

**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.)	(Jointly Administered)
)	Re: Docket Nos. 66-68, 101, 155

**REPLY OF DEBTORS IN SUPPORT OF
MOTION OF THE DEBTORS FOR ENTRY OF ORDERS
(I)(A) APPROVING BIDDING PROCEDURES FOR SUBSTANTIALLY
ALL OF THE DEBTORS’ ASSETS, (B) AUTHORIZING THE DEBTORS TO ENTER
INTO ONE OR MORE STALKING HORSE AGREEMENTS AND TO PROVIDE
BIDDING PROTECTIONS THEREUNDER, (C) SCHEDULING AN AUCTION AND
APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (D) APPROVING
ASSUMPTION AND ASSIGNMENT PROCEDURES, AND (E) SCHEDULING
A SALE HEARING AND APPROVING THE FORM AND MANNER OF NOTICE
THEREOF; (II)(A) APPROVING THE SALE OF THE DEBTORS’ ASSETS
FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES
AND (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY
CONTRACTS AND UNEXPIRED LEASES; AND (III) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) submit this reply in support of the *Motion of the Debtors for Entry of Orders (I)(A) Approving Bidding Procedures for Substantially All of the Debtors’ Assets, (B) Authorizing the Debtors to Enter into One or More Stalking Horse Agreements and to Provide Bidding Protections Thereunder, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, and (E) Scheduling A Sale Hearing and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtors’*

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.



Assets Free and Clear of Liens, Claims, Interests and Encumbrances and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief [Docket No. 66] (the “Motion”) and in response to the objections to the Motion filed by the Office of the U.S. Trustee for the District of Delaware (the “U.S. Trustee”) [Docket No. 101] (the “UST Objection”) and the Official Committee of Unsecured Creditors (the “Committee”) [Docket No. 155] (the “Committee Objection” and, together with the UST Objection, the “Objections”). In further support of the Motion and this reply, the Debtors state as follows.²

Reply

1. These chapter 11 cases must proceed on an expedited basis given the funding available under the DIP Facility and the go-forward business plan described in the First Day Declaration. The relief sought in the Motion—approval of the proposed Bidding Procedures, the sale timeline, the assumption and assignment process, and entry into the interrelated stalking horse agreements (subject to an overbidding process and approval of any sale terms at a future hearing)—is necessary to achieve this goal and consistent with relief granted in other cases. Accordingly, the Court should enter an order approving the Bidding Procedures.³

2. The Debtors have worked with the U.S. Trustee and the Committee to consensually resolve certain issues raised, including (a) removing the request for expense

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”) [Docket No. 12], filed 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 or the Motion, as applicable. The declaration of Neil A. Augustine filed in support of the Motion [Docket No. 67] (the “Augustine Declaration”) is incorporated by reference.

³ The Debtors plan to file updated Stalking Horse Agreements before the hearing on the Motion given the need to proceed expeditiously.

reimbursement for the PGX Stalking Horse Bidder, (b) lowering the overbid amount for the (i) PGX Assets from \$5 million to \$1 million and (ii) assets of Lexington Law Firm from \$500,000 to \$250,000, (c) providing the Committee additional consultation rights, (d) providing clarifying language regarding the permissibility of joint bids, and (e) modifying the terms of the proposed good faith finding.⁴ In light of these discussions, the Debtors believe they were able to consensually resolve the UST Objection in full and narrow the outstanding issues raised in the Committee Objection.

3. The Committee's remaining objections should be overruled. Any legal issues related to alleged actions taken by the Debtors prior to the Petition Date are simply not before the Court in any form, let alone in the context of the Motion. Further, the Committee Objection, at this premature juncture, seeks to litigate substantive potential sale issues that are not ripe for the hearing to approve the Bidding Procedures, and are better suited for a sale hearing where the terms of any actual proposed sales would properly be before the Court after completion of a robust marketing process and auction. For example, it is unnecessary to address the potential insider status of a stalking horse purchaser at this time given the absence of any breakup fees or expense reimbursement and the fact that the Debtors will continue to conduct an overbidding process. The Committee Objection attempts to rewrite material terms of the Restructuring Support Agreement, which must also be rejected. For instance, the Committee would have PGX Assets sold in a section 363 sale and the assets of Lexington Law Firm sold separately through a plan-sale, yet such a change completely overlooks the nature of the relationship between the PGX Debtors and Lexington Law Firm. The stalking horse purchasers do not seek to buy the businesses separately because the PGX Debtors and Debtor Lexington Law Firm have

⁴ The Debtors plan to file a proposed revised Bidding Procedures Order in advance of the hearing to reflect the consensual resolution of these and other issues.

intertwined operations, and the value of each Stalking Horse Agreement is conditioned on maintaining their relationship with the other on a go-forward basis.⁵ For the foregoing reasons and as set forth herein, the Debtors respectfully request that the Court enter an order overruling the objections and granting the relief requested in the Motion.

