

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

Prodigy Investments Holdings, Inc.,

Reorganized Debtor.¹

Chapter 11

Case No. 23–11120 (BLS)

(Jointly Administered)

Hearing Date: May 8, 2024 at 10:00 a.m. (ET)

Objection Deadline: April 26, 2024 at 4:00 p.m. (ET)

**MOTION OF GS OPERATING, LLC D/B/A GEXPRO SERVICES
FOR ALLOWANCE AND PAYMENT OF AN ADMINISTRATIVE EXPENSE CLAIM**

GS Operating, LLC d/b/a Gexpro Services (“Gexpro”), by and through its counsel, respectfully moves (the “Motion”) as follows:

RELIEF REQUESTED

1. Gexpro requests entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), allowing and compelling payment of an administrative expense claim for amounts due under a contract assumed by Debtor Proterra Operating Company, Inc. (“Proterra Operating”) and assigned to Volvo Battery Solutions LLC (“Volvo”).

JURISDICTION

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ The Reorganized Debtor in this chapter 11 case (f/k/a Proterra Inc.), along with the last four digits of the Reorganized Debtor’s federal tax identification number is: Prodigy Investments Holdings, Inc. (9565). The location of the Reorganized Debtor’s service address is: 3350 Virginia St., 2nd Floor, Miami, FL 33133.



3. 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”), Gexpro consents 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 consistent with Article III of the United States Constitution.

4. The statutory bases for the relief requested herein are sections 105, 365 and 503 of Title 11 of the United States Code (the “Bankruptcy Code”).

BACKGROUND

5. On August 7, 2023 (the “Petition Date”), Proterra Operating and Proterra Inc. (together, the “Debtors”), each filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

The Product Supply Agreement and Gexpro’s Provision of Electrical Supplies Thereunder

6. Prior to the Petition Date, Gexpro and Proterra Operating entered into the certain Product Supply Agreement dated January 24, 2022, as amended on November 18, 2022 (the “Product Supply Agreement”). Pursuant to the Product Supply Agreement, Gexpro supplied electrical materials, fasteners, and chemicals (“Electrical Supplies”) to Proterra Operating.

7. Post-bankruptcy Gexpro continued to provide Electrical Supplies to the Debtors.

Assumption and Assignment of the Product Supply Agreement Relationship

8. On August 24, 2023, Gexpro filed (i) *Motion of GS Operating, LLC d/b/a Gexpro Services for Allowance and Payment of Administrative Expense Claim Under 11 U.S.C. § 503(b)(9)* [Docket No. 122], (ii) *Motion of GS Operating, LLC d/b/a Gexpro Services to Compel Assumption or Rejection of Executory Contract* [Docket No. 123], and (iii) *Limited Objection of GS Operating, LLC d/b/a Gexpro Services to Debtors’ Motion for Entry of an Order Authorizing*

the Sale of All or Substantially All of the Debtors' Assets Free and Clear of Liens [Docket No. 121] (collectively, the "Gexpro Pleadings"). By agreement with the Debtors Gexpro adjourned the hearings on its motions pending further developments with respect to the Debtors' on-going efforts to sell some or all of their assets.

9. On November 29, 2023, the Court entered the *Order (A) Authorizing and Approving the Debtors' Entry Into the Asset Purchase Agreement, (B) Authorizing the Sale of the Debtors' Powered Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances, (C) Approving the Assumption and Assignment of the Assumed Executory Contracts and Unexpired Leases, and (D) Granting Related Relief* [Docket No. 664] (the "Volvo Sale Order") pursuant to which the Court approved the Debtors' sale of certain assets (the "Volvo Sale Transaction") to Volvo and authorized the Debtors to close the Volvo Sale Transaction. The Product Supply Agreement was among the executory contracts proposed to be assumed and assigned to Volvo as part of the Volvo Sale Transaction.

10. Pursuant to the Volvo Sale Order, upon payment of the cure amount, which "shall consist of all (a) prepetition unpaid amounts due and owing to Gexpro and (b) postpetition unpaid amounts due and owing to Gexpro, in each case as agreed by the parties or as determined by the Court, (i) Gexpro shall use reasonable efforts to promptly remove all liens it may have filed against the Debtors, the Debtors' assets and the property of the Debtors' landlords . . . and (ii) the following pleadings shall be deemed withdrawn: Docket Nos. 120, 121, 122, 123, 240, 241, and 360." Volvo Sale Order ¶ 32.

