

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

In re:	)	
	)	Chapter 11
	)	
ANAGRAM HOLDINGS, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 23-90901 (MI)
	)	
Debtors.	)	(Jointly Administered)
	)	Related to Docket Nos. 26 and 153

**DEBTORS' REPLY TO SILVER POINT CAPITAL'S LIMITED OBJECTION TO  
DEBTORS' BIDDING PROCEDURES AND SALE MOTION**

The above-captioned debtors and debtors in possession (collectively, "Anagram" or the "Debtors") respectfully submit this reply (this "Reply") to Silver Point Capital's (collectively with the funds and/or accounts that it manages, "Silver Point") limited objection (Docket No. 153) (the "Objection") to the *Emergency Motion of Debtors for Entry of an Order (I)(A) Approving the Bidding Procedures for Sale of Debtors' Assets, (B) Approving Stalking Horse Bid Protections, (C) Scheduling Certain Dates With Respect Thereto, (D) Approving Form and Manner of Notices of Thereof and (E) Approving Contract Assumption and Assignment Procedures, (II)(A) Approving Sale of Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and (B) Authorizing Assumption and Assignment Of Executory Contracts and Unexpired Leases and (III) Granting Related Relief* (Docket No. 26) (the "Bidding Procedures Motion")<sup>2</sup>, and state

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Anagram Holdings, LLC (8535); Anagram International, Inc. (2523) and Anagram International Holdings, Inc. (5837). The location of the Debtors' service address for purposes of these chapter 11 cases is: 7700 Anagram Drive, Eden Prairie, MN 55344. For the avoidance of doubt, the Debtors' chapter 11 cases are not proposed to be consolidated with Party City Holdco Inc. and its affiliate debtors (collectively, "Party City") which emerged from chapter 11 cases in this Court on October 12, 2023. *See In re Party City Holdco Inc., et. al.*, Case No. 23-90005 (MI) (Bankr. S.D. Tex). Any reference herein to the Debtors does not include the debtor-entities that were administered in the Party City chapter 11 cases.

<sup>2</sup> Capitalized terms used but not defined in this Reply have the meanings ascribed to them in Bidding Procedures Motion or the *Declaration of Adrian Frankum in Support of Debtors' Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"), as applicable.



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as follows:

### **I. PRELIMINARY STATEMENT**

1. Other than Silver Point, not a single party, including Party City or the over 100 potential bidders that the Debtors have approached, is complaining about the Debtors' proposed sale timeline. That is not surprising because the sales process the Debtors have conducted to date, and will conclude over the next month, gives potential buyers enough time to complete diligence and submit firm bids. In fact, to avoid any doubt, the Debtors have further extended the bid deadline by two (2) weeks to December 15, 2023—the maximum amount that the Debtors can unilaterally extend the timeline without breaching the agreed milestones in the Stalking Horse APA.

2. Only Silver Point has objected, and despite its declarations to the contrary, it is economically motivated to favor Party City over Anagram. According to public filings related to Party City's chapter 11 cases, Silver Point held approximately \$368 million of Party City debt,<sup>3</sup> which has been converted into approximately 41% of Party City's reorganized equity, making it the largest shareholder among Party City's latest Schedule 13D filers.<sup>4</sup> By contrast, according to its Objection, Silver Point holds approximately \$31 million of second-lien Anagram debt. Objection ¶ Preamble n.2.

3. Moreover, Silver Point contractually agreed not to use its position as a Second Lien Noteholder to interfere with a sales process supported by the First Lien Noteholders. The First Lien/Second Lien Intercreditor Agreement, dated as of July 30, 2020 (the "Intercreditor

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<sup>3</sup> *Joint Verified Statement of Davis Polk & Wardwell LLP and Haynes and Boone, LLP Pursuant to Federal Rule of Bankruptcy Procedure 2019, In re Party City Holdco Inc., et. al.*, Case No. 23-90005 (MI) (Bankr. S.D. Tex Jan. 20, 2023) (Docket No. 150).

<sup>4</sup> *See* Party City Holdco Inc., Schedule 13D, October 12, 2023, available at <https://www.sec.gov/Archives/edgar/data/1592058/000119312523260903/d735733dsc13d.htm>.

