

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

_____) Chapter 11
In re:)
)
) Case No. 23-90054 (CML)
IEH AUTO PARTS HOLDING LLC, *et al.*,¹)
) (Jointly Administered)
Debtors.)
_____)

**DEBTORS’ OBJECTION TO ADMINISTRATIVE CLAIM AMOUNT ASSERTED IN
CLAIM NO. 500 FILED BY DRIV AUTOMOTIVE INC.**

This is an objection to your claim. The objecting party is asking the Court to modify the claim that you filed in this bankruptcy case. If you do not file a response within 30 days after the objection was served on you, your claim may be modified without a hearing.

If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file your response electronically at <https://ecf.txsb.uscourts.gov/> within thirty days from the date this motion was filed. Otherwise, the Court may treat the Objection as unopposed and sustain the relief requested.

The above-captioned wind-down debtors (collectively, the “Debtors”) represent as follows in support of this claim objection (the “Objection”), and submit the *Declaration of Mark Berger of Portage Point Partners, LLC, in Support of the Debtors’ Objection to Administrative Claim Amount Asserted in Claim No. 500 Filed by DRiV Automotive Inc.* attached hereto as **Exhibit 1** (the “Berger Declaration”):

Relief Requested

¹ The Wind-Down Debtor entities in these chapter 11 cases, along with the last four digits of each Debtor entity’ federal tax identification number, are: IEH Auto Parts Holding LLC (6529); AP Acquisition Company Clark LLC (4531); AP Acquisition Company Gordon LLC (5666); AP Acquisition Company Massachusetts LLC (7581) AP Acquisition Company Missouri LLC (7840); AP Acquisition Company New York LLC (7361); AP Acquisition Company North Carolina LLC (N/A); AP Acquisition Company Washington LLC (2773); Auto Plus Auto Sales LLC (6921); IEH AIM LLC (2233); IEH Auto Parts LLC (2066); IEH Auto Parts Puerto Rico, Inc. (4539); and IEH BA LLC (1428). The Wind-Down Debtors’ service address is: 5330 Caramel Crest Lane, Charlotte, NC 28226.’



1. The Debtors seek entry of an order (the “Order”) pursuant to § 502(b) of title 11 of the United States Code (the “Bankruptcy Code”), and rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), modifying and adjusting Claim No. 500 filed by DRiV Automotive Inc. (the “Claimant”) against Debtor IEH Auto Parts LLC (“Auto Parts”). Through Claim No. 500, Claimant asserts a total claim in the amount of \$44,271,764.53 (the “Original Claim”), of which \$39,308,208.87 is asserted as a general unsecured claim (the “Original GUC Claim”) and \$4,963,555.63 is asserted as a section 503(b)(9) administrative priority claim (the “Original Priority Claim”). A true and correct copy of the Original Claim is attached hereto as **Exhibit 2**.

2. Pursuant to the Debtors’ books and records and in accordance with the Claimant’s documentation, the Debtors have determined that the Original Priority Claim should be reclassified, modified, and adjusted to reflect the true liability of the Debtors to the Claimant because the Original Priority Claim incorrectly asserts section 503(b)(9) priority status to a portion of its claim under applicable law. As provided in the column titled “Corrected” in the table provided on **Exhibit A** to the Order, the Original Priority Claim should be reclassified, modified, and adjusted to be a total priority claim in the amount of \$2,646,424.74 (the “Corrected Priority Claim”).

3. In support of this Objection, the Debtors submit the Berger Declaration.

Jurisdiction, Venue, and Procedural Background

4. The United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(B). The Debtors confirm their consent, pursuant to Rule 7008 of the Bankruptcy Rules, to the entry of a final order by the Bankruptcy Court.

5. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The relief requested herein is sought pursuant to §§ 105(a) and 502(b) of the Bankruptcy Code, Bankruptcy Rule 3007, and Rules 9013-1 and 3007-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”).

7. On June 31, 2023 (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court. A detailed description of the Debtors, their businesses, and the Debtors’ chapter 11 cases, are set forth in the *Declaration of Michael Neyrey in Support of Debtors’ Chapter 11 Petitions and First Day Motions* [Docket No. 24] (the “First Day Declaration”).

