

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

In re:

EPIC! CREATIONS, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-11161 (BLS)

(Jointly Administered)

**Re: D.I. 560**

**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF GOOGLE LLC  
TO THE POTENTIAL ASSUMPTION OF EXECUTORY CONTRACTS**

Google LLC (“**Google**”), by and through its undersigned counsel, files the following limited objection and reservation of rights to the potential assumption and assignment of the Google Contracts (as defined below) and proposed cure amount, in response to the proposed treatment under the *Second Notice to Counterparties to Potentially Assumed and Assigned Executory Contracts and Unexpired Leases Regarding Cure Amounts and Possible Assignment to the Successful Bidder at Auction* [D.I. 560] (the “**Cure Notice**”)<sup>2</sup> filed by the chapter 11 trustee for above-captioned debtors and debtors-in-possession (the “**Trustee**”), and states as follows:

**PRELIMINARY STATEMENT**

Although Google’s disagreement with the proposed cure amounts as set forth by the Trustee in the Cure Notice is minor, Google submits this limited objection and reservation of rights out of an abundance of caution. The proposed cure amount to be paid to Google—\$4,061,241.20 (if all Google Contracts are assumed), is less than the amount required to be paid

<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: Epic! Creations, Inc. (9113); Neuron Fuel, Inc. (8758); and Tangible Play, Inc. (9331).

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Cure Notice.



to cure the monetary defaults under Google’s Contracts—at least \$4,061,421.20, with at least an additional \$287,419.96 coming due March 30, 2025.

### **BACKGROUND**

1. On June 4 and 5, 2024 (the “**Petition Date**”), GLAS Trust Company LLC, in its capacity as administrative and collateral agent, and certain lenders under the Credit Agreement filed an involuntary petition against each Debtor in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”). D.I. 1.

2. Prior to the Petition Date, Google entered into certain contracts, including the contracts for advertising services (the “**Ads Agreement**”), cloud services (the “**Cloud Agreement**”), Google Play development distribution services (the “**Play Agreement**”) and workspace services (the “**Workspace Agreement**” and together with the Ads Agreement, Cloud Agreement, Play Agreement, collectively, the “**Google Contracts**”) with the Debtors. Pursuant to the Google Contracts, Google provides advertisements services, and other services to and for the benefit of the Debtors, including without limitations the following services (the “**Services**”) Google Ads (f/k/a AdWords), Google Cloud projects, Google Play services and Workspace services.

3. On March 12, 2025, the Trustee filed the Cure Notice. The contract schedule attached to the Cure Notice lists certain contracts between Google and certain of the Debtors, including the Ads Agreement, Cloud Agreement, Play Agreement and Workspace Agreement with proposed cure amount of \$4,061,241.20 (the “**Proposed Cure Amount**”).

4. As of March 18, 2025, at least \$4,061,421.20 is owed to Google and past due for the Services provided by Google to the Debtors, consisting of \$3,691,302.83 for pre-petition

services and \$370,118.37 is due on account of post-petition services provided to the Debtors.<sup>3</sup> The Cure Notice fails to reflect the total amount owed to Google—at least \$4,061,421.20.

5. The Cure Notice states that any objection to the Proposed Cure Amount must be filed with the Court no later than ten (10) days from the date of the Cure Notice, *i.e.* March 22, 2025, at 4:00 p.m. (prevailing Eastern Time) (the “**Objection Deadline**”).

6. Based on information and belief, the Trustee seeks to continue to have the Debtors receive the same Services historically provided by Google to the Debtors. Based on the Debtors’ prior participation in the Google’s Ads program, Cloud, Google Play services and Workspace services and the historical Services provided by Google to the Debtors, the Trustee will need to assume and cure the contracts between Google and the Debtors to continue to receive the same level of services from Google.

### **BASIS FOR OBJECTION**

7. The Trustee may assume contracts, but defaults under the contracts must be cured at the time the contract is assumed. Section 365 of the Bankruptcy Code provides:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee-

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property...;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

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<sup>3</sup> Google reserves the right to amend its Proof of Claim or this Objection at a later date to reflect further amounts that become due, as appropriate.

