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Nominal Defendant CleanSpark, Inc.

8 [Additional counsel on signature block page]

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 10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12 IN RE CLEANSARK, INC. DERIVATIVE
 13 LITIGATION,

Case No.: 2:21-cv-01004-GMN-BNW

14 This Document Relates to:

15 ALL ACTIONS

**AMENDED JOINT RULE 26(F)
 CONFERENCE REPORT AND JOINT
 [PROPOSED] DISCOVERY PLAN**

**SPECIAL SCHEDULING REVIEW
 REQUESTED**

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 19 Plaintiffs Andrea Ciceri and Mark Perna, both derivatively on behalf of CleanSpark, Inc.
 20 (“Plaintiffs”) and defendants Zachary K. Bradford (“Bradford”), Lori L. Love (“Love”), S.
 21 Matthew Schultz (“Schultz”), Roger P. Beynon (“Beynon”), Larry McNeill (“McNeill”), Thomas
 22 L. Wood (“Wood”) (collectively, the “Individual Defendants”) and nominal defendant
 23 CleanSpark, Inc. (“CleanSpark”) (collectively, with the Individual Defendants, “Defendants,” and
 24 collectively, with Plaintiffs, the “Parties”) hereby submit this Amended Joint Report pursuant to
 25 Rule 26(f) of the Federal Rules of Civil Procedure, and the Parties’ Joint Stipulation and Order
 26 Extending Deadline to Submit a Proposed Schedule endorsed by the Court on March 13, 2023.
 27 Special scheduling review is respectfully requested due to the additional time requested by the
 28 Parties for the discovery cut-off date, as set forth more fully below.

1 **RELEVANT PROCEDURAL HISTORY**

2 This consolidated action and two recently filed, related shareholder derivative actions
3 involve claims for damages related to the Individual Defendants’ alleged mismanagement of
4 CleanSpark. All four actions bring derivative claims turning on substantial questions of federal
5 law.

6 **The Six Related Actions:**

7 On May 26, 2021, plaintiff Andrea Ciceri filed a shareholder derivative action on behalf of
8 nominal defendant CleanSpark in the United States District Court for the District of Nevada,
9 captioned *Ciceri v. Bradford, et al.*, Case No. 2:21-cv-01004-GMN-BNW (the “First Case”). The
10 First Case was assigned to this Court.

11 On June 22, 2021, plaintiff Mark Perna filed a second shareholder derivative action on
12 behalf of nominal defendant CleanSpark in the United States District Court for the District of
13 Nevada, captioned *Perna v. Bradford, et al.*, Case No. 2:21-cv-01181-GMN-BNW (the “Second
14 Case”). The Second Case was also assigned to this Court.

15 On June 29, 2021, this Court consolidated the First Case and the Second Case into the
16 above-captioned action (the “Consolidated Action”) and designated the complaint filed in the First
17 Case as the operative complaint pursuant to a Joint Stipulation and Order Consolidating Related
18 Actions and Appointing Co-Lead Counsel (the “Consolidation Order”) (ECF No. 10).

19 Paragraph 11 of the Consolidation Order provides as follows:

20 This Order shall apply to each related shareholder derivative action
21 involving the same or substantially the same allegations, claims, and
22 defendants, and arising out of the same, or substantially the same,
23 transactions or events as the Consolidated Action, that is
24 subsequently filed in, removed to, reassigned to, or transferred to
25 this Court (“Potential Subsequent Related Derivative Action”).
26 When a shareholder derivative action that properly belongs as part
27 of *In re CleanSpark, Inc. Derivative Litigation*, Lead Case No. 2:21-
28 cv-01004-GMN-BNW, is hereafter filed in this Court, removed to
this Court, reassigned to this Court, or transferred to this Court from
another court, this Court requests the assistance of counsel in calling
to the attention of the Clerk of the Court the filing, removal,
reassignment, or transfer of any case that might properly be
consolidated as part of *In re CleanSpark, Inc. Derivative Litigation*,

1 Lead Case No. 2:21-cv-01004-GMN-BNW, and counsel are to
2 assist in assuring that counsel in subsequent actions receive notice
3 of this order. Unless otherwise ordered, the terms of all orders,
4 rulings, and decisions in the Consolidated Action shall apply to
5 Potential Subsequent Related Derivative Actions filed in this Court,
6 removed to this Court, reassigned to this Court, or transferred to this
7 Court from another court.

