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COUNSEL FOR BPG ARIZONA 1 LLC

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

)	
In re:)	Chapter 7
)	
TRICOLOR HOLDINGS, LLC, <i>et al.</i> , ¹)	Case No. 25-33487 (MVL)
)	
Debtors.)	
)	

**BPG ARIZONA 1 LLC’S LIMITED OBJECTION TO THE CHAPTER 7
 TRUSTEE’S EMERGENCY MOTION TO (I) SELL ESTATE ASSETS FREE AND
 CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS, (II)
 ESTABLISH SALE PROCEDURES, AND (III) GRANTING RELATED RELIEF**

BPG Arizona 1 LLC (“BPG”) hereby files this limited objection (this “Objection”) to the *Chapter 7 Trustee’s First Emergency Motion to (I) Sell Estate Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (II) Establish Sale Procedures, and (III) Granting Related Relief* [Docket No. 456] (the “Sale Motion”)² filed by Anne Elizabeth Burns, in her capacity as the Chapter 7 Trustee (the “Trustee”) and respectfully states as follows:

¹ The Debtors in these chapter 7 cases are as follows: Tricolor Holdings, LLC, TAG Intermediate Holding Company, LLC, Tricolor Auto Group, LLC, Tricolor Auto Acceptance, LLC, Tricolor Insurance Agency, LLC, Tricolor Home Loans LLC dba Tricolor Mortgage, Tricolor Real Estate Services, LLC, TAG California Holding Company, LLC, Flexi Compras Autos, LLC, TAG California Intermediate Holding Company, LLC, Tricolor California Auto Group, LLC, Tricolor California Auto Acceptance, LLC, Risk Analytics LLC, Tricolor Tax, LLC, Tricolor Financial, LLC, Tricolor Auto Receivables LLC, Tricolor Asset Funding, LLC, and Apoyo Financial, LLC.

² Capitalized terms used but not defined elsewhere in this Objection shall have the meanings ascribed to them in the Sale Motion.



Preliminary Statement

1. BPG is a prepetition landlord on one of the Debtors' leased facilities located in Surprise, Arizona. BPG does not oppose the sale of estate assets. It does, however, object to the Trustee's proposed procedures related to: (i) reporting of the sales; (ii) obligations related to asserting property interests, liens, claims, and Surcharge Costs; and (iii) proceeds of the sales and allocation thereof.

2. The Trustee, for the benefit of certain secured creditors who assert liens on Vehicles, has stored and aggregated Vehicles at sites throughout the country, including the Leased Premises (as hereafter defined). The Trustee's proposed procedures appear to fail to preserve and enforce all estate rights and claims particularly with respect to the Trustee's surcharge rights under 11 U.S.C. § 506(c). The Trustee has a statutory obligation to pay post-petition rent when the Leased Premises have been used by the Trustee and various lenders or other agents to aggregate and store Vehicles (whether estate or non-estate owned). 11 U.S.C. § 365(d)(3). If the Trustee lacks available funds to pay rent for the Leased Premises, the Trustee has a right (if not a duty) to seek a surcharge on that collateral pursuant to 11 U.S.C. § 506(c) so that she can satisfy the estate's post-petition obligations to BPG. The proposed sale procedures should not be used to limit the Trustee's surcharge rights under 11 U.S.C. § 506(c) when that may be the only source of funds for the Trustee to satisfy her statutory obligations under 11 U.S.C. § 365(d)(3).

3. The proposed procedures are confusing and appear to be internally inconsistent. Certain defined terms are ambiguous -- particularly as applied in certain proposed provisions. There are instances in which undefined terms are used when defined terms (if sufficiently defined) would provide much needed clarity and certainty. Ambiguities in the proposed procedures create obligations that may be impossible for certain parties like BPG to comply, thereby fundamentally altering or destroying rights. These Chapter 7 Cases have unique considerations and issues that

are magnified by the number of Vehicles implicated. The proposed procedures should be revised to be well-defined and structured such that parties can quickly and easily identify the process and their respective obligations to preserve their rights.

