

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

)	
)	Chapter 11
In re:)	Case No. 20-11259 (CTG)
)	
ADVANTAGE HOLDCO, INC.,)	Jointly Administered
)	
Debtors. ¹)	Related to ECF No. 1001
)	
)	Hr’g Date: Dec. 10, 2021, at 10:00 A.M. (EST)
)	Obj. Deadline: Dec. 3, 2021, at 4:00 P.M. (EST)
)	

**LIMITED OBJECTION OF THE BANCORP BANK TO THE CONFIRMATION OF
THE AMENDED COMBINED DISCLOSURE STATEMENT AND JOINT CHAPTER 11
PLAN OF LIQUIDATION OF ADVANTAGE HOLDCO, INC. ET AL.**

The Bancorp Bank (“**Bancorp**”) hereby objects to the confirmation of the *Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation of Advantage Holdco, Inc. et al.*² (the “**Plan**”)³ on the following bases:

BACKGROUND

1. On June 24, 2020, the Court entered the *Order Granting Relief from the Automatic Stay to the Bancorp Bank*⁴ (the “**Stay-Relief Order**”) by which the Court

¹ The Debtors and the last four digits of their federal taxpayer 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 P.O. Box 2818, Windermere, Florida 34786.

2 ECF No. 1001.

³ Capitalized terms that are not defined in this limited objection shall have the meanings that are given to those terms in the Plan.

4 ECF No. 250.

- (a) approved the *Stipulation Between The Bancorp Bank and Certain of the Debtors* (the “**Stipulation**”),⁵ a copy of which is attached to the Stay-Relief Order,⁶
- (b) incorporated the Stipulation’s terms into the Stay-Relief Order,⁷ and
- (c) noted that a “failure to re-state any provision of the Stipulation herein shall not be interpreted as affecting the enforceability of such provision.”⁸

2. Under the Stipulation, the Debtors waived and agreed not to assert—and the Stay-Relief Order, by incorporating the Stipulation’s terms, therefore provides for the Debtors’ waiver of, the following (collectively, the “**Waived Rights and Claims**”):

- (a) “any right[] to surcharge, or to seek to surcharge, the Bancorp Collateral, including pursuant to Section 506(c),”
- (b) “any claim [that] any of [the Debtors] may have under Section[] 510, 544, 547, 548, or 549 of the Bankruptcy Code against Bancorp, in any form or manner whatsoever,” and
- (c) “any right [that] any of [the Debtors] may have to challenge the extent, validity[,], and priority of the Bancorp Security Interest”⁹

3. Further, not only does the Stipulation grant an allowed claim in the amount of \$13,984,706.67 plus reasonable expenses to Bancorp (“**Bancorp Claim**”),¹⁰ but the Stipulation

⁵ See Stay-Relief Order ¶ 1, ECF No. 250 (“**IT IS HEREBY ORDERED THAT: . . . [a]pproval of the Stipulation is hereby GRANTED**”).

⁶ ECF No. 250-1.

⁷ See Stay-Relief Order ¶ 1, ECF No. 250 (“**IT IS HEREBY ORDERED THAT: . . . the terms of the Stipulation are incorporated herein.**”).

⁸ Stay-Relief Order at 1 n.2.

⁹ Stipulation ¶ 5, ECF No. 250-1. The Debtors also “agree[d] that the Bancorp Collateral may not be otherwise charged with the costs or expenses of the administration of the Debtors’ estates” Stipulation ¶ 5, ECF No. 250-1.

¹⁰ See Stipulation ¶ 2, ECF No. 250-1 (“Bancorp is hereby granted an allowed claim as of the Petition Date in the amount of \$13,984,706.67[]plus reasonable expenses (the “Bancorp Allowed Claim”).

terms also provides that the Bancorp Claim is an allowed secured claim in an amount equal to the lesser of the following (“**Bancorp Secured Claim**”):

- (a) the value of the “Bancorp Collateral”¹¹ on May 26, 2020 and
 - (b) the Bancorp Claim’s amount.¹²
4. Finally, the Stipulation expressly states that it
- (a) is binding on any successor or assignee of one or more of the Debtors,¹³ such as
 - (i) the Liquidating Trustee, which under the Plan is taking assignment of the Liquidating Trust Assets, including the Liquidating Trust Causes of Action,¹⁴ from the Debtors,¹⁵ or
 - (ii) the DIP Lender, which under the Plan is taking assignment of Residual Assets, including any “claims against the Debtors’ fleet lenders relating to the disposition of the Debtors’ leased or financed vehicles,”¹⁶ from the Debtor,¹⁷ and

¹¹ Notwithstanding this limited objection’s footnote 3, the term “Bancorp Collateral” has the meaning that the Stipulation gives to the term.

