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Counsel to the Debtors and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA**

In re:

☒ NEVADA COPPER, INC.
☒ NEVADA COPPER CORP.
☒ NC DITCH COMPANY LLC
☒ NC FARMS LLC
☒ LION IRON CORP.
☒ 0607792 B.C. LTD.

Debtors.¹

Lead Case No.: 24-50566-hlb
 Chapter 11

Jointly Administered with:
 Case No. 24-50567-hlb
 Case No. 24-50568-hlb
 Case No. 24-50569-hlb
 Case No. 24-50570-hlb
 Case No. 24-50571-hlb

Hearing Date: March 13, 2025
 Hearing Time: 1:30 p.m. PST

**DEBTORS' OBJECTION TO
 NEVADA CEMENT COMPANY, LLC'S SECURED CLAIM**

Nevada Copper, Inc. and its affiliates that are debtors and debtors in possession (the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), respectfully represent in support of this Objection (the “**Objection**”) as follows:

¹ The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

Relief Requested

1. The Debtors seek entry of the proposed form of order attached hereto as **Exhibit “A”** (the “**Proposed Order**”) disallowing and expunging in its entirety the secured claim asserted by Nevada Cement Company, LLC (“**Nevada Cement**”) (Claim Number 122-1) in the amount of \$349,096.51 (the “**Asserted Secured Claim**”). The legal predicates for the relief requested herein are sections 502 and 506 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “**Bankruptcy Code**”), Rules 3003, 3007 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 3007 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Nevada (the “**Local Rules**”). Pursuant to Local Rule 3007(a)(4), a copy of the first page of the proof of claim with respect to the Asserted Secured Claim is attached hereto as **Exhibit “B.”** In support of this Objection, the Debtors submit the *Declaration of Gregory J. Martin in Support of Debtors’ Objection to Nevada Cement Company, LLC’s Secured Claim* (the “**Martin Declaration**”), a copy of which is filed contemporaneously herewith.

Jurisdiction and Venue

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and Local Rule 1001(b)(1). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b).

3. Pursuant to Local Rule 9014.2, the Debtors consent to the entry of final orders and judgements by the bankruptcy judge on the matters presented in this Objection to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgements consistent with Article III of the United States Constitution.

4. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Background²

5. On June 10, 2024 (the “**Petition Date**”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. On June 18, 2024, the Court entered orders

² Additional facts relating to the Debtors’ business and capital structure, and the commencement of these Chapter 11 Cases are set forth in the *Omnibus Declaration of Gregory J. Martin in Support of the Debtors’ Chapter 11 Petitions and First Day Motions* [ECF No. 4].

1 authorizing the joint administration of these chapter 11 cases for procedural purposes only,
 2 pursuant to Bankruptcy Rule 1015(b). The Debtors continue as debtors in possession pursuant to
 3 sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee
 4 or examiner has been made in these chapter 11 cases. On June 27, 2024, the United States Trustee
 5 for Region 17 (the “*U.S. Trustee*”) appointed the Official Committee of Unsecured Creditors in
 6 these Chapter 11 Cases (the “*Committee*”).

7 6. The Debtors had been in the business of mining copper, and other minerals, and
 8 operating a processing plant that refines copper ore into copper concentrate, with the bulk of the
 9 Debtors’ operations focused on their Pumpkin Hollow project (the “*Project*”), which is located
 10 outside of Yerington, Nevada. The Project, which contains substantial mineral reserves and
 11 resources, including not only copper, but gold, silver, and iron magnetite, consists of an
 12 underground mine and processing facility, together with an open-pit project that is in the pre-
 13 feasibility stage of development.

