

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.	)		)	(Joint Administration Requested)

**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”) state as follows in support of this motion:²

Relief Requested

1. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and the “Final Order”), (a) authorizing the Debtors to pay all prepetition wages, salaries, other compensation, and reimbursable expenses on account of the Employee Compensation and Benefits (as defined below) and continue to administer the Employee Compensation and Benefits Programs in the ordinary

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.

² A detailed description of the Debtors and their business, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is 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* (the “First Day Declaration”), filed contemporaneously herewith on June 4, 2023 (the “Petition Date”) and incorporated by reference herein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.



course of business, including payment of prepetition obligations related thereto; and (b) granting related relief. In addition, the Debtors request that the Court schedule a final hearing approximately 21 days from the Petition Date.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Debtors confirm their consent, pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 105(a), 362(d), 363(b), 507(a), and 541(b)(1) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rules 2002-1 and 9013-1.

Background

5. The Debtors are one of the nation’s leading credit repair service providers, helping customers repair their credit and achieve their credit goals. Setting the industry standard for transparency, cutting edge technology-enabled solutions, and quality customer service, the Debtors help consumers access and understand the information contained in their credit reports, ensure that the information contained in those reports is fair, accurate, and complete, and address

other factors that may negatively impact their credit scores. The Debtors are headquartered in Salt Lake City, Utah and have employees in nine other states. Debtor PGX Holdings, Inc. and Debtor John C. Heath, Attorney At Law PC d/b/a Lexington Law Firm (“Lexington Law”) generated approximately \$388 million in combined revenue in 2022. As of the Petition Date, the Debtors have approximately \$423 million in funded-debt obligations.

6. As set forth in greater detail in the First Day Declaration, certain Debtors are currently involved in litigation with the Consumer Financial Protection Bureau (the “CFPB”) before the United States District Court for the District of Utah (the “District Court”). In such litigation, on five separate counts, the CFPB alleged that the defendant Debtors committed certain violations of federal consumer protection law through operation of their consumer assistance and credit repair business. On March 10, 2023, the District Court granted partial summary judgment against these Debtors on the first count in the litigation, finding that the billing practices were in violation of 16 C.F.R. § 310.4(a)(2), the Telemarketing Sales Rule (the “TSR”). In connection with the first count, the CFPB demanded nearly \$3 billion in restitution or refunds and other monetary relief, along with certain injunctive relief.

7. In response to the District Court’s ruling on the TSR count, and a subsequent denial of a stay of the ruling, the Debtors immediately stopped certain telemarketing activities, closed many of their call centers, and began evaluating the impact of the ruling on the future of their business, a process that remains ongoing. Following the Debtors’ reduction of business operations, the Debtors’ revenues also declined. Upon further review, the Debtors determined that their liquidity would continue to be severely constrained and their debt obligations are now unsustainable in light of the smaller operational footprint and decreased revenues going forward. The Debtors have commenced these chapter 11 cases to fully and fairly resolve their liabilities,

with the aim of preserving value for stakeholders and maintaining the ability to deliver best-in-class crucial credit repair services to customers.

8. On the Petition Date, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this motion, the Debtors filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no official committees have been appointed or designated.

The Debtors' Workforce

9. Throughout the United States, the Debtors employ approximately 370 individuals (the "Employees"), each of which are employed on a full-time basis, other than 4 part-time Employees. The Employees perform a wide variety of functions critical to the administration of these chapter 11 cases and the Debtors' restructuring. Their skills, knowledge, and understanding of the Debtors' operations and infrastructure are essential to preserving operational stability and efficiency. In many instances, the Employees include highly-trained personnel, including attorneys and paralegals, who are not easily replaced. Without the continued, uninterrupted services of their Employees, the Debtors' business operations will be halted.

10. The number of Employees who are salaried versus paid on an hourly basis is approximately 255 and 115 Employees, respectively. None of the Employees are represented by a collective bargaining unit. The Debtors' Employees perform a wide variety of functions critical to the Debtors' operations at both their headquarters and remotely. In addition to the Employees, the Debtors also periodically retain specialized individuals, including certain of counsel attorneys, as independent contractors and temporary staff (collectively, the "Temporary Staff"), to complete

discrete projects or fulfill certain duties on a short-term and extended basis. The Debtors work with certain staffing agencies (the “Staffing Agencies”) to satisfy their staffing and project requirements for Temporary Staff members on an as-needed basis. As of the Petition Date, the Debtors retained approximately 210 personnel as Temporary Staff. The Debtors’ ability to maintain Temporary Staff is a critical supplement to the efforts of the Debtors’ Employees.

11. In many instances, the Debtors’ Employees and Temporary Staff rely exclusively on their compensation and benefits to pay their daily living expenses and to support their families. Employees and Temporary Staff will be exposed to significant financial hardship and may leave the employ of the company to the detriment of the estates in the event the Debtors are not permitted to continue paying wages and salaries, providing employee benefits, and maintaining existing employee programs in the ordinary course of business. Consequently, the Debtors respectfully submit that the relief requested herein is necessary and appropriate under the facts and circumstances of these chapter 11 cases.

Employee Compensation and Benefits Programs

12. The Debtors seek to minimize the personal financial burden that their Employees and Temporary Staff would suffer if prepetition Employee- and Temporary Staff related obligations were not paid or remitted when due or as expected. As such, by this motion, the Debtors seek authority to pay and honor certain prepetition claims and/or continue to honor obligations on a postpetition basis, as applicable, relating to, among other things, wages, salaries, contractor fees, withholding taxes, other amounts withheld (including garnishments, Employees’ share of insurance premiums, taxes, and 401(k) contributions and other retirement savings contributions), payroll processing, reimbursable expenses, certain non-insider incentive and recognition programs, health insurance benefits, health savings accounts, health reimbursement accounts, life and AD&D insurance, short- and long term disability benefits, the workers’

compensation program, business travel insurance, retirement savings plans, benefit administration services, time-off benefits (including vacation time, unpaid vacation time, excused work days, holidays, and parental leave), COBRA benefits, and other benefits that the Debtors have provided to Employees and/or Temporary Staff historically (collectively, the “Employee Compensation and Benefits Programs”) on an interim and a final basis, as detailed herein, and summarized in the chart below. In addition, the Debtors also seek to pay all costs incidental to the Employee Compensation and Benefits.

13. Subject to the Court’s approval of the relief requested herein, the Debtors intend to continue their prepetition Employee Compensation and Benefits in the ordinary course of business. In light of the Debtors’ recent operational updates and the need to align employment practices with operational goals due to the adverse ruling in the CFPB Litigation (as further described in the First Day Declaration), the Debtors request the right to modify, change, and discontinue any of their Employee Compensation and Benefits and to implement new programs, policies, and benefits, in the ordinary course of business during these chapter 11 cases and without the need for further Court approval, subject to applicable law.

