

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

PGX HOLDINGS, INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-10718 (CTG)

(Jointly Administered)

Related Docket Nos. 66, 336

**OBJECTION OF HOODOO DIGITAL, LLC TO THE DEBTORS' NOTICE TO  
CONTRACT PARTIES TO POTENTIALLY ASSUME EXECUTORY CONTRACTS OR  
UNEXPIRED LEASES AND CURE AMOUNTS AND RESERVATION OF RIGHTS  
WITH RESPECT TO THE DEBTORS' SALE MOTION**

HooDoo Digital, LLC (the "Objector"), by and through its undersigned counsel, hereby objects (the "Objection") to the *Debtors' Notice to Contract parties to Potentially Assume Executory Contracts or Unexpired Leases* (Docket No. 336) (the "Cure List") and reserve its rights with respect to the *Motion of the Debtors for Entry of Orders (I)(A) Approving Bidding Procedures for the Sale of Substantially All of the 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, Interests and Encumbrances and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and*

<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). 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.



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(III) *Granting Related Relief* (Docket No. 66) (the “Sale Motion”). In support of the Objection, the Objector states as follows:

### **BACKGROUND**

1. Prior to June 4, 2023, (the “Petition Date”), Objector and Progrexion ASG, Inc. (“Progrexion”), one of the debtors (collectively, the “Debtors”) in the above-captioned, jointly administered Chapter 11 bankruptcy cases, entered into various contracts.

2. On the Petition Date, the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”). On June 6, 2023, the Debtors filed the Sale Motion.

3. On August 4, 2023, the Debtors filed the Cure List that included several contracts to which the Objector is also a party (collectively, the “Agreements”). The Agreements were listed as follows on the Cure List:

<b>Debtor(s)</b>	<b>Contract Counterparty</b>	<b>Description of Contract or Lease</b>	<b>Cure Amount</b>
Progrexion ASG, Inc.	HooDoo Digital, LLC	Master Services Agreement dated July 5, 2017	\$0.00
Creditrepair.com, Inc.	HooDoo Digital, LLC	Change Order for CreditRepair.com Client Site AEM Implementation dated March 8, 2021	\$184,905.25
Progrexion ASG, Inc.	HooDoo Digital, LLC	IT Technical Support Agreement dated April 19, 2021	\$0.00
Progrexion ASG, Inc.	HooDoo Digital, LLC	Statement of Work dated August 1, 2020	\$0.00
Progrexion ASG, Inc.	HooDoo Digital, LLC	Statement of Work dated November 15, 2021	\$0.00
Progrexion ASG, Inc.	HooDoo Digital, LLC	Statement of Work dated December 17, 2021	\$0.00
Progrexion ASG, Inc.	HooDoo Digital, LLC	Statement of Work dated January 3, 2022	\$0.00
Progrexion ASG, Inc.	HooDoo Digital, LLC	Statement of Work dated February 16, 2023	\$0.00

## OBJECTION

### A. The Cure Amounts for the Agreements are Incorrect.

4. Bankruptcy Code section 365(a) states that, except as provided in other provisions of the statute including subsection (b), subject to the Court's approval, the debtor “may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. 365(a). Section 365(b), in turn, requires that a debtor promptly cure, or provide adequate assurance that the trustee will promptly cure, any defaults in such contract or lease, in order to assume or assume and assign such contract. See id. § 365(b).

5. The Debtors identify a cure amount totaling \$184,905.25 and allocate all of the cure amount to the Change Order for CreditRepair.com Client Site AEM Implementation dated March 8, 2021. The correct amount owed to Objector under the Agreements is \$388,000.00.

6. Accordingly, Objector objects to the assumption and assignment of the Agreements and to the Sale Motion, to the extent that the Debtors purport to assume and assign the Agreements under any sale order it may ultimately file in connection with the Sale Motion.

