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FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF ORANGE
 CENTRAL JUSTICE CENTER
 FEB 08 2012
 ALAN CARLSON, Clerk of the Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE 3069 2012

00543476

10 DANIEL WRAY, an individual,
 11 Plaintiff,
 12 v.
 13 FISKER AUTOMOTIVE HOLDINGS, INC.,
 14 a Delaware corporation, AEI FISKER
 INVESTMENTS I, LLC, a Delaware Limited
 15 Liability Company, AEI FISKER
 INVESTMENTS II, LLC, a Delaware Limited
 16 Liability Company, AEI FISKER
 INVESTMENTS VI, LLC, a Delaware
 17 Limited Liability Company, ADVANCED
 EQUITIES, INC., a Delaware corporation, and
 18 DOES 1-100, inclusive,
 19 Defendants.

CASE NO.
**COMPLAINT FOR BREACH OF
 FIDUCIARY DUTY; CONSTRUCTIVE
 FRAUD; FRAUD AND DECEIT;
 NEGLIGENCE MISREPRESENTATION;
 VIOLATION OF CALIFORNIA
 CORPORATIONS CODE §§ 25401 AND
 25501; JOINT AND SEVERAL
 LIABILITY FOR VIOLATIONS OF
 CORPORATIONS CODE §§ 25504 AND
 25504.1; AND VIOLATION OF BUSINESS
 & PROFESSIONS CODE § 17200**
 JURY TRIAL DEMANDED
 JUDGE CHARLES MARGINES
 DEPT. C19
By Fax

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1 California.

2 5. Daniel Wray alleges on information and belief that at all relevant times each
3 defendant, including Does 1 through 100, was the agent, employee, partner, member, officer,
4 parent, subsidiary, fiduciary or co-conspirator of the remaining defendants, and in acting or failing
5 to act as alleged, each defendant acted within the course and scope of its agency, employment,
6 partnership, membership or conspiracy, and with the knowledge and consent and under the
7 direction and control of one or more of the remaining defendants.

8 **JURISDICTION AND VENUE**

9 6. This Court has jurisdiction over all causes of action asserted in this complaint
10 because many of the events alleged that give rise to these causes of action occurred in Orange
11 County, California, and because defendants disseminated offering memoranda and other
12 solicitation materials in and from Orange County, issued and/or sold unregistered securities in
13 Orange County, and because each defendant resides in or does business in Orange County.

14 7. Venue is proper in this Court because many of the acts and transactions giving rise
15 to the claims asserted in this complaint and the damages caused to Daniel Wray occurred and were
16 perpetuated in Orange County. In addition, each defendant resides in or does business in Orange
17 County.

18 **CO-CONSPIRATORS**

19 8. Daniel Wray has sued each defendant individually as a primary violator and also as
20 a co-conspirator.

21 9. The liability of each defendant arises from each defendant's agreement to commit
22 unlawful acts and the performance of those acts, in concert, to further that agreement.

23 10. The conspiracy began as early as 2009, and perhaps earlier.

24 11. Each defendant knowingly and willfully entered into and pursued a common
25 course of conduct, by agreement with the other defendants and third parties, to commit all or part
26 of the unlawful acts Daniel Wray alleges.

27 12. Such unlawful acts were committed intentionally, knowingly, maliciously and
28 without legal justification or excuse.

1 13. With an intentional and unlawful purpose, defendants, and each of them, agreed to
2 present materially false and misleading oral and written information to prospective investors and
3 purchasers of Fisker securities. Fisker, Advanced Equities and its captive limited liability
4 companies, AEI I, AEI II, and/or AEI VI, made materially false and misleading oral and written
5 representations to Daniel Wray through the use of offering documents and other representations
6 which defendants knew were materially inaccurate and misleading.

7 14. Further to the conspiracy, defendants encouraged, substantially assisted and
8 otherwise aided and abetted each other with respect to these and other wrongful acts set forth in
9 this complaint.

10 15. As a result of the conspiracy, the defendants are vicariously and jointly and
11 severally liable with respect to each of the actions described in this complaint.

12 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

13 16. The Fisker convertible preferred stock and the investment interests in AEI I, AEI II
14 and AEI VI as a vehicle to purchase Fisker securities are all securities as the California
15 Corporations Code section 25019 defines a security.