14. By this motion, the Debtors seek authority to pay the aggregate prepetition amounts owed on account of the Employee Compensation and Benefits Programs set forth in the table below:

Employee Compensation and Benefits	Approximate Interim Amount	Approximate Final Amount
Compensation and Withholding Obligations		
Unpaid Wages	\$600,000	\$600,000
Unpaid Temporary Staff Obligations	\$2,116,000	\$2,116,000
Payroll Fees	\$88,000	\$88,000
Withholding Obligations	\$305,000	\$305,000
Expenses	\$29,000	\$29,000
Non-Insider Quarterly Incentive Plan	\$0	\$592,000
Non-Insider PROPs Bonus	\$0	\$10,000
Non-Insider Quarterly Retention Program	\$0	\$0
Benefits and Entitlements		
Health Insurance Programs	\$105,000	\$105,000
Life and AD&D Insurance and Disability Benefits	\$4,000	\$4,000
Workers' Compensation Program	\$0	\$0
401(k) Plans	\$283,000	\$283,000
Other Employee Benefits		
Employee Assistance Program	\$37,000	\$37,000
Vacation Obligations	\$348,000	\$348,000
Total	\$3,915,000	\$4,517,000

I. Compensation and Withholding Obligations.

A. Wages.

15. The Debtors pay the wages, salaries, and other compensation (excluding reimbursable expenses, commissions, and paid leave, the “Wages”) of their Employees on a semi-monthly basis (on the 7th and 22nd day of each month, and on the preceding business day if the 7th or 22nd day of the month occurs on a weekend or holiday) and one week in arrears. Because Employees are generally paid in arrears, certain Employees will be owed accrued but unpaid Wages as of the Petition Date. Wages may also be due and owing as of the Petition Date due to, among other things, pay discrepancies that, upon resolution, may reveal that additional amounts are owed to certain Employees.

16. On average, the Debtors paid approximately \$1,580,000 semi-monthly on account of Wages for the two pay cycles immediately preceding the Petition Date. As of the Petition Date, the Debtors estimate that they owe Employees approximately \$600,000 in accrued and unpaid Wages (the “Unpaid Wages”), all of which will become due and owing within the first 30 days of these chapter 11 cases. Accordingly, by this motion, the Debtors seek authority to pay any accrued Unpaid Wages and continue to pay the Wages on a postpetition basis in the ordinary course of business and consistent with past practices.

B. Staff Compensation.

17. The Debtors make payments to maintain their Temporary Staff (the “Temporary Staff Compensation”), often indirectly through Staffing Agencies, for the performance of certain services critical to the Debtors’ operations, including, among other things, administrative functions, marketing services, information technology support, and maintenance services related to the Debtors’ businesses. The Debtors’ Employees rely on the support of the Temporary Staff to complete discrete projects in furtherance of the Debtors’ businesses and to provide critical support to the Debtors’ operations, on a short-term basis where it is not economically feasible to employ personnel on a full- or part time basis. The Debtors believe the authority to continue paying the Temporary Staff Compensation is critical to minimizing disruption to the Debtors’ continued business operations.

18. The Debtors paid approximately \$277,000 on account of the Temporary Staff Compensation for the month immediately preceding the Petition Date for which the Debtors possess invoices for. As of the Petition Date, the Debtors estimate that they owe approximately \$2,116,000 in accrued and unpaid Temporary Staff Compensation (the “Unpaid Temporary Staff Obligations”), all of which will become due and owing within the first 30 days of these chapter 11 cases. Accordingly, the Debtors seek authority to satisfy any accrued but Unpaid Temporary Staff

Obligations and continue to pay the members of the Temporary Staff on a postpetition basis in the ordinary course of business and consistent with past practices.

C. Payroll Processing.

19. The Debtors utilize software provided by Ultimate Kronos Group (“UKG”) to support payroll processing, payroll tax calculations and filings, and other payroll-related services and, correspondingly, pay certain software, payroll-related, and other administrative fees to UKG (the “Payroll Fees”). In the ordinary course of business, the Debtors accrue Payroll Fees on a quarterly basis one month in advance of each quarter. In addition, the Debtors accrue monthly Payroll Fees for any overages if the Debtors utilize more services than what was paid for in advance. Failure to satisfy the Payroll Fees in the future could lead to a delay in payroll processing and delayed disbursement of payroll taxes to the appropriate third parties to the detriment of the Employees and the Debtors’ operations. The Debtors believe the authority to continue paying UKG the Payroll Fees in order to maintain their use of the UKG software and to continue administering payroll, each in the ordinary course of business, is critical to the Debtors’ continued operations while in chapter 11.

20. On average, the Debtors paid approximately \$54,000 per quarter on account of the Payroll Fees for the two quarters immediately preceding the Petition Date. As of the Petition Date, the Debtors estimate that they owe approximately \$88,000 in accrued and unpaid Payroll Fees. Accordingly, by this motion, the Debtors seek authority to remit the Payroll Fees to UKG and to continue administering payroll in the ordinary course of business.

D. Withholding Obligations.

21. During each applicable pay period, the Debtors routinely deduct certain amounts from Employees’ paychecks, including, without limitation, garnishments, levies, child support and related fees, and pre-tax deductions payable in accordance with certain of the Health and Welfare

Programs (as defined below), including payments pursuant to any supplemental Employee-elected, voluntary insurance programs provided by SelectHealth, Inc. (“SelectHealth”) (collectively, the “Deductions”). Some of the Deductions are forwarded to various third-party recipients. On average, the Debtors deducted approximately \$229,000 per semi-monthly pay period from Employees’ paychecks for the two pay cycles immediately preceding the Petition Date.

22. The Debtors also are required by law to withhold from the Employees’ Wages amounts related to, among other things, federal, state, local income taxes, and Social Security and Medicare taxes (collectively, the “Employee Payroll Taxes”) for remittance to the appropriate federal, state, and local taxing authorities. The Debtors must then match the Employee Payroll Taxes from their own funds and pay, based upon a percentage of gross payroll, additional amounts for state and federal unemployment insurance (the “Employer Payroll Taxes” and, together with the Employee Payroll Taxes, the “Payroll Taxes”).³ The Payroll Taxes are generally processed and forwarded to the appropriate federal, state, or local taxing authority within a few days of when Employees’ payroll checks are disbursed.

23. On average, the Debtors paid approximately \$1.3 million per month on account of the monthly Payroll Taxes for the two pay cycles preceding the Petition Date. As of the Petition Date, the Debtors estimate that approximately \$305,000 of accrued but unpaid Deductions and Payroll Taxes (together, the “Withholding Obligations”) have been deducted but not remitted to the appropriate third-party payees, all of which will become due and owing within the first 30 days of these chapter 11 cases. Moreover, the Debtors believe that the Withholding Obligations are not property of their estates. However, out of an abundance of caution, the Debtors seek authority to

³ For the avoidance of doubt, the Debtors seek authority to pay Payroll Taxes solely in this motion and not in the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Payment of Certain Prepetition and Postpetition Taxes and Fees and (II) Granting Related Relief* filed contemporaneously herewith.

remit the Withholding Obligations to the respective third-party payees and to continue to honor and process the Withholding Obligations on a postpetition basis in the ordinary course of business and consistent with past practices.

