

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

In re:

ADVANTAGE HOLDCO, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 20-11259 (CTG)

(Jointly Administered)

Hearing Date: October 4, 2021 at 1:00 p.m. (ET)

Obj. Deadline: September 27, 2021 at 4:00 p.m. (ET)

**DEBTORS' MOTION FOR AN ORDER, PURSUANT TO SECTION 1121(d)
OF THE BANKRUPTCY CODE, FURTHER EXTENDING THE EXCLUSIVE
PERIODS WITHIN WHICH THE DEBTORS MAY FILE A CHAPTER 11 PLAN
AND SOLICIT ACCEPTANCES THEREOF**

The debtors and debtors in possession in the above-captioned cases (the “Debtors”) submit this motion (the “Motion”), pursuant to section 1121(d) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), Rule 9006(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9006-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) for entry of an order, substantially in the form attached hereto (the “Proposed Order”), extending the exclusive periods during which only the Debtors may file a chapter 11 plan and solicit acceptances thereof. In support of this Motion, the Debtors respectfully state as follows:

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.

INTRODUCTION

1. Section 1121(b) of the Bankruptcy Code provides for an initial period of one hundred twenty (120) days after the commencement of a chapter 11 case during which the Debtors have the exclusive right to file a chapter 11 plan (the “Exclusive Filing Period”). Furthermore, section 1121(c)(3) of the Bankruptcy Code provides that if the Debtors file a plan within the Exclusive Filing Period, the Debtors have an exclusive period of one hundred eighty (180) days from the commencement of the chapter 11 case to solicit acceptances of and confirm such a plan (the “Exclusive Solicitation Period,” and together with the Exclusive Filing Period, the “Exclusive Periods”). The initial Exclusive Filing Period in these cases extended through and including September 23, 2020, while the initial Exclusive Solicitation Period extended through and including November 23, 2020.

2. On September 21, 2020, the Court entered an order extending the Exclusive Filing Period through and including January 21, 2021, and the Exclusive Solicitation Period through and including March 23, 2021 [Docket No. 496] (the “First Exclusivity Extension Order”).

3. On February 8, 2021, the Court entered an order further extending the Exclusive Filing Period through and including May 14, 2021, and the Exclusive Solicitation Period through and including June 21, 2021 [Docket No. 684] (the “Second Exclusivity Extension Order”).

4. On June 3, 2021, the Court entered an order further extending the Exclusive Filing Period through and including September 10, 2021, and the Exclusive Solicitation Period through and including October 19, 2021 [Docket No. 834] (the “Third Exclusivity Extension Order”).

5. Section 1121(d) of the Bankruptcy Code permits the Court to extend the Exclusive Periods “for cause.” By this Motion, the Debtors request that (i) the Exclusive Filing

Period be extended by seventy-eight (78) days, through and including November 26, 2021, and (ii) the Exclusive Solicitation Period be extended by one-hundred (100) days, through and including January 26, 2022, pursuant to section 1121(d) of the Bankruptcy Code. For the reasons set forth herein, the Debtors submit that ample “cause” exists to grant such extensions.

JURISDICTION AND VENUE

6. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012 (the “Amended Standing Order”). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are section 1121(d) of the Bankruptcy Code, Bankruptcy Rule 9006(b), and Local Rule 9006-2.

BACKGROUND

7. 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”). The 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*.

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

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

RELIEF REQUESTED

10. By this Motion, the Debtors request the Court enter the Proposed Order, pursuant to section 1121(d) of the Bankruptcy Code, extending (i) the Exclusive Filing Period by seventy-eight (78) days, through and including November 26, 2021, and (ii) the Exclusive Solicitation Period by one-hundred (100) days, through and including January 26, 2022. The Exclusive Periods are permissible under section 1121(d)(2).

BASIS FOR RELIEF REQUESTED

11. The exclusive periods under section 1121(d) of the Bankruptcy Code are intended to afford the Debtors a full and fair opportunity to formulate and propose a chapter 11 plan and to solicit acceptances thereof without the disruption that might be caused by the filing of competing plans of reorganization by non-Debtors parties. To this end, where the exclusive periods prove to be unfeasible timeframes, section 1121(d)(1) of the Bankruptcy Code allows the Court to extend such exclusive periods for “cause.”