Agreement”)<sup>5</sup>, which governs the Second Lien Notes, could not be clearer. Silver Point disregards the Intercreditor Agreement, relying on an illogical and incorrect reading of the Intercreditor Agreement. Not surprisingly, Silver Point offers no applicable legal authority to support its position.

4. Notwithstanding Silver Point’s motive and lack of standing, the Debtors will establish at the Bid Procedures Hearing that Silver Point’s Objection has no merit, that the Bidding Procedures are a reasonable exercise of the Debtors’ business judgement, and that the sale timeline proposed by the Debtors is well-designed to facilitate a value-maximizing sale. Silver Point’s proposed timeline also disregards (and would put at jeopardy) the significant benefits to the Debtors’ estates that are locked into the Stalking Horse APA—such as the Stalking Horse Bidder’s agreement to assume all trade claims (pre- and post-petition) and hire all of the Debtors’ employees. Silver Point suggests that the Debtors should (i) simply disregard the Stalking Horse APA Milestones and the DIP Milestones in the hopes that more time (that the Debtors do not believe is necessary) will yield a higher or better bid and (ii) assume that the Stalking Horse Bidder and the noteholders under the DIP Notes Facility (the “DIP Noteholders”) will simply wait and not exercise remedies. The Debtors do not have that luxury and cannot adopt Silver Point’s ill-advised strategy.

## II. REPLY

### A. Silver Point’s Objection Violates the Intercreditor Agreement

5. Pursuant to the Intercreditor Agreement, the Second Lien Notes Trustee agreed, for itself and on behalf of each other Secured Party under the Second Lien Pledge and Security

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<sup>5</sup> See Exhibit 4 in *Debtors’ Witness and Exhibit List for Hearing on November 20, 2023* (“W&E List”).

Agreement<sup>6</sup> (collectively, the “Second Priority Secured Parties”), not to oppose or object to (and not to otherwise contest or support any party objecting to) certain actions in these chapter 11 cases, including:

any sale, transfer or other disposition of any Collateral free and clear of the Second Priority Liens or other claims under Section 363 of the Bankruptcy Code or any comparable provision of any other Bankruptcy Law (*including, for the avoidance of doubt, the approval of bidding procedures in connection therewith or any other related or ancillary matters*) (a “363 Sale”), if the First Priority Secured Parties, or a representative authorized by the requisite First Priority Secured Parties, shall consent to such sale or other disposition . . . .

Intercreditor Agreement § 7.01 (emphasis added).

6. Silver Point contends that, because it is a beneficial holder of Second Lien Notes and not a registered holder, it is not a Second Priority Secured Party and thus is not bound by this restriction. Objection ¶¶ 20-26. Silver Point’s interpretation strains credulity. If this restriction in the Intercreditor Agreement does not apply, as Silver Point suggests, to the beneficial holders of the Second Lien Notes, then the Intercreditor Agreement would be toothless and serve no benefits to senior lenders, because the junior parties with the real economic interests could act with impunity.

7. Silver Point’s interpretation also cannot be reconciled with the Second Lien Indenture (the “Indenture”).<sup>7</sup> The rights and obligations thereunder are also delegated to the “Holders” and therefore, under Silver Point’s theory, beneficial holders could not enforce the Indenture. In addition, the Indenture makes clear that the bonds are subject to the terms of the Intercreditor Agreement so a beneficial holder takes the bonds with those imbedded restrictions.<sup>8</sup>

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<sup>6</sup> See Exhibit 7 in W&E List.

<sup>7</sup> See Exhibit 6 in W&E List.

<sup>8</sup> See *id.*, § 11.02.

**B. Silver Point’s Motivations are to Benefit Party City, not Anagram, and its Objection Should be Viewed in That Context**

8. As Silver Point buries in a footnote, it is a “significant shareholder” of Party City. Objection ¶ Preamble n.2. This glosses over the extent to which Silver Point’s investments are heavily weighted toward Party City. According to the 2019 statement filed in the Party City bankruptcy, Silver Point held approximately \$368 million in Party City debt, as compared with the approximately \$31 million that it has invested in Anagram.<sup>9</sup>

9. No updated 2019 statements were filed, suggesting Silver Point’s investments did not materially change during the Party City chapter 11 cases. Silver Point was also a backstop party of a rights offering.

