

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

IN RE MULLEN AUTOMOTIVE, INC.  
DERIVATIVE LITIGATION

Case No. CV 22-5336-DMG (AGR<sub>x</sub>)

**NOTICE OF PROPOSED  
DERIVATIVE SETTLEMENT**

**TO: ALL RECORD HOLDERS AND BENEFICIAL OWNERS OF THE COMMON STOCK OF MULLEN AUTOMOTIVE INC. (“MULLEN” OR THE “COMPANY”) AS OF OCTOBER 11, 2024 (THE “RECORD DATE”).**

**PLEASE READ THIS NOTICE (“NOTICE”) CAREFULLY AND IN ITS ENTIRETY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT AND DISMISSAL OF THE ABOVE-CAPTIONED CONSOLIDATED DERIVATIVE ACTION AND CONTAINS IMPORTANT INFORMATION REGARDING YOUR RIGHTS. YOUR RIGHTS MAY BE AFFECTED BY THESE LEGAL PROCEEDINGS. IF THE COURT APPROVES THE SETTLEMENT, YOU WILL BE FOREVER BARRED FROM CONTESTING THE APPROVAL OF THE PROPOSED SETTLEMENT AND FROM PURSUING THE RELEASED CLAIMS.**

**IF YOU HOLD MULLEN COMMON STOCK FOR THE BENEFIT OF ANOTHER, PLEASE PROMPTLY TRANSMIT THIS DOCUMENT TO SUCH BENEFICIAL OWNER.**

Notice is hereby provided to you of the proposed settlement (the “Settlement”) of this consolidated shareholder derivative litigation. This Notice is provided by Order of the United States District Court for the Central District of California (the “Court”). It is not an expression of any opinion by the Court with respect to the truth

of the allegations in the litigation or merits of the claims or defenses asserted by or against any party. It is solely to notify you of the terms of the proposed Settlement, and your rights related thereto. The terms of the proposed Settlement are set forth in the written Stipulation and Agreement of Settlement dated August 21, 2024 (“Stipulation”) that has been publicly filed with the Court.<sup>1</sup>

## **I. WHY THE COMPANY HAS ISSUED THIS NOTICE**

Your rights may be affected by the settlement of the consolidated shareholder derivative action styled *In re Mullen Automotive, Inc. Derivative Litigation*, Case No. CV 22-5336-DMG (AGRx) (C.D. Cal.) (the “Consolidated Derivative Action”). Plaintiffs Jeff Witt, Joseph Birbigalia and Hany Morsy (collectively, “Plaintiffs”), on behalf of themselves and derivatively on behalf of Mullen; individual defendants David Michery, Ignacio Novoa, Mary Winter, Kent Puckett, Mark Betor, William Miltner, Jonathan New, Jerry Alban and Oleg Firer (the “Settling Defendants”); and Nominal Defendant Mullen (together with Plaintiffs and the Settling Defendants, the “Settling Parties”) have agreed upon terms to settle the above-referenced litigation and have signed the Stipulation setting forth those settlement terms.

On January 24, 2025, at 10:00 a.m., the Court will hold a hearing (the “Settlement Hearing”) in the Consolidated Derivative Action. The purpose of the

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<sup>1</sup> All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation.

Settlement Hearing is to determine: (i) whether the Settlement and Plaintiffs' Counsel's Fee and Expense Application is fair, reasonable, and adequate and should be finally approved; (ii) whether a final judgment should be entered and the Consolidated Derivative Action dismissed with prejudice pursuant to the Stipulation; and (iii) such other matters as may be necessary and proper under the circumstances.

## **II. MULLEN DERIVATIVE LITIGATION**

### **A. The Consolidated Derivative Action**

On August 1, 2022, Plaintiffs Witt and Birbigalia filed a putative shareholder derivative complaint (the "Witt Complaint") on behalf of Mullen in the Court, in the case captioned *Witt v. Michery, et. al.*, Case No. CV 22-5336-DMG (AGRx), asserting claims against the Settling Defendants for breach of fiduciary duties, unjust enrichment, abuse of control, and waste of corporate assets, and asserting a claim against Defendant Firer for violations of Section 14 of the Securities Exchange Act of 1934 (the "Exchange Act").