E. Expenses.

24. The Debtors reimburse certain Employees for certain expenses incurred in the scope of their duties (the “Reimbursable Expenses”). Reimbursable Expenses typically include expenses associated with transportation, lodging, and meals incurred in connection with business travel and certain other work-related expenses, such as business mobile phones, internet allowances, and general office expenses. Generally, Reimbursable Expenses are incurred by the Employees through the use of personal funds, and the Employee may be held personally liable for any unpaid obligations. The Debtors’ inability to reimburse such expenses would impose hardship on such individuals where the obligations were incurred for the Debtors’ benefit.

25. The Debtors also provide certain Employees with corporate credit cards through American Express⁴ (the “Corporate Credit Cards”). The Corporate Credit Cards are primarily utilized to pay for certain work-related expenses, such as work-related travel, meals, office supplies, employee incentives, vendor payments, and small, non-recurring purchases made on behalf of the Debtors. Given the importance of Employees’ ability to use the Corporate Credit Cards for payment of these work-related expenses, the Debtors request authority to continue utilizing and making payments on account of the Corporate Credit Cards in the ordinary course of business.

⁴ In addition, Debtor Lexington Law maintains one credit card with JPMorgan Chase & Co. Reimbursable Expenses incurred through this Corporate Credit Card are also processed through Expensify.

26. The Debtors utilize a certain program provided by Expensify, Inc. (“Expensify”) to manage the Reimbursable Expense system. The Corporate Credit Cards automatically sync with Expensify to streamline the expense reimbursement process. Reports are submitted via Expensify to the relevant Employee’s supervisor. Once the Debtors have determined that the charges are for allowable reimbursable business expenses, the Debtors reimburse such Employees for any such expenses. The Debtors pay a monthly fee of approximately \$5,000 to Expensify for administering the Reimbursable Expenses system. The Debtors estimate that, as of the Petition Date, they owe approximately \$5,000 to Expensify for administering the Reimbursable Expenses system.

27. On average, the Debtors paid approximately \$162,000 per month on account of the Reimbursable Expenses, including fees owed to Expensify, and the Corporate Credit Cards (together, the “Expenses”) for the four months immediately preceding the Petition Date. As of the Petition Date, the Debtors estimate that they will owe approximately \$29,000 in the aggregate amount of accrued but unpaid Expenses, all of which will become due and owing within the first 30 days of these chapter 11 cases. Accordingly, the Debtors seek authority to satisfy any accrued but unpaid prepetition Expenses and continue to pay the Expenses on a postpetition basis in the ordinary course of business and consistent with past practices.

F. Non-Employee Director Compensation (Final Order Only).

28. Debtor PGX Holdings, Inc. maintains a board of directors that includes one non-Employee serving in the capacity as an independent director (the “PGX Independent Directors”) and who is compensated for such services with monthly compensation of \$45,000, payable monthly in advance. Debtor Lexington Law maintains a board of directors that includes a non-Employee independent director (together with the PGX Independent Director, the “Independent Director”) who is compensated for such services with monthly compensation of \$45,000, payable monthly in advance.

29. The Independent Directors are also entitled to expense reimbursement for reasonable and documented out-of-pocket business expenses incurred in connection with their services (together with the monthly compensation, the “Independent Director Compensation”).

30. The Debtors do not believe they presently owe any amounts on account of the Independent Director Compensation. As such, the Debtors seek, pursuant to Final Order only, authority to pay any prepetition amount solely out of an abundance of caution and to continue to pay the Independent Director Compensation on a postpetition basis in the ordinary course of business and consistent with past practice.

G. Non-Insider Incentive and Retention Programs (Final Order Only).

1. Non-Insider Quarterly Incentive Plan.

31. The Debtors maintain certain incentive programs to drive performance among their Employees, including a quarterly incentive program for certain employees who do not constitute “insiders” (as defined in section 101(31) of the Bankruptcy Code, “Insiders”) (such program as to non-Insider Employees, the “Non-Insider Quarterly Incentive Plan”).⁵

32. The Debtors’ Non-Insider Quarterly Incentive Plan provides a quarterly bonus to certain Employees based on the Debtors reaching certain EBITDA thresholds and Employees achieving certain individual and team goals. Eligible Employees are paid bonuses equal to a percentage of their salary, ranging from five to thirty percent of their quarterly salary, based on their role and market conditions. Payments on account of the Non-Insider Quarterly Incentive Plan are made quarterly in arrears approximately one month after the close of each quarter.

⁵ The relief sought under this motion with respect to the Non-Insider Quarterly Incentive Plan does not include the payment of any obligation to an Insider. The Debtors will seek separate authority with respect to such parties and reserve all rights with respect to the “insider” status of such parties.

Presently, 153 non-Insider Employees are eligible to receive a quarterly bonus under the Non- Insider Quarterly Incentive Plan.

33. On average, the Debtors paid approximately \$671,000 per quarter on account of the Non-Insider Quarterly Incentive Plan. As of the Petition Date, the Debtors estimate that they will owe approximately \$592,000 on account of the Non-Insider Employee Incentive Plan. Accordingly, the Debtors seek authority to continue the Non-Insider Quarterly Incentive Plan on a postpetition basis in the ordinary course of business and consistent with past practices. For the avoidance of doubt, the Debtors seek authority to pay the amounts related to the Non-Insider Employee Incentive Plan pursuant to the Final Order only and do not propose to make any payment on account of the Non-Insider Employee Incentive Plan to Insiders.

2. Non-Insider PROPs Bonuses.

34. The Debtors also maintain a customer services based incentive bonus program for certain eligible Employees known as the Paralegals Recognized for Operational Performance Success or “PROPs” program (the “Non-Insider PROPs Bonuses”). The Non-Insider PROPs Bonuses are small-dollar bonuses meant to boost morale and motivate certain eligible Employees for working overtime, for example. The Non-Insider PROPs Bonuses are payable monthly and total approximately \$15,000 per month, on average. The Debtors estimate that, as of the Petition Date, approximately \$10,000 remains outstanding on account of the Non-Insider PROPs Bonuses. The Debtors request authority to pay outstanding amounts on account of the Non-Insider PROPs Bonuses and to continue the Non-Insider PROPs Bonuses in the ordinary course of business.

3. Non-Insider Quarterly Retention Program.

35. In addition to the Discretionary Bonuses, the Debtors maintain an annualized retention bonus program for certain non-Insider Employees, which is paid out on a quarterly basis (the “Non-Insider Quarterly Retention Program”). The Debtors believe that the Non-Insider

Quarterly Retention Program is crucial to avoiding the disruption that would result if certain key Employees were to leave their positions, especially during the pendency of these chapter 11 cases. 34 Employees are eligible for the compensation under the Non-Insider Quarterly Retention Program. For the avoidance of doubt, no bonuses under Non-Insider Quarterly Retention Program will be paid to Insiders. The Debtors believe that, as of the Petition Date, there are no amounts outstanding on account of the Non-Insider Quarterly Retention Program. However, out of an abundance of caution, the Debtors request authority to pay any outstanding amounts on account of the Non-Insider Quarterly Retention Program and to continue the Non-Insider Quarterly Retention Program in the ordinary course of business.