14 **Objection to the Asserted Secured Claim**

15 7. Section 502(b) of the Bankruptcy Code provides that the validity and amount of a
 16 claim shall be determined as of the date of the filing of the bankruptcy petition. Section 502(b)(1)
 17 requires disallowance of a claim if “such claim is unenforceable against the debtor and property
 18 of the debtor, under any agreement or applicable law for a reason other than because such claim is
 19 contingent or unmatured.” 11 U.S.C. § 502(b)(1). The “applicable law” referenced in Section
 20 502(b)(1) includes bankruptcy law as well as other federal and state laws. *See Cavaliere v. Sapir*,
 21 208 B.R. 784, 786-787 (D. Conn. 1997) (providing that “applicable law” includes bankruptcy law).
 22 A debtor is therefore allowed to raise any federal or state law defenses to a claim. *See In re G.I.*
 23 *Industries, Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000) (stating that a claim cannot be allowed under
 24 Section 502(b)(1) if it is unenforceable under non-bankruptcy law); *Johnson v. Righetti*, 756 F.2d
 25 738, 741 (9th Cir. 1985) (finding that the validity of the claim may be determined under state law).
 26 Section 506(a)(1) of the Bankruptcy Code provides that “an allowed claim of a creditor secured
 27 by a lien on property in which the estate has an interest. . . is a secured claim. . . .” 11 U.S.C. §
 28

1 506(a)(1). Accordingly, a claim that is not “secured by a lien on property in which the estate has
2 an interest” is not a secured claim.

3 8. Section 502(a) provides that a claim under Section 501 is “deemed allowed, unless
4 a party in interest . . . objects.” 11 U.S.C. § 502(a). The U.S. Court of Appeals for the Ninth Circuit
5 has described the shifting burdens of proof with respect to objections to claims as follows:

6 In short, the allegations of the Proof of Claim are taken as true. If those allegations
7 set forth all the necessary facts to establish a claim and are not self-contradictory,
8 they prima facie establish the claim. Should objection be taken, the objector is then
9 called upon to produce evidence and show facts tending to defeat the claim by
10 probative force equal to that of the allegations of the proofs of claim themselves.
But the ultimate burden of persuasion is always on the claimant. Thus, it may be
11 said that the Proof of Claim is some evidence as to its validity and amount. It is
12 strong enough to carry over a mere formal objection without more.

13 *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991) (*quoting* 3 L. King, *Collier on*
14 *Bankruptcy* § 502.02, at 502–22 (15th ed.1991)) (emphasis added); *see also Lundell v. Anchor*
15 *Constr. Specialists, Inc.*, 223 F.3d 1035, 1040 (9th Cir. 2000) (holding that the bankruptcy court
16 correctly understood that the ultimate burden of persuasion was on the creditor); *Spencer v. Pugh*
17 (*In re Pugh*), 157 B.R. 898, 901 (B.A.P. 9th Cir. 1993) (holding that the claimant bears the ultimate
18 burden of persuasion as to validity and amount of the claim by a preponderance of the evidence).
19 If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof
20 of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance
21 of the evidence. *See Lundell*, 223 F.3d at 1039-40.]

22 9. The Asserted Secured Claim should not be allowed as a secured claim because it
23 fails to provide evidence that it is secured by a valid lien. It lists Nev. Rev. Stat. § 108.226,
24 Nevada’s mechanic’s and materialmen’s lien statute, as the basis for perfection as “Notice of Lien
25 pursuant to NRS 108.226 et cet.” NRS 108.226 requires that, “[t]o perfect a lien, a lien claimant
26 must record a notice of lien in the office of the county recorder of the county where the property
27 or some part thereof is located. . . .” NRS 108.226. However, the proof of claim does not attach
28 a notice of lien. Furthermore, after conducting a search of the relevant records of the Lyon County

Recorder's Office, the Debtors have been unable to locate any such notice of lien filed by Nevada Cement. Given the absence of any evidence of a lien with respect to the Asserted Secured Claim, Nevada Cement has not met its burden to establish the secured status of its claim. *See Holm*, 931 F.2d at 623.

10. Ordinarily, the remedy for a claim that has been filed as secured but which is not entitled to secured status is to reclassify the claim as a general unsecured claim. However, Nevada Cement filed a separate unsecured claim (Claim Number 123-1) (the "***Asserted Unsecured Claim***") in the same amount as the Asserted Secured Claim and based on the exact same invoices. As the Asserted Secured Claim is not entitled to secured status, it is duplicative of the Asserted Unsecured Claim. It is "axiomatic that one can not recover for the same debt twice." *In re Handy Andy Home Imp. Centers, Inc.*, 222 B.R. 571, 575 (Bankr. N.D. Ill. 1998). Therefore, to prevent improper double recovery, the Debtors respectfully request that the Asserted Secured Claim be disallowed and expunged in its entirety.

Reservation of Rights

11. This Objection is limited to the grounds stated herein and is without prejudice to the Debtors' rights to object to the Asserted Secured Claim (to the extent the relief requested in this Objection is not granted), Asserted Unsecured Claim or other claims on any grounds whatsoever, and, to the extent permissible, the Debtors expressly reserve all substantive or procedural objections they may have.

Notice

12. Notice of this Motion will be provided to: (i) Woodburn & Wedge, as counsel to Nevada Cement, 6100 Neil Rd., Ste. 500, Reno, NV 89511, Attn: Seth Adams, Esq.; (ii) the Office of the United States Trustee for Region 17; (iii) counsel to the Committee, (a) Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, NY 10020, Attn: Eric S. Chafetz and Jeffrey L. Cohen; and (b) Fox Rothschild, One Summerlin, 1980 Festival Plaza Drive, Suite 700, Las Vegas, NV 89135, Attn: Brett A. Axelrod and Nicholas A. Koffroth; (iv) Milbank LLP, as counsel to the Prepetition Senior Secured Term Loan Agent, 55 Hudson Yards, New York, NY

1 10001, Attn: Tyson Lomazow; (v) Bennett Jones LLP, as counsel to Mercuria Investments US,
2 Inc., 3400 One First Canadian Place, P.O. Box 130, Toronto, Ontario M5X 1A4, Canada, Attn:
3 Simon Grant; (vi) White & Case LLP, as counsel to Concord Resources Limited as buyer under
4 the Debtors' prepetition advance payment agreement, 1221 6th Avenue, New York, NY 10020,
5 Attn: Philip Abelson; (vii) Davis, Graham & Stubbs LLP, as counsel to Triple Flag Mining
6 Finance Bermuda Ltd. as purchaser under the Debtors' prepetition purchase and sale agreement,
7 1550 17th Street, Suite 500, Denver, CO 80202, Attn: Kyler Burgi; (viii) Cleary Gottlieb Steen
8 & Hamilton LLP, as counsel to Pala Investments Limited as prepetition lender, 2 London Wall
9 Place, London, EC2Y 5AU, United Kingdom, Attn: Solomon J. Noh; One Liberty Plaza, New
10 York, NY 10006, Attn: Thomas Kessler; and (ix) any party that is required to receive or has
11 requested notice pursuant to Bankruptcy Rule 2002 or Local Rule 2002. The Debtors respectfully
12 submit that, in light of the nature of the relief requested, no other or further notice need be given.

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1 WHEREFORE, the Debtors respectfully request that the Court grant the relief requested
2 herein and as set forth in the Proposed Order and such other and further relief as is just and proper.

3 Dated this 7th day of February, 2025.
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5 Respectfully submitted,

6 /s/ Ryan J. Works

7 **McDONALD CARANO LLP**

8 Ryan J. Works (Nevada Bar No. 9224)

9 Amanda M. Perach (Nevada Bar No. 12399)

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11 -and-

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599 Lexington Avenue

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17 *Counsel to the Debtors and Debtors in*
18 *Possession*
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Exhibit A
Proposed Order

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

☒ NEVADA COPPER, INC.
☒ NEVADA COPPER CORP.
☒ NC DITCH COMPANY LLC
☒ NC FARMS LLC
☒ LION IRON CORP.
☒ 0607792 B.C. LTD.