11. The Volvo Sale Transaction closed on February 1, 2024, and, on information and belief, on that day the Product Supply Agreement was assumed and assigned to Volvo pursuant to

the authority contained in the Volvo Sale Order. *See* Docket No. 968 (Notice of Proterra Powered Sale Closing).

Payments to Gexpro in Connection with Assignment of the Product Supply Agreement

12. On February 2, 2024, the Debtors paid \$810,054.45 to Gexpro, which was the amount the Debtors and Gexpro agreed represented the pre-bankruptcy amounts that were due and owing under the Product Supply Agreement and in respect of which Proterra Operating was in default thereunder.²

13. Gexpro continued to provide Electrical Supplies under the Product Supply Agreement to the Debtors up to and including February 1, 2024. The Debtors advised Gexpro that unpaid post-bankruptcy amounts due under the Product Supply Agreement incurred up to the closing of the Volvo Sale Transaction would be paid by the Debtors in the ordinary course of business. Due to the on-going, continuous and fluid nature of the supply relationship, Gexpro, the Debtors and Volvo have had helpful discussions about the respective obligations of the Debtors and Volvo for Electrical Supplies ordered and delivered leading up to and on February 1, 2024. At this time Gexpro has no dispute with the allocations made by Debtors and Volvo or their payments thereon.

Obsolete Inventory Under the Product Supply Agreement

14. Among the obligations of the parties to the Product Supply Agreement is (i) for Gexpro to maintain a large inventory of Electrical Supplies such that Proterra Operating's (and now Volvo's, post-assignment) needs could be met in the most efficient and timely manner possible, and (ii) for Proterra Operating (and now Volvo, post-assignment) to compensate Gexpro

² Based on such, Gexpro has taken the appropriate steps to remove its liens against the Debtors and the Debtors' landlords in California and South Carolina and withdrew the Gexpro Pleadings as required by the Volvo Sale Order.

when inventory that Gexpro had acquired (and paid for) became obsolete and no longer usable by Proterra Operating (and now Volvo, post-assignment). In this regard, the Product Supply Agreement provides, in a provision entitled “Inventory/Warehousing Commitment”:

In the event of discontinuing a part for whatever reason, Buyer agrees to inform Seller as soon as possible to minimize obsolescence. Buyer agrees that it is responsible for purchasing all those materials that Seller purchased exclusively for Buyer and any other inventory that is determined (sic) to be Obsolete Inventory during a QBR. Seller to provide what parts are standard and those that are special to Buyer in Exhibit A. Buyer shall buy all parts up to lead time of product or the normal 3-month consumption for domestic products or 6-month consumption for imported products, whichever is greater, or as otherwise mutually agreed upon in writing, and only after Seller has made commercially reasonable efforts to mitigate the inventory to be allocated to other customers. Additionally, at no time is Buyer responsible for inventory beyond the Buyer Purchase Order, where applicable. Seller is responsible for maintaining product lead times as provided in Exhibit “A” in this Agreement. Buyer is not responsible for inventory part(s) provided by Seller, if Seller cannot supply items within the later of the lead-time stated in Exhibit A or the confirmed delivery date on a Buyer PO.

Product Supply Agreement, Basic Terms p. 2. The Product Supply Agreement defines “Obsolete Inventory” to mean “those parts in inventory that has had no replenishment signals during a six (6) month period, calculated on a per site basis for each of the Buyer’s sites for which Products are being ordered pursuant to this Agreement or a PO.” Product Supply Agreement, Section 22.

15. Prior to assignment of the Product Supply Agreement Gexpro had communications with both Proterra Operating and with Volvo about inventory and asked each for input on obsolete inventory. Both Proterra Operating and Volvo advised Gexpro that such determinations would be deferred until after assignment.

16. After assignment of the Product Supply Agreement Gexpro has had communications with Volvo about obsolete inventory issues, with Volvo now advising of inventory it believes is obsolete but also now taking the position that it did not assume liability for

obsolete inventory under the Product Supply Agreement and that such liability instead was a pre-assignment bankruptcy obligation of Proterra Operating.

17. The cost of the inventory that Volvo has classified as obsolete is \$1,070,258.00.

Confirmation of the Plan and the Administrative Expense Claims Bar Date

18. By order dated March 6, 2024 [Docket No. 1180] the Court confirmed Debtors' *Fourth Amended Joint Chapter 11 Plan of Reorganization for Proterra Inc and its Debtor Affiliate* [Docket No. 1039] (the "Plan").