10. Under the Party City plan of reorganization, the *ad hoc* group of Party City noteholders (the “PC Noteholder Group”) among whom, Silver Point held one of the largest positions in Party City debt, received nearly all of the reorganized equity in Party City, as well as a substantial amount of “take-back” debt. Under Party City’s Stockholders Agreement that was filed in its plan supplement<sup>10</sup> and became effective on October 12, 2023,<sup>11</sup> Silver Point is designated as one of two “Large Stockholders,” which endows it with certain governance rights, including the right to appoint two of the five Party City directors. Silver Point’s real economic interest therefore lies with the Debtors’ shareholder, not with the Debtors themselves.

11. Furthermore, Silver Point fails to disclose the *complete* history of Party City’s relationship with Anagram and Silver Point’s involvement leading up to these chapter 11 cases.

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<sup>9</sup> See Joint Verified Statement of Davis Polk & Wardwell LLP and Haynes and Boone, LLP Pursuant to Fed. Rule of Bankr. Procedure 2019, *In re Party City Holdco Inc., et. al.*, Case No. 23-90005 (MI) (Bankr. S.D. Tex Jan. 20, 2023) (Docket No. 150).

<sup>10</sup> See Exhibit D, *In re Party City Holdco Inc., et. al.*, Case No. 23-90005 (MI) (Bankr. S.D. Tex Sept. 6, 2023) (Docket 1705-3).

<sup>11</sup> See Party City Holdco Inc., Form 8-K, October 12, 2023, *Exhibit 10.4*, available at [https://www.sec.gov/Archives/edgar/data/1592058/000095014223002592/eh230409100\\_ex1004.htm](https://www.sec.gov/Archives/edgar/data/1592058/000095014223002592/eh230409100_ex1004.htm).

As described in the First Day Declaration, beginning in early 2023, the PC Noteholder Group (which included Silver Point as one of its largest holders) insisted that Party City either renegotiate the Anagram-Party City Contracts or reject them, which would leave Anagram without important services. In the months preceding these chapter 11 cases, Anagram and Party City were in discussions regarding a potential path forward, whether a separation or a continuation of their status quo relationship. These negotiations were driven in large part by the key economic parties—the Anagram Ad Hoc Group and the PC Noteholder Group.

12. Ultimately, the Anagram Ad Hoc Group and the PC Noteholder Group could not agree on terms to preserve the existing relationship between Party City and Anagram. Instead, the two groups negotiated the principal terms of an agreed transition period to facilitate a controlled separation of the Debtors and Party City. Party City publicly announced this deal on July 31, 2023 but, only weeks later, failed to honor the agreed terms, leaving the Debtors with an uncertain future and no viable alternative option.<sup>12</sup> Since that time, the Debtors pursued a dual track strategy of planning for a standalone future, but at the same time engaging with Party City on transition services or, alternatively, an agreement that would keep Party City and Anagram together. Despite Anagram’s repeated entreaties, no deal with Party City was forthcoming, leaving it with no choice but to pursue a sales process for an independent future. Accordingly, Silver Point’s criticism of the Debtors for not commencing the sale process sooner is disingenuous because the Debtors were on their way down an alternative path that was only abandoned after Party City and the PC Noteholder Group reneged on the parties’ agreement in principle.<sup>13</sup>

13. Similarly, Silver Point’s assertion that more time is necessary for “bidders to gain

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<sup>12</sup> See Transcript of Hearing on Disclosure Statement Approval, July 31, 2023 at 21:22-25, *In re Party City Holdco Inc., et. al.*, Case No. 23-90005 (MI) (Bankr. S.D. Tex Aug. 7, 2023) (Docket No. 1536).

<sup>13</sup> See First Day Declaration ¶ 73.

better clarity regarding the status of the Debtors' significant relationship with Party City" should be rejected. Objection ¶ 2. The Debtors have waited long enough for clarity from Party City regarding the parties' go-forward relationship and, if history is a guide, an extended sale process will not provide buyers with the "concrete understanding" that Silver Point alleges they are looking for. Objection ¶ 16.

