Docket #0005 Date Filed: 10/9/2024

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
NU RIDE INC., *et al.*,[1]	Case No. 23-10831 (MFW)
Reorganized Debtors.	(Jointly Administered)
COHEN RECYCLING, INC.,	
Plaintiff,	
vs.	Adv. Proc. No. 24-50127 (MFW)
NU RIDE INC., FOXCONN EV TECHNOLOGY, INC., and FOXCONN EV SYSTEM LLC,	
Defendants.	

NU RIDE INC.'S ANSWER,
AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS

[1] The Reorganized Debtors and the last four digits of their respective taxpayer identification numbers are: Lordstown Motors Corp. (3239); Lordstown EV Corporation (2250); and Lordstown EV Sales LLC (9101). The Reorganized Debtors' service address is: Nu Ride Inc. c/o William Gallagher, CEO, M 3 Partners, 1700 Broadway, 19th Floor, New York, NY 10019.

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Defendant Nu Ride Inc. f/k/a Lordstown Motors Corp. (the "**Nu Ride**"), by and through undersigned counsel, respectfully responds (this "**Response**") to the first amended adversary complaint (the "**Complaint**") filed by Cohen Recycling, Inc. (the "**Plaintiff**" or "**CRI**"), as follows.

ANSWER

The Complaint's introductory paragraph contains a statement to which no response is required.

Nu Ride denies all allegations in the Complaint to the extent not expressly admitted herein. Nu Ride hereby responds to the individually numbered paragraphs of the Complaint as follows:

INTRODUCTION

1. Denied.

2. Paragraph 2 consists of legal argument to which no response is required. To the extent a response is required, Nu Ride denies the allegations in Paragraph 2.

3. Nu Ride admits Foxconn filed a joinder to Nu Ride's *Motion for (A) Entry of an Order Enforcing the Vehicle Decommission Order and (B) for Related Relief*. The remaining allegations of Paragraph 3 states legal conclusions to which no response is required. To the extent a response is required, Nu Ride denies the allegations in Paragraph 3.

PARTIES

4. Nu Ride is without sufficient information to admit or deny; therefore, denied.

5. Admitted.

6. Nu Ride is without sufficient information to admit or deny; therefore, denied.

JURISDICTION AND VENUE

7. Admitted.

8. Admitted.

9. Admitted. Nu Ride further answers that Nu Ride consents to the entry of final orders or judgments by this Court pursuant to Federal Rule of Bankruptcy Procedure 7012 and Local Bankruptcy Rule 7012-1.

10. Admitted.

11. Admitted.

FACTS COMMON TO ALL COUNTS

12. Admitted.

13. Nu Ride is without sufficient information to admit or deny; therefore, denied.

14. Nu Ride is without sufficient information to admit or deny; therefore, denied.

15. Nu Ride is without sufficient information to admit or deny; therefore, denied.

16. Denied.

17. Admitted that the parties agreed that the Plaintiff would purchase the Vehicles for $12,400 to be towed by Plaintiff to its facility at Plaintiff's expense. Denied to the extent that the Plaintiff omits that the parties also agreed that the Plaintiff was obligated to disassemble and destroy the Vehicles.

18. Admitted that Plaintiff paid Nu Ride the purchase price alleged in paragraph 17 of the Complaint and towed the Vehicles. Denied to the extent that the Complaint omits that an essential term of the agreement was that Plaintiff was obligated to disassemble and destroy the Vehicles.

19. Denied.

20. Denied.

21. Denied.

22. Admitted.

23. Paragraph 23 references Form VR-454s which speak for themselves; to the extent any allegations are inconsistent therewith, such allegations are denied.

24. Paragraph 24 references Form VR-454s which speak for themselves; to the extent any allegations are inconsistent therewith, such allegations are denied.

25. Nu Ride is without sufficient information to admit or deny; therefore, denied.

26. Paragraph 26 states a legal conclusion to which no response is required. To the extent a response is required, Nu Ride denies the allegations in Paragraph 26.

27. Paragraph 27 states a legal conclusion to which no response is required. To the extent a response is required, Nu Ride denies the allegations in Paragraph 27.

28. Denied.

29. Nu Ride is without sufficient information to admit or deny; therefore, denied.

30. Nu Ride is without sufficient information to admit or deny; therefore, denied.

31. Nu Ride is without sufficient information to admit or deny; therefore, denied.

32. Paragraph 32 references bills of sale which speak for themselves; Nu Ride is otherwise without sufficient information to admit or deny; therefore, denied.

33. Paragraph 33 references bills of sale which speak for themselves; Nu Ride is otherwise without sufficient information to admit or deny; therefore, denied.

34. Nu Ride is without sufficient information to admit or deny; therefore, denied.

35. Nu Ride is without sufficient information to admit or deny; therefore, denied.

36. Admitted that on June 5, 2024, Nu Ride's counsel sent a letter to Plaintiff. To the extent Paragraph 36 purports to quote, paraphrase, or characterize a document, the document speaks for itself; to the extent any allegations are inconsistent therewith, such allegations are

denied. To the extent a response is required, Nu Ride denies the remaining allegations in Paragraph 36.

37. To the extent Paragraph 37 purports to quote, paraphrase, or characterize a document, the document speaks for itself; to the extent any allegations are inconsistent therewith, such allegations are denied. To the extent a response is required, Nu Ride denies the remaining allegations in Paragraph 37.

