

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

)))
In re:))	Chapter 11	
))		
PGX HOLDINGS, INC., <i>et al.</i> , ¹))	Case No. 23-10718 (CTG)	
))		
Debtors.))	(Joint Administration Requested)	
))		

**MOTION OF DEBTORS FOR ENTRY
OF INTERIM AND FINAL ORDERS (I) AUTHORIZING
THE DEBTORS TO MAINTAIN AND ADMINISTER THEIR
EXISTING CUSTOMER PROGRAMS AND HONOR CERTAIN PREPETITION
OBLIGATIONS RELATED THERETO AND (II) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) state as follows in support of this motion:²

Relief Requested

1. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and the “Final Order”), (a) authorizing, but not directing, the Debtors to maintain and administer their customer-related programs (collectively, the “Customer Programs”) as described in this Motion and honor certain undisputed prepetition obligations related thereto; and (b) granting related relief.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: PGX Holdings, Inc. (2510); Credit Repair UK, Inc. (4798); Credit.com, Inc. (1580); Creditrepair.com Holdings, Inc. (7536); Creditrepair.com, Inc. (7680); eFolks Holdings, Inc. (5213); eFolks, LLC (5256); John C. Heath, Attorney At Law PC (8362); Progrexion ASG, Inc. (5153); Progrexion Holdings, Inc. (7123); Progrexion IP, Inc. (5179); Progrexion Marketing, Inc. (5073); and Progrexion Teleservices, Inc. (5110). The location of the Debtors’ service address for purposes of these chapter 11 cases is: 257 East 200 South, Suite 1200, Salt Lake City, Utah 84111.

² A detailed description of the Debtors and their business, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of Chad Wallace, Chief Executive Officer of PGX Holdings, Inc., in Support of Chapter 11 Filing and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith on June 4, 2023 (the “Petition Date”) and incorporated by reference herein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.



In addition, the Debtors request that the Court schedule a final hearing approximately 21 days from the Petition Date.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Debtors confirm their consent, pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

4. The statutory bases for the relief requested herein are sections 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rules 2002-1 and 9013-1.

Background

5. The Debtors are one of the nation’s leading credit repair service providers, helping customers repair their credit and achieve their credit goals. Setting the industry standard for transparency, cutting edge technology-enabled solutions, and quality customer service, the Debtors help consumers access and understand the information contained in their credit reports, ensure that the information contained in those reports is fair, accurate, and complete, and address other factors that may negatively impact their credit scores. The Debtors are headquartered in Salt

Lake City, Utah and have employees in nine other states. Debtor PGX Holdings, Inc. and Debtor John C. Heath, Attorney At Law PC d/b/a Lexington Law Firm (“Lexington Law”) generated approximately \$388 million in combined revenue in 2022. As of the Petition Date, the Debtors have approximately \$423 million in funded-debt obligations.

6. As set forth in greater detail in the First Day Declaration, certain Debtors are currently involved in litigation with the Consumer Financial Protection Bureau (the “CFPB”) before the United States District Court for the District of Utah (the “District Court”). In such litigation, on five separate counts, the CFPB alleged that the defendant Debtors committed certain violations of federal consumer protection law through operation of their consumer assistance and credit repair business. On March 10, 2023, the District Court granted partial summary judgment against these Debtors on the first count in the litigation, finding that the billing practices were in violation of 16 C.F.R. § 310.4(a)(2), the Telemarketing Sales Rule (the “TSR”). In connection with the first count, the CFPB demanded nearly \$3 billion in restitution or refunds and other monetary relief, along with certain injunctive relief.

7. In response to the District Court’s ruling on the TSR count, and a subsequent denial of a stay of the ruling, the Debtors immediately stopped certain telemarketing activities, closed many of their call centers, and began evaluating the impact of the ruling on the future of their business, a process that remains ongoing. Following the Debtors’ reduction of business operations, the Debtors’ revenues also declined. Upon further review, the Debtors determined that their liquidity would continue to be severely constrained and their debt obligations are now unsustainable in light of their smaller operational footprint and decreased revenues going forward. The Debtors have commenced these chapter 11 cases to fully and fairly resolve their liabilities,

with the aim of preserving value for stakeholders and maintaining the ability to deliver best-in-class crucial credit repair services to customers.

8. On the Petition Date, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this motion, the Debtors filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no official committees have been appointed or designated.

