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**COUNSEL FOR ATLANTIC
STREET CAPITAL ADVISORS,
INC. AND ATLANTIC STREET
CAPITAL MANAGEMENT, LLC**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	)	
	)	Chapter 11
ZIPS CAR WASH, LLC, <i>et al.</i> , ¹	)	
	)	Case No. 25-80069 (MVL)
Debtors.	)	
	)	(Jointly Administered)

**OBJECTION TO NOTICE OF MODIFICATION TO ASSUMED
EXECUTORY CONTRACTS AND UNEXPIRED LEASES SCHEDULE**

¹ The Debtors in these chapter 11 cases, along with the last four digits of the Debtors' federal tax identification numbers, are Zips Car Wash, LLC (3045); Express Car Wash Holdings, LLC (6223); Zips 2900 Wade Hampton, LLC (N/A); Zips 3107 N. Pleasantburg, LLC (N/A); Zips 6050 Wade Hampton, LLC (N/A); Zips Operating Holdings, LLC (2161); Zips Portfolio I, LLC (9999); Zips Portfolio II, LLC (1864); Zips Portfolio III, LLC (N/A) and Zips Portfolio IV, LLC (N/A). The location of Debtors' principal place of business and the Debtors' service address in these chapter 11 cases is 8400 Bellevue Drive, Suite 210, Plano, Texas 75024.

Atlantic Street Capital Advisors, Inc. (“ASCA”) and Atlantic Street Capital Management, LLC (“ASCM,” and together with ASCA, “ASC”), by and through their undersigned counsel, file this objection (the “Objection”) to the *Notice of Modification to Assumed Executory Contracts and Unexpired Leases Schedule* [Docket No. 422] (the “Notice”) filed by the above-captioned reorganized debtors (before the effective date of their chapter 11 plan of reorganization, the “Debtors,” and after the effective date of their chapter 11 plan of reorganization, the “Reorganized Debtors”), and respectfully state as follows:

PRELIMINARY STATEMENT

1. The Reorganized Debtors seek to reject two executory contracts entered into between certain of the Debtors and ASC—contracts which, prior to the recent filing of the Notice, the Reorganized Debtors had already assumed. Prior to filing the Notice, the Reorganized Debtors paid the amounts owed to cure related contractual defaults. Given the Reorganized Debtors’ cure payment, their attempted post-confirmation rejection of the contracts should not be permitted, as it would allow the Reorganized Debtors to nullify the prior assumption of executory contracts.

2. Should the Court find rejection appropriate, ASC should not be forced to surrender the cure amounts it received, as any recovery of these funds by the Reorganized Debtors would run afoul of (i) the Confirmation Order² and (ii) the confirmed Plan’s³ debtor release, assumption, and distribution provisions approved by this Court.

² The “Confirmation Order” means the *Order (I) Approving the Debtors’ Disclosure Statement and (II) Confirming the Third Amended Joint Plan of Reorganization of Zips Car Wash, LLC and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 366].

³ The “Plan” means the *Third Amended Joint Plan of Reorganization of Zips Car Wash, LLC and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 365].

BACKGROUND

3. On February 5, 2025 (the “Petition Date”), Zips Car Wash, LLC and affiliates filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code.

4. On April 4, 2025, the Debtors filed the *Notice of Filing of Plan Supplement* [Docket No. 320] (the “Plan Supplement”), which appended the *Assumed Executory Contracts and Unexpired Leases Schedule* as Exhibit D (the “Assumption Schedule”) and the *Rejected Executory Contracts and Unexpired Leases Schedule* as Exhibit E (the “Rejection Schedule”). Exhibit D(iii) to the Plan Supplement listed two contracts between ASC and the Debtors (collectively, the “ASC Contracts”) to be assumed: (i) a *Consulting Agreement* between ASCA and one of the Debtors, Zips Car Wash, LLC; and (ii) a *Consulting Services Agreement* between ASCM and another one of the Debtors, Express Car Wash Holdings, LLC. The Plan Supplement states that the combined cure amount for the ASC Contracts is \$650,000.00 (the “Cure Amount”).