8. On June 16, 2023, the Court entered the *Order Confirming the Third Amended Combined Disclosure Statement and Joint Plan of Liquidation of IEH Auto Parts Holding LLC and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 749] (the “Plan”).

9. On October 6, 2023, the Plan became effective (the “Effective Date”). On the Effective Date, a Plan Agent was appointed by the Debtors to administer the Plan and wind down the Debtors’ estates. The Plan Agent is responsible for the claim reconciliation process for all Non-GUC Claims, including administrative priority claims. A separate GUC Trustee is responsible for the claim reconciliation process for all general unsecured claims, including general unsecured portions of partially secured and/or partially priority claims.

The Administrative Claims Reconciliation Process

10. Over 100 proofs of claim have been filed against the Debtors that assert priority administrative claims totaling over \$20 million. The Debtors, the Plan Agent, and their advisors (collectively, the “Reviewing Parties”) have worked diligently to review the Original Priority Claim, including any supporting documentation filed therewith.

11. For the reasons set forth below, and based on the review to date, the Reviewing Parties have determined that the Original Priority Claim should be disallowed as filed and reclassified, modified, and adjusted as set forth herein and in the column titled “Corrected” on **Exhibit A** to the Order.

12. This is an objection to the priority portion of the Original Claim. The GUC Trustee reserves the right to further object to the general unsecured portions of this claim.

Objection

13. The Original Priority Claim is a section 503(b)(9) claim. Section 503(b)(9) of the Bankruptcy Code provides administrative priority status to claims for “the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor’s business.” 11 U.S.C. § 503(b)(9).

14. There is zero doubt that the Claimant provided valuable goods to the Debtor within the 20 day 503(b)(9) window. There is, however, a large variance in what the Claimant shows was received by the Debtors, and what the Debtors show. Some portions of the variance are easily identifiable, while others are not. One complicating issue is the sheer volume of goods that were transferred between the parties. The Original Claim’s supporting documentation is voluminous, amounting to a more than 280 page summary of invoices, listing 70+ invoices per page. Each invoice showing goods delivered in the 20 day window must be reviewed and reconciled with the debtors records, which are supported by article-level delivery dates.

15. Despite abundant good faith efforts, including informal document exchanges, multiple meetings between Debtor and Claimant representatives, multiple calls between respective counsel, and many hours of spreadsheet level reconciliation efforts, the variance remains. The

Debtors will endeavor to continue the reconciliation offers, but must object to the Original Priority Claim.

16. Section 502 of the Bankruptcy Code provides, in pertinent part, as follows: “[a] claim or interest, proof of which is filed under § 501 of [the Bankruptcy Code], is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502. Section 502(b) provides that a court shall not allow a claim if “such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured” *See* 11 U.S.C. § 502(b)(1).

17. As set forth in Bankruptcy Rule 3001(f), a properly executed and filed proof of claim constitutes prima facie evidence of the validity and the amount of the claim under § 502(a) of the Bankruptcy Code. *See, e.g., In re Tran*, 351 B.R. 440, 444 (Bankr. S.D. Tex. 2006), *aff’d*, 369 B.R. 312 (S.D. Tex. 2007). A proof of claim loses the presumption of prima facie validity under Bankruptcy Rule 3001(f) if an objecting party refutes at least one of the allegations that are essential to the claim’s legal sufficiency. *See In re Fidelity Holding Co., Ltd.*, 837 F.2d 696, 698 (5th Cir. 1988). Once such an allegation is refuted, the burden reverts to the claimant to prove the validity of its claim by a preponderance of the evidence. *Id.* Despite this shifting burden during the claim objection process, “the ultimate burden of proof always lies with the claimant.” *Id.*

18. As set forth in the Berger Declaration, the Reviewing Parties reviewed the Debtors’ books and records along with the Original Priority Claim and any documents filed in support therewith, and have determined that the Original Priority Claim should be reclassified, adjusted, and modified to reflect the true liability of the Debtors, the Corrected Claim, as set forth in the column titled “Corrected Claim” on the table provided in **Exhibit A** to the Order. Specifically, the Original Priority Claim should be reclassified, adjusted, and modified because it incorrectly

asserts section 503(b)(9) priority status on a portion of its claim under applicable law, and is subject to certain credits.

