



GRANTED

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ABBAS KHAMBATI,
DERIVATIVELY, ON BEHALF OF
PLUG POWER INC.,

Plaintiff,

v.

GEORGE C. MCNAMEE, GARY K.
WILLIS, MAUREEN O. HELMER,
ANDREW MARSH, JOHANNES M.
ROTH, GREGORY L. KENAUSIS,
LUCAS P. SCHNEIDER, JONATHAN
SILVER, PAUL B. MIDDLETON,
GERALD A. CONWAY, JR. and KEITH
SCHMID,

Defendants,

and

PLUG POWER INC,

Nominal Defendant

Civil Action No. 2022-0569-KSJM

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ANNE D. GRAZIANO, TRUSTEE,
ANNE D. GRAZIANO REVOCABLE
LIVING TRUST, derivatively on behalf
of PLUG POWER, INC.,

Plaintiff,

v.

ANDREW MARSH, GEORGE C.
MCNAMEE, GARY K. WILLIS,
MAUREEN O. HELMER, JOHANNES
M. ROTH, GREGORY L. KENAUSIS,
LUKE SCHNEIDER, JONATHAN
SILVER, PAUL B. MIDDLETON,
GERARD L. CONWAY, JR., and
KEITH SCHMID,

Defendants,

and

PLUG POWER, INC.,

Nominal Defendant

Civil Action No. 2022-0629-KSJM

**JOINT STIPULATION AND [PROPOSED] ORDER CONSOLIDATING
RELATED SHAREHOLDER DERIVATIVE ACTIONS, APPOINTING CO-
LEAD COUNSEL, AND STAYING THE CONSOLIDATED ACTION**

WHEREAS, on June 29, 2022, plaintiff Abbas Khambati (“Khambati”) filed his verified shareholder derivative complaint with books and records on behalf of Plug Power, Inc. (“Plug” or the “Company”) against defendants George C. Mcnamee, Gary K. Willis, Maureen O. Helmer, Andrew Marsh, Johannes M. Roth, Gregory L. Kenausis, Lucas P. Schneider, Jonathan Silver, Paul B. Middleton,

Gerald A. Conway, Jr., Keith Schmid, and Nominal Defendant Plug (the “*Khambati* Action”);

WHEREAS, on July 19, 2022, plaintiff Anne D. Graziano, Trustee, Anne D. Graziano Revocable Living Trust (“Graziano”, and together with Khambati, “Plaintiffs”) filed her verified shareholder derivative complaint with books and records on behalf of the Company against the same defendants named in the *Khambati* action (“Defendants”) (the “*Graziano* Action,” and together with the *Khambati* Action, the “Actions”) based upon substantially the same misconduct alleged in the *Khambati* Action;

WHEREAS, there is federal securities class action pending in the United States District Court for the Southern District of New York, captioned *In re Plug Power Securities Litigation*, Case No. 21-cv-02004 (S.D.N.Y.) (the “Securities Action”), which alleges violations of law relating to and arising from circumstances substantially similar to those in the Actions;

WHEREAS, on July 21, 2022, this Court entered an Order staying the *Khambati* Action;

WHEREAS, the parties therefore respectfully submit that such a stay of the *Graziano* Action, under the same terms as the stay already in place in the *Khambati* Action, is appropriate;

WHEREAS, Court of Chancery Rule 42(a) permits the consolidation of actions where “actions involving a common question of law or fact are pending before the Court,” and the Court may “make such order concerning proceedings therein as may tend to avoid unnecessary costs or delay”;

WHEREAS, Plaintiffs have conferred and agree that the Actions contain substantially similar factual and legal contentions and that the administration of justice would be best served by consolidating the Actions and appointing Co-Lead Counsel as set forth herein;

WHEREAS, the Defendants agree that the Actions should be consolidated and take no position regarding appointment of Co-Lead Counsel;

WHEREAS, in the interests of efficiency and conserving judicial resources, the parties wish to avoid potentially duplicative proceedings;

WHEREAS, counsel for the Defendants hereby accept service of the summonses and complaint in the *Graziano* Action;

WHEREAS, this Stipulation is not a waiver of any of the parties’ rights, remedies, claims, or defenses;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by the parties hereto, through their undersigned counsel, and subject to the approval of the Court, as follows:

1. The Actions are hereby consolidated for all purposes, including pretrial proceedings, trial, and appeal, and are referred to herein as the “Consolidated Action.”