I. The Terms of the Bidding Procedures and the Stalking Horse Agreements Reflect the Reasonable Exercise of the Debtors' Sound Business Judgment and Are Entitled to Deference in the First Instance.

4. Courts recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and, therefore, are appropriate in the context of bankruptcy transactions. *See, e.g., In re Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998) (“The purpose of procedural bidding orders is to facilitate an open and fair public sale designed to maximize value for the estate.”); *see also In re Food Barn Stores, Inc.*, 107 F.3d 558, 564–65 (8th Cir. 1997) (in bankruptcy sales, “a primary objective of the [Bankruptcy] Code [is] to enhance the value of the estate at hand.”); *In re Integrated Res., Inc.*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (“It is a well-established principle of bankruptcy law that the objective of the bankruptcy rules and the [Debtor]’s duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.”) (citation omitted). Courts will approve such procedures if they are supported by a sound business justification. *See, e.g., In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996) (“[U]nder normal circumstances the court would defer to the trustee’s judgment so long as there is a legitimate business justification.”) (citing *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991) (“[T]he debtor in possession can sell

⁵ The PGX Debtors have performed certain key functions for Lexington Law Firm for nearly two decades under the Operating Agreements. *See* First Day Declaration, ¶ 26. In the twelve-month period before the Petition Date, Lexington Law Firm’s payment obligations to PGX were \$251.6 million on account of the Operating Agreements. *Id.* ¶ 27. Services provided by Lexington Law Firm to its Legal Clients (as defined herein) accounted for approximately 88% of the Debtors’ aggregate revenue in the twelve-month period ending in March 2023. *Id.* ¶ 88.

property of the estate . . . if[] he has an ‘articulated business justification[.]’”) (citations omitted)); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (“In determining whether to authorize the use, sale or lease of property of the estate . . . courts require the debtor to show that a sound business purpose justifies such actions.”). An initial bid on a debtors’ assets, “ordinarily or perhaps even always, will provide a benefit to an estate because it will establish a floor price for the assets to be sold.” *In re Reliant Energy Channelview LP*, 594 F.3d 200, 207 (3d Cir. 2010).

5. The Debtors have appropriately exercised their business judgment in seeking approval of the Bidding Procedures, which are designed to provide a clear and efficient means of soliciting and assessing value-maximizing proposals within the Debtors’ liquidity constraints for both the PGX Debtors’ assets and the assets of Lexington Law Firm. The Bidding Procedures provide the flexibility and optionality needed for the Debtors to assess multiple paths and proceed down the one that, in their business judgment, will create the most value for their stakeholders. Similarly, entry into the Stalking Horse Agreements reflects a sound exercise of the Debtors’ business judgement because the Stalking Horse Bids provide potential third-party purchasers with clear guidelines for participation in the sale process by setting a floor price for the Debtors’ assets which will maximize the value of such assets. In addition, the Bidding Procedures and Stalking Horse Agreements specifically reserve the Debtors’ rights to exercise their fiduciary duties, including in the pursuit of alternative transactions or restructuring strategies or modifying the terms of the Bidding Procedures.⁶ *See* Bidding Procedures,

⁶ For the avoidance of doubt, the Committee argues that any sales should be “untethered” from the “value-destructive” Restructuring Support Agreement. Committee Objection at ¶ 11. The Committee’s position appears to be based on a fundamental misunderstanding of the Restructuring Support Agreement. **First**, the Restructuring Support Agreement does not bind the Debtors to consummate any transaction with the Prepetition Secured Lenders. Rather, it binds the Debtors to a certain overbidding process whereby the Prepetition Secured Lenders serve as a stalking horse bidder, and the Debtors’ business judgment is fully preserved with a fiduciary out. **Second**, the release related provisions of the Restructuring Support Agreement

Section IX; Lexington Law APA, Article 10.19; Progrexion APA, Article 10.20. Nonetheless, the Committee raises certain issues with respect to the terms of the Bidding Procedures and the Stalking Horse Agreements without purporting to introduce any evidence or caselaw in support of rebutting the Debtors' business judgment deference. Importantly, the Debtors are not currently asking the Court to approve the Sale Transaction at this stage. Any sales presented to the Court in the future may differ from the terms of the Stalking Horse Agreements, which simply stake out a starting point for the overbidding process.