4. Understanding the urgency for the Trustee to commence liquidating the Vehicles, BPG proposes that the Court conditionally approve the Sale Motion such that the Trustee is authorized to proceed with the proposed sale process with respect to the proposed marketing and sale structure and fees (including the Trustee's statutory commission), but that all parties rights shall be reserved and preserved regarding any procedures related to: (i) reporting of the sales; (ii) obligations related to asserting property interests, liens, claims, and Surcharge Costs; and (iii) proceeds of the sales and allocation thereof. There is no urgent need to decide these important and disputed issues on shortened notice because all proceeds from the sale of any Vehicle can be held in escrow pending a consensual resolution or final determination by the Court at a later date after the parties have attempted to resolve, or at least narrow, these issues.

Relevant Background

A. The BPG Lease

5. On April 1, 2023, BPG and TriColor Auto Group, LLC (the "Tenant") entered into that certain *Build-to-Suit Lease Agreement* dated April 1, 2023 (as amended, modified, or supplemented from time to time, the "Lease") for: (i) an approximately 258,075 square-foot industrial warehouse building in a project commonly known as Summit Business Park in Surprise, Arizona; (ii) the land; and (iii) the Site Improvements (as defined in the Lease) (collectively, the "Leased Premises"). The original monthly rent schedule escalated annually over the 120-month term, with corresponding monthly and annual base rent amounts tied to the building's square footage.

6. On October 3, 2023, BPG and the Tenant entered into the first amendment to the Lease in which: (i) BPG provided a credit to reduce excess costs owed by the Tenant in connection with the construction of the building; (ii) relieved the Tenant of its obligation to pay such excess costs upfront and amortized those excess costs (after reduction for BPG's credit) through a formula for increased monthly base rent that would be memorialized in a subsequent amendment once the final improvement costs were determined.

7. On June 2, 2025, BPG and the Tenant entered into the second amendment to the Lease that deleted and replaced the monthly base rent schedule as required by the first amendment to the Lease.

8. The Lease requires the Tenant to pay rent in advance on the first day of each month. The Tenant did not pay the amount that was due on September 1, 2025.

B. The Chapter 7 Cases

9. On September 10, 2025 (the "Petition Date"), each of the debtors in the above-captioned cases filed a petition for relief under Chapter 7 of Title 11 of the United States Code (the "Bankruptcy Code"). All of the Debtors Chapter 7 cases are jointly administered under the above-captioned case for procedural purposes only. Docket No. 75.

10. On the Petition Date, the Trustee was appointed as the Chapter 7 Trustee in the instant cases. Docket No. 3.

11. On October 6, 2025, the Court entered an order granting the Trustee's request [Docket No. 107] for limited authorization to operate the Debtors' business for a period of ninety-five (95) days, through and including, January 9, 2026.

12. The Trustee has maintained possession of, and has continued to use, the Leased Premises since the Petition Date. Nevertheless, the Trustee has failed and refused to pay BPG any post-petition rent that is due and owing under the Lease.

13. On October 27, 2025, the Trustee filed the *Chapter 7 Trustee's First Omnibus Motion for Entry of an Order (I) Authorizing the Trustee to (A) Reject Certain Unexpired Real Property Leases and (B) Abandon Certain Personal Property, and (II) Granting Related Relief* [Docket No. 269] (the "Rejection Motion") seeking, among other things, to reject the Lease *nunc pro tunc* to the Petition Date.

14. On November 7, 2025, BPG filed *BPG Arizona I LLC's Motion to Compel Payment of Post-Petition Lease Obligations* [Docket No. 343] (the "Motion to Compel") seeking entry of an order (i) compelling immediate payment of all amounts due and owing under the Lease until the Trustee vacates the Leases Premises, and (ii) allow and direct prompt payment of BPG's administrative expense claim for the same amount pending satisfaction of such obligations.