16 17. In October 2009, Daniel Wray, through Advanced Equities, as Fisker's placement
17 agent, and AEI I and II, purchased Fisker unregistered securities in the amount of \$122,960. In
18 connection with that purchase, Daniel Wray relied on oral and written representations of Fisker,
19 Advanced Equities, AEI I, AEI II and AEI VI, which at the time Daniel Wray believed were true
20 and complete, and the truth of which he had no reason to question.

21 18. In October 2010, Daniel Wray, again through Advanced Equities and AEI II,
22 purchased additional Fisker unregistered securities in the amount of \$51,643.20. In connection
23 with that purchase, Daniel Wray relied on oral and written representations of Fisker, Advanced
24 Equities, AEI I, AEI II and AEI VI, which at the time Daniel Wray believed were true and
25 complete, and the truth of which he had no reason to question.

26 19. In April 2011, Daniel Wray purchased additional Fisker unregistered securities in
27 the amount of \$35,202.61. In connection with that purchase, Daniel Wray relied on oral and
28 written representations of Fisker, Advanced Equities, AEI I, AEI II and AEI VI, which at the time

1 Daniel Wray believed were true and complete, and the truth of which he had no reason to
2 question.

3 20. Fisker, Advanced Equities, AEI I, AEI II and AEI VI sold these securities by
4 confidential private placement memoranda dated, respectively, February 4, 2010, October 21,
5 2010 and March 31, 2011 and by other solicitation materials.

6 21. The offering memoranda represented to and assured Daniel Wray and other
7 purchasers of the securities that they would have a liquidation preference and "shall be entitled to
8 receive on a *pari passu* basis, an equal amount to the original [Series A-1, B-1 and C-1] preferred
9 ... plus all declared but unpaid dividends ... prior and in preference to holders of the common
10 stock."

11 22. The offering memoranda further represented to and assured Daniel Wray that he
12 would be entitled to dividends when and if declared by the board of directors.

13 23. The offering memoranda also represented to and assured Daniel Wray that he had
14 an automatic conversion/IPO conversion price discount in the event the company had a firm
15 commitment underwritten public offering of its equity securities.

16 24. Further, the offering memoranda represented to and assured Daniel Wray that he
17 would have anti-dilution protection.

18 25. Finally, the offering memoranda represented to and assured Daniel Wray that he,
19 among others, would enjoy registration rights.

20 26. While the offering memoranda recited, as appropriate, certain risks of investment,
21 nowhere among such risks did the offering memoranda inform Daniel Wray, or any other investor,
22 that, if he did not participate in future, forced financing of Fisker, as Fisker and Advanced Equities
23 dictated, he would suffer a significant dilution of all of his earlier investments; conversion of the
24 convertible preferred stock to common stock; loss of all the rights, preferences and privileges that
25 his ownership of preferred stock conferred, including liquidation preference, anti-dilution
26 protection; and initial public offering discount/special conversion rights.

27 27. Daniel Wray relied on Fisker, Advanced Equities, AEI I, AEI II and AEI VI's
28 written and oral representations and they were material to his investment decision.

1 28. In spite of those representations, on January 18, 2012, Advanced Equities, on
2 behalf of itself and Fisker and AEI I, II and VI informed Daniel Wray:

3 Due to Fisker's urgent need for equity capital, the Financing now contains a "pay to
4 play" provision that requires all holders (including the LLC) of Series D-X, A-1, B-
5 1 and C-1 Preferred Stock (the "**Prior Preferreds**") to purchase Series D-1
6 Preferred Stock in an amount equal to at least 40% of such holder's aggregate
7 dollar amount invested in the prior preferred ("threshold amount"). [Emphasis in
8 original.]

9 29. That paragraph further demanded that Daniel Wray pay an additional \$83,922.32,
10 and that if he did not he would incur a significant dilution in his prior investments, conversion to
11 common stock, and the commensurate loss of all the rights, preferences and privileges pertaining
12 to preferred stock ownership. (For example, liquidation preference and any initial public offering
13 discount/special conversion rights.)

14 30. The January 18 letter further informed Daniel Wray that he had only until Friday,
15 January 27, 2012 to make this investment decision and pay an additional \$83,922.32, or risk the
16 loss of all the rights associated with his purchase and ownership of Fisker preferred stock.

