false or misleading.”

3 124. Corporations Code § 25401 provides that “[i]t is unlawful for any person to offer or sell
4 a security in this state, or to buy or offer to buy a security in this state, by means of any written or oral
5 communication that includes an untrue statement of a material fact or omits to state a material fact
6 necessary to make the statements made, in the light of the circumstances under which the
7 statements were made, not misleading.”

8 125. Corporations Code § 25500 provides that “Any person who willfully participates in any
9 act or transaction in violation of Section 25400 shall be liable to any other person who purchases or
10 sells any security at a price which was affected by such act or transaction for the damages sustained by
11 the latter as a result of such act or transaction. Such damages shall be the difference between the price
12 at which such other person purchased or sold securities and the market value which such securities
13 would have had at the time of his purchase or sale in the absence of such act or transaction, plus
14 interest at the legal rate.”

15 126. Corporations Code § 25501 provides in pertinent part that “[a]ny person who violates
16 Section 25401 shall be liable to the person who purchases a security from him or sells a security to
17 him, who may sue either for rescission or for damages (if the plaintiff or the defendant, as the case may
18 be, no longer owns the security).” Corporations Code § 25503 also provides for the award of interest
19 and attorney fees to a prevailing plaintiff.

20 127. Corporations Code § 25504 provides that “Every person who directly or indirectly
21 controls a person liable under Section 25501 or 25503, every partner in a firm so liable, every principal
22 executive officer or director of a corporation so liable, every person occupying a similar status or
23 performing similar functions, every employee of a person so liable who materially aids in the act or
24 transaction constituting the violation, and every broker-dealer or agent who materially aids in the act or
25 transaction constituting the violation, are also liable jointly and severally with and to the same extent as
26 such person, unless the other person who is so liable had no knowledge of or reasonable grounds to
27 believe in the existence of the facts by reason of which the liability is alleged to exist.”

28 128. Defendants violated Corporations Code §25401 in at least the following ways:

- 1 a) In the Presentation that Defendants distributed to potential investors in late 2021,
2 Defendants contend that EV has “one of the most efficient, commercially viable and
3 safe energy storage solutions [with a] developed pipeline of customers with >361
4 engagements representing ~\$32 bn in potential Energy Vault projects over the next
5 5-10 years” These figures are all stated prominently on page 7, entitled
6 “Transaction Summary”, of EV’s Presentation. On information and belief, Plaintiff
7 alleges that in actuality, EV had no binding sale agreements with any viable
8 customers at that time.
- 9 b) On page 34 of the Presentation, in a section entitled “Customers and Growth
10 Visibility”, Defendants claim that EV has “customer engagements” with scores of
11 businesses, including such well-known firms as De Beers, Duke Energy, Hewlett
12 Packard, Minnesota Power, Saudi Aramco and Siemens. On information and belief,
13 Plaintiff alleges that EV actually had no binding sale agreements with any viable
14 customers at that time.
- 15 c) On page 37 of the Presentation, Defendants claim that EV has seven projects under
16 discussion “underpinned by executed agreements or letters of intent with 8
17 customers representing 1.223 MWh and \$368 million in potential sales”. On
18 information and belief, Plaintiff alleges that EV actually had no viable customers
19 and no binding sale agreements with any viable customers at that time.
- 20 d) On page 38 of the Presentation, Defendants claim that EV had \$96 million in
21 bookings during the fourth quarter of 2020 and \$67 million in 2021. Defendants
22 also claim that EV’s bookings would climb to \$263 million in 2022 with revenue of
23 \$148 million that year, followed by \$962 million in 2023 with revenue of \$535
24 million that year. On information and belief, Plaintiff alleges that EV actually had
25 no bookings in 2020 or 2021, and that its bookings and revenue projections for 2022
26 and 2023 had no basis in reality and were unrealistically high.
- 27 e) Marketing the investment as a SPAC when it did not qualify as such.

28 129. In publicly-available press releases of October 2021 and May 2022, Defendants claimed

1 that EV had a lucrative, multi-million-dollar partnership with DG Fuels and three large, specifically-
2 described projects they were involved in. In actuality, neither EV nor DG Fuels had any income, and
3 DG Fuels was a non-operating company which lacked the capacity and resources to perform under the
4 described agreement.

5 130. Defendants made these misrepresentations and omissions to induce persons such as
6 Plaintiff to invest in EV and to continue to invest in EV.

7 131. As set forth above, the statements made and the facts omitted were material. EV either
8 knew or had reasonable grounds to believe that the statements were false and the omissions were
9 material.

10 132. Plaintiff relied on these foregoing material misrepresentations when it invested in EV.

11 133. Defendants' violations of Corporations Code § 25401 proximately caused Plaintiff's
12 harm, and Plaintiff is entitled to rescission and/or damages in an amount according to proof.

13
14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, for:

- 16 1. Economic damages in an amount according to proof at trial;
 - 17 2. Statutory damages or rescission pursuant to California statutes;
 - 18 3. Attorneys' fees, pursuant to Corporations Code section 25501 and 25503;
 - 19 4. Punitive damages necessary to punish Defendants in an amount according to proof at trial;
 - 20 5. Pre-judgment interest on all damages at the maximum legal rate;
 - 21 6. Imposing a constructive trust, ordering an accounting, and/or awarding all other proper
22 equitable relief according to proof at trial;
 - 23 7. Costs of litigation in an amount according to proof at trial;
 - 24 8. Such other and further relief as this Court deems just and proper; and
 - 25 9. Plaintiff demands a trial by jury as to all triable issues in this action.
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REIF LAW GROUP, P.C.

Dated: July 20, 2022

By: _____
Brandon S. Reif
Attorneys for Plaintiff

LAW OFFICES OF STEVE A. BUCHWALTER, P.C.

Dated: July 20, 2022

By: _____
Steve A. Buchwalter
Attorneys for Plaintiff

Exhibit B

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12 Email: sab@securitieslaw-attorney.com

13 Attorneys for Plaintiff 1791 Management, LP

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF LOS ANGELES**

16 1791 MANAGEMENT, LP, a Delaware limited
17 partnership,

18 Plaintiff,

19 vs.

20 ENERGY VAULT, INC., a Delaware
21 corporation; [ROBERT A. PICONI, an](#)
22 [individual; WILLIAM T. GROSS, an](#)
23 [individual; ZIA HUQUE aka TAHSINUL ZIA](#)
24 [HUQUE, an individual; HENRY J. ELKUS, an](#)
25 [individual; ANDREA S. PEDRETTI aka](#)
26 [ANDREA PEDRETTI RODI, an individual;](#)
27 [ANDREA E. WUTTKE, an individual;](#)
28 [NOVUS CAPITAL CORPORATION II, a](#)
[Delaware corporation; ROBERT J. LAIKIN, an](#)
[individual; LARRY M. PAULSON, an](#)
[individual; JEFFREY D. FOSTER, an](#)
[individual; and DOES 1 through 25, inclusive,](#)

Defendants.