2. The file in *Khambati v. McNamee, et al.*, Case No. 2022-0569-KSJM, shall constitute the Master File for every action in the Consolidated Action. Hereinafter, papers need only be filed in Case No. 2022-0569-KSJM. All papers and documents previously served or filed in any of the cases consolidated herein are deemed a part of the record in the Consolidated Action.

3. All pleadings, discovery, and other documents filed, served, produced, or otherwise provided by any party to any other party in the Consolidated Action shall be produced or provided to all parties in the Consolidated Action.

4. Every pleading filed in the Consolidated Action shall bear the following caption:

IN RE PLUG POWER INC.
STOCKHOLDER
DERIVATIVE LITIGATION

CONSOLIDATED
Case No. 2022-0569-KSJM

5. Squitieri & Fearon, LLP (“S&F”), Moore Kuehn PLLC (“MK”), and Rigrodsky Law, P.A. (“RL”) are designated Co-Lead Counsel for Plaintiffs in the Consolidated Action. Plaintiffs contend that their counsel, S&F, MK, and RL, are well-qualified to coordinate prosecution of the claims they assert derivatively on behalf of the Company. The Defendants take no position on the qualifications or

appointment of lead counsel for Plaintiffs.

6. Co-Lead Counsel shall represent Plaintiffs in the prosecution of the Consolidated Action, determine and present to the Court and opposing parties the position of Plaintiffs on all matters arising during pretrial negotiations, delegate and monitor the work performed by Plaintiffs' attorneys to ensure that there is no duplication of effort or unnecessary expense, coordinate on behalf of the Plaintiffs the initiation and conduct of discovery proceedings, have the authority to negotiate matters with Defendants' counsel, and perform such other duties as may be incidental to the proper coordination of Plaintiffs' pretrial activities or authorized by further order of the Court. Defendants' counsel may rely on all agreements made with either of Co-Lead Counsel, or other duly authorized representative of Co-Lead Counsel, and such agreements shall be binding on all Plaintiffs.

7. The parties to this Stipulation agree that it would be duplicative and wasteful of the Court's resources for any Defendant who has been properly served, has agreed to accept service, or who is served in the future to have to respond whether by answer or motion to the individual complaints before a consolidated complaint is filed in the Consolidated Action. Therefore, the parties to this Stipulation agree that any Defendant who has been properly served, has agreed to accept service, or who is served in the future, need only respond, plead, move, or answer to any consolidated complaint filed in the Consolidated Action. To the extent

that any Defendant now named in any of the existing complaints filed in the Consolidated Action is not named in the consolidated complaint, the claims against such Defendant shall be deemed dismissed without prejudice. Any pleading filed or served in one of the underlying actions shall become part of the Consolidated Action.

8. This Joint Stipulation and Order shall apply to each action arising out of the same transactions and occurrences and asserting direct and/or derivative state law claims filed in this Court or transferred here, and counsel for plaintiffs in the Actions shall assist the Court by calling to the attention of the Court the filing or transfer of any such action, and counsel for plaintiffs in the Actions shall assure that counsel therein receive notice of this Stipulation and Order. Unless otherwise ordered, the terms of all orders, rulings, and decisions in the Consolidated Action shall apply to all later shareholder derivative actions instituted herein.

9. Defendants shall provide Plaintiffs, with undersigned counsel as Plaintiffs' designated receiving agent, copies of any documents produced by Plug in response to any demand pursuant to Section 220 of the Delaware General Corporate Law, 8 *Del. C.* §220, based on the same or similar facts as those alleged in this action. Such production shall be made pursuant to the existing confidentiality agreements between Plug and Plaintiffs.