### B. The Agreements Constitute One Integrated Agreement and Must All Be Assumed or Rejected.

7. As noted above, the Debtors have separately listed the various agreements that the Debtors have with Objector. Objector is still reviewing the terms of all of the Agreements, which are confidential. However, Objector understands that certain of the agreements are, in fact, one integrated agreement that, subject to payment in full of all cure amounts due under the Agreements, must be assumed and assigned to a successful purchaser together or not at all. Moreover, these integrated agreements must be assumed and assigned cum onere. See In re Physiotherapy Holdings, Inc., 538 B.R. 225, 237 (D. Del. 2015) (holding that related agreements that constitute a single contract must be assumed together).

8. Bankruptcy Courts recognize that a debtor must assume or reject an entire contract and cannot cherry-pick the provisions it does not like. See, e.g., In re G-I Holding, Inc., 568 B.R. 731, (D.N.J. 2017); In re Hawker Beechcraft, Inc., 486 B.R. 264, 278 (Bankr. S.D.N.Y. 2013). Further, an executory contract must be assumed or rejected in totality and may not be bifurcated into parts with some rejected and some accepted. Cf. In re AbitibiBowater Inc., 418 B.R. 815, 822-23 (Bankr. D. Del. 2009) (internal citations omitted).

9. Moreover, when multiple contracts are integrated into a single contract, all of the multiple contracts must be assumed or rejected under section 365. See In re Buffets Holdings, Inc., 387 B.R. 115 (Bankr. D. Del. 2008). Indeed, this Court has found that, where contracts are, in fact, one integrated contract, such contracts may only be assumed or rejected in toto and the Court may not allow for some of the integrated contracts to be rejected because they are unfavorable while others are assumed because they are favorable. See Physiotherapy Holdings, Inc., 538 B.R. at 237.

10. In determining whether a series of contracts are one integrated contract, courts generally look to the law governing the contracts to determine whether contracts in question are integrated or divisible and separate. Id. The Agreements are confidential, but at least the Statement of Work agreements expressly incorporate the terms of the Master Services Agreement dated July 5, 2017. The Objector reserves rights to assert that the remaining agreements are also one integrated agreement upon final review of such agreements.

11. Accordingly, although the Debtors have listed the Agreements separately on the Cure Lists, the Agreements may, in fact, constitute one integrated agreement.

#### **RESERVATION OF RIGHTS**

12. Objector is still reviewing the Agreements as listed by the Debtors and reconciling its contracts with those set forth by the Debtors to be assumed potentially.

Accordingly, Objector reserves its right to supplement this Objection once its review of the Agreements is complete. Moreover, Objector reserves the right to supplement and join in any filings, and to present supplemental and further arguments at any hearing on the Sale Motion, including but not limited to, evidence and argument with respect to any proposed assignment of the Agreements. Finally, to the extent that any other bidder emerges as the proposed successful bidder after an auction, Objector reserves all of its rights to object to the proposed assumption and assignment of the Agreements.

WHEREFORE, based on the foregoing, Objector respectfully requests that the Court enter an Order: (i) denying the assumption and assignment of the Agreements until such time as the correct cure amounts are paid and the Debtors and/or any successful bidder provide adequate assurance of future performance under the Agreements and (ii) granting Objector such other and further relief as is just and proper.

Dated: August 18, 2023

**WOMBLE BOND DICKINSON (US) LLP**

/s/ Ericka F. Johnson

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*Counsel to HooDoo Digital, LLC*

**CERTIFICATE OF SERVICE**

I, Ericka F. Johnson, hereby certify that on the 18<sup>th</sup> day of August 2023, I caused a copy of the following documents to be served upon the parties on the attached Service List via Electronic Mail:

- Objection of Hoodoo Digital, LLC to the Debtors' Notice to Contract Parties to Potentially Assume Executory Contracts or Unexpired Leases and Cure Amounts and Reservation of Rights with Respect to the Debtors' Sale Motion

Dated: August 18, 2023

*/s/ Ericka F. Johnson*

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Ericka F. Johnson (DE Bar No. 5024)

PGX HOLDINGS, INC., 23-10718-CTG  
CURE OBJECTION SERVICE LIST

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