Case No. 22STCV16538

[Assigned to the Hon. Michelle Williams, in
Dept. 74]

**PLAINTIFF'S ~~FIRST~~ SECOND AMENDED
COMPLAINT FOR:**

1. BREACH OF FIDUCIARY DUTY
2. COMMON LAW FRAUD
3. NEGLIGENT MISREPRESENTATION
4. NEGLIGENCE
5. CONSTRUCTIVE FRAUD
6. [VIOLATION OF CORPORATIONS
CODE §§ 25110-25118](#)
7. [VIOLATION OF CORPORATIONS
CODE §§ 25400-25550](#)

DEMAND FOR JURY TRIAL

Complaint Filed: May 18, 2022
[First Am. Complaint Filed: June 24, 2022](#)

1 Plaintiff 1791 Management, LP (“Plaintiff” or “1791”), by its undersigned attorneys, brings this
2 Second Amended Complaint against Defendants Energy Vault, Inc. (“EV”), Robert A. Piconi, William
3 T. Gross, Zia Huque aka Tahsinul Zia Huque, Henry J. Elkus, Andrea S. Pedretti aka Andrea
4 Pedretti Rodi, Andrea E. Wuttke, Novus Capital Corporation II (“Novus”), Robert J. Laikin, Larry M.
5 Paulson, Jeffrey D. Foster, and Does 1 through 25, inclusive (collectively “Defendants”), alleging the
6 following:

7 **OVERVIEW**

8 1. In late 2021, Defendants solicited Plaintiff to invest in Defendant entity EV.
9 Defendants’ solicitation focused on disseminating to Plaintiff a press release on October 27, 2021, and
10 a presentation titled Investor Presentation (“Presentation”) in November 2021.

11 2. On information and belief, Plaintiff alleges that each Defendant here falls within the
12 scope of liability set out in California Corp. Code section 25504: every person who directly or
13 indirectly controls a person liable under Section 25501 or 25503 , every partner in a firm so liable,
14 every principal executive officer or director of a corporation so liable, every person occupying a
15 similar status or performing similar functions, every employee of a person so liable who materially aids
16 in the act or transaction constituting the violation, and every broker-dealer or agent who materially aids
17 in the act or transaction constituting the violation, are also liable jointly and severally with and to the
18 same extent as such person, unless the other person who is so liable had no knowledge of or reasonable
19 grounds to believe in the existence of the facts by reason of which the liability is alleged to exist.

20 3. On information and belief, Plaintiff alleges that Defendants’ statements to Plaintiff, a
21 potential investor, were rife with false statements, misleading statements and omissions of material
22 facts. To induce the Plaintiff to invest in EV, Defendants misrepresented to Plaintiff that Novus met
23 the definition of a Blank Check Company, otherwise known as a Special-Purpose Acquisition
24 Company (“SPAC”). A SPAC is a shell company, with nominal or no assets, which raises money
25 through an “IPO”, otherwise known as an initial public offering, in order to acquire an operating
26 private business (the “target business”) and take it public. Investors participate in the IPO by
27
28

1 purchasing warrants¹, which they can use to buy stock at a pre-negotiated price in the target business
2 once that business is identified and other conditions are met.

3 4. The SPAC process makes it easier for a target business to go public than it would
4 otherwise be. If it were not for the SPAC, the target business could not go public in the streamlined
5 fashion that federal law permits for SPACs. It would instead have to go through a typical underwriting
6 process which is time-consuming and costly, and to give more information and disclosures to the
7 business's investors and potential investors than a SPAC IPO requires.

8 5. Federal regulations require that a SPAC cannot have identified a target business when it
9 issues its IPO. Defendant Novus and its officers and directors purported to comply with this
10 requirement in the documents they filed with the SEC.

11 6. On information and belief, Plaintiff alleges that Novus had already identified EV as its
12 target business for the SPAC IPO. Therefore, Novus was not a lawfully compliant SPAC, EV was not
13 properly registered with the SEC as a public company, and its shares did not meet SEC conditions for
14 sale to the public.

15 7. Defendants, on information and belief, falsely claimed that Novus is a SPAC in order to
16 register the warrants and make EV's shares more attractive to the Plaintiff.

17 8. On information and belief, Plaintiff alleges that Defendants: misrepresented EV's
18 financial status and expected revenue; concealed key material facts that potential and actual investors
19 have a right to know, such as the fact that EV had invested in DG Fuels, LLC (a Colorado limited
20 liability company) via a million-dollar promissory note when it announced a \$737 million sales
21 agreement with DG Fuels. Defendants also made knowingly untrue inflated claims about EV's ability
22 to generate revenue in 2022 and future years.

23 9. Plaintiff relied on Defendants' misrepresentations and concealments or omissions in
24 purchasing EV warrants in February to April 2022, and Defendants' misrepresentations and
25 concealments or omissions were a substantial factor in Plaintiff's purchase of the interest in EV.

26 _____
27 ¹ A warrant is a security as defined by California Corporations Code § 25019. It is a derivative contract between
28 a public company and an investor which allows the investor, as a warrant holder, to convert the warrant into
shares of stock in the company at a later date.

1 10. Due to these misrepresentations and concealed or omitted material facts, Plaintiff's
2 investment in EV is now worthless or near worthless and, at best, only worth a fraction of what it was
3 worth at the time of the IPO, and Plaintiff has been damaged in an amount of no less than \$1,000,000.

4 **THE PARTIES**

5 11. Plaintiff 1791 Management, LP is a limited partnership formed in Delaware. Its
6 principal place of business is in Nevada. It has an office in Laguna Niguel, Orange County, California.

7 12. Defendant Energy Vault, Inc. is a Delaware corporation with its principal place of
8 business in Westlake Village, Los Angeles County, California.

9 13. Defendant Robert A. Piconi is the CEO of EV and, on information and belief, is, and at
10 all times relevant was, a resident of Thousand Oaks, Ventura County, California.

11 14. Defendant William T. Gross is a Director of EV and, on information and belief, is, and
12 at all times relevant was, a resident of Pasadena, Los Angeles County, California.

13 15. Defendant Zia Huque aka Tahsinul Zia Huque is a Director of EV and, on information
14 and belief, is, and at all times relevant was, a resident of Jackson, Teton County, Wyoming.

15 16. Defendant Henry J. Elkus is a Director of EV and, on information and belief, is, and at
16 all times relevant was, a resident of City of Los Angeles, Los Angeles County, California.

17 17. Defendant Andrea S. Pedretti aka Andrea Pedretti Rodi is EV's Chief Technology
18 Officer and, on information and belief, is, and at all times relevant was, a resident of Thousand Oaks,
19 Ventura County, California.

20 18. Defendant Andrea E. Wuttke is a former Chief Financial Officer of EV and, on
21 information and belief, is, and at all times relevant was, a resident of Park City, Summit County, Utah.

22 19. Defendant Novus is a Delaware corporation with its principal place of business in
23 Indianapolis, Marion County, Indiana.

24 20. Defendant Robert J. Laikin is the CEO of Novus and, on information and belief, is, and
25 at all times relevant was, a resident of the city of Los Angeles, Los Angeles County, California.

26 21. Defendant Larry M. Paulson is Chairman of the Board of Novus and, on information
27 and belief, is, and at all times relevant was, a resident of Rancho Santa Fe, San Diego County,
28 California.

1 22. Defendant Jeffrey D. Foster is a Member of the Board of Novus and, on information and
2 belief, is, and at all times relevant was, a resident of the city of West Lake Hills, Travis County, Texas.

3 23. Plaintiff is informed and believes, and based thereon alleges, that each Defendant was
4 the agent, principal, officer, director, partner, servant, representative, employer, employee, partner,
5 joint venturer, co-conspirator, subsidiary, affiliate, aider and abettor, enabler, and/or alter ego of each
6 and every other Defendant, and in doing the actions or inactions alleged herein, acted within the course
7 and scope of their authority as the agent, principal, servant, representative, employer, employee,
8 partner, joint venturer, co-conspirator, subsidiary, affiliate, aider and abettor, enabler, and/or alter ego,
9 and with the full knowledge and consent of each of the other Defendants, except where otherwise
10 specifically described, and with an awareness of their wrongdoing, and knew that their conduct would
11 substantially assist in the accomplishment of the harm and damage to Plaintiff.