17 31. Fisker, Advanced Equities, AEI I, AEI II and AEI VI, however, had made, and
18 continued to make, representations of material fact to Daniel Wray—and he believes other
19 investors—both before Fisker, Advanced Equities, AEI I, AEI II and AEI VI drew Daniel Wray
20 into their investment scheme and before he invested in the securities, and continuing thereafter.

21 32. Those representations were false.

22 33. Daniel Wray is informed and believes that Fisker, Advanced Equities, AEI I, AEI
23 II and AEI VI knew that the representations were false when they made them or they made those
24 representations recklessly without knowing whether they were true or false.

25 34. Daniel Wray is informed and believes that Fisker, Advanced Equities, and AEI I,
26 AEI II and AEI VI made those representations with an intent to defraud and deceive Daniel Wray,
27 and other investors, and the defendants made those representations to induce Daniel Wray, and
28 others, to rely on them and to act in reliance on them.

 35. Fisker, Advanced Equities and AEI I, AEI II and AEI VI also withheld material
facts necessary to make the statements they made not false and misleading.

1 36. When the Fisker, Advanced Equities and AEI I, AEI II and AEI VI made the
2 material misrepresentations and omissions, Daniel Wray did not know that the representations
3 were false and believed them to be true.

4 37. Daniel Wray relied on those representations and omissions, and as a result of those
5 misrepresentations and omissions, expended substantial sums of money purchasing Fisker
6 securities and AEI I, AEI II and AEI VI investment interests as vehicles to purchase Fisker
7 securities.

8 38. Had Daniel Wray known the true facts he would never have purchased the
9 securities of Fisker, from Fisker and Advanced Equities or investment interests in AEI I, AEI II
10 and AEI VI.

11 39. Daniel Wray is informed and believes that Fisker, Advanced Equities, AEI I, AEI
12 II and AEI VI knew the true, material facts and material omissions concerning the investment and
13 knew that those facts were material to Daniel Wray, among other investors.

14 40. Daniel Wray is informed and believes that Fisker, Advanced Equities, AEI I, AEI
15 II and AEI VI willfully and intentionally concealed and suppressed those material facts.

16 41. Daniel Wray is informed and believes that Fisker, Advanced Equities, AEI I, AEI
17 II and AEI VI knew that Daniel Wray—among other investors—did not know and could not
18 reasonably discover those concealed and suppressed facts.

19 42. Daniel Wray is informed and believes that Fisker, Advanced Equities, AEI I, AEI
20 II and AEI VI intentionally concealed and suppressed these facts with the intent to defraud Daniel
21 Wray, among other investors.

22 43. Daniel Wray was unaware of these concealed and suppressed facts and would not
23 have acted as he did if he had known the concealed and suppressed facts.

24 44. Because of Fisker, Advanced Equities, AEI I, AEI II and AEI VI's superior
25 position, and their possession of material facts which only they knew and which they knew that
26 Daniel Wray—and other investors—did not know, and their knowledge that those facts were
27 material to Daniel Wray and any other investors, Fisker, Advanced Equities, AEI I, AEI II and
28 AEI VI had a duty to disclose these facts to Daniel Wray and the other investors.

1 45. By virtue of their intentional misrepresentation and by virtue of their intentional
2 concealment and suppression of material facts, Fisker, Advanced Equities, AEI I, AEI II and AEI
3 VI fraudulently induced Daniel Wray, among others, to purchase Fisker securities.

4 46. Daniel Wray is informed and believes that Fisker, Advanced Equities, AEI I, AEI
5 II and AEI VI made the promises stated in the written solicitation materials with the intent to
6 defraud Daniel Wray, and other investors, and that Fisker, Advanced Equities, AEI I, AEI II and
7 AEI VI made those promises to induce Daniel Wray to rely on them and to act in reliance on them.

8 47. Daniel Wray is informed and believes that Fisker, Advanced Equities, AEI I, AEI
9 II and AEI VI made statements of fact, and suggestions and assertions as facts, that were not true
10 and that Fisker, Advanced Equities, AEI I, AEI II and AEI VI knew were not true and did not
11 believe to be true and had no reasonable grounds for believing to be true.