8 On February 24, 2023, plaintiff Nicholas Iraci filed a third shareholder derivative action
9 on behalf of nominal defendant CleanSpark in the Eighth Judicial District Court of the State of
10 Nevada in and for Clark County, captioned *Iraci v. Bradford, et al.*, Case No. A-23-866172-C (the
11 “Third Case”).

12 On February 28, 2023, defendant Schultz filed a Petition for Removal and Notice of
13 Petition for Removal, removing the Third Case to the United States District Court for the District
14 of Nevada. The Third Case is now pending in the United States District Court for the District of
15 Nevada before the Honorable Jennifer A. Dorsey, captioned *Iraci v. Bradford, et al.*, Case No.
16 2:23-cv-00315-JAD-NJK. On March 6, 2023, defendant Schultz filed a Notice of Related Case,
17 requesting that the Third Case be transferred to this Court and added to the Consolidated Action.

18 On March 1, 2023, plaintiff Eric Atanasoff filed a fourth shareholder derivative action on
19 behalf of nominal defendant CleanSpark in the Eighth Judicial District Court of the State of
20 Nevada in and for Clark County, captioned *Atanasoff v. Bradford, et al.*, Case No. A-23-866492-
21 C (the “Fourth Case”).

22 On March 7, 2023, defendant Schultz filed a Petition for Removal and Notice of Petition
23 for Removal, removing the Fourth Case to the United States District Court for the District of
24 Nevada. The Fourth Case is now pending in the United States District Court for the District of
25 Nevada before the Honorable Anne R. Traum, captioned *Atanasoff v. Bradford, et al.*, Case No.
26 2:23-cv-00358-ART-BNW. On March 9, 2023, defendant Schultz filed a Notice of Related Case,
27 requesting that the Fourth Case be transferred to this Court and added to the Consolidated Action.

28 On February 21, 2013, plaintiff Brandon Smith filed a shareholder derivative action on
 behalf of nominal defendant CleanSpark in the Eighth Judicial District Court of the State of

1 Nevada in and for Clark County, captioned *Smith v. Bradford, et al.*, Case No. A-23-866051-C
2 (the “Fifth Case”).

3 On March 23, 2023, Defendants filed a Petition for Removal and Notice of Removal,
4 removing the Fifth Case to the United States District Court for the District of Nevada. The Fifth
5 Case is now pending in the United States District Court for the District of Nevada before Judge
6 Navarro, captioned *Smith v. Bradford, et al.*, Case No. 2:23-cv-00445-GMN-BNW.

7 On March 8, 2023, plaintiff Travis France filed a shareholder derivative action on behalf
8 of nominal defendant CleanSpark in the Eighth Judicial District Court of the State of Nevada in
9 and for Clark County, captioned *France v. Bradford, et al.*, Case No. A-23-866925-C (the “Sixth
10 Case” and together with the Third, Fourth, and Fifth Cases and the Consolidated Action, the “Six
11 Related Actions”).

12 On March 23, 2023, Defendants filed a Petition for Removal and Notice of Removal,
13 removing the Sixth Case to the United States District Court for the District of Nevada. The Sixth
14 Case is now pending in the United States District Court for the District of Nevada before Judge
15 Navarro, captioned *France v. Bradford, et al.*, Case No. 2:23-cv-00444-GMN-NJK. On March
16 24, 2023, Defendants filed a Notice of Related Case, requesting that the Fifth Case be transferred
17 to Judge Navarro and added to the Consolidated Action.

18 On March 24, 2023, Defendants filed Defendants’ Motion to Consolidate in the
19 Consolidated Action, with notifications for the Third, Fourth, Fifth, and Sixth Cases, requesting
20 that those cases be consolidated with the Consolidated Action.

21 The Six Related Actions are all derivative actions brought on behalf of nominal defendant
22 CleanSpark, and all cases involve significantly overlapping defendants: Bradford, Schultz,
23 Beynon, McNeill, and Wood.¹ Given that the Six Related Actions are all derivative actions, they
24 all also ask the Court to afford relief to the same party: CleanSpark.

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¹ Lori Love, a defendant in the Consolidated Action and Third Case, is not named as a defendant in the Fourth
28 Case. Amer Tadayon, a defendant in the Sixth Case, is not named as a defendant in any other case. All other
defendants are the same in the Six Related Actions.