15. On November 10, 2025, BPG filed *BPG Arizona I LLC's Objection to the Chapter 7 Trustee's First Omnibus Motion for Entry of an Order (I) Authorizing the Trustee to (A) Reject Certain Unexpired Real Property Leases and (B) Abandon Certain Personal Property, and (II) Granting Related Relief* [Docket No. 346] (the "Rejection Objection") opposing the *nunc pro tunc* rejection of the Lease.

16. On November 21, 2025, the Trustee filed the Sale Motion.

17. On November 24, 2025, the Court held a hearing on the Rejection Motion during which the Trustee's counsel announced, among other things, that the Lease had been removed from the revised proposed order granting the Rejection Motion and the parties expected to file a stipulation and agreed order that would provide for the rejection of the Lease and address the Rejection Objection and the Motion to Compel.³

³ The parties are still working on that stipulation and agreed order as of the date of filing this Objection, but BPG anticipates that it will be filed within the next few days.

18. On November 26, 2025, entered an order granting the Rejection Motion in part and authorizing the Trustee to reject certain leases that did not include the Lease. Docket No. 488.

Objection

19. The Trustee's proposed procedures are problematic because they will likely be construed as waiving the Trustee's surcharge rights under 11 U.S.C. § 506(c) except to the limited extent permitted by such procedures. The Trustee is included in the Asserted Lien or Interest Parties that must assert any Surcharge Costs in an Asserted Lien or Interest Notice on or before the Proceeds Bar Date. The proposed procedures narrowly define "Surcharge Costs" as being limited to "*out-of-pocket* costs, fees, and expenses . . . reasonably incurred." Sale Motion, ¶ 16, Vehicle Inventory Sales § F (emphasis added). In contrast, the Trustee's surcharge rights under section 506(c) of the Bankruptcy Code are not limited to *out-of-pocket* costs and expenses. As explained in the Rejection Objection and the Motion to Compel, which are incorporated herein by reference, the Trustee cannot ignore her statutory obligation to pay post-petition rent when the Leased Premises have been used by the Trustee and various lenders or other agents to aggregate and store Vehicles (whether estate or non-estate owned). If the Trustee lacks available funds to pay rent for the Leased Premises, the Trustee has a right (if not a duty) to seek a surcharge on that collateral pursuant to 11 U.S.C. § 506(c) so that she can satisfy the estate's post-petition obligations.

20. Moreover, the Trustee's proposed procedures would impermissibly foist the Trustee's responsibilities (if not obligations) to surcharge collateral onto all other parties thereby impermissibly granting other parties rights they do not have. Only the Trustee may assert surcharge rights under 11 U.S.C. § 506(c). *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6–7 (2000). The Trustee cites no authority for the Court to authorize such transfer of the Trustee's surcharge rights and impose the Trustee's responsibilities (if not

obligations) on all other parties. Any procedures approved should make clear that the Trustee's rights to surcharge under 11 U.S.C. § 506(c) are not limited, waived, or otherwise affected with respect to the reasonable and necessary costs and expenses of preserving the Estate Vehicles including the costs of postpetition rent due and owing for the Lease.

21. Relatedly, the Trustee's proposed sale procedures may be construed to be waiving estate claims and rights to seek compensation for the reasonable and necessary costs and expenses of preserving the Non-Estate Vehicles. Specifically, the proposed procedures provide that "[t]he Trustee shall not be entitled to any rights of set-off or recoupment with respect to any Sale Proceeds other than as expressly provided by these Sale Procedures." Sale Motion, ¶ 16, Vehicle Inventory Sales § G. While the limited Surcharge Costs process facially appears to apply to proceeds of Non-Estate Vehicles,⁴ other provisions permit the immediate distribution of undefined "proceeds" from the sale of a Vehicle determined by agreement or Court order to not be estate property,⁵ and limit the restrictions on distribution of undefined "proceeds" from the sale of *Estate Vehicles only* pending resolution of all Surcharge Costs applicable to such Vehicle.⁶ The proposed sale procedures should be modified to preserve the estates' rights to setoff or recoupment for such claims against the owners of the Non-Estate Vehicles.⁷

⁴ See Sale Motion, ¶ 16, Surcharge Costs, § A (contemplating "out-of-pocket costs, fees, and expenses . . . reasonably incurred by . . . (ii) any Asserted Lien or Interest Parties that *benefitted all or portions of the Non-Estate Vehicles* . . .") (emphasis added).