12 48. Daniel Wray is informed and believes that Fisker, Advanced Equities, AEI I, AEI
13 II and AEI VI suppressed facts they were bound to disclose, and gave information about other
14 facts to Daniel Wray, and to the other investors, that were likely to mislead Daniel Wray, and
15 other investors, because of the suppressed facts.

16 49. Fisker, Advanced Equities, AEI I, AEI II and AEI VI owed Daniel Wray a duty of
17 full disclosure, honesty and candor, as well as a duty to exercise reasonable care and to make a
18 reasonable and diligent investigation of statements they made to Daniel Wray and the other
19 investors.

20 50. Fisker, Advanced Equities, AEI I, AEI II and AEI VI committed fraud on Daniel
21 Wray, as a direct and proximate result of which Daniel Wray has suffered money damages in an
22 amount which is not presently known but which will be proven at trial.

23 51. Fisker, Advanced Equities, AEI I, AEI II and AEI VI's conduct constitutes an
24 intentional misrepresentation, false promise, deceit and suppression of facts known to Fisker,
25 Advanced Equities, AEI I, AEI II and AEI VI, all with the intention of causing injury to Daniel
26 Wray, and on information and belief the other investors, and was oppressive, fraudulent, malicious
27 conduct as defined in California Civil Code § 3294 and Daniel Wray should recover, in addition
28 to actual damages, exemplary and punitive damages according to proof.

1 fiduciary duties. Fisker, Advanced Equities, AEI I, AEI II and AEI VI breached their fiduciary
2 duties to Daniel Wray by, *inter alia*, (1) inducing Daniel Wray further to invest in Fisker; (2)
3 failing to disclose that Fisker intended to force Daniel Wray to accept a “pay-to-play” provision;
4 (3) failing to disclose that, unless Daniel Wray acquiesced to Fisker’s “pay-to-play” demand for
5 another almost \$84,000, that Daniel Wray would lose all of the rights that Fisker and Advanced
6 Equities had represented he would have as a holder of Fisker preferred stock.

7 59. Fisker, Advanced Equities, AEI I, AEI II and AEI VI knew or should have known
8 that their acts, statements and/or omissions were false or improper given their fiduciary and
9 confidential relationship with Daniel Wray.

10 60. Daniel Wray justifiably relied on Fisker, Advanced Equities, AEI I, AEI II and AEI
11 VI to fulfill their fiduciary duties and relied on their statements, misstatements and non-
12 disclosures to his detriment.

13 61. As a proximate result of defendants’ conduct, Daniel Wray has been damaged in an
14 amount in excess of \$210,000, the exact amount to be determined according to proof.

15 **THIRD CAUSE OF ACTION**
16 **[FRAUD AND DECEIT]**
17 **(Against Fisker, Advanced Equities, AEI I, AEI II and AEI VI)**

18 62. Daniel Wray incorporates by this reference the allegations in paragraphs 1 through
19 61, above.

20 63. In October 2009, Daniel Wray, through Advanced Equities, as Fisker’s placement
21 agent, and AEI I and II, purchased Fisker unregistered securities in the amount of \$122,960. In
22 connection with that purchase, Daniel Wray relied on oral and written representations and other
23 solicitation materials of Fisker and Advanced Equities, which at the time Daniel Wray believed
24 were true and complete and the truth of which he had no reason to question.

25 64. In October 2010, Daniel Wray, again through Advanced Equities and AEI II,
26 purchased additional Fisker unregistered securities in the amount of \$51,643.20. In connection
27 with that purchase, Daniel Wray relied on oral and written representations and other solicitation
28 materials of Fisker and Advanced Equities, which at the time Daniel Wray believed were true and
complete and the truth of which he had no reason to question.

1 65. In April 2011, Daniel Wray through Advanced Equities and AEI II purchased
2 additional Fisker unregistered securities in the amount of \$35,202.61. In connection with that
3 purchase, Daniel Wray relied on oral and written representations and other solicitation materials of
4 Fisker and Advanced Equities, which at the time Daniel Wray believed were true and complete
5 and the truth of which he had no reason to question.

6 66. Fisker and Advanced Equities and AEI I, AEI II and AEI VI sold these securities
7 by confidential private placement memoranda dated February 4, 2010, October 21, 2010 and
8 March 31, 3011.

9 67. The offering memoranda represented to and assured Daniel Wray and other
10 purchasers of the securities that they would have a liquidation preference.