19. The Plan went effective on March 13, 2024 (the "Effective Date"). *See* Docket No. 1208 (Notice of Effective Date). Pursuant to the Plan at Article I.A.2, the bar date for the filing of administrative expense claims is thirty days after the Effective Date, which is April 12, 2024 (the "Administrative Expense Claims Bar Date").

20. Accordingly, Gexpro is compelled at this time to file this motion; but Gexpro fully reserves all rights against Volvo under the Product Supply Agreement.

BASIS FOR RELIEF REQUESTED

21. Section 503(b)(1) of the Bankruptcy Code provides that, "there shall be allowed administrative expenses . . . including . . . the actual, necessary costs and expenses of preserving the estate." 11 U.S.C. § 503(b)(1)(A). Administrative claims are entitled to priority payment under section 507(a)(2) of the Bankruptcy Code and are required to be paid in full under a plan pursuant to section 1129(a)(9). *See id.* §§ 507(a)(2), 1129(a)(9). In accordance with the Bankruptcy Code, the Plan provides that holders of administrative expense claims shall be paid in full in cash on account of their claim. *See* Plan, Article II.A.1.

22. To establish an administrative claim, the claimant must typically show that (1) there was "a post-petition transaction between the creditor and the debtor," and (2) "the

estate . . . receive[d] a benefit from the transaction.” *In re Garden Ridge Corp.*, 321 B.R. 669, 676 (Bankr. D. Del. 2005) (quoting *In re Waste Systems Int’l, Inc.*, 280 B.R. 824, 826 (Bankr. D. Del. 2002)); *see also In re O’Brien Env’t Energy, Inc.*, 181 F.3d 527, 532–33 (3d Cir. 1999) (“For a claim in its entirety to be entitled to first priority under [§ 503(b)(1)(A)], the debt must arise from a transaction with the debtor-in-possession . . . [and] the consideration supporting the claimant’s right to payment [must be] beneficial to the debtor-in-possession in the operation of the business.”).

23. When a debtor assumes an executory contract, it assumes the contract in its entirety. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531 (1984) (“Should the debtor-in-possession elect to assume the executory contract, however, it assumes the contract *cum onere* . . .”); *In re Philadelphia Newspapers, LLC*, 424 B.R. 178, 183 (Bankr. E.D. Pa. 2010) (finding that the debtor “must either assume the whole contract, *cum onere*, or reject the entire contract, shedding obligations as well as benefits”).

24. Here, Proterra Operating assumed the Product Supply Agreement in connection with the Volvo Sale Transaction (i.e. Proterra Operating assumed its obligations related to Inventory/Warehouse Commitment). The Debtors and their estates received the benefit of the Product Supply Agreement as an assumed and assigned contract in the Volvo Sale Transaction. The value of the Product Supply Agreement as an assumed executory contract, including all its terms, impacted the purchase price in the Volvo Sale Transaction. To receive the benefit of the assumed Product Supply Agreement, the Debtors agreed that Gexpro’s cure amount would include all postpetition unpaid amounts due and owing to Gexpro. Volvo Sale Order ¶ 32. The Debtors and Gexpro agreed that postpetition unpaid amounts would be paid in the ordinary course of business as the obligations arose under the contract. To the extent that Proterra Operating does not

fulfill its obligations regarding the obsolete inventory, Gexpro is entitled to an administrative expense claim for the value of the obsolete inventory under the Product Supply Agreement.

25. Although Proterra Operating assigned the Product Supply Agreement to Volvo, it did so pursuant to the terms of the Volvo Sale Order and asset purchase agreement with Volvo. Based on Gexpro's discussions with Volvo post-closing, Volvo does not believe it assumed the liabilities related to the obsolete inventory pursuant to its agreement with Proterra Operating. However, the fact remains that Proterra Operating assumed the Product Supply Agreement in its entirety and either Proterra Operating or Volvo is liable for the obsolete inventory obligation. Given the benefit provided by the Product Supply Agreement to the Debtors' estates and the terms of the Volvo Sale Order, the Debtors are responsible for the obsolete inventory obligation if Volvo did not subsequently assume the obligation as part of the Volvo Sale Transaction.