Description of Customer Programs

9. The Debtors provide services to customers across the United States who seek to access and understand the information contained in their credit reports and to ensure such information contained is fair, accurate, and substantiated. In the twelve-month period ending in March 2023, the Debtors provided such services to more than 2.18 million customers. These customers fall into the following categories:

- **Lexington Law.** John C. Heath, Attorney At Law PC (d/b/a Lexington Law) (“Lexington Law”), a law firm, provides credit-related legal counseling to clients. The Debtors (other than Lexington Law) support Lexington Law by providing certain sales and marketing, custom software, technology, and administrative services. In the twelve-month period ending in March 2023, Debtor Lexington Law provided services to more than 1.13 million clients. Such services provided by the Debtors accounted for approximately eighty-eight percent of revenue over the same time period.
- **Creditrepair.com.** The Debtors provide certain credit report repair and monitoring services to customers on a direct-to-consumer basis through Creditrepair.com. In the twelve-month period ending in March 2023, the Debtors provided such services to approximately 110,000 customers that, collectively, accounted for approximately ten percent of the Debtors’ revenue during that timeframe.
- **Credit.com.** The Debtors provide certain services directly to customers through Credit.com, a website that matches customers to a financial product such as a credit

card or loan and provides consumers access to free credit scores, educational content, and other tools. The Debtors provided such services to approximately 940,000 customers in the twelve-month period ending in March 2023, accounting for approximately two percent of the Debtors' revenue over that same period. In addition, Credit.com has attracted website traffic of approximately 549,000 visitors per month for the twelve months ending April 2023.

10. The Debtors have significant market presence with each category of customer, and the Lexington Law and Creditrepair.com brands are highly-ranked brand names in the industry. Accordingly, maintaining the loyalty, support, and goodwill of their customers is critical to the Debtors' reorganization efforts. In addition, the Debtors must maintain positive customer relationships and their reputation for reliability to ensure that their customers continue to purchase the Debtors' products and services.

11. To that end, and consistent with common industry practice, the Debtors have historically provided certain Customer Programs including incentives, discounts, and accommodations to their customers to attract and maintain positive customer relationships. The Debtors believe that their ability to continue the Customer Programs and to honor their obligations thereunder in the ordinary course of business is necessary to retain their reputation for reliability, to meet competitive market pressures, and to ensure customer satisfaction, thereby retaining current customers, attracting new ones, and, ultimately, enhancing revenue and profitability for the benefit of all of the Debtors' stakeholders. In light of the importance of the Customer Programs to the Debtors' businesses, the Debtors request authority to continue to honor obligations related to these programs in the ordinary course of business.

12. The Debtors estimate that, of their prepetition obligations under the Customer Programs, they owe approximately \$165,000 on account of customer refunds, but have no other accrued adjustments, discounts, or other similar obligations owing to their customers.

I. The “Right to Rescission” Period and the Refund Program.

13. The Debtors comply with “right-to-rescission” laws around the country in connection with the sale of their credit report repair and monitoring services. Pursuant to these state laws, customers have the right to cancel, within a specified period of time, contracts they execute for credit report repair and monitoring services. The Debtors follow California law, pursuant to which customers in California have until midnight on the fifth business day after executing a contract for credit repair products or services to rescind, or cancel, that contract. Customers in other states have five days during which they can cancel or rescind contracts for credit repair products or services. The Debtors do not charge customers during the rescission period.

14. Separately, the Debtors also operate a refund program (the “Refund Program”), providing refunds to customers who are dissatisfied with the services or products they have purchased.³ The Debtors also provide a goodwill refund in certain situations, such as if a customer incurred an overdraft fee when a payment was attempted. Pursuant to the Refund Program, customers are generally refunded the full purchase price in the manner in which they purchased the services or, if the Debtors are not able to refund the amount to the customer’s payment information on file, customers are generally issued checks to refund the purchase price. There is no time limit in which customers can receive a refund. From April 2022 to March 2023, the Debtors issued approximately \$6.65 million in the aggregate to customers on account of the Refund Program.

³ For the avoidance of doubt, in light of the nature of legal services, Debtor Lexington Law has historically considered providing refunds to clients on a case-by-case basis in light of the particular facts and circumstances, but Lexington Law has no standard refund policy or satisfaction guarantee.

15. Programs like the Refund Program are common in these Debtors' industry, and similar programs are used by the Debtors' competitors. Maintaining the Refund Program is critical to maintaining the goodwill of the customer base. Without the Refund Program, potential customers may be unwilling to transact with certain Debtors, which could lead to a decline in revenues, the ultimate cost of which would be borne by the Debtors' estates.