1 Moreover, the Six Related Actions all allege, among other things, that Defendants made
2 material misstatements and omissions in the same public statements and regarding the same event:
3 *i.e.*, CleanSpark’s acquisition of ATL Data Centers, Inc. In making these claims, the Six Related
4 Actions also rely heavily on the same reports by a short-seller, Culper Research, to support their
5 claims. The Six Related Actions also allege overlapping causes of action in connection with the
6 above-alleged acts and omissions: *i.e.*, (i) the Consolidated Action alleges breach of fiduciary duty,
7 unjust enrichment, abuse of control, gross mismanagement, and waste of corporate assets; (ii) the
8 Third Case alleges breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and
9 unjust enrichment; and (iii) the Fourth Case alleges breach of fiduciary duty and unjust enrichment.

10 Accordingly, the Six Related Actions involve identical and/or overlapping factual and legal
11 issues, events, and questions of law, as well as duplicative claims.

12 For these reasons, it is the Parties’ position that the Third, Fourth, Fifth, and Sixth Cases
13 are “Potential Subsequent Related Derivative Actions” pursuant to paragraph 11 of the
14 Consolidation Order and are therefore subject to its terms and to all orders entered in the
15 Consolidated Action.

16 **The Consolidated Action:**

17 On January 21, 2022, the Court entered the Parties’ Joint Stipulation and [Proposed] Order
18 to Stay this Matter pending resolution of the motion to dismiss filed by all defendants in a securities
19 class action currently pending before the Hon. Loretta Preska in the Southern District of New
20 York, *Bishins v. CleanSpark, Inc. et al.*, No. 21-cv-511 (LAP) (the “Securities Class Action”).
21 (ECF No. 39).
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23 On November 23, 2021, Plaintiffs served Plaintiffs’ First Request for Production of
24 Documents and Notices of Depositions. On January 11, 2019, Defendants served responses and
25 objections to Plaintiffs’ First Request for Production of Documents.

26 On January 5, 2023, the court in the Securities Class Action issued an Opinion and Order
27 denying the defendants’ motion to dismiss, which terminated the stay in this matter by its own
28

1 terms.

2 The Parties reserve the right to move for dismissal and/or a stay of these proceedings in
3 whole or in part.

4 **PROPOSED DISCOVERY PLAN**

5 On January 13, 2023, February 24, 2023, March 6, 2023, and March 29, 2023, the Parties,
6 by and through their respective counsel of record, met and conferred by telephone as required by
7 the Order Extending Deadline to Submit a Proposed Schedule. After additional discussions, the
8 Parties subsequently agreed upon the following:

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10 Number of Days Required for Discovery: The parties respectfully request that the Court
11 enter a discovery cut-off date of Monday, February 5, 2024, which is 292 days from the date on
12 which Defendants are due to file their anticipated motion to dismiss in response to Plaintiffs’
13 complaint. The Parties respectfully submit that the additional time beyond the one-hundred-eighty
14 (180) days anticipated by Local Rule (“LR”) 26-2 will better accommodate the complexity of the
15 matter. Specifically, the Parties anticipate that they will need to retain multiple experts – on
16 financial markets, forensic accounting, and crypto currency, among others – each of which will
17 need to prepare expert reports pursuant to Fed. R. Civ. P. 26(a)(2)(B) and then be deposed.
18 Moreover, the Parties anticipate needing to interview and/or depose multiple fact witnesses, the
19 majority of whom are located in the western United States, while counsel for the Parties are located
20 in New York. This will necessitate frequent and lengthy travel.

21 Amending the Pleadings and Adding Parties: The Parties do not anticipate joining
22 additional parties at this time. The Parties believe that it is premature before discovery to anticipate
23 whether additional claims may need to be added into this action. If it is discovered that different
24 or additional parties are responsible for the subject claims, or that additional claims exist that
25 should be included in this litigation, including possible counterclaims, the Parties will seek to add
26 those parties as defendants and/or add the additional claims in this action, either by stipulation to
27 do so by amended pleadings, or through a motion to amend the pleadings, as needed. The Parties
28 agree the date of filing motions to amend the pleadings or to add parties shall not be later than

1 ninety (90) days prior to the close of discovery pursuant to LR 26-1(e)(2), *i.e.*, November 7, 2023.

2 Fed. R. Civ. P. 26(a)(2) Expert Disclosures: The Parties agree that the time deadlines
3 specified in Fed. R. Civ. P. 26(a)(2)(C) for initial disclosures concerning experts shall not be later
4 than sixty (60) days prior to the close of discovery pursuant to LR 26-1(b)(3), *i.e.*, December 7,
5 2023. Rebuttal expert disclosures shall be made 32 days after the initial disclosure of experts, *i.e.*,
6 January 8, 2024.

