

1 includes parcel 993-69-816, which relates to the personal property that is or was located
2 at 20620 N. 19th Avenue, Suite 200, Phoenix, AZ.

3 Arizona law provides the following.

4 a. The personal property tax liens attached on January 1 of the respective tax
5 year and the taxes are not discharged until the taxes and interest are paid in
6 full or title to the property vests in a purchaser of the property for taxes. A.R.S.
7 §§ 42-17153 and 42-19106.

8 b. The tax liens are “prior and superior to any other liens of every kind and
9 description regardless of when another lien attached.” A.R.S. §§ 42-19106 and
10 42-17153.

11 c. Interest accrues at the statutory rate of 16% per annum until the taxes are paid
12 in full. 11 U.S.C. § 511 and A.R.S. § 42-18053.

13 **Objections**

14 MCT objects to the Interim Financing Order and related Motion to the extent that
15 they seek to prime MCT’s valid, enforceable, senior tax liens on Debtors’ personal
16 property located in Maricopa County, Arizona. Throughout the Interim Financing Order, it
17 is indicated that the DIP Liens sought will be subject to Prepetition Permitted Liens.
18 However, the Interim Financing Order is unclear if the MCT tax liens qualify as Prepetition
19 Permitted Liens. Further, the DIP Loan Agreement attached to the Interim Financing
20 Order as Exhibit A does not define Prepetition Permitted Liens. The DIP Loan Agreement
21 defines “Permitted Liens”, which includes liens for taxes not yet due and payable. (DE 70,
22 Exhibit A, p. 34). The DIP Loan Agreement also defines “Permitted Prior Lien”, which
23 means “any of those existing Liens set forth on Schedule 7.02(a) that under applicable
24 law, are senior to, and have not been subordinated to, the DIP Liens...” (DE 70, Exhibit

1 A, p. 36). Schedule 7.02(a) lists “None” (DE 70, Exhibit A, Schedule 7.02(a)). Therefore,
2 the status of the MCT tax liens under the Interim Financing Order is unclear.

3 MCT further objects to the Interim Financing Order and related Motion to the extent
4 that the MCT tax liens are not adequately protected. Paragraph 35 of the Interim
5 Financing Order provides the following.

6 [U]nless otherwise ordered by the Court, including without limitation
7 pursuant to the Sale Order, all cash proceeds generated from the sale of
8 any assets secured by the Prepetition Secured Liens or the DIP Liens shall
9 be paid to the DIP Lenders and the Prepetition Secured Lenders upon the
10 closing of such sale for permanent application against the obligations owing
11 by the Debtors under the DIP Documents in accordance with the terms and
12 conditions of the DIP Orders, the DIP Documents and the Prepetition
13 Secured Loan Documents, each as applicable, until such time as all DIP
14 Obligations and the Prepetition Secured Loan Obligations have been Paid
15 in Full and all Adequate Protection Obligations have been indefeasibly paid
16 in full. (DE 70, Interim Financing Order, pp. 72-73)

17 Perhaps the above provision is included in the Interim Financing Order in the event
18 the sale or sales of assets is ultimately to parties other than the Stalking Horse Bidders.
19 In addition to the Interim Financing Order, the Debtors have also filed a motion to sell
20 substantially all assets (DE 66, the “Sale Motion”). The Sale Motion proposes two sales
21 to two separate Stalking Horse Bidders. One sale relates to the assets of the Progrexion
22 APA Parties and the other sale relates to the assets of the Lexington Law APA Parties.
23 The purchase price for the Progrexion sale consists of a credit bid plus the assumption
24 by Buyer of the Assumed Liabilities. The purchase price for the Lexington Law sale
consists of the assumption and cure of the PGX Operating Agreements plus the
assumption by Buyer of the Assumed Liabilities. Neither sale appears to include any cash
sale proceeds. To the extent there are cash proceeds generated from the sale or sales
of property subject to the MCT tax liens, those cash proceeds constitute MCT’s cash
collateral and MCT objects to its use to pay any other creditors of this estate. Pursuant to