36. The Debtors also maintain a limited discretionary bonus program (the “Discretionary Bonuses”). From time to time, a manager can recognize an Employee for their outstanding performance and award them with a modest Discretionary Bonus no larger than \$5,000 each month. For the avoidance of doubt, no Discretionary Bonuses will be paid to Insiders. The Discretionary Bonuses generally do not require significant cash expenditures from the Debtors, and accordingly the Debtors believe that only *de minimis* Discretionary Bonus amounts are outstanding as of the Petition Date. Accordingly, the Debtors request authority pay outstanding amounts on account of the Discretionary Bonuses solely out of an abundance of caution and to continue the Discretionary Bonuses in the ordinary course of business and consistent with past practices. For the avoidance of doubt, no Discretionary Bonuses will be paid to Insiders, nor have the Debtors paid any such Discretionary Bonuses within the past twelve months.

II. Employee Benefits Programs.

A. Health and Welfare Programs.

37. The Debtors offer a number of health and welfare benefits programs to eligible current and former Employees, including the Health Insurance Programs, the Life and AD&D

Insurance, the Disability Benefits, the Workers' Compensation Program, and the 401(k) Plans, and pay certain administrative fees to third-party providers associated with such programs (each as defined herein and, collectively, the "Health and Welfare Programs").

1. Health Insurance Programs.

38. Employees are offered the opportunity to participate in or are otherwise provided a number of health benefit plans, including the Medical Plans, the FSA and HSA, the Vision Plan, and the Dental Plan (each as defined herein, and collectively, the "Health Insurance Programs"). The Debtors also subsidize or continue to provide certain benefits to certain former Employees after their termination, retirement, or disability leave, including (without limitation) benefits provided under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA").

39. The Debtors offer medical and prescription drug benefit programs (the "Medical Plans") to current and certain former Employees, which are administered by SelectHealth. The coverage in the Medical Plans differs depending on the level of coverage Employees or former Employees elect to receive. Monthly health care premiums differ depending on the Medical Plan in which the Employee or former Employee is enrolled and whether the Employee or former Employee has dependents covered by the applicable plan. The Debtors subsidize the premiums due on account of each Employee's coverage under the Medical Plans.

40. The Debtors also provide Employees who participate in certain Medical Plans with access to a flexible spending account ("FSA") or a health savings account ("HSA"), which are both administered by Optum Bank, Inc. ("Optum") and can be used to cover incidental medical costs and dependent childcare. Currently, approximately 20 Employees utilize the FSA and approximately 190 Employees utilize the HSA as part of the Health Insurance Program. On average, the Debtors paid approximately \$4,000 per month to Optum for the administration of the FSA and HSA for the two or three months (for Debtor PGX Holdings, Inc. and Debtor Lexington

Law, respectively) immediately preceding the Petition Date. The Debtors estimate that, as of the Petition Date, the aggregate amount of accrued but unpaid amounts payable to Optum is approximately \$8,000. The Debtors make contributions to Employees' HSA on a quarterly basis. The Debtors estimate that, as of the Petition Date, the aggregate amount of accrued but unpaid contributions is approximately \$28,000.

41. The Debtors also provide vision insurance through EyeMed Vision Care LLC (the "Vision Plan") and dental insurance through Delta Dental (the "Dental Plan"). The Debtors subsidize the premiums on account of each Employee's coverage under both the Vision Plan and the Dental Plan.

42. On average, the Debtors paid approximately \$469,000 per month on account of the Health Insurance Programs for the two pay cycles immediately preceding the Petition Date. Of this amount, certain vendors under the Health Insurance Programs are paid at the beginning of the month in advance, while others are paid at various times throughout the month in advance. As of the Petition Date, the Debtors estimate that they owe approximately \$105,000 on account of the Health Insurance Programs, all of which will become due and owing within the first 30 days of these chapter 11 cases. Accordingly, the Debtors seek authority to pay any prepetition amounts owed on account of the Health Insurance Programs and to continue the Health Insurance Programs on a postpetition basis in the ordinary course of business and consistent with past practices.

2. Insurance, Disability, and Workers' Compensation Programs.

a. Life and AD&D Insurance Programs.

43. The Debtors provide life (the "Basic Life Insurance") and accidental death and dismemberment insurance coverage (the "Basic AD&D Insurance") to current and certain former Employees through Life Insurance Company of North America ("Life Insurance Company of North America"), each of which provide maximum coverage of \$50,000 to each Employee in the

event of an Employee's death or dismemberment. Current and certain former Employees may also purchase supplemental life insurance (the "Supplemental Life Insurance," and together with the Basic Life Insurance, the Basic AD&D Insurance, and the Supplemental Life Insurance, the "Life and AD&D Insurance") covering themselves and their spouses and children, through Life Insurance Company of North America. Employees are eligible for company-sponsored Life and AD&D Insurance on the first day of the month following their employment start date. The Debtors estimate that they will owe approximately \$3,000 on account of Life and AD&D Insurance within the first 30 days of these chapter 11 cases. The Debtors are fully insured through the Life and AD&D Insurance.

b. Disability Benefits.

44. The Debtors provide Employees with short- and long-term disability benefits. All Employees are eligible for Disability Benefits. Under the short-term disability benefits program, Employees are entitled to, among other things, continuation of 60 percent of their base wages, up to a weekly limit of \$1,200, in the event of a short-term medical disability due to an illness, injury, or pregnancy related condition (the "Short-Term Disability Benefits"). Under the long-term disability benefits program, Employees are entitled to, among other things, continuation of 60 percent of their wages, up to a monthly limit of \$5,000 until the earlier of (i) the date the Employee's disability ends or (ii) the date the Employee reaches Social Security retirement age, in the event of a long-term medical disability due to illness or injury (the "Long-Term Disability Benefits", and, together with the Short-Term Disability Benefits, the "Disability Benefits").

45. Employees' Short-Term Disability Benefits begin after an Employee is unable to work due to illness or injury for 14 consecutive days and up to a duration of 11 weeks. The Long-Term Disability Benefits begin after an Employee has been unable to work due to illness

or injury for 90 days and continue until the earlier of (i) the date the Employee's disability ends or (ii) the date the Employee meets the normal retirement age as defined by the Social Security Administration. The Disability Benefits are fully insured and administered through Life Insurance Company of North America.

46. As of the Petition Date, the Debtors estimate that they owe approximately \$4,000, including administrative fees, on account of the Life and AD&D Insurance and Disability Benefits, all of which will become due and owing within the first 30 days of these chapter 11 cases. Accordingly, the Debtors seek authority to pay any prepetition amounts owed on account of the Life and AD&D Insurance and Disability Benefits and continue the Life and AD&D Insurance and Disability Benefits on a postpetition basis in the ordinary course of business and consistent with past practices.

c. Workers' Compensation Program.

