IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re NU RIDE INC., *et al.*,[1] Reorganized Debtors.	Chapter 11 Case Nos. 23-10831 (MFW), *et seq.* (Jointly Administered)
COHEN RECYCLING, INC., Plaintiff, vs. NU RIDE INC., Defendant.	Adv. Proc. No. 24-50127 (MFW)

COHEN RECYCLING, INC.'S ANSWERS AND
AFFIRMATIVE DEFENSES TO NU RIDE INC.'S COUNTERCLAIMS
(relates to Docket No. 5)

Cohen Recycling, Inc. ("Plaintiff"), by its undersigned attorneys, hereby answers the Counterclaims (the "Counterclaim") filed by defendant/ counterclaimant Nu Ride Inc. ("Defendant") as follows:

[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.

UNNUMBERED INTRODUCTION

Plaintiff objects to the 9-paragraph unnumbered "Introduction" in the Counterclaim pursuant to Fed. R. Civ. P. 10(b), made applicable in this adversary proceeding by Fed. R. Bankr. P. 7010, insofar as it does not set forth its claims "in numbered paragraphs, each limited as far as practicable to a single set of circumstances." As a result, Plaintiff cannot reasonably respond to this so-called Introduction and therefore denies it.

PARTIES

1. To the extent that Paragraph 1 of the Counterclaim contains legal conclusions, no response is required. The allegation that Plaintiff is "successor to the rights, assets, and obligations of the Debtors in the Chapter 11 Cases" is admitted in part and denied in part. The balance of Paragraph 1 is admitted.

2. Paragraph 2 is admitted.

3. To the extent that Paragraph 3 of the Counterclaim contains legal conclusions, no response is required. To the extent that Paragraph 3 refers to the contents of documents, the documents speak for themselves.

4. To the extent that Paragraph 4 of the Counterclaim contains legal conclusions, no response is required.

5. To the extent that Paragraph 5 of the Counterclaim contains legal conclusions, no response is required.

6. To the extent that Paragraph 6 of the Counterclaim contains legal conclusions, no response is required.

FACTUAL ALLEGATIONS

7. Paragraph 7 is admitted.

8. Paragraph 8 is admitted.

9. To the extent that Paragraph 9 refers to the contents of documents, the documents speak for themselves.

10. Plaintiff lacks knowledge sufficient to form a belief as to truthfulness of the allegations in Paragraph 10 and therefore denies them.

11. To the extent that Paragraph 11 refers to the contents of a document, the document speaks for itself. Plaintiff lacks knowledge sufficient to form a belief as to truthfulness of the other allegations in Paragraph 11 and therefore denies them.

12. To the extent that Paragraph 12 refers to the contents of a document, the document speaks for itself. To the extent that Paragraph 12 of the Counterclaim contains legal conclusions, no response is required. Plaintiff lacks knowledge sufficient to form a belief as to truthfulness of the other allegations in Paragraph 12 and therefore denies them.

13. To the extent that Paragraph 13 refers to the contents of a document, the document speaks for itself.

14. Plaintiff admits that Plaintiff is a licensed dismantler. Plaintiff admits that Defendant sold the Vehicles[2] to Plaintiff and that Defendant's representatives had communications with Plaintiff's representatives in connection with the acquisition of the Vehicles. The balance of Paragraph 14 is denied.

15. To the extent that Paragraph 15 of the Counterclaim contains legal conclusions, no response is required. Paragraph 15 is admitted.

16. To the extent that Paragraph 16 refers to the contents of a document, the document speaks for itself.

17. To the extent that Paragraph 17 of the Counterclaim contains legal conclusions, no response is required.

18. Plaintiff objects to Paragraph 18 of the Counterclaim insofar as its extensive facts are not set forth in numbered paragraphs "each limited as far as practicable to a single set of circumstances." Without limiting the foregoing, Plaintiff admits that negotiations began on or about December 18, 2023, that Andy Cohen negotiated on behalf of Plaintiff, and that Michael Jones was among the persons with whom Mr. Cohen communicated. To the extent that Paragraph 18

[2] For convenience's sake, Plaintiff uses the same definition of the "Vehicles" herein as Defendant uses in the Counterclaim. Nothing in the Answer, however, should be deemed an admission that the Vehicles were transferred, marketed, or sold for on-road use and any sale of Vehicles—even without disassembly—was not a sale of scrap.

refers to the contents of a document, the document speaks for itself. The balance of Paragraph 18 is denied.

