IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
NUVO GROUP USA, INC., *et al.*,[1]	Case No. 24-11880 (MFW)
Debtors.	(Jointly Administered)
	Related Docket No.: 452

REPLY IN SUPPORT OF DEBTORS' OBJECTION TO CLAIM NO. 10054 FILED BY ALBERTO PERUCCHINI

The debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors"), by and through their undersigned counsel, hereby submit this reply (this "Reply") in further support of the *Debtors' Objection to Claim No. 10054 Filed by Alberto Perucchini* (Docket No. 452) (such claimant, the "Claimant", and such objection, the "Objection")[2] and in response to the Claimant's response (Docket No. 492) (the "Response"). In support of this Reply, the Debtors respectfully state as follows:

REPLY

I. THE CLAIMANT HAS FAILED TO SHOW THAT HE HAS A PROPERLY PERFECTED SECURITY INTEREST.

1. The Response fails to address the crux of the Objection: the Claimant has failed to provide any documentation that establishes that the purported lien that Claimant asserts with respect to the Note has been perfected. It has not. In response to the Objection, the Claimant

1. The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number or registration number in the applicable jurisdiction, are: Holdco Nuvo Group D.G Ltd. (5756); Nuvo Group Ltd. (3811); and Nuvo Group USA, Inc. (2727). The Debtors' mailing address for purposes of these Chapter 11 Cases is Nuvo Group USA, Inc., c/o Epiq Corporate Restructuring, LLC, P.O. Box 4421, Beaverton, OR 97076-4421.

2. Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Objection.

has provided no such evidence and has thus failed to carry his burden to establish that he has properly perfected his purported security interests. *See* Fed. R. Bankr. P. 3001(d) ("If a creditor claims a security interest in the debtor's property, the proof of claim must be accompanied by evidence that the security interest has been perfected."). Indeed, the Response fails to identify a single document that evidences a properly perfected security interest as to the Claimant. As a result, the Claimant has failed to meet his burden under Bankruptcy Rule 3001(d). This alone ends the inquiry and warrants a finding that the Claim is unsecured.

2. Rather than provide evidence of perfection, Claimant relies on the terms of the Note that purport to grant but not perfect a security interest, and past statements in the Debtors' bankruptcy filings[3] and certain of the Debtors' filings with the Securities and Exchange Commission ("SEC") as alleged admissions. However, these arguments are not evidence, and they are insufficient as a matter of law to establish that the Claimant have a perfected security interest with respect to the Claim. Recognizing as much, this Court has already rejected similar arguments made by other claimants in these Chapter 11 Cases.[4]

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3. While Claimant points to certain statements in Mr. Powell's First Day Declaration (D.I. 13), he fails to state that Mr. Powell filed a Supplemental First Day Declaration on December 9, 2024 (D.I. 284) that specifically corrects the statements to which Claimant refers. In that supplemental declaration, Mr. Powell states that following an investigation, the Bridge Financing Notes "do not appear to be properly perfected" and that "[t]he Debtors therefore dispute the priority (and specifically the purported secured nature of) the Bridge Financing Notes." (*See* D.I. 284 ¶ 8.)

4. *See* D.I. 442 (reclassifying Blinbaum claimants' claims as unsecured); *see also* Dec. 11, 2024 Hearing Tr. at 166:15-167:2 ("And let's look at the proof, and I'm glad you pointed it out again. The SEC filing does, in fact, say that the debtor granted a security interest and that the debtor filed pleadings to perfect it. But I cannot accept that as evidence of perfection. You don't perfect a security interest in intangibles by issuing an SEC statement."); Feb 19, 2025 Hearing Tr. at 24:2-24:6 ("But as between you and the debtor there is no document that shows that your interest was perfected and, whether that's fair or not, the law requires perfection for you to be treated as a secured creditor."); *Id.* at 24:14-24:17 ("You have not established that under Israeli law Gaingels filed anything to perfect your security interest. Gaingels has said repeatedly they did not act on your behalf."); *Id.* at 25:25-26:6 ("I will make a ruling that you have failed to show that you have a perfected security interest in any assets of the debtor . . . on the record today there is nothing showing that anybody perfected a security interest on your behalf, either under Israeli law or under United States law.")