12. Section 1121(d)(2) of the Bankruptcy Code authorizes a bankruptcy court to extend the exclusivity periods by as much as eighteen months (to file a plan) and twenty months (to solicit votes) after the petition date for cause. *See* 11 U.S.C. § 1121(d)(2).

13. Although the Bankruptcy Code does not define “cause” for purposes of an extension under section 1121(d), courts have identified several key factors relevant to a determination of whether cause exists under Bankruptcy Code section 1121(d), including the following: (a) the size and complexity of the case; (b) the necessity of sufficient time to permit

the debtors to negotiate a plan of reorganization and prepare adequate information; (c) the existence of good faith progress toward reorganization; (d) the fact that the debtors are paying its bills as they become due; (e) whether the debtors have demonstrated reasonable prospects for filing a viable plan; (f) whether the debtors have made progress in negotiations with its creditors; (g) the amount of time which has elapsed in the case; (h) whether the debtors are seeking an extension of exclusivity in order to pressure creditors to submit to the debtors' reorganization demands; and (i) whether an unresolved contingency exists. *See In re Adelphia Commc'ns Corp.*, 336 B.R. 610, 674 (Bankr. S.D.N.Y. 2006); *In re Dow Corning Corp.*, 208 B.R. 661, 664-65 (Bankr. E.D. Mich. 1997).

14. In evaluating whether an extension under section 1121(d) of the Bankruptcy Code is warranted, courts are given maximum flexibility to review the particular facts and circumstances of each case. *See e.g., In re Borders Grp., Inc.*, 460 B.R. 818, 821-22 (Bankr. S.D.N.Y. 2011) ("The determination of cause under section 1121(d) is a fact-specific inquiry and the court has broad discretion in extending or terminating exclusivity."); *In re AMKO Plastics, Inc.*, 197 B.R. 74, 77 (Bankr. S.D. Ohio 1996) ("[A]pplying the 'flexibility' in dealing with the question of extension of exclusivity which the cases suggest . . . we hold that debtor has shown cause for the extension . . ."); *In re Pub. Serv. Co. of N.H.*, 88 B.R. 521, 534 (Bankr. D.N.H. 1988) ("[T]he legislative intent has been construed to leave the question to the reorganization court in the exercise of its discretion and to promote maximum flexibility to suit various types of reorganization proceedings."). Not all of the above factors are necessary and relevant in determining whether to grant an extension of the exclusivity periods. *See e.g., In re Express One Int'l, Inc.*, 194 B.R. 98,100-101 (Bankr. E.D. Tex. 1996) (identifying only four of the factors as relevant in determining whether cause exists to support an extension).

15. As explained below, sufficient cause exists in the present cases to extend the Debtors' Exclusive Periods pursuant to section 1121(d) of the Bankruptcy Code.

16. The Debtors have made significant and material progress in administering the Chapter 11 Cases. The extension requested in this Motion will provide the Debtors and their advisors the opportunity to negotiate and file a chapter 11 plan for the distribution of assets to creditors. Thus, as discussed in more detail below, the facts and circumstances of these Chapter 11 Cases warrant the requested extension of the Exclusive Periods.

A. The Debtors Have Shown Good Faith Progress in these Chapter 11 Cases

17. The requested extension is reasonable given the Debtors' progress to date and the current posture of these Chapter 11 Cases. Since the Petition Date, the Debtors and their advisors have worked diligently to administer this case as efficiently as possible to minimize administrative expenses and maximize the recovery available to all of the Debtors' stakeholders. To that end, the Debtors have, among other things, (i) negotiated and obtained Court approval of the Debtors' post-petition financing credit facility; (ii) completed a sale process through which substantially all of the Debtors' assets were sold to two separate purchasers; (iii) prepared and filed the Debtors' Schedules of Assets and Liabilities and Statements of Financial Affairs; (iv) prepared and filed the Debtors' monthly operating reports; (v) retained Debtors' professionals; (vi) addressed, and resolved in a timely manner, challenges related to the Debtors' business and the chapter 11 efforts; (vii) resolved cure objections (viii) established bar dates, including a General Bar Date, Governmental Bar Date, Administrative Claims Bar Date, for creditors to file proofs of claim; (ix) negotiated consensual resolutions of substantial administrative, priority, and secured claims, including brokering a collective plan settlement among a group of similarly situated taxing authorities, (x) prosecuted objections to certain administrative expense, priority

claims, and secured claims; (xi) responded to creditor inquiries; and (xii) brokered an agreement with both the Committee and the Debtors' postpetition lender with respect to all material terms of a combined plan of liquidation and disclosure statement; and (xiii) drafted a complete combined plan of liquidation and disclosure statement that has signoff from the Committee and the Debtors' postpetition lender, subject only to updates for the most recent case activity. Accomplishing these tasks has been a labor-intensive and time-consuming process, fully occupying the Debtors' employees and professionals. However, as a result, the Debtors anticipate filing a combined plan of liquidation and disclosure statement in the near future.