19. To the extent that Paragraph 19 refers to the contents of a document, the document speaks for itself. Plaintiff lacks knowledge sufficient to form a belief as to truthfulness of what the Debtors were "seeking" and therefore denies this allegation. The balance of Paragraph 19 is denied.

20. To the extent that Paragraph 20 refers to the contents of documents, the documents speak for themselves. Plaintiff admits that Defendant sold the Vehicles to Plaintiff for $12,400 plus towing charges at Plaintiff's expense.

21. Plaintiff objects to Paragraph 21 of the Counterclaim insofar as its extensive facts are not set forth in numbered paragraphs "each limited as far as practicable to a single set of circumstances." Without limiting the foregoing, to the extent that Paragraph 21 refers to the contents of a document, the document speaks for itself. Plaintiff lacks knowledge sufficient to form a belief as to truthfulness of the allegation that the Debtor entered into the transaction "because" of any reason and therefore denies this allegation. The balance of Paragraph 21 is denied.

22. To the extent that Paragraph 22 refers to the contents of documents, the documents speak for themselves.

23. To the extent that Paragraph 23 refers to the contents of documents, the documents speak for themselves. Plaintiff admits that Andi LePore was the author of the document reflected in this paragraph.

24. To the extent that Paragraph 24 refers to the contents of documents, the documents speak for themselves. To the extent that Paragraph 24 contains legal conclusions, no response is required. Plaintiff does not understand Defendant's use of the term "used specifically for" as stated in this paragraph and therefore denies this paragraph.

25. Plaintiff objects to Paragraph 25 of the Counterclaim insofar as its extensive facts are not set forth in numbered paragraphs "each limited as far as practicable to a single set of circumstances." Without limiting the foregoing, to the extent that Paragraph 25 refers to the contents of documents, the documents speak for themselves. Plaintiff admits that the 31 respective Affidavits for the Vehicles were prepared and supplied to Defendant by Plaintiff. Plaintiff admits that they were signed by Mr. Cohen on behalf of Plaintiff. Plaintiff does not understand the balance of Paragraph 25, which is therefore denied.

26. Plaintiff objects to Paragraph 26 of the Counterclaim insofar as its extensive facts are not set forth in numbered paragraphs "each limited as far as practicable to a single set of circumstances." Without limiting the foregoing, to the extent that Paragraph 26 refers to the contents of documents, the documents speak

for themselves. To the extent that Paragraph 26 contains legal conclusions, no response is required. Plaintiff denies the allegation that the parties had any "agreement" beyond the mere sale of the Vehicles. The balance of Paragraph 26 is denied.

27. To the extent that Paragraph 27 refers to the contents of documents, the documents speak for themselves. To the extent that Paragraph 27 contains legal conclusions, no response is required. Plaintiff denies the allegation that its execution of each Affidavit constituted a representation to the Debtors of anything.

28. Plaintiff objects to Paragraph 28 of the Counterclaim insofar as its extensive facts are not set forth in numbered paragraphs "each limited as far as practicable to a single set of circumstances." Without limiting the foregoing, Plaintiff's records do not reflect whether these statements were made during the negotiations and therefore denies these allegations.

29. Plaintiff asserts that its presently intended disposition of the Vehicles, to convert certain of their parts into kits for off-road assembly and operation, is consistent with decommissioning, dismantling, and scrapping them, and therefore the premise of Defendant's allegations in Paragraph 29 of the Counterclaim is false and denied. Moreover, Plaintiff lacks knowledge sufficient to form a belief as to truthfulness of the allegations in Paragraph 29, and those allegations are therefore denied.

30. Plaintiff lacks knowledge sufficient to form a belief as to truthfulness of the allegations in Paragraph 30, and those allegations are therefore denied.

31. Plaintiff denies the allegation that the parties had any "agreement" beyond the mere sale of the Vehicles. The balance of Paragraph 31 is admitted.