12 24. Plaintiff is unaware of the true names and capacities, whether individual, corporate,
13 agent, representative, or otherwise, of the Defendants sued herein as DOES 1 through 25, inclusive,
14 and therefore sues these Defendants by such fictitious names. Plaintiff will amend this Complaint to
15 allege the true names and capacities of Does 1 through 25, inclusive, when Plaintiff ascertains the
16 identity of such Defendants. Plaintiff is informed and believes, and thereon alleges, that each of these
17 Defendants is responsible in some manner for the acts and omissions which damaged Plaintiff, and that
18 Plaintiff's damages as alleged herein were proximately caused by Defendants' actions or omissions.

19 25. Plaintiff is informed and believes and thereon alleges, that at all times herein mentioned,
20 each of the Defendants, and Does 1 through 25, and each of them, were the agents and/or employees of
21 each of the remaining Defendants, and in doing the things herein alleged, were acting within the course
22 and scope of said agency and/or employment, in that the actions of each Defendant as herein alleged
23 were authorized, approved, and/or ratified by each of the other Defendants as principals and/or
24 employers.

25 **JURISDICTION AND VENUE**

26 26. This action arises under the laws of the State of California and is within the subject
27 matter jurisdiction of this Court. As to the securities law portion of this action, under Corporations
28 Code §§ 25008, 25165, and 25550 the offer and sale of the warrant shares described here is conduct

1 that falls within the jurisdiction of the State of California.

2 27. Venue is proper in the Superior Court of California, County of Los Angeles, under Code
3 of Civil Procedure § 395 because Defendant EV’s principal place of business is in Los Angeles
4 County, and Los Angeles County is also the county of residence of defendants William T. Gross,
5 Henry J. Elkus, and Robert J. Laikin.

6 28. Plaintiff filed this civil action here in Los Angeles County to ensure that all the liable
7 Defendants are prosecuted herein, rather than different states or counties, to avoid inconsistent
8 outcomes and to address, if necessary, any issue of apportionment.

9 29. This case cannot be removed to federal court based on diversity of citizenship because
10 EV’s principal place of business is located within the County of this lawsuit.

11 **STATEMENT OF MATERIAL FACTS**

12 **a. Defendants’ False Statements and Concealment of Facts About EV and Novus To**
13 **Induce Plaintiff to Invest**

14 30. Novus claims to be a SPAC. Novus sponsored EV’s move from private to public
15 business, based on Defendants’ claim that Novus is a SPAC and is therefore permitted to take private
16 businesses public under certain federal laws regarding SPACs.

17 31. Federal regulations require that a SPAC cannot have identified a target business when it
18 issues its IPO. Defendant Novus, in seeming compliance with this requirement, filed an S-4 statement
19 with the SEC, dated January 21, 2022, stating:

20 “On February 8, 2021, Novus completed its initial public offering. Prior to the
21 consummation of the IPO, neither Novus, nor anyone on its behalf, contacted any
22 prospective target business or had any discussions, formal or otherwise, with respect to
23 a transaction with Novus.”

24 32. However, Novus had already identified EV as its target business for the SPAC IPO.
25 Unknown to Plaintiff at the time it invested in EV, Novus identified EV as its target business no later
26 than February 5, 2021. The IPO went public on Feb 8, 2021, at which time Novus had already
27 identified EV as its target business. Therefore, Novus was not a lawfully compliant SPAC, EV was not
28 properly registered with the SEC as a public company, and its shares were not SEC-approved for sale

1 to the public.

2 33. On information and belief, Plaintiff alleges that Defendants falsely claimed Novus is a
3 SPAC in order to make EV's shares more attractive to the Plaintiff.

4 34. EV purports to be in the business of energy storage. On information and belief, Plaintiff
5 alleges that EV and the other Defendants materially misrepresented EV's financial condition, track
6 record, ongoing business, and expected revenue in order to induce investors such as Plaintiff to invest
7 in EV.

8 35. In the Presentation that Defendants distributed to potential investors in late 2021,
9 Defendants contend that EV has: "one of the most efficient, commercially viable and safe energy
10 storage solutions [with a] developed pipeline of customers with >361 engagements representing ~\$32
11 bn in potential Energy Vault projects over the next 5-10 years" with Energy Vault stockholders rolling
12 100% of their equity; ~\$458mm cash on balance sheet after proceeds and net of transaction fees to
13 fund growth".

14 36. Defendants also claimed that EV's balance sheet cash (presumably excluding that of
15 EV's target business(es)) is \$116 million as of June 30, 2021. Defendants further claimed that EV is
16 valued at approximately \$1.1 billion, and is "[b]acked by reputable and long-term investors". These
17 figures are all stated prominently on page 7, entitled "Transaction Summary", of EV's Presentation.
18 On information and belief, Plaintiff alleges that EV actually had no binding sale agreements with any
19 viable customers at that time, and a portion of cash on its balance sheet was from duped investors
20 conned by the Defendants ahead of Plaintiff.

21 37. On page 34 of the Presentation, in a section entitled "Customers and Growth Visibility",
22 Defendants claim that EV has "customer engagements" with scores of businesses, including such well-
23 known firms as De Beers, Duke Energy, Hewlett Packard, SoftBank, Minnesota Power, Saudi Aramco,
24 and Siemens. On information and belief, Plaintiff alleges that EV actually had no binding sale
25 agreement with any viable customers at that time.

26 38. On page 37 of the Presentation, Defendants claim that EV has seven projects under
27 discussion "underpinned by executed agreements or letters of intent with 8 customers representing
28 1.223 MWh and \$368 million in potential sales". On information and belief, Plaintiff alleges that EV

1 actually had no viable customers and no binding sale agreement with any viable customers at that time.

2 39. On page 38 of the Presentation, Defendants claim that EV had \$96 million in bookings
3 during the fourth quarter of 2020 and \$67 million in 2021. Defendants also claim that EV’s bookings
4 would climb to \$263 million in 2022 with revenue of \$148 million that year, followed by \$962 million
5 in 2023 with revenue of \$535 million that year. On information and belief, Plaintiff alleges that EV’s
6 bookings and revenue projections for 2022 and 2023 had no basis in reality and were unrealistically
7 high. The Presentation is available online at:

8 [https://s29.q4cdn.com/892648123/files/doc_presentations/archive/2021/EVIP-](https://s29.q4cdn.com/892648123/files/doc_presentations/archive/2021/EVIP-202111_Investor_Presentation_Nov-2021.pdf)
9 [202111_Investor_Presentation_Nov-2021.pdf](https://s29.q4cdn.com/892648123/files/doc_presentations/archive/2021/EVIP-202111_Investor_Presentation_Nov-2021.pdf).

10 40. On information and belief, Plaintiff alleges that the preceding representations by
11 Defendants are materially false and/or misleading and/or omitted to state material facts to render the
12 representations true because Defendants misrepresented and failed to disclose material adverse facts
13 pertaining to EV’s business, operational, and financial results, which were known to Defendants or
14 recklessly disregarded by them. Those false and/or misleading statements and/or material omissions
15 by Defendants include that: (1) EV had no viable customers at that time; (2) EV had no binding sale
16 agreements or letters of intent with any viable customers at that time; (3) EV’s projections for bookings
17 and revenue in future years had no basis in reality and were unrealistically high; (4) Defendants’ claim
18 that Novus was a SPAC was false, because Novus had already identified its target business before
19 issuing its IPO; and (5) as a result, Defendants’ statements about EV’s operations, performance, and
20 expected revenue were wholly false and misleading.

21 41. On information and belief, Plaintiff alleges that Defendants misrepresented fundamental
22 facts to Plaintiff about EV’s purported partnership with DG Fuels. On October 27, 2021, Defendants
23 issued on the EV website a press release stating, falsely, that EV had formed a lucrative, multi-million-
24 dollar partnership with DG Fuels LLC:

25 “ENERGY VAULT ANNOUNCES ENERGY STORAGE AGREEMENT WITH DG
26 FUELS TO PROVIDE 1.6 GWH OF ENERGY STORAGE CAPACITY IN
27 SUPPORT OF SUSTAINABLE AVIATION FUEL PROJECTS
28 Energy Vault . . . has entered into an energy storage system agreement with DG Fuels

1 LLC (“DG Fuels”).

2 Under the terms of the agreement, Energy Vault agreed to provide 1.6 gigawatt hours
3 (GWh) of energy storage to support DG Fuels across multiple projects, with the first
4 project slated for 500 megawatt hours (MWh) in Louisiana. This initial project will be
5 followed by additional projects in British Columbia and Ohio. . . . DG Fuels will
6 deploy Energy Vault’s gravity storage systems to provide green electricity in
7 conjunction with photovoltaic solar to firm and shape the renewable energy to match
8 the demand load of the green hydrogen production. The renewable power will be used
9 to power HydrogenPro water electrolysis for both hydrogen and oxygen feedstock
10 production. . . .

11 Energy Vault systems are intended to minimize environmental and supply chain risks,
12 which was a critical factor in the final selection by DG Fuels. . . .

13 Energy Vault expects this agreement to provide up to \$520 million in revenue across
14 the three projects, the first of which [is] expected to commence in mid-2022. Robert
15 Piconi, CEO and Co-Founder of Energy Vault, commented, “We are proud to
16 collaborate with DG Fuels and its partners to economically enable 24/7 renewable
17 power, supporting DG Fuels to execute against their plans to efficiently deliver green
18 fuel to the aviation industry. . . . These projects will play a critical role in reducing our
19 reliance on fossil-based fuels while further advancing our country’s decarbonization
20 goals.”

21 Energy Vault previously announced an agreement for a business combination with
22 Novus Capital Corporation II (NYSE: NXU, NXU.U, NXU WS), which is expected to
23 result in Energy Vault becoming a public company listed on the New York Stock
24 Exchange in the first quarter of 2022 . . . Novus is a special purpose acquisition
25 company organized for the purpose of effecting a merger, share exchange, asset
26 acquisition, stock purchase, recapitalization, reorganization, or other similar business
27 combination with one or more businesses or entities. Novus Capital is led by Robert J.
28 Laikin, Jeff Foster, Hersch Klaff, Larry Paulson, Heather Goodman, Ron Sznajder and

1 Vince Donargo, who have significant hands-on experience helping high-tech
2 companies optimize their existing and new growth initiatives“.

3 See [https://www.businesswire.com/news/home/20211027005554/en/Energy-Vault-Announces-
4 Energy-Storage-Agreement-with-DG-Fuels-to-Provide-1.6-GWh-of-Energy-Storage-Capacity-
5 In-Support-of-Sustainable-Aviation-Fuel-Projects](https://www.businesswire.com/news/home/20211027005554/en/Energy-Vault-Announces-Energy-Storage-Agreement-with-DG-Fuels-to-Provide-1.6-GWh-of-Energy-Storage-Capacity-In-Support-of-Sustainable-Aviation-Fuel-Projects).

6 42. The press release was published by the Defendants through the Business Wire press
7 release media portal. On information and belief, Plaintiff alleges that the press release’s author is EV
8 with the endorsement of the Defendants and in furtherance of their conspiracy. It quotes EV’s CEO
9 Robert Piconi and DG Fuels’ CEO Michael C. Darcy.

10 43. On information and belief, Plaintiff alleges that the press release is false, misleading
11 and/or omits to state material facts to render the statement true, because the EV - DG Fuels partnership
12 described in the press release was based on fake news. Plaintiff alleges that EV did not reasonably
13 expect to see any significant revenue from the projects the press release described, because neither EV
14 nor DG Fuels had any business income at that time and DG Fuels was a non-operating company that
15 lacked the capacity and resources to perform under the described agreement. Plaintiff alleges that
16 Defendants’ preceding misrepresentations are materially false and/or misleading and induced the
17 Plaintiff to invest in EV.

18 **b. Plaintiff’s Reliance and Harm**

19 44. Plaintiff first saw Defendants’ misrepresentations in EV’s October 2021 press release
20 and the Presentation on EV’s website <https://investors.energyvault.com> on February 5, 2022. The
21 press release was also quoted in news articles by investor-related online publications such as
22 StartUpTicker (“US - Client to Bring Energy Vault \$500 Million Revenues”). EV caused and/or
23 intended the fake news to be disseminated through public and/or reliable channels to induce the
24 Plaintiff’s reliance on the viability of EV as an investment vehicle.

25 45. Because EV went public through a SPAC, Plaintiff did not have the benefit of the
26 factual information and disclosures that EV would have had to produce in order to go public through
27 other means.

28 46. Plaintiff reviewed the information about EV that was available, which included the

1 misrepresentations in EV’s October 2021 press release and Presentation, regarded them as being true
2 factual statements, and, based on them, purchased 397,000 EV warrant shares from February 2022 to
3 April 2022 at an average price of \$2.77 each, investing a total of \$1,099,690 in EV warrants.

4 47. EV’s stock value then dropped from approximately \$15 per share in April 2022 to
5 \$10.86 per share as of June 21, 2022. Its warrant share price dropped even more precipitously, from an
6 average price of \$2.77 per share when Plaintiff purchased the warrants in February-April 2022 to its
7 current \$1.73 per share as of June 21, 2022. These declines could be associated with skepticism about
8 EV’s claims which was expressed online during that period, for example the May 9, 2022 online article
9 by Michael Barnard, “Energy Vault Has Lawsuit Problem To Go Along With Bad Physics, CO2 Debt,
10 & Stock Price Drop”, at [https://cleantechnica.com/2022/05/09/energy-vault-has-lawsuit-problem-to-
11 go-along-with-bad-physics-co2-debt-stock-price-drop/](https://cleantechnica.com/2022/05/09/energy-vault-has-lawsuit-problem-to-go-along-with-bad-physics-co2-debt-stock-price-drop/).

12 48. EV’s warrant agreement sets out two conditions actionable here. One allows warrant
13 shareholders to convert their shares from warrants to Class A shares if stock trades at or above \$11.50
14 per share for a certain amount of time. Another condition is that warrants cannot be exercised until EV
15 filed an effective S-1 form.²

16 49. On information and belief, Plaintiff alleges that from March 11, 2022 to May 6, 2022,
17 Defendants deliberately delayed filing EV’s S-1 form with the SEC, thereby preventing warrant-
18 holders from exercising their warrants during that period. Defendants did this in order to reduce the
19 exercise or sale of warrants by Plaintiff and other warrant holders, in hopes of keeping EV’s stock
20 value artificially inflated.