16. The Debtors estimate that, of their prepetition obligations under the Customer Programs, they owe approximately \$165,000 on account of customer refunds.⁴ The Debtors seek authorization to pay these outstanding customer refunds, as well as to continue honoring their obligations in connection with the Refund Program in a manner consistent with their past practices.

II. Discounts.

17. In the ordinary course of business, the Debtors offer certain special-rate pricing discounts to their customers. From April 2022 to March 2023, the market value of the Debtors' discounts to customers was approximately \$50 million in the aggregate. For example, the Debtors (other than Lexington Law) have historically offered preferred pricing to customers who purchase multiple services for other members in the same household or certain one-time price discounts, historically at rates no greater than fifteen percent off the non-discounted price. Lexington Law has historically offered certain price discounts to incentivize signups, such as when a client's engagement includes their spouse or significant other (historically no more than fifty percent off the non-discounted price), along with other discount structures.

⁴ Approximately \$46,000 of such amount is owing based on outstanding checks. The remaining balance consists of refunds to be made on credit cards and debit cards.

18. Although the Debtors are not obligated to offer their customers such discounts, the Debtors believe that the discounts are in the best interest of the customers, as well as in their own best interests to help to grow the client base and inure to the benefit of the estates. As of the Petition Date, the Debtors estimate that there are no outstanding prepetition discounts owed to any customers, as such amounts are settled on a daily basis.

III. Credit Card and Other Payment Processors.

19. In addition to cash, the Debtors accept the following methods of payment from customers via online points of sale: (i) Visa, MasterCard, and Discover credit cards; (ii) debit cards; and (iii) checks (the “Non-Cash Payments”). To process Non-Cash Payments, the Debtors are party to certain agreements (the “Payment Processing Agreements”) with payment processors (the “Payment Processing Companies”). Pursuant to the Payment Processing Agreements, the Debtors generally receive the net customer sales less any chargebacks and processing fees charged (the “Processing Fees”). The fees owing to these companies are set off from the funds that are remitted to the Debtors on account of the Non-Cash Payments on a daily basis.

20. When customers dispute charges with a Payment Processing Company, the Debtors typically refund to such Payment Processing Company the purchase price of the disputed product or service, subject to certain adjustments (collectively, “Chargebacks,” and together with the Processing Fees, the “Processing Obligations”). Generally, Chargebacks are satisfied by netting the amount charged against pending payments owed by a Payment Processing Company to the Debtors. It is possible that certain Processing Obligations incurred by the Debtors immediately prior to the Petition Date may not have been fully netted out against the payments received by the Debtors prior to the Petition Date.

21. The Debtors’ continued acceptance of Non-Cash Payments is essential to the operation of the Debtors’ businesses because the majority of the Debtors’ sales are made using

Non-Cash Payments. Declining to accept Non-Cash Payments would have a severe negative effect on the Debtors' ongoing operations, the cost of which would be borne by their estates. To avoid disrupting these vital payment processing services, the Debtors seek authority to continue paying the Processing Obligations in the ordinary course of their business pursuant to the terms of the Payment Processing Agreements, and request that the Court authorize the Payment Processing Companies to continue to set off the Processing Obligations against amounts remitted to the Debtors, whether arising before or after the Petition Date, in a manner consistent with past practices.

Basis for Relief

I. Continuing to Honor the Customer Programs in the Ordinary Course Is Warranted Under Sections 105(a) and 363(b) of the Bankruptcy Code.

22. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business's going-concern value. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 825–26 (D. Del. 1999); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175–76 (Bankr. S.D.N.Y. 1989); *Armstrong World Indus., Inc. v. James A. Phillips, Inc.*, 29 B.R. 391, 398 (S.D.N.Y. 1983). In so doing, these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims.

23. Section 363(b) of the Bankruptcy Code permits a bankruptcy court, after notice and a hearing, to authorize a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). “In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions.” *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward*

Holding Corp. (In re Montgomery Ward Holding Corp.), 242 B.R. 147, 153 (D. Del. 1999) (collecting cases); *see also Armstrong World*, 29 B.R. at 397 (relying on section 363 to allow contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to debtors); *Ionosphere Clubs*, 98 B.R. at 175 (finding that a sound business justification existed to justify payment of certain prepetition wages); *In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring the debtor to show a “good business reason” for a proposed transaction under section 363(b)).