5. On April 17, 2025, the Debtors filed the *Notice of Filing of Amended Plan Supplement* [Docket No. 360] (the “Amended Plan Supplement”), which amended both the Assumption Schedule and the Rejection Schedule. As in the Plan Supplement, Exhibit D(iii) to the Amended Plan Supplement listed the ASC Contracts and Cure Amount.

6. On April 18, 2025, the Debtors filed their Plan. Article V of the Plan provides that the Reorganized Debtors may “alter, amend, modify, or supplement the Assumed Executory Contracts and Unexpired Leases Schedule or the Rejected Executory Contracts and Unexpired Leases Schedule (if any) at any time up to forty-five (45) days after the Effective Date.” Plan, art. V.A.

7. Article V of the Plan also provides that “[a]ny Cure costs shall be deemed fully satisfied, released, and discharged upon payment by the Debtors or the Reorganized Debtors of the applicable Cure costs . . .” Plan, art. V.C.

8. Article VI of the Plan provides that “[a]ny and all distributions made under this Plan shall be infeasible and not subject to clawback or turnover provisions.” Plan, art. VI.G.

9. Article VIII of the Plan provides certain releases to the “Released Parties” in exchange for their efforts “in facilitating the reorganization of the Debtors and implementation of the Restructuring Transactions” described in the Plan. *See* Plan, art. VIII.C. The Plan defines ASCM and “each of its affiliates and managed funds” as the “Sponsor,” which, in turn, is defined as a “Released Party.” Plan, art. I.A.142, 162. Notably, the Plan provides that:

[O]n and after the Effective Date, each Released Party is . . . conclusively, absolutely, unconditionally, irrevocably, and forever released, waived, and discharged by and on behalf of each and all of the Debtors, their Estates, and if applicable, the Reorganized Debtors, . . . from any and all Claims . . . , Interests, obligations, rights, suites [sic], damages and Causes of Action whatsoever, . . . based on or relating to, or in any manner arising from, in whole or in part, . . . the business or contractual arrangements or interaction between or among any Debtor and any Released Party, [and] the distribution of any Cash or other property of the Debtors to any Released Party . . .

Entry of the Confirmation Order shall constitute the Bankruptcy Court’s approval, pursuant to Bankruptcy Rule 9019, of the Debtor Release, which includes by reference each of the related provisions and definitions contained in this Plan, and further, shall constitute the Bankruptcy Court’s finding that the Debtor Release is . . . a bar to any of the Debtors, the Reorganized Debtors, or the Debtors’ Estates asserting any Claim or Cause of Action released pursuant to the Debtor Release.

Plan, art. VIII.C. Based on this debtor release (the “Debtor Release”), upon confirmation, the Plan bars any efforts on the part of the Reorganized Debtors to recover the Cure Amount.

10. On April 18, 2025, the Court entered the Confirmation Order, confirming the Plan. The Confirmation Order provides that “[t]he assumption . . . of any Executory Contract or Unexpired Lease, pursuant to the Plan or otherwise, shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including relating to such assumption . . .” Confirmation Order ¶ 17. In addition, the Confirmation Order approves the Debtor Release. *See* Confirmation Order ¶¶ 40-43.

11. On April 30, 2025, the Debtors filed the *Notice of Filing of Second Amended Plan Supplement* [Docket No. 416] (the “Second Amended Plan Supplement”), which further amended the Assumption Schedule and Rejection Schedule. As in the Plan Supplement and Amended Plan Supplement, Exhibit D(ii) to the Second Amended Plan Supplement lists the ASC Contracts and Cure Amount.

12. On April 30, 2025, the effective date (the “Effective Date”) of the Plan occurred.

13. On May 1, 2025—and prior to the filing of the Notice—the Reorganized Debtors paid ASC the Cure Amount in full via wire transfer.