38. To the extent Paragraph 37 purports to quote, paraphrase, or characterize a document, the document speaks for itself; to the extent any allegations are inconsistent therewith, such allegations are denied.

39. Nu Ride is without sufficient information to admit or deny; therefore, denied.

40. Nu Ride is without sufficient information to admit or deny; therefore, denied.

41. Paragraph 41 consists of characterizations that are not factual allegations, such that no response is required. To the extent a response is required, the Litigation Representative denies the allegations in Paragraph 41.

42. Paragraph 42 consists of characterizations that are not factual allegations, such that no response is required. To the extent a response is required, Nu Ride denies the allegations in Paragraph 42.

43. Paragraph 43 states a legal conclusion to which no response is required. To the extent a response is required, Nu Ride denies the allegations in Paragraph 43.

44. Paragraph 44 states a legal conclusion to which no response is required. To the extent a response is required, Nu Ride denies the allegations in Paragraph 44.

45. Paragraph 45 states a legal conclusion to which no response is required. To the extent a response is required, Nu Ride denies the allegations in Paragraph 45.

46. Paragraph 46 states a legal conclusion to which no response is required. To the extent a response is required, Nu Ride denies the allegations in Paragraph 46.

47. Admitted.

48. Paragraph 48 states a legal conclusion to which no response is required. To the extent a response is required, Nu Ride denies the allegations in Paragraph 48. Nu Ride further answers that Paragraph 48 references an order of this court, which speaks for itself; to the extent any allegations in Paragraph 48 are inconsistent therewith, such allegations are denied.

49. Paragraph 49 states a legal conclusion to which no response is required. To the extent a response is required, Nu Ride denies the allegations in Paragraph 49. Nu Ride further answers that Paragraph 48 references an order of this court, which speaks for itself; to the extent any allegations in Paragraph 48 are inconsistent therewith, such allegations are denied.

50. Paragraph 50 states a legal conclusion to which no response is required. To the extent a response is required, Nu Ride denies the allegations in Paragraph 50.

51. Paragraph 51 consists of legal argument, such that no response is required. To the extent a response is required, Nu Ride is without sufficient information to admit or deny; therefore, denied.

52. Paragraph 52 consists of characterizations that are not factual allegations, such that no response is required. To the extent a response is required, Nu Ride is without sufficient information to admit or deny; therefore, denied.

53. Paragraph 53 states a legal conclusion to which no response is required. To the extent a response is required, Nu Ride denies the allegations in Paragraph 53.

54. Paragraph 54 consists of characterizations that are not factual allegations, such that no response is required. To the extent a response is required, Nu Ride is without sufficient information to admit or deny; therefore, denied.

55. Paragraph 55 consists of characterizations that are not factual allegations, and consists of legal argument, such that no response is required. To the extent a response is required, Nu Ride denies the allegations contained in Paragraph 55.

56. Paragraph 56 consists of characterizations that are not factual allegations, and states legal conclusions, such that no response is required. To the extent a response is required, Nu Ride denies the allegations contained in Paragraph 56.

COUNT ONE
(Declaratory Relief)

57. Nu Ride repeats, realleges, and incorporates by reference each of the foregoing responses as if fully set forth herein.

58. Paragraph 58 states a legal conclusion to which no response is required. To the extent response is required, Nu Ride denies the allegations contained in Paragraph 58.

59. Paragraph 59 consists of legal argument to which no response is required. To the extent response is required, Nu Ride denies the allegations contained in Paragraph 59.

60. Paragraph 60 consists of legal argument to which no response is required. To the extent response is required, Nu Ride denies the allegations contained in Paragraph 60.

61. Paragraph 61 consists of legal argument to which no response is required. To the extent response is required, Nu Ride denies the allegations contained in Paragraph 61.

62. Paragraph 62 states a legal conclusion to which no response is required. To the extent response is required, Nu Ride denies the allegations contained in Paragraph 62.

PRAYER FOR RELIEF

This paragraph is a prayer for relief and does not contain factual allegations, such that no response is required. Nu Ride denies the Plaintiff is entitled to any of the relief sought in the Complaint. Upon resolution of Nu Ride's Counterclaims, Nu Ride respectfully requests that the Court award the relief set forth in the Counterclaims and any other and further relief the Court deems just and proper.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE
(Breach of Contract)

63. The Plaintiff's claims are barred because the Plaintiff breached its contract with Nu Ride by failing to destroy or decommission the vehicles.

SECOND AFFIRMATIVE DEFENSE
(Fraud in the Inducement)

64. The Plaintiff's claim is barred by the doctrine of fraud in the inducement as Nu Ride would never have sold the vehicles to the Plaintiff if Nu Ride knew that the Plaintiff was not going to decommission or destroy the vehicles in accordance with the Plaintiff's representations.

THIRD AFFIRMATIVE DEFENSE
(Implied Covenant of Good Faith and Fair Dealing)

65. Plaintiff's conduct violates the implied covenant of good faith and fair dealing inherent in the contract.

FOURTH AFFIRMATIVE DEFENSE
(Unclean Hands)

66. The plaintiff is not entitled to equitable relief in its favor as it has acted inequitably and in bad faith and has unclean hands.