21 50. Defendants eventually filed an S-1 form, but EV’s stock value thereafter never reached
22 the \$11.50 minimum price, again preventing warrants from becoming convertible to more salable Class
23 A shares and rendering them effectively worthless.

24 51. Plaintiff was never able to convert its warrants into marketable stock. As a result,
25 Plaintiff can only sell its shares as warrants, which are much less liquid than stocks and, additionally,
26 have dropped dramatically in value since April 5, 2022.

27 _____
28 ² Form S-1, entitled Registration Statement Under the Securities Act of 1933, is an SEC form required for U.S.
companies that want to be listed on a national stock exchange.

1 52. In an effort to minimize its losses as warrant prices plummeted, Plaintiff sold all but
2 141,000 of its warrants, resulting in a net realized and unrealized, calculable loss of \$329,292 as of
3 June 15, 2022, caused by Defendants' wrongful conduct.

4 53. Plaintiff's additional, consequential damages in lost profit were greater than this, and
5 were primarily the result of its inability to exercise its EV warrants from March 11, 2022 to May 6,
6 2022 as described above. During that period, EV's stock price rose as high as \$22 per share. If EV
7 warrants had been exercisable then, Plaintiff could have exercised its warrants to purchase 397,000
8 shares of stock at the contractual price of \$11.50 per share and then immediately sold them at \$22 per
9 share, for a net return of \$3,068,810 (i.e. sale at \$22 per share (\$8,734,000) minus cost at \$11.50 per
10 share (\$4,565,500) minus the warrants' original purchase price of \$1,099,690). Plaintiff was prevented
11 from realizing this \$3,068,810 profit, or other amount of damages according to proof at trial, by
12 Defendants' wrongful conduct.

13 54. On July 1, 2022, EV announced warrant redemption. EV's warrant agreement, at
14 section 6.2, states:

15 "6.2 Redemption of Warrants when the price per share of Common Stock equals or
16 exceeds \$10.00. Subject to Sections 6.5 and 6.6 hereof, not less than all of the outstanding
17 Warrants may be redeemed, at the option of the Company, commencing **ninety (90) days**
18 **after they are first exercisable** and prior to their expiration, at the office of the Warrant
19 Agent, upon notice to the Registered Holders of the Warrants . . .".

20 (emphasis added).

21 55. Based on warrant agreement section 6.2 above, Plaintiff's outstanding warrants were
22 exercisable 90 days before the first day of warrant redemption, which was July 1, 2022. Ninety days
23 before July 1, 2022 was April 2, 2022, a Saturday. Accordingly, the warrants were exercisable since
24 April 2, 2022, and Plaintiff should have been able to exercise its warrants as early as Monday, April 4,
25 2022 and Tuesday, April 5, 2022, to obtain stocks worth \$22 per share. Defendants prevented this
26 from happening through their wrongful conduct.

27 c. **Defendants Continue to Perpetrate the Misconduct After Plaintiff Invested in EV**

28 56. In mid-April 2022, after investing in EV based on Defendants' actionable

1 misrepresentations, Plaintiff learned that DG Fuels had only been formed within a year of EV's
2 October 2021 press release, and that neither DG Fuels nor EV had any income.

3 57. On May 3, 2022, Defendants disclosed in an SEC amendment that in November of
4 2021, EV invested \$1,000,000 in DG Fuels by entering into a promissory note in that amount with DG
5 Fuels. On information and belief, Plaintiff alleges that EV took this action because DG Fuels had no
6 other significant financial support at that time.

7 58. Defendants further misrepresented fundamental facts to Plaintiff about EV's purported
8 partnership with DG Fuels. Specifically, on May 12, 2022, Defendants issued on the EV website a
9 press release falsely stating that EV had up to an additional \$217 million in revenue from its
10 partnership with DG Fuels LLC, that the projects which Defendants described as part of the EV-DG
11 Fuels partnership had more than doubled in scope, and that the EV-DG Fuels partnership was now
12 worth up to \$737 million:

13 "ENERGY VAULT AND DG FUELS MORE THAN DOUBLE SIZE AND INCREASE
14 SCOPE OF INITIAL ENERGY STORAGE PROJECT TO SUPPORT THE PRODUCTION
15 OF GREEN HYDROGEN FOR SUSTAINABLE AVIATION FUEL

16 *First project site in Louisiana upsized and expended to a potential of 1,168 MWh, which*
17 *reflects a capacity increase versus previous scope of 500 MWh for behind-the-meter green*
18 *hydrogen production*

19 *Adds up to \$217 million of potential project revenue to the previously announced revenue*
20 *opportunity of \$520M over all three projects for a total of up to \$737M*

21 Energy Vault . . . today announced an increase in scope for its initial energy storage project
22 with DG Fuels . . . in Louisiana. . . .

23 Under the terms of the project expansion, the SAF [Sustainable Aviation Fuel] project is being
24 developed to support up to 73 megawatts (MW) for 16 hours, reflecting a total of 1,168 MWh
25 in storage capacity. The companies plan to follow the Louisiana project with additional
26 projects in British Columbia and Ohio, with an opportunity for total storage capacity of 2.234
27 MWh overall and up to \$737 million in potential project revenue over time. . . .

28 "This first-of-its kind project is a game changer for the production of sustainable aviation fuels .

1 . . . “ said Robert Piconi, Chairman, Co-Founder and CO, Energy Vault. “The partnership and
2 collaboration with DG Fuels has been outstanding.”

3 [https://investors.energyvault.com/news/news-details/2022/Energy-Vault-and-DG-Fuels-More-than-
4 Double-Size-and-Increase-Scope-of-Initial-Energy-Storage-Project-to-Support-the-Production-of-
5 Green-Hydrogen-for-Sustainable-Aviation-Fuel/default.aspx](https://investors.energyvault.com/news/news-details/2022/Energy-Vault-and-DG-Fuels-More-than-Double-Size-and-Increase-Scope-of-Initial-Energy-Storage-Project-to-Support-the-Production-of-Green-Hydrogen-for-Sustainable-Aviation-Fuel/default.aspx).

6 59. On information and belief, Plaintiff alleges that these claims are false, misleading or
7 omit material facts to render them truthful because Defendants did not reasonable expect EV to receive
8 any significant amount of revenue from the projects the press release described, the EV - DG Fuels
9 partnership was actually based on fake news, and because neither EV nor DG Fuels had any income
10 and DG Fuels was a non-operating company that lacked the capacity and resources to perform under
11 the partnership agreement.

12 **d. Common Course of Conduct**

13 60. In committing the wrongful acts complained of herein, Defendants EV, Robert A.
14 Piconi (CEO of EV), William T. Gross (EV Director), Zia Huque (EV Director), Henry J. Elkus (EV
15 Director), Andrea S. Pedretti (EV’s Chief Technology Officer), and Andrea E. Wuttke (EV’s former
16 Chief Financial Officer) pursued or joined in the pursuit of a common course of conduct and acted in
17 concert with one another in furtherance of a common plan, design, or conspiracy. In addition to the
18 wrongful conduct complained of herein giving rise to primary liability, Defendants further aided and
19 abetted and/or assisted each other in breach of their fiduciary duties.

20 61. Each of the Defendants aided and abetted and rendered substantial assistance in the
21 wrongs complained of herein. In taking such action to substantially assist the commission of the
22 wrongdoing complained of herein, each defendant acted with knowledge of the primary wrongdoing,
23 substantially assisted the accomplishment of that wrongdoing, and was aware of his or her overall
24 contribution to and furtherance of the wrongdoing.