7 Dispositive Motions: On October 26, 2021, Magistrate Judge Brenda Weksler held a
8 hearing in which she set a deadline for Plaintiffs in the Consolidated Action to file an amended
9 complaint and for briefing Defendants' anticipated motion to dismiss. (ECF No. 32). On
10 November 26, 2021, Plaintiffs notified the Court and Defendants that they would not be amending
11 their complaint. (ECF No. 36). Pursuant to a stipulation, dated January 19, 2022, the Parties had
12 agreed to stay the Consolidated Action. Now that the stay is lifted, the Parties intend to submit a
13 stipulation to be so-ordered containing a briefing schedule for Defendants' anticipated motion to
14 dismiss.

15 The Parties agree that the date for filing dispositive motions shall be not later than
16 forty-five (45) days after the discovery cut-off date, *i.e.*, March 21, 2024. The Parties respectfully
17 submit that the additional time beyond the thirty (30) days anticipated by LR 26-1(b)(4) will better
18 accommodate the complexity of the case.

19 Pretrial Order: The Parties agree that pursuant to LR 26-1(b)(5), the Joint Pretrial Order
20 shall be filed not later than (32) days after the deadline for filing dispositive motions, *i.e.*, April
21 22, 2024. In accordance with LR 26-1(b)(6), the pretrial disclosures required by Fed. R. Civ. P.
22 26(a)(3) and any objections thereto shall be included in the Joint Pretrial Order. In the event
23 dispositive motions are filed, the date for filing the Joint Pretrial Order, including the pretrial
24 disclosures required by Fed. R. Civ. P. 26(a)(3) and any objections thereto, shall be suspended
25 until thirty (30) days after the decision of the dispositive motions or further order of the Court.

26 Extensions of Scheduled Deadlines: In accordance with LR 26-4, a stipulation or motion
27 for modification or extension of this discovery plan and scheduling order must be made no later
28 than twenty-one (21) days before the expiration of the subject deadline.

1 Subjects for Discovery: The Parties agree that discovery may be had on all claims, issues,
2 or defenses raised in the pleadings. At this time, the Parties do not anticipate conducting discovery
3 in phases.

4 Alternative Dispute Resolution. The Parties certify that they met and conferred about the
5 possibility of using alternative dispute-resolution (“ADR”) processes including mediation,
6 arbitration, and if applicable, early neutral evaluation, and agree that ADR is premature at this
7 time.

8 Alternative Forms of Case Disposition. The Parties certify that they considered consent to
9 trial by a magistrate judge under 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73 and the use of the Short
10 Trial Program (General Order 2013-01) and do not consent to the use of either procedure at this
11 time.

12 Electronic Evidence: The Parties certify that they discussed whether they intend to present
13 evidence in electronic format to jurors for the purposes of jury deliberations. The Parties reserve
14 the right to present evidence in electronic format to jurors for the purposes of jury deliberations,
15 but have reached no stipulations yet concerning providing discovery in an electronic format
16 compatible with the Court’s electronic jury evidence display system.

17 Electronically Stored Information (“ESI”): The Parties anticipate entering into a stipulation
18 governing the disclosure of ESI prior to their first production or exchange of documents.

19 Privilege Preservation Order: The Parties reserve the right to seek a preservation order
20 under Federal Rule of Evidence 502, but believe such order is premature at this time.

21 Protective Order: The Parties anticipate entering into a Stipulated Protective Order to
22 protect the confidentiality of materials that are normally kept confidential by the parties, either for
23 proprietary, commercially competitive reasons and/or to comply with HIPAA and other federal
24 and state privacy grounds. At this time, the Parties do not see the need to request the Court to enter
25 any protective orders other than the Stipulated Protective Order, which the Parties intend to submit
26 prior to their first production or exchange of documents.

27 Scheduling Order: The Parties reserve the right to seek modification of this Amended Joint
28 Discovery Plan or any other scheduling order issued by the Court and to seek such other and further

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DATED: March 29, 2023

Respectfully submitted,

/s/ Patrick R. Leverty
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DATED: March 29, 2023


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ORDER

IT IS ORDERED that ECF No. 53 is GRANTED. The parties are advised, however, that the Court normally does not grant such lengthy discovery plans. As such, the parties are expected to work diligently to complete discovery within this schedule.

IT IS SO ORDERED
DATED: 9:09 am, March 31, 2023

BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE