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8

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**02/16/2021**  
Clerk of the Court  
BY: SANDRA SCHIRO  
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN THE COUNTY OF SAN FRANCISCO

11 KHOSLA VENTURES IV, L.P., a Delaware  
limited partnership, KHOSLA VENTURES IV  
12 (CF), L.P., a Delaware limited partnership,

13 Plaintiffs,

14 v.

15 NEUTRON HOLDINGS, INC., a Delaware  
corporation, DAVID RICHTER, and  
16 individual, and BRAD BAO, an individual,  
and MICHAEL HILLMAN, an individual,

17 Defendants.  
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CASE NO. CGC-20-584188

**DECLARATION OF AUSTIN SCHWING IN  
SUPPORT OF DEFENDANTS' MOTION  
FOR TRANSFER AND COORDINATION**

*[Notice of Motion and Motion for Transfer and  
Coordination filed concurrently herewith]*

Action Filed: April 20, 2020

Trial Date: October 18, 2021



1           9.       On December 17, 2020, Defendants filed a Notice of Related Case with this Court  
2 identifying the Santa Clara Action as a related case.

3           10.       On December 31, 2020, Lime filed its demurrer to the SC FAC. A hearing on the demurrer  
4 has been scheduled for April 8, 2021.

5           11.       As of February 10, 2021, the Court has not made any substantive rulings in the Santa Clara  
6 Action, and the parties have not yet begun discovery. The SC FAC also names Structural Capital  
7 Investments II, LP, Ocean II PLO LLC (“Ocean”) and Shojin Enterprises, LLC (“Shojin”) as  
8 defendants. None of these defendants have even answered the complaint yet.

9           12.       On January 27, 2021, Plaintiffs served their initial discovery requests on Defendants in the  
10 San Francisco Action. Attached hereto as Exhibit 3 is a true and correct copy of the Requests for the  
11 Production of Documents (“RFPs”) directed to Defendant Lime. Plaintiffs served identical RFPs on  
12 Defendants Richter, Bao, and Hillman. Attached hereto as Exhibit 4 is a true and correct copy of the Special  
13 Interrogatories directed to Defendant Lime. Attached hereto as Exhibit 5 is a true and correct copy of the  
14 Requests for Admission directed to Defendant Lime.

15           13.       Pursuant to California Rules of Court, Rule 3.500, on February 3, 2021, Defendants made  
16 a good faith effort to obtain agreement to the transfer from all parties to each action, conferring with counsel  
17 for Khosla and counsel for the other parties to the Santa Clara Action.

18           14.       On February 5, 2021, Khosla’s counsel indicated they did not agree to the coordination of  
19 the two cases. Attached hereto as Exhibit 6 is a true and correct copy of this email correspondence from  
20 counsel for Khosla. On February 10, 2021, Structural’s counsel also indicated that they did not agree to the  
21 coordination of the two cases.

22           15.       The San Francisco Action and Santa Clara Action are not complex because they are not  
23 actions “that require exceptional judicial management to avoid placing unnecessary burdens on the court  
24 or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by  
25 the court, the parties, and counsel.” (Cal. Rules of Court, rule 3.400, subd. (a).) In addition, neither Action  
26 involves: the management of a large number of witnesses, management of a large number of separately  
27 represented parties, coordination with related actions pending in other states, countries, or in federal court  
28

1 or substantial post-judgment judicial supervision. (*Id.*, rule 3.400, subd. (b).) Neither do they fit into the  
2 categories of cases provisionally designated as complex. (*Id.*, rule 3.400, subd. (c).)

3 16. Pursuant to California Rules of Court, rule 3.500, on February 10, 2021, Defendants notified  
4 all parties of their obligation to disclose to the Court any information they may have concerning any other  
5 motions requesting transfer of any case that would be affected by the granting of the motion before the  
6 Court.

7 I declare under penalty of perjury under the laws of the State of California that the foregoing  
8 is true and correct. Executed on this 10th day of February 2021, in San Francisco, California.

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12 Austin Schwing  
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# **EXHIBIT 1**

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO  
BEFORE THE HONORABLE ETHAN P. SCHULMAN, JUDGE PRESIDING  
DEPARTMENT NO. 302

KHOSLA VENTURES IV, L.P., a Delaware  
limited partnership, and KHOSLA  
VENTURES IV (CF), L.P., a Delaware  
limited partnership,



No. CGC-20-584188

Plaintiffs,  
vs.

NEUTRON HOLDINGS, INC., a Delaware  
corporation,  
DAVID RICHTER, an individual,  
BRAD BAO, an individual,  
and MICHAEL HILLMAN, an individual,  
Defendants.

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REPORTER'S TRANSCRIPT OF PROCEEDINGS  
WEDNESDAY, OCTOBER 28, 2020

A P P E A R A N C E S (via Zoom)

For the Plaintiffs:

WILMER CUTLER PICKERING HALE AND DORR LLP  
BY: Peter J. Kolovos (*pro hac vice*)  
60 State Street  
Boston, Massachusetts 02109

For the Defendants:

GIBSON DUNN & CRUTCHER LLP  
BY: Matthew S. Kahn,  
Austin W. Schwing  
555 Mission Street  
San Francisco, California 94105

1 October 28, 2020

9:48 a.m.

2 P R O C E E D I N G S

3 THE COURT: Line Number 5, Khosla Ventures versus Neutron  
4 Holdings.

5 MR. KOLOVOS: Good morning, Your Honor. Peter Kolovos,  
6 K-o-l-o-v, as in victor, o-s.

7 THE COURT: Good morning.

8 MR. SCHWING: Good morning, Your Honor. Austin Schwing at  
9 Gibson, Dunn & Crutcher on behalf of Defendants. And I'm also  
10 joined by my partner, Matthew Kahn.

11 THE COURT: Good morning.

12 MR. KAHN: Good morning, Your Honor.

13 THE COURT: Good morning. Where's the beard?

14 MR. KAHN: Your Honor, I've had several iterations of  
15 facial configuring that took place --

16 THE COURT: I thought the rule was you're supposed to grow  
17 a beard during shelter in place, not shave it off.

18 MR. KAHN: I had a beard; I had a mustache; I had a  
19 goatee, but we're back to clean shaven at the instruction of my  
20 wife.

21 THE COURT: Fair enough.

22 Okay. Other counsel appearing, as well? No?

23 MR. KOLOVOS: Your Honor, at least one of my colleagues is  
24 on the Zoom as well, but I'll be presenting on behalf of...

25 THE COURT: Fair enough.

26 MR. SCHWING: And for the benefit of the court reporter,  
27 my last name is spelled S-c-h-w-i-n-g.

28 THE COURT: All right. We have a number of demurrers and,

1 if I recall correctly, a motion to strike as well. Who would  
2 like to be heard first? Mr. Schwing? Mr. Kahn?

3 MR. SCHWING: I'd like to be heard first, Your Honor. I'm  
4 going to address the demurrers. And Mr. Kahn will address the  
5 motion to strike.

6 I've read your tentative and studied it. I appreciate the  
7 opportunity to address it here today.

8 Boiled down, Plaintiff Khosla here is effectively seeking  
9 to turn unsuccessful contract negotiations into a tort, which  
10 is not permitted.

11 THE COURT: Into a what? I'm sorry.

12 MR. SCHWING: Into a tort, which is not permitted under  
13 California law.

14 Just as a foundational point here, there was no promise or  
15 contract at all here, and none is alleged in the first amended  
16 complaint.

17 There was no agreement to buy Boosted;

18 There was no agreement not to solicit employees;

19 There was no agreement not to hire employees;

20 That's not -- it's not alleged in the first amended  
21 complaint at all.

22 There was --

23 THE COURT: Well, so let's talk about this for a minute.

24 I mean the gist of this is, as I understand it, and it's  
25 all very qualified and on information and belief and so on, but  
26 the gist of the allegations is, in effect, these were sham  
27 acquisition negotiations where the true object was concealed;

28 And in the course of those negotiations, confidential

1 information was acquired and was used for improper purposes,  
2 but this was all kind of a sham; it was a charade.

3 I mean, fairly read -- I'm oversimplifying, obviously, but  
4 isn't that basically the story that the Plaintiff is telling  
5 here in this amended complaint?

6 MR. SCHWING: I think that that is a fair kind of  
7 overarching summary of what they are driving at, Your Honor.

8 And --

9 THE COURT: And if -- if that's true, and I have no -- you  
10 know, let me hasten to add that I'm sure that, you know, you're  
11 going to tell me that it's not true, but that's a factual  
12 issue, but if that were true, if you indulge me for a moment  
13 and take that as a given, could that not give rise to tort  
14 claims?

15 MR. SCHWING: Your Honor, I think the issue here is that  
16 embedded within that premise, there are several legal  
17 conclusions at issue, for example, whether or not there were  
18 trade secrets here; or confidential information; and whether or  
19 not there are appropriate and adequate facts alleged to support  
20 the theory.

21 I think... probably the easiest way to do this, because we  
22 do need to sort it out, is to dig into the actual causes of  
23 action...

24 THE COURT: Okay.

25 MR. SCHWING: Before us, and to -- and to address them,  
26 and to see what the Plaintiffs have alleged versus what they  
27 have not alleged.

28 So, if I may, I'd like to turn first, I think logically,

1 to the first cause of action, which is the tortious  
2 interference with prospective economic advantage claim.

3 That cause of action is focused on the alleged  
4 interference with a potential deal with the motorcycle  
5 manufacturer.

6 It is not suggested in the first amended complaint that  
7 there is a tort in and of itself of trying to hire away  
8 employees.

9 That would not be a prospective economic advantage claim  
10 because there's nothing prospective about an existing  
11 employment relationship. That would be, if anything, an  
12 interference with a contract claim, as made clear in the *Reeves*  
13 *versus Hanlon* case.

14 But the first amended complaint does not advance such a  
15 claim; instead, what it focuses on is an alleged interference  
16 with the deal with the Manufacturer.

17 So if we dig into that first and carve out the  
18 Manufacturer, which I think is an important issue, there are  
19 not facts in the first amended complaint sufficient to  
20 demonstrate an existing economic relationship between the  
21 Manufacturer and Boosted containing the probability of future  
22 economic benefit.

23 First of all, there was no existing relationship between  
24 Boosted, a skateboard and scooter company, and the  
25 Manufacturer, a motorcycle company.

26 It's not alleged that they had any kind of dealings with  
27 one another before, nor are there factual allegations  
28 supporting the conclusory assertion in the first amended

1 complaint that there was a probable future economic benefit.

2 But what the Plaintiffs say here is that there perhaps  
3 could have been some kind of financing, or there could have  
4 been a purchase, but they don't say what. A purchase of the  
5 whole company? Of certain assets? And what are the facts  
6 suggesting that indeed that was probable?

7 There are also no allegations, factual allegations in the  
8 complaint to support the key element of this cause of action  
9 that there was independently wrongful conduct by Lime that  
10 caused an interference with a probable deal with the  
11 Manufacturer.

12 In fact, in the original complaint, in paragraph 28, there  
13 is a key fatal admission that the Manufacturer looked at  
14 Boosted and said that its senior management simply wasn't  
15 interested in getting into the scooter and skateboard space.

16 The first amended complaint deleted that key admission,  
17 but that admission lives on. You can't delete an admission  
18 through an amendment, and that's identified in the *Congleton*  
19 case that's cited.

20 What the Plaintiffs do is they try to substitute that key  
21 admission with speculation based on information and belief only  
22 that what really was driving the Manufacturer's decision to not  
23 do a deal was a fear of potential loss of employees in the  
24 future to Lime. But there are zero factual allegations in the  
25 complaint to support that;

26 And, in fact, it's contrary to the admission that they  
27 made in the original complaint, and paragraph 28, that the  
28 Manufacturer simply was not interested.

1           They cannot base their complaint on speculation; that's  
2 not a factual allegation.

3           Nor are there any allegations that Lime caused any concern  
4 on the part of the Manufacturer. There's no allegation that  
5 there was ever any contact between the Manufacturer and Lime.

6           And it's also alleged that Khosla was the one that was  
7 negotiating two deals in parallel. So to the extent that the  
8 Manufacturer was put off by potential moving employees to Lime,  
9 that's on Khosla.

10          So I wanted to focus on the Manufacturer piece first,  
11 because I do believe that that -- that claim, that's what the  
12 first amended complaint, the first cause of action actually is  
13 focused on. The tentative at this point does not address that  
14 prospective economic relationship.

15          I do believe that it would be very helpful to have the  
16 Court address that issue, because otherwise we could be  
17 spending significant time, money, you know, effort, resources  
18 on a theory that simply doesn't hold water as matter of law.

19          But the -- the tentative focuses on, for the first cause  
20 of action, is it sort of tries to transfigure it into something  
21 to do with hiring Boosted's employees away. But, again, that  
22 would not be a prospective economic advantage claim; that  
23 would, if anything, be a tortious interference with contract  
24 claim.

25          And that's not existing in the first amended complaint.  
26 We dealt with the first amended complaint on its own terms.  
27 And, of course, you know, pleadings aren't supposed to be a  
28 shape-shifting shell game. If there's gonna be that cause of

1 action, we can address it, but there isn't right now.

2 But, Your Honor, even if you focus on Lime hiring  
3 employees, as a potential tort in and of itself, there is no  
4 cause of action stated here.

5 And this is driving towards the point that, and the  
6 question that you raised earlier, I think it's important:  
7 California has a strong public policy favoring employee  
8 mobility. These are at-will employees; they're free to  
9 terminate their employee. Lime is free to solicit them and  
10 hire them.

11 There was never any agreement alleged in the first amended  
12 complaint not to solicit or hire Boosted employees.

13 Now, what the complaint says --

14 THE COURT: The claim, as I understand it, and maybe I'm  
15 wrong, is not about hiring; it's about hiring Mr. Hillman, who  
16 had been involved in interviewing the employees, and using the  
17 confidential information that he acquired during those  
18 interviews improperly.

19 MR. SCHWING: Perfect. Well, that's what I was just about  
20 to turn to, so thank you for raising that issue.

21 First of all, and I think this is important, the first  
22 amended complaint alleges that Boosted was actually  
23 facilitating interviews of employees before Mr. Hillman went to  
24 work at Lime, okay.

25 Okay. So -- if you take a look at paragraphs 25 and 27 of  
26 the first amended complaint.

27 Okay. So this is not a situation where, you know, Lime  
28 stole away Mr. Hillman, and then used his secret information to

1 somehow start interviewing people, okay. That's not what's  
2 alleged in the first amended complaint.

3 And, of course, there's nothing unlawful about soliciting  
4 employees, or hiring employees. That would only be the case if  
5 there were trade secrets that were being stolen away.

6 But all we have in the first amended complaint are  
7 completely conclusory legal -- you know, legal conclusions that  
8 somehow trade secrets were being stolen; that somehow  
9 employees' identities or their skills are trade secrets.

10 But there are no facts supporting that conclusion. And,  
11 in fact, it's contrary to California law.

12 We've cited to the *Cypress Semiconductor* case on that  
13 point;

14 The *Metro Traffic* case that we cited in our reply brief on  
15 that point.

16 The *Metro Traffic* states that:

17 "A stable of trained and talented at-will  
18 employees does not constitute an employer's trade  
19 secret."

20 Now, I read again, last night, the Plaintiffs' opposition  
21 brief, with great interest, to see what case they cited for the  
22 proposition that the identity and skill set of employees was a  
23 trade secret.

24 They cited nothing, Your Honor.

25 And I would submit to you that binding Court of Appeal  
26 decisions saying that these are not trade secrets trumps the  
27 Plaintiffs', you know, completely conclusory assertions that  
28 these are trade secrets.

1           And the fact they have not cited a single case in support  
2 of their position I think speaks volumes here.

3           Nor is there any allegation in the first amended complaint  
4 that Boosted took any steps to keep this information  
5 confidential.

6           And, in fact, to the contrary, Your Honor. As I just  
7 indicated a few moments ago, the first amended complaint  
8 alleges that Boosted was facilitating interviews before  
9 Mr. Hillman went to work for Lime.

10           And lastly on this point, Your Honor, I -- this is, I  
11 think, a truly kind of... kind of a mind-bending, in some ways,  
12 complaint, because... the first amended complaint alleges that  
13 Boosted was gonna fire these employees;

14           That Boosted was under financial distress;

15           That it, you know, was defaulting under the loan security  
16 agreement;

17           That there was gonna be this massive bloodletting.

18           But in the same breath they say, *no, these are all -- all*  
19 *these people that we're gonna fire are still valuable to the*  
20 *company; and therefore there should be a tort claim with*  
21 *respect to hiring them.*

22           It just simply doesn't make any sense.

23           THE COURT: It is odd, I'll give you that. I'm not sure  
24 that means that it doesn't state a cause of action. Odd things  
25 happen in the world and give rise to lawsuit.

26           MR. SCHWING: I mean, to sum it up, Your Honor, there has  
27 to be -- you can't just state a legal conclusion that these are  
28 trade secrets; there has to be facts, okay. There has to be

1 support under the case law. There simply isn't.

2 I mean I can call this a ham sandwich. But if there's no  
3 ham and no bread, you don't have a ham sandwich.

4 THE COURT: All right. I got that point. You didn't need  
5 to dumb it down for me but I got it.

6 MR. SCHWING: Well, I -- that's how my brain works, Your  
7 Honor; I didn't mean to suggest anything.

8 So that's the first cause of action.

9 The interference with contract claim, there's two of them.  
10 There's the second cause of action and the third cause of  
11 action.

12 The second cause of action relates to the loan security  
13 agreement between Boosted and Structural.

14 Well, to state an intentional interference with contract  
15 claim, you've got to do a number of things and have factual  
16 allegations to support each of the elements.

17 One of the key elements is that there has to be an  
18 intentional act designed to induce a breach or disruption of  
19 the loan security agreement here.

20 But, at most, what the Plaintiffs allege is that Lime  
21 intended to hire certain Boosted employees, which is  
22 permissible under California law.

23 There's no allegation that, you know, based on facts, that  
24 they'd intended to cause a breach or disruption of the loan  
25 security agreement between Boosted and Structural.

26 The -- according to the first amended complaint, the LSA  
27 is what gave Structural the right to foreclose on Boosted's  
28 collateral if it didn't meet its obligations. But nothing Lime

1 did allegedly caused a breach or disruption of the LSA.

2 The LSA worked exactly as it was intended. Even before  
3 the negotiations were happening, according to the first amended  
4 complaint, Structural was already freezing Boosted's cash in  
5 early 2020 because of breaches by Boosted of covenants in the  
6 LSA.

7 That's in paragraph 24.

8 Okay. That's not Lime's fault. You know, Lime didn't do  
9 anything to change the nature of the loan security agreement or  
10 impact Structural's ability to foreclose;

11 It didn't change the terms in any way, shape or form.

12 What Khosla seems to be saying is that somebody had to do  
13 a deal with Boosted; somebody needed to pay Boosted a bunch of  
14 money so that this failing company could pay off its loan.

15 But there's no duty on the part of Lime to do that.  
16 There's no duty on the part of the Manufacturer to come and  
17 save the day.

18 This is -- I mean this reminds me of, like, let's say,  
19 Your Honor, tomorrow I leave my job at Gibson Dunn. I'm that  
20 foolish;

21 And I go -- I have a mortgage through Chase. I've got to  
22 pay off my mortgage still, right.

23 And I go down the street to Morrison & Foerster and I say,  
24 "hey, you know, I've got this mortgage to pay. Why don't you  
25 give me a job?"

26 And we negotiate for a couple weeks about, you know, what  
27 the compensation would look like, et cetera, et cetera.

28 And at the end of the day they say, "you know what, we've

1 just decided we're not interested." And, as a result, I can't  
2 pay off my mortgage and the mortgage -- you know, Chase  
3 forecloses on my house.

4 I don't get to sue Morrison & Foerster for not doing a  
5 deal with me so I couldn't pay off my mortgage.

6 I mean that's what the Plaintiffs are attempting to do...

7 THE COURT: Yeah, I... I understand the arguments, and I'm  
8 not gonna cut off your argument, but let me just observe  
9 that -- I mean some of what we're talking about here is the  
10 level of detail that is required to support a given claim.

11 In general, California, you know, as kind of a notice  
12 pleading state, allows fairly conclusory claims.

13 And, you know, to look at the cause of action you've just  
14 been discussing, paragraph 53 alleges:

15 "Defendants engaged in intentional acts designed  
16 to harm and disrupt Boosted's business and that  
17 caused Structural to pursue a foreclosure process."

18 Now, I understand your argument that, while they don't  
19 really put much flesh on that, and it's hard to understand how  
20 that could be true, but at some point, you know... people can  
21 plead almost anything, particularly in an unverified pleading.  
22 Proving it, of course, is a whole different matter.

23 But the question -- the only question before us now is,  
24 what is the adequacy of the allegations as a pleading matter?

25 I did -- I did note at the outset that a lot of them are  
26 pretty thin, and many of them are alleged on information and  
27 belief. But, again, that's kind of allowed under California  
28 law, isn't it?

1 MR. SCHWING: Well, not all claims require a sort of  
2 heightened pleading standard. I will grant you that, Your  
3 Honor.

4 The fraud claim does. We'll get into that, I think,  
5 momentarily.

6 THE COURT: Right.

7 MR. SCHWING: But the cause of action still must be  
8 supported by factual allegations. And they need to, you know,  
9 actually hold together and make some sense, okay.

10 There is nothing in the first amended complaint that  
11 explains how there was a disruption or breach of the loan  
12 security agreement; they've continued on exactly as they have  
13 before.

14 There's nothing in the first amended complaint indicating  
15 and providing the facts that -- that Lime's intent was to  
16 interfere with the loan security agreement, which is a required  
17 element of this cause of action.

18 All that's alleged is that they wanted to hire away  
19 employees.

20 So a deal like this -- this one is just a bridge too far;  
21 there -- it's too remote. They're stretching it out to an  
22 interference with the loan security agreement.

23 It's one thing if they want to bring a claim, Your Honor,  
24 based on hiring away employees, is that being some kind of  
25 interference with the contractual relationship?

26 I just explained why that that would not be an appropriate  
27 cause of action. But at least that theory, in concept, one  
28 could wrap it -- your mind around it. But there is no

1 interference with the loan security agreement, just because  
2 Boosted, you know, didn't do a deal with Lime.

3 The third cause of action here is also an interference  
4 with contract claim. It suffers from many of the same problems  
5 as the second cause of action.

6 Again, there has to be an allegation that Lime knew about  
7 the -- the contract at issue here is the intercreditor  
8 agreement amongst Boosted's creditors.

9 There has to be an allegation that Lime knew about the  
10 intercreditor agreement and intended to cause a breach of that  
11 intercreditor agreement.

12 There is no such factual allegation.

13 What's alleged here is that Lime --

14 THE COURT: Well, but, again... you know, I mean you do  
15 have competent counsel on the other side. They've looked at  
16 their form book.

17 Paragraph 61 does allege:

18 "Defendants knew of the existence of that  
19 agreement."

20 It's alleged on information and belief but that is the  
21 allegation, an allegation 60 -- paragraph 62:

22 "Defendant's engaged in intentional acts designed  
23 harm and disrupt business," et cetera.

24 It's really the same allegation that I quoted from the  
25 prior cause of action.

26 MR. SCHWING: Uh-huh.

27 THE COURT: But it's alleged there.

28 MR. SCHWING: Okay --

1 THE COURT: It may be improbable. It may be false, right?  
2 But that's not what we're here to decide.

3 MR. SCHWING: So let me try this a different way, Your  
4 Honor, okay, because I understand your point and I appreciate  
5 it.

6 But... the ICA -- so the first amended complaint in  
7 paragraph 12 states that the purpose of the ICA is to set out  
8 the, you know, quote, "rights, priorities and interests"  
9 governing loans that the creditors made to Boosted, and the  
10 collateral for those loans.

11 That is the nature of the intercreditor agreement, okay.

12 What did Lime do that in any way impacted rights,  
13 priorities, or interests governing loans or impacted the  
14 collateral for those loans?

15 That's the nature of the intercreditor agreement. There's  
16 no interference with that intercreditor agreement. It was not  
17 changed in any way;

18 The rights, priorities, and interest governing those loans  
19 were not impacted in any way;

20 The right to foreclose on collateral was not impacted in  
21 any way.

22 So there's kind of a disconnect here. So they're alleging  
23 things that they say are... you know, intentional acts, and  
24 they've got kind of laundry list of things.

25 THE COURT: Right. And --

26 MR. SCHWING: But they don't explain what impacted --

27 THE COURT: The same allegations that appear in all of the  
28 causes of action, I think, generally.

1 MR. SCHWING: Yeah.

2 So there has to be a causal, rational connection between  
3 the alleged wrongful conduct, and there has to be some impact  
4 caused to this agreement. And that's where this breaks down.

5 If I may, Your Honor, I'll turn to the fraud cause of  
6 action.

7 This is one where -- I hear what you said before about  
8 the -- you know, a pleading standard. This is one where the  
9 law is certainly on my side, my client's side with respect to  
10 the requirement that this claim be pled with particularity.

11 Every element has to be alleged with particularity.

12 And, you know, you've got to demonstrate with specificity  
13 the *who*, *how*, *when*, *where*, and *why* the alleged fraud.

14 And under the *West versus JP Morgan* case that was  
15 identified in your tentative, for a corporate defendant, the  
16 plaintiff has to identify the names of people who made the  
17 representation;

18 To whom they spoke;

19 What they actually said and wrote, with specificity;

20 And why it's false.

21 But the first amended complaint does not do that.

22 Probably the -- you know, if I'm being fair, which I don't  
23 like to be, but I -- I suppose I should be here, but to be  
24 fair, probably the closest that they come is with respect to  
25 the stock allegation.

26 But even that doesn't get across the line, okay.

27 What they allege is that Mr. Bao and Mr. Richter made a  
28 presentation in December where they supposedly somehow

1 overstated the value of Lime's stock.

2 But they don't provide any specifics at all. What exactly  
3 did they say, and to whom did they say it? And why was it  
4 false? They don't identify that.

5 When my client asked me, *what is it they said that I said,*  
6 *and who did I say it to?* I don't have an answer for them.

7 This is not sufficient under the pleading requirement for  
8 fraud.

9 I think it's also notable, Your Honor, that Lime is not a  
10 publicly-traded company; this is a private company.

11 A publicly-traded company, I can go look right now and see  
12 what, you know, Microsoft's market cap is, and what their stock  
13 price is.

14 We're talking about a private company here. And the value  
15 of a private company and the value of its stock is subject to  
16 interpretation and subjective assessments, and oftentimes  
17 negotiation and discussion.

18 So what is it that these gentlemen actually said? And  
19 what was it based on? And why specifically was it false?

20 They don't allege sufficient facts here.

21 There's also vague references to unbinding term sheets as  
22 being fraudulent somehow. There's no allegation that there's  
23 anything fraudulent in them or misstated;

24 There's allegations of -- where Mr. Richter is alleged to  
25 have asked Boosted not to fire employees because it wanted to  
26 interview them. Well, that's exactly what happened. There's  
27 nothing false or fraudulent about that;

28 There's vague allegations about somehow inducing Khosla to

1 make bridge loans, but there's no allegation that Lime made any  
2 false statement about those bridge loans, or even requested  
3 that they make them or frankly, that they even knew that those  
4 bridge loans existed.

5 So you've got to plead fraud with particularity and  
6 specificity, and the Plaintiffs have not done that here, Your  
7 Honor.

8 The tentative references the *Engalla* case, and says that a  
9 promise made without intention to perform can be fraud.

10 But here there's no promise. What was the promise? And  
11 what was the specific factual misrepresentation? It's not  
12 identified in the first amended complaint.

13 The UCL claim, Your Honor, stated that -- the fact that it  
14 would survive because the other causes of action survived and  
15 the UCL claim could be based on it, I've given it my best here  
16 to explain why that should not be the case; so I won't further  
17 burden Your Honor by going into that.

18 I think it ought to fail for the same reasons as the other  
19 causes of action.

20 THE COURT: Right.

21 MR. SCHWING: There also is a problem with the restitution  
22 and injunctive relief request. We raised that in our motion to  
23 strike. And I will defer to my colleague, the beardless Matt  
24 Kahn, to address that issue, if it's all right with Your Honor.

25 THE COURT: All right. Mr. Kahn? Oh, I'm sorry...

26 MR. SCHWING: Just briefly on the... I think this could be  
27 a good time to also address the individual defendants'  
28 demurrers.

1 THE COURT: Sure.

2 MR. SCHWING: Because many of the same issues arise here.

3 THE COURT: Yes.

4 MR. SCHWING: The allegations against the individual  
5 defendants, Mr. Richter, Bao, and Hillman, you know, they fail  
6 for the same reasons that we've identified in our demurrer with  
7 respect to Lime. But, frankly, the allegations are even more  
8 defective with respect to the individual defendants.

9 They've gotta show that there were facts that... you know,  
10 they have to show facts supporting that these individuals  
11 participated in the wrongful...