6. ***Form of Consideration.*** One issue that appeared to be raised in the Committee Objection is the form of the consideration proposed under the Lexington Law APA not being direct cash consideration, which the Committee argues should be required. The Court should overrule this argument for purposes of the Bidding Procedures. Not only is it premature and an intrusion on the Debtors' exercise of their business judgment, but the Committee has also cited no legal authority to compel a specific form of consideration. To the contrary, the Bankruptcy Code and past practice in this district demonstrate that non-cash consideration is routinely considered by debtors. For instance, the Bankruptcy Code expressly permits credit bidding in which no cash actually exchanges hands, except where "the court for cause orders otherwise." *See* 11 U.S.C. § 363(k). Further, it is common for debtors to ascribe value to a buyer's assumption of certain liabilities or obligations. *See, e.g., In re Indep. Pet Partners Holdings, LLC*, No. 23-19153 (LSS) (Bankr. D. Del. Feb. 24, 2023) (including the value of the assumed liabilities in the definition of the purchase price); *In re Sequential Brands Grp., Inc.*, No. 21-11194 (JTD) (Bankr. D. Del. Sept. 24, 2021) (same); *In re Avadim Health, Inc.*,

arise solely in the context of a plan following consummation of a sale transaction; *however*, the Debtors are not required to consummate any plan by the express terms of the Restructuring Support Agreement. *See* Restructuring Term Sheet at 3.

No. 21-10883 (CTG) (Bankr. D. Del. June 23, 2021) (same); *In re Bluestem Brands, Inc.*, No. 20-10566 (MFW) (Bankr. D. Del. June 3, 2020) (same); *In re Forever 21, Inc.*, No. 19-12122 (KG) (Bankr. D. Del. Feb. 4, 2020) (same).⁷

7. ***Avoidance Actions.*** The Committee also objects to the Stalking Horse Agreements as far as they transfer avoidance actions to each stalking horse bidder. See Committee Objection at ¶ 21.a. Similar to the Committee's objection to the consideration put forth in the Lexington Law APA, this objection is premature and should be considered in connection with the Court's approval of the Sale Transaction at the sale hearing.

8. Even so, the courts in this district have routinely approved the forms of stalking horse agreement that seek to transfer avoidance actions to the buyer. See, e.g., *In re Plastiq Inc.*, No. 23-10671 (BLS) (Bankr. D. Del. June 21, 2023) (overruling the objection of the unsecured creditors' committee that included, inter alia, an argument that avoidance actions should not transfer, and approving a stalking horse agreement that purported to transfer avoidance actions to the buyer); *In re Indep. Pet Partners Holdings, LLC*, No. 23-19153 (LSS) (Bankr. D. Del. Feb. 24, 2023) (approving purchase agreement that would transfer avoidance actions against the debtors' current or former directors, managers or equityholders or their respective subsidiaries, parents, equityholders, partners, employees, officers, directors, managers, divisions, affiliates, agents, representatives, advisors, attorneys, successors and assigns, in each case, in their capacity as such, to the buyer); *In re Sequential Brands Grp., Inc.*, No. 21-11194 (JTD) (Bankr. D. Del. Sept. 24, 2021) (similar); *In re Avadim Health, Inc.*, No. 21-10883 (CTG) (Bankr. D. Del. June 23, 2021) (similar); *In re Bluestem Brands, Inc.*, No. 20-10566 (MFW) (Bankr. D. Del.

⁷ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this reply. Copies of these orders are available upon request to the Debtors' proposed counsel.

June 3, 2020) (similar); *In re Forever 21, Inc.*, No. 19-12122 (KG) (Bankr. D. Del. Feb. 4, 2020) (similar).⁸

9. The Committee also argues that the Prepetition Secured Lenders cannot utilize their credit bid to acquire unencumbered assets. However, the Stalking Horse Purchaser for the PGX Assets (a vehicle owned by the DIP Lenders and Prepetition Lenders) is also entitled to credit bid amounts advanced under the DIP Facility, pursuant to which the DIP Lenders have liens on such unencumbered assets. Further, as detailed in the Debtors' reply in support of approval of the DIP Facility filed contemporaneously herewith, the Debtors assert that granting of liens on substantially all the assets of the Debtors is appropriate and necessary under the circumstances, and the Court's resolution of this issue as it relates to the DIP financing renders this objection moot.

