


Fill in this information to identify the case:

Debtor 1 Advantage Opco, LLC (20-11264)

Debtor 2 Advantage Holdco, Inc. (20-11259)
(Spouse, if filing)

United States Bankruptcy Court for the: District of Delaware 

Case number 20-11259 (Advantage Holdco, Inc.)

Filed: USBC - District of Delaware
Advantage Holdco Inc, et al (B10)
20-11259 (JTD)

ADG



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Official Form 410

Proof of Claim

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>Anthony Wong</u> Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent? <u>Anthony Wong</u> Name <u>5353 Shea Street, Unit 307</u> Number Street <u>Orlando</u> <u>FL</u> <u>32814</u> City State ZIP Code Contact phone <u>678-439-8422</u> Contact email <u>anthony.t.wong@outlook.com</u>	Where should payments to the creditor be sent? (if different) Name _____ Number Street _____ City State ZIP Code _____ Contact phone _____ Contact email _____
Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____		
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? ☒ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ 102,500.00 Does this amount include interest or other charges?
☒ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.

Attached :: Matson v. Alarcon, 651 F.3d 404 (4th Cir. 2011)

9. Is all or part of the claim secured? ☒ No
☐ Yes. The claim is secured by a lien on property.
Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
☐ Motor vehicle
☐ Other. Describe: _____

Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: \$ _____

Annual Interest Rate (when case was filed) _____ %
☐ Fixed
☐ Variable

10. Is this claim based on a lease? ☒ No
☐ Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? ☒ No
☐ Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

☐ No

☒ Yes. Check one:

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Amount entitled to priority

\$ _____

☐ Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ _____

☐ Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ _____

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ _____

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ _____

☒ Other. Specify subsection of 11 U.S.C. § 507(a)(4) that applies.

\$ 102,500.00

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☒ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 06/11/2020
MM / DD / YYYY

Anthony Wong
Signature

Anthony Wong 11 June 2020

Print the name of the person who is completing and signing this claim:

Name Anthony Wong
First name Middle name Last name

Title _____

Company _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 5353 Shea Street, Unit 307
Number Street
Orlando FL 32814
City State ZIP Code

Contact phone 678.439.8422 Email anthony.t.wong@outlook.com

Epiq Corporate Restructuring, LLC
PO Box 4470
Beaverton, OR 97076
Address Service Requested

Legal Documents Enclosed -
Please direct to the attention
of the Addressee,
Legal Department or President

2,127



ADG 341NTC 06-04-2020 (CREDITOR,CREDNUM)
*****1000001306***** BAR(23) MAIL ID *** 000165379901 ***

WONG, ANTHONY
5353 SHEA ST UNIT 307
ORLANDO FL 32814-6923

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Epiq Corporate Restructuring, LLC
PO Box 4470
Beaverton, OR 97076
Address Service Requested

Legal Documents Enclosed -
Please direct to the attention
of the Addressee,
Legal Department or President

2,122



ADG 341NTC 06-04-2020 (CREDITOR,CREDNUM)
*****1000004303***** BAR(23) MAIL ID *** 000165379896 ***

ANTHONY WONG
5353 SHEA STREET
UNIT 307
ORLANDO FL 32814

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March 7, 2018

Anthony Wong
Delivered - Via Email

Anthony,

It is with great pleasure that we extend to you a conditional offer of employment with Advantage/EZ Rent A Car. We ask that you review the following information and confirm the initial terms of employment as outlined below, please sign, date and return this letter to me or HR@advantage.com.

POSITION OVERVIEW

HIRE DATE: TBD
JOB TITLE: Chief of Staff
ANNUAL SALARY: \$170,000.00
ANNUAL BONUS: 40%
FULL-TIME/PART-TIME STATUS: Full time
LOCATION: Orlando, FL
REPORTS TO: Scott Davido, CEO

Employment Information: Payroll cycles for all employees are bi-weekly. Annual performance reviews will be conducted in accordance with The Company Annual Review schedule per calendar year. Full time employees are eligible to enroll for health benefits immediately upon hire with the effective date of coverage being the 61st day with the company. This offer includes an accrual of "PTO" (paid time off) in the amount of 120 hours for year one. The offer of employment is contingent upon your successful passing of the drug, DMV and background screening processes, and proof of your identity and legal ability to work in the United States. Failure to successfully complete any of these requirements will result in this offer of employment being rescinded. Should you have any questions, please call me at 914-529-1014.