32. Plaintiff lacks knowledge sufficient to form a belief as to truthfulness of the allegations of what Defendant "became aware of" and those allegations in Paragraph 32 are therefore denied. Plaintiff asserts that its presently intended disposition of the Vehicles, to convert certain of their parts into kits for off-road assembly and operation, is consistent with decommissioning, dismantling, and scrapping them, and therefore the premise of Defendant's allegations in Paragraph 32 of the Counterclaim is false and denied. Plaintiff admits that it marketed kits created from the Vehicles for off-road use, the marketing materials speak for themselves. Plaintiff admits that it sold two Vehicles as is, as kits for off-road use, denies that it sold four. In further answering, Plaintiff states that two Vehicles were dismantled and parts were sold from them. The balance of Paragraph 32 is denied.

33. To the extent that Paragraph 33 states the contents of a video, the video speaks for itself.

34. To the extent that Paragraph 34 states the contents of a video, the video speaks for itself. To the extent that Paragraph 34 contains legal conclusions, no response is required.

35. To the extent that Paragraph 35 states the contents of a video, the video speaks for itself.

36. Plaintiff objects to Paragraph 36 of the Counterclaim insofar as its extensive facts are not set forth in numbered paragraphs "each limited as far as practicable to a single set of circumstances." Without limiting the foregoing, to the extent that Paragraph 36 states the contents of a video, the video speaks for itself. Plaintiff denies the allegation that there were any "terms under which he purchased the Vehicles[,]" beyond the mere agreement to purchase the Vehicles from the Debtor for a stated price. Plaintiff denies that he had, or has, any intention to "circumvent . . . the limitations of his license . . . ."

37. It is unclear from Paragraph 37 of the Counterclaim whether the stated dialogue occurred in writing or orally. If in writing, then the writing speaks for itself. If orally, Plaintiff does not have sufficient recollection to know the exact words that were used in a communication with Defendant's counsel, nor when exactly the alleged conversation took place. Paragraph 37 is therefore denied.

38. Plaintiff admits that a Vehicle was listed on the stated website and that the listing was apparently canceled. The term "intact" as used in this paragraph is ambiguous and therefore denied.

39. Plaintiff objects to Paragraph 39 of the Counterclaim insofar as its extensive facts are not set forth in numbered paragraphs "each limited as far as

practicable to a single set of circumstances." Without limiting the foregoing, Plaintiff denies that "several" Vehicles were sold or that any Vehicles were sold to Mr. Ahn. To the extent that Paragraph 39 contains allegations of the contents of a website, the website speaks for itself. Plaintiff lacks sufficient knowledge to form a belief as to the truthfulness of the remaining allegations in Paragraph 39 and therefore denies them.

40. To the extent that Paragraph 40 contains allegations of the contents of websites, the websites speak for themselves. Plaintiff lacks sufficient knowledge to form a belief as to the truthfulness of the remaining allegations in Paragraph 40 and therefore denies them.

41. To the extent that Paragraph 41 states the contents of a video, the video speaks for itself.

42. To the extent that Paragraph 42 states the contents of a document, the document speaks for itself.

43. Plaintiff admits that Plaintiff and Defendant engaged in negotiations on and after June 5, 2024. Plaintiff lacks sufficient knowledge to form a belief as to the truthfulness of Defendant's expenditure of resources. Plaintiff denies that Plaintiff had any "contractual obligations" other than the obligation to pay a purchase price to Defendant, and further denies that Plaintiff has any obligations under the so-called Vehicle Decommission Order. In further answering, Plaintiff

states that Defendant's improper aggression, threats, and mischaracterizations have compelled Plaintiff to expend considerable, unnecessary resources in defending its rights to use the Vehicles that it purchased from Defendant. The balance of Paragraph 43 is therefore denied.

44. Plaintiff admits that it has not complied with Defendant's unreasonable requests. Plaintiff denies that it has not complied with any legal or contractual obligations and denies that it has violated any order of the Court that applies to Plaintiff. Plaintiff therefore denies that Defendant, as the injuring party, has incurred any "damages." The balance of Paragraph 44 is therefore denied.

45. Paragraph 45 of the Counterclaim is admitted.

46. Plaintiff admits that, upon learning of its error, Plaintiff filed the [Amended] Complaint to correct those errors, among other things. Paragraph 46 is therefore admitted.