47. The Debtors maintain workers' compensation insurance for their Employees at the levels required by laws in the states in which the Debtors operate (collectively, the "Workers' Compensation Program"). All Employees participate in the Debtors' Workers' Compensation Program, which is fully insured. The Debtors maintain coverage for the Workers' Compensation Program through Diversified Insurance (the "Workers' Compensation Broker") as broker and Atlantic Specialty Insurance Company Inc.⁶ as the carrier (together with the Workers' Compensation Broker, the "Workers' Compensation Vendors"). The Debtors pay approximately \$139,000 annually to the Workers' Compensation Vendors to maintain the Workers' Compensation Program.

⁶ One of the Debtor entities, Lexington Law, utilizes CNA Financial Corporation as its workers' compensation insurance carrier.

48. The Debtors must continue the claim assessment, determination, adjudication, and payment processing pursuant to the Workers' Compensation Program, without regard to whether such liabilities are outstanding before the Petition Date, to ensure that the Debtors comply with applicable workers' compensation laws and requirements.⁷ There are currently no open claims under the Workers' Compensation Program to which this would apply. The Debtors are not aware of any potential claims against them that have not yet been formally reported. Under their coverage from the Insurance Providers, the Debtors do not pay any amounts associated with each compensable claim; instead, the Insurance Providers pay any claim amounts directly. As of the Petition Date, the Debtors believe that there are no accrued, unpaid payments owed to Workers' Compensation Vendors.

49. For the claims administration process to operate in an efficient manner and to ensure that the Debtors comply with their contractual and legal obligations, the Debtors must continue to assess, determine, and adjudicate claims brought under the Workers' Compensation Program during these chapter 11 cases. In addition, to the extent any Employees assert claims under the Workers' Compensation Program, the Debtors request that the Court modify the automatic stay under section 362 of the Bankruptcy Code to permit the Employees to proceed with their claims under the Workers' Compensation Program. This requested modification of the automatic stay pertains solely to claims under the Workers' Compensation Program.

50. Because the Debtors are statutorily and/or contractually obligated to maintain the Workers' Compensation Program, their inability to do so may result in adverse legal consequences

⁷ The Debtors' Workers' Compensation Program may change postpetition in the ordinary course of business due to changes in applicable laws and regulations and the Debtors' ability to meet requirements thereunder. By this motion, the Debtors request authority to continue making all payments related to Workers' Compensation Program postpetition, including making any changes to current policy and practices that become necessary.

that would disrupt the reorganization process. Accordingly, the Debtors seek authority to continue the Workers' Compensation Program in the ordinary course of business on a postpetition basis, including by modifying the automatic stay solely to allow affected Employees to assert claims under the Workers' Compensation Program.

3. Retirement Plans.

51. The Debtors offer all of their Employees the opportunity to participate in either a traditional 401(k) Plan or a Roth 401(k) Plan (together, the "401(k) Plans"). Employees aged 18 or over become eligible for the 401(k) Plans on the first of the month following three months of continuous employment. The 401(k) Plans generally provide for salary deductions of compensation up to limits set by the Internal Revenue Code. Each Employee's 401(k) contributions are deducted automatically from each paycheck. The Debtors match the Employees' 401(k) Plan contributions in an amount up to 100 percent of the Employees' first three percent of eligible compensation and up to a 50 percent match for the next two percent of eligible compensation for a total of five percent of eligible compensation (the "401(k) Match"). Under the 401(k) Plans, the Debtors also make disbursements on account of payroll deductions for repayment of loans that Employees previously drew from their individual 401(k) accounts (the "401(k) Participant Loan Payments").

52. On average, the Debtors' paid approximately \$128,000 per month on account of the 401(k) Match and 401(k) Participant Loan Payments (together, the "401(k) Obligations") for the two pay cycles immediately preceding the Petition Date. As of the Petition Date, the Debtors estimate that they owe Employees approximately \$283,000 on account of the 401(k) Plans, all of which will become due and owing within the first 30 days of these chapter 11 cases. Accordingly, the Debtors seek authority to pay any accrued and unpaid 401(k) Obligations and continue the

401(k) Plans on a postpetition basis in the ordinary course of business and consistent with past practices.

53. The 401(k) Plan is administered by Fidelity Investment Company (“Fidelity Investment”) as trustee record keeper and Morgan Stanley Graystone (“Morgan Stanley”) as the broker. Fees for the 401(k) Plan owed to Fidelity Investment and Morgan Stanley are paid out of the plan itself. Accordingly, as of the Petition Date, the Debtors believe that there are no outstanding amounts due to Fidelity Investment or Morgan Stanley on account of the 401(k) Plans.

4. The Assistance Program.

54. The Debtors provide the Employees and their immediate family members with a free, confidential, and voluntary counseling and referral service (the “Employee Assistance Program”). The Employee Assistance Program pairs Employees and/or their family members with professional counselors who may also provide referrals and follow-up for individuals, couples, families, and groups regarding personal or work-related issues such as stress, marital family and relationship problems, anger management, substance abuse, work performance issues, emotional difficulties, or any concern that becomes a problem in an Employee’s (or their immediate family member’s) life.

55. The Employee Assistance Program is administered by SelectHealth. On average, the Debtors paid approximately \$8,000 on a quarterly basis on account of the Employee Assistance Program for the three most recent quarters preceding the Petition Date for which the Debtors possess invoices for. As of the Petition Date, the Debtors estimate that they currently owe approximately \$29,000 on account of the Employee Assistance Program and that the Debtors will owe approximately \$37,000 in the aggregate within the first 30 days of these chapter 11 cases.

5. Paid and Unpaid Leave.

56. The Debtors provide paid leave in the form of PTO (as defined below) and certain other statutory Paid Leave (together, the “Paid Leave”); the Debtors also provide Unpaid Leave (as defined below) in certain situations.

57. In the ordinary course of business, the Debtors provide paid time off (“PTO”) to the Employees as a Paid Leave benefit which may be used for any reason. For exempt Employees, PTO is awarded on an ad-hoc, open basis (the “Open PTO Program”) (unless otherwise mandated by state and/or local employment law). For hourly Employees, PTO accrues based on level and tenure.

58. The Debtors estimate that, as of the Petition Date, the aggregate amount of unused PTO is approximately \$348,000. This amount, however, is not a current cash payment obligation.

59. In addition, the Debtors provide certain other forms of Paid Leave and Unpaid Leave, including:

- paid holidays throughout the year, during which Employees are not required to work and are paid their base rate of pay;
- leave under the Family and Medical Leave Act for: (a) birth, adoption, or foster care, (b) family care, (c) medical emergencies, (d) military exigencies, and (e) military caregiving needs;
- maternity leave for all expecting female Employees; and
- other paid and unpaid leaves of absence for personal reasons, many of which are required by law, including statutory sick leave, emergency closings, missed work time in the ordinary course of business for bereavement leave, jury or court attendance, or time spent voting and unpaid leaves of absence for family medical leaves and military leaves (the “Unpaid Leave”).