12 So if we look at Mr. Richter, what's alleged is that he  
13 was involved in negotiations.

14 At times, the first amended complaint kind of, curiously,  
15 goes as far as to say that there was almost a deal, that  
16 Mr. Richter had agreed to something. But it's notable that  
17 there's no contract cause of action in the case here;

18 Furthermore, it's clear from the first amended complaint  
19 that Khosla and Boosted continued to negotiate with the  
20 Manufacturer after the supposed statements were made.

21 Mr. Richter supposedly made some statements that there  
22 could be a deal in around December 10th, and 14th, in that  
23 neighborhood.

24 And then they allege that December 24th, they learned that  
25 this motorcycle manufacturer might be interested. And so they  
26 were, you know, eventually all in and doing some big  
27 unidentified deal with the motorcycle manufacturer at that  
28 point.

1           If there was an agreement, that wouldn't have been the  
2 case.

3           So, you know, again, to the point I started with,  
4 negotiations, Your Honor, are not binding; they're not  
5 tortious.

6           The other thing they point to with respect to Mr. Richter  
7 was the stock presentation. But I've already explained why  
8 that does not support a fraud cause of action. I won't burden  
9 the Court by repeating myself here, but what is it that they  
10 actually said? It's not identified.

11           There's an allegation that Mr. Richter urged that there be  
12 no reduction in Lime's workforce. Well, there's nothing false  
13 or fraudulent about that; that's exactly what Lime wanted to  
14 do; it interviewed employees.

15           The allegations with respect to Mr. Bao, who is the -- was  
16 the chief executive officer of Lime, are largely the same as  
17 with respect to Mr. Richter insofar as they say that he was  
18 involved in negotiations. But here they've even watered it  
19 down more to say on information and belief he was somehow  
20 working with Mr. Richter on negotiations. But I have no idea  
21 what that is supposed to mean, or why that would be tortious.

22           They, again, say that he was involved in this presentation  
23 with respect to the stock, but for the reasons I've explained,  
24 there is no cause of action with respect to that; it hasn't  
25 been adequately pled.

26           And then, with respect to Mr. Hillman, they don't -- as  
27 Your Honor indicated in the tentative, they don't say that he  
28 said anything false at all, which is correct; they say what he

1 did was he assisted Lime, when he moved to Lime, in hiring  
2 employees, but there is nothing unlawful about that.

3 He would have had to have used trade secrets of Boosted.  
4 Perhaps then they could state a cause of action. But they  
5 haven't alleged facts sufficient to show that there was use of  
6 trade secrets.

7 Again, employees' identities, their skill sets, et cetera,  
8 these are not trade secrets. If there were, people would be  
9 violating trade secret law all day every day on LinkedIn;  
10 people can put their job experiences up, what they do, you  
11 know, what they're good at. There's nothing unlawful about  
12 that.

13 If employers could stop employees from discussing their  
14 job skills, for heaven's sakes, I mean we wouldn't be able to  
15 hire anybody; you could never know who you could hire or not.

16 So I -- the other thing that they mention with respect to  
17 Mr. Hillman is that he supposedly had knowledge about the  
18 negotiations between Boosted and the Manufacturer.

19 I'm really curious to know what that is, since in the  
20 first amended complaint they don't even explain what the  
21 supposed deal was.

22 But the bottom line is, they don't ever say what it was,  
23 or how it impacted anything.

24 They certainly don't allege that the Manufacturer said  
25 that they didn't want to do a deal with Boosted because they  
26 learned that Mr. Hillman had said something about their  
27 negotiations.

28 In fact, what they allege is that the Manufacturer simply

1 was not interested in entering into the scooter and skateboard  
2 space, Your Honor.

3 So I will stop there and defer to my colleague, Mr. Kahn,  
4 on the motion to strike.

5 THE COURT: Mr. Kahn?

6 MR. KAHN: Thank you, Your Honor. Can you hear me okay?

7 THE COURT: Yeah.

8 MR. KAHN: Okay, great.

9 So I'll address the motion to strike. And in doing so,  
10 I'll also address the substantive UCL issues that Mr. Schwing  
11 kicked over to me.

12 On the motion to strike, Your Honor, there's three things  
13 we move to strike. The first is punitive damages.

14 I would submit, Your Honor, that -- whether they concede  
15 the punitive damages rises and falls with the fraud claim,  
16 so --

17 THE COURT: Yeah, we agree on that. Obviously that's...  
18 that's the right answer, ha.

19 MR. KAHN: Right. So if Your Honor agrees with  
20 Mr. Schwing, as I submit Your Honor should, then punitive  
21 damages should be stricken.

22 With respect to the request for injunctive relief, that's  
23 only on the UCL claim.

24 THE COURT: Right.

25 MR. KAHN: I studied Your Honor's tentative. I would  
26 respectfully submit that it is mistaken in two regards. And if  
27 we talk about those things, I think Your Honor will see that  
28 the injunctive relief should be stricken.

1 First, in the tentative, the Court says that Khosla may  
2 pursue an injunction under the UCL relating to Lime's  
3 possession of Boosted's confidential information, because  
4 Khosla is asserting certain tort claims on Boosted's behalf.

5 However, Your Honor, the UCL claim is a statutory claim,  
6 not a tort claim. And if we look at the complaint, Khosla is  
7 asserting that claim only on its own behalf, not on Boosted's  
8 behalf.

9 If we look at the UCL claim, Your Honor, in paragraph 90,  
10 it says that there is irreparable injury to Khosla, not to  
11 Boosted. And it's seeking injunctive relief for Khosla, not  
12 for Boosted. So I would submit that injunctive relief cannot  
13 be sought on the basis identified in the tentative;

14 Second, Your Honor, and perhaps more important, Khosla  
15 fails to identify any alleged ongoing misconduct that threatens  
16 irreparable harm to anyone that supports an injunction.

17 For example, Khosla does not allege that Lime is currently  
18 using Boosted's supposed trade secrets, the employee  
19 information, or any other confidential information. Nor would  
20 that make any sense, since Lime long ago hired the Boosted  
21 employees, as the complaint admits.

22 Importantly, Your Honor, Khosla fails to respond to this  
23 point in its papers, but it's dispositive, because a plaintiff  
24 cannot obtain an injunction in the absence of ongoing  
25 misconduct that threatens irreparable harm, as the California  
26 Supreme Court said in the *Intel versus Hamidi* case that we  
27 cited.

28 This case, Your Honor, is about things that already

1 happened, not things that are going to happen; and so there's  
2 no basis for injunctive relief.

3 With respect to restitution under the UCL, again, I would  
4 respectfully submit that the Court's tentative is mistaken.

5 The tentative says that Khosla can pursue restitution  
6 because the FAC alleges Lime, quote, "obtained money from  
7 Boosted," close quote.

8 However, the FAC does not identify any money that Lime  
9 allegedly obtained from Boosted or from anyone else, for that  
10 matter. There is no allegation that Lime got money from  
11 anyone, and even Khosla admits this in its opposition brief.

12 So restitution is simply inapplicable here, Your Honor;  
13 this is not a case about money.

14 And even if Boosted could seek restitution of property, if  
15 there were any property allegedly taken, Khosla cannot seek  
16 restitution of it, because Khosla is pursuing the UCL claim  
17 solely on its own behalf, not for Boosted.

18 So for that reason, Your Honor, we would submit; that the  
19 restitution and injunctive relief prayers be stricken and the  
20 UCL claim be dismissed because it doesn't seek any relief.

21 Thank you.

22 THE COURT: All right. Thank you.

23 At this point, Mr. Kolovos, you have a lot to respond to.

24 MR. KOLOVOS: Ha.

25 THE COURT: Let me just, before I give you the mic, let me  
26 ask the court reporter...

27 *(Off-the-record discussion.)*

28 MR. KOLOVOS: Shall I proceed, Your Honor?

1 THE COURT: Please.

2 MR. KOLOVOS: Good morning.

3 Your Honor, you won't be surprised to hear that we... we  
4 do believe that the Court's tentatives reached the correct  
5 result on all grounds.

6 Your Honor, as you've heard today, and as you saw in the  
7 papers, the Defendants were trying to frame this case as  
8 something that it isn't; I mean they're trying to frame this  
9 case as a case about a business deal that didn't go well, a  
10 case about... the freedom of employees to move to other  
11 employers.

12 That isn't what this case is about, as Your Honor  
13 recognized at the beginning of this argument this morning.

14 This is not a case about a business deal that went south  
15 after good faith arm's-length negotiations.

16 What we have pled, and it's right there on the first page  
17 of our amended complaint in paragraph 2, what we've pled is  
18 that the Defendants never had an intention to do a deal with  
19 Boosted or with Plaintiffs;

20 That they used the pretext, or pretence of good faith  
21 negotiations as a way to get under the hood, if you will, to  
22 acquire information about the company, to acquire confidential  
23 information about its employees;

24 And then essentially take some actions that sabotage the  
25 company's business, which then allowed it, allowed Lime to  
26 first start hiring away Boosted's employees at a point where  
27 Boosted was no longer in a position that it could fight to keep  
28 those employees;

1           And then, two, you know, coordinate with one of  
2 Boosted's other -- one of Boosted's creditors to structure a  
3 foreclosure sale at the exit of a pandemic without sufficient  
4 notice, at which Lime was able to acquire assets on the cheap  
5 from Boosted.

6           So that's what this case is about.

7           And we do believe, Your Honor, that -- obviously the  
8 pleading standard, as you recognized, aside from the fraud  
9 claim, is somewhat lenient. But we think we've done more than  
10 enough in our complaint to put the Defendants on notice of what  
11 the claims are about and what they're defending, and that is...  
12 that is the standard.

13           So I'll take each claim in turn, sort of responding --  
14 I'll try to do it in the same order as -- as counsel, turn to  
15 them.

16           On the interference with prospective economic advantage  
17 claim, so there, as counsel pointed out, there are two  
18 different prospective economic advantages at issue here.

19           The Court's tentative focused on the relationship between  
20 Boosted and its employees.

21           To be clear, the -- the first point that counsel brought  
22 up is that there's nothing -- indeed, the complaint, count one,  
23 does not allege interference -- does not allege the employee  
24 piece with respect to the intentional interference with  
25 prospective advantage claim.

26           Paragraph... I just had it in front of me, I have to get  
27 it again... 46 of the complaint, which is the first cause of  
28 action 46:

1           "Defendants also intentionally interfered with the  
2           relationship between Boosted and its employees.  
3           This disruption cause harm to Boosted by depriving  
4           it of some of its most valuable employees, which  
5           adversely affected Boosted's prospects for  
6           consummating an alternative transaction."

7           So it is absolutely part of the first cause of action  
8           here, the intentional interference with prospective economic  
9           advantage claim, that there's a claim for interference with the  
10          relationship between Boosted and its employees.

11          And the Court's reasoning here, I think there are two  
12          cases that we cite, and the Court cited one of them, that are  
13          directly on point here.

14          The Court cited *Reeves versus Hanlon*, a 2004 case.

15          In that case a law firm sued former employees who had left  
16          the firm, and then hired away some of the firm's employees.

17          The court found interference because the defendant had  
18          done more than just extend a job offer to those employees; the  
19          employee -- the former -- the defendants had mounted a  
20          campaign, a quote, "campaign to deliberately disrupt  
21          plaintiff's business," which left the plaintiff unable to keep  
22          those employees.

23          That is the scenario that we have here, Your Honor -- or  
24          that we allege here, Your Honor.

25          *Reeves versus Hanlon* relied on a much -- an older, a 1944  
26          Supreme Court case, *Buxbom versus Smith*. But, again, it's the  
27          same framework and the same issue that we have here.

28          In *Buxbom*, the defendant... the court explains that the

1 defendant -- the claim there was that the defendant had used  
2 his relationship with the plaintiff to get information about  
3 the plaintiff's business;

4 Then breached a contract with the plaintiff, which harmed  
5 the plaintiff's business;

6 And left the plaintiff unable to keep the plaintiff's  
7 employees.

8 And through this conduct, the court found that what the  
9 defendant had done was, quote, "acquired a strategic position,"  
10 which prevented the plaintiffs from effectively competing to  
11 keep their own employees.

12 In that, the court found that was an unfair method of  
13 interference, and that the conduct was intended as a means of  
14 facilitating defendant's hiring the plaintiff's employees.

15 And that is what we're alleging.

16 And counsel made the... one of the -- one of the factors  
17 or the test here is to allege independently wrongful conduct.

18 We believe we have. The independently wrongful conduct  
19 here, independent of the interference. So the conduct here is  
20 the misrepresentation, the concealment of the true purpose of  
21 getting into these -- into the negotiations in the first place,  
22 the getting in under the hood;

23 The convincing Boosted not to lay off these employees,  
24 which Boosted, by the way, was proposing as a cost-cutting  
25 measure, given that it was having financial difficulties.

26 By putting that off -- by Lime convincing Boosted to put  
27 that off, we allege, that put Boosted in even further sort of  
28 financial difficulties that ended up ultimately leaving it

1 unable to comply with the LSA, which we'll get to later.

2 THE COURT: How do you respond, and this may be a little  
3 bit out of order, but how do you respond to Mr. Schwing's  
4 argument that neither the identities, nor the skill sets, or  
5 experience, or anything else of employees can constitute a  
6 protectable trade secret?

7 MR. KOLOVOS: Though -- Your Honor, a couple points there.

8 It is -- we do believe it's a trade secret. We believe,  
9 under Civil Code 3421.6... the defendants are selectively  
10 quoted, the test there.

11 The trade secret -- so there's a -- we've omitted the word  
12 *information*.

13 The trade secret is information that derives independent  
14 economic value, actual or potential, from not being generally  
15 known to the public, or other persons who obtained economic  
16 value from its disclosure or use.

17 So we do believe that it does constitute a trade secret.

18 But even if it isn't a trade secret, it's still  
19 confidential information; it's still information that... was  
20 Boosted's, and that Plaintiffs were not able to -- I'm sorry,  
21 Defendants were not entitled to access and exploit without  
22 permission.

23 Now, in terms of the -- another point that counsel made  
24 about --

25 THE COURT: Well, hang on a second.

26 So... I mean... you're not arguing, I take it, that the  
27 mere hiring away of Mr. Hillman was itself illegitimate?

28 MR. KOLOVOS: Correct, Your Honor.

1 THE COURT: And, you know, I'll follow up Mr. Schwing's  
2 hypothetical. If somebody moves from one law firm to another,  
3 one employer to another, that person, presumably, can say, *you*  
4 *know, the firm I just left, the following associates I thought*  
5 *were particularly good, or particularly bad.*

6 *And that's not wrongful, is it? That's not confidential;*  
7 *that's the person's opinion about those employees.*

8 Now, I'm not -- you know, what's done with the information  
9 is another question, obviously, but there's nothing  
10 independently wrongful about that, is there?

11 MR. KOLOVOS: No, Your Honor, but we allege more than  
12 that. We allege -- not that Mr. Hillman was sharing his own  
13 opinion about Boosted's employees; we allege that Mr. Hillman,  
14 through his work for Boosted while he was there, was aware of  
15 Boosted's internal rankings of its employees. And that is the  
16 confidential information.

17 Again, it's not Mr. Hillman --

18 THE COURT: I don't remember seeing anything in the first  
19 amended complaint about internal rankings. Maybe I'm  
20 misremembering it.

21 MR. KOLOVOS: It's paragraph 27, Your Honor, of the  
22 complaint.

23 "Hillman also possessed confidential trade secrets  
24 regarding Boosted's internal rankings of its  
25 employees, and evaluations of its employees'  
26 skills."

27 THE COURT: Okay. I stand corrected. Thank you.

28 MR. KOLOVOS: And to respond to another point, and I guess

1 we're all going to go out of order, given the scope of the  
2 issues, but there was a point about isn't it interesting that  
3 Boosted permitted Lime to interview its employees. So how  
4 could it be that... that we're protecting these employees when  
5 we allowed them in?

6 But, again, that ignores the genesis of the entire claim  
7 here, which is whether Lime was engaging in good faith  
8 negotiations in the first place.

9 The allegation, again, is that Lime entered into these  
10 negotiations, never intending to do a deal, and intending  
11 simply to get information about the company, to later take  
12 advantage of that information.

13 So, again, part of the -- you know, part of the scheme  
14 here was the request to interview the employees.

15 So let me talk about the Manufacturer issue, the other  
16 prospective economic advantage we got here, which essentially,  
17 to boil it down, as I understand Defendants' argument, is that  
18 the allegations of this prospective economic advantage, that  
19 deal was too speculative; you know, the terms weren't concrete  
20 enough; it was... you know, it was speculative, essentially, a  
21 potential deal as opposed to a reasonably probable deal.

22 But if you put aside labels, whether it's *potential* or  
23 *reasonably probable* and look at what we actually allege, and  
24 then compare it to some of the cases Defendants cite, the  
25 allegations are that in December of 2019, Boosted learned of  
26 Manufacturer's interest;

27 We allege that the two parties had repeated and serious  
28 discussions;

1           We allege that we told -- that Plaintiffs even told Lime  
2 about those discussions;

3           We allege that the parties completed all material due  
4 diligence for the transaction;

5           And we allege that the deal was poised to proceed.

6           That's in paragraph 21.

7           These allegations, they go well beyond the speculative  
8 relationships that are in the cases that Lime cites, and just  
9 to take up a few of them:

10           Defendant cites *Westside Center versus Safeway Stores* as  
11 a -- as a case where there was a prospective economic advantage  
12 that was too speculative.

13           That was a case about a potential sale of a shopping  
14 center.

15           There was no buyer identified in that case. The  
16 prospective advantage there was with the market, all potential  
17 buyers of the shopping center.

18           So, you know, clearly speculative but clearly not what we  
19 have here;

20           Lime also cites *Sole Energy versus Petrominerals*. The  
21 alleged -- that was an alleged interference with a transaction  
22 to buy an oil company.

23           In that case, according to the court's decision, the  
24 discussions had just begun in earnest for that transaction; so  
25 too speculative, again. Again, here our deal was poised to  
26 proceed.

27           And then just lastly, the *Blank versus Kirwan* case, which  
28 probably was the most entertaining case I read, as I was

1 getting ready for this morning's discussion.

2 That case was a license that involved -- it was a license  
3 to run a poker club, and the prospective economic advantage  
4 that was derived from not having that license.

5 But there the prospective future economic relationship was  
6 with, you know, essentially the class of all potential patrons  
7 who might come to that poker club to play poker there, as  
8 opposed to any specific counter party.

9 And so, you know, Your Honor, I would submit that we are  
10 well beyond the allegations in that case. And, you know, we've  
11 alleged a potential transaction with the Manufacturer that was  
12 ready to proceed absent the independently wrongful conduct.

13 THE COURT: You know, in the interests of time,  
14 Mr. Kolovos, maybe I can ask you to turn to the fraud cause of  
15 action, the claim that that's not pled with sufficient  
16 particularity;

17 And then the motion to strike.

18 Because I think you'll acknowledge that what you've  
19 covered thus far is largely... you know, tracks with respect to  
20 the second and the third causes of action.

21 MR. KOLOVOS: Your Honor, you know, just one point I do  
22 want to raise.

23 THE COURT: Sure.

24 MR. KOLOVOS: Counsel made a reference to language from  
25 the first complaint that we had filed.

26 THE COURT: Yeah.

27 MR. KOLOVOS: And we had dropped some language.

28 Again here, if the Court -- and I'm sure the Court will

1 look at the actual language that's attached to the redline of  
2 the complaint, if you will.

3 So the sentence that -- again, if the Court looks at the  
4 sentence that immediately followed the sentence that counsel  
5 cites in their briefs. So they cite the old paragraph 28 of  
6 our complaint:

7 "Manufacturer stated that its foreign-based senior  
8 management team was not ready to move into the  
9 space."

10 The very next sentence says, of the original complaint, it  
11 says:

12 "However, upon information and belief, a  
13 significant reason that Manufacturer's decision not  
14 to pursue a deal with Boosted was the loss of  
15 crucial Boosted team members to Lime."

16 So even in the original complaint -- we haven't shifted  
17 gears here, Your Honor -- the original complaint we said, *this*  
18 *is what Manufacturer told us. But on information and belief,*  
19 *this is why they really walked away.*

20 Now, it is an information and belief allegation, but for  
21 this type of claim, we believe those are appropriate.

22 To the fraud claim, Your Honor, I -- you know, in my mind,  
23 it is fairly straightforward. We say there's no...  
24 particular -- without -- it's not pled with particularity.

25 We... These statements that were made here, and they're  
26 detailed in the complaint, we allege when (*ph*) presentations  
27 were made, what was false about them, and which executive made  
28 them.

1 Did we attach term sheets? No. But we alleged what the  
2 term sheet said.

3 The fraud here is, again, the... Lime's and the  
4 Defendants, the other Defendants... giving Boosted and the  
5 Plaintiffs this false impression that they wanted to do a deal.

6 And in each of these instances where they approached us  
7 with a term sheet or with a proposal, and with continued  
8 discussions in terms of going forward, each of those instances  
9 was, if you will, an implicit promise that Lime -- that was  
10 interested in pursuing a deal with Boosted, when they never  
11 had -- we allege they never had that interest to do that.

12 And, you know, and again, with respect to Mr. Richter's  
13 suggestion, if you will, to Boosted that it not engage in  
14 cost-cutting measures and let go of its employees, again, that  
15 misrepresentation, there's an implied promise -- the reason  
16 Mr. Richter gave for that is, *it would be easier for us to*  
17 *continue to interview your employees as part of this sort of*  
18 *deal negotiation, if you don't fire them.*

19 And, again, that --

20 THE COURT: That's not a commitment that we're gonna do  
21 the deal. That's saying, well, it'll make it easier for us as  
22 we continue to pursue the possibility of doing the deal; right?

23 MR. KOLOVOS: Right. And we allege that's false, Your  
24 Honor. If Lime doesn't believe there's a possible -- it never  
25 intends to do a deal. Again, it's all the false pretense.

26 Again, to be clear, Your Honor, we are not alleging, we're  
27 not claiming that Lime had agreed to do a deal. That's not the  
28 basis of the claim.

1           The basis of the claim here is that they -- it was  
2 just this -- again, this charade of a false pretense to get in  
3 under the hood and get information about Boosted, and take  
4 other steps that I proposed.

5           So I think that's the fraud claim, Your Honor, the -- you  
6 know, *what did I say? What did I do?* When Mr. Schwing's  
7 clients asked them about those representations, again it's  
8 the...

9           *(Reporter interruption.)*

10          MR. KOLOVOS: I'm sorry.

11          I'm just responding to the point that Mr. Schwing  
12 apparently, when he's asked by his clients, *what did I say?*  
13 *What did I do?* It is the -- each step they took in giving  
14 Lime -- I'm sorry -- giving Boosted and Plaintiffs what turned  
15 out to be the false impression that they were intending to  
16 pursue a transaction.

17          So, Your Honor, that's the fraud issue.

18          To which did you want me to move next? I'm sorry.

19          THE COURT: Well, the motion to strike and Mr. Kahn's  
20 arguments. We are kind of running out of time here.

21          MR. KOLOVOS: Okay. So, again, punitive damages, Your  
22 Honor, I think it does rise and fall on the fraud claim.

23          THE COURT: Yeah, we all agree on there.

24          MR. KOLOVOS: There's some other arguments that counsel  
25 made in their papers about, you know, whether officers were  
26 involved. It seems like we'll rest on the papers with respect  
27 to those.

28          Injunctive relief. Again, the ongoing -- the allegation

1 is that there is confidential information, again, this ranking  
2 of employees, that they -- that Boosted -- I'm sorry, that Lime  
3 still has. Perhaps they're not using it. That's, perhaps, the  
4 recitation that counsel's making today, but they still have it.

5 And so we're looking for -- and we are looking for a  
6 declaration that they're not entitled to have that information  
7 and shouldn't use it for any purpose.

8 THE COURT: Well, Mr. Kahn argues that the UCL -- and I  
9 think he's correct in this regard, that the UCL claim is sought  
10 on Khosla's behalf alone, not in the capacity as the assignee  
11 of... of Boosted.

12 So what's your response to that?

13 MR. KOLOVOS: So that is true, Your Honor, but we -- there  
14 are allegations in the complaints, the allegation related to  
15 the... I believe it's paragraph 98. Let me find it...

16 Sorry. Paragraph 89 of the complaint alleges that not  
17 only that Boosted -- I'm sorry -- not only that Khosla was  
18 harmed by the unfair business practices, but also that Boosted,  
19 that substantially damaging to Plaintiffs and Boosted.

20 So this is a claim that Khosla is advancing but also  
21 seeking to compensate it for harm caused by Boosted.

22 Relating to the restitution point, and I'll wrap up here,  
23 the restitution here vis-a-vis the Khosla plaintiffs, not  
24 Boosted but Khosla, here Khosla did suffer economic harm,  
25 within the meaning of *Kwikset*, by the wrongful conduct here,  
26 among other things, as we allege.

27 As Lime was stringing along Boosted and the Plaintiffs,  
28 Khosla put in another \$2.4 million, I think that's the number,

1 to --

2 THE COURT: Those are those bridge loans that are referred  
3 to?

4 MR. KOLOVOS: Yeah, to keep the ship afloat here.

5 Lime now has that value, as a result of the foreclosure,  
6 as a result of the -- as a result of what we believe was sort  
7 of this rush to foreclosure in the middle of a pandemic, that  
8 they conspired with Structural to prevent Khosla from getting  
9 sufficient notice of.

10 But, you know, that value is now with Lime. And it's --  
11 whether you call it money or property, it is there.

12 In addition, the Khosla parties were -- had an interest,  
13 as a investor in Lime, to some portion of the assets that were  
14 part of that foreclosure proceeding.

15 Again, we allege, through the conspiring with Structural,  
16 Lime prevented Khosla from being able to have a fair shot at --  
17 at participating in that foreclosure sale, which is, by the  
18 way, the thrust of count 4, the interference with the ICA  
19 claim.

20 The claim there is that, you know, the benefit of the  
21 bargain for Khosla was that it would be able to participate --  
22 if there were to be a foreclosure proceeding, that it would be  
23 able to participate in it.

24 The allegation is that, you know, starting in March, Lime  
25 started talking to Structural about how to structure this  
26 foreclosure; and so Khosla wasn't able to participate in the  
27 foreclosure.

28 In any event, we believe that's also part of the UCL

1 violation. And as a result of that violation, there's property  
2 of Khosla's, you know, this share some assets of... of Boosted  
3 that Lime now has.

4 So unless the Court has other questions, and we're running  
5 short on time...

6 THE COURT: Let me ask one more question. And then I'll  
7 give the Defendants a brief opportunity for rebuttal. And I'll  
8 ask them the same question as well:

9 Is there a reported California case that addresses this  
10 theory, this unusual theory on which this whole action is  
11 premised -- or whole -- I should say the complaint is premised,  
12 that a party, you know, to use your words, was engaging in a  
13 pretense or a pretext of negotiations that were not actually  
14 intended in good faith to result in a consummated transaction,  
15 and thereby committed a variety of actionable torts.

16 MR. KOLOVOS: Your Honor, I would point the Court to the  
17 you *Asahi versus Actelion* case that is cited in the papers, 222  
18 Cal.App.4th, 945.

19 I believe it's cited in the context of the -- you know,  
20 whether individual defendants could be liable for the conduct.

21 But if you look at what happened there, the claim there  
22 was for... a party, Actelion, backed out of the drug  
23 development deal that harmed Asahi's prospective relationships  
24 related to that drug.

25 But the conduct there that the -- that hooked the  
26 officers, if you will, in that case, what the court describes  
27 there is that Actelion had made a decision not to proceed, but  
28 they strung Asahi along anyway for a while, and kind of kept

1 the ball moving, kept the ball rolling.

2 And, you know, Asahi suffered harm because of that delay.  
3 Because of that delay, it couldn't take other steps.

4 So -- and the description's at page 953 of that case.

5 So, Your Honor, it's not directly on point. I don't want  
6 to suggest that. But as I read the description of that case  
7 and the sort of notion that the individual officers, their  
8 active participation was sort of the -- you know, knowing they  
9 weren't going to proceed but decided to keep the negotiations  
10 anyway to string Asahi along, that rung to me as -- of the  
11 cases I've read, getting ready for today, the closest to us.

12 THE COURT: All right. Thank you.

13 So, Messieurs Schwing and Kahn, I have now nine minutes  
14 before my 11 o'clock calendar, and it seems to me that ought to  
15 be sufficient for you to present rebuttal. If you -- if you  
16 disagreed vigorously, I'll entertain a motion to resume after  
17 my 11 o'clock calendar, but I think you ought to be able to do  
18 it.

19 MR. KAHN: Your Honor, before Mr. Schwing goes, I think  
20 he's gonna talk about the substance, I want to just briefly  
21 respond to Mr. Kolovos on what the key case is here.

22 THE COURT: Okay.

23 MR. KAHN: The *Asahi* case, I was involved in that case.  
24 And the actual facts, as you'll see in the opinion, are  
25 that there was a deal, in that Actelion breached the deal.