47. To the extent that Paragraph 47 contains allegations of the contents of a document, the document speaks for itself.

COUNT I
(Declaratory Judgment)

48. Plaintiff repeats and realleges its responses to the foregoing paragraphs as though fully set forth herein.

49. Paragraph 49 is admitted.

50. Without limiting the positions stated in the Complaint, Plaintiff admits its position is that its only obligations with respect to the Vehicles are governed by Maryland state law, which may permit Plaintiff to sell vehicles to third parties disassembled, partially assembled, or fully assembled under certain circumstances. Plaintiff lacks sufficient knowledge to form a belief as to the truthfulness of what Defendant contends, except that the Vehicles would not be operated on the public roads. The balance of Paragraph 50 is denied.

51. Paragraph 51 is admitted in part. Upon judgment on the Complaint in Plaintiff's favor, Plaintiff intends to sell the Vehicles "as is" without titles issued by the DMV with a condition on the bills of sale indicating that they are not to be operated on public roads. It may not be possible or feasible for Plaintiff to police the 36 buyers' compliance with Maryland law or with the terms of the bills of sale (and Plaintiff may not have standing to do so). Plaintiff does not have record of what Mr. Cohen "indicated" and therefore denies that allegation. The balance of Paragraph 51 is denied.

52. To the extent that Paragraph 52 contains legal conclusions, no response is required. Plaintiff lacks knowledge sufficient to form a belief as to the truthfulness of what Defendant is seeking and therefore denies Paragraph 52.

COUNT II
(Breach of Contract)

53. Plaintiff repeats and realleges its responses to the foregoing paragraphs as though fully set forth herein.

54. To the extent that Paragraph 54 contains legal conclusions, no response is required.

55. To the extent that Paragraph 55 contains legal conclusions, no response is required. Plaintiff admits that it paid $400 per Vehicle to Defendant plus the cost of towing and that Plaintiff received the Vehicles from Defendant. In further answering, Plaintiff states that the contract between Plaintiff and Defendant was for the payment of money, the tendering of the Vehicles, and Plaintiff's towing of the Vehicles. The balance of Paragraph 55 is denied.

56. To the extent that Paragraph 56 contains legal conclusions, no response is required. In further answering, Plaintiff states that the contract between Plaintiff and Defendant was for the payment of money, the tendering of the Vehicles, and Plaintiff's towing of the Vehicles. The balance of Paragraph 56 is denied.

57. To the extent that Paragraph 57 contains legal conclusions, no response is required. In further answering, Plaintiff states that the contract between Plaintiff and Defendant was for the payment of money, the tendering of the Vehicles, and Plaintiff's towing of the Vehicles. Plaintiff asserts that it had no obligation to destroy the Vehicles and therefore could not "fail to" do so. To the

extent that Paragraph 57 contains allegations of the contents of marketing materials, those materials speak for themselves. The balance of Paragraph 57 is denied.

58. Paragraph 58 is denied.

59. Paragraph 59 is denied.

60. Plaintiff states that the contract between Plaintiff and Defendant was for the payment of money, the tendering of the Vehicles, and Plaintiff's towing of the Vehicles. Plaintiff denies that it breached that contract. Paragraph 60 is denied.

COUNT III
(Fraud in the Inducement)

61. Plaintiff repeats and realleges its responses to the foregoing paragraphs as though fully set forth herein.

62. Plaintiff admits that it is a state licensed dismantler, recycler and scrap processor under the laws of the State of Maryland. Plaintiff does not have record of whether it "held itself out" in this capacity to Defendant at any time prior to its purchase of the Vehicles and therefore denies the balance of Paragraph 62.

63. Plaintiff admits that it stated to Defendant that it was pricing the Vehicles to Defendant for "scrap value"—a reflection of the price it was willing to pay—but denies that it made representations to Defendant regarding limiting the purposes of the Vehicles after the purchase. In further answering, Plaintiff states

that Defendant expressly recognized by text Defendant's expectation that Plaintiff would sell parts of the Vehicles. The balance of Paragraph 63 is denied.

64. Paragraph 64 is denied, for all purposes including but not limited to concealment and any insinuation of road-worthiness.