10. ***Legal Clients.*** The Committee also makes inflammatory suggestions that the assumption and assignment procedures fail to properly account for the potential transfer of Lexington Law Firm's attorney-client relationships (such clients of Lexington Law Firm, collectively, the "Legal Clients") or comply with applicable professional responsibility rules. Not only has the Lexington Law APA been revised to more precisely account for the relationships with Legal Clients, but Lexington Law Firm, from before the Petition Date, has focused and continues to focus on compliance with applicable professional responsibility rules and tailoring the relief requested in these chapter 11 cases to account for the operation of a law firm. Further, the transfer of the files of Legal Clients will not occur under the assumption and assignment procedures but, rather, in accordance with the applicable professional responsibility

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

rules, as reflected in the revised Lexington Law APA. Accordingly, the Debtors' assert that they have taken steps necessary to comply with applicable professional responsibility rules.

11. The Debtors requested in their suite of first day motions that the Court approve the form of an opt-out notice for the Legal Clients (the "Legal Client Notice"). *See* Docket No. 14. The form of Legal Client Notice approved by the Court included clear instructions—in an easily readable format, written in plain English, and with the applicable deadline set off with bold and underlined typeface—on how a Legal Client could opt-out from the transfer of their client file to any eventual buyer of Lexington Law Firm. *See* Docket No. 64. The Debtors caused their current and former Legal Clients to receive service of the Legal Client Notice, along with the notice of commencement. The *Certificate of Service* filed at Docket No. 131 by the Debtors' noticing and claims agent stated,

[B]etween June 9, 2023 and June 12, 2023 . . . employees of KCC caused to be served a cover letter and the *Notice of Chapter 11 Bankruptcy Case* [Docket No. 80] . . . upon both the current and former Lexington Law Clients and PGX Customers. The Lexington Law Clients also received information regarding opting out of having their client file transferred to the Buyer.

Further, the Debtors' noticing and claims agent has indicated that approximately 1.93 million current or former Legal Clients received service of the Legal Client Notice. For the avoidance of doubt, the deadline to opt out in accordance with the terms of the Legal Client Notice was set for September 10, 2023, which is 90 days after service of the Legal Client Notice was completed in compliance with the 90-day notice and objection period required under rule 1.17(c) of the Utah Rules of Professional Conduct and rule 1.17(c) of the Delaware Rules of Professional Conduct (to the extent applicable) and as recommended by rule 1.17(c) of the ABA Model Rules of Professional Conduct.

II. Arguments Related to the Potential Insider Status of the Lexington Law Stalking Horse Bidder and the Consideration Contemplated Under the Lexington Law Stalking Horse Agreement are Premature.

12. As stated above, the issue currently before the Court is simply whether the Bidding Procedures should be approved. The Committee raises certain objections to the Bidding Procedures that are more properly made in the context of the eventual approval of the Sale Transaction, after the marketing and overbidding process. The hearing to approve Bidding Procedures is not intended to approve the Stalking Horse Agreements in their substance, but only their form in order to set a floor for the overbidding process, which may result in new buyers for one or more of the Debtors' assets. Moreover, there is the potential that the Stalking Horse Agreements undergo further revisions in any event.

13. As other courts have concluded, approval of bidding procedures does not require perfect resolution of ancillary legal issues pending in a debtor's chapter 11 case. *See, e.g., In re The Free Lance-Star Publ'g Co. of Fredericksburg, VA*, No. 14-30315 (Bankr. E.D. Va. March 10, 2014) [Docket No. 111] (approving bidding procedures and scheduling a hearing to determine contested credit bid at a later date); *In re Merit Group, Inc.*, 464 B.R. 240, 257–58 (Bankr. D.S.C. July 12, 2011) (approving bidding procedures and reserving the right to revisit the appropriateness of any credit bid at a later date).⁹ Courts have similarly overruled objections to bidding procedures and deferred ruling on issues that are ultimately better suited for a sale or confirmation hearing. *See In re Innkeepers USA Trust*, 448 B.R. 131, 148 (Bankr. S.D.N.Y. 2011) (approving bidding procedures and a stalking horse bid “so that [the debtors] may conduct an auction” while overruling certain objections raising issues for confirmation); *In re Verity Health Sys. of California, Inc.*, No. 18-20151 (Bankr. C.D. Ca. Oct. 31, 2018)

⁹ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this reply. Copies of these orders are available upon request to the Debtors' proposed counsel.