24. Courts also authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code, which codifies a bankruptcy court’s inherent equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a) of the Bankruptcy Code, courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor’s business. *See Just for Feet*, 242 B.R. at 825–26. Specifically, a court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the “necessity of payment” rule (also referred to as the “doctrine of necessity”). *See, e.g., Ionosphere Clubs*, 98 B.R. at 176; *In re Lehigh & New England Ry Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (stating that courts may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); *see also In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the business). A bankruptcy court’s use of its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate

the rehabilitation of the debtor is not a novel concept.” *See Ionosphere Clubs*, 98 B.R. at 175–76 (citing *Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286 (1882)). Indeed, at least one court has recognized that there are instances when a debtor’s fiduciary duty can “only be fulfilled by the preplan satisfaction of a prepetition claim.” *See CoServ*, 273 B.R. at 497.

25. Continuing to administer the Customer Programs without interruption during these chapter 11 cases will help preserve and expand the Debtors’ valuable customer relationships and goodwill, that will inure to the benefit of all of the Debtors’ creditors and stakeholders. Importantly, the Debtors’ competitors maintain similar customer programs. Thus, if the Debtors are unable to continue their Customer Programs postpetition and satisfy obligations related thereto in the ordinary course of business, the Debtors risk alienating their customer base and losing it to their competitors. Loss of customer loyalty at this early stage in the proceedings could significantly impair the Debtors’ prospects for a value-maximizing reorganization.

26. In similar circumstances, where retaining the loyalty and patronage of customers is critical to a successful reorganization, courts in this district routinely authorize the continuation of customer programs. *See, e.g., In re Lannett Co., Inc.*, No. 23-10559 (JKS) (Bankr. D. Del. May 5, 2023) (authorizing continuation of customer programs on an interim basis); *In re Carestream Health, Inc.*, No. 22-10778 (JKS) (Bankr. D. Del. Aug. 24, 2022) (authorizing continuation of customer programs on a final basis); *In re Riverbed Tech., Inc.*, No. 21-11503 (CTG) (Bankr. D. Del. Nov. 18, 2021) (same); *In re Clover Techs. Grp., LLC*, No. 19-12680 (KBO) (Bankr. D. Del. Jan. 1, 2020) (same); *In re Dura Auto., LLC*, No. 19-12378 (KBO) (Bankr. D. Del. Nov. 19, 2019) (same).⁵

⁵ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors’ proposed counsel.

27. Accordingly, the Debtors submit that the substantial benefit conferred on the Debtors' estates by the Customer Programs warrants the authority to honor the Customer Programs and any obligations relating thereto, whether arising prepetition or postpetition, and to continue to administer their Customer Programs in the ordinary course of business.

Processing of Checks and Electronic Fund Transfers Should Be Authorized

28. The Debtors have sufficient funds to pay the amounts described in this motion in the ordinary course of business by virtue of access to cash on hand and anticipated access to cash collateral and debtor-in-possession financing. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to any authorized payment in respect of the relief requested herein. Accordingly, the Debtors do not believe that checks or wire transfer requests, other than those relating to authorized payments, will be inadvertently honored. Therefore, the Debtors request authority, but not direction, to authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this motion.

The Requirements of Bankruptcy Rule 6003(b) Are Satisfied

29. Bankruptcy Rule 6003 empowers a court to grant certain relief within the first twenty-one days after the petition date only "to the extent that relief is necessary to avoid immediate and irreparable harm." For the reasons discussed above, the Debtors believe an immediate and orderly transition into chapter 11 is critical, and the failure to receive the requested relief during the first twenty-one days of these chapter 11 cases could impact the Debtors' operations at this important juncture. The requested relief is necessary for the Debtors to operate their businesses in the ordinary course, preserve the ongoing value of their operations, and maximize value of their estates for the benefit of all stakeholders. The Debtors have demonstrated

that the requested relief is “necessary to avoid immediate and irreparable harm,” as contemplated by Bankruptcy Rule 6003, and the Court should grant the requested relief.