A second putative shareholder derivative complaint was filed in the Court on September 30, 2024, captioned *Morsy v. Michery, et. al.*, Case No. CV 22-7139-DMG (AGRx) (the "Morsy Complaint"), asserting claims similar to those asserted in the Witt Complaint against the Settling Defendants for breach of fiduciary duties,

unjust enrichment, abuse of control, and waste of corporate assets, and violations of Section 14 of the Exchange Act.

Both the Witt Complaint and the Morsy Complaint allege that the Settling Defendants are liable to Mullen for purportedly permitting the issuance of a series of false and misleading statements, beginning on June 15, 2020, concerning Mullen's business prospects; specifically, that the Settling Defendants allegedly misrepresented Mullen's: (1) ability and timeline to produce and sell electric cars; (2) manufacturing facilities and capabilities; (3) battery technology development and capabilities; and (4) strategic partnerships and/or deals with third-parties and customer contracts. The Witt Complaint and the Morsy Complaint allege these purported misrepresentations caused Mullen's common stock to trade at artificially inflated prices, resulting in a decline in the price when the truth was publicly disclosed. The Settling Defendants expressly deny that either the Witt Complaint or the Morsy Complaint has asserted any valid claims as to any of them, and expressly deny any and all allegations of fault, liability, wrongdoing, or damages whatsoever.

On November 8, 2022, the Court consolidated the Witt action with the Morsy action, and appointed Gainey McKenna & Egleston and The Rosen Law Firm, P.A. as Co-Lead Counsel for the Plaintiffs. Shortly thereafter, Plaintiffs and certain of the Settling Defendants filed a Joint Stipulation to Stay Derivative Litigation. The

Court's Order Staying Derivative Litigation was entered on November 30, 2022 ("Order Staying Derivative Action").

**B. The Securities Class Action**

The claims asserted in the Witt Complaint and Morsy Complaint are predicated on similar facts and circumstances to those alleged in a related securities class action case previously filed in the Court on May 5, 2022, captioned *In re Mullen Automotive, Inc. Securities Litigation*, Case No. CV 22-3026-DMG (AGRx) (C.D. Cal.) (the "Securities Class Action"). The Securities Class Action, narrowed following a motion to dismiss, alleges that during the putative class period from June 15, 2020 through April 18, 2022, inclusive (the "Class Period"), defendants Mullen, Mullen Technologies Inc. ("Mullen Tech"), and Michery allegedly made materially false and misleading statements and/or omitted material information which artificially inflated the price of Mullen's common stock. When the purported truth was allegedly publicly disclosed, the price of Mullen's common stock allegedly declined. Following mediation and further discussions, the parties to the Securities Class Action agreed to settle the lawsuit for a settlement payment of \$7.25 million – which was the mediator's recommendation. On August 16, 2024, plaintiff in the Securities Class Action filed a motion for preliminary approval of the settlement.

### **C. Settlement Negotiations**

On April 2, 2024, Plaintiffs and Mullen participated in a mediation session before Robert Meyer (“Mr. Meyer” or the “Mediator”) of JAMS. On March 13, 2024, prior to the in-person mediation session, Plaintiffs sent a written settlement demand to explore a potential resolution of the Consolidated Derivative Action. Over the next several months, with the assistance of the Mediator, the Settling Parties engaged in extensive arm’s-length negotiations regarding a possible resolution of the Consolidated Derivative Action. Ultimately, following these discussions conducted with Mr. Meyer’s assistance, on June 3, 2024, the Settling Parties reached an agreement-in-principle to settle the Consolidated Derivative Action and executed a term sheet whereby Mullen agreed to adopt the corporate governance enhancements (the “Corporate Governance Enhancements”), subject to execution of a formal, final stipulation and agreement of settlement and related papers, and Court approval. The Corporate Governance Enhancements are summarized herein and in Paragraph V.3 of the Stipulation. The full text of the Corporate Governance Enhancements are attached to the Stipulation as Exhibits 1 to 7.