Additional Information on Compensation: This position is eligible to participate in the Corporate Annual Bonus Plan to be paid annually at a rate of up to 40% of annual salary. The Bonus Plan is based upon reaching the Company's projected financial targets. Finally, this position includes a one-time net payment of \$15,000.00 to cover relocation expenses to be paid in conjunction with your move to the Orlando area. If within 12 months of this payment, you voluntarily terminate your employment the Employer may, at its discretion, require you to repay this amount pro-rated for the months remaining against each of the 12 month schedules. In addition, you will be reimbursed the cost of COBRA post your payment of the monthly amount for (2) months. In these circumstances, you agree to repay the amount notified to you by the Employer within ten days of receipt of a written notice from the Employer. In addition, temporary living and travel back to your residence during the first 60 days of employment, not to exceed (8) trips will be covered by the Company. In addition the Company will provide an additional (2) trips for your spouse to review the area and for final destination.

Finally, upon separation from the Company for any reason other than voluntary termination or gross misconduct, you will be eligible for 26 weeks of salary continuation.

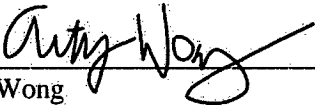
Anthony, we look forward to working with you and having you become a key member of the Advantage/EZ Rent A Car team.

Sherry A. Schultz

Sherry A. Schultz
SVP, Chief Human Resources Office
Advantage Rent A Car / E-Z Rent A Car



Acknowledgement – Please sign and return to Human Resources



Anthony Wong

7-Mar 2018

Date

Employment with us is an at will arrangement. This overview is not a contract for employment but is a statement of the terms of your employment. As an employee you are subject to the Company's general employment policies as in effect from time to time. Employment at the Company is "at will", which means that you may elect to terminate your employment at any time for any reasons and the Company has the same right. Further, the Company does not have any oral or implied contracts of employment. All employees are subject to a 90 day probationary period.

The Company reserves the right to amend, modify, terminate or interpret any of its employment policies, employee benefit plans or incentive arrangements at any time and thereby modify your terms and conditions of employment at any time in the sole discretion of the Company.

**First Impressions: Prepetition Severance Pay
Entitled to Priority Under Section 507(a)(4)**

November/December 2011

David G. Marks

In the first circuit-level opinion on the issue, the Fourth Circuit Court of Appeals in *Matson v. Alarcon*, 651 F.3d 404 (4th Cir. 2011), held that, for purposes of establishing priority under section 507(a)(4) of the Bankruptcy Code, an employee's severance pay was "earned" entirely upon termination of employment, even though the severance amount was determined by the employee's length of service with the employer.

Section 507(a)(4)

Section 507 sets forth the categories of claims that are entitled to priority treatment under the Bankruptcy Code. Under section 507(a)(4), a fourth priority is given (with emphasis added) to "allowed unsecured claims, but only to the extent of [\$11,725] for each individual . . . *earned within 180 days* before the date of the filing of the petition . . . for . . . wages, salaries, or commissions, including vacation, severance, and sick leave pay *earned* by an individual."

Priority for wages earned prepetition has been a feature of U.S. bankruptcy law since the Bankruptcy Act's original enactment in 1898. This priority protects workers from hardship imposed by an employer's bankruptcy filing and encourages employees to remain working for a company despite its financial distress. With these same concerns in mind, courts often grant debtors' "first day" motions to pay prepetition wage claims at the inception of a chapter 11 case. Although there is no explicit statutory authority for paying such claims prior to the confirmation of a chapter 11 plan, some courts, invoking the "doctrine of necessity" or otherwise, have

justified the payments in light of the priority afforded to the underlying claims by section 507(a)(4).

Matson v. Alarcon

In 2004, LandAmerica Financial Group, Inc. ("LandAmerica"), which was at one time the third-largest title insurance group in the U.S., established a "severance benefits plan" for its employees. An employee would become a participant in the plan, which was amended in 2008, if he or she was terminated without cause after having signed a severance agreement and, upon termination, a release. However, an employee would not qualify as a participant if the employee was rehired within 30 days or offered an equivalent position with the company within a 50-mile radius, or if the termination was due to the employee's death or resignation.

A participant in the severance benefits plan was entitled to compensation equal to the employee's weekly salary for a specified number of weeks. The number of weeks was calculated on the basis of the employee's length of employment with LandAmerica. Thus, for example, an eligible participant who worked for more than one year but fewer than two years would receive two weeks of pay as severance, while an employee who worked more than eight years but fewer than 10 years would receive six weeks of pay. LandAmerica's board of directors retained the unilateral right to modify or eliminate the severance benefits plan at any time prior to an employee's termination.