NU RIDE'S COUNTERCLAIMS

Pursuant to Rule 13 of the Federal Rules of Civil Procedure, made applicable to this adversary proceeding through Federal Rule of Bankruptcy Procedure Rule 7013, Nu Ride Inc. f/k/a Lordstown Motors Corp. ("**Nu Ride**") brings the following action against Cohen Recycling, Inc. ("**CRI**") and alleges as follows, upon information and belief:

INTRODUCTION

During the Chapter 11 Cases, the Debtors sought permission to repurchase previously sold Endurance trucks in order to decommission them. They did so because otherwise, after the Plan Effective Date, they would be unable to comply with warranty and other regulatory obligations including vehicle safety and environmental matters. This Court granted that permission, and clearly instructed that the repurchased vehicles must be "decommissioned" and were not to be resold to anyone who intended to use the vehicle on the road.

The Debtors followed this Court's instruction and sought to fulfill their obligations to the utmost. The Debtors repurchased the vehicles at significant cost. They then engaged parties to assist in decommissioning them. One of these parties was CRI, a licensed disassembler, recycler and scrap processor, through its CEO, Andrew Cohen.

CRI and the Debtors agreed to a deal premised entirely on CRI's obligation to destroy the vehicles it was purchasing. In emails, CRI, offered to price the vehicles "as scrap"; the Debtors agreed and informed CRI that they needed to be scrapped because of the lack of warranty support and liability risk during the bankruptcy; Mr. Cohen then offered to "take them all" for $400 each in "scrap value." In text messages, the Debtors stated to Cohen that "certificates of destruction" were required for each vehicle. In more emails, the Debtors informed Mr. Cohen that the Debtors would oversee documentation for the vehicles CRI "are destroying."

In response, CRI supplied a Maryland State Registry of Motor Vehicles form which states at the top of the page that a vehicle transferred pursuant to this form "may only be dismantled, destroyed, or scrapped". The Debtors and Mr. Cohen, on CRI's behalf, signed 31 such forms, one for each vehicle sold. The Debtors transferred the vehicles to CRI for consideration expressly predicated on each vehicle's scrap value.

Within days of acquiring the vehicles, Cohen published a YouTube video, marketing the Endurance for sale "as an awesome *rebodied* four-wheel drive," which Cohen made clear was meant as a means of obtaining title for a vehicle that was otherwise not permitted to be titled. The video shows Mr. Cohen driving the truck on the open road, in traffic, demonstrating and lauding its capabilities. While doing this, Mr. Cohen tells us he has driven the truck for over 1,000 miles. CRI put at least one of the trucks up for auction online and was only prevented from selling it to the public by Nu Ride's discovery of his behavior and intervention.

Nu Ride then asked Mr. Cohen about the status of the vehicles, and he replied: "I have not scrapped any of them." That was on May 24 of this year, more than three months after he acquired the vehicles from Nu Ride.

Nu Ride thereafter sent cease and desist letters to CRI demanding that CRI abide by the terms of the contract of conveyance and destroy the vehicles such that they could not be driven. On behalf of CRI, Cohen refused to abide by his obligations. While these discussions were ongoing CRI sold at least two, and perhaps four, of the vehicles without first disassembling them in any way.

The initial adversary complaint filed by CRI contained the false statement that Mr. Cohen, during negotiations to acquire the vehicles, did not know the Debtors were in bankruptcy. After Nu Ride filed a motion to enforce this Court's Vehicle Decommission Order, CRI amended its

Complaint, removing the assertion that it did not know of the bankruptcy but maintaining that it did not know of the Vehicle Decommission Order. Although irrelevant due to the express terms of the contract of conveyance, the acknowledgement that at all times CRI knew of the bankruptcy, coupled with CRI's status as a state licensed disassembler, recycler and scrap processor, and the publicly available Vehicle Decommission Order precludes CRI from claiming ignorance. Rather it punctuates CRI's bad faith and fraudulent conduct throughout this process.

CRI seeks a declaration that it is not bound by contract or otherwise in its use and disposition of the Endurance vehicles. By this Counterclaim, Nu Ride seeks a declaration that a contract existed between the parties in accordance with the provisions of the Uniform Commercial Code, and the terms of that agreement required CRI to disassemble and destroy the vehicles such that the vehicles could not be driven in any way. *See* UCC § 2-202

Nu Ride also seeks judgment for breach of contract, fraud; entry of permanent injunctive relief, and the award of actual and punitive damages.

PARTIES

1. Nu Ride is a corporation organized and existing under the laws of the State of Delaware. Nu Ride is the post-emergence reorganized entity and successor to the rights, assets, and obligations of the Debtors in the Chapter 11 Cases (defined below).

2. CRI is a corporation organized and existing under the laws of the State of Maryland.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157, 1332, and 1334, paragraph 9 of the Vehicle Decommission Order, paragraph 101 of the Confirmation Order (defined below), and Article XI of the Plan (defined below).

4. By filing the Complaint, CRI has consented to this Court's jurisdiction over it and "to the entry of final orders or judgments by this Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution."

5. Venue is proper in this district under 28 U.S.C. §§ 1391, 1408 and 1409.

6. This adversary proceeding is a core proceeding under 28 U.S.C. § 157(b)(2).

FACTUAL ALLEGATIONS

A. The Chapter 11 Cases.

7. On June 27, 2023 (the "**Petition Date**"), Lordstown Motors Corp. (now known as Nu Ride) and its affiliated debtors (the "**Debtors**") commenced voluntary cases under Chapter 11 of the Bankruptcy Code in this Court (the "**Chapter 11 Cases**").