### **III. TERMS OF THE PROPOSED DERIVATIVE SETTLEMENT**

The principal terms, conditions, and other matters that are part of the Settlement, which is subject to approval by the Court, are summarized below. This

summary should be read in conjunction with, and is qualified in its entirety by reference to, the text of the Stipulation and its Exhibits, which have been filed with the Court.

Within ninety (90) days of the Judgment becoming Final, Mullen's Board shall adopt the Corporate Governance Enhancements summarized below, which shall remain in effect for no less than four (4) years from the date the Judgment becomes Final. Mullen acknowledges and agrees that the filing, pendency, and settlement of the Consolidated Derivative Action caused the adoption and implementation of the Corporate Governance Enhancements set forth below. Mullen acknowledges that the Corporate Governance Enhancements set forth below confer substantial benefits upon Mullen and its current shareholders.

**A. The Corporate Governance Enhancements**

Establishment of a Risk Committee. Mullen shall create a Board-level Risk Committee ("Risk Committee") to oversee the Company's risk management policies and framework. The Risk Committee shall consist of at least three (3) independent directors. The Board shall adopt and implement a formal charter for the Risk Committee, a copy of which is attached as Exhibit 2 to the Stipulation. Mullen shall post the Risk Committee Charter on its website promptly after adoption.

Creation of a Disclosure Committee. Mullen shall create a separate, management-level Disclosure Committee ("Disclosure Committee") that establishes

effective procedures and protocols at the Company relating to financial disclosures, to ensure that all of Mullen’s significant public statements, including, but not limited to, SEC filings, material press releases, and Mullen’s significant statements to non-Mullen individuals at public or private meetings, are reviewed for accuracy, integrity, and completeness, and for reviewing with management its ongoing compliance with these protocols and procedures. The Disclosure Committee members shall consist of, at least, Mullen’s Chief Executive Officer (“CEO”), Chief Financial Officer (“CFO”), legal counsel, and at least one other senior officer with day-to-day oversight of the key functional areas of the Company. Mullen shall adopt and implement a formal Charter for the Disclosure Committee, a copy of which is attached as Exhibit 3 to the Stipulation. Mullen shall post the Disclosure Committee Charter on its website promptly after adoption.

Audit Committee’s Company Assessment. The Audit Committee will perform a one-time internal assessment of internal controls in consultation with Mullen’s outside auditors.

Improvements to the Nominating and Corporate Governance Committee Charter. Mullen shall amend the Nominating and Corporate Governance Committee Charter as reflected in the redlined version of the existing charter, attached as Exhibit 4 to the Stipulation. Mullen shall post the amended Nominating and Corporate Governance Committee Charter on its website promptly after adoption.



Improvements to the Compensation Committee Charter. Mullen shall amend the Compensation Committee Charter as reflected in the redlined version of the existing charter, attached as Exhibit 5 to the Stipulation. Mullen shall post the amended Compensation Committee Charter on its website promptly after adoption.

Executive Reports. All Mullen executives subject to the reporting requirements of Section 16 of the Exchange Act shall provide reports (either oral or written at the Board's discretion) regarding their respective areas of responsibility at all regularly scheduled quarterly Board meetings.

Improvements to Director Education. Mullen's Corporate Governance Guidelines state that Mullen currently "provides an orientation program for new directors that includes written materials, oral presentations, and meetings with senior members of management" and is "designed to familiarize new directors with [Mullen]'s business and strategy." Mullen shall bolster this program by requiring that all existing outside directors, and all new outside directors, attend a National Associate of Corporate Directors ("NACD") certified training program, or similar program, within one year of (a) entry of Final Judgment in the Consolidated Derivative Action, or (b) a new director joining the Board.