26. Notably, Proterra Operating was aware of the obsolete inventory throughout the sale process and informed Gexpro on several occasions that this issue would be dealt with after the sale closed. Despite these representations, Proterra Operating has not engaged in meaningful discussions regarding the obsolete inventory post-sale closing. As the counterparty to an assumed contract, Gexpro is entitled to an administrative expense claim for the value of obsolete inventory in accordance with the terms of the Product Supply Agreement.

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WHEREFORE, Gexpro respectfully requests entry of an order, substantially in the form of the Proposed Order, granting the relief requested in this Motion and granting such other and further relief as the Court deems just and proper.

Dated: April 12, 2024

SAUL EWING LLP

/s/ Paige N. Topper

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Services*

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

In re:

Prodigy Investments Holdings, Inc.,

Reorganized Debtor.¹

Chapter 11

Case No. 23–11120 (BLS)

(Jointly Administered)

Hearing Date: May 8, 2024 at 10:00 a.m. (ET)

Objection Deadline: April 26, 2024 at 4:00 p.m. (ET)

NOTICE OF MOTION

PLEASE TAKE NOTICE that on April 12, 2024, GS Operating, LLC d/b/a Gexpro Services (“Gexpro”), filed the *Motion of GS Operating, LLC d/b/a Gexpro Services for Allowance and Payment of an Administrative Claim* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that objections, if any, to the entry of an order approving the Motion must be (a) in writing and served on or before **April 26, 2024 at 4:00 p.m. (ET)** (the “Objection Deadline”); (b) filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801; and (c) served as to be received on or before the Objection Deadline by the undersigned attorneys for Gexpro.

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will be held on **May 8, 2024 at 10:00 a.m. (ET)** before the Honorable Brendan L. Shannon, Judge of the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 6th Floor, Courtroom #1, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE that only objections made in writing and timely filed and received, in accordance with the procedures above, will be considered by the Bankruptcy Court at such hearing.

¹ The Reorganized Debtor in this chapter 11 case (f/k/a Proterra Inc.), along with the last four digits of the Reorganized Debtor’s federal tax identification number is: Prodigy Investments Holdings, Inc. (9565). The location of the Reorganized Debtor’s service address is: 3350 Virginia St., 2nd Floor, Miami, FL 33133.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: April 12, 2024

SAUL EWING LLP

/s/ Paige N. Topper

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Services*

EXHIBIT A

Proposed Order

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

In re:

Prodigy Investments Holdings, Inc.,

Reorganized Debtor.¹

Chapter 11

Case No. 23–11120 (BLS)

(Jointly Administered)

Re: Docket No. ____

**ORDER GRANTING MOTION OF GS OPERATING, LLC D/B/A
GEXPRO SERVICES FOR ALLOWANCE AND PAYMENT OF AN
ADMINISTRATIVE CLAIM**

Upon consideration of the *Motion of GS Operating, LLC d/b/a Gexpro Services for Allowance and Payment of an Administrative Claim* (the “Motion”)²; and the Court, having found that notice of the Motion and of the hearing on the Motion was timely, proper and adequate under all applicable rules of procedure; and the Court, having found that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor; it is hereby ORDERED, that:

1. The Motion is GRANTED.
2. Gexpro is hereby granted an allowed administrative claim in the amount of \$1,070,258.00.

¹ The Reorganized Debtor in this chapter 11 case (f/k/a Proterra Inc.), along with the last four digits of the Reorganized Debtor’s federal tax identification number is: Prodigy Investments Holdings, Inc. (9565). The location of the Reorganized Debtor’s service address is: 3350 Virginia St., 2nd Floor, Miami, FL 33133.

² Capitalized terms used but not defined herein are defined in the Motion.

3. The Court shall retain jurisdiction over any and all issues arising from or related to the implementation and interpretation of this Order.

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

In re:

Prodigy Investments Holdings, Inc.,

Reorganized Debtor.

Chapter 11

Case No. 23–11120 (BLS)

(Jointly Administered)

CERTIFICATE OF SERVICE

I, Paige N. Topper, hereby certify that on April 12, 2024, I caused a copy of the *Motion of GS Operating, LLC d/b/a Gexpro Services for Allowance and Payment of an Administrative Claim*, to be served electronically with the Court and served through the Court’s CM/ECF system upon all registered electronic filers appearing in this case, and on the parties on the attached Service List in the manner indicated therein.

SAUL EWING LLP

By: /s/ Paige N. Topper

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