25 62. Each Defendant substantially harmed Plaintiff by way of undisclosed conflicts of
26 interest, and false statements about Defendants’ track records, prior performance, operations, and
27 expected revenue.

28 63. Each Defendant further harmed Plaintiff by abusing the trust and confidence Plaintiff

1 placed in them, thus causing Plaintiff further harm.

2 64. Each Defendant committed wrongful acts and omissions as either a corporation, or as
3 officers, directors, or managing agents of the various entities that they controlled, such that each of the
4 Defendants are liable for punitive damages based on their employer's, agents', or employees' conduct.

5 **FIRST CAUSE OF ACTION**

6 **BREACH OF FIDUCIARY DUTY**

7 **(AGAINST ALL DEFENDANTS and DOES 1-25)**

8 65. Plaintiff incorporates and references all allegations as though fully set forth herein.

9 66. Defendants, as directors, officers, and executives of EV, are fiduciaries and owe duties
10 of care to potential and actual shareholders. During the time that Plaintiff considered investing in EV,
11 and then in February 2022 to April 2022 purchased EV warrants, Plaintiff and Defendants had a direct,
12 consensual relationship wherein Defendants undertook to act on behalf of and for the benefit of
13 Plaintiff.

14 67. By reason of Plaintiff's position beginning in late 2021 as a potential investor, and later
15 as a warrant shareholder beginning on or about February 5, 2022, and continuing from those times to
16 the present, Defendants owed Plaintiff a fiduciary duty to act at all times in good faith, use their best
17 judgment, and do their best to promote the corporation's interests. Toward this end, Defendants owed
18 a fiduciary duty of care to Plaintiff to (1) avoid misrepresentations and concealment of material facts
19 regarding EV's operations, financial condition, and its value on the market, and (2) permit EV's
20 shareholders to freely buy and sell their shares to the extent practicable. Both of these duties served
21 not only Plaintiff, but the corporate interest in lawfully maximizing EV's share value.

22 68. Defendants should have disclosed to Plaintiff the material facts they were concealing,
23 including that the investment did not qualify as a SPAC, EV had no viable customers, no binding sale
24 agreements with any viable customers, and no bookings in 2020 or 2021, that its bookings and revenue
25 projections for 2022 and 2023 had no basis in reality and were unrealistically high, that DG Fuels had
26 only been formed within a year of EV's October 2021 press release, and that neither DG Fuels nor EV
27 had any income. Defendants breached their fiduciary duties to Plaintiff.

28 69. Defendants' fiduciary duties to Plaintiff also require them to disseminate only truthful

1 and accurate statements regarding EV so that EV's shareholders, potential and actual, can make
2 informed share transactions based on EV's true financial condition at any given time.

3 70. Plaintiff reasonably reposed its trust and confidence in Defendants at that time.

4 71. Defendants controlled the EV warrants which they induced Plaintiff to purchase.

5 72. Had Defendants complied with their fiduciary duties to Plaintiff, they would not have
6 misrepresented EV's financial condition, its relationship with DG Fuels, customer contracts, ongoing
7 projects, and expected revenue, as they did.

8 73. Had Defendants complied with their fiduciary duties to Plaintiff, they would not have
9 delayed filing EV's S-1 form with the SEC, thereby preventing Plaintiff from exercising its EV
10 warrants to receive registered stock during that time.

11 74. Defendants' breaches of fiduciary duty proximately caused Plaintiff's harm.

12 75. Defendants engaged in the alleged conduct with malice, oppression, and/or fraud as
13 those terms are defined in California Civil Code § 3294 and, thus, an award of exemplary and/or
14 punitive damages is warranted. EV authorized, subsequently adopted, ratified, and/or approved
15 Defendants' misconduct.

16 76. Defendants' breaches of fiduciary duty proximately caused Plaintiff's harm.

17 77. Defendants engaged in the aforementioned conduct with malice, oppression, and/or
18 fraud as those terms are defined in California Civil Code § 3294 and, thus, warrant an award of
19 exemplary and/or punitive damages. Defendants' personnel, agents, and representatives committed
20 these wrongful acts and omissions as agents of EV, which authorized, adopted, ratified, and/or
21 approved Defendants' misconduct.

22 **SECOND CAUSE OF ACTION**

23 **COMMON LAW FRAUD**

24 **(AGAINST ALL DEFENDANTS AND DOES 1 - 25)**

25 78. Plaintiff incorporates and references all allegations as though fully set forth herein.

26 79. Defendants defrauded Plaintiff through intentional misrepresentation, deception, and/or
27 concealment, inducing Plaintiff to purchase over a million dollars in EV warrants.

28 80. Corporations Code § 25504 provides that "Every person who directly or indirectly

1 controls a person liable under Section 25501 or 25503, every partner in a firm so liable, every principal
2 executive officer or director of a corporation so liable, every person occupying a similar status or
3 performing similar functions, every employee of a person so liable who materially aids in the act or
4 transaction constituting the violation, and every broker-dealer or agent who materially aids in the act or
5 transaction constituting the violation, are also liable jointly and severally with and to the same extent as
6 such person, unless the other person who is so liable had no knowledge of or reasonable grounds to
7 believe in the existence of the facts by reason of which the liability is alleged to exist.”

8 81. Because of Defendants’ deception, intentional misrepresentation or concealment,
9 Plaintiff did not know those misrepresented and concealed facts. Plaintiff would not have made its
10 investments in EV had it known the truth that was misrepresented and concealed by Defendants.

11 82. Plaintiff purchased over a million dollars in EV warrants in reliance on Defendants’
12 false representations and concealments.

13 83. Defendants continued to deceive Plaintiff after Plaintiff purchased the EV warrants, to
14 discourage and prevent Plaintiff from selling or otherwise liquidating its EV warrants as warrant values
15 continued to decrease over time.

16 84. Plaintiff was harmed by Defendants’ fraud in an amount to be determined at trial but not
17 less than \$1 million.

18 85. Defendants engaged in the aforementioned conduct with malice, oppression, and/or
19 fraud as those terms are defined in California Civil Code § 3294 and, thus, warrant an award of
20 exemplary and/or punitive damages. Defendants’ personnel, agents, and representatives committed
21 these wrongful acts and omissions as agents of EV, which authorized, adopted, ratified, and/or
22 approved Defendants’ misconduct.

23 **THIRD CAUSE OF ACTION**

24 **NEGLIGENT MISREPRESENTATION**

25 **(AGAINST ALL DEFENDANTS and DOES 1-25)**

26 86. Plaintiff incorporates and references all allegations as though fully set forth herein.

27 87. Defendants represented to Plaintiff that certain facts were true.

28 88. Defendants’ representations were not true.

1 89. To the extent Defendants did not know that their misrepresentations were false, they
2 made the misrepresentations without a reasonable basis for believing that they were true when they
3 made them.

4 90. Defendants intended that Plaintiff would rely on the misrepresentations.

5 91. Plaintiff invested in EV in reliance on Defendants' misrepresentations.

6 92. Plaintiff suffered damages of no less than \$1,000,000.

7 93. Plaintiff's reliance on Defendants' representations was a substantial factor in causing
8 Plaintiff's harm.