26 That's not this case at all.

27 The key case here, Your Honor, is the one we cited in our  
28 demurrer, and that they never responded to in their opposition,

1 because they had no response, it's the *Tenzer* case,  
2 T-e-n-z-e-r, from the California Supreme Court, 1985, in which  
3 the Court, Supreme Court said that proof that a promise was  
4 made and was not fulfilled is not fraud, because you have to  
5 actually allege facts showing that at the time the promise was  
6 made, here the apparent promise to make a deal in the future,  
7 that it wasn't genuine, as opposed to simply changing your mind  
8 after the fact.

9 You have to actually allege facts showing that at the time  
10 the negotiations were ongoing, that there was an intent to  
11 deceive. And that's not alleged other than conclusorily.

12 So I suggest Your Honor look at the *Tenzer* case, and I  
13 hand it over to Mr. Schwing.

14 THE COURT: Thank you.

15 MR. SCHWING: Thank you, Mr. Kahn.

16 And, you know, also, frankly, the *Tenzer* case is even  
17 facts beyond ours, because there there was an actual promise of  
18 an agreement.

19 Here, I've just heard Mr. Kolovos admit that there never  
20 was a deal, right. He was very clear about that. What he said  
21 was that there were simply negotiations. And --

22 THE COURT: Right.

23 MR. SCHWING: -- there --

24 THE COURT: Well, I mean that's why I was asking the  
25 question, whether there's a case that involves, in effect, sham  
26 negotiations, or a pretense at good faith negotiations that are  
27 not in fact what they appear to be.

28 MR. SCHWING: So there is no such thing as a covenant of

1 good faith and fair dealing in negotiations unless there's some  
2 sort -- absent an agreement, right? That's when that covenant  
3 arises, Your Honor. Unless you're talking about like the  
4 insurance context or something like that, where there's some  
5 statutory requirement.

6 There's a case I don't think we cited, to be honest, it's  
7 the -- is a *Baskin-Robbins* case, and I can send it along to  
8 you, that makes that exact same point; that there is no  
9 covenant of good faith and fair dealing until there actually is  
10 a deal.

11 So, I mean can you imagine, I mean the Pandora's box that  
12 this opens up if mere, you know, contract negotiations between  
13 sophisticated parties, where everybody knows that there's no  
14 deal here, suddenly becomes binding through a tort theory, and  
15 somebody can just come and say, *well, we really thought you*  
16 *were gonna do this but you didn't.*

17 Well, I mean this is a large, successful venture capital  
18 firm, you know, Khosla; we're not talking about, you know, some  
19 schlub off the street here.

20 To say that negotiations are binding, that they can  
21 reasonably rely on negotiations when there's term sheets that  
22 are in conflict with each other flying back and forth, it just  
23 strains the imagination here, Your Honor.

24 You know, what I heard Mr. Kolovos say was, you know --

25 THE COURT: Well, so is it your -- I mean is it your  
26 argument that the demurrers should be sustained without leave  
27 to amend here because, on the facts alleged, no cause of action  
28 can be stated?

1 MR. SCHWING: Well, Your Honor, I know you probably would  
2 be reluctant to do that, because most judges are and, you know,  
3 I've been before you before.

4 My answer would be yes, because they actually have  
5 amended, and we've met and conferred and explained the problems  
6 with their complaint, and they didn't fix them.

7 But, you know, obviously it's within Your Honor's  
8 discretion as to what to do in that regard.

9 But I heard you, you know, Your Honor put it to  
10 Mr. Kolovos, you know, *what would be false statements?* And I  
11 didn't hear anything; what I heard was, *well, there was this*  
12 *overall impression that was given that one might go forward*  
13 *with the deal.*

14 But that's not a fraud cause of action; he's just simply  
15 referring to the fact that there were negotiations and Khosla  
16 and Boosted perhaps had their, you know, hopes up, but that's  
17 not fraud.

18 In the fraud claim, you've got to state what specifically  
19 was false. And they have not done that here.

20 You know, to be able to state a fraud claim based on, you  
21 know, hope and expectations and some inkling of, you know, that  
22 something might turn into a deal, that's not California law.

23 There was a statement made that Khosla made bridge loans  
24 to Lime -- I'm sorry -- to Boosted for \$2.4 million. And  
25 that --

26 THE COURT: Right.

27 MR. SCHWING: And that Lime somehow got the benefit of  
28 that through a foreclosure process. The foreclosure process

1 here resulted in Lime purchasing boosted's I.P., not its cash.

2 I would give Mr. Kolovos the opportunity to correct that  
3 misstatement, if he would like to, at this time.

4 MR. KOLOVOS: Your Honor, the foreclosure process resulted  
5 in Lime acquiring whatever assets remained, and that was the  
6 I.P. -- as I understand, from Mr. Schwing, the I.P.

7 So I did not mean to suggest that cash went to -- I don't  
8 know whether cash went to Lime. I'll take Mr. Schwing's  
9 representation.

10 However, the value, whatever value existed in the asset  
11 that Lime obtained in the foreclosure was value to which Khosla  
12 contributed.

13 THE COURT: All right.

14 MR. KOLOVOS: That's the point I'm trying to make.

15 THE COURT: All right. Mr. Schwing, let's try and wrap  
16 this up, if you don't mind.

17 MR. SCHWING: Okay. Let me go back to what I think is one  
18 of the most central issues here, whether or not there's factual  
19 allegations to support that a trade secret was taken here.

20 There's simply isn't. There's no case cited by Plaintiffs  
21 here that would support that. In fact, we've cited cases to  
22 the exact opposite of that.

23 They've raised that -- that internal rankings, that  
24 Mr. Hillman may have had internal rankings by the employees, as  
25 a way to try to save this claim.

26 There's no allegation that Lime had acc -- that they used  
27 these internal rankings. I don't even know what those are or  
28 what that means, frankly.

1           So there is no allegation that Lime used that information;  
2           There's no allegation that Boosted took steps to try to  
3           keep that information confidential.

4           THE COURT: All right.

5           MR. SCHWING: I wish we could go on and on, Your Honor.  
6           You've been very patient and I do appreciate that. If you have  
7           any further questions, I'd be happy to answer.

8           THE COURT: I don't.

9           Mr. Kahn, you want to chime in here briefly on the motion  
10          to strike, or do you want to leave it where it is?

11          MR. KAHN: I would just make one last point to the motion  
12          to strike, Your Honor, where Mr. Kolovos suggested because  
13          paragraph 89 identifies harm --

14          THE COURT: Right.

15          MR. KOLOVOS: -- to Boosted, therefore the UCL claim seeks  
16          an injunction on behalf of Boosted, but it doesn't. Because if  
17          you look at paragraph 90, that's where the injunction's  
18          requested.

19          The alleged irreparable harm is only to Plaintiffs, not to  
20          Boosted. And they haven't identified any alleged irreparable  
21          harm to Boosted, nor could they, because Boosted doesn't exist  
22          anymore.

23          There's just no basis for an injunction here because  
24          there's no ongoing harm, threatening irreparable injury.

25          Damages, they can seek damages, but no injunction.

26          THE COURT: All right. Thank you, all, very much. You've  
27          been patient with me, as well.

28          The matter is under submission, and I will issue a ruling

1 in due course.

2 MR. KOLOVOS: Thank you, Your Honor Be safe.

3 MR. KAHN: Thank you, Your Honor.

4 MR. SCHWING: Thank you, Your Honor.

5 THE COURT: All right. Thank you.

6 *(11:00 a.m.)*

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I, MARIA ANTONIA TORREANO, DO HEREBY CERTIFY:

That the foregoing is a full, true and correct transcript of the testimony given and proceedings hereinbefore entitled;

That it is a full, true and correct transcript of the evidence offered and received, acts and statements of the court, also all objections of counsel and all matters to which the same relate;

That I reported the same in stenotype to the best of my ability, being the duly-appointed, qualified and official stenographic reporter of said court, and thereafter had the same transcribed, as herein appears.

DATE: October 29, 2020

**Maria A. Torreano**

Digitally signed by Maria A. Torreano  
Date: 2020.10.29 20:11:30 -07'00'

  
\_\_\_\_\_  
Maria A. Torreano, CSR, CRR, RMR, CCRR  
Certificate No. 8600

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# **EXHIBIT 2**

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6 Attorneys for Plaintiffs Khosla Ventures IV, LP, and Khosla  
Ventures IV (CF), LP  
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SANTA CLARA**

11 KHOSLA VENTURES IV, LP, a Delaware limited )  
12 partnership, and KHOSLA VENTURES IV (CF), )  
LP, a Delaware limited partnership, )

13 Plaintiffs, )

14 vs. )

15 STRUCTURAL CAPITAL INVESTMENTS II, )  
16 LP, a Delaware limited partnership, OCEAN II )  
PLO LLC, a California limited liability company, )  
17 SHOJIN ENTERPRISES, LLC, a California limited )  
liability company, NEUTRON HOLDINGS. INC., )  
18 a Delaware corporation, and DOES 1-10, )

19 Defendants. )  
20

Case No. 20CV366073

**FIRST AMENDED COMPLAINT FOR:**

- 1. **SPECIFIC PERFORMANCE;**
- 2. **DECLARATORY RELIEF; OR**
- 3. **DAMAGES FOR BREACH OF WRITTEN CONTRACT**

21 Plaintiffs Khosla Ventures IV, LP, and Khosla Ventures IV (CF), LP (jointly, "Plaintiffs"),  
22 allege the following with personal knowledge as to their own status and acts and on information and  
23 belief as to all other matters.

24 **SUMMARY OF COMPLAINT**

25 1. Plaintiffs, Activate Capital Partners, L.P. ("Activate"), and Defendant Structural  
26 Capital Investments II, LP ("Structural") provided secured loans totaling \$23.5 million to Boosted,  
27 Inc. ("Boosted"), a local electric skateboard and scooter manufacturer. On October 21, 2019,  
28 Plaintiffs and Activate agreed to lend Boosted a total of \$5,000,000 (with \$4,300,000 loaned by

1 Plaintiffs and \$700,000 from Activate) as a secured loan, and in connection with that loan, Plaintiffs  
2 and Activate entered into an intercreditor agreement (the “Initial ICA”) dated October 21, 2019 with  
3 Structural and its collateral agent and administrative agent, Ocean II PLO, LLC (“Ocean”). In  
4 February of this year, with Boosted in critical financial condition, Plaintiffs agreed to lend Boosted  
5 another \$2,500,000, and as a condition to the additional loan, agreed to amend and restate the terms  
6 of the Initial ICA in a first amended and restated intercreditor agreement (the “ICA”). Under that  
7 ICA, entered into on February 13, 2020, the parties agreed that if Boosted failed, Structural and  
8 Ocean would be responsible for handling the liquidation of the collateral for the secured loans (the  
9 “Collateral”) and the parties would split the proceeds of that liquidation, with Plaintiffs to receive  
10 approximately 27.75%.

11 2. Boosted defaulted the very next month. Ocean published notices of a public sale of  
12 the Collateral (the “Public Sale Notices”) for March 17, 2020 at a San Mateo County location.  
13 Unbeknownst to Plaintiffs, however, Defendants had no intention of splitting the liquidation  
14 proceeds. Rather than credit bid for the assets and liquidate them, they ensured that, on information  
15 and belief, a Structural affiliate, Defendant Shojin Enterprises, LLC (“Shojin”) would purchase the  
16 bulk of the assets at a lowball price, to liquidate them on its own account.

17 3. Defendants disregarded the Covid-19 pandemic to ensure success. On March 16,  
18 2020, the San Mateo County Health Officer issued a Shelter in Place Order that precluded any  
19 potential bidders for the Collateral from appearing at the auction site. Under the applicable  
20 requirements of the California Commercial Code, this voided the Public Sales Notices, precluding  
21 the sale of the Collateral on the next day from being commercially reasonable and requiring Ocean  
22 to publish new notices of the public sale of the Collateral.

23 4. Not only did Structural and Ocean decide to proceed with the sale, they did so by  
24 telephone and did not provide the access information for the teleconference to anyone other than  
25 Shojin and Neutron Holdings, Inc. (“Lime”). Only when Plaintiffs specifically asked Structural and  
26 Ocean’s counsel if the auction would proceed were they provided with the telephonic information  
27 for the auction less than 24 hours in advance. At the auction, Shojin purchased two lots into which  
28 the Collateral was divided (including cash-equivalent tariff refunds worth over \$5,000,000 for a

1 winning bid of \$400,000) and Lime purchased the third lot. Shojin and Lime participated in the  
2 sham sale (the “Purported Public Sale”) knowing that it was being conducted pursuant to void Public  
3 Sale Notices and in violation of the California Commercial Code. As a result, neither qualifies as a  
4 good faith transferee pursuant to California Commercial Code section 9617.

5 5. By this Complaint, Plaintiffs seek to undo the Purported Public Sale and allow a  
6 public sale of the Collateral that is commercially reasonable and complies with the requirements of  
7 the California Commercial Code. If for any reason that cannot be ordered, Plaintiffs seek (a)  
8 declaratory relief or an award of damages against Structural and Ocean which compensates Plaintiffs  
9 for Structural’s and Ocean’s outrageous breaches of their obligations to Plaintiffs under the ICA and  
10 (b) a declaration that, pursuant to California Commercial Code section 9617, Shojin and Lime took  
11 and now hold the Collateral assets subject to Plaintiffs’ interest therein and liens thereon.

12 **JURISDICTION, VENUE AND PARTIES**

13 6. Plaintiff Khosla Ventures IV, LP is a limited partnership organized under the laws of  
14 Delaware.

15 7. Plaintiff Khosla Ventures IV (CF), LP is a limited partnership organized under the  
16 laws of Delaware.

17 8. Defendant Structural Capital Investments II, LP, is a limited partnership organized  
18 under the laws of Delaware.

19 9. Defendant Ocean II PLO, LLC, is a limited liability company organized under the  
20 laws of California, with offices at 400 Oyster Point Blvd., South San Francisco, California.

21 10. Defendant Shojin Enterprises, LLC, is a limited liability company organized under  
22 the laws of California. On information and belief, Shojin is directly or indirectly owned and  
23 controlled by Structural and was first registered on March 9, 2020 for the purpose of acquiring Lot 1  
24 at the sale to be conducted pursuant to the Public Sales Notices.

25 11. Defendant Neutron Holdings, Inc., commonly known and hereinafter referred to as  
26 “Lime”, is a corporation organized under the laws of Delaware.

27 12. The true names and capacities of the defendants sued herein as Does 1 through 10,  
28 inclusive, are unknown to Plaintiffs, which therefore sues said defendants by such fictitious names.

1 Plaintiffs will seek leave of court to amend this Complaint to allege their true names and capacities  
2 when the same are fully ascertained.

3 13. The Santa Clara Superior Court has jurisdiction over the claims made herein in that  
4 (a) the ICA related to loans made by Plaintiffs and Structural to Boosted, which is headquartered  
5 with its principal place of business within this county and (b) Section 12 of the ICA specifies that,  
6 given the unenforceability of the ICA parties' jury trial waiver set forth therein and their inability to  
7 agree on a private judge to whom the claims asserted in this Complaint should be referred, the  
8 Presiding Judge of the Santa Clara Superior Court is to select a private judge pursuant to California  
9 Code of Civil Procedure Section 638 to conduct the proceedings in accordance with the provisions  
10 of California Code of Civil Procedure Sections 638 through 645.1, inclusive.

11 **FACTUAL ALLEGATIONS**

12 14. Prior to February 13, 2020, Plaintiffs, Activate and Structural had made Boosted, an  
13 electric skateboard and scooter company headquartered in Mountain View, California, several  
14 separate secured loans (collectively, the "Prior Boosted Secured Loans") in principal amounts  
15 totaling \$23,500,000.00. On February 13, 2020, in connection with, and as a precondition to,  
16 Plaintiffs' making an additional secured loan (the "New Secured Loan") to Boosted in the amount of  
17 \$2,500,000.00, Plaintiffs, Activate, Structural and Ocean (Structural's collateral agent and  
18 administrative agent under the prior secured loan to Boosted the "Structural Term Loan"), entered  
19 into the ICA dated February 13, 2020. A true and correct copy of the ICA is attached as Exhibit 1  
20 hereto and incorporated herein by this reference.

21 15. Under the terms of the ICA, Structural and Ocean were provided the exclusive right  
22 to enforce both Plaintiffs' and Activate's, as well as Structural's rights against the Collateral  
23 specified for the Structural Term Loan, which collateral consisted of substantially all Boosted's  
24 assets. A true and correct description of the Collateral as attached as Exhibit A to the Structural  
25 Term Loan is attached as Exhibit 2 hereto and incorporated herein by this reference.

26 16. In the event that the Collateral was liquidated following a default by Boosted under  
27 the terms of the Prior Boosted Secured Loans, all of the proceeds of the liquidation of the Collateral  
28 were to be split between Plaintiffs and Structural in accordance with Section 4.3 of the ICA. This

1 section provides that, after payment of Structural’s outstanding out-of-pocket costs and expenses to  
2 preserve the Collateral, of foreclosure or suit, if any, and of such sale and the exercise of any other  
3 rights or remedies with respect to the Collateral, the proceeds were to be split pro rata until both the  
4 Prior Boosted Secured Loans and the New Secured Loan were paid in full, or approximately 27.75%  
5 to Plaintiffs, 2.86% to Activate and 69.39% to Structural.

6 17. On March 4, 2020, following Boosted’s defaults under the terms of the Prior Boosted  
7 Secured Loans, Ocean provided a Notice of Disposition of Collateral to Boosted and Plaintiffs (the  
8 “Notice of Disposition of Collateral”) which provides, in relevant part, that the sale of the Collateral  
9 will take place on March 17, 2020, at Ocean’s offices at 400 Oyster Point Blvd. Suite 229, South San  
10 Francisco, CA 94080 (the “Public Sale Location”). A true and correct copy of the Notice of  
11 Disposition of Collateral is attached as Exhibit 3 hereto.

12 18. On March 7, 2020, Ocean published the Public Sale Notices of the Collateral in the  
13 San Francisco Business Times and the Silicon Valley Business Journal, true and correct copies of  
14 which are attached as Exhibits 4 and 5 hereto, respectively. The Public Sales Notices provide, in  
15 relevant parts, that (a) the sale of the Collateral will take place on March 17, 2020, at the Public Sale  
16 Location, and (b) the winning bidder will be required to tender the full amount of the winning bid  
17 and sign a Foreclosure Sales Agreement at the conclusion of the auction.

18 19. On March 16, 2020, the Health Officer of the County of San Mateo, within which the  
19 Public Sale Location is situated, issued a Shelter in Place Order which prohibited all travel within  
20 the County of San Mateo except for the Essential Travel specified in Section 10 of the Shelter in  
21 Place Order and provided that the violation of the Shelter in Place Order is a misdemeanor  
22 punishable by fine, imprisonment, or both. A true and correct copy of the Shelter in Place Order is  
23 attached as Exhibit 6 hereto. Since travel to the Public Sale Location for the purpose of bidding at  
24 the public sale of the Collateral did not fall within the Essential Travel specified in Section 10 of the  
25 Shelter in Place Order, the entry of the Shelter in Place Order voided the Notice of Disposition of  
26 Collateral and the Public Sales Notices and required that Ocean (a) provide a new notice of  
27 disposition of the Collateral to Boosted and Plaintiffs and (b) publish new notices of the public sale  
28

1 of the Collateral which complied with the requirements therefor provided in California Commercial  
2 Code sections 9610 through 9613, inclusive.

3 20. On March 17, 2020, Ocean conducted the Purported Public Sale of the Collateral in  
4 the following three lots: (a) Lot 1, which consisted of all the Collateral designated as “Lot 1” in the  
5 Notice of Disposition of Collateral and the Public Sales Notices with the exception of Boosted’s van;  
6 (b) Lot 1A, which consisted of Boosted’s van: and (c) Lot 2, which consisted of all the Collateral  
7 designated as “Lot 2” in the Notice of Disposition of Collateral and the Public Sales Notices. The  
8 Purported Public Sale was conducted by a telephonic conference call (the “Sale Conference Call”)  
9 that lasted just over 20 minutes and that required any participant (a) to utilize one of six alternate  
10 telephone numbers and (b) input a ten digit meeting ID number in order to join in the Sale  
11 Conference Call. The alternate telephone numbers and meeting ID number required to access the  
12 Sale Conference Call (the “Sale Conference Call Access Information”) were only disclosed in  
13 advance by Structural and Ocean to Boosted, Plaintiffs and certain potential bidders selected by  
14 Structural and Ocean.

15 21. The only potential bidder to whom Structural and Ocean disclosed the Sale  
16 Conference Call Access Information who Structural and Ocean understood intended to bid on Lot 1  
17 and Lot 1A was Shojin. The only potential bidder to whom Structural and Ocean disclosed the Sale  
18 Conference Call Access Information who Structural and Ocean understood intended to bid on Lot 2  
19 was Lime. Sale Conference Call Access Information was only provided to Plaintiffs at 6pm on  
20 March 16, 2020, and only after Plaintiffs explicitly asked if the auction was proceeding in light of  
21 the Shelter in Place Order.

22 22. Shojin made the winning bids of \$400,000 for Lot 1 and \$1,000 for Lot 1A at the  
23 Purported Public Sale. Lot 1 included the tax and tariff refunds owned by Boosted, which refunds  
24 had and have a readily realizable value in excess of \$5,000,000. Shojin is not a good faith transferee  
25 of the Lot 1 and Lot 1A assets due to its participation in the Purported Public Sale with knowledge  
26 that that sale was being conducted pursuant to void Public Sale Notices, in violation of the  
27 requirements therefor provided in California Commercial Code sections 9610 through 9613, and in  
28 breach of Structural’s and Ocean’s obligations to Plaintiffs under the terms of the ICA. As a result,

1 pursuant to California Commercial Code section 9617, Shojin took, and unless specific performance  
2 is ordered and obtained with respect to the Lot 1 and Lot 1A assets holds, the Lot 1 and Lot 1A  
3 assets subject to Plaintiffs' interests therein and liens thereon.

4 23. Lime made the winning bid of 61,855,670 of its common shares for Lot 2 at the  
5 Purported Public Sale. Lot 2 included all of Boosted's intellectual property and all other assets that  
6 were part of the collateral and not specifically included in Lot 1 and Lot 1A, which assets have a fair  
7 market value in excess of \$15,000,000 while the fair market value of 61,855,670 of Lime's common  
8 shares at all times during the period from March 17, 2020, to the present is likely less than  
9 \$1,000,000. Lime is not a good faith transferee of the Lot 2 assets due to its participation in the  
10 Purported Public Sale with knowledge that that sale was being conducted pursuant to void Public  
11 Sale Notices and in violation of the requirements therefor provided in California Commercial Code  
12 sections 9610 through 9613. As a result, pursuant to California Commercial Code section 9617,  
13 Lime took, and unless specific performance is ordered and obtained with respect to the Lot 2 assets  
14 holds, the Lot 2 assets subject to Plaintiffs' interests therein and liens thereon.

15 24. Up until the conduct of the Purported Public Sale, Plaintiffs had reasonably  
16 understood and believed that Structural would credit bid for Lot 1 up to what Structural assessed as  
17 the fair value of the Lot 1 assets based on various oral and written representations made by  
18 Structural, and in particular, Todd M. Jacquez-Fissori ("Jacquez-Fissori"), its Managing Partner, to  
19 Peter Buckland ("Buckland"), a managing director and COO at Khosla Ventures, in connection with  
20 Plaintiffs' making of the New Secured Loan to Boosted. In particular, on December 19, 2019,  
21 Jacquez-Fissori sent Buckland an email (the "December 19, 2019 Email") wherein Jacquez-Fissori  
22 represented to Buckland that: "Any tariff dollars or random sales that occur / or cash above \$2M will  
23 be controlled by us which should be ok. It is partly yours ultimately and will be settled down the  
24 road as part of that 'pool'". A true and correct copy of the December 19, 2019 Email is attached as  
25 Exhibit 7 hereto.

**FIRST CAUSE OF ACTION**

**(Specific Performance by All Plaintiffs against All Defendants)**

25. Plaintiffs refer to and incorporate by this reference all of the allegations in paragraphs 1 through 24 hereof, inclusive.

26. Plaintiffs and Defendants Structural and Ocean entered into the ICA on or about February 13, 2020.

27. The consideration provided to Defendants Structural and Ocean under the ICA was adequate and its terms just and reasonable to Defendants Structural and Ocean. First, the protections which Plaintiffs understood were provided them by the terms of the ICA induced Plaintiffs and Activate to make the Prior Boosted Secured Loans to Boosted in the amount of \$4,300,000 and the New Secured Loan to Boosted in the amount of \$2,500,000, thereby providing Boosted with cash that increased the chance of Boosted being able to effect a turnaround of its business, which turnaround, if it had occurred (it did not) would have decreased Structural's probable loss on its loans to Boosted by multiple millions of dollars. Second, the ICA provided Structural and Ocean effective control over the liquidation of the Collateral and precluded Plaintiffs from exercising any rights against Boosted or the Collateral which could interfere with the timing of, and strategy for, dealing with Boosted's defaults under the Prior Boosted Secured Loans or the New Secured Loan.

28. If Defendants Structural and Ocean had in fact acted in good faith in exercising their rights under the ICA and splitting all of the proceeds of the liquidation of the Collateral in accordance with Section 4.3 of the ICA with approximately 27.75% to Plaintiffs, 2.86% to Activate and 69.39% to Structural until both the Prior Boosted Secured Loans and the New Secured Loan were paid in full, the consideration provided to Plaintiffs by Defendants Structural and Ocean under the ICA would similarly have been adequate and its terms just and reasonable to Plaintiffs. The consideration provided to Plaintiffs by Defendants Structural and Ocean under the ICA would be rendered inadequate, and its terms unjust and unreasonable to Plaintiffs, if the purported sale of Lot 1 to Shojin, a Structural affiliate, for at least \$4,600,000 less than the fair market value of the Lot 1 assets instead of Structural's use of a credit bid to acquire those assets subject to Section 4.8 of the ICA is allowed to stand. If not remedied hereby, this will result in a direct loss suffered by

1 Plaintiffs, even assuming Structural pays Plaintiffs 27.75% of the \$400,000 received for Lot 1 of  
2 \$110,280 at the Purported Public Sale, in the amount of at least \$1,276,500 (i.e., 27.75% of  
3 \$4,600,000 is \$1,276,500) and is estimated to reduce Plaintiffs' share of the proceeds of the  
4 Collateral from the agreed 27.75% to under 5%.

5 29. Plaintiffs have performed all their respective obligations under the ICA except for  
6 those excused by reason of the non-performance of Defendants Structural and Ocean.

7 30. Defendants Structural and Ocean have breached their respective obligations under the  
8 ICA by (a) failing to continue or renounce the sale of the Collateral as noticed in the Public Sale  
9 Notices after the Public Sale Notices were rendered void and commercially unreasonable, and in  
10 violation of the requirements therefor provided in California Commercial Code sections 9610  
11 through 9613, when on March 16, 2020, the Health Officer of the County of San Mateo issued the  
12 Shelter in Place Order making it illegal for potential bidders to appear at the Public Sale Location on  
13 the date specified therefor and (b) purporting to sell Lot 1 to Shojin at the Purported Public Sale  
14 despite Structural's and Ocean's knowledge of the above-specified defects in the Public Sale Notices  
15 with the intended purpose and effect of causing Plaintiffs to suffer a direct loss in the amount of at  
16 least \$1,276,500 and reducing Plaintiffs' share of the proceeds of the Collateral from the agreed  
17 27.75% to what is estimated to be under 5%.

18 31. The above-specified breaches by Structural and Ocean of their obligations under the  
19 IGA constituted willful misconduct, or at the very least were grossly negligent, since Structural and  
20 Ocean were fully advised and aware on March 16, 2020, that the issuance of the Shelter in Place  
21 Order rendered the Public Sales Notices void.

22 32. Plaintiffs' remedy at law is inadequate as unless this Court orders Structural and  
23 Ocean to specifically perform their obligations under the ICA by unwinding, to the extent possible,  
24 the sales of the Collateral to Shojin and Lime and renouncing the sale of all recovered Collateral in  
25 conformity with the requirements therefor provided in California Commercial Code sections 9610  
26 through 9613, inclusive, Plaintiffs will never receive distributions from Structural and Ocean based  
27 on the fair market value of the Collateral as established by a properly noticed and conducted public  
28 sale. While it will be possible to assess a non-speculative amount of damages that Plaintiffs suffered

1 by reason of the sale of the tariff and tax refunds to Shojin as part of Lot 1 since such refunds are  
2 virtually equivalent to cash, the great bulk of all of the other Collateral assets are items the value of  
3 which may vary by extremely material amounts depending on the specific individuals who become  
4 aware that such items are being sold in a public auction of which such individuals are provided  
5 adequate advance notice and actually have the ability to participate in the auction without  
6 committing a misdemeanor.