19. The Original Priority Claim portion of the Original Claim should be reduced in the amount of \$1,532,325.63 as that portion of the Original Priority Claim is incorrectly classified as a section 503(b)(9) claim under the Bankruptcy Code. As further explained on Exhibit A under the heading titled “Reason for Disallowance or Modification,” the Original Priority Claim includes invoices that assert amounts for (i) goods that were received outside the 20 day 503(b)(9) window (\$190,553.15); (ii) dropship goods that were shipped directly from the Claimant to the customer and thus were never received by the Debtors (\$529,031.36); and (iii) goods that the Debtors do not show as having been received in the 20 days before the commencement of the case (\$812,741.12).

20. The Original Priority Claim is also subject to substantial credits which would further reduce the Original Priority Claim. As can be expected, certain goods shipped to the Debtors from various automotive industry vendors were subject to product returns for various reasons. Accordingly, the Debtors show product returns to the Claimant which should result in a dollar for dollar setoff totaling \$784,705.26 (the “Credit”). The Credit amount is currently disputed. A full accounting and support of the Credit has been provided to the Claimant.

21. Due to the incorrect classification and the Credit, the Reviewing Parties believe that (i) the Original Priority Claim must be modified and reduced to be a 503(b)(9) claim in the amount of \$2,646,524.74 (the “Corrected Priority Claim”) and (ii) the Original GUC Claim must be modified and adjusted in the amount of the reclassification to be a general unsecured claim in the

aggregate amount of \$41,625,239.79 (the “Modified GUC Claim”) (but the Modified GUC Claim shall remain subject to review, reconciliation, and objection by the GUC Trustee).

22. Failure to reduce, modify, and reclassify the Original Priority Claim, and modify the Original GUC Claim, could result in an improper recovery on account of the Original Claim, to the detriment of other, similarly situated creditors. Therefore, the Debtors seek entry of an order reducing, modifying, and reclassifying the Original Claim to the extent provided in the “Corrected” column on Exhibit A to the proposed Order.

Reservation of Rights

23. **This Objection addresses the Non-GUC portions of the Original Claim only. All GUC portions of the Original Claim or any modified claim, including the requested Modified GUC Claim, remain subject to review, reconciliation, and objection by the GUC Trustee in every respect.**

24. This Objection is limited to the grounds stated herein. Accordingly, it is without prejudice to the rights of the Debtors, including the GUC Trustee, to object to any claim on any ground whatsoever. The Debtors, including the GUC Trustee, expressly reserve all further substantive or procedural objections. Nothing contained herein or any actions taken pursuant to such relief is intended or should be construed as: (a) an admission as to the validity of any prepetition claim against a Debtor or Debtor entity; (b) a waiver of the Debtors’ right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Objection or any order granting the relief requested by this Objection; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to § 365 of the Bankruptcy Code; or (f) a waiver of the Debtors’ rights under the Bankruptcy Code or any other applicable law.

Notice

25. The Wind-Down Debtors will provide notice of this motion to: (a) the United States Trustee for the Southern District of Texas; (b) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (c) the affected Claimants (and their counsel, where applicable). In light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtors request that the Court enter an Order granting the relief requested herein, and such other and further relief as is just and equitable.

Houston, Texas

Dated: December 8, 2023

/s/ Zachary McKay

JACKSON WALKER LLP

Matthew D. Cavanaugh (TX Bar No. 24062656)

Veronica A. Polnick (TX Bar No. 24079148)

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Counsel to the Wind-Down Debtors

Certificate of Service

I certify that on the 8th day of December, 2023, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas and directed KCC, the Debtors' claims, noticing, and solicitation agent, to serve Claimant via first class U.S. Mail at the addresses listed on the applicable Proofs of Claim.

/s/ Zachary McKay

Zachary McKay

Exhibit 1

Berger Declaration

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	Chapter 11
)	
IEH AUTO PARTS HOLDING LLC, <i>et al.</i> , ¹)	Case No. 23-90054 (CML)
)	
Debtors.)	(Jointly Administered)
)	

**DECLARATION OF MARK BERGER IN SUPPORT OF THE DEBTORS’
OBJECTION TO ADMINISTRATIVE CLAIM AMOUNT ASSERTED IN CLAIM NO.
500 FILED BY DRIV AUTOMOTIVE INC.**

I, MARK BERGER, hereby declare under penalty of perjury:

1. I am the Managing Director of Portage Point Partners (“Portage”). Portage was retained by the above-captioned debtors (collectively, the “Debtors”) as restructuring advisor in connection with these chapter 11 cases. I have more than fifteen (15) years of restructuring experience in providing both interim management and advisory services to various clients in a variety of restructuring matters, specializing in interim management roles and advising companies during operational turnarounds and financial restructuring processes. My primary areas of focus include financial reporting, treasury, bankruptcy administration, supply chain optimization and business plan development related roles.

