

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

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|  | ) |                                   |  |
| In re:   | ) | Chapter 11                        |  |
|  | ) |                                   |  |
| PGX HOLDINGS, INC., <i>et al.</i> , <sup>1</sup> | ) | Case No. 23-10718 (CTG)           |  |
|  | ) |                                   |  |
| Debtors.   | ) | (Jointly Administered)            |  |
|  | ) | <b>Re: Docket Nos. 6, 58, 154</b> |  |

**REPLY OF DEBTORS IN SUPPORT OF  
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**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully submit this reply (the “Reply”) to the objection of the Official Committee of Unsecured Creditors (the “Committee”) [Docket No. 154] (the “Objection”) and in further support of the *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] (the “Wages Motion”)<sup>2</sup>:

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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: 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); Progexion ASG, Inc. (5153); Progexion Holdings, Inc. (7123); Progexion IP, Inc. (5179); Progexion Marketing, Inc. (5073); and Progexion 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.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings set forth in the *Wages Motion* or the *Declaration of Chad Wallace, Chief Executive Officer of PGX Holdings, Inc., in Support of Chapter 11 Filing and First Day Motions* [Docket No. 12] (the “First Day Declaration”).



### **Introduction**

1. The Debtors commenced these cases to pursue a value-maximizing sale of substantially all of their assets and ensure the continuation of their businesses as a going concern. The Debtors' restructuring process, which comes in the wake of years of ongoing litigation with the CFPB, has been disruptive to ordinary course operations and required the Debtors' workforce to take on additional roles as they manage the business throughout the chapter 11 process. In recognition of that, the Debtors sought certain operational relief under the Wages Motion and other first day motions, to smooth the Debtors' transition into chapter 11. A chief concern for the Debtors is making sure that the employees—who are the lifeblood of the business—are adequately compensated and incentivized, consistent with historical practice, to bring these chapter 11 cases to a value-maximizing conclusion.

2. Under the Wages Motion, the Debtors seek to continue their Non-Insider Quarterly Incentive Plan, the Non-Insider PROPs Bonus Program, and the Non-Insider Quarterly Retention Program (which includes the Discretionary Bonuses program and collectively, the "Non-Insider Incentive and Retention Programs") and, the Employees eligible to participate in any such programs as described in the Wages Motion, collectively, the "Participants"), consistent with historical practice. While the Committee claims that it has not received sufficient information to determine whether any of the Participants are Insiders, the evidence will clearly show that the programs at issue are solely for non-Insider employees. Since the Committee's appointment, the Debtors have been providing diligence to the Committee on a rolling basis. And, in response to the Objection, the Debtors provided additional diligence to assuage the Committee's concerns regarding the Participants in these programs. Notably, the Debtors have provided the Committee with a full list of the Participants and has identified all Employees who are Insiders. The Committee has not identified any Participant that might be an Insider, but instead has objected to the payments

proposed to be made to all Participants so as to punish the Debtors' employees in attempt to gain leverage in these cases.

3. Furthermore, the Committee's Objection focuses on certain prepetition bonus payments that are not the subject of the Wages Motion. These prepetition payments are not relevant to the relief requested in the Wages Motion and are asserted to distract the Court from the fact that the Committee's Objection is without merit. The Committee's Objection to the Wages Motion fails to cite any relevant legal authority or provide any factual record to support denial of the final relief sought in the Wages Motion. Accordingly, the Debtors respectfully request the Court overrule the Committee's Objection and enter the Final Order.

### Reply

#### **I. The Court Should Approve the Debtors' Continued Administration of the Non-Insider Incentive and Retention Programs for Rank-and-File Employees.**

4. The Committee argues that the Debtors should not be permitted to make payments under such programs to any management personnel (a) to the extent relevant information remains outstanding for the Committee to make an informed decision regarding such employee's Insider status (as such term is defined under Section 101(31) of the Bankruptcy Code) or (b) who previously received bonuses in the 90 days prior to the Petition Date.

5. The Committee's objection is without merit. The Debtors' professionals have provided relevant information to the Committee's advisors to confirm that no Insiders are set to receive payments under the Non-Insider Incentive and Retention Programs and are entitled to business judgment deference in respect of the relief sought, and the Committee has made no showing to rebut such deference.

6. Contrary to the Committee's conjecture, the Debtors provided the Committee with a list of the exact Participants, as well as a list of the Employees who are Insiders, as further

evidence that the Participants did not overlap with the list of Insiders. It is unclear what other fact development the Committee would need to make its determination, and moreover, the Committee has yet to identify any specific Participant at issue as a potential Insider.

7. For these non-Insider payments, the Debtors are entitled to use their reasonable business judgment, consistent with historical practice. Section 363 of the Bankruptcy Code provides, in relevant part, that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Under section 363(b) of the Bankruptcy Code, courts require only that the debtor “show that a sound business purpose” justifies the proposed use of property. *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *see also In re Phx Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987). Moreover, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *In re Johns-Manville Corp.*, 60B.R. 612, 616 (Bankr. S.D.N.Y. 1986); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (stating that, “[o]vercoming the presumption of the business judgment rule on the merits is a near-Herculean task”). Thus, if a proposed use of estate property satisfies the business judgment rule, it should be approved under section 363(b) of the Bankruptcy Code, barring an objection that meets the high threshold to rebut the Debtors’ business judgment deference.

8. The payments under the Non-Insider Incentive and Retention Programs are justified in light of the Debtors’ need to retain and properly motivate the Participants to continue to work hard for the Debtors and ensure the success of these chapter 11 cases. These programs are well within the sound discretion of the Debtors’ business judgment. As described in detail in the Wages Motion, the relief requested is consistent with historical practice and critical to the overall

compensation of the Participants. Indeed, there is no evidence to suggest that the Debtors can maximize the value of their estates without the continued efforts of their employees. The Participants are critical to the Debtors' restructuring process and businesses, and, absent the receipt of bonuses, which are consistent with historical practice, morale would be seriously jeopardized and many of these critical employees could inevitably depart—hence, the Debtors' understandable, reasoned judgment that the continuation of the Non-Insider Incentive and Retention Programs is necessary. Moreover, the Debtors have not and will not make any payments to Insiders under the Non-Insider Incentive and Retention Programs since such payments are not authorized under the proposed Final Order. Finally, the Committee challenges, without providing any cogent legal arguments or further support, any bonus payments being made to the Debtors' executives and management personnel who received bonuses in the 90 days prior to the Petition Date. *See* Objection, ¶ 8. Any speculation about prepetition payments has no bearing on the question at hand of whether the Debtors may continue to make payments to non-Insiders consistent with historical practice in their reasonable business judgment. The Committee's Objection is laden with unsubstantiated narrative and fails to put forth any evidence with respect to the alleged impropriety of prepetition payments or how such payments relate to approval of the relief sought in the Wages Motion. Given the reasonable business justifications for the bonus payments under their Non-Insider Incentive and Retention Programs set forth herein, and in the Wages Motion and First Day Declaration, such payments should be approved.

### **Conclusion**

9. For the reasons set forth herein, in the Wages Motion, and in the First Day Declaration, the Objection should be overruled, and the Wages Motion should be granted on a final basis.

WHEREFORE for the foregoing reasons and upon the Wages Motion, the Debtors respectfully request that the Court overrule the objections and approve the Wages Motion.

Dated: July 19, 2023  
Wilmington, Delaware

*/s/ Domenic E. Pacitti*

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