9 **FOURTH CAUSE OF ACTION**

10 **NEGLIGENCE**

11 **(AGAINST ALL DEFENDANTS and DOES 1-25)**

12 94. Plaintiff incorporates and references all allegations as though fully set forth herein.

13 95. Defendants owed Plaintiff a duty to act in a reasonably careful manner as one should act
14 who solicits and accepts investment monies from the public in the same or similar circumstances, i.e.,
15 by engaging in truthful advertising, making truthful disclosures pertaining to EV, and fully disclosing
16 all relevant material facts.

17 96. Defendants failed to act in that reasonably careful manner.

18 97. As a direct and proximate result of Defendants' negligent conduct, Plaintiff was
19 harmed.

20 98. Defendants' negligent conduct was a substantial factor in causing that economic harm.

21 99. As a proximate result of Defendants' negligent actions, Plaintiff sustained direct,
22 indirect, consequential and incidental damages in the sum of no less than \$1,000,000.

23 **FIFTH CAUSE OF ACTION**

24 **CONSTRUCTIVE FRAUD**

25 **(AGAINST ALL DEFENDANTS and DOES 1-25)**

26 100. Plaintiff incorporates and references all allegations as though fully set forth herein.

27 101. Defendants are liable for constructive fraud because they breached a duty which gained
28 them, or persons claiming under them, an advantage by misleading Plaintiff to his prejudice.

1 102. Each Defendant on the one hand, and Plaintiff on the other hand, were in a confidential
2 or fiduciary relationship, and each Defendant was obligated to disclose to Plaintiff and not conceal
3 from Plaintiff the material facts pertaining to EV.

4 103. Each Defendant intentionally withheld important and material relevant facts from
5 Plaintiff that were known only to that Defendant.

6 104. Plaintiff did not know those concealed facts and would not have made the investments
7 in EV had it known the truth concealed by Defendants.

8 105. Plaintiff purchased over a million dollars in EV warrants in reliance on Defendants'
9 concealments.

10 106. After Plaintiff purchased the EV warrants, each Defendant continued to withhold
11 important and material relevant facts from Plaintiff that were known only to that Defendant, to
12 discourage and prevent Plaintiff from selling or otherwise liquidating its EV warrants as warrant values
13 continued to decrease over time.

14 107. Plaintiff was harmed by Defendants' wrongdoing in an amount to be determined at trial
15 but not less than \$1 million.

16 108. Defendants engaged in the alleged misconduct with malice, oppression, and/or fraud as
17 those terms are defined in California Civil Code § 3294 and, thus, warrant an award of exemplary
18 and/or punitive damages. Defendants' personnel, agents, and representatives committed these
19 wrongful acts and omissions as agents of EV, which authorized, adopted, ratified and/or approved
20 Defendants' misconduct.

21 **SIXTH CAUSE OF ACTION**

22 **VIOLATION OF CORPORATIONS CODE §§ 25110-25118**

23 **(AGAINST ALL DEFENDANTS and DOES 1-25)**

24 109. Plaintiff incorporates and references all allegations as though fully set forth herein.

25 110. The warrants that are the subject of this lawsuit are securities as defined by
26 Corporations Code § 25019.

27 111. Corporations Code § 25110 prohibits the offer or sale of unregistered securities. It
28 provides that "It is unlawful for any person to offer or sell in this state any security in an issuer

1 transaction (other than in a transaction subject to Section 25120), whether or not by or through
2 underwriters, unless such sale has been qualified under Section 25111, 25112 or 25113 (and no order
3 under Section 25140 or subdivision (a) of Section 25143 is in effect with respect to such qualification)
4 or unless such security or transaction is exempted or not subject to qualification under Chapter 1
5 (commencing with Section 25100) of this part. The offer or sale of such a security in a manner that
6 varies or differs from, exceeds the scope of, or fails to conform with either a material term or material
7 condition of qualification of the offering as set forth in the permit or qualification order, or a material
8 representation as to the manner of offering which is set forth in the application for qualification, shall
9 be an unqualified offer or sale.”

10 112. Section 25110 allows rescission of a sale of shares where the seller did not qualify as a
11 SPAC when it offered the shares because its target entity was pre-designated, leaving the share offering
12 unqualified and hence ineffective.

13 113. Corporations Code § 25503 sets forth the liability for a violation of Section 25110.
14 Under Section 25503, “Any person who violates Section 25110, 25130, or 25133, or a condition of
15 qualification under Chapter 2 (commencing with Section 25110)” may sue for “the consideration they
16 paid for that security with interest thereon at the legal rate, and reasonable attorney’s fees, less the
17 amount of any income received therefrom, upon the tender of that security, or for damages, if they no
18 longer own the security, or if the consideration given for the security is not capable of being returned.
19 Damages, if the plaintiff no longer owns the security, shall be equal to the difference between (a) the
20 purchase price plus interest at the legal rate from the date of purchase, plus reasonable attorney’s fees,
21 and (b) the value of the security at the time it was disposed of by the plaintiff plus the amount of any
22 income received therefrom by the plaintiff.”

23 114. Corporations Code § 25504 provides that “Every person who directly or indirectly
24 controls a person liable under Section 25501 or 25503, every partner in a firm so liable, every principal
25 executive officer or director of a corporation so liable, every person occupying a similar status or
26 performing similar functions, every employee of a person so liable who materially aids in the act or
27 transaction constituting the violation, and every broker-dealer or agent who materially aids in the act or
28 transaction constituting the violation, are also liable jointly and severally with and to the same extent as

1 such person, unless the other person who is so liable had no knowledge of or reasonable grounds to
2 believe in the existence of the facts by reason of which the liability is alleged to exist.”

3 115. Pursuant to Corporations Code § 25017, both offers to sell a security and the actual sale
4 of a security can be the basis of liability under this section, as the legislature intended to protect actual
5 shareholders as well as potential ones.

6 116. Defendants violated Corporations Code § 25110 by offering to sell, in California, EV
7 warrants to Plaintiff while claiming Novus to be a SPAC though Novus was not actually qualified as a
8 SPAC, making the offers unqualified and hence ineffective.

9 117. Defendants also violated Corporations Code § 25110 by selling, in California, EV
10 warrants to Plaintiff while claiming Novus to be a SPAC though Novus was not actually qualified as a
11 SPAC, making the sales unqualified and hence ineffective.

12 118. Defendants made these misrepresentations to induce persons such as Plaintiff to invest
13 in EV and to continue to invest in EV.

14 119. As set forth above, the statements made and the facts omitted were material. EV either
15 knew or had reasonable grounds to believe that the statements were false.

16 120. Plaintiff relied on these foregoing material misrepresentations when it invested in EV.

17 121. Defendants’ violations of Corporations Code § 25110 proximately caused Plaintiff’s
18 harm, and Plaintiff is entitled to rescission and/or damages in an amount according to proof.

19 **SEVENTH CAUSE OF ACTION**

20 **VIOLATION OF CORPORATIONS CODE §§ 25400-25550**

21 **(AGAINST ALL DEFENDANTS and DOES 1-25)**

22 122. Plaintiff incorporates and references all allegations as though fully set forth herein.

23 123. Corporations Code § 25400(d) provides that “It is unlawful for any person, directly or
24 indirectly, in this state: (d) If such person is a broker-dealer or other person selling or offering for sale
25 or purchasing or offering to purchase the security, to make, for the purpose of inducing the purchase or
26 sale of such security by others, any statement which was, at the time and in the light of the
27 circumstances under which it was made, false or misleading with respect to any material fact, or which
28 omitted to state any material fact necessary in order to make the statements made, in the light of the

1 circumstances under which they were made, not misleading, and which he knew or had reasonable
2 ground to believe was so false or misleading.”