⁵ See *id.* at ¶ 16, Vehicle Inventory Sales, § F (Any funds held by the Trustee that are the proceeds of a Vehicle determined by agreement of the Secured Parties or order of the Court (subject to any appeal) *not to constitute property of Debtors' estates* shall be *promptly turned over to Vervent to be held for the benefit of, and distributed to, the Secured Parties* in accordance with the procedures contemplated below.") (emphasis added).

⁶ See *id.* at ¶ 16, Surcharge Costs § D ("For the avoidance of doubt, other than with respect to the Auction Costs and Trustee Costs from *proceeds of Estate Vehicles*, no Sale Proceeds for a particular Vehicle shall be distributed *prior to the agreement and resolution of all Surcharge Costs* applicable to such Vehicle.") (emphasis added).

⁷ Notably, it is unclear what legal basis the Court has to bind alleged owners of Vehicles to the Surcharge Cost provisions of the proposed procedures because, among other things, the Trustee's surcharge rights under 11 U.S.C. § 506(c) may not extend to the Non-Estate Vehicles. This reality demonstrates the importance of preserving the estate's claims and rights against all owners of Non-Estate Vehicles for the reasonable and necessary costs and expenses of preserving the Non-Estate Vehicles.

22. The Trustee’s proposed procedures are also confusing and appear to be internally inconsistent. First, the “Sale Proceeds” definition is ambiguous as applied in various places throughout the proposed procedures in part because it fails to use any of the three defined terms used to identify the “vehicles” to be liquidated with respect to “the gross proceeds thereof.” Sale Motion, ¶ 4. As a non-exclusive example, the proposed procedures provide that “[t]he Trustee shall not be entitled to any rights of set-off or recoupment with respect to any Sale Proceeds other than as expressly provided by these Sale Procedures.”⁸ If “Sale Proceeds” includes all gross proceeds from the sale of all Vehicles (*i.e.*, including Non-Estate Vehicles) and the Trustee must turn over proceeds from the sale of undisputed Non-Estate Vehicles to Vervent to be distributed to the Secured Parties,⁹ all without first resolving all Surcharge Costs applicable to such Non-Estate Vehicle,¹⁰ then the Trustee would have to use estate resources to seek to recover what she should be entitled to easily setoff or recoup.

23. Second, the “Asserted Lien or Interest Notice” construct appears to be internally inconsistent and overbroad. Although defined to encompass all parties,¹¹ the procedures *require* the “Asserted Lien or Interest Parties” to submit evidence of *ownership or lien* but *permit* the “Asserted Lien or Interest Parties” to submit “a request for reimbursement of Surcharge Costs and evidence thereof.”¹² Therefore, the definition of the “Asserted Lien or Interest Parties” necessarily includes BPG, but the only way BPG could submit the limited Surcharge Costs (which should be expanded as explained above), is by asserting an ownership or lien through the submission of an Asserted Lien or Interest Notice. Absent the timely submission of an Asserted Lien or Interest

⁸ Sale Motion, ¶ 16, Vehicle Inventory Sales, § G.

⁹ *Id.* at ¶ 16, Surcharge Costs, § F.

¹⁰ *See id.* at ¶ 16, Surcharge Costs § D (“For the avoidance of doubt, other than with respect to the Auction Costs and Trustee Costs from *proceeds of Estate Vehicles*, no Sale Proceeds for a particular Vehicle shall be distributed *prior to the agreement and resolution of all Surcharge Costs* applicable to such Vehicle.”) (emphasis added).

¹¹ *Id.* at ¶ 16, Proceeds Bar Date & Asserted Lien or Interest Notice, § A.

¹² *Id.* at ¶ 16, Proceeds Bar Date & Asserted Lien or Interest Notice, § B.

