

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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In re: : Chapter 11
: :
ADVANTAGE HOLDCO, INC., *et al.*, : Case No. 20-11259 (CTG)
: :
Debtors.¹ : (Jointly Administered)
: :
: **Hearing Date: September 3, 2021 at 1:00 p.m.**
----- X **Objection Deadline: August 23, 2021 at 4:00 p.m.**

**MOTION FOR ENTRY OF AN ORDER CLARIFYING THE COURT’S VEHICLE
SURRENDER ORDERS WITH RESPECT TO CONTINUING LIABILITIES**

Advantage Holdco, Inc. and certain of its affiliates, the debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the “Debtors”), hereby move (the “Motion”) pursuant to section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), for entry of an order, substantially in the form of **Exhibit A** hereto (the “Proposed Order”) clarifying certain of the Court’s Surrender Orders (as defined below) with respect to continuing liabilities related to surrendered vehicles, such as tolls, parking violations, and registration fees. In support of the Motion, the Debtors state as follows:

RELIEF REQUESTED²

1. Shortly after the Petition Date, the Debtors ceased their car rental services. The Court entered orders permitting the Debtors to surrender ownership and possession of their Rental Fleet to the lessors and financiers that claimed to own the cars or hold first priority liens on the

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Advantage Holdco, Inc. (4832); Advantage Opco, LLC (9101); Advantage Vehicles LLC (6217); E-Z Rent A Car, LLC (2538); Central Florida Paint & Body, LLC (1183); Advantage Vehicle Financing LLC (7263); and RAC Vehicle Financing, LLC (8375). The Debtors’ address is PO Box 2818, Windermere, FL, 34786.

² Capitalized terms used in this section have the meaning provided below.

cars. Despite the Surrender Orders, the Debtors continue to receive claims and charges for tolls, citations, fees, and expenses related to its former Rental Fleet.

2. The Debtors respectfully request that the Court enter an order clarifying that, pursuant to its Surrender Orders, following the Surrender Dates, the Debtors neither owned nor operated its Rental Fleet and neither the Debtors nor their estates are liable for post-Surrender Date Vehicle Charges.

JURISDICTION

3. The Court has jurisdiction over this matter under 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware* dated February 29, 2012. Venue proper under 28 U.S.C. §§ 1408 and 1409.

4. This is a core proceeding under 28 U.S.C. § 157(b) and, pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, the Debtors consent to the entry of a final order by the Court in connection with the Motion to the extent that it is later 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. The statutory basis for the relief requested herein is section 105(a) of the Bankruptcy Code.

BACKGROUND

6. On May 26, 2020 (the “Petition Date”), the Debtors filed voluntary petitions in this Court commencing cases for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”).

7. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

8. On June 9, 2020, the United States Trustee for Region 3 appointed the Official Committee of Unsecured Creditors in the Chapter 11 Cases [Docket No. 140]. No trustee or examiner has been appointed in the Chapter 11 Cases.

9. A more complete factual background regarding the Debtors, including their business operations, their capital, and debt structures, and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the *Declaration of Alfred C. Farrell, Chief Financial Officer of Advantage Holdco, Inc., in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 15].

10. In further support of this Motion, the Debtors rely on the *Declaration of Alfred C. Farrell in Support of the Motion for Entry of an Order Clarifying the Court's Vehicle Surrender Orders with Respect to Continuing Liabilities* attached hereto as **Exhibit B**.

A. The Rental Fleet

11. The Debtors previously provided rental car services throughout the United States, largely focused on locations near major airports.

12. The Debtors acquired substantially all their rental car fleet (the "Rental Fleet") under a number of agreements (collectively, the "Vehicle Facilities") with certain, non-affiliated third-party lessors and financiers (collectively, the "Vehicle Vendors"). The Vehicle Facilities were variously styled as revolving credit lines or leases and, typically, were secured by first priority liens on the vehicles financed using those facilities.³

13. Depending on the terms of the Vehicle Facility, certain cars in the Rental Fleet were titled and registered to a Debtor, while the remainder of the cars were titled and registered to one

³ None of the descriptions contained herein of the Vehicle Facilities is an admission as to the status of any such facility as a true lease or a secured credit facility or to the validity or perfection of any purported liens on the Debtors' assets, and the Debtors reserve all of their rights with respect thereto.

of the Vehicle Vendors. Each license plate used for the Rental Fleet was registered to one of the Debtors or a Vehicle Vendor. Additionally, in certain locations, the Debtors provided renters with electronic toll collection devices (“Transponders”) that were linked to an account associated with a Debtor.

14. In the ordinary course of business, the Debtors incurred several categories of claims related to their Rental Fleet (collectively referred to as “Vehicle Charges”):

- Tolls, moving and parking violations and citations, towing and impound charges, and other fees incurred from operating or parking vehicles (“Operating Charges”). These fees were typically incurred by renters. However, in the ordinary course of business, certain of the Debtors’ Rental Fleet, license plates, and Transponders were stolen and used illegally, resulting in additional Operating Charges.
- Governmental agencies charged taxes, fees, and expenses related to vehicle registration, plating, titling, and ownership.
- The Debtors incurred transfer and service fees, taxes,⁴ and third-party liability to purchasers in connection with vehicle sales.