Between August and November 2008, more than 100 employees were terminated by LandAmerica and became participants in the severance benefits plan (the "Claimants"). On November 26, 2008, LandAmerica filed for chapter 11 protection in Virginia. The Claimants

filed proofs of claim for their severance compensation, taking the position that their claims were entitled to priority treatment under section 507(a)(4) because the underlying severance benefits were “earned” when the employees were terminated in the months leading up to the bankruptcy.

LandAmerica’s chapter 11 plan created a liquidating trust. The liquidating trustee acknowledged that the Claimants were owed the amounts claimed as severance, but it argued that the Claimants “earned” their severance compensation over the entire course of their employment and were therefore entitled to priority status for only the (relatively small) portion of their Claims “earned” within the 180 days before the bankruptcy. To calculate the amount entitled to priority, the trustee prorated each employee’s severance benefits across all the days of his or her employment. Then, the trustee multiplied that daily rate by the number of days the employee worked within the 180 days prior to the bankruptcy. According to the trustee, only this smaller portion of the total severance benefits was entitled to priority status because only that portion was “earned” within the 180-day period.

The Bankruptcy Court’s Decision

The bankruptcy court rejected the trustee’s proposed calculation, holding instead that the severance involved was “earned” in its entirety at the moment the employees were terminated and became eligible participants in the severance benefits plan. In reaching this conclusion, the court focused on what it characterized as the “absurd result” of the trustee’s proposed calculation: “The result of [the trustee’s] calculation is that terminated employees who worked many years at the company will receive a much smaller percentage of their severance package as a priority payment than will employees who worked for only a short period of time.” According to the

court, Congress could not have intended the “inequitable result” of punishing long-term employees because they worked for a longer time period.

The bankruptcy court then examined the purpose of severance pay, explaining that severance is “earned” on the day the employee “shows up to work and is terminated by the company without cause.” The purpose of severance pay, the court noted, is to compensate employees for the economic disruption following termination of employment. An employee’s length of service is simply a useful tool for measuring the scope of that disruption. According to the bankruptcy court, “It does not matter what factors go into an employee’s severance package, only what the severance package is during that 180-day period.”

Finally, the bankruptcy court decided that case law regarding the administrative priority of postpetition severance payments under section 503(b)(1)(A) is not relevant because the purpose and language of the provision differ significantly from those of section 507(a)(4). Section 503(b)(1)(A), the court explained, grants administrative-expense priority to claims for “services rendered” postpetition and is traditionally construed narrowly. By contrast, the court said, section 507(a)(4) covers severance benefits “earned” prepetition and is traditionally construed liberally.

Because the issue was an unsettled one of first impression in the circuit, the bankruptcy court certified a direct appeal to the Fourth Circuit Court of Appeals.

The Fourth Circuit’s Decision

A three-judge panel of the Fourth Circuit affirmed the ruling below. In doing so, however, the court focused on different facts in reaching the same conclusion. Initially, the court pointed out that the triggering event permitting employees to “earn” severance benefits was entirely outside the employees’ control. Unlike traditional wages, the entitlement to severance pay was triggered by the *employer’s* decision to terminate the employment relationship, not by the employee’s rendering of services. Since LandAmerica’s decision to terminate the Claimants’ employment occurred within the applicable 180-day window, the Fourth Circuit reasoned, the severance pay was “earned” in its entirety within the time period entitled to priority.

The Fourth Circuit found further support for its position in the fact that the board of directors could unilaterally eliminate the severance plan before the employees became entitled to payments. Under the trustee’s “accrual” position, employees “earned” their severance benefits over the course of their employment. Yet, if the board had decided to eliminate the severance plan before the employees were terminated, the employees would have been “earning” severance benefits to which they would ultimately have no entitlement. The Fourth Circuit found this interpretation to be untenable.

Finally, the Fourth Circuit agreed with the bankruptcy court’s reasoning that none of the cases regarding administrative priority under section 503(b)(1)(A) was relevant in analyzing section 507(a)(4). Just as the bankruptcy court had pointed out, the Fourth Circuit contrasted section 507(a)(4)’s reference to “earned” severance payments with the reference to “services provided” in section 503(b)(1)(A). On the basis of this difference, the court of appeals concluded that case law from other circuits holding that severance compensation based on length of employment has

administrative priority only to the extent the compensation was based on services provided postpetition does not apply to section 507(a)(4).

Outlook

Matson clarifies the application of section 507(a)(4) to severance benefits earned as a result of a prepetition termination. Any ramifications of the reasoning articulated by the Fourth Circuit on whether severance payments should be entitled to priority when a termination occurs postpetition remain to be seen.

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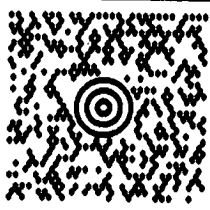
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