

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
PGX HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 23-10718 (CTG)
Debtors.	)	Jointly Administered
	)	Re: D.I. 153

**STATEMENT OF PROSPECT CAPITAL  
CORPORATION REGARDING PRELIMINARY OMNIBUS  
OBJECTION AND RESERVATION OF RIGHTS OF OFFICIAL  
COMMITTEE OF UNSECURED CREDITORS TO THE DEBTORS’  
DIP FINANCING MOTION AND BIDDING PROCEDURES MOTION**

Prospect Capital Corporation, in its capacities as Prepetition First Lien Lender, Prepetition Second Lien Agent, and DIP Lender in the above-captioned cases (including its affiliates, “Prospect”), respectfully submits this statement (the “Statement”) to correct certain inaccurate statements set forth in the *Preliminary Omnibus Objection and Reservation of Rights of Official Committee of Unsecured Creditors to the Debtors’ DIP Financing Motion and Bidding Procedures Motion* [Docket No. 153] (the “Objection”)<sup>2</sup> filed by the official committee of unsecured creditors (the “Committee”) and states as follows:

<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); Progrexion ASG, Inc. (5153); Progrexion Holdings, Inc. (7123); Progrexion IP, Inc. (5179); Progrexion Marketing, Inc. (5073); and Progrexion Teleservices, Inc. (5110) (collectively, the “Debtors”). 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 otherwise defined herein shall have the meanings 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* [ECF No. 12] (the “First Day Declaration”), the *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* [ECF No. 17] (the “DIP Motion”), or the *Superpriority Secured Debtor-in-Possession Financing Agreement* (as the same may be amended, restated, supplemented, or otherwise modified from time to time in accordance with the terms



## Statement

### **I. Prospect is a Lender, Not an Equity Sponsor, and Became Majority Equity Holder Only After Providing a Rescue Loan to the Debtors in December 2022 When No One Else Would or Did.**

1. The Committee's Objection is riddled with false, misleading, and reckless statements about Prospect and its relationship with the Debtors. Under the Committee's misguided narrative, Prospect is the "equity sponsor" of a "company ... committing regulatory violations" which took action that harmed the Debtors and is now looking to implement an "insider cleansing transaction." *See* Objection, ¶¶ 2, 16. This false narrative is part of a broader litigation strategy: create negotiating leverage for an out-of-the money constituent looking to create friction costs as part of an economic shake-down.

2. The facts are simple and undisputed by the Debtors:

- a. H.I.G. Capital, LLC ("HIG") was Debtor PGX Holdings, Inc.'s majority equity holder from 2010 until January 28, 2023. First Day Declaration, ¶ 35.
- b. The CFPB Litigation was filed May 2019 when HIG was the equity sponsor. *See id.*, ¶ 9.
- c. Prospect first became involved with the Debtors in 2010 solely as a secured lender and is currently a minority first-lien lender, owed approximately \$76 million (roughly 30% of the total first-lien facility) in principal, and the sole second-lien lender, owed approximately \$180 million in principal. *See id.*, ¶¶ 30, 33, 47.
- d. By the Fall of 2022, the Debtors "faced an imminent liquidity need and the likelihood of defaults under the First Lien Facility and the Second Lien Facility with respect to liquidity covenant tests and interest payments." *Id.*, ¶ 50.
- e. At that time, HIG was unwilling to contribute any capital to address the Debtors' liquidity need.
- f. With no one else willing to do so, Prospect alone stepped up to try to rescue the Debtors financially, including by providing another \$15 million of an incremental second-lien term loan funded on December 28, 2022 (the "Rescue Loan"). *See id.*, ¶ 51.

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thereof, the "DIP Loan Agreement").

- g. As a condition to the Rescue Loan, HIG transferred to Prospect its equity in Debtor PXG Holdings, Inc., effective as of January 28, 2023. *Id.*, ¶¶ 50–51.
- h. With respect to the equity interests transferred from HIG to Prospect, voting equity was split from non-voting equity. Prospect indirectly owns a substantial majority of the equity of PGX Holdings, Inc., none of which is entitled to vote.
- i. Prospect is not an officer or director of the Debtors.
- j. No officer or director or employee of Prospect is an officer or director of any Debtor.

3. In light of the foregoing, the Committee’s assertion that Prospect was “the controlling stockholder of a company found to be committing regulatory violations” (Objection, ¶ 2) is flatly wrong. The Debtors’ business practices alleged to be regulatory violations were in place *decades* before Prospect was thrust into the majority equity holder’s seat *this calendar year*. *See* First Day Declaration, ¶¶ 38–39. Prospect, as the Committee repeatedly misstates, had nothing whatsoever to do with establishing those business practices. The Committee disingenuously ignores the very late date (not to mention the *raison d’etre*) of the January 2023 equity transfer from HIG to Prospect, but this Court should not. That equity transfer did not retroactively transform Prospect into an “equity sponsor.” Rather, Prospect, in a completely innocent posture, stands to lose substantially more capital vis-à-vis the Debtors than any other stakeholder.

## **II. Prospect Was Not Obligated to Fund Additional Term Loans.**

4. The Committee tries to blame Prospect for failing to fund another \$30 million of term loans at the end of March 2023. Again, the Committee is wrong because Prospect had no obligation to fund additional loans for at least three reasons. *First*, the Debtors undisputedly failed to provide an officer’s certificate evidencing their compliance with a financial covenant under the First Lien Facility, which was a condition precedent to the term loan funding request. *See* Second Lien Facility, § 5.03(d). *Second*, there was no obligation to fund the term loan because an Event

of Default (as defined in the governing agreement) existed by virtue of the undisputed fact of an adverse order in the CFPB Action having at least one of the following attributes: (a) not stayed as to enforcement, (b) not successfully appealed, or (c) not stayed pending appeal. *See* Second Lien Facility, § 9.01(q). *Third*, there was no obligation to fund the term loan because an additional Event of Default (as defined in the governing agreement) occurred by virtue of the Debtors' inability and undisputed failure to deliver on or prior to March 31, 2023, audited, unqualified financial statements in respect of the fiscal year ended December 31, 2022. *See* Second Lien Facility, §§ 9.01(c)(i) and 7.01(a)(iii).

5. Prospect files this Statement to correct the record against the Committee's portrayal of Prospect in a light untethered from the truth and belied by the facts.

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Dated: July 26, 2023

/s/ Matthew B. Harvey

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**CERTIFICATE OF SERVICE**

I, Matthew B. Harvey, hereby certify that I am not less than 18 years of age, and that service of the foregoing was caused to be made on July 26, 2023, via CM/ECF upon those parties registered to receive such electronic notifications, and via electronic mail or first class mail on the parties listed on the below service list.

Date: July 26, 2023

/s/ Matthew B. Harvey  
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