14. Only Party City (and, by extension, Silver Point) knows whether it is interested in a transition service arrangement with Anagram and, consistent with past practice, the Debtors remain ready and able to quickly negotiate with Party City. However, the Debtors need a willing and good faith partner to achieve any resolution. The Debtors are not willing to risk losing the Stalking Horse Bid based on Silver Point's assertion that it and Party City need more time to decide whether they want to buy a company they currently own (and which Party City has owned for approximately 25 years).

**C. The Bidding Procedures and Related Deadlines are a Reasonable Exercise of the Debtors' Business Judgment**

15. In any event, as described in the Bidding Procedures Motion, the Bidding Procedures and the deadlines proposed therein (the "Bidding Procedures Deadlines") are a sound exercise of the Debtors' business judgment because they provide sufficient time for the Debtors to adequately market and sell their assets while preserving the certainty provided by the Stalking Horse Bid.

16. As discussed in the First Day Declaration and the *Declaration of Ajay Bijoor in Support of Debtors' Emergency Motion for Approval of Bidding Procedures and Related Relief* (Docket No. 145) (the "Bijoor Sale Declaration"), the Stalking Horse Bid is essential to set a floor on the value of the Debtors' estates and is particularly attractive because it includes: (i) a credit bid of amounts outstanding under the DIP Notes Facility and the First Lien Notes, (ii) an offer of

employment to all of the Debtors' employees with benefits that are no less favorable than those currently provided, (iii) the assumption of all of the Debtors' trade claims (pre- and post-petition), and (iv) a minimum cash payment to help fund the wind down of the Debtors' estates. *See* Bijoor Sale Declaration ¶ 7. The Stalking Horse Bidder insisted on the Bidding Procedures Deadlines and the Debtors, in their reasonable business judgment, concluded that it was essential to lock in the benefits provided by the Stalking Horse Bid and that the proposed sale timeline was adequate considering the pre-filing marketing process that the Debtors had already commenced.

17. It would be contrary to the Debtors' business judgment to risk losing the Stalking Horse Bid by violating the Stalking Horse APA Milestones and the DIP Milestones under Silver Point's "Modified Deadlines," Objection ¶ 12, for the theoretical possibility that more time will yield a higher or better bid. If the Debtors receive an offer that is higher or better than the Stalking Horse Bid, they have flexibility in their DIP Milestones to extend the sale process. But unless and until a binding higher or better bid is received, the Debtors cannot be compelled to take a risk that the Stalking Horse Bidder will terminate the Stalking Horse APA.

18. Silver Point's contention that the Debtors' business is not a "melting ice cube" and therefore a "quick" timeline is not necessary is a red herring and should also be rejected. First, for the reasons stated above and as the evidence will show, the Debtors' proposed timeline is not "quick" or "short"; it is adequate under the circumstances and sufficient to yield the highest or best offer. In addition, the Debtors negotiated significant benefits in the Stalking Horse APA but had to recognize the Stalking Horse Bidder's and DIP Noteholders' desire to minimize the costs of administration of the chapter 11 cases. Although the Debtors project adequate liquidity post-closing, the DIP Noteholders and Stalking Horse Bidder would much prefer that those funds be available for the go-forward business, including to satisfy claims that the Stalking Horse Bidder is



voluntarily assuming (after hard-fought negotiation by the Debtors), not for costs of administering an extended case. The Debtors agree.

19. Accordingly, the Debtors' business judgment in setting the proposed bidding timeline is well-supported and should not be overturned.

*[Remainder of page intentionally left blank]*

WHEREFORE, the Debtors respectfully request that the Court overrule the Objection and enter the Bidding Procedures Order substantially in the form filed at Docket No. 163 and grant such other relief as the Court deems appropriate under the circumstances.

Dated: November 19, 2023

Respectfully submitted,

By: /s/ Tom A. Howley

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**Certificate of Service**

I certify that on November 19, 2023, I caused a copy of the foregoing Reply to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Tom A. Howley

Tom A. Howley