1 11 U.S.C. § 363(c)(4), absent consent by MCT, or an order of the Court permitting use of
2 the cash collateral, the Debtors “shall segregate and account for any cash collateral” in
3 their possession. MCT does not consent to the use of its cash collateral and a segregated
4 account in the amount of \$13,813.18 must be established from the sale proceeds to
5 comply with the requirements of 11 U.S.C. § 363(c)(4). As senior secured creditors, with
6 liens priming the DIP lenders, MCT objects to any cash sale proceeds being paid over to
7 the DIP Lenders, Prepetition Secured Lenders, or any other junior creditors without first
8 having paid the MCT Claims in full.

9 WHEREFORE, MCT objects to the Interim Financing Order and the related Motion
10 to the extent that they seek to prime any MCT tax liens and fail to provide adequate
11 protection.

12 RESPECTFULLY SUBMITTED this 20th day of June, 2023.

13 RACHEL H. MITCHELL
14 MARICOPA COUNTY ATTORNEY

15 BY: /s/ Peter Muthig
16 PETER MUTHIG
17 Deputy County Attorney
18 AZ State Bar No. 018526
225 W. Madison Street
Phoenix, Arizona 85003
Telephone (602) 506-1923
E-mail: muthigk@mcao.maricopa.gov
Attorney for Maricopa County Treasurer

19 ORIGINAL of the foregoing E-FILED
20 this 20th day of June, 2023, with:

21 Clerk, United States Bankruptcy Court
22 District of Delaware
824 Market Street, 3rd Floor
Wilmington, DE 19801

23 ...

24

1 COPY of the foregoing mailed/e-mailed,
2 this 20th day of June, 2023, to:

3 Joshua A. Sussberg
4 Kirkland & Ellis LLP
5 601 Lexington Avenue
6 New York, NY 10022
7 Email: Joshua.sussberg@kirkland.com
8 *Co-Counsel for Debtors*

9 Spencer Winters
10 Whitney Fogelberg
11 Alison J. Wirtz
12 Kirkland & Ellis LLP
13 300 N. LaSalle
14 Chicago, IL 60654
15 Email: spencer.winters@kirkland.com
16 Email: whitney.fogelberg@kirkland.com
17 Email: Alison.wirtz@kirkland.com
18 *Co-Counsel for Debtors*

19 Domenic E. Pacitti
20 Michael W. Yurkewicz
21 Klehr Harrison Harvey Branzburg LLP
22 919 N. Market Street, Suite 1000
23 Wilmington, DE 19801
24 Email: dpacitti@klehr.com
Email: myurkewicz@klehr.com
Co-Counsel for Debtors

Morton R. Branzburg
Klehr Harrison Harvey Branzburg LLP
1835 Market Street, Suite 1400
Philadelphia, PA 19103
Email: mbranzburg@klehr.com
Co-Counsel for Debtors

Roger Schwartz
Geoffrey M. King
Timothy Fesenmyer
King & Spalding
1185 Avenue of the Americas
New York, NY 10036
Email: rschwartz@kslaw.com
Email: gking@kslaw.com
Email: tfesenmyer@kslaw.com
*Counsel for the Prepetition First Lien Lenders
And DIP Lenders*

...

...

1 Robert J. Dehney
Morris, Nichols, Arsht & Tunnell LLP
2 1201 N. Market Street, Suite 1600
Wilmington, DE 19801
3 Email: rdehney@morrisnichols.com
Counsel for the Prepetition First Lien Lenders
And DIP Lenders

4
Jane M. Leamy
5 Office of the U.S. Trustee
844 King Street, Suite 2207
6 Wilmington, DE 19801
Email: jane.m.leamy@usdoj.gov
7 Email: jane.leamy@usdoj.gov

8 /s/ Marcy Delgado

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24