These other forms of Paid Leave and Unpaid Leave do not involve incremental cash outlays beyond standard payroll obligations.

60. Because of the Debtors' Open PTO Program, they do not officially offer vacation time, sick time off, floating holidays, or personal time off for regular full-time exempt Employees, with very limited exceptions. As such, there is generally no "accrued" PTO, sick leave, or vacation, and exempt Employees are not paid any amount of vacation, sick time, or PTO upon termination of employment. Hourly Employees, however, accrue PTO based on level and tenure. Upon termination, hourly Employees could be eligible for a 50% payout on their accrued PTO (unless state and local employment laws mandate otherwise). The Debtors anticipate that, within 30 days of the Petition Date, no more than approximately \$11,000 in such accrued PTO may become payable.

61. The Debtors believe that the continuation of the Paid Leave and Unpaid Leave policies in accordance with prior practice is essential to maintaining Employee morale during these chapter 11 cases. Further, the policies are broad-based programs upon which all Employees have come to depend. The Debtors anticipate that their Employees will utilize any accrued Paid Leave in the ordinary course of business, which will not create any material cash flow requirements beyond the Debtors' normal payroll obligations.

B. Miscellaneous Benefits.

62. In addition to the above-mentioned benefits programs, the Debtors maintain the following benefits programs (the "Miscellaneous Benefits"):

- The Debtors offer various health and wellness programs, often structured as office-wide or individual challenges run by a coach. These programs typically run for four to six weeks and sometimes include a cost to the Debtors;
- The Debtors offer all of their Employees free access to their premium credit-repair services, a value of approximately \$3,000 per person. In

addition, each Employee may select one “plus-one” person to also receive the credit-repair services, once per calendar year;

- The Debtors allow their Employees to take paid time off to volunteer with community partners; and
- The Debtors offer certain Employees the ability to take a paid sabbatical when they hit their five-, ten-, fifteen-, or twenty-year anniversary with the Company.

63. The Miscellaneous Benefits are an important part of the total benefits package offered by the Debtors to their Employees. The Debtors believe that the continuation of the Miscellaneous Benefits will have a positive effect on Employee moral during the pendency of these chapter 11 cases. The Debtors therefore seek authority to pay unpaid prepetition amounts owed on account of the Miscellaneous Benefits and to continue paying amounts that come due on a postpetition basis in the ordinary course of business.

C. Benefits Brokerage Fees.

64. Arthur J. Gallagher & Co. (“Gallagher”) acts as the Debtors’ broker for employee benefits, coordinates with the Debtors’ benefit carriers, and provides the Debtors with invoice reconciliation support. The Debtors do not directly pay Gallagher. Gallagher is paid a fee by the benefit providers. As such, nothing is owed by the Debtors to Gallagher. The services provided by Gallagher are indispensable to the administration of the Debtors’ benefit programs, and absent continued service the Debtors would be forced to take their benefit programs in-house at great financial and logistical cost. Out of an abundance of caution, the Debtors seek authority to pay any fees that may be due or become due to Gallagher on a postpetition basis in the ordinary course of business.

Basis for Relief

I. Sufficient Cause Exists to Authorize the Debtors to Honor the Employee Compensation and Benefits Programs.

A. Certain Employee Compensation and Benefits Programs Are Entitled to Priority Treatment.

65. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code entitle the majority of the Employee Compensation and Benefits to priority treatment, to the extent such payments do not exceed \$15,150 for each individual as provided for under sections 507(a)(4) and (5) of the Bankruptcy Code. As priority claims, the Debtors are required to pay these claims in full to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(B) (requiring payment of certain allowed unsecured claims given priority under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code for (a) wages, salaries or commissions, including vacation, severance, and sick leave pay earned by an individual and (b) contributions to an employee benefit plan). To the extent that an Employee receives no more than \$15,150 on account of claims entitled to priority, the relief sought with respect to compensation only affects the timing of payments to Employees and does not have any material negative impact on recoveries for general unsecured creditors. To the extent an Employee is owed more than \$15,150 on account of certain Employee Compensation and Benefits, full payment of such obligations in the ordinary course is warranted under section 363(b)(1) of the Bankruptcy Code and the doctrine of necessity.

66. The Debtors' Employees are essential to the success of these chapter 11 cases and the Debtors' business. As such, payment of the Employee Compensation and Benefits at this time is necessary to avoid potential material disruption to the Debtors' ordinary-course operations. Finding, attracting, and training new qualified talent would be extremely difficult, particularly given current labor market conditions. Such recruitment efforts would most likely require, among other things, higher salaries, guaranteed bonuses, and more comprehensive compensation

packages than are currently provided to Employees. Furthermore, to avoid potentially costly disputes that could reduce the value of the Debtors' estates, as well as ease potential concerns from non-terminated Employees regarding ongoing compensation, it is necessary to pay any accrued but unpaid amount on account of Employee Compensation and Benefits owed to recently terminated Employees.

B. Payment of Certain Employee Compensation and Benefits Programs Is Required by Law.

67. As discussed above, the Debtors seek authority to pay the Withholding Obligations to the appropriate third-party entities. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction from the Employees' paychecks. Indeed, certain Withholding Obligations are not property of the Debtors' estates because the Debtors have withheld such amounts from the Employees' paychecks on another party's behalf. *See* 11 U.S.C. §§ 541(b)(1), (d). Furthermore, federal and state laws require the Debtors to withhold certain tax payments from the Employees' paychecks and to pay such amounts to the appropriate taxing authority. 26 U.S.C. §§ 6672, 7501(a); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95–97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes); *In re DuCharmes & Co.*, 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes). Because the Withholding Obligations may not be property of the Debtors' estates, the Debtors request that the Court authorize them to transmit the Withholding Obligations on account of the Employees to the proper parties in the ordinary course of business. *See In re Dameron*, 155 F.3d 718, 721 (4th Cir. 1998). The Debtors therefore request that the Court recognize that the Withholding Obligations are not property of the Debtors' estates

and, regardless of whether the Debtors collected the amounts prior to the Petition Date, authorize the Debtors to transmit such monies to the proper parties in the ordinary course of business.

68. Similarly, state laws require the Debtors to maintain the Workers' Compensation Program. If the Debtors fail to maintain the Workers' Compensation Program, state laws may prohibit the Debtors from operating in those states. Payment of all Workers' Compensation Program amounts is therefore crucial to the Debtors' continued operations and the success of the Debtors' restructuring. The Debtors therefore request that the Court authorize the Debtors to maintain the Workers' Compensation Program.

II. Payment of the Employee Compensation and Benefits Programs Is Proper Pursuant to Section 363(b) of the Bankruptcy Code and the Doctrine of Necessity.