11 68. The offering memoranda further represented to and assured Daniel Wray that he
12 would be entitled to dividends when and if declared by the board of directors.

13 69. Further, the offering memoranda also represented to and assured Daniel Wray that
14 he had an automatic conversion/IPO conversion price discount in the event that the company had a
15 firm commitment underwritten public offering of its equity securities.

16 70. Further, the offering memoranda represented to and assured Daniel Wray that he
17 would have anti-dilution protection.

18 71. Finally, the offering memoranda represented to and assured Daniel Wray that he,
19 among others, would enjoy registration rights.

20 72. The offering memoranda did not inform Daniel Wray that, if he did not participate
21 in future "pay-to-play" financing of Fisker, as Fisker and Advanced Equities and AEI I, AEI II and
22 AEI VI dictated, that he would suffer a significant dilution of all of his earlier investments;
23 conversion of the convertible preferred stock to common stock; loss of all the rights, preferences
24 and privileges that his ownership of preferred stock conferred, including liquidation preference,
25 anti-dilution protection; and initial public offering discount/special conversion rights.

26 73. Daniel Wray relied on Fisker, Advanced Equities, AEI I, AEI II and AEI VI's
27 written and oral representations and they were material to his investment decision.

28 74. Fisker, Advanced Equities, AEI I, AEI II and AEI VI, however, made, and

1 continued to make, representations of material fact to Daniel Wray—and he believes other
2 investors—both before Fisker and Advanced Equities and AEI I, AEI II and AEI VI drew Daniel
3 Wray into their investment scheme and before he invested in the securities, and continuing
4 thereafter.

5 75. Those representations were false.

6 76. Daniel Wray is informed and believes that Fisker, Advanced Equities, AEI I, AEI
7 II and AEI VI knew that the representations were false when they made them or they made those
8 representations recklessly without knowing whether they were true or false.

9 77. Daniel Wray is informed and believes that Fisker, Advanced Equities, AEI I, AEI
10 II and AEI VI made those representations *with an intent to defraud and deceive Daniel Wray*, and
11 the defendants made those representations to induce Daniel Wray, and others, to rely on them and
12 to act in reliance on them.

13 78. When the Fisker, Advanced Equities, AEI I, AEI II and AEI VI made the
14 representations and omitted material facts necessary to make their representations not misleading,
15 Daniel Wray did not know that the representations were false and believed them to be true.

16 79. Daniel Wray relied on those material representations and omission and as a result
17 of those misrepresentations expended substantial sums of money purchasing Fisker securities and
18 AEI I, AEI II and AEI VI, investment interests.

19 80. Had Daniel Wray known the true facts he would never have purchased securities
20 from Fisker, Advanced Equities or investment interests in AEI I, AEI II and AEI VI.

21 81. Daniel Wray is informed and believes that Fisker, Advanced Equities, AEI I, AEI
22 II and AEI VI knew the true, material facts concerning the investment and knew that they were
23 material to Daniel Wray, among other investors.

24 82. Daniel Wray is informed and believes that Fisker, Advanced Equities, AEI I, AEI
25 II and AEI VI willfully and intentionally concealed and suppressed those material facts.

26 83. Daniel Wray is informed and believes that Fisker, Advanced Equities, AEI I, AEI
27 II and AEI VI knew that Daniel Wray—among other investors—did not know and could not
28 reasonably discover these concealed and suppressed facts.

1 84. Daniel Wray is informed and believes that Fisker, Advanced Equities, AEI I, AEI
2 II and AEI VI intentionally concealed and suppressed these facts with the intent to defraud Daniel
3 Wray, among other investors.

4 85. Daniel Wray was unaware of these concealed and suppressed facts and would not
5 have acted as he did if he had known the concealed and suppressed facts.

6 86. Because of Fisker, Advanced Equities, AEI I, AEI II and AEI VI's superior
7 position, and their possession of material facts which only they knew and which they knew that
8 Daniel Wray—and other investors—did not know, and their knowledge that these facts were
9 material to Daniel Wray and any other investors, Fisker, Advanced Equities, AEI I, AEI II and
10 AEI VI had a duty to disclose these facts to Daniel Wray and the other investors.