8. On March 6, 2024, the Court entered an order (the "**Confirmation Order**") confirming the *Third Modified First Amended Joint Chapter 11 Plan of Lordstown Motors Corp. and Its Affiliated Debtors* (the "**Plan**"). The Plan went effective on March 14, 2024.

9. The Plan provides, among other things, that "th[is] Bankruptcy Court shall retain and have jurisdiction over all matters arising in, arising under, or related to the Chapter 11 Cases[.]" The Confirmation Order provides, among other things, that "[t]he Bankruptcy Court shall retain jurisdiction with respect to . . . all matters arising in and under, and related to, these Chapter 11 Cases . . . *provided, however*, that nothing herein shall impair or prejudice . . . the Debtors[' or] Post-Effective Date Debtors['] . . . rights, claims, causes of action, or defenses under applicable law[.]"

B. The Debtors Developed And Produced The Endurance Vehicles, Which The Court Ordered Decommissioned.

10. Prior to the Petition Date, the Debtors were in the business of developing, manufacturing, and selling electric vehicles, primarily to commercial fleet customers. The company's flagship vehicle was the "Endurance," a full-size, all-electric pickup truck.

11. During the Chapter 11 Cases, on November 22, 2023, the Debtors filed a motion requesting authorization from the Court to repurchase Endurance Vehicles previously sold (the "**Decommission Motion**"). The Decommission Motion states: "[t]he Debtors will be unable to comply with their warranty, recall, and other regulatory obligations after the Effective Date of the Plan. This may give rise to claims against the estate and, even now, could constitute unliquidated and undefined contingent liabilities of the Debtors. Such obligations could be material and could impact the administration of their estates[.]"

12. On December 7, 2023, the Court entered an order granting the Decommission Motion and authorizing the Debtors to reclaim the vehicles (the "**Vehicle Decommission Order**"). That order states that "[f]or the avoidance of doubt, the vehicles will be decommissioned and not resold to any third-party that intends to use the vehicle for an on-road purpose."

13. The Vehicle Decommission Order further states that "[t]he Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Order[.]"

C. The Debtors Repurchase The Vehicles And Agree To Sell Them To CRI For Destruction.

14. The Debtors complied with the Vehicle Decommission Order by repurchasing and reclaiming possession of all Endurance vehicles. Thereafter, the Debtors sought to contract with a party licensed to disassemble and scrap untitled vehicles so that the Endurance trucks would be

removed from the road. Ultimately, Debtors became aware that CRI was a licensed disassembler. The Debtors then contracted with CRI, through its owner, Andy Cohen, for the acquisition and destruction of 31 Endurance vehicles (the "**Vehicles**").

15. CRI is licensed by the State of Maryland, pursuant to Code of Maryland Section 15-502, to conduct business as an automotive dismantler and recycler or scrap processor. CRI holds itself out as an automotive dismantler, recycler or scrap processor.

16. CRI's website states: "We are a full service auto recycling business serving the Washington DC metropolitan area" and gives CRI's location as Bladensburg, Maryland. CRI's Complaint represents that "Plaintiff operates . . . as part of a group of companies that sell, repair, and build custom vehicles and harvest parts for resale [and] is a licensed Automotive Dismantler and Recycler under Maryland Law."

17. Code of Maryland Section 15-501(b)(1) defines an automotive dismantler and recycler as follows:

> (b)(1) "Automotive dismantler and recycler" means a person in the business of:
>
> (i) Dismantling, destroying, or scrapping any vehicle for the purpose of reselling any of its usable parts; or
> (ii) Otherwise acquiring vehicles for the benefit of their parts or the materials in them

18. Negotiations with CRI began on December 18, 2023 and were conducted largely through e-mails and text messages. The principal participants in the negotiations were Michael Jones, on behalf of the Debtors, and Andy Cohen, CEO of CRI. From the outset, Jones informed Cohen in writing that the company was in bankruptcy and that the Debtors were seeking to have the Vehicles destroyed by a licensed dismantler and scrap processor. Cohen understood that the Debtors were in bankruptcy as evidenced, for example, by the first e-mail exchange with Jones in

which Cohen wrote "I don't know anyone in the industry who will touch them [the vehicles] being a bankrupt company."

19. Reflecting CRI's understanding that the Debtors were seeking to have the Vehicles decommissioned and destroyed, Cohen stated that if the Debtors "*want me to price [the vehicles] as far as scrap value I certainly can*."

20. In this first exchange Jones asked Cohen to price the Vehicles as scrap and informed Cohen in writing that "[d]ue to the bankruptcy [the Debtors] no longer have service, warranty support, or liability insurance so [the vehicles] need to be scrapped." Cohen responded that "$400 per car for scrap value" was the price at which CRI was willing to pay to "take them all." Ultimately the 31 Vehicles were sold to CRI for $12,400, or $400 scrap value per Vehicle.