69. 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.*, 60 B.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 presumptions of the business judgment rule on the merits is a near-Herculean task”). Thus, if a transaction satisfies the business judgment rule, it should be approved under section 363(b) of the Bankruptcy Code.

70. Furthermore, section 105(a) of the Bankruptcy Code provides that a court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions

of” the Bankruptcy Code, pursuant to the “doctrine of necessity.” 11 U.S.C. § 105(a). The “doctrine of necessity” functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code and further supports the relief requested herein.

71. The United States Court of Appeals for the Third Circuit recognized the “necessity of payment” doctrine in *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981). The Third Circuit held that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor. *Id.* (stating a court may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”).

72. The necessity of payment doctrine is designed to foster a debtor’s rehabilitation, which courts have recognized is “the paramount policy and goal of Chapter 11.” *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization”); *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code,” but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of toolmakers as “necessary to avert a serious threat to the Chapter 11 process”).

73. Payment of the Employee Compensation and Benefits Programs is warranted under this authority and the facts of these chapter 11 cases. Employees will be exposed to significant financial difficulties if the Debtors are not permitted to honor obligations for unpaid Employee Compensation and Benefits Programs. Additionally, continuing ordinary course benefits will help maintain Employee morale and minimize the adverse effect of the commencement of these chapter 11 cases on the Debtors' ongoing business operations.

74. Moreover, Employees provide the Debtors with services necessary to conduct the Debtors' businesses, and the Debtors believe that absent the payment of the Employee Compensation and Benefits Programs owed to the Employees, the Debtors may experience Employee turnover and instability at this critical time in these chapter 11 cases. The Debtors believe that without these payments, Employee productivity may decline because of the potential significant financial strain and other hardships the Employees may face. Such Employees may then elect to seek alternative employment opportunities. Additionally, a significant portion of the value of the Debtors' businesses is tied to their workforce, which cannot be replaced without significant efforts—which efforts may not be successful given the overhang of these chapter 11 cases. Enterprise value may be materially impaired to the detriment of all stakeholders in such a scenario. The Debtors therefore believe that payment of the prepetition obligations with respect to the Employee Compensation and Benefits Programs is a necessary and critical element of the Debtors' efforts to preserve value and will give the Debtors the greatest likelihood of retention of their Employees as the Debtors seek to operate their businesses in these chapter 11 cases.

75. Courts in this district have granted similar relief to that requested in this motion in previous chapter 11 cases. *See, e.g., In re Lannett Co., Inc.*, No. 23-10559 (JKS) (Bankr. D. Del. Apr. 24, 2023) (authorizing, on an interim basis, debtors to continue employee compensation and

benefit programs and pay certain prepetition obligations related thereto on a postpetition basis); *SiO2 Med. Prods., Inc.*, No. 23-10366 (JTD) (Bankr. D. Del. Apr. 24, 2023) (authorizing, on a final basis, debtors to continue employee compensation and benefit programs and pay certain prepetition obligations related thereto on a postpetition basis); *In re Carestream Health, Inc.*, No. 22-10778 (JKS) (Bankr. D. Del. Aug. 24, 2022) (same); *In re Lear Cap. Inc.*, No. 22-10165 (BLS) (Bankr. D. Del. Mar. 4, 2022) (same); *In re Am. Eagle Del. Holding Co. LLC*, No. 22-10028 (JKS) (Bankr. D. Del. Jan. 8, 2022) (same).⁸ Accordingly, the Debtors respectfully request that the Court authorize the Debtors to pay and continue the Employee Compensation and Benefits Programs in the ordinary course of business and consistent with past practice.

III. A Limited Waiver of the Automatic Stay for Workers' Compensation Claims Is Appropriate Here.

76. Section 362(a) of the Bankruptcy Code operates to stay “the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title” 11 U.S.C. § 362(a)(1).

77. Section 362 of the Bankruptcy Code, however, permits a debtor or other parties in interest to request a modification or termination of the automatic stay for “cause.” *Id.* at § 362(d)(1). Cause exists here to modify the automatic stay to permit the Employees to proceed with workers’ compensation claims in the appropriate judicial or administrative forum. Staying the workers’ compensation claims could have a detrimental effect on the financial well-being and morale of the Employees.

⁸ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors’ proposed counsel.

Processing of Checks and Electronic Fund Transfers Should Be Authorized

78. The Debtors have sufficient funds to pay the amounts described in this motion in the ordinary course of business by virtue of access to cash on hand and anticipated access to cash collateral and debtor-in-possession financing. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to any authorized payment in respect of the relief requested herein. Accordingly, the Debtors do not believe that checks or wire transfer requests, other than those relating to authorized payments, will be inadvertently honored. Therefore, the Debtors request authority, but not direction, to authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this motion.

The Requirements of Bankruptcy Rule 6003(b) Are Satisfied

79. Bankruptcy Rule 6003 empowers a court to grant certain relief within the first twenty-one days after the petition date only "to the extent that relief is necessary to avoid immediate and irreparable harm." For the reasons discussed above, the Debtors believe an immediate and orderly transition into chapter 11 is critical, and the failure to receive the requested relief during the first twenty-one days of these chapter 11 cases could impact the Debtors' operations at this important juncture. The requested relief is necessary for the Debtors to operate their businesses in the ordinary course, preserve the ongoing value of their operations, and maximize value of their estates for the benefit of all stakeholders. The Debtors have demonstrated that the requested relief is "necessary to avoid immediate and irreparable harm," as contemplated by Bankruptcy Rule 6003, and the Court should grant the requested relief.

Reservation of Rights

80. Nothing contained in this motion or any order granting the relief requested in this motion, and no action taken by the Debtors pursuant to the relief requested or granted (including any payment made in accordance with any such order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, priority, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in this motion or any order granting the relief requested by this motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity, priority, or amount of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

81. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

Notice

82. The Debtors will provide notice of this motion to: (a) the United States Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the office of the attorney general for each of the states in which the Debtors operate; (d) the United States Attorney’s Office for the District of Delaware; (e) the Internal Revenue Service; (f) the United States Securities and Exchange Commission; (g) the United States Department of Justice; (h) the DIP Agent and counsel thereto; (i) First Lien Credit Agreement Agent and counsel thereto; (j) the Second Lien Credit Agreement Agent and counsel thereto; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002 (the “Notice Parties”). As this motion is seeking “first day” relief, within two business days of the hearing on this motion, the Debtors will serve copies of this motion and any order entered in respect to this motion as required by Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

83. No prior request for the relief sought in this motion has been made to this or any other court.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors request entry of the Interim Order and Final Order, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, (a) granting the relief requested herein and (b) granting such other relief as the Court deems appropriate under the circumstances.