10. If, during the pendency of the stay, the Defendants produce documents in the Securities Action, the Defendants also shall produce those documents to

Plaintiffs. Plaintiffs agree that any such documents will not be used to amend the complaint or in opposition to a motion to dismiss the complaint.

11. If Defendants engage in mediation in the Securities Action or in any related derivative action, Defendants agree to provide Plaintiffs with reasonable advance notice of such mediation and to include Plaintiff in such mediation. If Defendants provide documents to the plaintiffs in the Securities Action or related derivative action, in connection with a mediation, Defendants agree to provide, within ten (10) days of production, but no later than three (3) days before such mediation, the same documents to Plaintiffs in this Action on the same terms they are provided to plaintiff in the Securities Action, or related derivative action, as appropriate. In the event that parties other than Defendants object to including Plaintiff in such mediation, Defendants will mediate with Plaintiff at or about the same time.

12. Notwithstanding the stay of this Consolidated Action, Plaintiffs may file a consolidated or amended complaint, though Defendants shall be under no obligation to respond to it during the pendency of the stay. In the event Plaintiffs file a consolidated or amended complaint, the Parties shall meet and confer to set a schedule, in the event the stay of the Consolidated Action is lifted, to govern Defendants' response to any such amended complaint.

13. This Stipulation is without prejudice to the right of any Defendant to

raise any and all arguments or defenses concerning the claims raised in the Consolidated Action. By entering into this Stipulation, each Defendant preserves all objections and challenges of any kind. By entering into this Stipulation, the Defendants do not waive or prejudice any rights that may exist with respect to arbitration, including the rights (if any) of any party to file any subsequent motion seeking to compel arbitration, including any motion seeking a stay or dismissal of claims in favor of arbitration.

14. Graziano agrees to be bound by the same stay provisions of the Court's July 21, 2022 Order (paragraphs 2 and 6) in the *Khambati* Action, and that the *Granziano* Action should be stayed as follows:

- a. The parties agree to voluntarily stay the Graziano Action on the terms set forth herein unless and until either (1) the Securities Litigation is dismissed, with prejudice, by the United States District Court for the Southern District of New York; or (2) the motion to dismiss the Securities Litigation is denied in whole or in part; or (3) either of the Parties to this Stipulation gives a fourteen (14) day notice that they no longer consent to the voluntary stay.
- b. Upon occurrence of any of (1) the granting of the motion to dismiss the Securities Action, with prejudice, by its court; or (2)

the denial of the motion to dismiss the Securities Action in whole or in part; or (3) either of the Parties to this Stipulation has given a fourteen (14) day notice that they no longer consent to the voluntary stay of the Derivative Action, then the Parties shall notify the Court within fourteen (14) days after the occurrence of any of the events above and will propose to the Court a schedule for the orderly progress of the Consolidated Action.

15. By entering into this Stipulation, Plaintiffs and Defendants do not waive any rights not specifically addressed herein. Defendants preserve all rights, objections, and defenses, and Plaintiffs preserve all rights and claims.

16. The Defendants, to the extent they have not been served, hereby accept service of the summonses and complaint filed in the *Graziano* Action through their undersigned counsel.

17. In accordance with the Court's July 21, 2022 Order in the *Khambati* Action, the parties will provide the Court with a joint status update on the progress of the Securities Action every three months beginning on October 31, 2022 or as events warrant.

Dated: August 9, 2022

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Dated: August 9, 2022

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Dated: August 9, 2022

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By: /s/ Rudolf Koch

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Counsel for Defendants

* * *

IT IS SO ORDERED THIS _____ DAY OF _____, 2022.

CHANCELLOR KATHALEEN ST. J. MCCORMICK

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: Multi-Case

File & Serve

Transaction ID: 67913668

Current Date: Aug 10, 2022

Case Number: Multi-Case

Case Name: Multi-Case

Court Authorizer: Kathaleen St Jude McCormick

/s/ Judge Kathaleen St Jude McCormick