14. On May 5, 2025, the Reorganized Debtors filed the Notice, which states that:

[W]ithout any further action of the Debtors or the Reorganized Debtors, the ASC Contracts are hereby removed from the Assumed Executory Contracts and Unexpired Leases Schedule, are deemed rejected by the Reorganized Debtors and are deemed to be added to the Rejected Executory Contracts and Unexpired Leases Schedule.

Notice p. 3.

15. The Notice provided an objection deadline of May 15, 2025, which the Reorganized Debtors and ASC subsequently agreed to extend to May 30, 2025.

OBJECTION

16. ASC objects to the removal of the ASC Contracts from the Assumption Schedule and the rejection of these agreements because the Reorganized Debtors paid the Cure Amount to ASC. Even if the Court finds that rejection is appropriate, it should not order the return of the Cure Amount by ASC because the Confirmation Order and the Plan preclude the Reorganized Debtors from asserting or recovering any claim against ASC.

A. The Reorganized Debtors Should Not be Permitted to Reject the Previously Assumed ASC Contracts.

17. The Court should not allow the Reorganized Debtors to reject the ASC Contracts, which they previously assumed once they paid the Cure Amount to ASC.

18. Generally, courts have held that post-confirmation assumption and rejection of contracts is permissible. However, only one court appears to have considered the impact of cure payments on post-confirmation rejection; this decision is consistent with the relief ASC requests in this Objection. In *ReGen Capital I, Inc. v. UAL Corp. (In re UAL Corp.)*, 635 F.3d 312 (7th Cir. 2010), AT&T Corporation (“AT&T”) agreed to assign to ReGen Capital I (“ReGen”), a claims trader, prepetition unsecured claims that AT&T held against parties in bankruptcy. *Id.* at 314. One of the assigned claims was a general unsecured claim that AT&T held against one of the debtors, United Air Lines, Inc. (“United”), after United defaulted on a series of telecommunications services contracts. *Id.*

19. In an exhibit to United’s confirmed plan entitled “Assumed Executory Contracts and Unexpired Leases,” United listed the AT&T executory contracts—but it did not list any approved or agreed cure amounts. *Id.* at 315. The plan itself also included a reservation of rights that allowed United to reject any executory contract up to fifteen days after the later of (i) the date

on which the contracting parties’ agreed to the cure amount, or (ii) the issuance of a final order from the bankruptcy court establishing the cure. *Id.*

20. ReGen, which believed that United intended to assume these executory contracts under which the general unsecured claim arose, filed a “cure claim” in United’s bankruptcy proceedings to collect the full amount of the default. *Id.* at 314. ReGen argued that, by including the AT&T contracts in the “Assumed Executory Contracts and Unexpired Leases” list, United had elected to assume them. *Id.* at 315-16. United objected to ReGen’s cure claim and subsequently filed a notice of its intent to reject the AT&T contracts. *Id.* at 316.

21. The bankruptcy court, and later the district court, concluded that United had rejected the AT&T contracts under its plan of reorganization, which precluded ReGen from recovering the cure amount. ReGen appealed. *Id.*

22. On appeal, ReGen argued that the reservation of United’s right to reject executory contracts could not be read to permit the nullification of a prior assumption of the AT&T contracts, which it said were assumed upon confirmation. *Id.* at 319. The Seventh Circuit, however, agreed with the lower courts that the AT&T contracts were rejected—and that no prior assumption had been made. *Id.* The court noted that:

By confirming the plan, the court approved United’s choice to assume the contracts it listed in the “Assumed Executory Contracts” exhibit. For the AT&T executory contracts, where there remained an outstanding default, confirmation of the plan did not, and could not, constitute the act of assumption itself.