¹² See Stipulation ¶ 3, ECF No. 250-1 (“The Bancorp Allowed Claim is secured by a duly perfected first priority security interest in the Retained Financed Vehicles and any proceeds thereof and is an allowed secured claim in an amount equal to the lesser of (a) the value of the Bancorp Collateral as of the Petition Date, and (b) the amount of the Bancorp Allowed Claim.”).

¹³ See Stipulation ¶ 10, ECF No. 250-1 (“This stipulation shall bind the Parties and any successor or assign of the Parties, such as any trustee or other representative of the Debtors’ estates who succeeds the Debtors in their capacity as debtors in possession.”).

¹⁴ Plan art. II.A.79, ECF No. 1001.

¹⁵ See Plan art. IX.D, ECF No. 1001 (“Except as otherwise set forth in the Plan, pursuant to section 1141(b) of the Bankruptcy Code, the Liquidating Trust Assets shall vest in the Liquidating Trust free and clear of all Claims, Liens[,], charges[,], or other encumbrances.”).

¹⁶ Plan art. II.A.114, ECF No. 1001.

¹⁷ See Plan art. VII.A.10, ECF No. 1001 (“On the Effective Date, the Residual Assets shall be transferred to the DIP Lender in satisfaction of the DIP Claims free and clear of all Claims and Interests; provided, however, that receipt of the Residual Assets shall be

- (b) will survive the confirmation of a plan of reorganization or liquidation,¹⁸ such as the Plan.

LIMITED OBJECTION

5. The Plan purports to preserve causes of action against Bancorp. That preservation of claims is accomplished by the following:

- (a) The Plan's incorporation of the Plan Supplement,¹⁹ one part of which is the *Schedule of Retained Causes of Action* (the "**Schedule**"),²⁰ a copy of which is attached to the *Notice of Filing of Plan Supplement* as its Exhibit B.²¹
- (b) Paragraph 4 of the Schedule's identification of the following causes of action as causes of action that the Plan purports to preserve ("**Preserved Causes of Action**"):

subject to the obligation to turn over the Residual Proceeds and, to the extent necessary, the Swipe Fee Sharing Proceeds to the Liquidating Trust.").

¹⁸ See Stipulation ¶ 11, ECF No. 250-1 ("This stipulation shall survive, among other things, any confirmation of a plan of reorganization or liquidation, any dismissal of one or more of the Cases, and any conversion of one or more of the Cases.").

¹⁹ See Plan art. II.A.30, ECF No. 1001 ("'**Combined Plan and Disclosure Statement**' or '**Plan**' means this Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation of Advantage Holdco, Inc. et al., including, without limitation, all exhibits, supplements, appendices, and schedules hereto, either in their present form or as the same may be altered, amended, or modified from time to time through substantial consummation thereof, including the Plan Supplement.").

²⁰ See Plan art. II.A.102, ECF No. 1001 ("'**Plan Supplement**' means the appendix of any schedules or exhibits that may be filed at least seven (7) days prior to the deadline for submission of Ballots to vote to accept or reject a plan, and which may, among other things, more specifically identify the Causes of Action. The Plan Supplement will be filed with the Bankruptcy Court and served on the required notice parties and shall be made available on the Debtors' claims agent's website."); Notice of Filing of Plan Supplement at 1, ECF No. 1035 (identifying the Schedule of Retained Causes of Action as a part of the Plan Supplement).

²¹ Notice of Filing of Plan Supplement, Ex. B, ECF No. 1035-2.