Debtors.¹

Lead Case No.: 24-50566-hlb
Chapter 11

Jointly Administered with:

Case No. 24-50567-hlb
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 Case No. 24-50569-hlb
 Case No. 24-50570-hlb
 Case No. 24-50571-hlb

Hearing Date: March 13, 2025

Hearing Time: 1:30 p.m. PST

**ORDER SUSTAINING DEBTORS' OBJECTION TO
NEVADA CEMENT COMPANY, LLC'S SECURED CLAIM**

Upon the Objection (the “*Objection*”) of the Debtors for entry of an order (this “*Order*”), pursuant to sections 502 and 506 of the Bankruptcy Code, Bankruptcy Rules 3003, 3007 and 9014 and Local Rule 3007, disallowing and expunging in its entirety the secured claim asserted by Nevada Cement Company, LLC (Claim Number 122-1) in the amount of \$349,096.51 (the “*Asserted Secured Claim*”); and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and that this Court may enter a final order consistent with Article III of the United States Constitution; and, proper and adequate notice of the Objection and the hearing thereon having been given; and it appearing that no other or further notice is necessary; and this

¹ The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

1 Court having reviewed the Objection and the *Declaration of Gregory J. Martin in Support of*
2 *Debtors' Objection to Nevada Cement Company, LLC's Secured Claim*; and it appearing that no
3 claimant or other party in interest filed a response to the Objection; and it appearing that the legal
4 and factual bases set forth in the Objection establish just cause for the relief granted herein; and
5 after due deliberation and sufficient cause appearing therefor;

6 **IT IS HEREBY ORDERED THAT:**

- 7 1. The Objection is **SUSTAINED** as set forth herein.
- 8 2. The Asserted Secured Claim is hereby disallowed and expunged in its entirety.
- 9 3. The Official Claims Register in these Chapter 11 Cases shall be modified in
10 accordance with this Order.
- 11 4. The Debtors and Epiq Corporate Restructuring, LLC, the Court-appointed claims
12 and noticing agent, are authorized and empowered to take any action necessary to implement and
13 effectuate the terms of this Order.
- 14 5. Notwithstanding anything to the contrary, the terms and conditions of this Order are
15 immediately effective and enforceable upon its entry.
- 16 6. This Court shall retain jurisdiction over any and all matters arising from or related
17 to the interpretation or implementation of this Order.

18 **IT IS SO ORDERED**

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L.R. 9021 Certification

In accordance with L.R. 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

- ☐ The court has waived the requirement of approval under L.R. 9021(b)(1).
- ☐ No party appeared at the hearing or filed an objection to the motion.
- ☐ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below.

Approve Disapprove

US Trustee _____

☐ I certify that this is a case under chapter 7 or 13, that I have served a copy of this order with the motion pursuant to L.R. 9014(g), and that no party has objected to the form or content of the order.

###

Prepared and submitted by:

McDONALD CARANO LLP

Ryan J. Works (Nevada Bar No. 9224)
Amanda M. Perach (Nevada Bar No. 12399)
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New York, New York 10022

Counsel to the Debtors and Debtors in Possession

APPROVED/DISAPPROVED

Exhibit B

First Page of Proof of Claim

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Fill in this information to identify the case:

Debtor 1 NEVADA COPPER, INC.Debtor 2
(Spouse, if filing) _____

United States Bankruptcy Court for the: District of Nevada

Case number 24-50566-HLB

RECEIVED

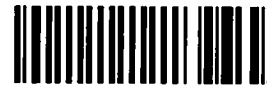
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LEGAL SERVICES

Filed: USBC - District of Nevada
Nevada Copper, Inc., et al
24-50566 (HLB)

(CLM)

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Official Form 410

Proof of Claim

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>Nevada Cement Company, LLC</u> Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent? <u>Woodburn & Wedge - Attn: Seth Adams, Esq.</u> Name <u>6100 Neil Rd., Ste. 500</u> Number Street <u>Reno</u> <u>NV</u> <u>89511</u> City State ZIP Code Contact phone <u>775-688-3000</u> Contact email <u>sadams@woodburnandwedge.com</u>	Where should payments to the creditor be sent? (if different) Name _____ Number Street _____ City State ZIP Code _____ Contact phone _____ Contact email _____
Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____		
4. Does this claim amend one already filed?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	