2. I am generally familiar with the Debtors’ day-to-day operations, financing arrangements, business affairs, and books and records that reflect, among other things, the Debtors’

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liabilities and the amount thereof owed to their creditors as of the Petition Date. I have read the *Debtors' Objection to Administrative Claim Amount Asserted in Claim No. 500 Filed by DRiV Automotive Inc.* (the "Objection"), filed contemporaneously herewith.²

3. To the best of my knowledge, information, and belief, the assertions made in the Objection are accurate. In evaluating the Original Priority Claim, the Reviewing Parties have reviewed the Debtors' books and records, as well as the Original Claim, Original Priority Claim, and supporting documentation provided by Claimant. The Reviewing Parties determined that the Original Priority Claim should be disallowed as filed, and reduced, modified, and reclassified to the extent provided under the "Correct" column on Exhibit A to the proposed Order. As such, I believe that the reduction, modification, and reclassification of the Original Priority Claim on the terms set forth in the Objection is appropriate.

4. The Original Priority Claim is a section 503(b)(9) claim. There is zero doubt that the Claimant provided valuable goods to the Debtor within the 20 day 503(b)(9) window. There is, however, a large variance in what the Claimant shows was received by the Debtors, and what the Debtors show. Some portions of the variance are identifiable, while others are not. One complicating issue is the sheer volume of goods that were transferred between the parties. The Original Claim's supporting documentation is voluminous, amounting to a more than 280 page summary of invoices, listing 70+ invoices per page. Each invoice showing goods delivered in the 20 day window must be reviewed and reconciled with the debtors records, which are supported by article-level delivery dates. Despite great efforts, including informal document exchanges, multiple meetings between Debtor and Claimant representatives, multiple calls between respective counsel, and many hours of spreadsheet level reconciliation efforts, the variance remains. The

² Capitalized but undefined terms herein shall have the same meaning ascribed to them in the Objection.

Debtors will endeavor to continue the reconciliation offers, but must object to the Original Priority Claim.

5. The Reviewing Parties reviewed the Debtors' books and records along with the Original Priority Claim and any documents filed in support therewith, and have determined that the Original Priority Claim should be reclassified, adjusted, and modified to reflect the true liability of the Debtors, the Corrected Claim, as set forth in the column titled "Corrected Claim" on the table provided in Exhibit A to the Order. Specifically, the Original Priority Claim should be reclassified, adjusted, and modified because it incorrectly asserts section 503(b)(9) priority status on a portion of its claim under applicable law, and it is subject to certain credits.

6. The Original Priority Claim portion of the Original Claim should be reduced in the amount of \$1,532,325.63 as that portion of the Original Priority Claim is incorrectly classified as a section 503(b)(9) claim under the Bankruptcy Code. As further explained on Exhibit A under the heading titled "Reason for Disallowance or Modification," the Original Priority Claim includes invoices that assert amounts for (i) goods that were received outside the 20 day 503(b)(9) window (\$190,553.15); (ii) dropship goods that were shipped directly from the Claimant to the customer and thus were never received by the Debtors (\$529,031.36); and (iii) goods that the Debtors do not show as having been received in the 20 days before the commencement of the case.

7. The Original Priority Claim is also subject to substantial credits which would further reduce the Original Priority Claim. As can be expected, certain goods shipped to the Debtors from various automotive industry vendors were subject to product returns for various reasons. Similarly, the Debtors show product returns to the Claimant valued at \$784,705.26 (the "Credit").

8. Due to the incorrect classification and the Credit, the Reviewing Parties believe that (i) the Original Priority Claim must be modified and reduced to be a 503(b)(9) claim in the amount of \$2,646,524.74 (the “Corrected Priority Claim”) and (ii) the Original GUC Claim must be modified and adjusted in the amount of the reclassification to be a general unsecured claim in the aggregate amount of \$41,625,239.79 (the “Modified GUC Claim”) (but the Modified GUC Claim shall remain subject to review, reconciliation, and objection by the GUC Trustee).