11 87. By virtue of their intentional misrepresentation and by virtue of their intentional
12 concealment and suppression of material facts, Fisker, Advanced Equities, AEI I, AEI II and AEI
13 VI fraudulently induced Daniel Wray, among others, to purchase Fisker securities.

14 88. Daniel Wray is informed and believes that Fisker, Advanced Equities, AEI I, AEI
15 II and AEI VI made the promises stated in the written solicitation materials with the intent to
16 defraud Daniel Wray, and other investors, and that Fisker, Advanced Equities, AEI I, AEI II and
17 AEI VI made those promises to induce Daniel Wray to rely on them and to act in reliance on them.

18 89. Daniel Wray is informed and believes that Fisker, Advanced Equities, AEI I, AEI
19 II and AEI VI made statements of fact, and suggestions and assertions as facts, that were not true
20 and that Fisker, Advanced Equities, AEI I, AEI II and AEI VI knew were not true and did not
21 believe to be true and had no reasonable grounds for believing to be true.

22 90. Daniel Wray is informed and believes that Fisker, Advanced Equities, AEI I, AEI
23 II and AEI VI suppressed facts they were bound to disclose, and gave information about other
24 facts to Daniel Wray, and to the other investors, that were likely to mislead Daniel Wray, and
25 other investors, because of the suppressed facts.

26 91. Fisker, Advanced Equities, AEI I, AEI II and AEI VI owed Daniel Wray a duty of
27 full disclosure, honesty and candor, as well as a duty to exercise reasonable care and to make a
28 reasonable and diligent investigation of statements they made to Daniel Wray and the other

1 investors.

2 92. Fisker, Advanced Equities, AEI I, AEI II and AEI VI committed fraud on Daniel
3 Wray, as a direct and proximate result of which Daniel Wray has suffered money damages in an
4 amount which is not presently known but which will be proven at trial.

5 93. Fisker, Advanced Equities, AEI I, AEI II and AEI VI's conduct constitutes an
6 intentional misrepresentation, false promise, deceit and suppression of facts known to Fisker,
7 Advanced Equities, AEI I, AEI II and AEI VI, all with the intention of causing injury to Daniel
8 Wray, and on information and belief the other investors, and was oppressive, fraudulent, malicious
9 conduct as defined in California Civil Code § 3294 and Daniel Wray should recover, in additional
10 to actual damages, exemplary and punitive damages according to proof.

11 **FOURTH CAUSE OF ACTION**
12 **[NEGLIGENT MISREPRESENTATION]**
13 **(Against Fisker, Advanced Equities, AEI I, AEI II and AEI VI)**

14 94. Daniel Wray incorporates by this reference the allegations in paragraphs 1 through
15 93, above.

16 95. Fisker, Advanced Equities, AEI I, AEI II and AEI VI made representations to
17 Daniel Wray, orally and in written solicitation materials, about existing material facts.

18 96. That those representations were false.

19 97. Daniel Wray is informed and believes that Fisker, Advanced Equities, AEI I, AEI
20 II and AEI VI made those representations without a reasonable ground for believing them to be
21 true.

22 98. Daniel Wray is informed and believes that Fisker, Advanced Equities, AEI I, AEI
23 II and AEI VI made those representations with the intent to induce Daniel Wray, to rely upon
24 them.

25 99. Daniel Wray was unaware of the falsity of the representations and acted in reliance
26 on the truth of the representations and was justified in acting in relying upon those representations.

27 100. As a result of his reliance on the truth of those representations, Daniel Wray has
28 sustained and continues to sustain money damages according to proof at trial.

101. In engaging in the conduct alleged, Fisker, Advanced Equities, AEI I, AEI II and

1 AEI VI made representations and statements of material facts and omitted to state material fact
2 necessary to make statements that they made, in light of the circumstances in which they were
3 made, not misleading, and necessary to be stated in order that Daniel Wray would be informed of
4 all material facts necessary for Daniel Wray's decision to purchase the shares. Fisker, Advanced
5 Equities, AEI I, AEI II and AEI VI made such representations and statements with the intent to
6 induce Daniel Wray to rely on them.

7 102. In making the representations and statements and omitting to state material facts,
8 Fisker, Advanced Equities, AEI I, AEI II and AEI VI acted negligently in that they made those
9 representations and statements without a reasonable ground for believing them to be true and did
10 not exercise due care in investigating to determine the existence of the material facts omitted.