7 33. Shojin and Lime are named as defendants in this First Cause of Action for Specific  
8 Performance solely as indispensable parties in that the requested relief, if granted, would require  
9 Shojin and Lime to transfer the Collateral assets to Ocean in return for the consideration provided by  
10 Shojin and Lime therefor. Neither Shojin nor Lime is a good faith transferee of the Collateral assets  
11 due to their participation in the Purported Public Sale with knowledge that that sale was being  
12 conducted pursuant to void Public Sale Notices and in violation of the requirements therefor  
13 provided in California Commercial Code sections 9610 through 9613. As a result, pursuant to  
14 California Commercial Code section 9617, Shojin and Lime took the Collateral assets subject to  
15 Plaintiffs' interest therein and liens thereon.

16 34. Structural and Ocean assert that the Purported Public Sale was validly conducted by  
17 Ocean and that, under the terms of the ICA, Plaintiffs are not entitled themselves to enforce  
18 Plaintiffs' interest in, and liens on, the Collateral assets transferred to Shojin and Lime. Plaintiffs  
19 contest hereinbelow that Structural and Ocean maintain the right to interfere with Plaintiffs' ability  
20 to enforce their interest in, and liens on, the Collateral assets transferred to Shojin and Lime. Yet in  
21 the event that this Court were to determine that the Purported Public Sale was void but that  
22 Plaintiffs' are not entitled themselves to enforce Plaintiffs' interest in, and liens on, the Collateral  
23 assets transferred to Shojin and Lime, only the above-requested specific performance would subject  
24 Shojin and Lime as bad faith transferees to any liability or responsibility for their involvement in,  
25 and receipt of wrongful benefits from, the Purported Public Sale. Furthermore, even if this Court  
26 agrees that Structural and Ocean do not have the right to interfere with Plaintiffs' ability to enforce  
27 their interest in, and liens on, the Collateral assets transferred to Shojin and Lime, the above-  
28 requested specific performance should still be ordered in lieu of restricting Plaintiffs' rights as

1 against Shojin and Lime to enforcing their interest in, and liens on, the Collateral assets transferred  
2 to Shojin and Lime if the Court determines that that remedy would be more equitable and expedient  
3 given the evidence submitted at trial.

4 **SECOND CAUSE OF ACTION**

5 **(Declaratory Relief by All Plaintiffs against All Defendants)**

6 35. Plaintiffs refer to and incorporate by this reference all of the allegations in paragraphs  
7 1 through 31 hereof, inclusive.

8 36. Plaintiffs have actual, present controversies with the Defendants and each of them,  
9 arising out of the Purported Public Sale and relating to Plaintiffs' rights against Structural and Ocean  
10 under the ICA and against Shojin and Lime with regard to Plaintiffs' rights in the Collateral  
11 purportedly acquired by Shojin and Lime at the Purported Public Sale. In particular, Plaintiffs  
12 assert, and the Defendants deny as indicated below, as follows:

13 a. Structural and Ocean have breached their obligations under the ICA as  
14 specified above in paragraphs 30 and 31, and, as a result thereof, (i) Structural and  
15 Ocean have forfeited any right to control or interfere, whether under the ICA or  
16 otherwise, with Plaintiffs' ability to enforce their rights in, and liens on, the  
17 Collateral assets or to receive any portion of any recovered obtained by Plaintiffs  
18 from Shojin or Lime and (ii) to the extent specific performance is not granted and  
19 obtained as to any of the Collateral acquired by Shojin at the Purported Public Sale so  
20 its public sale can be renoticed in conformity with the requirements therefor provided  
21 in California Commercial Code sections 9610 through 9613, inclusive, such non-  
22 returned Collateral shall be deemed held by Shojin as if it had been acquired by a  
23 credit bid under Section 4.8 of the ICA and the proceeds of any sale of such  
24 Collateral by Shojin shall be distributed as is necessary to ensure that such  
25 distribution is in accordance with the provisions of Sections 2,2, 4.3.1, 4.3.2 and  
26 4.3.3 of the ICA, as applicable;

27 b. neither Shojin nor Lime is a good faith transferee of the Lot 1, Lot 1A  
28 or Lot 2 assets due to their participation in the Purported Public Sale with knowledge

1 that that sale was being conducted pursuant to void Public Sale Notices and in  
2 violation of the requirements therefor provided in California Commercial Code  
3 sections 9610 through 9613; and as a result, to the extent specific performance is not  
4 granted and obtained as to any of the Collateral acquired by Shojin or Lime at the  
5 Purported Public Sale so its public sale can be renoticed in conformity with the  
6 requirements therefor provided in California Commercial Code sections 9610  
7 through 9613, inclusive, pursuant to California Commercial Code section 9617,  
8 Shojin and Lime took and now hold the Lot 1, Lot 1A or Lot 2 assets subject to  
9 Plaintiffs' interests therein and liens thereon; and

10 c. Structural and Ocean deny the assertions by Plaintiffs set forth in  
11 subparagraph a above and Shojin and Lime deny the assertions by Plaintiffs set forth  
12 in subparagraph b above.

13 **THIRD CAUSE OF ACTION**

14 **(Breach of Written Contract by All Plaintiffs**  
15 **against Defendants Structural and Ocean Only)**

16 37. Plaintiffs refer to and incorporate by this reference all of the allegations in paragraphs  
17 1 through 31 hereof, inclusive.

18 38. To the extent specific performance is not granted and obtained as to any of the  
19 Collateral acquired by Shojin or Lime at the Purported Public Sale so its public sale can be renoticed  
20 in conformity with the requirements therefor provided in California Commercial Code sections 9610  
21 through 9613, inclusive, Plaintiffs have suffered actual damages in an amount to be established  
22 according to the proof at trial but not less than \$1,276,500.

23 WHEREFORE, Plaintiffs pray that judgment be rendered in Plaintiffs' favor and against  
24 Defendants as follows:

25 1. On the First Cause of Action for a determination and judgment that Plaintiffs are  
26 entitled to Defendants Structural's and Ocean's specific performance of their obligations under the  
27 ICA as specified in paragraph 32 above;

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2. On the Second Cause of Action, for a declaration of Plaintiffs' and Defendants' respective rights and obligations under the ICA (as to Structural and Ocean) and with regard to Plaintiffs' rights in the Collateral purportedly acquired by Shojin and Lime at the Purported Public Sale (as to Shojin and Lime) in accordance with Plaintiffs assertions as set forth in subparagraphs a and b of paragraph 36 of the Complaint;

3. On the Third Cause of Action, for an award of its actual damages in an amount to be established according to the proof at trial but not less than \$1,276,500;

4. On all causes of action, for an award of its costs and expenses as allowed by law, and

5. On all causes of action, for such other and further relief as the Court deems just and proper.

Dated: December 1, 2020

PACHULSKI STANG ZIEHL & JONES LLP

By 

Dean A. Ziehl  
James K. T. Hunter

Attorneys for Plaintiffs Khosla Ventures  
IV, LP, and Khosla Ventures IV (CF), LP

# **EXHIBIT 1**

First Amended and Restated Intercreditor Agreement

## FIRST AMENDED AND RESTATED INTERCREDITOR AGREEMENT

THIS FIRST AMENDED AND RESTATED INTERCREDITOR AGREEMENT (this "Agreement") is entered into as of February 13, 2020, by and among Structural Capital Investments II, LP, a Delaware limited partnership ("SCI II"), OCEAN II PLO LLC, a California limited liability company, as collateral agent and administrative agent for Structural ("Ocean", and together with Structural, collectively, "Structural"), and Khosla Ventures IV, LP, Khosla Ventures IV (CF), LP, and Activate Capital Partners, L.P. (collectively, "Investors"; together with Structural, each sometimes referred to herein as a "Lender" or collectively as "Lenders").

### RECITALS

A. Boosted, Inc., a Delaware corporation ("Borrower"), SCI II and Ocean entered into that certain (i) Loan and Security Agreement dated as of May 6, 2019 (as amended and as may be further amended, modified, restated, replaced, or supplemented from time to time, the "Structural Loan Agreement") pursuant to which SCI II loaned \$18,500,000 to Borrower (the "Structural Term Loan"). The obligations of Borrower under the Structural Loan Agreement and the Structural Loan Documents (as hereinafter defined) are secured by a lien on substantially all assets of Borrower (the "Collateral").

B. Borrower and Investors are entering into that certain Secured Note Purchase Agreement and related Secured Convertible Promissory Notes, all dated of even date herewith (as may be amended, modified, restated, replaced, or supplemented from time to time, the "Investors Loan Agreement"), pursuant to which Investors will loan Borrower up to \$2,500,000 (the "Investors Loan"). The obligations of Borrower under the Investors Loan Agreement and the Investors Loan Documents (as hereinafter defined) are also secured by the Collateral.

C. Borrower and Khosla Ventures IV, LP, Khosla Ventures IV (CF), LP, and Activate Capital Partners, L.P. entered into that certain Secured Note Purchase Agreement and related Secured Convertible Promissory Notes, all dated October 21, 2019 (as may be amended, modified, restated, replaced, or supplemented from time to time, the "Prior Loan Agreement", together with the Structural Loan Agreement and the Investors Loan Agreement, each sometimes referred to herein as a "Loan Agreement" or collectively as the "Loan Agreements), pursuant to which Investors loaned Borrower \$5,000,000 (the "Prior Loan"; together with the Structural Term Loan and the Investors Loan, each sometimes referred to herein as a "Loan" or collectively as "Loans"). The obligations of Borrower under the Prior Loan Agreement and the Prior Loan Documents (as hereinafter defined) are also secured by the Collateral.

D. The Investors loaned funds to Borrower pursuant to a Note Purchase Agreement dated as of August 19, 2019, and related convertible promissory notes in the principal amount of \$6,000,000 (the "August Loan"). Borrower's obligations under the August Loan are unsecured.

E. Structural and Investors desire to set forth in this Agreement their respective rights, priorities and interests governing their respective relationships with Borrower and the Collateral.

F. Unless otherwise defined herein, terms capitalized herein shall have the meanings ascribed to them in the applicable Loan Agreement, and if not defined in the Loan Agreements, the Uniform Commercial Code as adopted in the State of California (the "Code").

## AGREEMENT

The parties agree as follows:

### 1. DEFINITIONS AND CONSTRUCTION

1.1 **Definitions.** As used in this Agreement, the following terms shall have the following definitions:

"August Loan" has the meaning given to such term in Recital C.

"Bankruptcy Code" means the federal bankruptcy law of the United States as from time to time in effect, currently as Title 11 of the United States Code. Section references to current sections of the Bankruptcy Code shall refer to comparable sections of any revised version thereof if section numbering is changed.

"Claim" means any and all present and future "claims" (used in its broadest sense, as contemplated by and defined in Section 101(5) of the Bankruptcy Code, but without regard to whether such claim would be disallowed under the Bankruptcy Code) of any Lender now or hereafter arising or existing under or relating to such Lender's Loan Agreement and related Loan Documents, whether joint, several, or joint and several, whether fixed or indeterminate, due or not yet due, contingent or non-contingent, matured or unmatured, liquidated or unliquidated, or disputed or undisputed, whether under a guaranty or a letter of credit, and whether arising under contract, in tort, by law, or otherwise, any interest or fees thereon (including interest or fees that accrue after the filing of a petition by or against Borrower under the Bankruptcy Code, irrespective of whether allowable under the Bankruptcy Code), any costs of Enforcement Actions, including reasonable attorneys' fees and costs, and any prepayment or termination premiums.

"Code" has the meaning given to such term in Recital E.

"Collateral" means all of the property of Borrower whether presently existing or hereafter created or acquired, and wherever located listed on Exhibit A, hereto, provided that capitalized terms used but not defined in Exhibit A shall have the meaning provided in the Structural Loan Agreement.

"Enforcement Action" means, with respect to any Lender and with respect to any Claim of such Lender or any item of Collateral in which such Lender has or claims a security interest, lien or right of offset, any action, whether judicial or nonjudicial, to repossess, collect, accelerate, offset, recoup, give notification to third parties with respect to, sell, dispose of, foreclose upon, give notice of sale, disposition, or foreclosure with respect to, or obtain equitable or injunctive relief with respect to, such Claim or Collateral. The filing, or the joining in the filing, by any Lender of an involuntary bankruptcy or insolvency proceeding against Borrower also is an Enforcement Action.

**“First Amendment”** means that certain First Amendment to Loan and Security Agreement dated as of August 19, 2019, by and among Borrower, SCI II and Ocean, as may be amended from time to time.

**“Investors Loan Agreement”** has the meaning given to such term in Recital B.

**“Investors Loan Documents”** means the Investors Loan Agreement, the secured promissory notes executed in connection therewith, and any other agreement, document, promissory note, financing statement, or instrument executed by Borrower in favor of Investors pursuant to or in connection with the Investors Loan, as the same has been or may be amended, modified, supplemented, renewed, or otherwise modified, from time to time, but specifically excluding any and all documentation relating to the August Loan.

**“Insolvency Event”** has the meaning given to such term in Section 4.5.

**“Lien”** means a claim, mortgage, deed of trust, levy, charge, pledge, security interest or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property, in the Collateral to secure a Claim by a Lender.

**“Loan”** or collectively **“Loans”** has the meaning given to such term in Recital C.

**“Loan Agreements”** has the meaning given to such term in Recital C.

**“Loan Documents”** means the Structural Loan Documents, the Investors Loan Documents, and/or Prior Loan Documents, as applicable.

**“Maturity Date”** means the date that the Obligations (as defined in the Structural Loan Agreement) become due and payable, whether by means of acceleration or the occurrence of the Maturity Date (as defined in the Structural Loan Agreement).

**“Party”** or collectively **“Parties”** means the Lenders.

**“Prior Loan Agreement”** has the meaning given to such term in Recital C.

**“Prior Loan Documents”** means the Prior Loan Agreement, the secured promissory notes executed in connection therewith, and any other agreement, document, promissory note, financing statement, or instrument executed by Borrower in favor of Khosla Ventures IV, LP, Khosla Ventures IV (CF), LP or Activate Capital Partners, L.P., as applicable, pursuant to or in connection with the Prior Loan, as the same has been or may be amended, modified, supplemented, renewed, or otherwise modified, from time to time, but specifically excluding any and all documentation relating to the August Loan.

**“Proceeds of Collection”** means, with respect to any Collateral, the proceeds of such Collateral, and the proceeds of any remedy under the applicable Loan Documents, whether before or after the occurrence of an Event of Default.

**“Structural Loan Agreement”** has the meaning given to such term in Recital A.

**“Structural Loan Documents”** means the Structural Loan Agreement and any other agreement, document, promissory note, financing statement, or instrument executed by Borrower in favor of Structural pursuant to or in connection with the Structural Tern Loan, as the same has been or may be amended, modified, supplemented, renewed, or otherwise modified, from time to time.

**“Tranche 2 Loan”** shall have the meaning provided in the First Amendment.

**1.2 Other Interpretive Provisions.** References in this Agreement to “Recitals,” “Sections,” and “Exhibits” are to recitals, sections, and exhibits herein and hereto unless otherwise indicated. References in this Agreement to any document, instrument or agreement shall include (a) all exhibits, schedules, annexes and other attachments thereto, (b) all documents, instruments or agreements issued or executed in restatement or replacement thereof, and (c) such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified and supplemented from time to time and in effect at any given time. The words “include” and “including” and words of similar import when used in this Agreement shall not be construed to be limiting or exclusive.

## **2. INTERCREDITOR ARRANGEMENTS**

**2.1 Proportionate Interests.** Except as otherwise provided in this Agreement, any reference in this Agreement to an allocation between or sharing by the Lenders of any Proceeds of Collection or any right, interest or obligation “ratably,” “pro rata,” “pari passu,” “proportionally” or in similar terms shall refer to the ratio of (a) the aggregate outstanding principal amount of such Lender’s Loan to Borrower under its respective Loan Agreement, to (b) the aggregate outstanding principal amount of all Loans to Borrower. The provisions hereof shall apply irrespective of the time or order of attachment or perfection of security interests, or the time or order of filing or recording of financing statements.

### **2.2 Priority of Security Interests.**

(a) Notwithstanding any contrary priority established by (i) the filing dates of their respective financing statements, (ii) the recording dates of any other security perfection documents, (iii) which Lender has possession of any of the Collateral or (iv) any statute or rule of law to the contrary, the Lenders agree that, except as otherwise provided under Section 4:

(i) the Lien of Structural and Investors in the Collateral shall at all times be equal in rank and priority;

(ii) the Proceeds of Collection of the Collateral shall be distributed as provided in Section 4 below; and

(iii) The relative priority of the Liens specified in this Agreement applies only to Liens held by the Lenders (and by their respective agents) to secure Loans made under their respective Loan Agreements, and specifically excludes the August Loan.

(b) The relative priorities set forth in subsection (a) are subject to the following:

(i) No Lender shall challenge or contravene the perfection of the Lien of any other Lender. The relative priorities described in subsection (a) above, shall not apply, however, and the provisions of this Agreement shall not be effective as to any Lien which otherwise would be prior and superior, which Lien, by reason of any act or omission to act by the Lender whose rights therein under the Agreement would be superior, is judicially determined as not to be effective, or is rendered ineffective by reason of any act or omission to act of any third party to this Agreement.

(ii) A Lender's relative priority in the proceeds (within the meaning of the Code) of an asset of the Borrower shall be determined based upon that Lender's relative priority in the asset from which such proceeds arose as provided in subsection (a) above, whether such proceeds are derived from an Insolvency Event, from insurance, from disposition of Collateral following a credit bid and subsequent disposition, or otherwise.

(iii) Any Lender which conducts a liquidation shall provide each other Lender with copies of all demands, communications, correspondence, and pleadings which relate to such Lender's conduct of such liquidation. The proceeds of any liquidation shall be distributed accordance with subsection (a) above. Any Lender which conducts a liquidation shall provide the other Lender with a written statement of the results of such liquidation and the distribution of the proceeds thereof.

(iv) In the event insurance proceeds on the Collateral are hereafter realized, then the proceeds thereof shall be distributed in accordance with provisions of subsection (a) above.

(v) Each of the Lenders shall provide the other Lender with a copy of any notice of demand, or similar communication as and when given the Borrower or any guarantor. Each of the Lenders shall make reasonable efforts to provide all others as and when received, given, or executed, copy of any amendment, modification, waiver, replacement or supplement of their respective Loan Documents with the Borrower or any-guarantor. No Lender shall have any liability to the other Lender for failure to comply with this subsection.

**2.3 Further Loans by Lenders.** Structural may administer and manage its credit and other relationships with Borrower in its own best interest, without notice to or consent of Investors. At any time and from time to time, Structural may enter into any amendment or agreement with Borrower as Structural may deem proper, including increasing the amount of the Structural Term Loan, extending the time of payment of or renewing or otherwise altering the terms of all or any of the Structural Term Loan or affecting the collateral security for, supporting or underlying any or all of the Structural Term Loan, and may exchange, sell, release, surrender or otherwise deal with any such collateral without in any way thereby impairing or affecting this Agreement, and all such additional agreements and amendments shall be Structural Loan Documents evidencing the Structural Term Loan. After the date hereof, Investors may not extend credit to Borrower without notice to and the consent of Structural.

## **2.4 Transfer of Interest in Loans.**

**2.4.1 Consent.** No Lender may sell or otherwise transfer any of its interest in its Loan Agreement, or the applicable related Loan Documents without first delivering a copy of this Agreement to the proposed transferee or assignee, and obtaining the acknowledgment of the proposed transferee or assignee that the transfer or assignment is subject to all of the terms of this Agreement; provided, however, each Lender may sell to any other financial entity participation interests in such Lender's rights under this Agreement, its Loan Agreement and the other applicable Loan Documents without delivering or obtaining such acknowledgment, provided that notwithstanding the sale of participations, such Lender shall remain solely responsible for the performance of its obligations under this Agreement and its Loan Agreement, and the other Lender shall continue to deal solely and directly with such Lender in connection with this Agreement, the Loan Agreement and the other applicable Loan Documents.

**2.4.2 Assumption of Obligations.** The transferee shall assume all obligations of the transferring Lender under this Agreement, its Loan Agreement and the other applicable Loan Documents, provided, that to the extent the transferor shall not transfer the entirety and shall retain any portion of its interest in its Loan Agreement and the other applicable Loan Documents, the transferor shall retain its obligations under this Agreement, its Loan Agreement and the other applicable Loan Documents with respect to that portion of its interest.

**2.5 Bailee for Perfection.** If any Lender shall obtain possession or control of any Collateral, it shall hold such Collateral for itself and as agent and bailee for the other Lender for purposes of perfecting such other Lender's security interest therein; provided, that a Lender in the possession or having control of any Collateral shall not have any duty or liability to protect or preserve any rights pertaining to any of the Collateral and, except for gross negligence or willful misconduct as determined pursuant to a final non-appealable order of a court of competent jurisdiction, the non-possessing and/or non-controlling Lender hereby waives and releases the other Lender from, all claims and liabilities arising pursuant to the possessing Lender's role as bailee with respect to the Collateral, so long as the possessing and/or controlling Lender shall use the same degree of care with respect thereto as the possessing and/or controlling Lender uses for similar property pledged to the possessing and/or controlling Lender as collateral for indebtedness of others to the possessing and/or controlling Lender. Notwithstanding the foregoing, if any Investor obtains possession of any Collateral, such Investor shall immediately deliver such Collateral to Ocean, and failure to do so shall constitute a material breach of this Agreement by such Investor, upon which such Investor hereby subordinates its entitlement to participate pro rata until the Claims of Structural and any non-defaulting Investor are paid in full in cash.

## **3. ALLOCATION OF PAYMENTS PRIOR TO THE MATURITY DATE**

Nothing in this Agreement shall prohibit the receipt by Structural without a corresponding pro rata payment to Investors of the required or permitted payment of non-default interest, administration fees, and Lender Expenses (as defined in the Structural Loan Documents) owed in respect of Obligations to Structural prior to the Maturity Date. All other payments by Borrower to Lenders shall be made as provided pursuant to Section 4.3.

#### **4. REMEDIES UPON AN EVENT OF DEFAULT**

##### **4.1 Exercise of Remedies by Structural under the Structural Loan Agreement.**

Notwithstanding anything to the contrary contained in this Agreement or in the Structural Loan Documents, upon the occurrence of an Event of Default, Structural shall be free at all times to exercise or to refrain from exercising any and all rights and remedies it may have with respect to the Collateral under the Structural Loan Documents or under applicable law, including the taking or refraining from taking any Enforcement Action.

##### **4.2 Exercise of Remedies by Investors under the Investors Loan Agreement.**

Notwithstanding anything to the contrary contained in this Agreement or in the Investors Loan Agreement, upon the occurrence of an Event of Default, Investors may only provide a notice that all obligations under the Investors Loan Agreement are due, but may not take any other Enforcement Action without Ocean's prior written consent.

**4.3 Application of Proceeds of Collection of Collateral.** Notwithstanding anything to the contrary in the Loan Agreements, as among the Lenders, the Proceeds of Collection of the Collateral shall upon receipt by any Lender be paid to and applied as follows:

**4.3.1 First,** to the payment of then outstanding out-of-pocket costs and expenses of Structural expended to preserve the value of Collateral, of foreclosure or suit, if any, and of such sale and the exercise of any other rights or remedies with respect to the Collateral;

**4.3.2 Second,** to Structural in an amount up to the unpaid principal and interest relating to the Tranche 2 Loan;

**4.3.3 Third,** to Structural and Investors pro rata until all each Lender's Claims are satisfied in full; and

**4.3.4 Fourth,** to Borrower, its successors and assigns, or to whomsoever may be lawfully entitled to receive the same.

Proceeds of Collection resulting from the disposition of Collateral following a credit bid where SCI II, Ocean, and/or their affiliates acquire any Collateral shall be distributed in accordance with Section 4.8 rather than this Section 4.3.

**4.4 Insurance.** In the event of any loss affecting any Collateral, Structural shall, subject to the Borrower's rights under the Structural Loan Agreement, have the sole and exclusive right, to adjust settlement of any insurance policy applicable to such Collateral. All proceeds of such insurance applicable to such Collateral shall (subject to the Borrower's rights under the Structural Loan Agreement) be applied in the same manner set forth in Section 4.3 with respect to such Collateral itself and other Proceeds thereof.

**4.5 Insolvency Events.** In the event of any distribution, division, or application, partial or complete, voluntary or involuntary, by operation of law or otherwise, of all or any part of the property of Borrower or the proceeds thereof to the creditors of Borrower, or the readjustment of any of the Claims, whether by reason of liquidation, bankruptcy, arrangement, receivership, assignment for the benefit of creditors or any other action or proceeding involving

the readjustment of all or any part of any of the Claims, or the application of the property of Borrower to the payment or liquidation thereof, or upon the dissolution or other winding up of Borrower's business, or upon the sale of all or any substantial part of Borrower's property (any of the foregoing being hereinafter referred to as an "Insolvency Event"), then, and in any such event, the provisions of this Agreement shall remain in full force and effect. In addition to and without limiting the foregoing, without Structural's prior written consent: (a) until obligations under the Senior Loan Documents have been fully paid in cash, no Investor shall commence or join in any involuntary bankruptcy petition or similar judicial proceeding against Borrower, and (b) if an Insolvency Event occurs: (i) no Investor shall assert any claim, motion, objection or argument in respect of the Collateral in connection with any Insolvency Event which could otherwise be asserted or raised in connection with such Insolvency Event, including, without limitation, any claim, motion, objection or argument seeking adequate protection or relief from the automatic stay in respect of the Collateral, (ii) Structural may consent to the use of cash collateral on such terms and conditions and in such amounts as it shall in good faith determine without seeking or obtaining the consent of any Investor, provided that Investors receive the same adequate protection as Structural in the Collateral consistent with the provisions of this Agreement, (iii) if use of cash collateral by Borrower is consented to by Structural, no Investor shall oppose such use of cash collateral on the basis that such Investor's interest in the Collateral (if any) is impaired by such use or inadequately protected by such use, or on any other ground, provided that Investors receive the same adequate protection as Structural in the Collateral consistent with the provisions of this Agreement, and (iv) no Investor shall object to, or oppose, any sale or other disposition of any assets comprising all or part of the Collateral, free and clear of security interests, liens and claims of any party, including Investors, under Section 363 of the United States Bankruptcy Code or otherwise, on the basis that the interest of Investor in the Collateral (if any) is impaired by such sale or inadequately protected as a result of such sale, or on any other ground (and, if requested by Structural, Investors shall affirmatively and promptly consent to such sale or disposition of such assets), if Structural has consented to, or supports, such sale or disposition of such assets, provided that Investors and Structural's treatment is consistent with the provisions of this Agreement.

**4.6 Appointment.** Until the Senior Indebtedness is fully paid in cash, each Investor irrevocably appoints Ocean as such Investor's attorney in fact, and grants to Ocean a power of attorney with full power of substitution, in the name of such Investor or in the name of Ocean, for the use and benefit of Ocean, without notice to such Investor, (i) in any Insolvency Event involving Borrower to file the appropriate claim or claims in respect of indebtedness on behalf of any Investor that does not do so prior to thirty (30) days before the expiration of the time to file claims in such proceeding, and (ii) otherwise in the name of Investors to collect and enforce, and to submit claims in respect of, any indebtedness on behalf on any Investor and to apply amounts received thereon in accordance with this Agreement (including any post-petition interest in any bankruptcy or similar proceeding), and to vote any indebtedness on behalf of any Investors in favor of or in opposition to any matter.

**4.7 Return of Payments.** To the extent any payment for the account of Borrower is required to be returned as a voidable transfer or otherwise, the Lenders shall contribute to one another as is necessary to ensure that such return of payment is in accordance with the provisions of Sections 2.2, 4.3 or 4.8, as applicable.

**4.8 Credit Bid By Lenders.** Without the written consent of Structural, Investors shall not credit bid at any foreclosure sale or other sale of any of the Collateral. If Structural, Ocean and/or any of their affiliates obtain any Collateral by credit bid, such entity or entities will own such Collateral (and Investors shall not), provided however, that upon any sale or disposition of such Collateral, proceeds will be distributed as is necessary to ensure that such distribution is in accordance with the provisions of Sections 2.2, 4.3.1, 4.3.2 and 4.3.3, as applicable. Structural shall, or shall cause its affiliates to, sell or otherwise liquidate any Collateral obtained through a credit bid expeditiously, it being the Lenders' intent that such Collateral should be liquidated promptly, provided however, that if in Agent's reasonable determination any such Collateral has restrictions on transfer which impair its value, Agent may wait to liquidate such Collateral until either such restrictions are removed or their affect on the value of the Collateral as diminished.

## **5. EXCULPATION OF AND DELEGATION BY LENDERS**

**5.1 Exculpation.** In connection with any exercise of Enforcement Actions hereunder, neither any Lender nor any of its partners, or any of their respective directors, officers, employees, attorneys, accountants, or agents shall be liable as such for any action taken or omitted by it or them, except for its or their own gross negligence or willful misconduct with respect to its duties under this Agreement.

**5.2 Delegation of Duties.** Each Lender may execute any of its powers and perform any duties hereunder either directly or by or through agents or attorneys-in-fact. Each Lender shall be entitled to advice of counsel concerning all matters pertaining to such powers and duties. No Lender shall be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it, if the selection of such agents or attorneys-in-fact was done without gross negligence or willful misconduct.