3. Realizing that he has no evidence of perfection, the Claimant instead appears to want to assert claims against the Debtors for failing to perfect his security interest and for allegedly making misrepresentations to him.[5] But in making that argument, the Claimant concedes that the alleged "misrepresentation is a separate matter entirely from whether a security interest lien was indeed perfected with respect to the Notes." *See* Resp. ¶ 3. Those are not the words of a properly perfected secured creditor, and they do not suffice to establish secured status.

4. Based on the foregoing, and for the reasons stated in the Objection, the Claimant has failed to establish that his Claim is subject to a properly perfected security interest. As a result, the Claim should be reclassified as an unsecured claim.

II. CLAIMANT'S OTHER ARGUMENTS ARE IRRELEVANT, BASELESS, AND PROCEDURALLY IMPROPER.

5. In the last paragraph of the Response, the Claimant asserts without basis that he is entitled to a constructive trust or an equitable lien on the sale proceeds, or that legal and administrative expense claims on the sale proceeds should be equitably subordinated to the Claimant's Claim. Resp. ¶ 7. The Claimant offers no legal basis for such arguments, which are procedurally improper and irrelevant to the issue of whether the Claimant has a perfected security interest. Indeed, the Claimant fails to establish that these remedies are even available under Israeli law, which governs the Note. Note ¶ 11. This Court has previously rejected constructive trust

5. The Debtors do not concede any allegations against them and reserve all rights, claims and defenses.

claims where the applicable law did not recognize such a claim.[6] This Court has also rejected constructive trust claims that, like here, were based on loans extended to a debtor.[7]

6. This Court has also previously rejected equitable lien claims where, as here, a claimant failed to record its security interest or make reasonable efforts to do so. *Bank of New York v. Epic Resorts – Palm Springs Marquis Villas LLC (In re Epic Capital Corp.)*, 290 B.R. 514, 523 (Bankr. D. Del. 2003) (citing *In re Trim-Lean Meat Products, Inc.*, 10 B.R. 333, 335 (D. Del. 1981) ("court refused to recognize an equitable lien where the claimant has not 'done everything reasonable under the circumstances to perfect its lien.'") The Claimant has failed to establish that it has done or even attempted to do anything to perfect its asserted security interest.

7. In addition, the same opinion rejected BONY's equitable subordination claim where BONY "slept on its rights and is, therefore, not entitled to equitable relief." *Id.* at 525. Here, the Claimant did not object to the Debtors' asset sale, and does not allege that he took any acts to perfect his purported security interest. He thus has slept on his rights. The Claimant also fails to offer any factual or legal basis to warrant equitable subordination – a remedy with an extremely high burden of proof in any event – of unidentified administrative expense and professional claims based on unidentified conduct. The mere assertion of legal rights – here, that the Claimant does not have a properly perfected security interest under applicable law – is far from

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6. *Fluor Enters., Inc. v. Orion Refining Corp. (In re Orion Refining Corp.)*, 341 B.R. 476, 485-486 (Bankr. D. Del. 2006) (holding that Fluor was not entitled to a constructive trust on sale proceeds where Louisiana law did not recognize a constructive trust claim).

7. *Wingspire Equip. Fin. LLC v. E-Crane Int'l USA Inc. (In re Cool Springs LLC)*, 657 B.R. 767, 779-780 (Bankr. D. Del. 2024) ("As a general proposition, once loan funds are extended to a debtor, those funds are property of the debtor, and the lender has no claim of ownership to those funds. Thus, the Court agrees with ECI that once Wingspire agreed to pay the Debtor's obligation to ECI, the funds advanced by Wingspire were the Debtor's property and Wingspire retained no interest in them. Therefore, the Court concludes that Wingspire has not alleged a causal connection between any loss of the funds it lent to the Debtor and any alleged benefit ECI realized by its retention of the Cranes and Deposits. Rather, it appears that Wingspire was impoverished, if at all, by the failure of the Debtor to repay Wingspire for its loan. As a result, the Court concludes that the claims for unjust enrichment and constructive trust must be dismissed.")

inequitable conduct and does not come anywhere close to the conduct required to warrant equitable subordination.

8. Based on the foregoing, the Claimant's arguments are irrelevant to the Objection and are unsupported in law or fact. As a result, they should be rejected, and the Objection to the Claim should be sustained.

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CONCLUSION

WHEREFORE, for the reasons set forth in the Objection and this Reply, the Debtors respectfully request that the Court enter the Proposed Order, substantially in the form attached to the Objection as Exhibit A, reclassify the Claim as unsecured, and grant such other and further relief as is just and proper.

Dated: March 25, 2025
Wilmington, Delaware

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