11 103. At the time of the representations, statements, and material omissions, Daniel Wray
12 was unaware that they were false and misleading and was unaware that there had been omissions
13 of material facts.

14 104. Daniel Wray justifiably relied on these representations and statements and
15 justifiably believed that there was no omissions of material facts. As a result, Daniel Wray was
16 induced to purchase Fisker securities.

17 105. As a direct and proximate result of the misrepresentations and omissions alleged,
18 Daniel Wray has suffered money damages in an amount which is not presently known but which
19 will be proven at trial.

20 **FIFTH CAUSE OF ACTION**
21 **[VIOLATION OF CALIFORNIA CORPORATIONS CODE §§ 25400 AND 25500]**
22 **(Against Fisker, Advanced Equities, AEI I, AEI II and AEI VI)**

23 106. Daniel Wray incorporates by this reference the allegations in paragraphs 1 through
24 105, above.

25 107. The shares that Fisker, Advanced Equities, AEI I, AEI II and AEI VI sold to Daniel
26 Wray were securities as § 25019 of the California Corporations Code defines the term.

27 108. Fisker, Advanced Equities, AEI I, AEI II and AEI VI are liable to Daniel Wray
28 under California Corporations Code §§ 25400(d) and 25500 because they sold or offered to sell
securities, and made statements or willfully participated in the making of false and misleading

1 statements for the purposes of inducing Daniel Wray, and others, to purchase such securities.

2 109. Those statements were, at the time and in the light of the circumstances under
3 which they were made, false or misleading with respect to material facts, and omitted to state
4 material facts necessary in order to make the statement made, in the light of the circumstances
5 under which they were made, not misleading.

6 110. Fisker, Advanced Equities, AEI I, AEI II and AEI VI knew or had reasonable
7 grounds to believe that the statements and omissions were false or misleading.

8 111. The misrepresentations and material omissions proximately injured Daniel Wray,
9 and perhaps others, in an amount that is not presently known but which will be proven at trial.

10 **SIXTH CAUSE OF ACTION**
11 **[VIOLATIONS OF CALIFORNIA CORPORATION CODE §§ 25401 AND 25501]**
12 **(Against Fisker, Advanced Equities, AEI I, AEI II and AEI VI)**

13 112. Daniel Wray incorporates by this reference the allegations in paragraphs 1 through
14 111, above.

15 113. California Corporations Code section 25110 provides, in pertinent part, that:

16 It is unlawful for any person to offer or sell in this state any security in an issuer
17 transaction ... unless such sale has been qualified under Section 25111, 25112, or
18 25113 ... or unless such security is exempted or not subject to qualification under
19 Chapter 1 (commencing with Section 25100) of this part.

20 114. Fisker, Advanced Equities, AEI I, AEI II and AEI VI and each of them offered and
21 sold, or conspired with other defendants directly or indirectly controlled others to offer and sell,
22 securities in issuer transactions in Orange County, California in the form of investments in Fisker
23 Automotive through investments in AEI I, AEI II and AEI VI.

24 115. Through the offering documents and other representations, Fisker, Advanced
25 Equities, AEI I, AEI II and AEI VI offered and sold the securities within California within the
26 meaning of California Corporations Code §§ 25008 and 25017 and in so doing represented that the
27 offering was exempt from registration and/or qualification under California law.

28 116. The Commissioner of the California Department of Corporations did not issue a
permit or other form of qualification authorizing Fisker, Advanced Equities, AEI I, AEI II and
AEI VI, to offer and sell Fisker securities in California.

1 117. The offer of securities referred to in this complaint are not exempt from the
2 requirement of qualification under California Corporations Code section 25110.

3 118. The shares that defendants sold to Daniel Wray were securities as § 25019 of the
4 California Corporations Code defines the term.

5 119. Fisker, Advanced Equities, AEI I, AEI II and AEI VI are liable to Daniel Wray
6 under §§ 25401 and 25501 of the California Corporations Code because each offered to sell and
7 sold securities in California by means of written or oral communications that included untrue
8 statements of material facts and omitted to state material facts necessary in order to make the
9 statements made, in the light of the circumstances under which they were made, not misleading.

10 120. The material misrepresentations and omissions proximately injured Daniel Wray in
11 an amount that is not presently known but which will be proven at trial.