Reservation of Rights

30. Nothing contained in this motion or any order granting the relief requested in this motion, and no action taken by the Debtors pursuant to the relief requested or granted (including any payment made in accordance with any such order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, priority, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors’ or any other party in interest’s rights to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in this motion or any order granting the relief requested by this motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors’ estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law. If the Court grants the relief sought herein, any payment made pursuant to the Court’s order is not intended and should not be construed as an admission as to the validity, priority, or amount of any particular claim or a waiver of the Debtors’ rights to subsequently dispute such claim.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

31. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

Notice

32. The Debtors will provide notice of this motion to: (a) the United States Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the office of the attorney general for each of the states in which the Debtors operate; (d) the United States Attorney's Office for the District of Delaware; (e) the Internal Revenue Service; (f) the United States Securities and Exchange Commission; (g) the United States Department of Justice; (h) the DIP Agent and counsel thereto; (i) First Lien Credit Agreement Agent and counsel thereto; (j) the Second Lien Credit Agreement Agent and counsel thereto; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002 (the "Notice Parties"). As this motion is seeking "first day" relief, within two business days of the hearing on this motion, the Debtors will serve copies of this motion and any order entered in respect to this motion as required by Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

33. No prior request for the relief sought in this motion has been made to this or any other court.

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WHEREFORE, the Debtors request entry of the Interim Order and Final Order, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, (a) granting the relief requested herein and (b) granting such other relief as the Court deems appropriate under the circumstances.

Dated: June 4, 2023
Wilmington, Delaware

/s/ Domenic E. Pacitti

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*Proposed Co-Counsel to the Debtors and Debtors in
Possession*

Exhibit A

Proposed Interim Order

to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion 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 Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion 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 Motion 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 Motion is granted on an interim basis as set forth herein.
2. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2023, at ___:___ .m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on _____, 2023 and shall be served on: (a) the Debtors, 257 East 200 South, Suite 1200, Salt Lake City, Utah 84111, Attn.: Eric Kamerath; (b) proposed counsel to the Debtors (i) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Joshua A. Sussberg, P.C. (joshua.sussberg@kirkland.com), (ii) Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois, 60654, Attn.: Spencer Winters (spencer.winters@kirkland.com), Whitney C. Fogelberg (whitney.fogelberg@kirkland.com), and Alison J. Wirtz (alison.wirtz@kirkland.com), (iii) Klehr Harrison Harvey Branzburg LLP, 919 North Market Street, Suite 1000, Wilmington, Delaware 19801, Attn.: Domenic E. Pacitti (dpacitti@klehr.com) and Michael W. Yurkewicz (myurkewicz@klehr.com), and (iv) Klehr Harrison Harvey Branzburg LLP, 1835 Market Street, Suite 1400, Philadelphia, Pennsylvania 19103, Attn.: Morton R. Branzburg

(mbranzburg@klehr.com); (c) the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn.: Jane Leamy (jane.m.leafy@usdoj.gov); and (d) any statutory committee appointed in these chapter 11 cases.

3. The Debtors are authorized, but not directed, to continue to administer the Customer Programs (including, but not limited to, those discussed in the Motion) currently in effect and honor any undisputed prepetition obligations related to the Customer Programs, in each case in the ordinary course of business, on an interim basis, consistent with prepetition practices, and to modify, replace, or terminate any Customer Program in the ordinary course of business.

4. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

5. Notwithstanding anything to the contrary in this Interim Order, any payment made, or authorization contained, hereunder, shall be subject to the "Approved Budget" as defined in the order of the Court approving debtor-in-possession financing in these chapter 11 cases.

6. Nothing contained in the Motion or this Interim Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Interim Order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount, validity or priority of, or basis for any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim;

(d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in the Motion or this Interim Order; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

7. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

8. The Debtors have demonstrated that the requested relief is "necessary to avoid immediate and irreparable harm," as contemplated by Bankruptcy Rule 6003.

9. Nothing in this Interim Order authorizes the Debtors to accelerate any payments not otherwise due prior to the date of the Final Hearing.

10. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

11. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

12. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

13. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

14. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

Exhibit B

Proposed Final Order

district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion 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 Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion; and this Court having determined that the legal and factual bases set forth in the Motion 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 Motion is granted on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to continue to administer the Customer Programs (including, but not limited to, those discussed in the Motion) currently in effect and honor any undisputed prepetition obligations related to the Customer Programs, in each case in the ordinary course of business, on a final basis, consistent with prepetition practices, and to modify, replace, or terminate any Customer Program in the ordinary course of business.
3. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.
4. Notwithstanding anything to the contrary in this Final Order, any payment made, or authorization contained, hereunder, shall be subject to the "Approved Budget" as defined in the order of the Court approving debtor-in-possession financing in these chapter 11 cases.

5. Nothing contained in the Motion or this Final Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Final Order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount, validity or priority of, or basis for any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in the Motion or this Final Order; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

6. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

7. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

8. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

9. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

10. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.