Notice, BPG would be barred from recovering any funds from the Sale Proceeds.¹³ Thus, BPG cannot properly assert any amounts it is owed (whether out-of-pocket costs and expenses or other obligations owed to it) and taken together with the impermissible limited Surcharge Costs, the Trustee cannot assert surcharge rights for the same amounts owed to BPG. The “Asserted Lien or Interest Notice” construct is fundamentally flawed and unfair to BPG.

24. Third, to the extent that the Court agrees with the Trustee foisting her responsibilities (if not obligations) to surcharge collateral onto all other parties, the interim sale reporting requirements also should be modified to require: (i) inclusion of dates and estate location(s) of the Vehicles from the Petition Date through the date the Vehicle was removed from all estate locations and (ii) public disclosure such as through filing notices on the docket. As currently proposed, only the Trustee and the Secured Parties have knowledge of the dates and estate location(s) for each Vehicle and they are the only parties that will receive interim reports of the sale of the Vehicles.¹⁴ If the Trustee will not be responsible for asserting surcharge costs for the postpetition rent of the Leased Premises and other costs and expenses incurred by BPG to preserve the Vehicles, then BPG must be provided sufficient information to assert such costs and expenses on a Vehicle-by-Vehicle basis.

25. Fourth, the Proceeds Bar Date is unfair with respect to any unsold Vehicles. Specifically, the proposed procedures only require that *substantially all* of the Vehicles sales shall be completed by the Vehicle Sales Deadline,¹⁵ but the Proceeds Bar Date applies to all Sale Proceeds (which is ambiguously defined as explained above). Even if BPG is provided sufficient

¹³ *Id.* at ¶ 16, Proceeds Bar Date & Asserted Lien or Interest Notice, § E.

¹⁴ Notably, the Trustee’s assertion that the proposed procedures “grants any potential Asserted Lien or Interest Parties likely more than four (4) months to assert their interests in the Sales Proceeds” is not true with respect to any Asserted Lien or Interest Parties other than the Trustee and the Secured Parties absent a deadline by which the Trustee must file her final Vehicle Sales Report because parties other than the Trustee and Secured Parties are not entitled to interim sale reports under the proposed procedures.

¹⁵ Sale Motion, ¶ 14.

information to assert costs and expenses on a Vehicle-by-Vehicle basis shortly after the sale of the applicable Vehicle (which is not currently contemplated under the proposed procedures), BPG will not have the necessary information to timely assert any claims with respect to Vehicles that are not sold before the Proceeds Bar Date. Accordingly, the Proceeds Bar Date should be extended with respect to any Vehicle that is not actually sold on or before the Vehicle Sales Deadline by one day for each day between the Vehicle Sales Deadline and the actual date the applicable Vehicle is sold.

26. Finally, the proposed procedures are captioned “key terms” thereby implying additional terms or details not specified therein and there are several provisions that are bracketed. Such oversights create uncertainty and potential ambiguity regarding the scope and extent of the procedures. All brackets should be removed from the proposed procedures, and the procedures should include all procedures, not just “key terms” and be referred to as “Sale Procedures.”

Conclusion

27. For the reasons explained above, BPG requests that the Court: (i) sustain this Objection; (ii) only conditionally approve the Sale Motion such that the Trustee is authorized to proceed with the proposed sale process with respect to the proposed marketing and sale structure and fees (including the Trustee’s statutory commission); (iii) reserve and preserve all parties’ rights regarding any procedures related to (a) reporting of the sales, (b) obligations related to asserting property interests, liens, claims, and Surcharge Costs, and (c) proceeds of the sales and allocation thereof; and (iv) grant such further and other relief as the Court deems appropriate under the circumstances.

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Dated: December 2, 2025

Respectfully submitted,

/s/ Stephen M. Pezanosky

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ATTORNEYS FOR BPG ARIZONA 1 LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 2, 2025, I caused a copy of the foregoing document to be served via CM/ECF to all parties authorized to receive electronic notices in this case.

/s/ Stephen M. Pezanosky

Stephen M. Pezanosky