15. Local and state agencies and contract companies, including tolling authorities, parking and citations authorities, departments of motor vehicles, taxing agencies (collectively “Vehicle Agencies”), assign Vehicle Charges to the entity or person to which a vehicle, license plate, or toll transponder is registered. The exact method of assignment varied by location. For instance, depending on location, tolls were registered based on license plates or Transponders. And moving and parking violations are often charged to the holder of a cars’ title or registration.

⁴ In most states, the Debtors, as car rental operators, were exempt from sales tax on their Rental Fleet.

16. In their ordinary course of business, the Debtors contracted with various third parties (the “Administrators”) to administer certain titling, registration, tolling, and citations associated with the Rental Fleet and provide Transponders.⁵ Following the Petition Date, the Debtors rejected their contracts with the Administrators effective July 30, 2020.⁶

B. Surrender of the Rental Fleet

17. Prior to the Petition Date, the Debtors had already begun significant fleet reductions through bulk sales and by surrendering vehicles to the Vehicle Vendors. As of the Petition Date, the Debtors’ Rental Fleet consisted of approximately 8,458 cars. By then end of June 2020, a little more than a month after the Petition Date, the Debtors ceased car rentals. Postpetition, the Vehicle Vendors asserted ownership or security interests in the Rental Fleet and began working to recover the Rental Fleet. Consequently, the Debtors negotiated the surrender of their Rental Fleet with respective Vehicle Vendors.

18. In June of 2020, the Court entered a series of agreed orders lifting the automatic stay for Vehicle Vendors or approving stipulations with the Vehicle Vendors (the “Surrender Orders”).⁷ Pursuant to the Surrender Orders, the Debtors surrendered their remaining Rental Fleet⁸ on or before June 30, 2020 (the “Surrender Dates”),⁹ giving up the Debtors’ rights to possession and ownership, where applicable. However, the Surrender Orders preserved the Debtors’ rights

⁵ In the ordinary course, the Debtors administered certain titling, registration, tolling, and citations associated with the Rental Fleet in house.

⁶ See *Order Authorizing the Debtors to (i) Reject Certain Executory Contracts and Unexpired Leases Effective as of the Rejection Date; and (ii) Abandon Any Remaining Personal Property in Connection Therewith* [Docket No. 437].

⁷ See Docket Nos. 169, 213, 250, 321, and 449.

⁸ In limited circumstances, the Debtors retained possession or ownership of a certain cars that, in the Debtors’ ordinary course of business, were heavily damaged, subject to legal holds related to ongoing litigation., or stolen (the “Retained Vehicles”). The Debtors have not operated the Retained Vehicles after the Surrender Dates.

⁹ The specific Surrender Date for each Vehicle Vendor is identified specifically on Exhibit C.

and claims to the proceeds of the Retained Vehicles and surrendered vehicles, including from applicable insurance policies.¹⁰

C. The Debtors Continue to Receive Post-Surrender Date Charges

19. Consistent with the Surrender Orders, following the Surrender Dates, the Debtors and their remaining, limited workforce coordinated with the Administrators and, when requested, Vehicle Vendors to finalize the surrender of the Rental Fleet and to return Transponders and license plates. Despite these efforts, the Debtors have continued to receive charges related to the Rental Fleet, Transponders, and license plates that accrued after the Surrender Dates. Based on the Debtors' investigation, the continuing charges stem from unreturned, lost, or stolen Transponders or license plates, the failure of certain Vehicle Vendors to re-plate and re-title surrendered vehicles, and outdated Vehicle Agency records.¹¹

20. The inventory and return of Transponders, for instance, was hampered by the Covid-19 pandemic. The Administrators that supplied Transponders also provided staff to be present at the Debtors' locations to assist with inventory, removal, and return of Transponders. However, due to the Covid-19 pandemic, the Administrators stopped providing such services months prior to Petition Date. The Debtors instructed their remaining, limited workforce to remove Transponders from the surrendered Rental Fleet and return them to the Administrators. However, based on charges received from Vehicle Agencies, it appears that certain Transponders were still active and in use for some time following the Surrender Dates, generating additional toll charges against the Debtors.

¹⁰ In certain instances, third-party, collection agencies the Debtors retained prior to the Petition Date ("Collection Agencies"), including Purco Fleet Services, Inc., have and continue to recover and hold proceeds from Retained Vehicles and surrendered vehicles.

¹¹ To date, the Debtors believe that no party has filed any proof of claim or otherwise asserted a claim or administrative expense in the Chapter 11 Cases for post-Surrender Date Vehicle Charges.