## **6. NO RESPONSIBILITY FOR INVESTIGATION**

Each Lender agrees that it will make its own independent investigation of the financial condition and affairs of Borrower in connection with the making of its Loan pursuant to its Loan Agreement and has made and shall continue to make its own appraisal of the creditworthiness of Borrower. No Lender shall have any duty or responsibility either initially or on a continuing basis to make any such investigation or any such appraisal on behalf of all Lenders or to provide the other Lender with any credit or other information with respect thereto whether coming into its possession before the date hereof or any time or times thereafter and shall further have no responsibility with respect to the accuracy of or the completeness of the information provided to the Lenders by Borrower.

## **7. REPRESENTATIONS AND WARRANTIES**

**7.1 Due Organization and Qualification.** SCI II represents and warrants that it is a limited partnership duly existing and in good standing under the laws of the State of Delaware. Ocean represents and warrants that it is a limited liability company duly existing and in good standing under the laws of the State of California. Each Investor represents and warrants that it is duly existing and in good standing under the laws of its jurisdiction of formation. Each Lender

represents and warrants that it is qualified and licensed to do business in, and is in good standing in, any state in which the conduct of its business or its ownership of property requires that it be so qualified, except for such states as to which any failure so to qualify would not have a material adverse effect on such Lender.

**7.2 Authority.** Each Lender represents and warrants that it has all necessary power and authority to execute, deliver and perform this Agreement in accordance with the terms hereof and that it has all requisite power and authority to own and operate its properties and to carry on its business as now conducted.

**7.3 Authorization: Enforceability.** Each Lender represents and warrants that (a) the execution and delivery of this Agreement and the consummation of the transactions contemplated herein have each been duly authorized by all necessary action on the part of such Lender and (b) this Agreement has been duly executed and delivered and constitutes a legal, valid and binding obligation of such Lender, enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws of general application relating to or affecting the enforcement of creditors' rights or by general principles of equity.

## **8. NOTICES**

Unless otherwise provided in this Agreement, all notices or demands by any Party relating to this Agreement or any other agreement entered into in connection herewith shall be in writing and (except informal documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by certified mail, postage prepaid, return receipt requested, or by facsimile to the Lenders, at the respective addresses or fax numbers set forth below:

If to SCI II or Ocean:                   400 Oyster Point Blvd, Suite 229  
South San Francisco, CA 94080  
Attn: Todd Jaquez-Fissori, Managing Partner  
EMAIL: [todd@structuralcapital.com](mailto:todd@structuralcapital.com)

If to Investors:                           At the address provided below such Investors signature  
hereto

The Parties hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other.

## **9. NO BENEFIT TO THIRD PARTIES**

The terms and provisions of this Agreement shall be for the sole benefit of Lenders and their respective successors and assigns, and no other Person (including Borrower) shall have any right, benefit, priority, or interest under or because of this Agreement.

## **10. GENERAL PROVISIONS**

**10.1 Changes.** Investors agree that Structural may at any time, and from time to time, without the consent of Investors and without notice to Investors, but subject in all respects to the

priorities set forth in this Agreement, including Section 4.3: renew or extend any of the Borrower's indebtedness and obligations owing to Structural or that of any other person at any time directly or indirectly liable for the payment of thereof; accept partial payments of its Claims; settle, release (by operation of law or otherwise), compromise, collect or liquidate any of its Claims; release, exchange, fail to perfect, delay the perfection of, fail to resort to, or realize upon its Collateral; change, alter or vary the interest charge on, or any other terms or provisions of its Claims or any present or future instrument, document or agreement with the Borrower; and take any other action or omit to take any other action with respect to its Claims as it deems necessary or advisable in its sole discretion. Investors waive any right to require Structural to proceed first against some Collateral before proceeding against other Collateral, or to exercise certain remedies before exercising other remedies, whether under the equitable doctrine of marshalling or otherwise, but subject, in all cases, to the provisions of this Agreement.

**10.2 Successors and Assigns.** This Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of each of the Lenders; provided, however, that neither this Agreement nor any rights hereunder may be assigned, transferred or participated by any Lenders thereto without being in compliance with Section 2.4.

**10.3 Severability of Provisions.** Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

**10.4 Entire Agreement; Construction; Amendments and Waivers.**

**10.4.1** This Agreement constitutes and contains the entire agreement between the Parties and supersedes any and all prior agreements, negotiations, correspondence, understandings and communications between the parties, whether written or oral, respecting the subject matter hereof. Notwithstanding the foregoing, Lenders acknowledge that Structural has certain rights under the Investors Loan Agreement and nothing in this Agreement is intended to, nor shall be construed as, limiting such rights.

**10.4.2** This Agreement is the result of negotiations between and has been reviewed by each of the Parties executing this Agreement as of the date hereof and their respective counsel; accordingly, this Agreement shall be deemed to be the product of the Parties hereto, and no ambiguity shall be construed in favor of or against any Party. Parties agree that they intend the literal words of this Agreement and that no parole evidence shall be necessary or appropriate to establish any Party's actual intentions.

**10.4.3** Any and all amendments, modifications, discharges or waivers of, or consents to any departures from any provision of this Agreement shall not be effective without the written consent of each Lender against which enforcement of the same is sought. Any waiver or consent with respect to any provision of this Agreement shall be effective only in the specific instance and for the specific purpose for which it was given. Any amendment, modification, waiver or consent effected in accordance with this Section 10.4 shall be binding upon each Lender.

**10.5 Counterparts.** This Agreement may be executed in any number of counterparts, including counterparts transmitted by facsimile or other means of electronic transmission, and by

different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement.

**10.6 Termination.** This Agreement shall terminate upon the later of irrevocable payment in full to each Lender of all amounts owing to it under the Loan Agreements and the termination of all obligations to lend thereunder.

**10.7 Reinstatement.** Notwithstanding any provision of this Agreement to the contrary, the rights and obligations of the parties hereunder with respect to Borrower shall be reinstated and revived if and to the extent that for any reason any payment by or on behalf of Borrower is rescinded, or must be otherwise restored by any Lender, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, all as though such amount had not been paid. To the extent any payment is rescinded or restored, the obligations shall be revived in full force and effect without reduction or discharge for that payment.

**10.8 Survival.** All covenants, representations and warranties made in this Agreement shall continue in full force and effect so long as any obligations remain outstanding hereunder.

## **11. RELATIONSHIP OF LENDERS**

Lenders shall not under any circumstances be construed to be partners or joint venturers of one another; nor shall the Lenders under any circumstances be deemed to be in a relationship of confidence or trust or a fiduciary relationship with one another, or to owe any fiduciary duty to one another. Lenders do not undertake or assume any responsibility or duty to one another to select, review, inspect, supervise, pass judgment upon or otherwise inform each other of any matter in connection with Borrower's property, any Collateral held by any Lender or the operations of Borrower. Each Lender shall rely entirely on its own judgment with respect to such matters, and any review, inspection, supervision, exercise of judgment or supply of information undertaken or assumed by any Lender in connection with such matters is solely for the protection of such Lender.

## **12. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER**

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW, EACH OF THE LENDERS HEREBY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF CALIFORNIA.

**TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY WAIVES THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.**

WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, if the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of the Santa Clara County, California Superior Court) appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Santa Clara County, California; and the parties hereby submit to the jurisdiction of such court. The reference proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedure §§ 638 through 645.1, inclusive. The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Santa Clara County, California Superior Court for such relief. The proceeding before the private judge shall be conducted in the same manner as it would be before a court under the rules of evidence applicable to judicial proceedings. The parties shall be entitled to discovery which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The private judge shall oversee discovery and may enforce all discovery rules and order applicable to judicial proceedings in the same manner as a trial court judge. The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to the California Code of Civil Procedure § 644(a). Nothing in this paragraph shall limit the right of any party at any time to exercise self-help remedies, foreclose against collateral, or obtain provisional remedies. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

**STRUCTURAL:**

**Structural Capital Investments II, LP,**  
a Delaware limited partnership

**By: Structural Capital GP II, LLC,**  
a Delaware limited liability company  
its General Partner

By:   
Name: Lawrence Gross  
Title: Managing Member

**COLLATERAL AGENT and  
ADMINISTRATIVE AGENT:**

**Ocean II PLO, LLC,**  
a California limited liability company

**By: Structural Capital Management Company II, LP,**  
a Delaware limited partnership  
its Manager

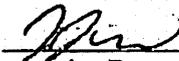
By:   
Name: Lawrence Gross  
Title: General Partner

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

**INVESTORS:**

**KHOSLA VENTURES IV, LP**

By: Khosla Ventures Associates IV, LLC, a Delaware limited liability company and general partner of Khosla Ventures IV, LP

By:   
Name: John Demeter  
Title: General Counsel

**KHOSLA VENTURES IV (CF), LP**

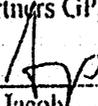
By: Khosla Ventures Associates IV, LLC, a Delaware limited liability company and general partner of Khosla Ventures IV (CF), LP

By:   
Name: John Demeter  
Title: General Counsel

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

**INVESTORS:**

**ACTIVATE CAPITAL PARTNERS, L.P.**  
By: ACG Partners GP, LP, its general partner  
By: ACG Partners GP, LLC, its general partner

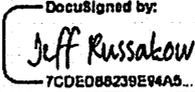
By:   
Name: Anup Jacob  
Title: Managing Member

**ACKNOWLEDGMENT**

Borrower hereby acknowledges that it has received a copy of the foregoing Intercreditor Agreement (the "Intercreditor Agreement") and agrees to recognize all rights granted by the Intercreditor Agreement to Parties thereto, waive the provisions of section 9-615(a) of the UCC in connection with the application of proceeds of Collateral in accordance with the provisions of the Intercreditor Agreement, agree that it will not do any act or perform any obligation which is not in accordance with the agreements set forth in the Intercreditor Agreement and, without limiting the generality of the foregoing, agrees to abide by the Intercreditor Agreement as if it fully applied to it. Borrower further acknowledges and agrees that it is not an intended beneficiary or third party beneficiary under the Intercreditor Agreement, as amended, restated, supplemented or otherwise modified hereafter.

**ACKNOWLEDGED AS OF THE DATE FIRST WRITTEN ABOVE:**

Boosted, Inc.,  
a Delaware corporation

By   
Name Jeff Russakow  
Title Chief Executive Officer

## EXHIBIT A

### Collateral

All property of Borrower (herein referred to as "Borrower" or "Debtor") whether presently existing or hereafter created or acquired, and wherever located, including, but not limited to (collectively, the "Collateral"):

(a) all accounts (including health-care-insurance receivables), chattel paper (including tangible and electronic chattel paper), commercial tort claims, deposit accounts, securities accounts, documents (including negotiable documents), equipment (including all accessions and additions thereto), general intangibles (including payment intangibles and Intellectual Property), goods (including fixtures), instruments (including promissory notes), Inventory (including all goods held for sale or lease or to be furnished under a contract of service, and including returns and repossessions), investment property (including securities and securities entitlements), letter of credit rights, money, and all of Debtor's books and records with respect to any of the foregoing, and the computers and equipment containing said books and records;

(b) all real property interests (including leaseholds, mineral rights, timber, etc.); and

(c) any and all cash proceeds and/or noncash proceeds of any of the foregoing, including, without limitation, insurance proceeds, and all supporting obligations and the security therefor or for any right to payment.

Notwithstanding the foregoing, in no event shall the Collateral include: (a) any lease, license, contract, property rights or agreement to which Borrower is a party or any of its rights or interests thereunder if and for so long as the grant of such security interest shall constitute or result in (i) the abandonment, invalidation or unenforceability of any right, title or interest of Borrower therein or (ii) in a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract property rights or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9406, 9407, 9408 or 9409 of the Code (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including the Bankruptcy Code) or principles of equity); provided that the Collateral shall include and such security interest shall attach immediately (x) at such time as the condition causing such abandonment, invalidation or unenforceability shall be remedied and to the extent severable, shall attach immediately to any portion of such lease, license, contract, property rights or agreement that does not result in any of the consequences specified in (i) or (ii) above and (y) to any all Proceeds, products, accessions, rents and profits of or in respect of any of the foregoing such lease, licenses, contract, property right or agreement; (b) in any of the outstanding capital stock of a foreign subsidiary in excess of 65% of the voting power of all classes of capital stock of such foreign subsidiary entitled to vote; or (c) any intent-to use Trademark applications prior to the filing of a "Statement of Use", "Amendment to Allege Use" or similar filing with regard thereto, to the extent and solely during the period, in which the grant of a security interest therein may impair the validity or enforceability of any Trademark that may issue from such intent to use Trademark application under applicable law.

**EXHIBIT 2**  
Exhibit A to Structural Term Loan

**EXHIBIT A**

**DEBTOR:** Boosted, Inc.  
**SECURED PARTY:** Ocean II PLO LLC

**COLLATERAL DESCRIPTION ATTACHMENT  
TO LOAN AND SECURITY AGREEMENT**

All property of Borrower (herein referred to as "Borrower" or "Debtor") whether presently existing or hereafter created or acquired, and wherever located, including, but not limited to (collectively, the "Collateral"):

(a) all accounts (including health-care-insurance receivables), chattel paper (including tangible and electronic chattel paper), commercial tort claims, deposit accounts, securities accounts, documents (including negotiable documents), equipment (including all accessions and additions thereto), general intangibles (including payment intangibles and Intellectual Property), goods (including fixtures), instruments (including promissory notes), Inventory (including all goods held for sale or lease or to be furnished under a contract of service, and including returns and repossessions), investment property (including securities and securities entitlements), letter of credit rights, money, and all of Debtor's books and records with respect to any of the foregoing, and the computers and equipment containing said books and records;

(b) all real property interests (including leaseholds, mineral rights, timber, etc.); and

(c) any and all cash proceeds and/or noncash proceeds of any of the foregoing, including, without limitation, insurance proceeds, and all supporting obligations and the security therefor or for any right to payment.

Notwithstanding the foregoing, in no event shall the Collateral include: (a) any lease, license, contract, property rights or agreement to which Borrower is a party or any of its rights or interests thereunder if and for so long as the grant of such security interest shall constitute or result in (i) the abandonment, invalidation or unenforceability of any right, title or interest of Borrower therein or (ii) in a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract property rights or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9406, 9407, 9408 or 9409 of the Code (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including the Bankruptcy Code) or principles of equity); provided that the Collateral shall include and such security interest shall attach immediately (x) at such time as the condition causing such abandonment, invalidation or unenforceability shall be remedied and to the extent severable, shall attach immediately to any portion of such lease, license, contract, property rights or agreement that does not result in any of the consequences specified in (i) or (ii) above and (y) to any all Proceeds, products, accessions, rents and profits of or in respect of any of the foregoing such lease, licenses, contract, property right or agreement; (b) in any of the outstanding capital stock of a foreign subsidiary in excess of 65% of the voting power of all classes of capital stock of such foreign subsidiary entitled to vote; or (c) any intent-to use Trademark applications prior to the filing of a "Statement of Use", "Amendment to Allege Use" or similar filing with regard thereto, to the extent and solely during the period, in which the grant of a security interest therein may impair the validity or enforceability of any Trademark that may issue from such intent to use Trademark application under applicable law.

**EXHIBIT 2**

**EXHIBIT 3**  
Notice of Disposition of Collateral

**NOTIFICATION OF DISPOSITION OF COLLATERAL**

To: Boosted, Inc.

From: Ocean II PLO LLC, 400 Oyster Point Blvd, Suite 229, South San Francisco, CA 94080, telephone: 650-595-8548.

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We will sell the property owned by Boosted, Inc. listed on Exhibit A, hereto, in two lots to the highest qualified bidder in public as follows:

Day and Date: Tuesday, March 17, 2020

Time: 1:00 p.m. (Pacific Daylight Time)

Place: 400 Oyster Point Blvd, Suite 229, South San Francisco, CA

The first lot will consist of all of Boosted, Inc.'s: (a) inventory (including work in process, raw materials and spare parts (related to goods but not equipment)), (b) accounts receivables and cash, (c) tax and tariff refunds owned by Boosted, Inc. and (d) all books, records and insurance proceeds related to items (a)-(c) (including computers and equipment containing such books and records) (collectively, the "First Lot Property"). The second lot will consist of all the property listed on Exhibit A, hereto, but excluding the First Lot Property.

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell for a charge of \$2,500.

You may request an accounting by calling us at 650-595-8548.

**OCEAN II PLO LLC**

a California limited liability company

By: STRUCTURAL CAPITAL MANAGEMENT COMPANY II, LP,

a Delaware limited partnership

its Manager

By: 

Name: Lawrence Gross

Title: Managing Partner

March 4, 2020

EXHIBIT 3

## EXHIBIT A

### Description of Property Being Sold

All property of Boosted, Inc. (herein referred to as "Debtor") whether presently existing or hereafter created or acquired, and wherever located, including, but not limited to (collectively, the "Collateral"):

(a) all accounts (including health-care-insurance receivables), chattel paper (including tangible and electronic chattel paper), commercial tort claims, deposit accounts, securities accounts, documents (including negotiable documents), equipment (including all accessions and additions thereto), general intangibles (including payment intangibles and Intellectual Property), goods (including fixtures), instruments (including promissory notes), inventory (including all goods held for sale or lease or to be furnished under a contract of service, and including returns and repossessions), investment property (including securities and securities entitlements), letter of credit rights, money, and all of Debtor's books and records with respect to any of the foregoing, and the computers and equipment containing said books and records;

(b) all real property interests (including leaseholds, mineral rights, timber, etc.); and

(c) any and all cash proceeds and/or noncash proceeds of any of the foregoing, including, without limitation, insurance proceeds, and all supporting obligations and the security therefor or for any right to payment.

Notwithstanding the foregoing, in no event shall the Collateral include: (a) any lease, license, contract, property rights or agreement to which Debtor is a party or any of its rights or interests thereunder if and for so long as the grant of such security interest shall constitute or result in (i) the abandonment, invalidation or unenforceability of any right, title or interest of Debtor therein or (ii) in a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract property rights or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9406, 9407, 9408 or 9409 of the Code (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including 11 U.S.C. Title 11) or principles of equity); provided that the Collateral shall include and such security interest shall attach immediately (x) at such time as the condition causing such abandonment, invalidation or unenforceability shall be remedied and to the extent severable, shall attach immediately to any portion of such lease, license, contract, property rights or agreement that does not result in any of the consequences specified in (i) or (ii) above and (y) to any all proceeds, products, accessions, rents and profits of or in respect of any of the foregoing such lease, licenses, contract, property right or agreement; (b) in any of the outstanding capital stock of a foreign subsidiary in excess of 65% of the voting power of all classes of capital stock of such foreign subsidiary entitled to vote; or (c) any intent-to use Trademark applications prior to the filing of a "Statement of Use", "Amendment to Allege Use" or similar filing with regard thereto, to the extent and solely during the period, in which the grant of a security interest therein may impair the validity or enforceability of any Trademark that may issue from such intent to use Trademark application under applicable law.

For the purposes of this Exhibit A, the following capitalized terms shall have the meanings provided below:

"Code" means the Uniform Commercial Code as adopted and in effect in the State of California, as amended from time to time, provided, that, to the extent that the Code is used to define any term herein and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to the secured party's security interest on any Collateral is governed by the Uniform Commercial Code in

effect in a jurisdiction other than the State of California, the term "Code" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

**"Copyrights"** means any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof.

**"Governmental Authority"** means (a) any United States federal, state, county, municipal or foreign government, or political subdivision thereof, (b) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, (c) any court or administrative tribunal or (d) with respect to any Person, any arbitration tribunal or other similar non-governmental authority to whose jurisdiction that Person has consented.

**"Intellectual Property"** means all of a Person's right, title, and interest in and to the following: domain names; Copyrights, Trademarks and Patents (including registrations and applications therefor prior to granting, and whether or not filed, recorded or issued); all trade secrets and related rights, including without limitation rights to unpatented inventions, know-how and manuals; all design rights; claims for damages by way of past, present and future infringement of any of the rights included above; all amendments, renewals and extensions of any Copyrights, Trademarks or Patents.

**"Patents"** means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

**"Person"** means and includes any individual, any partnership, any corporation, any business trust, any joint stock company, any limited liability company, any unincorporated association or any other entity and any Governmental Authority.

**"Trademarks"** means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of a Person connected with and symbolized by such trademarks.

**EXHIBIT 4**  
Public Sale Notice in  
San Francisco Business Times

LEADS

Whitburn Ventures Inc./XP&D, 600 California St. #11, San Francisco 94108, \$10,740, (employment development dept), document #2020-02/05/20.

Young's Roofing Inc., 1165 Foster Ave. E., San Francisco 94124, \$10,000, (franchise tax board), document #2020-02/05/20.

SmartSapient Inc., 134 Holladay Ave., San Francisco 94110, \$11,507, (franchise tax board), document #2020-02/05/20.

SAN MATEO COUNTY

Chico Inc. dba Chico's Service Station, 1112 High Ave., San Francisco 94122, \$13,916, (CA dept of tax & fee admin), document #2020-02/11/20, 02/12/20.

Via Mare of America Inc., 6423 Mission St., Dept City 94014, \$1,432, (CA dept of tax & fee admin), document #2020-02/02/20, 02/12/20.

US Meats LLC, 1532 Loma Ave., San Mateo 94401, \$12,675, (CA dept of tax & fee admin), document #2020-02/21/20, 02/12/20.

Asa Woodhill LLC, 305 E. 16th Ave., San Mateo 94402, \$13,345, (franchise tax board), document #2020-02/13/20.

Fatima E. Mare Inc., 1055 Robin Rd., Burlingame 94010, \$31,549, (CA dept of tax & fee admin), document #2020-02/09/20, 02/13/20.

Fatima E. Mare Inc., 1055 Robin Rd., Burlingame 94010, \$194,252, (CA dept of tax & fee admin), document #2020-02/09/20, 02/13/20.

Released of State Tax Liens

ALAMEDA COUNTY  
CLS Global Transportation Inc., 125, 294, (employment development dept), document #2020-03/04/20, 02/19/20.

CLS Global Transportation Inc., 120, 294, (employment development dept), document #2020-03/04/20, 02/19/20.

Botner Manufacturing Inc., 111, 498, (employment development dept), document #2020-03/04/20, 02/19/20.

CONTRA COSTA COUNTY  
Teamsters Int'l, Teamsters Temporary Staffing Solutions (fired in error), \$17,187, (employment development dept), document #2020-03/12/20, 02/09/20.

Basix Int'l, Everett Contract Int'l, \$1,422, (employment development dept), document #2020-03/12/20, 02/09/20.

Teamsters Int'l, Teamsters Temporary Staffing Solutions (fired in error), \$11,110, (employment development dept), document #2020-03/12/20, 02/09/20.

Ariel Ballei, \$32,427, (employment development dept), document #2020-03/12/20, 02/09/20.

Professional Automotive Enterprises Inc., \$11,378, (CA dept of tax & fee admin), document #2020-03/12/20, 02/09/20.

Cavazon Inc., \$14,765, (CA dept of tax & fee admin), document #2020-03/12/20, 02/09/20.

Urban Group LLC, \$14,564, (CA dept of tax & fee admin), document #2020-03/12/20, 02/09/20.

MARIN COUNTY  
Nirvana Enterprises Inc., 139 Fehrbach Ln. #2, Belvedere 94923, \$18,760, (CA dept of tax & fee admin), document #2020-03/16/20, 02/10/20.

SAN FRANCISCO COUNTY  
Nancy H. Khalaf aka Nancy H. Khalaf OBE, \$21,677, (franchise tax board), document #2020-02/19/20.

Matevica LLC, 1801 18th St., San Francisco 94114, \$29,275, (CA dept of tax & fee admin), document #2020-02/19/20.

Breca's Alexandria dba The Designer Consultant, 456 Geary St., San Francisco 94102, \$76,369, (CA dept of tax & fee admin), document #2020-02/19/20.

Approach Corp. (fired in error), \$18,541, (employment development dept), document #2020-02/05/20.

Approach Corp. (fired in error), \$17,728, (employment development dept), document #2020-02/05/20.

Uva Perfumes LLC, Tatavla Vallarta, \$16,804, (employment development dept), document #2020-02/05/20.

SAN MATEO COUNTY  
CAW Associates Inc. dba Cynthia L. 883 Santa Cruz Ave., Menlo Park 94025, \$11,320, (CA dept of tax & fee admin), document #2020-02/05/20, 02/12/20.

Frank S. Addigo Construction, \$10,115, (employment development dept), document #2020-02/05/20, 02/12/20.

Boxwell Inc./AMP Electric, 701, (employment development dept), document #2020-02/12/20, 02/12/20.

Mechanics' Liens

ALAMEDA COUNTY  
Claimant: SunBelt Remodeling & Contractor; Fayed Inc., \$50,122, Owner: Palmes Alameda Lodging LLC, on property at 45570 Walnut Springs Blvd., Fremont 94539, document #2020-03/05/20, 02/18/20.

Claimant: Camrains Neighborhood Supply Inc., Contractor: Diversa Stage Development/Genex Stage Management, \$38,294, Owner: District Live Development/Grant Corp Management, on property at 5601 San Leandro St., Oakland 94611, document #2020-04/05/20, 02/19/20.

Claimant: MG Remediation Inc., Contractor: Renewed Manor Apartments, \$37,161, Owner: Smith Berkeley Neighborhood Development Corp., on property at 1615 Burnett St., Berkeley 94703, document #2020-04/26/20, 02/12/20.

Claimant: Versione, Contractor: GEM Builders, \$21,369, Owner: Elm A, on property at 35584 Seabrook Rd., Newark 94566, document #2020-04/18/20, 02/24/20.

Claimant: RealUSA Inc./Plant Electric Supply, Contractor: Huber Inc., \$135,250, Owner: DuXin Crossing LLC, on property at 5801 Sterling St., Dublin 94568, document #2020-04/19/20, 02/24/20.

Claimant: JC Metal Specialists Inc., Contractor: Scargo Inc., \$109,425, Owner: 2970, on property at 2970 Sumner St., Oakland 94612, document #2020-04/23/20, 02/27/20.

CONTRA COSTA COUNTY  
Claimant: House Construction, Contractor: SCB Construction Management Services Inc., \$77,097, Owner: Northwestern Mutual Life Insurance Co., on property at 207 Virginia Valley Rd., Walnut Creek 94596, document #2020-03/10/20, 02/24/20.

Claimant: EcoBis Construction Services, Contractor: PCH Partners LLC, \$715,387, Owner: PCH Partners LLC, on property at 5141 Park Chicago Hwy., Concord 94520, document #2020-02/07/20, 01/07/20.

Claimant: Rescue Electric Corp., Contractor: Focus Realty Services Inc., \$26,339, Owner: 01 Mountain View Associates LLC, on property at 551 Mountain View Dr., Lafayette 94549, document #2020-03/20/20, 01/08/20.

Claimant: Creative Ceiling Inc., Contractor: EcoBio Construction Services, \$10,385, Owner: PCH Partners LLC, on property at 5141 Park Chicago Hwy., Concord 94520, document #2020-03/06/20, 01/07/20.

Claimant: Bay Area Roofers Health & Welfare Trust Fund, Contractor: Farnham Roofing Inc., \$12,144, Owner: Richmond Home Associates, on property at 1100 New Ave., Richmond 94804, document #2020-02/16/20, 01/15/20.

Claimant: Bay Area Roofers Health & Welfare Trust Fund, Contractor: Farnham Roofing Inc., \$12,144, Owner: Richmond Home Associates, on property at 1100 New Ave., Richmond 94804, document #2020-02/16/20, 01/15/20.

Revlon Acquisition, on property at 2200 New Ave. #34, Richmond 94804, document #2020-02/16/20, 01/15/20.

MARIN COUNTY  
Claimant: Egiez Corp., Contractor: Dale Sullivan Co., \$46,060, Owner: Waste Management/Redwood Landfill Inc., on property at 8950 Redwood Hwy., Novato 94945, document #2020-05/06/20, 02/07/20.

SAN FRANCISCO COUNTY  
Claimant: MGM Drywall Inc., Contractor: Lennox Urban and Build Group Inc., \$401,688, Owner: Lennox Urban, on property at Hubler Pl. Shipped/Driveway & Exchange St., San Francisco 94124, document #2020-02/15/20, 01/30/20.

Claimant: Walter Ng, Contractor: Build a Difference Properties LLC, \$100,574, Owner: Build a Difference Properties LLC, on property at 147 Bikey St., San Francisco 94110, document #2020-02/15/20, 01/30/20.

Claimant: De Hara Ramirez Corp., Contractor: Total Group General Contractors, \$171,711, Owner: Biscuit 1609 Market LLC, on property at 1609 Market St., San Francisco 94103, document #2020-02/15/20, 01/30/20.

Claimant: Pinarate Installations LLC, Contractor: SA Pipe Construction, \$35,054, Owner: Lefrak Property Management, on property at 300 California St., San Francisco 94104, document #2020-02/15/20, 01/31/20.

Claimant: Accu-Tech Corp., Contractor: Wellco Toocom Inc., \$121,912, Owner: Golden State Warriors, on property at Mission Bay Block 26-12, San Francisco 94116, document #2020-02/15/20, 01/31/20.