21. At all times Cohen expressly and impliedly represented to the Debtors that CRI was acquiring the Vehicles in its capacity as a dismantler, recycler and scrap processor. At all times, Jones and other representatives of the Debtors confirmed in writing that the Vehicles were being transferred to CRI expressly because CRI was a licensed dismantler, recycler and scrap processor, and that the Vehicles would be rendered non-road-worthy upon transfer of ownership. In two separate text messages with Mr. Cohen, Mr. Jones stated: "I just need certificates of destruction for each" Vehicle.

22. On January 24, 2024, the Debtors informed Cohen that the Debtors would "oversee[] the documentation for the vehicles [CRI] picked up from the City of Washington DC and are destroying," and asked that CRI "provide [the Debtors] the necessary documentation to confirm they all have been destroyed." In the same email, the Debtors confirmed that the Debtors and CRI "agreed to $400 per vehicle before any charges [CRI] has for excess towing charges due to vehicles not being available or ready as expected."

23. On January 26, CRI, through Andi LePore, Mr. Cohen's assistant, responded using Cohen's email address as follows: "My name is Andi, I am Andy Cohen's assistant, I have attached the MVA form VR-454 we need one filled out and signed for each of the vehicles."

24. The Motor Vehicle Administration of Maryland forms VR-454 supplied by CRI are forms used specifically for the transfer of untitled vehicles to a licensed automotive dismantler. Form VR-454 is entitled: "*Affidavit of Lawful Possession for Transfer of a Vehicle to an Automotive Dismantler and Recycler or Scrap Processor"* (each, an "**Affidavit**" and, collectively, the "**Affidavits**"). Form VR-454 expressly states as follows: "Purpose - Use this form to certify, under oath, that a Certificate of Title is unavailable for a vehicle that is being transferred to an Automotive Dismantler and Recycler or Scrap Processor ***for purposes of dismantling, destroying or scrapping*** . . ." Form VR-454 further states as follows: "Limitations - A vehicle may not be retitled or assigned using this document; ***it may only be dismantled, destroyed, or scrapped****."* (Emphasis added).

25. The 31 Affidavits for each Vehicle were prepared and supplied to the Debtors by CRI. Each Affidavit was signed and executed by Mr. Cohen, on behalf of CRI, and by Adam Kroll, on behalf of the Debtors, on January 26, 2024. Each Form VR-454, executed by both parties, is consistent with the parties prior written communications, express and implied representations and understanding of the terms of the conveyances.

26. The Affidavits reflect the parties' agreement that the Vehicles were sold for scrap value solely for the purpose of being dismantled, destroyed or scrapped. The Affidavits are also consistent with the Vehicle Decommission Order's mandate that the Vehicles be "decommissioned." The Affidavits are also consistent with the scope of CRI's license as a dismantler and recycler under Maryland law.

27. By executing each Affidavit, CRI further represented to the Debtors that the Vehicles would not be used or sold in any way as a drivable vehicle, and specifically not for on-road purposes.

28. At no time during the negotiations for the purchase of the 31 Endurance Vehicles did Cohen inform the Debtors that CRI operated any side business other than that of a licensed automotive dismantler and recycler or scrap processor. At no time during the negotiations did Cohen ever disclose to the Debtors that CRI intended to sell the Endurance Vehicles as intact operating vehicles.

29. Had the Debtors known that CRI and Cohen did not intend to dismantle, destroy or scrap the Vehicles, consistent with its license issued by the State of Maryland and the express discussions between the parties, the Debtors would not have conveyed the Vehicles at any price, including for scrap value.

30. The Debtors relied on CRI's express statements and omissions in agreeing to convey the 31 Endurance Vehicles for scrap value.

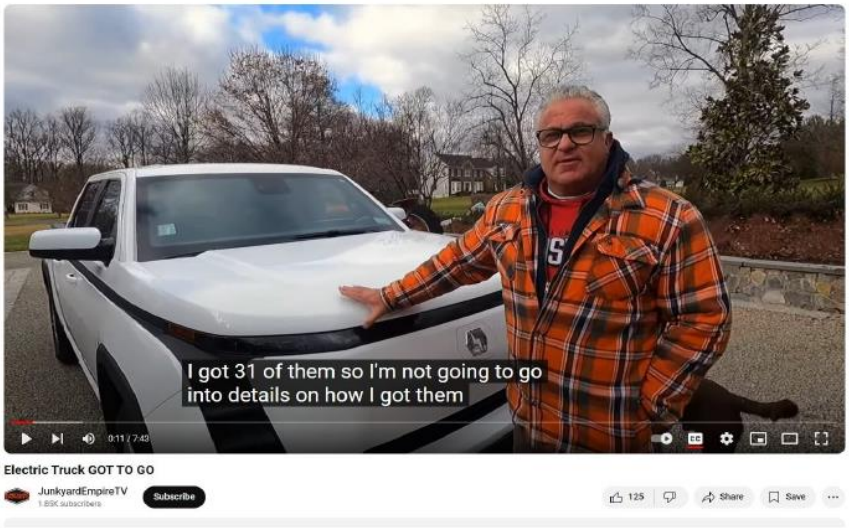
31. The Debtors transferred the Vehicles to CRI in or around February 2024, in accordance with the parties' agreement.

D. CRI Markets The Vehicles For Resale, And Sells Vehicles To Third Parties.

32. Subsequently, Nu Ride became aware that instead of dismantling, destroying or scrapping the Vehicles for their useable parts, CRI was instead marketing, and on at least four occasions, selling the Endurance Vehicles without dismantling them in any way.