Id. at 320. The court found that “[t]he detailed terms of United’s plan make plain that, at the time of confirmation, United had not yet cured the outstanding defaults on the AT&T executory contracts as required by section 365 for assumption.” *Id.* Notably, “United did not pay either AT&T

or ReGen for the amount equal to ‘all unpaid monetary obligations.’” *Id.* And “[b]ecause section 365(b)(1) requires cure or adequate assurance of prompt cure ‘at the time of assumption,’ both of which were absent here,” it “conclude[d] that no assumption occurred.” *Id.*

23. Unlike United, the Reorganized Debtors in the present case actually paid the Cure Amount necessary to assume the ASC Contracts. While the Plan permits modifications to the Assumption Schedule post-confirmation, it does not allow the Reorganized Debtors to nullify the prior assumption of the ASC Contracts. Given that the Reorganized Debtors previously assumed the ASC Contracts, the Reorganized Debtors should not now be permitted to reverse course and reject the ASC Contracts.

B. Should the Court Find Rejection Appropriate, the Reorganized Debtors Cannot Recover the Cure Amount.

24. To the extent the Court finds that the Reorganized Debtors may reject the ASC Contracts, at this juncture, the Court should not order the return of the Cure Amount because the Confirmation Order and certain provisions in the Plan preclude the Reorganized Debtors from asserting claims against ASC or clawing back distributions made to it.⁴

25. With the Cure Amount paid, the Reorganized Debtors assumed the ASC Contracts; under the Plan and Confirmation Order, the claims related to the Cure Amount (and assumption generally) have been discharged and released. Under Article V of the Plan, “[a]ny Cure costs shall be deemed fully satisfied, released, and discharged upon payment by the Debtors or the Reorganized Debtors of the applicable Cure costs . . .” Plan, art. V.C. Likewise, the Confirmation

⁴ Moreover, should the Court find that rejection of the ASC Contracts is proper, ASC reserves its right to file a proof of claim for rejection damages. *See* Plan art. V.B.

Order states that “[t]he assumption . . . of any Executory Contract . . . , pursuant to the Plan or otherwise, shall result in the full release and satisfaction of any Claims . . . , whether monetary or nonmonetary, including relating to assumption . . .” Confirmation Order ¶ 17. In addition, Article VI of the Plan prevents turnover of the Cure Amount, as “[a]ny and all distributions made under this Plan shall be infeasible and not subject to clawback or turnover provisions.” Plan, art. VI.G.

26. Separately, the Debtor Release in the Plan provides that following the Effective Date, ASC is

. . . conclusively, absolutely, unconditionally, irrevocably, and forever released, waived and discharged by and on behalf of . . . the Reorganized Debtors, . . . from any and all Claims . . . based on or relating to, or in any manner arising from, . . . the business or contractual arrangements or interaction between or among any Debtor any Released Party, [and] the distribution of any Cash or other property of the Debtors to any Released Party . . .

Plan, art. VIII.C. Moreover, the Debtor Release provides that entry of the Confirmation Order constitutes this Court’s finding that the Debtor Release is “a bar to any of . . . the Reorganized Debtors . . . asserting any Claim or Cause of Action released pursuant to the Debtor Release.” *Id.* Allowing a claim for the Cure Amount, which is related to the “business or contractual arrangements” and the “distribution of . . . Cash . . . of the Debtors” to ASC, would run counter to the express terms and spirit of the Debtor Release set forth in Article VIII of the confirmed Plan. *See id.*

27. Thus, based on the foregoing provisions in the Plan and Confirmation Order, the Reorganized Debtors should not be permitted to assert a claim for the Cure Amount, and ASC should not have to return the Cure Amount to the Reorganized Debtors.

CONCLUSION

WHEREFORE, ACS respectfully requests that the Court (i) disallow the rejection of the ASC contracts, or, if rejection is permitted, bar the Reorganized Debtors from recouping the Cure Amount; and (ii) grant such other and further relief as ASC may be justly entitled.

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Dated: May 30, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of May, 2025, a true and correct copy of the foregoing document was served via ECF on all parties registered to receive ECF service in this case.

/s/ Bryan L. Rochelle
Bryan L. Rochelle