Claimant: Blaze Fireplaces of California Inc. dba Blaze, Contractor: Divines United General Contractors Corp., \$14,480, Owner: 246 Cal St. 0417 LLC, on property at 246/248 Cal St., San Francisco, document #2020-02/15/20, 01/31/20.

Claimant: Elements Manufacturing Inc., Contractor: GC inc. General Contractor, \$12,000, Owner: Hely Realty Corp., on property at 100 Hooper St. #5, San Francisco 94107, document #2020-02/15/20, 01/31/20.

Claimant: Build Group Inc., Contractor: HPA Block 55 LLC, \$19,664, Owner: HPA Block 55 LLC and Jack West et al., on property at 55/57/59 Hudson St. and 11/13/15/17/19 Howard et al., San Francisco 94124, document #2020-02/15/20, 01/31/20.

Claimant: Walker Telecommunications Inc., Contractor: Johnson Controls Inc., \$181,612, Owner: ICGP Tower 1 & H Overlay LLC, on property at 300 16th St., San Francisco 94103, document #2020-02/15/20, 02/05/20.

Claimant: Walker Telecommunications Inc., Contractor: Manhattan Clark a joint venture, \$311,613, Owner: GSW Aerial LLC, on property at 303 16th St., San Francisco 94103, document #2020-02/15/20, 02/05/20.

SAN MATEO COUNTY  
Claimant: Berkeley Comm Inc., Contractor: Theodor Bullen Corp., \$42,219, Owner: Winstar Plaza LLC, on property at 657 Walnut St., San Carlos 94070, document #2020-02/09/20, 01/29/20.

Claimant: Terra Nova Industries, Contractor: Fortitrip Inc., \$2,358,319, Owner: Bullhoun Development Co., on property at 36 Hillside Shopping Center, San Mateo 94403, document #2020-02/09/20, 02/09/20.

Claimant: Paper Material Handling dba Paper Rems, Contractor: Sison Pacific, \$27,509, Owner: Essex/Essex Forrella LP, on property at 720 S. Delaware St., San Mateo 94402, document #2020-02/11/20, 02/11/20.

Claimant: Terra Nova Industries, Contractor: Fortitrip Inc., \$2,358,319, Owner: Bullhoun Development Co., on property at 36 Hillside Shopping Center #401, San Mateo 94403, document #2020-02/09/20, 02/09/20.

Abstracts of Judgment

CONTRA COSTA COUNTY  
MCAFixed Payment LLC vs. Parifor Senior Care Service LLC, \$1,255 Trent Blvd. #100, Walnut Creek 94597, \$16,736, plaintiff, case #19-10309, 01/13/20.

MARIN COUNTY  
Professional Investors 31 LLC vs. Melissa Bradley Keel Estate Inc. & Circle Pl., San Rafael 94901, \$51,182, plaintiff, case #CV1901092, 02/13/20.

Eugene Haley Executor vs. Anton D. Nowalk Individually and as Trustee Property LLC, 1885 Hwy. 1, Marshall 94940, \$75,167, plaintiff, case #CV1901663, 02/13/20.

SAN FRANCISCO COUNTY  
Multiplier Capital LP vs. Evamodis Corp. (Feylaga - Les Angeles), 75 Broadway #102, San Francisco 94111, \$352,384, plaintiff, case #18 STCV03762, 02/04/20.

The Sherwin-Williams Co. vs. Rhodes Painting & Decorating Inc., 1485 Bayshore Blvd. #104 #200, San Francisco 94134, \$21,512, plaintiff, case #CCG 19 54242, 02/04/20.

William Cullis vs. Alchemy Networks LLC, 6 30th St. #211, San Francisco 94103, \$23,555, plaintiff, case #CCG 19 54046, 02/05/20.

People of the State of California vs. Victor Alm Individually and dba Rock On, 1900 Greenwood Dr., San Bruno 94066, \$18,564, plaintiff, case #CCG 11 509331, 02/06/20.

SAN MATEO COUNTY  
Microlands Electronics Corp. vs. Mira C. Kaul et al Optinus Ventures, 2509 Spruce St., Redwood City 94061, \$14,693, plaintiff, case #17 CV02755, 02/05/20.

New Fictitious Names Registered

ALAMEDA COUNTY  
Miyahla Shay, Ready for Market Pokuai, 1121 40th St. #203, Livermore 94550.

Miyahla Shay, Product Marketing Pokuai, 1121 40th St. #203, Livermore 94550.

Miyahla Shay, Product Marketing Pokuai, 1121 40th St. #203, Livermore 94550.

Miyahla Shay, Product Marketing Pokuai, 1121 40th St. #203, Livermore 94550.

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Miyahla Shay, Product Marketing Pokuai, 1121 40th St. #203, Livermore 94550.

Miyahla Shay, Product Marketing Pokuai, 1121 40th St. #203, Livermore 94550.

NOTICE OF PUBLIC SALE OF COLLATERAL

NOTICE IS HEREBY GIVEN that pursuant to Section 9010 of the California Uniform Commercial Code, Ocean II PLO LLC ("Secured Creditor") shall on March 17, 2020 offer for sale to the highest bidder at public sale by auction (the "Sale") collateral comprised of substantially all of the personal property of Boosted, Inc. ("Debtor") described in further detail below.

Secured Creditor will sell the property in two lots. The first lot will consist of all of Debtor's (a) inventory (including work in process, raw materials and spare parts (related to goods but not equipment)), (b) accounts receivables and cash, (c) tax and tariff refunds owned by Debtor and (d) all books, records and insurance proceeds related to items (a)-(c) (including computers and equipment containing such books and records) (collectively, the "First Lot Property"). The second lot will consist of all property of Debtor other than the First Lot Property, including (a) equipment (other than computers and equipment contained in Lot 1), (b) all Debtor's rights and interests in Debtor's intellectual property (including patent rights, trademark rights, copyrights and all similar rights), (c) Debtor's domain names, and (d) general intangibles (collectively, the "Second Lot Property", and together with the First Lot Property, the "Collateral"). The intellectual property included in the Second Lot Property principally relates to Debtor's patents, patent applications and trademarks. Interested parties may request additional and more specific listing of property contained in each Lot from Secured Creditor's counsel by sending an email request to sgasser@premiercounsel.com.

The Sale shall take place as follows:

Date: March 17, 2020 | Time: 1:00 p.m. (Pacific Daylight Time) | Place: Offices of Ocean II PLO LLC, 400 Oyster Point Blvd, Suite 229, South San Francisco, CA 94080

THE COLLATERAL WILL BE SOLD "AS IS, WHERE IS" WITHOUT RECOURSE, AND SECURED CREDITOR EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE COLLATERAL WHETHER EXPRESS OR IMPLIED, INCLUDING ANY AND ALL WARRANTIES AS TO TITLE, POSSESSION, NON-INFRINGEMENT, QUIET ENJOYMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Minimum Bid Amounts:

There will be no minimum bid amount or minimum bidding increments on either lot.

Qualifying Bids:

Bidders at the auction will not be required to qualify in advance to bid, but the winning bidder will be required to tender the full payment of the winning bid at the conclusion of the auction. If payment in full is not so tendered, Secured Party reserves the right, in its sole discretion, to either cancel the sale to the winning bidder or pursue collection of the bid amount from the winning bidder. Secured Creditor reserves the right to require any payment to be made by cash, cashier's check or other immediately available funds acceptable to Secured Creditor in its sole discretion unless prior arrangements have been made. Potential bidders may contact Secured Creditor, either directly or through its counsel, to inquire about alternative payment arrangements. Successful bidders will be required to enter into a Foreclosure Sale Agreement with Secured Creditor memorializing the sale. Secured Creditor reserves the right to bid at the auction, whether by credit bid, cash or otherwise.

Bids For Less Than All Of The First Lot Property or Second Lot Property:

In the event a bidder desires to bid for less than all of the First Lot Property or the Second Lot Property, such bidder shall make such request prior to the commencement of the auction for such lot. Secured Creditor is not required to inquire whether any bidder desires to bid on less than the full lot. Secured Creditor may, in its discretion at the time of sale, establish additional "lots" for competitive bidding. In such case, competitive bidding will proceed on a lot by lot basis, to be followed by competitive bidding for the remainder of the First Lot Property and/or the Second Lot Property, as applicable.

Summary Of Auction Procedures: The following is a summary of the rules governing the auction:

- 1. The Sale may be adjourned from time to time and notice of any adjourned sale date will be given only at the time of the scheduled sale and to those who attend the scheduled sale.
  - 2. Any interested party desiring to evaluate the Collateral should immediately contact counsel for Secured Creditor by email at sgasser@premiercounsel.com. Secured Creditor is not in possession of Collateral but will use reasonable efforts to provide reasonable additional information concerning the Collateral.
  - 3. At the conclusion of the auction for each lot, the winning bidder shall immediately tender payment of the winning bid to Secured Party and sign the Foreclosure Sale Agreement.
- The above is a summary of the Collateral and auction procedures, and interested parties desiring additional information concerning the Collateral, auction/bid procedures or terms of sale should contact Secured Creditor's counsel, Steve Gasser of Premier Counsel LLP, by email at sgasser@premiercounsel.com prior to the Sale.

LEADS

Jonathan Stranis, 795 Duffino LLC, 77 Estabrook St. #303, San Leandro 94577.  
Osama Aljaini, Dominic's Cafe, 617 Cesar E. Chavez Dr., Martinez 94026.  
Harmesh Kumar, Kitaraya, 2255 Mt. Diablo St., Concord 94520.  
Marlin Choo, Simply Barista, 7122 England St. #156, Dublin 94567.

Prima Williams, Divine Purpose Catering, 1428 103rd Ave., Oakland 94603.  
Brianna Pickney, Coffee Cones, 16 Yerman St. #25, Oakland 94610.  
Brianna Pickney, Cafe Cones, 16 Yerman St. #25, Oakland 94610.  
Irene D'Saiza, JJ Grant Co., 15114 Donnelly Ave., San Leandro 94590.  
Tatiana Tajumate, Mildari Sweets, 38815 S. Brande St., Fremont 94536.

Christopher Niles, See Angel Records, 1073 Alameda St. #A, Oakland 94608.  
Ana Guerrero, CraftyBrochs, 1115 6th St., Alameda 94501.  
Paqi Eun, Pierce Jewelry, 43258 Cottonwood St., Fremont 94539.  
April Huang, Jim's Custom, 31675 Starling Dr., Union City 94587.  
Janee Warren, Oakland Trends, 218 3rd St. #16, Oakland 94607.

Carla Bryant, JoMar Investments, 2628 Grant St., Berkeley 94703.  
Jeong Eak, Jui Salon, 743 La Playa St. #C, San Francisco 94121.  
James Warren, Skidoo Barbers and Cosmetology, 5118 International Blvd., Oakland 94601.  
Julie Pruitt, Acne Specialists Oakland, 4217 Piedmont Ave. #106, Oakland 94611.

Julie Pruitt, Julie Pruitt Acne Specialists, 4217 Piedmont Ave. #106, Oakland 94611.  
Julie Pruitt, Flutter Lash Bar, 4217 Piedmont Ave. #105, Oakland 94611.  
Julie Pruitt, Acne Specialists, 4217 Piedmont Ave. #105, Oakland 94611.  
Tatyana Samay, Relationship and Health Coaching, 132 S. Pacific St., Mountain House 95191.  
AK Janthorai, 77475

Hesperian Blvd. #188, Hayward 94545.  
Angelina Rowe, Hello's Neurosolving, 5037 Exeter Common, Fremont 94555.  
Nelly Mencia, Mundo Feliz Family Day Care, 446 Schafel Rd., Hayward 94544.  
Maxine Kharalid, Rita Parake Daycare, 4274 Treflan Ln., Dublin 94568.  
Hyon Yang, Union Station, 13260 Central Ave., Union City 94587.

Lamtha Karalen, Hyspeler Ventures, 28602 Leblond Dr., Newark 94560.  
**CONTRA COSTA COUNTY**  
MS Posing, 2635 Contra Costa Blvd., Pleasant Hill 94523.  
Mark Burke, Dill Pool Service, 160 Alamo Tr. #1184, Alamo 94507.  
Michael Silva, Pavers and More, 3148 Clayton Rd., Concord 94523.

George Dimitrios Jr., Luz Level Studios/ART Electrical, 5127 Lema Tree Way, Antioch 94531.  
Javier Mejia II, Juntos Backflow Testing, 139 Mardeck St., Richmond 94805.  
Richard Caulfield, 1877 Palms, 775 Toule Dr., Pinole 94553.  
Costa Painting, 1400 Richmond Pkwy. #7605, Richmond 94806.

SAN FRANCISCO BUSINESS TIMES BUSINESS EXCHANGE

MARCH 6, 2020

LUXURY LIVING

EMPLOYMENT

**G | The GRUBB Co.**  
6936 CHAMBERS DRIVE, OAKLAND



OPEN SUN 2-4:30PM

Bright and open with magical, private setting only minutes to Montclair Village! Level entry to large great room with walls of glass and beamed ceiling. Three bedrooms, two baths with den and office nook. Indoor outdoor living with broad decks and large yard. Attached garage with interior access. A gem!

3+BR • 2BA • \$895,000

Alexis Thompson Bebe McRae  
CalBRE #01849227 CalBRE #00875159  
C: 510.816.0706 C: 510.928.3912  
Athompson@grubbcoc.com Bmcrae@grubbcoc.com

**G | The GRUBB Co.**  
19 OAKVALE AVENUE, BERKELEY



OPEN SUN 2-4:30PM

A rare smaller scale home in the prestigious and convenient Claremont neighborhood near shops, San Francisco express bus and BART! Gracious proportions with a lovely setting. Three bedrooms, two and one-half baths, including master suite, den or study, basement storage and detached garage.

3+BR • 2.5BA • \$1,695,000

Alexis Thompson Bebe McRae  
CalBRE #01849227 CalBRE #00875159  
C: 510.816.0706 C: 510.928.3912  
Athompson@grubbcoc.com Bmcrae@grubbcoc.com

Salesforce.com, Inc. has the following jobs available in San Francisco:

- Business Value Services Senior Manager (Req.# 18-3650):** Dvlp & deliver compelling biz case presentations & financial models aimed at identifying, accelerating, justifying & expanding sales opportunities. Work closely w/ prospective & existing customers. Req's: MS(or equiv.)+5 yrs. exp. Or BS(or equiv.)+7 yrs. exp.
- UX Designer (Req.# 18-2383):** Work w/ cross-functional teams of researchers, designers, strategists & technologists to design & conduct bespoke innovation engagements to transform complex ideas into proposals for simple & elegant user-friendly designs. 5% travel to other Salesforce offices is required. Req's: MS(or equiv.) Or BS(or equiv.)+5 yrs. exp.
- Principal Solution Engineer (Req.# 19-2640):** Present product offerings & architecture in best light to prospects & customers, to evoke confidence in company's technology infrastructure & to remove all technical objections in the sales cycle. May be assigned to various, unanticipated worksites throughout U.S. Req's: MS(or equiv.)+3 yrs. exp. Or BS(or equiv.)+5 yrs. exp.
- Technical Customer Success Manager (Deployments) - Quip (Req.# 15-3514):** Identify & implement automations & processes to continually increase efficiency for customers & Quip employees alike. Req's: MS(or equiv.)+1 yr. exp. Or BS(or equiv.)+5 yrs. exp.
- Senior Security Compliance Analyst (Req.# 19-3782):** Support customer security reviews & answer security questionnaires. Maintain customer facing security & compliance documents & white paper. Employer will accept 3 or 4-yr. Bachelor's degree. Req's: MS(or equiv.)+4 yrs. exp. Or BS(or equiv.)+8 yrs. exp.

Mail resume w/ ref. to: (include Req. No.) at: Salesforce.com HQ, Rincon Post Office PO Box #162244, San Francisco, CA 94105. Salesforce.com is an Equal Opportunity & Affirmative Action Employer. Education, experience & criminal background checks will be conducted.

Twitter Inc. has the following job opportunities in its San Francisco, CA office:

- Sr. Procurement Analyst (Req.#19-6920):** Preparing monthly, quarterly & ad hoc reporting & analysis. Engaging internal stakeholders by hosting training, documenting processes, drafting communications & providing support. Telecommuting &/or travel to Twitter's San Jose Office may be req'd. Req's: BS(or equiv.)+2 yrs. exp.
  - Product Designer II (Req.# 19-5587):** Utilize knowledge of HTML, CSS & Javascript to design & dvlp mobile or desktop products w/ strong focus on advertising or biz. Req's: MS (or equiv.) OR BS(or equiv.)+5 yrs. exp.
  - Business Intelligence Analyst II (Req.# 19-3460):** Improve the data extraction pipeline through data mapping, validation, reconciliation, cleansing, standardization & integration. Req's: MS(or equiv.) OR BS(or equiv.)+5 yrs. exp.
  - Sr. Accountant (Req.# 19-3171):** Review (Prepare) supporting schedules for the 10Q & 10K reports, along w/ supporting SEC team on reviewing the reporting packages w/ particular focus on Lease Commitment Schedule. Req's: BS(or equiv.)+1 yr. exp.
- Mail resume w/ ref. (include Req. #.) to: Global Mobility, Twitter Inc., 1355 Market St., Ste. 900, San Francisco, CA 94103.

**HEAD OF BUSINESS OPERATIONS AND TECHNOLOGY** in San Francisco - Lead & scale business technology & web development teams. M+12/ B+15. Up to 20% domestic & int'l travel req'd. Mail: Ref# HBOT attn P Kennard Asana Inc 1550 Bryant St Ste 200 San Francisco CA 04103.

**STAFF ENGINEER** - With little supervision, build backend of SW products & machine learning systems. Implement scalable production SW systems, MS/5 or PhD/3. Job #SE-001, attn A. Bonutto, Sift Science, Inc. 123 Mission St Ste 2000 San Francisco CA 04105.

**SENIOR SYSTEMS ENGINEER**  
Lead architecture & validation of co's Perception sys, support validation across autonomy stack. Support Sys Eng'g team to derive sensing hardware perf req's & investigate solving HW architectures. Design HW arch for perception tech. May telecommute 1 day/wk. Mast+3yr/Bach+5y. Mail: HR #201 Re Robotics, Inc. 1400 Minnesota St San Francisco CA 94107

**SOFTWARE SECURITY ENGINEER** - Build & implement SW security, both vulnerability defense & cryptography, into large-scale, mission-critical SW & HW. B+3. Job #SSE-01, attn A. Feerst, Neuralink Corp. 3180 18th St. Suite 200 San Francisco CA 94110.

**ENGINEERING MANAGER, ADS & PARTNER** - Lead the ad & partnerships team to execute sys & app dev. Supervise up to 7 SWEs. Mail: Job #EM-1 attn T Spuhler Quizlet, Inc. 501 2nd St Ste 500 San Francisco CA 94107

**PROCESS ENGINEER** - Develop hw & processes for prod'n of Synthetic DNA. Mail: Job #PE1 attn K. Beach Twist Bioscience Corporation, 681 Gateway Blvd South San Francisco CA 94080



target first-class candidates

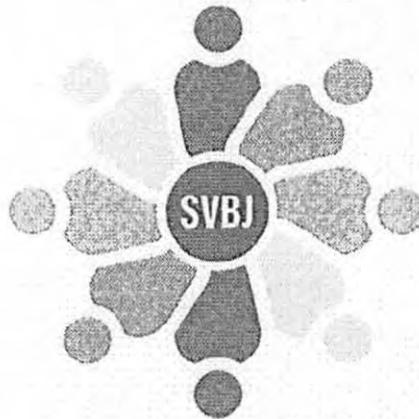
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**EXHIBIT 5**  
Public Sale Notice in  
Silicon Valley Business Journal



# LATINO BUSINESS LEADERSHIP AWARDS

Silicon Valley Business Journal

**Thursday, March 26, 2020**

11:30 AM - 1:30 PM

**Double Tree San Jose**

2050 Gateway Place, San Jose

Join us in honoring exemplary local Latino business owners, executives and entrepreneurs. On March 26, we'll celebrate their contributions and commitments to the community, along with their outstanding professional performance! We will also recognize companies for their model policies, practices and programs that promote diversity, creating opportunities and pathways to develop Latino leaders.

## Company Honorees

Intel Corp.

ATR International

## Individual Honorees

**Daniel Ballesteros**

Managing Shareholder, Hoge Fenton

**Irene Chavez**

Senior VP & Area Manager, Kaiser Permanente

**Olga Enciso-Smith**

Owner, Machu Picchu Gallery of the Americas

**Blanca Gomez**

Vice President, Wells Fargo

**Cynthia V. Guerrero**

Principal, California Strategies

**Daniel Montes Sr.**

CEO, Brilliant General Maintenance

**Richard Rapoza**

DVP of Global Clinical Affairs, Abbott

**Patricia Timm**

General Counsel, Looker

**Raul Vazquez**

CEO, Opportun

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[SiliconValleyBusinessJournal.com/event](https://SiliconValleyBusinessJournal.com/event)



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**LEADS**

Trustee no. Clear Revoc Corp.

172 French Cr.  
San Jose 95139  
Date: Mar 18, 9 AM  
Trustee: Quality Loan Service Corp.  
Original Balance: \$662,161  
Sale Location: 191 N. 1st St., San Jose, APN: 708-039; Trustee: Rick and Leze Funk  
Document no.: 24405995  
Trustee no. CA-17-770157-144

144 Menno Dr.  
Palo Alto 94306  
Date: Mar 20, 10 AM  
Trustee: PFM Loan Management Services Inc.  
Original Balance: 1744,127  
Sale Location: 191 N. 1st St., San Jose, APN: 148-06-001; Trustee: Palo Alto CA 14 LLC  
Document no.: 24406903  
Trustee no. 272-018788

11081 Chula Vista Ave.  
San Jose 95127  
Date: Apr 1, 9 AM  
Trustee: Quality Loan Service Corp.  
Original Balance: \$625,121  
Sale Location: 191 N. 1st St., San Jose, APN: 599-28-045; Trustee: Kurt I. Matzuda  
Document no.: 24411042  
Trustee no. CA-19-873161-AB

**Mechanics Liens**

Claimant: Acumatica  
Firstwin Inc. Contractor  
Pete Bryant, \$297,852  
Owner: Riverside Tower 1  
Tower LLC/West San Jose  
Deviant LLC, on property at 131 W. San Carlos St., San Jose 95110, document #24488217, 02/19/20

Claimant: Baycar Corp.  
Contractor: Complete Environmental Solutions, \$25,458, Owner: MCP1 Santa Clara LLC, on property at 1201 Lurewood Rd., Santa Clara 95054, document #24607419, 02/15/20

Claimant: Jahan Faridini dba Jahan Construction  
Contractor: HPK Corp., \$125,000, Owner: Summath Banda, on property at 13139 Kevin St., Saratoga 95079, document #24406308, 02/16/20

Claimant: Jahan Faridini dba Jahan Construction  
Contractor: HPK Corp., \$125,000, Owner: Summath Banda, on property at 14001 Agriway Hill Ln., Saratoga 95079, document #24406307, 02/18/20

Claimant: Lennox Industries Inc., Contractor: CA Mechanical Inc., \$42,661, Owner: The Grand Stanford Junco University/Stanford Property Group Inc./Zachry Catch Inc., on property at 180 E. Camino Real Space 711 Bldg. E., Palo Alto 94304, document #244110453, 02/23/20

Claimant: Mish-Ra Inc. dba Triluxo Panels, Contractor: Naoki Construction Inc./Brozaro Brothers Inc. \$48,316, Owner: Sunnyvale Habitat LLC, on property at 702 S. Matamoros Ave., Sunnyvale 95081, document #24406972, 02/21/20

Claimant: Prudis Construction Co., Contractor: O&H

Construction, \$109,761, Owner: Fellowship Plaza LP, on property at 14520 Fruitvale Ave., Saratoga 95070, document #24409946, 02/20/20  
Claimant: Rick Slater Construction Inc., Contractor: Iron Construction Inc., \$96,150, Owner: T&T Properties, on property at 1040 S. 10th St., San Jose 95128, document #24405948, 02/18/20

Claimant: Westwood Contractors Inc., Contractor: Bottega Winata, \$38,816, Owner: VJ Mall LLC, on property at 2851 Stevens Creek Blvd., #1349, San Jose 95128, document #24407815, 02/19/20

**Real Estate Sales**

Sobrato Family Foundation to Lantana LLP LLC, 1101 30th St. #W 8150, Washington, D.C. 20007; 2715/2225/2235 Lawton Ln., Santa Clara 95054, Parcel: 1\*81D 274-48-021 thru -023, \$276,300,000

Santa Clara Towers LLC c/o Ciferia St. #1000, San Francisco 94071; 3055/3903/3965 Freedom Cr., Santa Clara 95054, Parcel: 2 MC endless Towers Phase II B 104-49-037/031, \$195,000,000

The Realty Associates Fund X LP to MPG Atman LLC/MPG Atman 2 LLC/MPG Atman 3 LLC et al., c/o Miramar Capital/100 Visible Blvd. #650, Santa Monica 90401; 2160 Laureate Dr. #100, Santa Clara 95054, Parcel: B 10 216-31-067, \$48,250,000

Cook Rental Properties LLC to Magnusson S. Middlefield LLC, 690 San Antonio Rd., Mountain View 94035; 2151 Old Middlefield Way, Mountain View 94043; Lot 29 Sierra Vista ID 147-07-272, \$4,930,000

John B. Gammon and Yvonne C. Hunt Trustees to New View 7 Inc., 1155 Carmichael Circle, Mountain View 94040; 417 Los Altos Ave., Los Altos 94022, Lot 8 tract 4257 ID 167-27-060, \$3,350,000

**Tax Liens/Federal Releases**

Acer American Holdings, 333 W. San Carlos St., #1500, San Jose 95110, #47,154, (11/20/2019), document #24406612, 02/18/20

Araman Chip Systems Inc., 2010 N. 1st St. #510, San Jose 95131, #81,060, (06/18/94), document #24406609, 02/18/20

Araman Chip Systems Inc., 2010 N. 1st St. #510, San Jose 95131, \$11,428, 700/80, document #24406613, 02/18/20

Assured Care Enterprises Inc./Chancellor Care, 1361 S. Winchester Blvd. #200, San Jose 95128, \$84,255, (11/10/2009/941), document #2438253, 01/16/20

California Center for Implant Dentistry, 6110 Hecker Ave. #125, San Jose 95138, \$11,553,

(#721/941), document #24110265, 02/21/20

Fieras Construction and Development Inc., 2131 The Alameda #B, San Jose 95126, \$197,043, (9/40/941), document #24411447, 02/24/20

Rula Maintenance Janitorial Service et al., 369 Avaton Dr., South San Francisco 94080, \$14,238, (9/40/941), document #24406619, 02/18/20

San Jose Forest Products Inc. aka The Decking Superstore, 2090 S. 10th St., San Jose 95112, \$8,417,686, (11/20), document #24410269, 02/21/20

Sanjay K. Shah MD Inc., 285 Samaritan Dr. #103, San Jose 95124, \$21,246, (9/21/94), document #24406619, 02/18/20

Tabel Construction & Design Inc., 1844 Andrew Ave., San Jose 95124, \$15,589, (9/41), document #24406605, 02/18/20

**Tax Liens/ Federal**

Arroyo & Silve Corp., 3401 Edward Ave., Santa Clara 95054, \$11,815, (9/11), document #24406550, 02/18/20

Burton W. Hancock/John I. Ressler Attorney-In-Fact, 1400 Hamilton Ave. #201, San Jose 95125, \$10,140, (CWP), document #24395796, 02/04/20

Cashmere Inc., 2351 W. March Ln. #A, Stockton 95207, \$10,454, (9/11), document #24411482, 02/24/20

Jump Labs Inc., 4030 Moorpark Ave. #107, San Jose 95117, \$10,854, (CWP), document #24410247, 02/21/20

Novell Inc., 130 Linton Ave. Fl. 2, Palo Alto 94301, \$25,003, (CWP), document #24416248, 02/21/20

Northern California Kidney Stone Center Inc., 16400 Lark Ave. #105, Los Gatos 95032, \$5,609,455, (11/20), document #24406635, 02/18/20

**Tax Liens/ State Releases**

A-1 Quality Construction et al., \$26,144, (employment development dept), document #24407513, 02/19/20

Akymon Technologies Corp., \$39,354, (employment development dept), document #24407582, 02/19/20

Bilco Inc., \$10,113, (employment development dept), document #24407515, 02/19/20

Bilco Inc., \$10,183, (employment development dept), document #24407494, 02/19/20

Bob Ray Creative Service Inc., \$29,574, (franchise fee board), document #24365506, 12/24/19

Contractor's Palatka Group et al., 110 RAR, (employment development dept), document #24406671, 02/28/20

International Aviators Inc. dba Trade Winds Aviation, \$44,622, (CA dept of tax & fee admin), document #24409732, 02/21/20

Intek Stajner dba IS Consulting and K&K International Link et al., \$17,484, (franchise fee board), document #24371433, 12/31/19

Netta Velasco Milerios dba Mr. Sewer, \$14,010, (CA dept of tax & fee admin), document #24364069, 12/21/19

Orlas Systems Inc., \$10,589, (CA dept of tax & fee admin), document #24409733, 02/21/20

The Kanavel Group LLC \$16,686, (employment development dept), document #24407597, 02/19/20

**Tax Liens/ State**

Aesthetic Clinch Dental Inc., 131 S. Main St., Milpitas 95035, \$16,403, (employment development dept), document #24412566, 02/25/20

AFN Services LLC 368 E. Campbell Ave., Campbell 95008, \$104,198, (CA dept of tax & fee admin), document #24405731, 02/21/20

Direct2U Furniture Inc., 368 Madison Dr., San Jose 95123, \$314,562, (franchise fee board), document #24409226, 02/20/20

Genex Market Inc., 86 Dunsmuir Rd., Milpitas 95035, \$15,430, (CA dept of tax & fee admin), document #24414472, 02/24/20

Lifescans Inc., 1016 Hamner Ave., Palo Alto 94301, \$11,124, (employment development dept), document #24407502, 02/13/20

Hirvanah Inc., 6374 Foothill Glen Dr., San Jose 95123, \$23,127, (employment development dept), document #24407571, 02/19/20

Orelina Transport LLC et al., 193 Lockwood Way, Sunnyvale 94087, \$32,285, (employment development dept), document #24372064, 01/02/20

Partnership of Oscar Lozano and Elvir Holguin dba Super Sandwich, 1623 Harding Ave., National City 91950, \$58,768, (CA dept of tax & fee admin), document #24411473, 02/24/20

Reggie & David Enterprises LLC, 237 Estaban Ct., San Jose 95111, \$11,242, (CA dept of tax & fee admin), document #24407475, 02/19/20

Tovar Hames LLC, 20388 Hartz Ficus, San Jose 95138, \$22,091, (employment development dept), document #24411205, 02/24/20

Vizevo Inc., 174 University Ave., Palo Alto 94301, \$23,554, (CA dept of tax & fee admin), document #24408687, 02/20/20

**CLASSIFIED**

**NOTICE OF PUBLIC SALE OF COLLATERAL**

**NOTICE IS HEREBY GIVEN** that pursuant to Section 9610 of the California Uniform Commercial Code, Ocean II PLO LLC ("Secured Creditor") shall on **March 17, 2020** offer for sale to the highest bidder at public sale by auction (the "Sale") collateral comprised of substantially all of the personal property of Boosted, Inc. ("Debtor") described in further detail below.