33. On or about February 9, 2024, Cohen published a YouTube video marketing the Vehicles in the public domain via his own YouTube channel, "JunkYardEmpireTV." In the video, Cohen stands by one of the Vehicles and states that "I got 31 of them, so I'm not going into details

on how I got them." Cohen further states in the video that "I cannot sell them as whole vehicles. I have to sell them as a parts vehicle, so my thought is to market these as an awesome ***rebodied*** four-wheel drive." (Emphasis added).

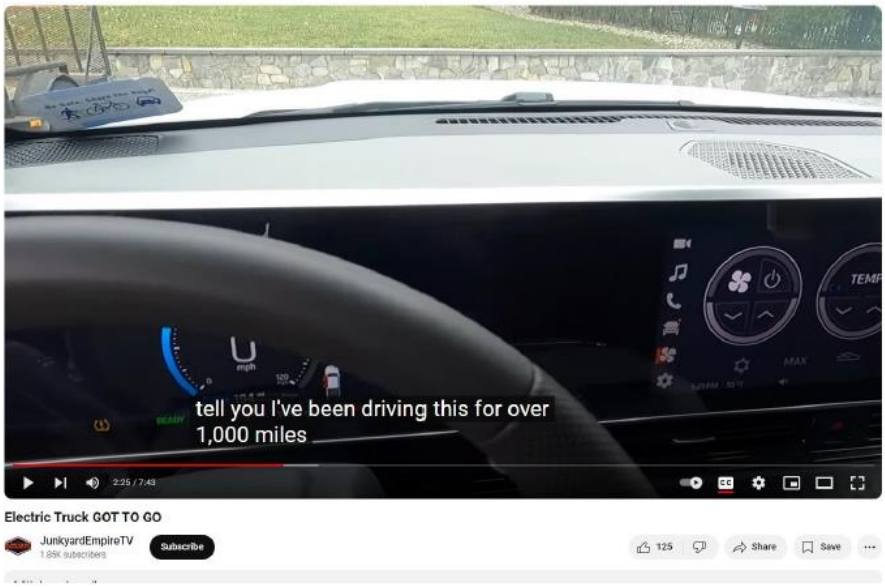


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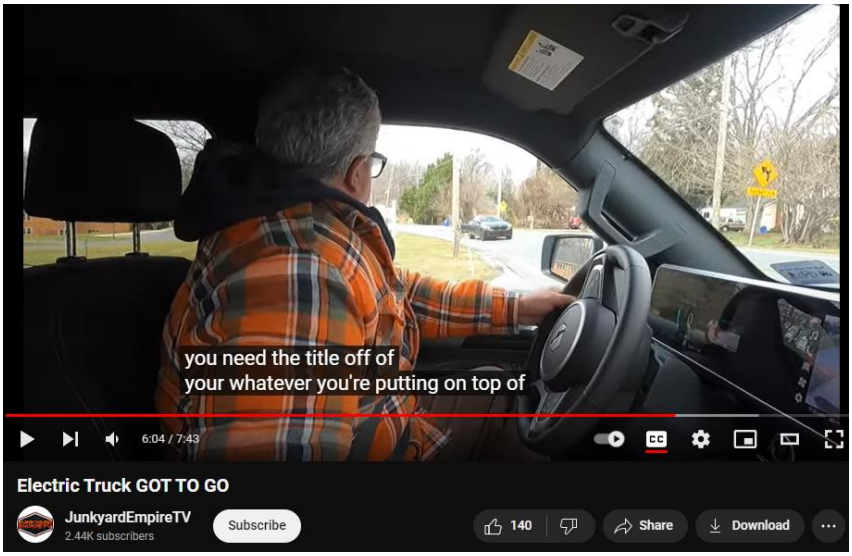
34. The video depicts Mr. Cohen driving the Vehicle on a public road and in traffic while demonstrating its features capabilities. Upon information and belief, Cohen affixed to the Endurance Vehicle demonstrated in the video a "special, recycler registration plate" issued in accordance with Maryland Code, Title 13, Section 13-622.

35. In the video Mr. Cohen also states: "I can tell you I've been driving this for over 1,000 miles."

[2] The text in the screenshots contained herein were generated via closed captioning.



36. In the same video, Cohen expressly tells the target market that a buyer should remove the Endurance car body and replace a Ford or other body onto the intact chassis and electric battery. Specifically, Cohen tells prospective buyers: "take an old body" and place it on top of the rest of the Endurance vehicle, and that if a buyer put a "[19]68 or [19]72 Chevy pickup on [the Endurance] you have a brand new electric [19]68 to [19]72 Chevy pickup . . . Harry Homeowner can go and start and drive a brand new truck today by setting a new body on top of" the rest of the Endurance Vehicle. Cohen reinforces his intent to circumvent the limitations of the terms under which he purchased the Vehicles and the limitations of his license as follows: "Also remember, there is no title with these, they are sold as parts vehicles, ***so you will need the title off of whatever you are putting on top of it.***"





37. On May 24, 2024, Nu Ride's counsel asked Cohen to "confirm what happened with the rest of the Lordstown Endurance trucks you received. Were they all sold whole, or did you destroy, dismantle, or scrap any of them?" The same day Cohen responded: "I have not scrapped any of them"; rather, CRI has been "market[ing] them as a cool hot rod project" to third-party customers.