[Docket No. 724] (approving bidding procedures while noting that consideration of objections related to the rejection of collective bargaining agreements and other specific contract concerns was premature, and such objections were preserved for the sale hearing).¹⁰

14. The Bidding Procedures are simply a series of deadlines, bid qualifications and criteria, and other related procedural requirements. At this time, the Debtors do not seek approval of a sale, plan, or other transaction, nor the terms of certain releases, treatment of claims, assumption or rejection of any agreements, breakup fees, or expense reimbursements. Even still, the Debtors and the Lexington Law Stalking Horse Bidder negotiated the Lexington Law APA at arm's-length and like any other third-party at all times. *See* Augustine Declaration, ¶¶ 19-21. Both Lexington Law Firm and the Lexington Law Stalking Horse Bidder were represented by experienced and well-regarded legal advisors who engaged extensively in the negotiation of the Lexington Law APA. The disinterested director on the board of Lexington Law Firm reviewed the terms of the Lexington Law APA (with the advice of independent counsel) and determined entry into the same, subject to Court approval, was advisable and in the best interests of Lexington Law Firm. The Lexington Law Stalking Horse Bidder does not seek bid protections or expense reimbursements, only the opportunity to serve as the stalking horse for the Lexington Law Firm assets. Further, the Debtors submit that the terms of the Lexington Law Stalking Horse APA are “customary [and] reasonable.” Augustine Declaration, ¶ 21.

15. As consideration for this opportunity, the Lexington Law Stalking Horse Bidder has agreed to assume certain liabilities. Contrary to the Committee's suggestion that the consideration only amounts to the cure costs of the PGX Operating Agreements, the Lexington Law APA also includes, separately, the assumption of certain other material obligations related

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to administrative expenses (not in excess of \$4.4 million in the aggregate). As stated at the first day hearing, the Lexington Law Stalking Horse Bidder is assuming cure costs under the PGX Operating Agreements of approximately \$24 million. June 6, 2023 Hr’g Tr. 18:11–14 (“The consideration [for the sale of Lexington Law Firm] is assumption of the operating agreements and certain other liabilities, including a roughly \$24 million liability outstanding under those operating agreements.”). This Court and other courts in this jurisdiction have previously approved agreements where the consideration package ascribed specific value to cure costs assumed by the buyer. *See, e.g., In re Big Vill. Holding LLC*, No. 23-10174 (CTG) (Bankr. D. Del. Mar. 13, 2023) (including satisfaction of cure costs in the defined purchase price); *In re Forever 21, Inc.*, No. 19-12122 (KG) (Bankr. D. Del. Feb. 4, 2020) (capping assumed liabilities, including cure costs, at \$30 million and including such amount in the purchase price); *In re Emerald Oil, Inc.*, No. 16-10704 (KG) (Bankr. D. Del. July 28, 2016) (approving asset purchase agreement where certain cure costs constituted a deduction to the purchase price). When describing the consideration paid by a purchaser in another case, at least one court even specifically mentioned the value of the liabilities to be assumed. *In re Performance Powersports Grp. Invs., LLC*, No. 23-10047 (LSS) (Bankr. D. Del. Mar. 23, 2023), Hr’g Tr. 82:2–7 (“The purchase price is \$10 million in the credit bid . . . and assumed liabilities of about \$9 million.”). Contrary to the Committee’s assertions, the assumption of cure costs is far from illusory as they represent actual value to the Debtors’ estates.

16. In time, the Debtors will seek the approval of the Sale Transaction, but there is no guarantee that either Stalking Horse Bidder, let alone the Lexington Law Stalking Horse Bidder, will be successful bidders on the applicable assets. A hypothetical sale to an insider should not

stall the entire bidding process during which alternative bidders may come forward to participate in the marketing and bidding process.

Conclusion

17. For the reasons discussed in the Motion, the Augustine Declaration, and this reply, the Debtors believe that the Bidding Procedures are designed to support an active and competitive bidding process that will maximize the value of the Debtors' estates under the circumstances, and entry into the interdependent Stalking Horse Agreements will serve as an appropriate floor for the Sale Transaction that will be sought for Court approval in the future if such agreements are determined to be the winning bids. Accordingly, the Debtors request that the Court overrule the Objections (to the extent not consensually resolved or rendered moot), enter the proposed Order, and grant such other and further relief that the Court deems just and proper.

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Dated: July 19, 2023
Wilmington, Delaware

/s/ Michael W. Yurkewicz

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