65. Paragraph 65 is denied, for all purposes including but not limited to misrepresentations, omissions, and inducement.

66. Plaintiff lacks knowledge sufficient to form a belief as to the truthfulness of the allegations about what Defendant "relied on" but such reliance was not upon representations of Plaintiff. Paragraph 66 is therefore denied.

67. Paragraph 67 is denied. In further answering, Plaintiff asserts that Defendant sold the Vehicles to Plaintiff for scrap value because Defendant wanted to wipe its hands of a messy situation and make it Plaintiff's problem. If Defendant had wanted to hire someone to destroy the Vehicles, Defendant would have had to pay Plaintiff (or someone similarly situated to Plaintiff) instead of the other way around.

68. Paragraph 68 is denied.

COUNT IV
(Promissory Estoppel)

69. Plaintiff repeats and realleges its responses to the foregoing paragraphs as though fully set forth herein.

70. Paragraph 70 is denied.

71. Plaintiff lacks knowledge sufficient to form a belief as to the truthfulness of the allegations about what Defendant "relied on" but such reliance was not upon representations of Plaintiff. Paragraph 71 is therefore denied.

72. Paragraph 72 is denied.

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

73. Plaintiff repeats and realleges its responses to the foregoing paragraphs as though fully set forth herein.

74. Plaintiff denies that the "Contract" has the meaning ascribed by Defendant, and therefore denies Paragraph 74. In further answering, Plaintiff states that the contract between Plaintiff and Defendant was for the payment of money, the tendering of the Vehicles, and Plaintiff's towing of the Vehicles.

75. To the extent that Paragraph 75 contains legal conclusions, no response is required. Plaintiff denies that it had, or has, any obligation "to dismantle or destroy the Vehicles." The balance of Paragraph 75 is denied.

76. Paragraph 76 is admitted in part: Defendant performed its obligations under the contract between the parties by conveying the 31 Vehicles to Plaintiff. Plaintiff denies the balance of Paragraph 76.

77. Plaintiff denies that the "Contract" has the meaning ascribed by Defendant, and therefore denies Paragraph 77. In further answering, Plaintiff states that the contract between Plaintiff and Defendant was for the payment of money,

the tendering of the Vehicles, and Plaintiff's towing of the Vehicles. The balance of Paragraph 77 is denied.

78. Paragraph 78 is denied.

79. Paragraph 79 is denied.

AFFIRMATIVE DEFENSES

(A) Defendant has failed to state a claim upon which relief may be granted.

(B) Defendant is estopped from asserting that there is a contract.

(C) Unclean hands.

(D) Defendant lacks standing to assert one or more of the claims stated in the Counterclaim.

(E) Accord and satisfaction.

(F) Parol evidence rule.

(G) Laches.

(H) Statute of Frauds.

(I) No basis for award of attorneys' fees under the American Rule.

(J) Punitive damages not permissible.

(K) Impossibility, to the extent any Vehicles are no longer within Plaintiff's custody, possession, or control.

(L) Frustration of purpose.

(M) Failure to join indispensable party.

(N) Breach was not material.

(O) Requested relief in Counterclaim materially differs from allegedly applicable language of Vehicle Decommission Order.

(P) Defendant failed to act in good faith.

(Q) Failure to plead fraud with particularity.

(R) Fraud in the inducement.

(S) Breach of implied covenant of good faith and fair dealing.

(T) Failure of damages.

WHEREUPON, Defendant requests that the Plaintiff take nothing upon its Counterclaim, that the Court enter judgment in Plaintiff's favor against Defendant on all counts of the Counterclaim, that the Court award Plaintiff its fees and costs, including but not limited to attorneys' fees, for defending against the Counterclaim, and that the Court grant Plaintiff such further relief as this Court deems just and proper.

Dated: October 30, 2024
Wilmington, Delaware

Respectfully submitted,

HILLER LAW, LLC

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Attorney for Plaintiff, Cohen Recycling, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 30, 2024, I caused copies of the foregoing Answers And Affirmative Defenses To Nu Ride Inc.'s Counterclaims to be served via electronic mail upon:

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Dated: October 30, 2024
Wilmington, Delaware

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