

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

In re:

ADVANTAGE HOLDCO, LLC, *et al.*,
Debtors.¹

Chapter 11

Case No. 20-11259 (JTD)

(Jointly Administered)

Re: Docket No. 172

**OBJECTION TO ASSUMPTION NOTICE AND RESERVATION OF RIGHTS WITH
RESPECT TO ASSUMPTION AND ASSIGNMENT OF CONTRACTS**

American Traffic Solutions Consolidated, LLC d/b/a Verra Mobility Solutions (“**American Traffic**”) and Highway Toll Administration, LLC d/b/a Verra Mobility Solutions (“**Highway Toll**” and with American Traffic, the “**VM Contracting Parties**”) hereby file this objection and reservation of rights (the “**Objection**”) to the *Notice of (I) Possible Treatment of Executory Contracts and Leases, (II) Fixing of Cure Amounts and (III) Deadlines to Object* [Docket No. 172] (the “**Assumption Notice**”) filed by the above-captioned debtors and debtors-in-possession (the “**Debtors**”).²

OBJECTION

1. As set forth in the Assumption Notice, the Debtors seek authority to assume, or assume and assign, the following contract with the VM Contracting Parties: “VioLogics Product Statement of Work, subject to that certain Masters Services Agreement.” *See* Assumption Notice, p. 31.

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); AEZ, LLC (2538); Central Florida Paint & Body, LLC (1183); Advantage Vehicle Financing LLC (7263); and RAC Vehicle Financing, LLC (8375). The Debtors’ address is 2003 McCoy Road, Orlando, Florida 32809.

² All capitalized terms, unless otherwise specifically defined herein, shall have the meaning ascribed to such terms in the Assumption Notice.

2. However, the “VioLogics Product Statement of Work” was never executed. Instead, Debtor Advantage OPCO, LLC (“OPCO”) is currently a party to the following contracts (collectively, the “Contracts”) with the VM Contracting Parties:

- a. Master Services Agreement between OPCO and American Traffic, dated October 16, 2017 (the “MSA”);
- b. Vehicle Title and Registration Product Statement of Work under the MSA, dated October 16, 2017 between OPCO and American Traffic; and
- c. Tolling and Citation Services Agreement between OPCO and Highway Toll, dated January 16, 2017, as amended by letter agreement dated March 22, 2020.

3. Upon information and belief, the reference in the Assumption Notice to the “VioLogics Product Statement of Work” was a scrivener’s error. Accordingly, and in order to avoid any confusion, the VM Contracting Parties request that any order authorizing the assumption, or the assumption and assignment, of the Debtors’ contracts with the VM Contracting Parties reference the following:

- a. Master Services Agreement between Advantage OPCO, LLC and American Traffic Solutions Consolidated, LLC d/b/a Verra Mobility Solutions, dated October 16, 2017;
- b. Vehicle Title and Registration Product Statement of Work under the MSA, dated October 16, 2017 between Advantage OPCO, LLC and American Traffic Solutions Consolidated, LLC d/b/a Verra Mobility Solutions; and
- c. Tolling and Citation Services Agreement between Advantage OPCO, LLC and Highway Toll Administration, LLC, dated January 16, 2017, as amended by letter agreement dated March 22, 2020.

4. Furthermore, the Assumption Notice provides that the cure amount is \$3,459,688. *See* Assumption Notice, p. 31. In point of fact, the amount due under the Contracts as of the petition date was \$3,488,747.42.

5. Additionally, the cure amount should reflect all past due amounts owing as of the assumption date. Pursuant to section 365(b)(1)(a) of the Bankruptcy Code, a debtor in possession is prohibited from assuming an executory contract or unexpired lease unless it cures all monetary

defaults in full – including all monetary defaults that arise both pre- and post-petition. Accordingly, to the extent that the VM Contracting Parties have invoiced, or will invoice, the Debtors for additional services provided under the terms of the Contracts, and such invoices are not paid in the ordinary course of business and prior to the proposed assumption, or assumption and assignment, of the Contracts, then such invoiced amounts should be included in the cure amount. *See* 3 COLLIER ON BANKRUPTCY § 365.05[2] (Alan N. Resnick & Henry J. Sommer eds., 15th ed. rev. 2008) (“The other party to the contract or lease that the trustee proposes to assume is entitled to insist that any defaults, whenever they may have occurred, be cured, that appropriate compensation be provided, and that, a past default having occurred, adequate assurance of future performance is available.”); *see also Stoltz v. Brattleboro Housing Authority*, 315 F.3d 80, 94 (2nd Cir. 2002) (noting that the requirement to cure all defaults “protect[s] the creditor’s pecuniary interests before requiring a creditor to continue a contractual relationship with a debtor”).

RESERVATION OF RIGHTS

6. The Assumption Notice does not identify the assignee of the Contracts. Moreover, the Debtors have not yet provided the VM Contracting Parties with Adequate Assurance Information (as such term is defined in the Bidding Procedures Order). Accordingly, the VM Contracting Parties cannot, at this time, make an informed decision regarding whether they consent or object to the assumption and assignment of the Contracts. The VM Contracting Parties therefore reserve their rights to: (a) object to the assumption and assignment of the Contracts; (b) amend or supplement this Objection and object to the assumption and assignment of the Contracts for lack of adequate assurance of future payment with respect to the successful Bidder, if any; and (c)

modify or supplement this objection and present such evidence as they deem appropriate in connection with any hearing to consider this objection.

7. Additionally, the VM Contracting Parties reserve the right to argue that the Contracts cannot assumed, or assumed and assigned, without the consent of the VM Contracting Parties as financial accommodation agreements pursuant to sections 364 and 365(c)(2) of the Bankruptcy Code.

Dated: June 22, 2020

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