Secured Creditor will sell the property in two lots. The first lot will consist of all of Debtor's (a) inventory (including work in process, raw materials and spare parts (related to goods but not equipment)), (b) accounts receivables and cash, (c) tax and tariff refunds owned by Debtor and (d) all books, records and insurance proceeds related to items (a)-(c) (including computers and equipment containing such books and records) (collectively, the "First Lot Property"). The second lot will consist of all property of Debtor other than the First Lot Property, including (a) equipment (other than computers and equipment (including patent rights, trademark rights, copyrights and all similar rights)), (c) Debtor's domain names, and (d) general intangibles (collectively, the "Second Lot Property", and together with the First Lot Property, the "Collateral"). The intellectual property included in the Second Lot Property principally relates to Debtor's patents, patent applications and trademarks. Interested parties may request additional and more specific listing of property contained in each Lot from Secured Creditor's counsel by sending an email request to [sgasser@premiercounsel.com](mailto:sgasser@premiercounsel.com).

The Sale shall take place as follows:

Date: **March 17, 2020** | Time: **1:00 p.m. (Pacific Daylight Time)** | Place: Offices of Ocean II PLO LLC, 400 Oyster Point Blvd, Suite 229, South San Francisco, CA 94080

**THE COLLATERAL WILL BE SOLD "AS IS, WHERE IS" WITHOUT RECOURSE, AND SECURED CREDITOR EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE COLLATERAL WHETHER EXPRESS OR IMPLIED, INCLUDING ANY AND ALL WARRANTIES AS TO TITLE, POSSESSION, NON-INFRINGEMENT, QUIET ENJOYMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**Minimum Bid Amounts:**

There will be no minimum bid amount or minimum bidding increments on other lot.

**Qualifying Bids:**

Bidders at the auction will not be required to qualify in advance to bid, but the winning bidder will be required to tender the full payment of the winning bid at the conclusion of the auction. If payment in full is not so tendered, Secured Party reserves the right, in its sole discretion, to either cancel the sale to the winning bidder or pursue collection of the bid amount from the winning bidder. Secured Creditor reserves the right to require any payment to be made by cash, cashier's check or other immediately available funds acceptable to Secured Creditor in its sole discretion unless prior arrangements have been made. Potential bidders may contact Secured Creditor, either directly or through its counsel, to inquire about alternative payment arrangements. Successful bidders will be required to enter into a Foreclosure Sale Agreement with Secured Creditor memorializing the sale. Secured Creditor reserves the right to bid at the auction, whether by credit bid, cash or otherwise.

**Bids For Less Than All Of The First Lot Property or Second Lot Property:**

In the event a bidder desires to bid for less than all of the First Lot Property or the Second Lot Property, such bidder shall make such request prior to the commencement of the auction for such lot. Secured Creditor is not required to inquire whether any bidder desires to bid on less than the full lot. Secured Creditor may, in its discretion at the time of sale, establish additional "lots" for competitive bidding. In such case, competitive bidding will proceed on a lot by lot basis, to be followed by competitive bidding for the remainder of the First Lot Property and/or the Second Lot Property, as applicable.

**Summary Of Auction Procedures:** The following is a summary of the rules governing the auction:

1. The Sale may be adjourned from time to time and notice of any adjourned sale date will be given only at the time of the scheduled sale and to those who attend the scheduled sale.
2. Any interested party desiring to evaluate the Collateral should immediately contact counsel for Secured Creditor by email at [sgasser@premiercounsel.com](mailto:sgasser@premiercounsel.com). Secured Creditor is not in possession of Collateral but will use reasonable efforts to provide reasonable additional information concerning the Collateral.
3. At the conclusion of the auction for each lot, the winning bidder shall immediately tender payment of the winning bid to Secured Party and sign the Foreclosure Sale Agreement.

The above is a summary of the Collateral and auction procedures, and interested parties desiring additional information concerning the Collateral, auction/bid procedures or terms of sale should contact Secured Creditor's counsel, Steve Gasser of PremierCounsel LLP, by email at [sgasser@premiercounsel.com](mailto:sgasser@premiercounsel.com) prior to the Sale.

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**SILICON VALLEY BUSINESS JOURNAL**

Eriocson Inc. has an opening in Santa Clara, CA for a Software Engineer to provide tech expertise for complex SW analysis, design, development, installation, configuration mgmt, verification, & integration of commercially viable tech Eriocson solutions. Mail resumes to Eriocson Inc., Mailstop R1-C12, C300 Legacy Dr, Plains TX 75024 & reference ID#EUS4558542

Shape Security, Inc. seeks Cloud Infrastructure Engineer in Santa Clara, CA: Automate tools & process to increase efficiency and support internal, as well as customer needs. Participate in on-call rotation. Req: MS for new; 3+ yr. exp. OR BS for equiv. +5 yrs. exp. Submit resume w/ rel. to: Req. No. # 19-6026 at: ATTN: HR, Shape Security, Inc., 2766 Augustine Drive, Fl. B, Santa Clara, CA 95064.

**EXHIBIT 6**  
Shelter in Place Order

## March 16, 2020 - Health Officer's Shelter in Place Order (Formal Order)

[View More](#)

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### COVID-19 Public Call Center

Call 211

For non-emergency, non-medical questions

24 hours a day, 7 days a week

**DATE OF ORDER: MARCH 16, 2020**

### **ORDER OF THE HEALTH OFFICER OF THE COUNTY OF SAN MATEO**

DIRECTING ALL INDIVIDUALS LIVING IN THE COUNTY TO SHELTER AT THEIR PLACE OF RESIDENCE EXCEPT THAT THEY MAY LEAVE TO PROVIDE OR RECEIVE CERTAIN ESSENTIAL SERVICES OR ENGAGE IN CERTAIN ESSENTIAL ACTIVITIES AND WORK FOR ESSENTIAL BUSINESSES AND GOVERNMENTAL SERVICES; EXEMPTING INDIVIDUALS EXPERIENCING HOMELESSNESS FROM THE SHELTER IN PLACE ORDER BUT URGING THEM TO FIND SHELTER AND GOVERNMENT AGENCIES TO PROVIDE IT; DIRECTING ALL BUSINESSES AND GOVERNMENTAL AGENCIES TO CEASE NON-ESSENTIAL OPERATIONS AT PHYSICAL LOCATIONS IN THE COUNTY; PROHIBITING ALL NON-ESSENTIAL GATHERINGS OF ANY NUMBER OF INDIVIDUALS; AND ORDERING CESSATION OF ALL NON-ESSENTIAL TRAVEL

Please read this Order carefully. Violation of or failure to comply with this Order is a misdemeanor punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295, *et seq.*)

EXHIBIT 6

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, AND 120175, THE HEALTH OFFICER OF THE COUNTY OF SAN MATEO ("HEALTH OFFICER") ORDERS:

1. The intent of this Order is to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling essential services to continue, to slow the spread of COVID-19 to the maximum extent possible. When people need to leave their places of residence, whether to obtain or perform vital services, or to otherwise facilitate authorized activities necessary for continuity of social and commercial life, they should at all times reasonably possible comply with Social Distancing Requirements as defined in Section 10 below. All provisions of this Order should be interpreted to effectuate this intent. Failure to comply with any of the provisions of this Order constitutes an imminent threat to public health.
2. All individuals currently living within San Mateo County (the "County") are ordered to shelter at their place of residence. To the extent individuals are using shared or outdoor spaces, they must at all times as reasonably possible maintain social distancing of at least six feet from any other person when they are outside their residence. All persons may leave their residences only for Essential Activities, Essential Governmental Functions, or to operate Essential Businesses, all as defined in Section 10. Individuals experiencing homelessness are exempt from this Section, but are strongly urged to obtain shelter, and governmental and other entities are strongly urged to make such shelter available as soon as possible and to the maximum extent practicable (and to utilize Social Distancing Requirements in their operation).
3. All businesses with a facility in the County, except Essential Businesses as defined below in Section 10, are required to cease all activities at facilities located within the County except Minimum Basic Operations, as defined in Section 10. For clarity, businesses may also continue operations consisting exclusively of employees or contractors performing activities at their own residences (i.e., working from home). All Essential Businesses are strongly encouraged to remain open. To the greatest extent feasible, Essential Businesses shall comply with Social Distancing Requirements as defined in Section 10 below, including, but not limited to, when any customers are standing in line.
4. All public and private gatherings of any number of people occurring outside a household or living unit are prohibited, except for the limited purposes as expressly permitted in Section 10. Nothing in this Order prohibits the gathering of members of a household or living unit.
5. All travel, including, but not limited to, travel on foot, bicycle, scooter, motorcycle, automobile, or public transit, except Essential Travel and Essential Activities as defined below in Section 10, is prohibited. People must use public transit only for purposes of performing Essential Activities or to travel to and from work to operate Essential Businesses or maintain Essential Governmental Functions. People riding on public transit must comply with Social Distancing Requirements as defined in Section 10 below, to the greatest extent feasible. This Order allows travel into or out of the County to perform Essential Activities, operate Essential Businesses, or maintain Essential Governmental Functions.
6. This Order is issued based on evidence of increasing occurrence of COVID-19 within the County and throughout the Bay Area, scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, and evidence that the age, condition, and health of a significant portion of the population of the County places it at risk for serious health complications, including death, from COVID-19. Due to the outbreak of the COVID-19 virus in the general public, which is now a pandemic according to the World Health Organization, there is a public health emergency throughout the County. Making the problem worse, some individuals who contract the COVID-19 virus have no symptoms or have mild symptoms, which means they may not be aware they carry the virus. Because even people without symptoms can transmit the disease, and because evidence shows the disease is easily spread, gatherings can result in preventable transmission of the virus. The scientific evidence shows that at this stage of the emergency, it is essential to slow virus transmission as much as possible to protect the most vulnerable and to prevent the health care system from being overwhelmed. One proven way to slow the transmission is to limit interactions among people to the greatest extent practicable. By reducing the spread of the COVID-19 virus, this Order helps preserve critical and limited healthcare capacity in the County.
7. This Order also is issued in light of the existence of 41 cases of COVID-19 in the County, as well as at least 258 confirmed cases and at least three deaths in the seven Bay Area jurisdictions jointly issuing this Order, as of 5 p.m. on March 15, 2020, including a significant and increasing number of suspected cases of community transmission and likely further significant increases in transmission. Widespread testing for COVID-19 is not yet available but is expected to increase in the coming days. This Order is necessary to slow the rate of spread and the Health Officer will re-evaluate it as further data becomes available.

8. This Order revokes and replaces Order Number C19-2b (revised), originally issued on March 14, 2020. That order is no longer in effect as of the effective date and time of this Order. This Order is issued in accordance with, and incorporates by reference, the March 4, 2020 Proclamation of a State of Emergency issued by Governor Gavin Newsom, the March 3, 2020 Proclamation by the Director of Emergency Services Declaring the Existence of a Local Emergency in the County, the March 3, 2020 Declaration of Local Health Emergency Regarding Novel Coronavirus 2019 (COVID-19) issued by the Health Officer, the March 10, 2020 Resolution of the Board of Supervisors of the County of San Mateo Ratifying and Extending the Declaration of a Local Health Emergency, the March 11, 2020 and March Order of the Health Officer No. C19-1 restricting visitors to skilled nursing facilities, the March 12, 2020 State of California Executive Order N-25-20, and the March 13, 2020 Order of the Health Officer No. C19-3 imposing a School Operations Modification Order.
9. This Order comes after the release of substantial guidance from the County Health Officer, the Centers for Disease Control and Prevention, the California Department of Public Health, and other public health officials throughout the United States and around the world, including a variety of prior orders to combat the spread and harms of COVID-19. The Health Officer will continue to assess the quickly evolving situation and may modify or extend this Order, or issue additional Orders, related to COVID-19.
10. Definitions and Exemptions.
  - a. For purposes of this Order, individuals may leave their residence only to perform any of the following “Essential Activities.” But people at high risk of severe illness from COVID-19 and people who are sick are urged to stay in their residence to the extent possible except as necessary to seek medical care.
    - i. To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members (including, but not limited to, pets), such as, by way of example only and without limitation, obtaining medical supplies or medication, visiting a health care professional, or obtaining supplies they need to work from home.
    - ii. To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products, and products necessary to maintain the safety, sanitation, and essential operation of residences.
    - iii. To engage in outdoor activity, provided the individuals comply with Social Distancing Requirements as defined in this Section, such as, by way of example only and without limitation, walking, hiking, or running.
    - iv. To perform work providing essential products and services at an Essential Business or to otherwise carry out activities specifically permitted in this Order, including Minimum Basic Operations.
    - v. To care for a family member or pet in another household.
  - b. For purposes of this Order, individuals may leave their residence to work for or obtain services at any “Healthcare Operations” including hospitals, clinics, dentists, pharmacies, pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, home healthcare services providers, mental health providers, or any related and/or ancillary healthcare services. “Healthcare Operations” also includes veterinary care and all healthcare services provided to animals. This exemption shall be construed broadly to avoid any impacts to the delivery of healthcare, broadly defined. “Healthcare Operations” does not include fitness and exercise gyms and similar facilities.
  - c. For purposes of this Order, individuals may leave their residence to provide any services or perform any work necessary to the operations and maintenance of “Essential Infrastructure,” including, but not limited to, public works construction, construction of housing (in particular affordable housing or housing for individuals experiencing homelessness), airport operations, water, sewer, gas, electrical, oil refining, roads and highways, public transportation, solid waste collection and removal, internet, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services), provided that they carry out those services or that work in compliance with Social Distancing Requirements as defined this Section, to the extent possible.
  - d. For purposes of this Order, all first responders, emergency management personnel, emergency dispatchers, court personnel, and law enforcement personnel, and others who need to perform essential services are categorically exempt from this Order. Further, nothing in this Order shall prohibit any individual from performing or accessing “Essential Governmental Functions,” as determined by the governmental entity performing those functions. Each governmental entity shall identify and designate appropriate employees or contractors to continue providing and carrying out any Essential Governmental Functions. All Essential Governmental Functions shall be performed in compliance with Social Distancing Requirements as defined in this Section, to the extent possible.
  - e. For the purposes of this Order, covered businesses include any for-profit, non-profit, or educational entities, regardless of the nature of the service, the function they perform, or its corporate or entity structure.
  - f. For the purposes of this Order, “Essential Businesses” means:
    - i. Healthcare Operations and Essential Infrastructure;
    - ii. Grocery stores, certified farmers’ markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and

- poultry, and any other household consumer products (such as cleaning and personal care products). This includes stores that sell groceries and also sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operation of residences;
- iii. Food cultivation, including farming, livestock, and fishing;
  - iv. Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;
  - v. Newspapers, television, radio, and other media services;
  - vi. Gas stations and auto-supply, auto-repair, and related facilities;
  - vii. Banks and related financial institutions;
  - viii. Hardware stores;
  - ix. Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses;
  - x. Businesses providing mailing and shipping services, including post office boxes;
  - xi. Educational institutions—including public and private K-12 schools, colleges, and universities—for purposes of facilitating distance learning or performing essential functions, provided that social distancing of six-foot per person is maintained to the greatest extent possible;
  - xii. Laundromats, drycleaners, and laundry service providers;
  - xiii. Restaurants and other facilities that prepare and serve food, but only for delivery or carry out. Schools and other entities that typically provide free food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up and take-away basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site;
  - xiv. Businesses that supply products needed for people to work from home;
  - xv. Businesses that supply other essential businesses with the support or supplies necessary to operate;
  - xvi. Businesses that ship or deliver groceries, food, goods or services directly to residences;
  - xvii. Airlines, taxis, and other private transportation providers providing transportation services necessary for Essential Activities and other purposes expressly authorized in this Order;
  - xviii. Home-based care for seniors, adults, or children;
  - xix. Residential facilities and shelters for seniors, adults, and children;
  - xx. Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities;
  - xxi. Childcare facilities providing services that enable employees exempted in this Order to work as permitted. To the extent possible, childcare facilities must operate under the following mandatory conditions:
    - 1. Childcare must be carried out in stable groups of 12 or fewer ("stable" means that the same 12 or fewer children are in the same group each day).
    - 2. Children shall not change from one group to another.
    - 3. If more than one group of children is cared for at one facility, each group shall be in a separate room. Groups shall not mix with each other.
    - 4. Childcare providers shall remain solely with one group of children.
- g. For the purposes of this Order, "Minimum Basic Operations" include the following, provided that employees comply with Social Distancing Requirements as defined this Section, to the extent possible, while carrying out such operations:
- i. The minimum necessary activities to maintain the value of the business's inventory, ensure security, process payroll and employee benefits, or for related functions.
  - ii. The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.
- h. For the purposes of this Order, "Essential Travel" includes travel for any of the following purposes. Individuals engaged in any Essential Travel must comply with all Social Distancing Requirements as defined in this Section below.
- i. Any travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses, or Minimum Basic Operations.
  - ii. Travel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons.
  - iii. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.
  - iv. Travel to return to a place of residence from outside the jurisdiction.
  - v. Travel required by law enforcement or court order.
  - vi. Travel required for non-residents to return to their place of residence outside the County. Individuals are strongly encouraged to verify that their transportation out of the County remains available and functional prior to commencing such travel.
- i. For purposes of this Order, residences include hotels, motels, shared rental units and similar facilities.
- j. For purposes of this Order, "Social Distancing Requirements" includes maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.

11. Pursuant to Government Code sections 26602 and 41601 and Health and Safety Code section 101029, the Health Officer requests that the Sheriff and all chiefs of police in the County ensure compliance with and enforce this Order. The violation of any provision of this Order constitutes an imminent threat to public health.
12. This Order shall become effective at 12:01 a.m. on March 17, 2020 and will continue to be in effect until 11:59 p.m. on April 7, 2020, or until it is extended, rescinded, superseded, or amended in writing by the Health Officer.
13. Copies of this Order shall promptly be: (1) made available at the County Government Center at 400 County Center, Redwood City, CA 94063; (2) posted on the County Public Health Department website (available at [www.smchealth.org](http://www.smchealth.org)); and (3) provided to any member of the public requesting a copy of this Order.

If any provision of this Order to the application thereof to any person or circumstance is held to be invalid, the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

pdfMarch 16, 2020 - Health Officer's Shelter in Place Order -- ACTIVE233.92 KB

[COVID-19 Info](#)

**EXHIBIT 7**  
December 19, 2019 Email

From: **Todd Jaquez-Fissori** <[todd@structuralcapital.com](mailto:todd@structuralcapital.com)>

1

EXHIBIT 7

Date: Thu, Dec 19, 2019 at 12:43 PM  
Subject: RE: Boosted  
To: Peter Buckland <[pb@khoslaventures.com](mailto:pb@khoslaventures.com)>

Other thing:

- Any tariff dollars or random sales that occur/ or cash above \$2M will be controlled by us which should be ok. It is partly yours ultimately and will be settled down the road as part of that 'pool'

**Todd M Jaquez-Fissori**

**Structural Capital**

**Managing Partner**

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South San Francisco, CA 94080

[Todd@structuralcapital.com](mailto:Todd@structuralcapital.com)  
T 415-595-8548

Structural Capital: [LinkedIn Website](#)

**From:** Peter Buckland <[pb@khoslaventures.com](mailto:pb@khoslaventures.com)>  
**Sent:** Thursday, December 19, 2019 10:17 AM  
**To:** Todd Jaquez-Fissori <[todd@structuralcapital.com](mailto:todd@structuralcapital.com)>  
**Subject:** Re: Boosted

Probably best to discuss live.

Minor side note is that the \$2M of cash on the balance sheet is not technically yours yet and even if you did foreclose on it we would be entitled to 17%.

On Thu, Dec 19, 2019 at 10:14 AM Todd Jaquez-Fissori <[todd@structuralcapital.com](mailto:todd@structuralcapital.com)> wrote:

Reverse order:

3. like before we will assure that it is not sweep. It would be in the agreement.

2. not sure what that means but doing the rif will cost money. It is the investors burden to fund the company to an exit. We are agreeing the use/investment of the \$2M that is ours. We will allow use after your min investment. In total that is \$4.6M which I hope is enough. Cash is fungible anyway.

1. I understand that you that you would want it as part of the senior. All dollars including our \$2M will be part of the senior obligation. So \$4.6M additional to the \$22M that is there currently.

**Todd M Jaquez-Fissori**

Structural Capital

Managing Partner

400 Oyster Point Blvd, Suite 229

South San Francisco, CA 94080

[Todd@structuralcapital.com](mailto:Todd@structuralcapital.com)  
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**From:** Peter Buckland <[pb@khoslaventures.com](mailto:pb@khoslaventures.com)>

**Sent:** Thursday, December 19, 2019 10:07 AM

**To:** Todd Jaquez-Fissori <[todd@structuralcapital.com](mailto:todd@structuralcapital.com)>; Anup Jacob <[anup@activatecp.com](mailto:anup@activatecp.com)>

**Subject:** Re: Boosted

Todd:

Im working hard on getting the commitments lined up from the investors. Assuming i can get that we need the following:

1. Our additional \$2M+ comes in parri passu with your \$17M -- ie an extension of the last bridge
2. We use the company cash on the balance sheet first. that way we can buy more time and optionality -- ie if we have to put in our money first and do it now, we would immediately pay statutory. If we use the balance sheet cash first, we can wait to pay statutory until the end.

3. We would pay as we go. We cant really fund into a company account as we dont have assurances it wont be swept.

happy to discuss

On Thu, Dec 19, 2019 at 9:56 AM Todd Jaquez-Fissori <[todd@structuralcapital.com](mailto:todd@structuralcapital.com)> wrote:

Peter/Anup:

We spoke internally have approved participation in the funding with the following specifics:

- Commitment from the investors to fund fully through the process regardless of the amount
- Acceptance of the final approved budget which needs further work
- Addition of Mainfreight to the budget if not in there, and team needs to negotiate a go forward with them to continue work on tariff
- Investors to fund a min of \$2.6M today/tomorrow
- Once that capital is used, we will provide access to the next \$2M as bills are presented, then anything above that amount that the company requires will revert back to the investors to cover
- Any additional sales or proceeds from Tariff will come directly to us to pay down our obligations

Meantime:

- Get John and Steve together to discuss sales tax liabilities as well as a plan for future foreclosure if needed (think we still need it at some point to clean up things)
- Review budget more and cut out stuff
- Discuss severance and health care in Jan (you cant pay for employee health care if they are not employees)

Hopefully this all helps you guys get your approvals done as well. thanks.

PS: nothing gets paid until there is an agreement on funding above.

**Todd M Jaquez-Fissori**

**Structural Capital**

**Managing Partner**

**400 Oyster Point Blvd, Suite 229**

**South San Francisco, CA 94080**

**Todd@structuralcapital.com**

**T: 415-595-8548**

**Structural Capital: [LinkedIn Website](#)**

--  
**Peter Buckland**  
**khosla ventures**  
**650 376 8544**

--  
**Peter Buckland**  
**khosla ventures**  
**650 376 8544**

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**Peter Buckland**  
**khosla ventures**  
**650 376 8544**

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA )  
3 COUNTY OF LOS ANGELES )

4 I, Mary de Leon, am employed in the city and county of Los Angeles, State of California. I  
5 am over the age of 18 and not a party to the within action; my business address is 10100 Santa  
6 Monica Blvd., 13th Floor, Los Angeles, California 90067-4003.

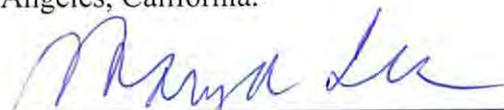
7 On December 1, 2020, I caused to be served the **FIRST AMENDED COMPLAINT FOR:**  
8 **1. SPECIFIC PERFORMANCE; 2. DECLARATORY RELIEF; OR 3. DAMAGES FOR**  
9 **BREACH OF WRITTEN CONTRACT** in this matter by sending a copy of said document(s) as  
10 follows:

11 *SEE ATTACHED SERVICE LIST*

- 12  (BY MAIL) I am readily familiar with the firm's practice of collection and processing  
13 correspondence for mailing. Under that practice it would be deposited with the U.S.  
14 Postal Service on that same day with postage thereon fully prepaid at Los Angeles,  
15 California, in the ordinary course of business. I am aware that on motion of the party  
16 served, service is presumed invalid if postal cancellation date or postage meter date is  
17 more than one day after date of deposit for mailing in affidavit.
- 18  (BY EMAIL) I caused to be served the above-described document by email to the party  
19 indicated above at the indicated email address.
- 20  (BY FAX) I caused to be transmitted the above-described document by facsimile  
21 machine to the fax number(s) as shown. The transmission was reported as complete and  
22 without error. (Service by Facsimile Transmission to those parties listed above with fax  
23 numbers indicated.)
- 24  (BY OVERNIGHT DELIVERY) By sending by FEDERAL EXPRESS to the  
25 addressee(s) as indicated above.
- 26  (BY HAND DELIVERY) I caused to be served the above-described document by hand  
27 delivery to the party indicated above at the indicated address.

28 I declare under penalty of perjury, under the laws of the State of California that the foregoing  
is true and correct.

Executed on December 1, 2020, at Los Angeles, California.

  
\_\_\_\_\_  
Mary de Leon

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**SERVICE LIST**

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Structural Capital Investments II, LP

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# **EXHIBIT 3**

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12 *Attorneys for Plaintiffs*  
13 KHOSLA VENTURES IV, L.P.  
14 KHOSLA VENTURES IV (CF), L.P.

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **FOR THE COUNTY OF SAN FRANCISCO**

17 KHOSLA VENTURES IV, L.P., a Delaware  
18 limited partnership, and KHOSLA  
19 VENTURES IV (CF), L.P., a Delaware limited  
20 partnership,

20 Plaintiffs,

21 v.

22 NEUTRON HOLDINGS, INC., a Delaware  
23 corporation, DAVID RICHTER, an individual,  
24 BRAD BAO, an individual, and MICHAEL  
25 HILLMAN, an individual,

26 Defendants.

CASE NO. CGC-20-584188

**PLAINTIFFS' FIRST SET OF  
REQUESTS FOR PRODUCTION OF  
DOCUMENTS AND THINGS TO  
DEFENDANT NEUTRON  
HOLDINGS, INC.**

Action Filed: April 20, 2020

1 **PROPOUNDING PARTIES:** PLAINTIFFS KHOSLA VENTURES IV, L.P. and  
2 KHOSLA VENTURES IV (CF), L.P.

3 **RESPONDING PARTIES:** DEFENDANT NEUTRON HOLDINGS, INC.