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

8. Bankruptcy Code Section 365(b)(1) makes clear that defaults must be cured as of the assumption. Such defaults that must be cured include both pre-petition and post-petition defaults. *In re McLean Industries, Inc.*, 96 B.R. 440, 449 n. 11 (S.D.N.Y. 1989) (“assumption creates a post-petition liability and requires cure of pre-petition and post-petition defaults”); *In re Washington Capital Aviation & Leasing*, 156 B.R. 167, 173 (Bankr. E.D. Va. 1993) (“Section 365(b)(1)(A) requires the debtor in possession to cure pre- and post-petition defaults . . . . This conclusion is clear from §365(b)(1) which measures defaults as of the ‘time of assumption’”) (citing *In re Rachels Industries, Inc.*, 109 Bankr. 797, 811-812 (Bankr. W.D. Tenn. 1990)); *In re Bachrach Clothing, Inc.*, 2007 Bankr. LEXIS 2623 \* 11 (N.D. Ill. Aug. 2, 2007) (“...365(b)(1) measures defaults as of the time of assumption. Therefore, the debtor was required to cure both pre- and post-petition defaults.”) *aff’d* 396 B.R. 219 (N.D. Ill. 2008).

9. “Once an assumption order is entered, the creditor must perform in accordance with the terms of the assumed agreements. . . . In other words, the debtor must cure all defaults, assure future performance, and make the other contracting party whole before it may be permitted to assume the agreement.”. *In re Kiwi Intern. Air Lines, Inc.*, 344 F.3d 311, 318 (3rd Cir. 2003); *In re Columbia Gas System Inc.*, 50 F.3d 233, 238–39 (3d Cir.1995) (“[T]he Bankruptcy Code provides that the cost of performing the debtor's obligations is an administrative expense of the estate. . . .”).

10. Google objects to the proposed assumption of the Google Contracts on the ground that the Proposed Cure Amount (\$4,061,241.20) does not cure the defaults under the Google

Contracts. As set forth above, the amount necessary to cure the monetary defaults under the Google Contracts is at least payment of \$4,061,421.20.

11. To the extent that the Trustee seeks to assume the Google Contracts, the outstanding monetary defaults must be fully cured by paying Google \$4,061,421.20, along with payment of any amounts due and owing in the ordinary course of business, through the effective date of assumption.

12. Google submits that the Trustee is obligated to cure all monetary defaults under the Google Contracts, in full, as a condition of assumption of the Google Contracts pursuant to 11 U.S.C. §365(b)(1).

13. Google is filing this Objection on or before the Objection Deadline and will follow-up with the Trustee to try to resolve the cure amounts for the Google Contracts, to determine the services sought by assumption of the Google Contracts and the respective cure amounts.

#### **RESERVATION OF RIGHTS**

14. Google hereby expressly reserves (the “**Reservation of Rights**”) all rights, interests, claims, counterclaims, rights of setoff and recoupment and/or defenses pertaining to any or all Google Contracts including, without limitation, (a) the right to object to the assumption and/or assignment by the Trustee of any contract not identified by the Trustee in the Cure Notice (the “**Excluded Contracts**”), (b) the right to payment of all monetary defaults and the cure of all non-monetary defaults that exist with respect to each such Excluded Contracts, (c) the right to assert any additional cure costs due and owing with respect to any additional contracts that hereinafter are designated for assumption and assignment by the Trustee, and/or (d) the right to have the assignment of any Google Contract or Excluded Contract specifically conditioned on the Court finding, based on

competent evidence, that the actual assignee of such contract is capable of performing all terms and conditions of such contract including, without limitation, payment of all amounts that will come due and owing subsequent to any such assignment.

15. Google further expressly reserves the right to amend, modify and/or supplement this Objection, including without limitation all rights to further object to the proposed assumption and assignment of the Google Contracts, based upon the Trustee's further disclosures and supplemental assumption/cure notices, the parties further discussions and exchange of information, and in reply to any responses to this Objection.

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**WHEREFORE**, for the reasons set forth above, Google respectfully requests that (i) the Court sustain this objection and deny the assumption of the Google Contracts, unless Google is paid the full cure amount of at least \$4,061,421.20, along with payment of any amounts due and owing in the ordinary course of business, through the effective date of assumption, (ii) approve the Reservation of Rights, and (iii) such other relief as may be just and proper under the facts and circumstances of these Bankruptcy Cases.

Date: March 21, 2025

Respectfully submitted,

**WHITE AND WILLIAMS LLP**

/s/ Michael Ingrassia

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**CERTIFICATE OF SERVICE**

I, Michael Ingrassia, certify that the *Limited Objection and Reservation of Rights of Google LLC to the Potential Assumption of Executory Contracts* was served on March 21, 2025 by CM/ECF, upon the parties who have registered for CM/ECF service of notices and pleadings in this case.

Date: March 21, 2025

Respectfully submitted,

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