Board Composition and Practices. Mullen shall amend its Corporate Governance Guidelines as reflected in the redlined version of the existing guidelines attached as Exhibit 6 to the Stipulation.

Whistleblower Policy. While Mullen’s Code of Conduct indicates that the Company maintains “Whistle-Blower Policy and Procedures,” Mullen’s written policy is not publicly available on the Company’s website and has not yet been formally adopted. Mullen shall adopt and formalize the Whistleblower Policy (the “Whistleblower Policy”), a copy of which is attached as Exhibit 7 to the Stipulation. Mullen shall post the Whistleblower Policy on the Company’s website and shall remind employees of the Whistleblower Policy in an employee communication to all current employees and to each new employee as he or she joins the Company.

#### **IV. PLAINTIFFS’ COUNSEL’S APPLICATION FOR ATTORNEYS’ FEES AND EXPENSES**

Plaintiffs’ Counsel intends to apply to the Court for an award of attorneys’ fees and expenses not to exceed \$500,000.00 (the “Fee and Expense Application”), and Defendants have agreed not to oppose such Fee and Expense Application. Plaintiffs’ Counsel also has informed Defendants that they intend to apply to the Court for service awards to Plaintiffs for the time and expenses Plaintiffs expended in the prosecution of the Consolidated Derivative Action of up to \$2,000 each, or \$6,000 in total, to be payable from any fees and expenses the Court awards to Plaintiffs’ Counsel in connection with the Fee and Expense Application.

By no later than December 9, 2024, Plaintiffs’ motion in support of Court approval of the Settlement and Plaintiffs’ Counsel’s Fee and Expense Application

will be available for viewing on Plaintiffs' Counsel's websites at [www.rosenlegal.com](http://www.rosenlegal.com) and [www.gme-law.com](http://www.gme-law.com).

## **V. REASONS FOR THE SETTLEMENT**

The Settling Parties have determined that it is desirable and beneficial that the Consolidated Derivative Action, and all of their disputes related thereto, be fully and finally settled in the manner and upon the terms and conditions set forth in the Stipulation, and Plaintiffs and Plaintiffs' Counsel believe that the Settlement is in the best interests of the Settling Parties, Mullen, and its shareholders.

### **A. Why Did the Settling Defendants Agree to Settle?**

The Settling Defendants have denied and continue to deny each of the claims and contentions alleged by Plaintiffs in the Consolidated Derivative Action. The Settling Defendants expressly have denied and continue to deny all allegations of wrongdoing or liability against them, or any of them, arising out of, based upon, or related to, any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Consolidated Derivative Action. Without limiting the foregoing, the Settling Defendants have denied and continue to deny, among other things, that they breached their fiduciary duties or any other duty owed to Mullen or its shareholders, or that Plaintiffs, Mullen, or its shareholders suffered any damage or were harmed as a result of any conduct alleged in the Consolidated Derivative Action. The Settling Defendants have further asserted and continue to assert that at

all relevant times, they acted in good faith and in a manner they reasonably believed to be in the best interests of Mullen and its shareholders.

Nonetheless, the Settling Defendants also have taken into account the expense, uncertainty, and risks inherent in any litigation, especially in complex cases like the Consolidated Derivative Action, and that the proposed Settlement would, among other things: (a) bring an end to the expenses, burdens, and uncertainties associated with the continued litigation of the claims asserted in the Consolidated Derivative Action; (b) finally put to rest those claims and the underlying Consolidated Derivative Action; and (c) confer benefits upon them, including further avoidance of disruption of their duties due to the pendency and defense of the Consolidated Derivative Action. Therefore, the Settling Defendants have determined that it is desirable and beneficial that the Consolidated Derivative Action, and all of the Settling Parties' disputes related thereto, be fully and finally settled in the manner and upon the terms and conditions set forth in the Stipulation. Pursuant to the terms set forth below, the Stipulation (including all of the Exhibits thereto) shall in no event be construed as or deemed to be evidence of an admission or concession by the Settling Defendants with respect to any claim of fault, liability, wrongdoing, or damage whatsoever.