4 **SET NO.:** ONE

5 Plaintiffs Khosla Ventures IV, L.P. and Khosla Ventures IV (CF), L.P. (“Khosla” or  
6 “Plaintiffs”) hereby request that Defendant Neutron Holdings, Inc. (“Lime”) identify and  
7 produce the documents and things described below for inspection and copying at the law office  
8 of Wilmer Cutler Pickering Hale and Dorr LLP, 2600 El Camino Real, Suite 400, Palo Alto, CA  
9 94306, and serve upon Plaintiffs’ attorneys the written responses required by Code of Civil  
10 Procedure Section 2031.210 et seq., within thirty (30) days after service of this request.

11 **DEFINITIONS**

12 As used herein, the following definitions apply to the terms that are fully capitalized:

- 13 1. “RELEVANT PERIOD” is defined as November 1, 2019 through April 30, 2020.
- 14 2. “COMPLAINT” is the first amended complaint filed in the lawsuit Khosla  
15 Ventures IV, L.P. and Khosla Ventures IV (CF), L.P. v. Neutron Holdings, Inc., David Richter,  
16 Brad Bao, and Michael Hillman, CGC-20-584188 (filed July 31, 2020).
- 17 3. “LIME” is Defendant Neutron Holdings, Inc.
- 18 4. “BOOSTED” is non-party Boosted, Inc.
- 19 5. “MANUFACTURER” is the international motorcycle and off-road vehicle  
20 manufacturer referenced in Paragraph 21 of the COMPLAINT.
- 21 6. “STRUCTURAL” is non-party Structural Capital Investments II, LP.
- 22 7. “ACTIVATE” is non-party Activate Capital Partners, L.P.
- 23 8. “YOU” includes LIME, its agents, its employees, their agents, their employees,  
24 LIME’S attorneys, LIME’S accountants, LIME’S investigators, and anyone else acting on  
25 LIME’S behalf.
- 26 9. “DOCUMENT” means a writing, as defined in Evidence Code Section 250, and  
27 includes the original or a copy of handwriting, typewriting, printing, photostats, photographs,  
28

1 electronically stored information, and every other means of recording upon any tangible thing  
2 and form of communicating or representation, including letters, words, pictures, sounds, or  
3 symbols or combination of them.

4 10. "COMMUNICATION" has the broadest meaning permitted under the California  
5 Evidence Code, and includes the transmittal of information in the form of facts, ideas, inquiries,  
6 or otherwise by any means, including but not limited to any meeting, conversation, discussion,  
7 conference, correspondence, message, or other written or oral transmission, exchange, or transfer  
8 of information in any form between two or more persons, including but not limited to in person  
9 or by telephone, facsimile, telegraph, telex, email or other medium.

10 11. "CONCERNING" a given subject means, in whole or in part, constituting,  
11 containing, embodying, reflecting, identifying, stating, referring to, evidencing, or in any other  
12 way being relevant to that given subject matter.

13 **INSTRUCTIONS**

14 1. Each request shall be construed independently and shall not be limited by  
15 reference to any other request.

16 2. Electronically stored information shall be produced in original, native format,  
17 with all metadata intact.

18 3. The DOCUMENTS demanded herein include, but are not limited to, those  
19 DOCUMENTS in YOUR possession, custody, or control or in the possession, custody, or  
20 control of YOUR present or former agents, employees, business, and representatives.

21 4. Unless otherwise specified, the time period applicable to each specific request for  
22 production set forth below is the RELEVANT PERIOD.

23 5. If any of the DOCUMENTS demanded herein is claimed to be privileged or is  
24 otherwise withheld, please set forth, in a log accompanying the document production, with  
25 respect to each such DOCUMENT, facts of sufficient specificity to permit the Court to make a  
26 full determination as to whether the claim of privilege is valid, including the basis upon which  
27 the privilege is claimed.



- c. the title of the DOCUMENT, if any, or other identifying data;
- d. the type of DOCUMENT (e.g., memorandum, letter);
- e. in summary, the nature and subject matter of the DOCUMENT;
- f. the date on which the DOCUMENT was sent to or received by YOU, as the case may be;
- g. the identity of all individuals to whom the substance of the DOCUMENT was transmitted, or who saw the DOCUMENT, and under what circumstances;
- h. the present location of the DOCUMENT, if not destroyed; and the name, title, home and business address, and home and business telephone number, of the current custodian of the DOCUMENT.

15. These requests are ongoing in nature and YOU should continue to produce responsive DOCUMENTS as they are found on an ongoing basis.

**REQUESTS FOR PRODUCTION**

1. All DOCUMENTS and COMMUNICATIONS CONCERNING or with BOOSTED.
2. All DOCUMENTS and COMMUNICATIONS CONCERNING or with Plaintiffs.
3. All DOCUMENTS and COMMUNICATIONS CONCERNING or with the MANUFACTURER.
4. All DOCUMENTS and COMMUNICATIONS CONCERNING or with STRUCTURAL.
5. All DOCUMENTS and COMMUNICATIONS CONCERNING or with ACTIVATE.
6. All DOCUMENTS and COMMUNICATIONS CONCERNING the valuation of LIME, including but not limited to the valuation of LIME common stock.

1           7.     All DOCUMENTS and COMMUNICATIONS CONCERNING the hiring of  
2 BOOSTED employees.

3           8.     All DOCUMENTS and COMMUNICATIONS CONCERNING or with any  
4 former BOOSTED employee.

5           9.     All DOCUMENTS and COMMUNICATIONS CONCERNING the sale of  
6 BOOSTED's assets.

7           10.    All DOCUMENTS and COMMUNICATIONS CONCERNING the foreclosure  
8 sale referenced in Paragraph 34 of the COMPLAINT.

9           11.    All DOCUMENTS and COMMUNICATIONS CONCERNING any non-  
10 disclosure or confidentiality agreements between LIME and BOOSTED.

11          12.    All DOCUMENTS and COMMUNICATIONS CONCERNING LIME's interest  
12 in pursuing a transaction with BOOSTED.

13          13.    All DOCUMENTS and COMMUNICATIONS CONCERNING the Loan and  
14 Security Agreement referenced in Paragraph 12 of the COMPLAINT.

15          14.    All DOCUMENTS and COMMUNICATIONS CONCERNING the Intercreditor  
16 Agreement referenced in Paragraph 12 of the COMPLAINT.

1 Dated: January 27, 2021

By:  /s/ Chris Johnstone

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3 DORR LLP

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KHOSLA VENTURES IV (CF), L.P.

# **EXHIBIT 4**

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12 *Attorneys for Plaintiffs*  
13 KHOSLA VENTURES IV, L.P.  
14 KHOSLA VENTURES IV (CF), L.P.

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **FOR THE COUNTY OF SAN FRANCISCO**

17 KHOSLA VENTURES IV, L.P., a Delaware  
18 limited partnership, and KHOSLA  
19 VENTURES IV (CF), L.P., a Delaware limited  
20 partnership,

21 Plaintiffs,

22 v.

23 NEUTRON HOLDINGS, INC., a Delaware  
24 corporation, DAVID RICHTER, an individual,  
25 BRAD BAO, an individual, and MICHAEL  
26 HILLMAN, an individual,

27 Defendants.

CASE NO. CGC-20-584188

**PLAINTIFFS' FIRST SET OF  
SPECIAL INTERROGATORIES TO  
DEFENDANT NEUTRON  
HOLDINGS, INC.**

Action Filed: April 20, 2020

1 PROPOUNDING PARTIES: PLAINTIFFS KHOSLA VENTURES IV, L.P. and  
2 KHOSLA VENTURES IV (CF), L.P.

3 RESPONDING PARTIES: DEFENDANT NEUTRON HOLDINGS, INC.

4 SET NO.: ONE

5 Plaintiffs Khosla Ventures IV, L.P. and Khosla Ventures IV (CF), L.P. (“Plaintiffs”)  
6 hereby request that Defendant Neutron Holdings, Inc. (“Lime”) answer under oath and in  
7 accordance with California Code of Civil Procedure § 2030.010 *et seq.* the interrogatories set  
8 forth below, separately and fully, in writing, within thirty (30) days after service thereof. Please  
9 take notice that the original written, verified responses must be served upon the undersigned  
10 within the time required by said statute after the service of these interrogatories.

11 **INSTRUCTIONS**

12 1. Each answer must be as complete and straightforward as the information  
13 reasonably available to you, including the information possessed by your attorneys or agents,  
14 permits.

15 2. Whenever an interrogatory may be answered by referring to a document, the  
16 document may be attached as an exhibit to the response and referred to in the response. If the  
17 document has more than one page, refer to the page and section where the answer to the  
18 interrogatory can be found.

19 3. If you are asserting a privilege or making an objection to an interrogatory, you  
20 must specifically assert the privilege or state the objection in your written response.

21 4. Unless otherwise specified, the time period applicable to each specific Special  
22 Interrogatory set forth below is November 1, 2019 through April 30, 2020.

23 5. Your answers to these interrogatories must be verified, dated, and signed.

24 **DEFINITIONS**

25 As used herein, the following definitions apply to the terms that are fully capitalized:

26 1. “COMPLAINT” is the first amended complaint filed in the above-captioned  
27 matter.



1           6.       Describe in detail any valuation of LIME’s common stock that was used in  
2 connection with any financing transaction that LIME completed in 2019 or 2020, and state the  
3 basis for such valuation.

4           7.       Describe in detail any offers LIME made to BOOSTED that involved LIME’s  
5 common stock, state the value of LIME’s common stock used in those offers, and state the basis  
6 for any such valuations.

7           8.       To the extent not already provided in response to Special Interrogatories 6 and 7,  
8 describe in detail any valuations of LIME’s common stock that LIME prepared, received, or  
9 obtained in 2019 and 2020.

10          9.       Describe in detail all requests that LIME made to BOOSTED about the potential  
11 reduction in force described in Paragraph 18 of the COMPLAINT.

12          10.      Identify the BOOSTED employees LIME interviewed, list the date of their  
13 interviews, and state whether they were later hired as employees of LIME.

14          11.      Identify the date on which YOU offered Michael Hillman a position at LIME, the  
15 date he accepted that offer, and the date he began his employment with LIME.

16          12.      Describe in detail all nonpublic information about BOOSTED, written and non-  
17 written, that YOU acquired CONCERNING BOOSTED.

18          13.      Describe in detail all facts known to LIME in January 2020 CONCERNING a  
19 potential transaction between BOOSTED and the MANUFACTURER.

20          14.      Identify all employees or agents of BOOSTED and LIME who participated in  
21 LIME’s negotiations with BOOSTED, as well as any employees of LIME who were involved in  
22 those negotiations but did not directly participate.

23          15.      Describe in detail all statements by LIME to BOOSTED or Plaintiffs on or around  
24 December 10, 2019 CONCERNING a potential transaction involving BOOSTED, including but  
25 not limited to any proposals or acceptances of proposals.

1           16.     Describe in detail all statements by LIME to BOOSTED or Plaintiffs on or around  
2 December 18, 2019 CONCERNING a potential transaction involving BOOSTED, including but  
3 not limited to any proposals or acceptances of proposals.  
4

5 Dated: January 27, 2021

By:   /s/ Chris Johnstone  

6                   WILMER CUTLER PICKERING HALE AND  
7                   DORR LLP

8                   Chris Johnstone (SBN 242152)  
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*Attorneys for Plaintiffs*

KHOSLA VENTURES IV, L.P., and  
KHOSLA VENTURES IV (CF), L.P.

# **EXHIBIT 5**

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12 *Attorneys for Plaintiffs*  
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14 KHOSLA VENTURES IV (CF), L.P.

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **FOR THE COUNTY OF SAN FRANCISCO**

17 KHOSLA VENTURES IV, L.P., a Delaware  
18 limited partnership, and KHOSLA  
19 VENTURES IV (CF), L.P., a Delaware limited  
20 partnership,

Plaintiffs,

v.

21 NEUTRON HOLDINGS, INC., a Delaware  
22 corporation, DAVID RICHTER, an individual,  
23 BRAD BAO, an individual, and MICHAEL  
24 HILLMAN, an individual,

Defendants.

CASE NO. CGC-20-584188

**PLAINTIFFS' FIRST SET OF  
REQUESTS FOR ADMISSION TO  
DEFENDANT NEUTRON  
HOLDINGS, INC.**

Action Filed: April 20, 2020

1 PROPOUNDING PARTIES: PLAINTIFFS KHOSLA VENTURES IV, L.P. and  
2 KHOSLA VENTURES IV (CF), L.P.

3 RESPONDING PARTIES: DEFENDANT NEUTRON HOLDINGS, INC.

4 SET NO.: ONE

5 Plaintiffs Khosla Ventures IV, L.P. and Khosla Ventures IV (CF), L.P. (“Khosla” or  
6 “Plaintiffs”) hereby request that Defendant Neutron Holdings, Inc., (“Lime”) answer under oath  
7 and in accordance with California Code of Civil Procedure 2033.010 *et seq.* the requests for  
8 admission set forth below, separately and fully, in writing, within thirty days after service of  
9 these requests.

10 **DEFINITIONS**

11 As used herein, the following definitions apply to the terms that are fully capitalized:

12 1. “COMPLAINT” is the first amended complaint filed in the above-captioned  
13 matter.

14 2. “LIME” is Defendant Neutron Holdings, Inc.

15 3. “BOOSTED” is non-party Boosted, Inc.

16 4. “STRUCTURAL” is non-party Structural Capital Investments II, LP.

17 5. “MANUFACTURER” is the international motorcycle and off-road vehicle  
18 manufacturer referenced in Paragraph 21 of the COMPLAINT.

19 6. “YOU” includes LIME, its agents, its employees, their agents, their employees,  
20 LIME’S attorneys, LIME’S accountants, LIME’S investigators, and anyone else acting on  
21 LIME’S behalf.

22 7. “CONCERNING” a given subject means, in whole or in part, constituting,  
23 containing, embodying, reflecting, identifying, stating, referring to, evidencing, or in any other  
24 way being relevant to that given subject matter.

**REQUESTS FOR ADMISSION**

1  
2           1.       Admit that on or about December 10, 2019, YOU verbally confirmed to Plaintiffs  
3 that LIME was willing to pay BOOSTED \$30 million, in the form of LIME common stock, to  
4 acquire certain BOOSTED assets.

5           2.       Admit that on or about December 10, 2019, YOU verbally confirmed to  
6 BOOSTED that LIME was willing to pay BOOSTED \$30 million, in the form of LIME common  
7 stock, to acquire certain BOOSTED assets.

8           3.       Admit that YOU developed one or more valuations of LIME’s common stock for  
9 the financing that LIME completed on or about February 6, 2019.

10          4.       Admit that YOU developed one or more valuations of LIME’s common stock for  
11 a transaction with Intellectus Partners, LLC on or about May 1, 2019.

12          5.       Admit that YOU developed one or more valuations of LIME’s common stock for  
13 the financing that LIME completed on or about May 7, 2020.

14          6.       Admit that on December 11, 2019, YOU requested the ability to interview  
15 BOOSTED’s employees.

16          7.       Admit that on December 18, 2019, YOU verbally agreed to the terms of a  
17 transaction with BOOSTED.

18          8.       Admit that Plaintiffs informed LIME of a potential transaction between  
19 BOOSTED and the MANUFACTURER in the first week of January 2020.

20          9.       Admit that YOU received nonpublic information CONCERNING BOOSTED  
21 through Michael Hillman.

22          10.       Admit that, prior to the foreclosure sale described in Paragraph 34 of the  
23 COMPLAINT, YOU conferred with STRUCTURAL CONCERNING the date on which the  
24 foreclosure sale would occur.

25          11.       Admit that, prior to the foreclosure sale described in Paragraph 34 of the  
26 COMPLAINT, YOU conferred with STRUCTURAL CONCERNING the BOOSTED assets that  
27 would be sold during the foreclosure sale.

1           12.     Admit that, prior to the foreclosure sale described in Paragraph 34 of the  
2 COMPLAINT, YOU conferred with STRUCTURAL CONCERNING the identity of the  
3 potential bidders who might participate in the foreclosure sale.

4           13.     Admit that, prior to the foreclosure sale described in Paragraph 34 of the  
5 COMPLAINT, YOU told STRUCTURAL which of BOOSTED's assets YOU were interested in  
6 bidding on.

7  
8  
9 Dated: January 27, 2021

By:   /s/ Chris Johnstone  

10                   WILMER CUTLER PICKERING HALE AND  
11                   DORR LLP

12                   Chris Johnstone (SBN 242152)  
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*Attorneys for Plaintiffs*

KHOSLA VENTURES IV, L.P., and  
KHOSLA VENTURES IV (CF), L.P.

# **EXHIBIT 6**

**From:** [Schwing, Austin](#)  
**To:** [James Hunter](#); [Kahn, Matthew S.](#); [Beth R. Young](#); [Nick.Purcell@wilmerhale.com](#); [Peter Kolovos](#); [Michael Bongiorno](#); [Chris.Johnstone@wilmerhale.com](#); [Dean A. Ziehl](#); [mwe@sezalaw.com](#)  
**Cc:** [Dansey, Lauren](#); [Loegering, Warren](#)  
**Subject:** RE: Khosla v. Lime et al.  
**Date:** Wednesday, February 10, 2021 2:30:22 PM

---

Counsel,

Defendants will be filing their motion to transfer and coordinate the Santa Clara and San Francisco matters today. Pursuant to CRC 3.500, I am informing you that all parties are obligated to disclose to the Court any information they may have concerning any other motions requesting transfer of any case that would be affected by the granting of the motion before the Court. I am unaware of any, but the rules indicate I must inform you of this.

Thanks,  
Austin

---

**From:** James Hunter <jhunter@pszjlaw.com>  
**Sent:** Friday, February 5, 2021 2:43 PM  
**To:** Kahn, Matthew S. <MKahn@gibsondunn.com>; Beth R. Young <bry@lnbyb.com>; Nick.Purcell@wilmerhale.com; Peter Kolovos <peter.kolovos@wilmerhale.com>; Michael Bongiorno <michael.bongiorno@wilmerhale.com>; Chris.Johnstone@wilmerhale.com; Dean A. Ziehl <dziehl@pszjlaw.com>; mwe@sezalaw.com  
**Cc:** Schwing, Austin <ASchwing@gibsondunn.com>; Dansey, Lauren <LDansey@gibsondunn.com>; Loegering, Warren <WLoegering@gibsondunn.com>; James Hunter <jhunter@pszjlaw.com>  
**Subject:** Khosla v. Lime et al.

[External Email]

Matt:

The Khosla parties do not believe that the coordination of the two cases in either the San Francisco or Santa Clara Superior Courts is appropriate since (1) only Lime is a defendant in both cases and the majority of the defendants in both cases only appear in one case, (2) the claims are not the same or similar (i.e., our action raises the very discrete issue of whether the UCC sale was properly done and, if not, what remedy should issue), (3) the core events (the sale in our case) are not the same or substantially identical and do not require the determination of the same or substantially identical questions of law or fact, and (4) the cases do not involve claims or damages to the same property. In addition, if the transfer of one case to the other's forum were appropriate (and it is not), the proper forum would be Santa Clara, which was the first filed case and where the venue provision of the ICA required that action to be filed.

This is not to suggest that the Khosla parties do not believe that the parties should cooperate to avoid duplicative discovery, including document productions and depositions. That objective should be able to be achieved, however, without requiring the transfer of either case.

Best regards, Jim

**James Hunter**

Pachulski Stang Ziehl & Jones LLP

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Los Angeles | San Francisco | Wilmington, DE | New York | Costa Mesa

---

**From:** Kahn, Matthew S. [<mailto:MKahn@gibsondunn.com>]

**Sent:** Thursday, February 04, 2021 10:12 AM

**To:** Beth R. Young <[bry@lnbyb.com](mailto:bry@lnbyb.com)>; [Nick.Purcell@wilmerhale.com](mailto:Nick.Purcell@wilmerhale.com); Peter Kolovos <[peter.kolovos@wilmerhale.com](mailto:peter.kolovos@wilmerhale.com)>; Michael Bongiorno <[michael.bongiorno@wilmerhale.com](mailto:michael.bongiorno@wilmerhale.com)>; [Chris.Johnstone@wilmerhale.com](mailto:Chris.Johnstone@wilmerhale.com); Dean A. Ziehl <[dziehl@pszjlaw.com](mailto:dziehl@pszjlaw.com)>; James Hunter <[jhunter@pszjlaw.com](mailto:jhunter@pszjlaw.com)>; [mwe@sezalaw.com](mailto:mwe@sezalaw.com)

**Cc:** Schwing, Austin <[ASchwing@gibsondunn.com](mailto:ASchwing@gibsondunn.com)>; Dansey, Lauren <[LDansey@gibsondunn.com](mailto:LDansey@gibsondunn.com)>; Loegering, Warren <[WLoegering@gibsondunn.com](mailto:WLoegering@gibsondunn.com)>

**Subject:** RE: Khosla v. Lime et al.

Beth-

Thanks for your email. We believe these cases meet the criteria for transfer and coordination (not consolidation, at this time) as set forth in Code of Civil Procedure Section 404.1 for several reasons.

First, the two actions share significant common questions of fact and law. (CCP 404.1.) Key to both disputes is the nature of the foreclosure sale of Boosted, LP's assets on March 17, 2020. Indeed, the entirety of the Santa Clara action ("SC Action") arises out of the foreclosure sale, as all three of Khosla's causes of action challenge whether the foreclosure was a "properly noticed . . . public sale" or whether it should be deemed "void." (See SC Action FAC ¶¶ 32, 34, 36.) Similarly, Khosla's Second and Third causes of action in the San Francisco action ("SF Action") depend at least in part on whether the foreclosure sale was "deficient and improperly conducted," such that Khosla was deprived of "contractual rights and benefit from the foreclosure." (See SF Action FAC ¶¶ 34, 53, 56, 63, 65.) Moreover, this sale is key to any damages claims in the SF Action, as Khosla alleges that the foreclosure sale was conducted "as a direct result of Defendants' actions, which disrupted Boosted's business." (*Id.* ¶¶ 2, 34.)

Khosla's opposition to Lime's demurrer in the SF Action further clarifies that it intends to litigate the appropriateness of the foreclosure sale, which is at the heart of the SC Action, in SF:

“Here, the FAC contains ample allegations to support Plaintiffs’ informed belief that Lime and Structural conspired regarding the foreclosure sale—namely, by ‘limiting the number of buyers who had notice of the foreclosure sale’ and ‘not informing Plaintiffs of the sale until fewer than 24 hours beforehand,’ which permitted Lime to take advantage of the situation and purchase most of Boosted assets for less than fair value. FAC ¶ 34. These allegations, as well as those cited above describing how Defendants’ acts harmed Boosted’s business, are sufficient to state a claim for intentional interference with the ICA.”

(Dem. Opp. at 2.) Similarly, Khosla indicated in its opposition to Lime’s demurrer that its UCL cause of action seeks restitution of the assets that Lime purchased at the foreclosure sale. (*Id.* at 15.) Khosla is attempting to have two different courts address the propriety of the foreclosure sale on multiple theories. This is the quintessential example of when cases should be coordinated.

Khosla’s recently served discovery requests in the SF Action further confirm the substantial overlap between the cases. Khosla seeks, for example, “all documents and communications concerning Structural,” “the sale of Boosted’s assets,” and “the foreclosure sale.” Khosla also seeks admissions that Lime “prior to the foreclosure sale . . . , conferred with Structural concerning the date on which the foreclosure sale would occur,” “the Boosted assets that would be sold during the foreclosure sale,” and “the identity of the potential bidders who might participate in the foreclosure sale.” Khosla’s interrogatories likewise ask Lime to “describe in detail all communications, written and non-written, between Lime and Structural concerning the foreclosure sale,” “describe in detail any agreements, written and non-written, that Lime had with Structural concerning the foreclosure sale,” and “identify any entity or individual that attended the foreclosure sale . . . and identify any such entity or individual who made a bid.” All of this evidence and these issues are at the heart of the SC Action as well. As such, “the question of the legality and enforceability of the transaction is central to both cases.” (*Epstein v. Schwarzenegger* (Cal.Super. July 07, 2011), No. CGC10-505436, 2011 WL 11680087, at \*1 [granting transfer and coordination].)

Second, given this substantial overlap in the questions of law and fact in the two cases, transfer and “coordination will prevent . . . inconsistent rulings.” (CCP 404.1.) Without coordination, Lime (and, potentially, Structural) will be subject to potentially inconsistent rulings and exposed to varying liability if one court finds that the foreclosure sale was conducted properly while the other court finds it was deficient. “It would be unreasonable and illogical to have an individual involved in simultaneous litigation in two separate forums, over the same issue,” which “could result in conflicting rulings.” (*Bancomer, S.A. v. Super. Ct.* (1996) 44 Cal.App.4th 1450, 1462.) Lime should face consistent decisions on this issue. “Absent transfer and coordination, there is a significant risk of duplicative or inconsistent rulings, orders or judgments in that one court may rule the transaction illegal” while another rules it valid. (*Epstein*, 2011 WL 11680087 at \*2.)

Third, coordination will promote judicial economy and advance the convenience of the parties, witnesses, and counsel. (CCP 404.1.) Rather than conduct discovery on and litigate substantially similar overlapping issues on the foreclosure sale in two actions in different courts, convenience would be furthered if Lime does not have to duplicatively produce documents, brief these overlapping legal issues, or force Lime (and Khosla, Boosted, and Structural) witnesses to testify twice on identical issues. “Allowing the witnesses to appear once in a single venue is more

convenient than requiring them to appear multiple times in multiple venues.” (*Cluck v. IKON Office Sols., Inc.* (N.D. Cal. May 8, 2012) No. 11-05027-JSW, 2012 WL 1610789, at \*2 [collecting cases]; *Ford Motor Warranty Cases* (2017) 11 Cal. App. 5th 626, 643 [even where some issues are “individualized,” coordination is warranted where there are “common discovery issues”].)

Fourth, both actions are at early stages of development, making coordination particularly appropriate, with Lime’s demurrer pending in the SC Action, and discovery requests only recently being served in the SF Action. (CCP 404.1.) Because “both cases are still in the pleading and discovery phase . . . duplication of effort will not be required.” (*Epstein*, 2011 WL 11680087 at \*1.) In terms of which forum is more appropriate, because the court in the SF Action has ruled on Lime’s demurrer, while Lime’s SC Action demurrer remains pending, coordination and transfer in San Francisco is warranted given the court’s greater familiarity with the issues and that case’s far greater procedural advancement.

As I noted, we’d be happy to speak about any of this if it would be helpful. Thanks.

Matt

**Matthew S. Kahn**

## GIBSON DUNN

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555 Mission Street, San Francisco, CA 94105-0921  
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[MKahn@gibsondunn.com](mailto:MKahn@gibsondunn.com) • [www.gibsondunn.com](http://www.gibsondunn.com)

---

**From:** Beth R. Young <[bry@lnbyb.com](mailto:bry@lnbyb.com)>  
**Sent:** Wednesday, February 3, 2021 5:54 PM  
**To:** Kahn, Matthew S. <[MKahn@gibsondunn.com](mailto:MKahn@gibsondunn.com)>; [Nick.Purcell@wilmerhale.com](mailto:Nick.Purcell@wilmerhale.com);  
[Peter.Kolovos@wilmerhale.com](mailto:Peter.Kolovos@wilmerhale.com); [Michael.Bongiorno@wilmerhale.com](mailto:Michael.Bongiorno@wilmerhale.com);  
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**Cc:** Schwing, Austin <[ASchwing@gibsondunn.com](mailto:ASchwing@gibsondunn.com)>; Dansey, Lauren <[LDansey@gibsondunn.com](mailto:LDansey@gibsondunn.com)>;  
Loegering, Warren <[WLoegering@gibsondunn.com](mailto:WLoegering@gibsondunn.com)>  
**Subject:** RE: Khosla v. Lime et al.

[External Email]

Thank you Matt. It appears to me that the subject matter of the two actions is different, but I would appreciate your thoughts (with specificity) on why you believe transfer and consolidation of these two cases is appropriate. Once I receive your response I will review it with my clients and get back to you.

Best regards,

Beth

**BETH ANN R. YOUNG**, Esq.

**LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.**

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 Please consider the environment before printing this email

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**From:** Kahn, Matthew S. [<mailto:MKahn@gibsondunn.com>]  
**Sent:** Wednesday, February 3, 2021 5:31 PM  
**To:** [Nick.Purcell@wilmerhale.com](mailto:Nick.Purcell@wilmerhale.com); [Peter.Kolovos@wilmerhale.com](mailto:Peter.Kolovos@wilmerhale.com);  
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Loegering, Warren <[WLoegering@gibsondunn.com](mailto:WLoegering@gibsondunn.com)>  
**Subject:** Khosla v. Lime et al.

Dear Counsel-

We write regarding the two lawsuits initiated by Khosla against Lime and others in SF and Santa Clara Superior Courts. We believe it is appropriate to transfer the Santa Clara action to SF and coordinate the actions pursuant to CCP 403. CCP 403 instructs us to “ma[k]e a good faith effort to obtain agreement to the transfer from all parties to each action.” Please let us know by the end of the week if you agree that the Santa Clara action should be transferred to SF and that the two actions should be coordinated. We would be happy to have a call to discuss if anyone would like.

Thanks.

Matt

**Matthew S. Kahn**

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