9. Failure to reduce, modify, and reclassify the Original Priority Claim, and modify the Original GUC Claim, could result in an improper recovery on account of the Original Priority Claim, to the detriment of other, similarly situated creditors. Therefore, the Debtors seek entry of an order reducing, modifying, and reclassifying the Original Priority Claim to the extent provided in the “Corrected” column on Exhibit A to the proposed Order. As such, I believe that reduction, reclassification, and modification of the Original Priority Claim on the terms set forth both in the Objection and Exhibit A is appropriate.

10. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the facts set forth in the foregoing declaration are true and correct to the best of my knowledge, information, and belief.

Dated: December 8, 2023

/s/ Mark Berger
Mark Berger
Managing Director
Portage Point Partners, LLP

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	Chapter 11
)	
IEH AUTO PARTS HOLDING LLC, <i>et al.</i> , ¹)	Case No. 23-90054 (CML)
)	
Debtors.)	(Jointly Administered)
)	

**ORDER SUSTAINING DEBTORS' OBJECTION TO ADMINISTRATIVE CLAIM
AMOUNT ASSERTED IN CLAIM NO. 500 FILED BY DRIV AUTOMOTIVE INC.**

Upon the objection (the "Objection")² of the above-captioned Debtors, seeking entry of an order (the "Order") sustaining the *Debtors' Objection to Administrative Claim Amount Asserted in Claim No. 500 Filed by DRiV Automotive Inc.*, all as more fully set forth in the Objection; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and this Objection in this district is permissible pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Objection is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Objection and opportunity for a hearing on the Objection were appropriate under the circumstances and no other notice need be

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² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Objection.

provided; and this Court having reviewed the Objection and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Objection and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Objection is sustained.
2. Claim No. 500 filed by DRiV Automotive Inc. identified under the column “Claim as Filed” on **Exhibit A** attached to this Order is hereby reduced, reclassified, and modified as set forth in the “Corrected” column of **Exhibit A** attached to this Order; *provided* that the Debtors, including the GUC Trustee, reserve the right to further object to the Corrected Claim on any applicable grounds.
3. The Debtors’ claims, noticing, and solicitation agent, KCC, is authorized and directed to update the claims register maintained in these chapter 11 cases to reflect the relief granted in the Order.
4. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor or Debtor entity; (b) a waiver of the Debtors’ right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Objection or any order granting the relief requested by this Objection; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to § 365 of the

Bankruptcy Code; or (f) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law.

5. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.
6. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Objection.
7. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2023
Houston, Texas

UNITED STATES BANKRUPTCY JUDGE

Exhibit A

Claim #	Creditor	Date Claim Filed	Claim as Filed						Corrected					
			Debtor Entity	Secured	Admin	Priority	Unsecured	Total	Debtor Entity	Secured	Admin	Priority	Unsecured	Total
500	DRiV Automotive Inc. 15701 Technology Drive Northville, Michigan 48168	4/27/23	IEH Auto Parts LLC	\$0.00	\$4,963,555.63	\$0.00	\$39,308,208.90	\$44,271,764.53	IEH Auto Parts LLC	\$0.00	\$2,646,524.74	\$0.00	\$41,625,239.79	\$44,271,764.53

Reason for Disallowance and Modification:

The Original Priority Claim includes invoices that assert amounts for (i) goods that were received outside the 20 day 503(b)(9) window (\$190,553.15); (ii) dropship goods that were shipped directly from the Claimant to the customer and thus were never received by the Debtors and do not qualify as receiving 503(b)(9) priority (\$529,031.36); and (iii) value of goods that the Debtors do not show as having been received in the 20 days before the commencement of the case (\$812,741.12). As such, the Debtors show the value of goods received in the 503(b)(9) window to be \$3,431,230.00. These numbers are based off of the Debtors records, which are recorded at the article level as goods are scanned into its system once received.

The Corrected Priority Claim is further reduced by the Credit as addressed in the Objection, bringing the total Admin claim to **\$2,646,524.74**. All other portions of the claim should be considered a GUC, which is subject to further review, reconciliation, and objection by the GUC Trustee.