12 **SEVENTH CAUSE OF ACTION**
13 **[VIOLATION OF CALIFORNIA CORPORATIONS CODE §§ 25504 AND 25504.1]**
14 **(Against Fisker, Advanced Equities, AEI I, AEI II and AEI VI)**

15 121. Daniel Wray incorporates by this reference the allegations in paragraphs 1 through
16 120, above.

17 122. Advanced Equities, and AEI I, AEI II and AEI VI materially aided and abetted in
18 the solicitation and sale of the securities to Daniel Wray.

19 123. Advanced Equities, and AEI I, AEI II and AEI VI participated in and aided and
20 abetted the misrepresentation and material omissions in the written solicitation materials and also
21 oral misrepresentation.

22 124. Advanced Equities, AEI I, AEI II and AEI VI are liable for the conduct alleged
23 both as a direct participants and as principals and or agents of the other defendants pursuant to
24 Corporations Code §§ 25504 and 25504.1.

25 125. Advanced Equities and AEI I, AEI II and AEI VI materially assisted in the
26 violations of Corporations Code Section 25401 and are liable under Corporations Code Section
27 25504.1.

28 126. As a direct and proximate result, Daniel Wray suffered money damages in an
amount that is not presently known but which will be proven at trial.

1 **EIGHTH CAUSE OF ACTION**
2 **[VIOLATION OF BUSINESS & PROFESSIONS CODE §17200]**
3 **(Against Fisker, Advanced Equities, AEI I, AEI II and AEI VI)**

4 127. Daniel Wray incorporates by this reference the allegations in paragraphs 1 through
5 126, above.

6 128. By their conduct, Fisker, Advanced Equities, AEI I, AEI II and AEI VI violated
7 Business & Professions Code § 17200.

8 129. As a direct and proximate result of Fisker, Advanced Equities, AEI I, AEI II and
9 AEI VI's violation of Business & Professions Code § 17200, Daniel Wray is entitled to restitution
10 damages according to proof at trial.

11 **NINTH CAUSE OF ACTION**
12 **[BREACH OF FIDUCIARY DUTY AND RESTITUTION]**
13 **(Against Advanced Equities, Inc.)**

14 130. Daniel Wray incorporates by this reference the allegations in paragraphs 1 through
15 129, above.

16 131. In addition to his investments in Fisker securities through Advanced Equities and
17 its captive limited liability companies, AEI I, AEI II and AEI VI, Daniel Wray also invested in
18 other captive Advanced Equities LLCs: Advanced Equities Greentech Investments IV LLC, in the
19 amount of \$50,000; Advanced Equities iSkoot Investments II, LLC, in the amount of \$25,000;
20 AEI Luxtera III, LLC, in the amount of \$25,000; AEI Magnum Investments IV, LLC, in the
21 amount of \$26,500.

22 132. As a consequence of Advanced Equities breaches of fiduciary duty to Daniel Wray,
23 in addition to the damages he has suffered in connection with his investment in Fisker securities,
24 Daniel Wray demands rescission of the other investments identified above and restitution of all his
25 funds.

26 133. As a proximate result of defendants' conduct, Daniel Wray has been damaged in an
27 amount in excess of \$130,000, the exact amount to be determined according to proof.

28 **PRAYER**

WHEREFORE, Daniel Wray demands judgment against defendants Fisker, Advanced
Equities, AEI I, AEI II and AEI VI, as follows:

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1. For a judgment that Daniel Wray is entitled to an accounting and restitution of the funds he entrusted to Fisker, Advanced Equities, and AEI I, AEI II and AEI VI;
2. For restitution in an amount to be proven at trial;
3. For compensatory damages in an amount to be proven at trial;
4. For punitive damages for an amount to be proven at trial;
5. For attorneys fees and costs of suit; and
6. For such other and further relief as this Court deems just and proper.

DATED: February 8, 2012

SOLOMON WARD SEIDENWURM & SMITH, LLP


By: 
EDWARD J. MCINTYRE
Attorneys for Daniel Wray

DEMAND FOR JURY

Daniel Wray demands a jury trial of all claims triable by a jury.

DATED: February 8, 2012

SOLOMON WARD SEIDENWURM & SMITH, LLP

By: 
EDWARD J. MCINTYRE
Attorneys for Daniel Wray