21. Further, several of the Debtors' license plates were never returned to appropriate Vehicle Agencies and continue to be used without permission of the Debtors or while being transported or sold by Vehicle Vendors after cars were surrendered. When the Debtors surrendered a car, their staff or the Vehicle Vendors were tasked with returning Debtor license plates. Further, when the Rental Fleet was returned or surrendered to Vehicle Vendors, they were required by agreement and applicable state law to obtain new license plates that were no longer associated with the Debtors. However, in certain instances, both before and after the Petition Date, the Debtors' license plates were still used by some Vehicle Vendors or never returned to respective Vehicle Agencies and, in some instances, were stolen. Unknown third parties continue to illegally use certain plates, generating tolls, citations, violations, and other fees that are being charged to the Debtors. There are, for example, a limited number of license plates that are ticketed for tolls in New York and New Jersey multiple times a day—often these plates appear on more than one car on the same day. The weekly volume of charges varies. In certain weeks, the Debtors have received hundreds of tolls, citations, violations, and other fees that relate to old license plates.

22. The Debtors also understand that, in certain circumstances, Vehicle Vendors did not properly re-register or re-title cars recovered from the Rental Fleet. For instance, certain Vehicle Vendors used powers of attorney or instructed the Debtors to improperly transfer title directly from a Debtor to a third party. In certain instances, Vehicle Vendors even *used the Debtors' dealer license* to effectuate sales after vehicles were surrendered. Doing so likely saved Vehicle Vendors hundreds of dollars per vehicle in titling and registration fees. It also created a record incorrectly showing that the Debtors, rather than the Vehicle Vendors, sold vehicles. These actions created potential liability to the Debtors for, among other things, transfer and service fees, sales tax, and third-party liability to purchasers.

23. Likewise, outdated Vehicle Agency records continue to result in additional Vehicle Charges. As discussed, in certain instances, Vehicle Vendors failed to re-title or re-register surrendered cars. Further, even where cars are properly re-titled or re-registered, Vehicle Agency records still have substantial errors. Vehicle Agency records are outdated largely because Vehicle Agencies do not share information with Vehicle Agencies located outside of their state. So, for instance, if a car that was titled and registered in Florida is then sold, registered, and titled in Texas, Florida records may still show that the vehicle is titled and registered to a Debtor. The Debtors understand that in Florida alone, there may be as many as 100,000 vehicles that are still associated with the Debtors. This problem exposes the Debtors to potential claims, not only for continuing registration fees, but also for claims for tolls, citations, violations, and other fees that Vehicle Agencies allocate based on vehicle title and registration information. The Debtors continue to receive a daily supply of new notices for such claims.

BASIS FOR RELIEF

24. It is without question that a bankruptcy court is permitted to enter an order interpreting and clarifying its prior orders. *See Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009). Further, under section 105(a) of the Bankruptcy Code, “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

25. The Surrender Orders provide that the Debtors surrendered control and, where applicable, ownership of their Rental Fleet as of the Surrender Dates. Following the Surrender Dates, the estates no longer owned, operated, or possessed cars in the Rental Fleet. As a result, any Vehicle Charges incurred by operation of the Rental Fleet or any license plates or Transponders formerly associated with the Rental Fleet would not be liabilities of the estates.

26. Contrary to the Surrender Orders, the Debtors continue to receive post-Surrender Date Vehicle Charges. The problem of lost or stolen Transponders and license plates and inaccurate Vehicle Agency records is not new. The Debtors have managed these problems throughout their existence. However, prior to ceasing operations, the Debtors retained the Administrators, who have expertise and unique access to Vehicle Agency records, to correct and respond to inaccurate claims. Now, without the assistance of the Administrators and a very limited staff, the Debtors lack the resources to continue to respond to each notice. Nonetheless, the Debtors' management has contacted several Vehicle Agencies and Vehicle Vendors seeking information related to the post-Surrender Date charges and to explain that the Debtors no longer own or operate the Rental Fleet. The Vehicle Agencies are unable (or unwilling) to update their records to stop continuing post-Surrender Date charges.

27. Without clarification that the Rental Fleet was not estate property following the Surrender Dates and that neither the Debtors nor their estates are liable for post-Surrender Date Vehicles Charges, the Debtors will continue to receive Vehicle Charges associated with cars they do not own or possess and that provided no benefit to the estates. Such clarification is especially necessary since the majority of the cars generating such Vehicle Charges were sold or surrendered prior to Petition Date.

28. The Debtors seek a clarification order out of an abundance of caution. Under the circumstances described herein, the Debtors do not believe any Vehicle Agencies or other third parties hold valid claims against the Debtors, including administrative expense claims, for post-Surrender Date Vehicles Charges. Nonetheless, dealing with post-Surrender Date Vehicles Charges is extremely burdensome and creates a risk of litigation. The requested clarification will delineate the Debtors' and their estates' liability.

NOTICE

29. Notice of this Motion will be given to: (a) the U.S. Trustee; (b) counsel to the Debtors' postpetition lender; (c) counsel to the Committee; (d) counsel to the Vehicle Vendors; (e) all known Vehicle Agencies and third parties that may continue to assert Vehicle Charges and (f) all parties entitled to notice pursuant to Local Rule 2002-1(b). The Debtors submit that no other or further notice is required.

CONCLUSION

WHEREFORE, the Debtors request that the Court enter an order, substantially in the form attached hereto, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: August 9, 2021

COLE SCHOTZ P.C.

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