38. On or about June 3, 2024, CRI listed an intact Vehicle for auction on the website Copart.com. The listing resulted in numerous bids before Copart agreed to halt the listing after discussions with representatives of Nu Ride.

39. CRI has also sold several Vehicles to third parties, including two fully operating Vehicles sold to Mike Ahn. Mr. Ahn subsequently listed one of the Vehicles for sale on a website called "carsandbids.com", and stated the Vehicle was "extremely fun to drive." Nu Ride thereafter informed carsandbids.com of the limitations regarding use of the Vehicles and carsandbids.com cancelled the auction before the Vehicle was sold.

40. Under the "Comments and Bids" section of the carsandbids.com auction page, user "3pedal" commented: "I've driven it for over 100 miles, extremely fun to drive." User 3pedal has a profile picture featuring a car and a sign stating "LuxuryAutoMax.com". Mr. Ahn represents on his LinkedIn page that he is the owner of LuxuryAutoMax.com.

41. Mr. Ahn also uploaded a YouTube video of himself driving and marketing one of the Vehicles. In the video, Mr. Ahn also demonstrates the Vehicle's acceleration speed and turning radius as well as its dashboard and navigation system on public roads and in traffic.

E. CRI Fails To Decommission The Vehicles After Several Requests And Commences This Adversary Proceeding.

42. Counsel for Nu Ride sent a letter to Mr. Cohen on June 5, 2024, demanding that CRI and Mr. Cohen cease and desist from further actions in violation of the terms of the parties' agreement, including representations made in the Affidavits, such as marketing the Vehicles for on-road driving purposes. The letter informed Mr. Cohen of the Vehicle Decommission Order, and that his actions violated the order.

43. Nu Ride and CRI thereafter engaged in substantial negotiations . Nu Ride has been compelled to expend considerable resources in connection with such negotiations and efforts to ensure CRI complies with its contractual obligations and the Vehicle Decommission Order, without the need for litigation.

44. CRI has not complied with Nu Ride's request for compliance. As a direct and proximate result of CRI's failure to comply with its contractual and legal obligations, Nu Ride has incurred substantial damages and costs.

45. On September 5, 2024, CRI initiated this adversary proceeding by filing a complaint seeking declaratory relief (the "**Initial Complaint**"). In the Initial Complaint, CRI repeatedly alleged that CRI and Mr. Cohen had not been told and were unaware that the Debtors were in bankruptcy until receipt of the June 5, 2024 cease and desist letter.

46. On September 26, 2024, CRI filed its first amended complaint for declaratory relief (the "**Complaint**"). The Complaint deleted the Initial Complaint's false assertions that CRI and Mr. Cohen were unaware of the Debtors' bankruptcy. Instead, the Complaint states that CRI and Cohen were unaware of the Vehicle Decommission Order or that the sale of the Vehicles was subject to a Bankruptcy Court order.

47. The Complaint further states that "[a]t the time of the Purchase," CRI "understood" that the Vehicles "were not street-legal and should not be operated on public roads[.]"

COUNT I
(Declaratory Judgement)

48. Nu Ride repeats and realleges the foregoing allegations as though fully set forth herein.

49. A dispute has arisen to the existence of a contract and the limitations and conditions on use the Vehicles agreed to in such contract.

50. CRI maintains that it is not obligated to dismantle, destroy, or scrap the Vehicles but instead that CRI and its agents and representatives are free to market and sell the Vehicles intact to third parties; Nu Ride contends that the Vehicles were sold to CRI for scrap value with

the express agreement that CRI would dismantle or destroy the Vehicles such that the Vehicles would be incapable of operating on the road.

51. Without a declaration of rights CRI, thoughts its CEO Mr. Cohen, has indicated he will sell the Vehicles and thereafter it will be impossible to prevent third parties from driving those vehicles where and as they choose, including on-road.

52. Nu Ride seeks a declaratory judgment that:

a. The parties formed an enforceable contract (the "**Contract**");

b. The terms of such Contract included the requirement that the Vehicles be dismantled, destroyed, or scrapped;

c. CRI has breached the Contract;

d. CRI is liable to Nu Ride for damages and costs incurred as a result of such breach;

e. CRI and Cohen are prohibited from selling the Vehicles as intact, operational vehicles; and

f. The Vehicle Decommission Order applies to CRI—and its agents and representatives, including Mr. Cohen—as CRI is now before this Court with respect to issues addressed by the order.

COUNT II
(Breach of Contract)

53. Nu Ride repeats and realleges the foregoing allegations as though fully set forth herein.

54. The Vehicles are movable goods that meet the definition of "goods" in section 2-105 of the Delaware Uniform Commercial Code, 6 Del. C. ("**UCC**") § 2-105.

55. The Vehicles were received and accepted by CRI, and payment of $400 scrap value per Vehicle was made and accepted. The conduct of CRI and the Debtors in conveying the Vehicles to CRI in exchange for payment and executing the Affidavits, among other things, recognized the existence of a contract for sale of the Vehicles.

56. The email and text communications between CRI and the Debtors, the bills of sale and Affidavits executed by both parties effecting the transfer for each Vehicle, and the parties' conduct in effectuating the sale, constitute a contract that set forth the per vehicle price; the identity and number of vehicles to be sold; and the conditions and limitations of the sale – that is, CRI's obligation to dismantle, destroy, or scrap the Vehicles for salvage value or use or resale of its disassembled parts.

