

**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.	(Jointly Administered)
	Ref Docket Nos. 6, 17, 66 & 124

NOTICE OF DEPOSITION OF JOHN HEATH

PLEASE TAKE NOTICE that, pursuant to Rules 30 and 45, of the Federal Rules of Civil Procedure made applicable to these proceedings through Rules 9014, and 9016, counsel for Official Committee of Unsecured Creditors (the “Committee”), by and through his undersigned counsel, hereby provides notice to all parties that the Committee intends to serve the attached subpoena (the “Subpoena”) to take the deposition upon oral examination of John Heath, in connection with the pending (i) *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief* [Docket No. 6], (ii) *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (v) Granting Related Relief* [Docket No. 17], (iii) *Motion of the Debtors for Entry of Orders (I)(A) Approving Bidding Procedures for Substantially All of the*

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.



Debtors' Assets, (B) Authorizing the Debtors to Enter Into One or More Stalking Horse Agreements and to Provide Bidding Protections Thereunder, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, and (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interest and Encumbrances and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief [Docket No. 66], and (iv) Debtors' Application for Entry of Order (I) Authorizing the Employment and Retention of Greenhill & Co., LLC as Financial Advisor and Investment Banker to the Debtors and Debtors in Possession, Effective as of Petition Date, and (II) Granting Related Relief [Docket No. 124].

PLEASE TAKE FURTHER NOTICE that, as indicated on the face of the Subpoena, the deposition will be conducted at the offices of Fabian Vancott, located at 95 South State, Suite 2300, Salt Lake City, UT 84111, and remotely via Zoom video conferencing on **Wednesday, July 26, 2023**, beginning at 10:00 a.m. (Mountain Daylight Time).

PLEASE TAKE FURTHER NOTICE that the deposition will be conducted consistent with the Federal Rules of Civil Procedure, it shall be recorded stenographically and by sound and video before an officer authorized to administer oaths by the laws of the United States or by a person appointed by the court, and will continue from day to day until completed or as otherwise agreed by those present.

[Signature Page Follows]

Dated: July 18, 2023
Wilmington, Delaware

By: /s/ Tara C. Pakrouh
Eric J. Monzo (DE Bar No. 5214)
Brya M. Keilson (DE Bar No. 4643)
Tara C. Pakrouh (Bar No. 6192)
MORRIS JAMES LLP
500 Delaware Avenue, Suite 1500
Wilmington, DE 19801
Telephone: (302) 888-6800
Facsimile: (302) 571-1750
Email: emonzo@morrisjames.com
bkeilson@morrisjames.com
tpakrouh@morrisjames.com

-and-

Andrew I. Silfen (admitted *pro hac vice*)
Beth M. Brownstein (admitted *pro hac vice*)
ArentFox Schiff LLP
1301 Avenue of the Americas, 42nd Floor
New York, New York 10019
Telephone: (212) 484-3900
Facsimile: (212) 484-3990
Email: Andrew.Silfen@afslaw.com
Beth.Brownstein@afslaw.com

-and-

Justin A. Kesselman (admitted *pro hac vice*)
ArentFox Schiff LLP
800 Boylston Street, 32nd Floor
Boston, MA 02199
Telephone: (617) 973-6100
Facsimile: (617) 367-2315
E-mail: Justin.Kesselman@afslaw.com

*Proposed Counsel for the Official Committee
of Unsecured Creditors*

EXHIBIT A

Subpoena

UNITED STATES BANKRUPTCY COURT

for the District of Delaware

In re PGX HOLDINGS, INC., et al.

Debtor

(Complete if issued in an adversary proceeding)

Case No. 23-10718 (CTG)

Chapter 11

Plaintiff

v.

Adv. Proc. No.

Defendant

SUBPOENA TO TESTIFY AT A DEPOSITION IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: John Heath, 2875 S. Decker Lake Drive, Suite 200, West Valley City, UT 84119

(Name of person to whom the subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this bankruptcy case (or adversary proceeding). If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: PLACE (This deposition will be conducted at the offices of Fabian Vancott, 95 South State, Suite 2300, Salt Lake City, UT 84111) and DATE AND TIME (July 26, 2023 at 10:00 a.m. (MT))

The deposition will be recorded by this method: Stenographically and by sound and video

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: July 18, 2023

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Tara C. Pakrouh

Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party) Official Committee of Unsecured Creditors, who issues or requests this subpoena, are:

Eric J. Monzo, Brya M. Keilson, & Tara C. Pakrouh, Morris James LLP, 500 Delaware Avenue, Suite 1500 Wilmington, DE 1980, Email: emonzo@morrisjames.com bkeilson@morrisjames.com tpakrouh@morrisjames.com Andrew I. Silfen, Beth M. Brownstein, & Justin A. Kesselman, ArentFox Schiff LLP, 1301 Avenue of the Americas, 42nd Floor New York, New York 10019, Email: Andrew.Silfen@afslaw.com Beth.Brownstein@afslaw.com Justin.Kesselman@afslaw.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true and correct.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...
(g) Contempt. The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

PGX HOLDINGS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 23-10718 (CTG)

(Jointly Administered)

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of July, 2023, I caused to be filed with the Court electronically, and I caused to be served a true and correct copy of the *Notice of Deposition of John Heath* upon the parties that are registered to receive notice via the Court's CM/ECF notification system and an additional service was completed via electronic mail upon the parties listed on the attached service list.

/s/ Tara C. Pakrouh

Tara C. Pakrouh (Bar No. 6192)

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.

Service List

Kirkland & Ellis LLP
Joshua A. Sussberg, P.C.
601 Lexington Ave
New York, New York 10022
Email: joshua.sussberg@kirkland.com

Spencer Winters, Esq.
Whitney C. Fogelberg, Esq.
Alison J. Wirtz, Esq.
300 North LaSalle
Chicago, Illinois 60654
Email: spencer.winters@kirkland.com
whitney.fogelberg@kirkland.com
alison.wirtz@kirkland.com

and

Klehr Harrison Harvey Branzburg LLP
Domenic E. Pacitti, Esq.
Michael W. Yurkewicz, Esq.
919 North Market Street, Suite 1000
Wilmington, Delaware 19801
Email: dpacitti@klehr.com
myurkewicz@klehr.com

Morton R. Branzburg, Esq.
1835 Market Street, Suite 1400
Philadelphia, Pennsylvania 19103
Email: mbranzburg@klehr.com

*Proposed Counsel to the Debtors and Debtors
in Possession*