## **B. Why Did Shareholders Agree to Settle?**

Plaintiffs and Plaintiffs' Counsel believe that the claims asserted in the Consolidated Derivative Action have merit. However, Plaintiffs and Plaintiffs' Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Consolidated Derivative Action against the Settling Defendants through trial(s) and potential appeal(s). Plaintiffs and Plaintiffs' Counsel also have considered the uncertain outcome and the risk of any litigation, especially in complex actions such as the Consolidated Derivative Action, as well as the difficulties and delays inherent in such litigation. Plaintiffs and Plaintiffs' Counsel also are mindful of the inherent problems of proof of, and possible defenses to, the claims asserted in the Consolidated Derivative Action. Based on their evaluation, Plaintiffs and Plaintiffs' Counsel have determined that the Settlement set forth in the Stipulation is in the best interests of Mullen and its shareholders. Plaintiffs and Plaintiffs' Counsel believe that the implementation of the Corporate Governance Enhancements will strengthen Mullen's operations and will provide value to the Company and its shareholders.

## **VI. SETTLEMENT HEARING**

On January 24, 2025, at 10:00 a.m., the Court will hold the Settlement Hearing at the United States District Court for the Central District of California, 350 West 1st Street, Los Angeles, California 90012, in Courtroom 8C. At the Settlement

Hearing, the Court will consider whether the terms of the Settlement are fair, reasonable, and adequate and thus should be finally approved, whether the Fee and Expense Application should be approved, and whether the Consolidated Derivative Action should be dismissed with prejudice pursuant to the Stipulation.

## **VII. RIGHT TO ATTEND SETTLEMENT HEARING**

Any Mullen shareholder, as of the Record Date, may, but is not required to, appear in person at the Settlement Hearing. If you want to be heard at the Settlement Hearing, then you must first comply with the procedures for objecting, which are set forth below. The Court has the right to adjourn the date of the Settlement Hearing or modify any other dates without further notice. The Court reserves the right to hold the Settlement Hearing telephonically, or by other virtual means. Thus, if you are planning to attend the Settlement Hearing, you should confirm the date, time, and format before going to the Court. Mullen shareholders as of the Record Date who have no objection to the Settlement do not need to appear at the Settlement Hearing or take any other action.

## **VIII. RIGHT TO OBJECT TO THE PROPOSED DERIVATIVE SETTLEMENT AND PROCEDURES FOR DOING SO**

Any Mullen shareholder as of the Record Date may appear and show cause, if he, she, or it has any reason why the Settlement of the Consolidated Derivative Action should not be approved as fair, reasonable, and adequate, or why a judgment should not be entered thereon, or why requested attorneys' fees and expenses should

not be approved. You must object in writing, and you may request to be heard at the Settlement Hearing. If you choose to object, then you must follow these procedures.

**A. You Must Make Detailed Objections in Writing**

Any objections must be presented in writing and must contain the following information:

1. Your name, legal address, telephone number, and email (if applicable);
2. The case name and number (*In re Mullen Automotive, Inc. Derivative Litigation*, Case No. CV 22-5336-DMG (AGRx) (C.D. Cal.));
3. Proof of being a Mullen shareholder as of the Record Date, October 11, 2024;
4. The date(s) you acquired your Mullen shares;
5. A statement of each objection being made;
6. Notice of whether you intend to appear at the Settlement Hearing (you are not required to appear to have your objection considered by the Court); and
7. Copies of any papers you intend to submit, along with the names of any witness(es) you intend to call to testify at the Settlement Hearing and the subject(s) of their testimony.

Only Mullen shareholders, as of the Record Date, who have mailed valid and timely written notices of objection will be entitled to be heard at the Settlement

Hearing unless the Court orders otherwise. The Court may not consider any objection that does not substantially comply with these requirements.

