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COUNSEL FOR BMO HARRIS BANK, N.A.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS

IN RE:	§	**CHAPTER 11**
	§	
ALLIANCE PROCESSORS, INC.,	§	
	§	
DEBTOR.	§	**CASE NO. 16-40261-mxm**
	§	
	§	

OBJECTION OF BMO HARRIS BANK, N.A. TO DISCLOSURE STATEMENT PURSUANT TO SECTION 1125 OF THE UNITED STATES BANKRUPTCY CODE WITH RESPECT TO THE FIRST AMENDED PLAN OF REORGANIZATION FOR ALLIANCE PROCESSORS, INC.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

BMO Harris Bank, N.A. ("BMO Harris"), a creditor of Alliance Processors, Inc. (the "Debtor"), objects to the Debtor's *Disclosure Statement Pursuant to Section 1125 of the United States Bankruptcy Code With Respect to the First Amended Plan of Reorganization For Alliance Processors, Inc.*[Dkt. No. 221] (the "Disclosure Statement") and states as follows:

1. On January 18, 2016, Debtor filed a voluntary petition commencing this Chapter 11 case.

2. BMO Harris has a pre-petition claim against the Debtor in the amount of $213,169.54, which is partially secured by BMO Harris' interest in two 2015 Kenworth T800-Series

Tractors of the Debtor. BMO Harris received possession of the collateral and is in the process of attempting to mitigate its damages through the sale or other commercially reasonable disposition of the collateral. Nevertheless, BMO Harris expects to have an unsecured deficiency claim against the Debtor and the guarantor.

3. On June 21, 2017, the Debtor filed with the Court the Disclosure Statement and *First Amended Plan of Reorganization* (the "Plan").

4. BMO Harris objects to the Disclosure Statement on the grounds that the Plan is fatally flawed and unconfirmable. "Disapproval of the adequacy of a disclosure statement may sometimes be appropriate where it describes a plan of reorganization which is so fatally flawed that confirmation is impossible." *In re U.S. Brass Corp*., 194 B.R. 420, 422 (Bankr. E.D. Tex. 1996).

5. Specifically, Section 6.7 of the Disclosure Statement states that "any and all Claims against the Debtor for which the Debtor's principal, Harvey Earles, may be jointly liable, whether pursuant to a guaranty agreement or otherwise, shall be restrained and enjoined from pursuing any action to collect any such Claim . . .." (Disclosure Statement, Section 6.7.) However, neither the Disclosure Statement nor the Plan provides any justification for releasing Earles from liability or give an indication that Earles have given up adequate consideration in exchange for the release.

6. Third-party releases are not contemplated by the Bankruptcy Code and are permitted only in the most extreme and rare circumstances. *Matter of Zale Corp*., 62 F.3d 746, 760 (5th Cir. 1995) ("Section 524 prohibits the [permanent] discharge of debts of nondebtors. . . . [Temporary] injunction may be proper under unusual circumstances.") BMO Harris objects to the inclusion of third-party releases contemplated by the Plan.

7. Neither the Plan nor the Disclosure Statement provides legal justification for the third-party releases requested in the Plan. At a minimum, the Debtor must disclose what consideration is to be exchanged for the requested releases of claims against Harvey Earles ("Earles"). *See Hernandez v. Larry Miller Roofing, Inc*., 628 F. App'x 281, 288 (5th Cir. 2016), as revised (Jan. 6, 2016) (finding the release provisions in a plan not specific enough to release third parties where there was "no indication that the [third parties] undertook any obligations under the Plan with the expectation that any release language would be inserted into the Plan"); *In re FFS Data, Inc*., 776 F.3d 1299, 1309 (11th Cir. 2015) (applying this court's specificity test and explaining that the insertion of release language into a plan in return for a third party undertaking some obligation favors a finding that the release language is sufficiently specific). The third-party releases fail the specificity test adopted in the Fifth Circuit, and the Plan is unconfirmable as a matter of law.

8. Moreover, the Plan is fatally flawed because it patently violates the absolute priority rule. "The absolute priority rule . . . requires that senior claims be paid in full before any junior class can receive or retain any property." *In re Mortg. Inv. Co. of El Paso, Tex.*, 111 B.R. 604, 617 (Bankr. W.D. Tex. 1990).

9. Section 4.6 of the Plan states with respect to Class 6: "holders of interests in the Debtor shall retain such interest following the Effective Date." (Plan, Section 4.6.) Section 2.2 of the Plan, however, discloses that all classes, except Class 6, are impaired. The Plan further provides that the projected recovery of the General Unsecured Creditors is only 8.9%, while Class 6 is projected to recover 100% of its interests in the Debtor. This proposed treatment clearly violated the absolute priority rule and renders the Plan fatally flawed and unconfirmable. Accordingly, the Court should not approve the Disclosure Statement.

RESERVATION OF RIGHTS

10. BMO Harris reserves any and all rights to object to any amended Disclosure Statement filed by the Debtor. Further, BMO Harris does not waive its rights to receive the full notice required by the Bankruptcy Rules in the event the Debtor files an amended Disclosure Statement.

11. BMO Harris reserves any and all rights to object to the Plan, and nothing contained herein shall be considered a waiver of any objection to the Plan.

CONCLUSION

For all of the foregoing reasons, BMO Harris respectfully requests that the Disclosure Statement not be approved on the basis that it provides disclosures for a Plan that could not be confirmed as a matter of law.

Dated this 26th day of July, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This certifies that a copy of the foregoing pleading has been served via first class mail, postage prepaid, on all parties listed below and on the attached service list on July 26, 2017. In addition, on that same date, copy of the foregoing pleading was served via the court's ECF/CM system to all attorneys registered to receive notice of filings in this case.

/s/ Leslie Brockhoeft
Leslie Brockhoeft