All Causes of Action for avoidance and recovery under §§ 541, 542, 543, 544, 545, 547, 548, 549, 550, 553(b) of the Bankruptcy Code and all applicable state law, including but not limited to, claims against (a) the parties listed on **Exhibit B-1** attached hereto²²

(c) Exhibit B-1 of the Schedule’s listing of Bancorp.²³

(d) Paragraph 5 of the Schedule’s identification of the following causes of action and defenses as Preserved Causes of Action:

All Causes of Action and defenses against the Debtors’ fleet lenders and lessors (including, but not limited to, The Bancorp Bank . . .), including but not limited to, Causes of Action related to the Vendor Orders, the vehicle facilities listed on Exhibit B-2 attached hereto, and claims against the Debtors’ fleet lenders and lessors relating to the disposition of the Debtors’ leased or financed vehicles, including but not limited to, liquidation or disposition recoveries in excess of amounts owed to such fleet lenders (i.e., “positive fleet equity”).²⁴

6. For the reasons noted below, to the extent Preserved Causes of Action include claims against Bancorp, the Plan’s purported preservation of such claims directly conflicts with the Stipulation and the Stay-Relief Order.²⁵

7. First, many of the Preserved Causes of Action against Bancorp are among the expressly Waived Rights and Claims.

²² Schedule of Retained Causes of Action ¶ 4, ECF No. 1035-2.

²³ Schedule of Retained Causes of Action, Ex. B-1 at 1 line 22, ECF No. 1035-2.

²⁴ Schedule of Retained Causes of Action ¶ 5, ECF No. 1035-2.

²⁵ The Plan does contain provisions suggesting that nothing in the Plan is intended to abrogate the Stay-Relief Order or the Stipulation. *See, e.g.*, Plan art. II.A.10, ECF No. 1001 (carving out certain released causes of action from the Plan’s definition of the term “Avoidance Actions”); Plan art. X.N (concerning the Vendor Orders’ survival). These provisions, however, are inconsistent with the express retention and preservation of causes of action against Bancorp, and this inconsistency must be addressed.

8. Second, to the extent any such Preserved Causes of Action are not Waived Rights and Claims, the Court's allowance of the Bancorp Claim precludes any subsequent challenge to, and any collateral attack on, the Bancorp Claim.²⁶

9. The only causes of action and other rights that the Debtor can preserve against or with respect to Bancorp are rights arising under, or relating to the enforcement of Bancorp's obligations under, the Stay-Relief Order or the Stipulation. And all of Bancorp's claims and other rights arising under, or relating to the enforcement of the Debtors' obligations under, the Stay-Relief Order or the Stipulation must likewise be preserved.

10. Bancorp's limited objection to the Plan would be resolved if the following language (the "**Requested Language**") was included in any order confirming the Plan:

Notwithstanding anything in the Plan, including any supplement thereto, or this Order to the contrary: (a) the *Order Granting Relief from the Automatic Stay to the Bancorp Bank* [ECF No. 250] and the *Stipulation Between The Bancorp Bank and Certain of the Debtors* [ECF No. 250-1] (the "Bancorp Stipulation") shall remain in full force and effect; (b) nothing in the Plan, including any supplement thereto, or this Order is intended to revive, or shall be construed as reviving, any claim, cause of action, defense, or other right that the Debtors waived and agreed not to assert in the Bancorp Stipulation; (c) no claim or other right of any kind against Bancorp shall be preserved except for any right to enforce the Bancorp Stipulation, which right shall be transferred to the DIP Lender; and (d) all claims and other rights of Bancorp to enforce its rights under the Bancorp Stipulation, or to assert defenses to claims asserted against it under the Bancorp Stipulation, shall be preserved.

²⁶ See *In re Allvend Indus. Snacks by Toms, Inc.* 29 B.R. 900, 903–904 (Bankr. S.D.N.Y. 1983) (giving *res judicata* effect to a stipulation and barring the relegation of any claim that was settled or compromised in the stipulation).

CONCLUSION

WHEREFORE, Bancorp asks the Court to sustain this limited objection to the Plan's confirmation unless the Requested Language is included in any order confirming the Plan and to grant such other and further relief that is just and proper.

Dated: December 3, 2021
Wilmington, Delaware

Respectfully submitted,

/s/ David W. Giattino

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