57. CRI failed to destroy the Vehicles, but instead marketed the Vehicles in intact, road-worthy condition in breach of its contractual and legal obligations. CRI thereby breached the Contract.

58. As a direct and proximate result of the breaches of the Contract by CRI, the Debtors have incurred damages and costs in seeking to enforce the obligations.

59. The professional fees and costs incurred in negotiating with CRI are damages flowing directly from CRI's breaches, not as costs of suit.

60. CRI's breach of the contract was knowing, willful and in bad faith.

COUNT III
(Fraud in the Inducement)

61. Nu Ride repeats and realleges the foregoing allegations as though fully set forth herein.

62. At all times, CRI held itself out as a state licensed dismantler, recycler and scrap processor under the laws of the State of Maryland.

63. At all times, Nu Ride expressly represented to CRI that it was selling the Vehicles to CRI at scrap value for the purposes of having those Vehicles decommissioned and destroyed as drivable vehicles.

64. At all times, CRI concealed from Nu Ride CRI's intent to market and sell the Endurance Vehicles as intact, road-worthy vehicles.

65. Through its misrepresentations and omissions, CRI fraudulently induced Nu Ride to sell CRI the Vehicles at scrap value.

66. Nu Ride reasonably relied on CRI's representations and omissions, including its representation that it was a licensed dismantler under Maryland State law, and that they were purchasing the Vehicles, consistent with its license, for the purposes of dismantling, destroying, or scrapping them.

67. Nu Ride would not have sold the Vehicles to CRI if it had known such representations were false, and justifiably relied on such representations in selling the Vehicles to CRI.

68. CRI's fraudulent inducement resulted in damages to Nu Ride including, without limitation, expending considerable resources finding out whether the representations were false and seeking to ensure CRI abided by its representations.

COUNT IV
(Promissory Estoppel)

69. Nu Ride repeats and realleges the foregoing allegations as though fully set forth herein.

70. In various written and oral communications, including the Affidavits and emails with Mr. Jones, CRI promised to, among other things, "scrap" or "destroy" the Vehicles after purchasing them, and not to use them on the road.

71. Nu Ride reasonably relied on such promises in conveying the Vehicles to CRI with the expectation they would be destroyed and accepting a price for the Vehicles they would not have paid if they knew CRI would not fulfil its promises.

72. As a result of relying on CRI's promises to its detriment Nu Ride suffered damages in an amount to be proven at trial.

COUNT V
(Breach of Covenant of Good Faith and Fair Dealing)

73. Nu Ride repeats and realleges the foregoing allegations as though fully set forth herein.

74. Nu Ride and CRI are parties the Contract.

75. The Contract includes the implied covenant of good faith and fair dealing; specifically the covenant to dismantle or destroy the Vehicles consistent with parties' express written communications, discussions, the VR-454 Affidavits, and CRI's license..

76. Nu Ride performed its obligations under the Contract by conveying the 31 Vehicles to CRI for scrap value and pursuant to the VR-454 Affidavits.

77. CRI breached the Contract, including the implied covenant of good faith and fair dealing, by (without limitation) selling four of the 31 Vehicles as intact, fully operational Endurance trucks, and by repudiating its obligation to dismantle or destroy the remaining Vehicles.

78. By the aforementioned and other conduct, CRI did not act fairly and in good faith.

79. As a result of CRI's breach of the covenant of good faith and fair dealing, Nu Ride incurred damages and costs, including attorneys' fees, in an amount to be determined at trial.

PRAYERS FOR RELIEF

WHEREFORE, by reason of the foregoing, Nu Ride respectfully requests this Court grant the following relief to the extent not inconsistent:

a. On Count I, enter judgment declaring that: the parties formed a contract, the terms of which include CRI's obligation to dismantle, destroy, or scrap the Vehicles; CRI breached that contract; CRI and its agents, affiliates and representatives (including Cohen) may not use or sell the Vehicles as intact operational vehicles; and the Vehicle Decommission Order applies to CRI and its agents, affiliates and representatives (including Cohen);

b. On Count II, enter judgment against CRI, finding that CRI breached the Contract, and award damages and costs as a result of such conduct in an amount to be determined at trial;

c. On Count III, enter judgment against CRI for fraud and award damages and costs as a result of such conduct in an amount to be determined at trial.

d. On Count IV, enter judgment against CRI, finding that Nu Ride reasonably relied on CRI's promises to its detriment, and award damages and costs incurred as a result in an amount to be determined at trial;

e. On Count V, enter judgment against CRI, finding that CRI breached its covenant of good faith and fair dealing with respect to the Contract, and award damages and costs, including attorneys' fees, in an amount to be determined at trial;

f. Enter the following permanent injunctive relief:

i. Order CRI to render the Vehicles inoperable on public roads, as soon as reasonably practical, but in no event later than three days after entry of judgment, and provide a certification and evidence of same; and

ii. Granting such other and further injunctive relief as the Court deems just and proper;

g. Award reasonable costs and expenses incurred in this adversary proceeding, including attorneys' fees;

h. Award punitive damages as a result of CRI's fraud and willful breach of contract; and

i. Grant Nu Ride such other and further relief as the Court deems just and proper.

Dated: October 9, 2024

MORRIS JAMES LLP

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