**B. You Must Timely Deliver Written Objections to Counsel**

Unless otherwise ordered by the Court, no Mullen shareholder, as of the Record Date, shall be heard or entitled to contest the approval of all or any of the terms and conditions of the Settlement, or, if approved, the District Court Approval Order and the Judgment to be entered thereon approving the same, unless that Person has, at least twenty-one (21) calendar days before the Settlement Hearing, or by January 3, 2025, mailed to Plaintiffs' Counsel and Defendants' Counsel appropriate proof of Mullen stock ownership, along with his, her, or its written objection, including the basis therefore, and all other information detailed herein. All written objections and supporting papers must be mailed to Plaintiffs' Counsel and Defendants' Counsel as listed below:

Plaintiffs' Counsel:

**THE ROSEN LAW FIRM, P.A.**  
Erica L. Stone, Esq.  
275 Madison Avenue, 40th Floor  
New York, NY 10016

**GAINEY McKENNA & EGGLESTON**  
Gregory M. Egleston, Esq.  
260 Madison Avenue, 22nd Floor  
New York, NY 10016

— and —

Defendants' Counsel:

**KING & SPALDING LLP**  
Brian P. Miller, Esq.  
Southeast Financial Center  
200 S. Biscayne Boulevard, Suite 4700  
Miami, FL 33131

**FOLEY & LARDNER LLP**  
F. Phillip Hosp, Esq.  
555 South Flower Street, Suite 3300  
Los Angeles, CA 90071



An attorney hired by a shareholder for the purpose of objecting to the Settlement must file a notice of appearance with the Clerk of the Court no later than twenty-one (21) calendar days before the Settlement Hearing.

**YOUR WRITTEN OBJECTIONS MUST BE POSTMARKED NO LATER THAN JANUARY 3, 2025.**

Unless the Court orders otherwise, your objection will not be considered unless it is timely submitted to Plaintiffs' Counsel and Defendants' Counsel.

Any Person who fails to object or otherwise request to be heard in the manner prescribed above will be deemed to have waived the right to object to any aspect of the Settlement as incorporated in the Stipulation or otherwise request to be heard (including the right to appeal) and will be forever barred from raising such objection or request to be heard in this or any other action or proceeding, and, unless otherwise ordered by the Court, shall be bound by the Judgment to be entered, and the releases to be given pursuant to Paragraph V.5 of the Stipulation.

#### **IX. HOW TO OBTAIN ADDITIONAL INFORMATION**

This Notice summarizes the Stipulation. It is not a complete statement of the events of the Consolidated Derivative Action or the Settlement contained in the Stipulation.

You may inspect the Stipulation and other papers in the Consolidated Derivative Action by requesting those items from Plaintiffs' counsel, or by visiting

the United States District Clerk's office at any time during regular business hours of each business day. The Clerk's office is located at the United States District Court for the Central District of California, 350 W. 1st Street, Suite 4311, Los Angeles, CA 90012-4565. However, you must appear in person to inspect these documents. The Clerk's office will not mail copies to you. You may also view and download the Stipulation via the Public Access to Court Electronic Records (PACER) system at [pacer.uscourts.gov](http://pacer.uscourts.gov).

If you have any questions about matters in this Notice, you may contact:

**THE ROSEN LAW FIRM, P.A.**

Erica L. Stone, Esq.  
275 Madison Avenue, 40th Floor  
New York, NY 10016  
Tel: (212) 686-1060  
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**GAINEY McKENNA & EGGLESTON**

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Email: [gegleston@gme-law.com](mailto:gegleston@gme-law.com)

**PLEASE DO NOT CALL, WRITE, OR OTHERWISE DIRECT  
QUESTIONS TO THE COURT, THE CLERK'S OFFICE, OR  
DEFENDANTS' COUNSEL.**

DATED: October 11, 2024

BY ORDER OF THE  
UNITED STATES DISTRICT  
COURT FOR THE CENTRAL  
DISTRICT OF CALIFORNIA