18. The Debtors submit that their progress to date and the nature and extent of activity contemplated for the next couple of months provides ample cause to extend the Exclusive Periods. The Debtors have worked diligently to inform and involve the Committee in these Chapter 11 Cases. The Debtors intend to continue to consult and work cooperatively with the Committee on all major issues, including confirming a plan.

B. The Need for Sufficient Time to Negotiate and Prepare Adequate Information

19. The relief requested herein will facilitate the Debtors' efforts by providing the Debtors with a full and fair opportunity to resolve one remaining open claims issue without the distraction of ill-formed competing plans. *See In re Energy Conversion Devices, Inc.*, 474 B.R. 503, 507 (Bankr. E.D. Mich. 2012) ("In enacting 11 U.S.C. § 1121, Congress intended to allow the debtor a reasonable time to obtain confirmation of a plan without the threat of a competing plan. It was intended that at the outset of a Chapter 11 case a debtor should be given the unqualified opportunity to negotiate a settlement and propose a plan of reorganization without interference from creditors and other interests.") (internal citations and quotations omitted).

20. The Debtors believe that the requested extensions of the Exclusive Periods will afford the key parties in interest time to file a plan in advance of the proposed extended Exclusive Periods. In sum, the Debtors intend to file a plan of liquidation shortly, but file this Motion out of abundance of caution to alleviate any unnecessary rush in the final stages of these Chapter 11 Cases. Accordingly, the Debtors submit that this factor weighs in favor of the requested extension of the Exclusive Periods.

C. An Extension Will Advance these Chapter 11 Cases and Will Not Harm Any Party

21. This Motion is the Debtors' fourth request for an extension of the Exclusive Periods, and the request will not unfairly prejudice or pressure the Debtors' creditor constituencies or grant the Debtors any unfair bargaining leverage. Indeed, throughout the chapter 11 process, the Debtors have endeavored to establish and maintain a cooperative working relationship with the Committee and believe that relationship will continue during the extension requested herein. Importantly, the Debtors are not seeking an extension to delay administration of these Chapter 11 Cases or to exert pressure on its creditors, but rather to resolve issues related to any potential plan and continue the orderly, efficient, and cost-effective chapter 11 process. Accordingly, the Debtors believe that the requested extension is warranted and appropriate under the circumstances.

D. The Debtors Are Meeting Their Postpetition Obligations

22. Courts considering whether to extend a Debtors' exclusive periods also may assess whether the Debtors are paying their debts when they come due. *See In re McLean Indus., Inc.*, 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987). Here, the Debtors are paying their undisputed postpetition obligations as they come due.

E. Additional Factors Exist to Support an Extension of the Exclusive Periods

23. In addition to the factors discussed above, termination of the Exclusive Periods would adversely impact the Debtors' progress in the Chapter 11 Cases. Simply put, if the requested extensions are denied, upon expiration of the Exclusive Periods, any party in interest would be free to propose a plan for the Debtors and solicit acceptances thereof. Such a ruling could stifle negotiations, significantly delay the case, and impair the Debtors' ability to successfully propose a plan, without any corresponding benefit to the Debtors' estates and creditors.

24. Based on the foregoing, the Debtors respectfully submit that cause exists, pursuant to section 1121(d) of the Bankruptcy Code, for the Court to extend the Exclusive Filing Period through November 26, 2021, and the Exclusive Solicitation Period through January 26, 2022.

NOTICE

25. Notice of this Motion will be given to: (i) the U.S. Trustee; (ii) counsel to the Committee; (iii) counsel to the Debtors' postpetition lender; and (iv) all parties entitled to notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, under the circumstances, no other or further notice is required.

WHEREFORE, for the reasons stated herein, the Debtors respectfully 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 the Court deems just and proper.

Dated: September 10, 2021

COLE SCHOTZ P.C.

/s/ Andrew J. Roth-Moore

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