Dated: June 4, 2023
Wilmington, Delaware

/s/ Domenic E. Pacitti

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*Proposed Co-Counsel to the Debtors and Debtors in
Possession*

Exhibit A

Proposed Interim Order

**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.	)	(Joint Administration Requested)
	)	Re: Docket No. ___

**INTERIM ORDER (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**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for the entry of an interim order (this “Interim Order”), (a) authorizing the Debtors (i) to pay undisputed prepetition wages, salaries, other compensation, and reimbursable expenses on account of the Employee Compensation and Benefits and (ii) to continue employee benefits programs in the ordinary course of business, including payment of certain undisputed prepetition obligations related thereto; (b) scheduling a final hearing to consider approval of the Motion on a final basis; and (c) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and

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.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein.
2. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2023, at __:__.m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on _____, 2023 and shall be served on: (a) the Debtors, 257 East 200 South, Suite 1200, Salt Lake City, Utah 84111, Attn.: Eric Kamerath; (b) proposed counsel to the Debtors (i) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Joshua A. Sussberg, P.C. (joshua.sussberg@kirkland.com), (ii) Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois, 60654, Attn.: Spencer Winters (spencer.winters@kirkland.com), Whitney C. Fogelberg (whitney.fogelberg@kirkland.com), and Alison J. Wirtz (alison.wirtz@kirkland.com), (iii) Klehr Harrison Harvey Branzburg LLP, 919 North Market Street, Suite 1000, Wilmington, Delaware 19801, Attn.: Domenic E. Pacitti (dpacitti@klehr.com) and Michael W. Yurkewicz

(myurkewicz@klehr.com), and (iv) Klehr Harrison Harvey Branzburg LLP, 1835 Market Street, Suite 1400, Philadelphia, Pennsylvania 19103, Attn.: Morton R. Branzburg (mbranzburg@klehr.com); (c) the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn.: Jane Leamy (jane.m.leafy@usdoj.gov); and (d) any statutory committee appointed in these chapter 11 cases.

3. The Debtors are authorized, but not directed, to continue and/or modify, change, and discontinue the Employee Compensation and Benefits and to implement new programs, policies, and benefits, in the ordinary course of business during these chapter 11 cases and without the need for further Court approval, subject to applicable law. For the avoidance of doubt, except as otherwise expressly set forth herein, nothing in this Interim Order should be construed as authorizing the Debtors to: (i) pay any amounts to Insiders on account of any bonus or incentive programs; or (ii) make any payment on account of the Employee Compensation and Benefits that are outside the ordinary course of business without prior Court approval.

4. The Debtors are authorized, but not directed, in their discretion, to pay and honor prepetition amounts related to the Employee Compensation and Benefits Programs pursuant to this Interim Order; *provided* that such payments shall not exceed \$3,915,000 in the aggregate pending entry of a final order; *provided, further* that the Debtors are not authorized to pay any prepetition amounts on account of the Independent Director Compensation, the Non-Insider Quarterly Incentive Plan, the Non-Insider PROPs Bonus program, or the Non-Insider Quarterly Retention Program pursuant to this Interim Order.

5. Nothing herein shall be deemed to authorize the payment of any amounts in satisfaction of bonus or severance obligations, or which may implicate or be subject to section 503(c) of the Bankruptcy Code; *provided* that nothing in this Interim Order shall prejudice

the Debtors' ability to seek approval of relief pursuant to section 503(c) of the Bankruptcy Code at a later time.

6. Pursuant to section 362(d) of the Bankruptcy Code: (a) Employees are authorized to proceed with their workers' compensation claims in the appropriate judicial or administrative forum under the Workers' Compensation Program, and the Debtors are authorized to pay all undisputed prepetition amounts relating thereto in the ordinary course of business; and (b) the notice requirements pursuant to Bankruptcy Rule 4001(d) with respect to clause (a) are waived. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Program, and any such claims must be pursued in accordance with the applicable Workers' Compensation Program. Payment on account of any recoveries obtained in connection with a claim brought pursuant to this paragraph is limited to the terms and conditions of the applicable Workers' Compensation Program, including with regard to any policy limits or caps.

7. Nothing contained in the Motion or this Interim Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Interim Order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount, validity or priority of, or basis for any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in the Motion or this Interim Order; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property

of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

8. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

9. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

10. Notwithstanding anything to the contrary in this Interim Order, any payment made, or authorization contained, hereunder, shall be subject to the "Approved Budget" as defined in the order of the Court approving debtor-in-possession financing in these chapter 11 cases..

11. Nothing in this Interim Order authorizes the Debtors to accelerate any payments not otherwise due prior to the date of the Final Hearing.

12. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

13. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

14. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

15. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

16. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

Exhibit B

Proposed Final Order

**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.	)	(Joint Administration Requested)
	)	Re: Docket No. ___

**FINAL ORDER (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**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for the entry of a final order (this “Final Order”), (a) authorizing the Debtors (i) to pay undisputed prepetition wages, salaries, other compensation, and reimbursable expenses on account of the Employee Compensation and Benefits and (ii) to continue employee benefits programs in the ordinary course of business, including payment of certain undisputed prepetition obligations related thereto; and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having

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.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

found that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to continue and/or modify, change, and discontinue the Employee Compensation and Benefits and to implement new programs, policies, and benefits, in the ordinary course of business during these chapter 11 cases and without the need for further Court approval, subject to applicable law. For the avoidance of doubt, except as otherwise expressly set forth herein, nothing in this Final Order should be construed as authorizing the Debtors to: (i) pay any amounts to insiders on account of any bonus or incentive programs; or (ii) make any payment on account of the Employee Compensation and Benefits that are outside the ordinary course of business without prior Court approval.
3. Notwithstanding anything to the contrary herein, the Debtors are authorized, but not directed, to pay and honor prepetition amounts related to the Employee Compensation and Benefits Programs.

4. Nothing herein shall be deemed to authorize the payment of any amounts which violates or implicates section 503(c) of the Bankruptcy Code; *provided* that nothing herein shall prejudice the Debtors' ability to seek approval of relief pursuant to section 503(c) of the Bankruptcy Code at a later time.

5. Pursuant to section 362(d) of the Bankruptcy Code: (a) Employees are authorized to proceed with their workers' compensation claims in the appropriate judicial or administrative forum under the Workers' Compensation Program, and the Debtors are authorized to pay all undisputed prepetition amounts relating thereto in the ordinary course of business; and (b) the notice requirements pursuant to Bankruptcy Rule 4001(d) with respect to clause (a) are waived. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Program and any such claims must be pursued in accordance with the applicable Workers' Compensation Program. Payment on account of any recoveries obtained in connection with a claim brought pursuant to this paragraph is limited to the terms and conditions of the applicable Workers' Compensation Program, including with regard to any policy limits or caps.

6. Nothing contained in the Motion or this Final Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Final Order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount, validity or priority of, or basis for any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in the Motion or this Final Order; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease

pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

7. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

8. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

9. Notwithstanding anything to the contrary in this Final Order, any payment made, or authorization contained, hereunder, shall be subject to the "Approved Budget" as defined in the order of the Court approving debtor-in-possession financing in these chapter 11 cases.

10. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

11. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

12. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

13. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.