3 124. Corporations Code § 25401 provides that “[i]t is unlawful for any person to offer or sell
4 a security in this state, or to buy or offer to buy a security in this state, by means of any written or oral
5 communication that includes an untrue statement of a material fact or omits to state a material fact
6 necessary to make the statements made, in the light of the circumstances under which the
7 statements were made, not misleading.”

8 125. Corporations Code § 25500 provides that “Any person who willfully participates in any
9 act or transaction in violation of Section 25400 shall be liable to any other person who purchases or
10 sells any security at a price which was affected by such act or transaction for the damages sustained by
11 the latter as a result of such act or transaction. Such damages shall be the difference between the price
12 at which such other person purchased or sold securities and the market value which such securities
13 would have had at the time of his purchase or sale in the absence of such act or transaction, plus
14 interest at the legal rate.”

15 126. Corporations Code § 25501 provides in pertinent part that “[a]ny person who violates
16 Section 25401 shall be liable to the person who purchases a security from him or sells a security to
17 him, who may sue either for rescission or for damages (if the plaintiff or the defendant, as the case may
18 be, no longer owns the security).” Corporations Code § 25503 also provides for the award of interest
19 and attorney fees to a prevailing plaintiff.

20 127. Corporations Code § 25504 provides that “Every person who directly or indirectly
21 controls a person liable under Section 25501 or 25503, every partner in a firm so liable, every principal
22 executive officer or director of a corporation so liable, every person occupying a similar status or
23 performing similar functions, every employee of a person so liable who materially aids in the act or
24 transaction constituting the violation, and every broker-dealer or agent who materially aids in the act or
25 transaction constituting the violation, are also liable jointly and severally with and to the same extent as
26 such person, unless the other person who is so liable had no knowledge of or reasonable grounds to
27 believe in the existence of the facts by reason of which the liability is alleged to exist.”

28 128. Defendants violated Corporations Code §25401 in at least the following ways:

- 1 a) In the Presentation that Defendants distributed to potential investors in late 2021,
2 Defendants contend that EV has “one of the most efficient, commercially viable and
3 safe energy storage solutions [with a] developed pipeline of customers with >361
4 engagements representing ~\$32 bn in potential Energy Vault projects over the next
5 5-10 years” These figures are all stated prominently on page 7, entitled
6 “Transaction Summary”, of EV’s Presentation. On information and belief, Plaintiff
7 alleges that in actuality, EV had no binding sale agreements with any viable
8 customers at that time.
- 9 b) On page 34 of the Presentation, in a section entitled “Customers and Growth
10 Visibility”, Defendants claim that EV has “customer engagements” with scores of
11 businesses, including such well-known firms as De Beers, Duke Energy, Hewlett
12 Packard, Minnesota Power, Saudi Aramco and Siemens. On information and belief,
13 Plaintiff alleges that EV actually had no binding sale agreements with any viable
14 customers at that time.
- 15 c) On page 37 of the Presentation, Defendants claim that EV has seven projects under
16 discussion “underpinned by executed agreements or letters of intent with 8
17 customers representing 1.223 MWh and \$368 million in potential sales”. On
18 information and belief, Plaintiff alleges that EV actually had no viable customers
19 and no binding sale agreements with any viable customers at that time.
- 20 d) On page 38 of the Presentation, Defendants claim that EV had \$96 million in
21 bookings during the fourth quarter of 2020 and \$67 million in 2021. Defendants
22 also claim that EV’s bookings would climb to \$263 million in 2022 with revenue of
23 \$148 million that year, followed by \$962 million in 2023 with revenue of \$535
24 million that year. On information and belief, Plaintiff alleges that EV actually had
25 no bookings in 2020 or 2021, and that its bookings and revenue projections for 2022
26 and 2023 had no basis in reality and were unrealistically high.
- 27 e) Marketing the investment as a SPAC when it did not qualify as such.

28 129. In publicly-available press releases of October 2021 and May 2022, Defendants claimed

1 that EV had a lucrative, multi-million-dollar partnership with DG Fuels and three large, specifically-
2 described projects they were involved in. In actuality, neither EV nor DG Fuels had any income, and
3 DG Fuels was a non-operating company which lacked the capacity and resources to perform under the
4 described agreement.

5 130. Defendants made these misrepresentations and omissions to induce persons such as
6 Plaintiff to invest in EV and to continue to invest in EV.

7 131. As set forth above, the statements made and the facts omitted were material. EV either
8 knew or had reasonable grounds to believe that the statements were false and the omissions were
9 material.

10 132. Plaintiff relied on these foregoing material misrepresentations when it invested in EV.

11 133. Defendants' violations of Corporations Code § 25401 proximately caused Plaintiff's
12 harm, and Plaintiff is entitled to rescission and/or damages in an amount according to proof.

13
14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, for:

- 16 1. Economic damages in an amount according to proof at trial;
 - 17 2. Statutory damages or rescission pursuant to California statutes;
 - 18 3. Attorneys' fees, pursuant to Corporations Code section 25501 and 25503;
 - 19 4. Punitive damages necessary to punish Defendants in an amount according to proof at trial;
 - 20 5. Pre-judgment interest on all damages at the maximum legal rate;
 - 21 6. Imposing a constructive trust, ordering an accounting, and/or awarding all other proper
22 equitable relief according to proof at trial;
 - 23 7. Costs of litigation in an amount according to proof at trial;
 - 24 8. Such other and further relief as this Court deems just and proper; and
 - 25 9. Plaintiff demands a trial by jury as to all triable issues in this action.
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REIF LAW GROUP, P.C.

Dated: July 20, 2022

By: _____
Brandon S. Reif
Attorneys for Plaintiff

LAW OFFICES OF STEVE A. BUCHWALTER, P.C.

Dated: July 20, 2022

By: _____
Steve A. Buchwalter
Attorneys for Plaintiff



Make a Reservation

1791 MANAGEMENT, LP, A DELAWARE LIMITED PARTNERSHIP vs ENERGY VAULT, INC., A DELAWARE CORPORATION

Case Number: 22STCV16538 Case Type: Civil Unlimited Category: Fraud (no contract)

Date Filed: 2022-05-18 Location: Stanley Mosk Courthouse - Department 74

Reservation

Case Name:

1791 MANAGEMENT, LP, A DELAWARE LIMITED PARTNERSHIP vs ENERGY VAULT, INC., A DELAWARE CORPORATION

Case Number:

22STCV16538

Type:

Motion for Leave (to file Second Amended Complaint)

Status:

RESERVED

Filing Party:

1791 Management, LP (Plaintiff)

Location:

Stanley Mosk Courthouse - Department 74

Date/Time:

03/23/2023 8:30 AM

Number of Motions:

1

Reservation ID:

584708845557

Confirmation Code:

CR-CS7XFPWUA313ZN45U

Fees

| Description | Fee | Qty | Amount |
|------------------------------------|-------|-----|----------------|
| Motion for Leave (name extension) | 60.00 | 1 | 60.00 |
| Credit Card Percentage Fee (2.75%) | 1.65 | 1 | 1.65 |
| TOTAL | | | \$61.65 |

Payment

Amount:

\$61.65

Type:

Visa

Account Number:

XXXX7207

Authorization:

07011I

[Print Receipt](#)

[Reserve Another Hearing](#)

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