

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

In re:	)	Chapter 11
PGX HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 23-10718 (CTG)
Debtors.	)	(Jointly Administered)
	)	<b>Re: Docket No. 391</b>

**STATEMENT IN SUPPORT AND JOINDER BY BLUE TORCH FINANCE LLC TO  
THE DEBTORS’ OMNIBUS REPLY IN SUPPORT OF THE  
PROPOSED SALE TRANSACTIONS**

Blue Torch Finance LLC (“Blue Torch”), as the administrative agent and collateral agent under the First Lien Facility, DIP Agent and on behalf of the stalking horse purchaser of the PGX Debtors’ assets (the group of DIP Lenders and Prepetition First Lien Lenders serving as stalking horse purchaser, collectively, the “PGX Stalking Horse Purchaser”), by and through its undersigned counsel, hereby files this statement in support and joinder (the “Joinder”) to the *Omnibus Reply of Debtors in Support of the Proposed Sale Transactions* [Docket No. 391] (the “Debtors’ Reply”) filed 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*

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: 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.



*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* [Docket No. 66] (the "Sale Motion") and in response to the sale objection filed by the United States on behalf of the U.S. Consumer Financial Protection Bureau (the "CFPB") [Docket No. 375] (the "CFPB Objection"), the Maricopa County Treasurer [Docket No. 360], Capitol Indemnity Corporation [Docket No. 368] (together with the foregoing objections, the "Sale Objections"), and all other objections and reservation of rights, each of which relates solely to a Cure Notice (the "Contract Objections" and, together with the Sale Objections, the "Objections").<sup>2</sup> In support hereof, Blue Torch respectfully states as follows:

#### **STATEMENT IN SUPPORT AND JOINDER**

1. The Prepetition Secured Lenders and DIP Lenders agreed to fund these chapter 11 cases and serve as the PGX Stalking Horse Purchaser in order for the Debtors to operate their business in the ordinary course during the chapter 11 cases and conduct a robust auction process to obtain the highest and best value for the Debtors' assets. Absent a higher and better offer, the Prepetition Secured Lenders and DIP Lenders, through serving as the PGX Stalking Horse Purchaser, agreed to purchase the PGX Debtors' assets via a credit bid of the outstanding DIP Obligations and Prepetition Secured Loan Obligations pursuant to section 363 of the Bankruptcy Code. An essential condition precedent to the Prepetition Secured Lenders' and DIP Lenders' willingness to consummate the purchase of the PGX Debtors' assets as the PGX Stalking Horse Purchaser is entry of a Bankruptcy Court order approving the sale and providing the PGX Stalking

---

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings given such terms in the Sale Motion, the Debtors' Reply, the order approving certain relief sought in the Sale Motion [Docket No. 331] (the "Bidding Procedures Order"), or the Progexion APA, as applicable.

Horse Purchaser with customary free and clear sale protections and good faith findings afforded to asset purchasers in this District.

2. Contrary to the assertions made by the CFPB in the CFPB Objection, the PGX Stalking Horse Purchaser does not intend to operate its future business in contravention of the law, or to otherwise use the bankruptcy process to “avoid a regulatory scheme.” Should the proposed Sale Order be approved, the PGX Stalking Horse Purchaser intends to operate its business in compliance with applicable law and will continue to cooperate in good faith with applicable state and federal regulatory bodies. The Prepetition Secured Lenders and DIP Lenders believe that the PGX Stalking Horse Purchaser can successfully operate its new business within the same regulatory and legal framework as industry competitors and provide its customers with trustworthy and compliant credit-repair services, which is why the Prepetition Secured Lenders and the DIP Lenders agreed to provide approximately \$ 23 million in new money and bridge financing to support the Debtors’ orderly entry into, and administration of, these chapter 11 cases. It is also why the Prepetition Secured Lenders and the DIP Lenders are prepared to invest substantial additional new capital to facilitate the going concern operations of the PGX Stalking Horse Purchaser following the closing of the Sale Transaction.

3. Counter to the arguments advanced in the CFPB Objection, the PGX Stalking Horse Purchaser is entitled to the free and clear protections and good faith findings afforded to purchasers under section 363 of the Bankruptcy Code, and the customers, employees, trade vendors, equity holders, lenders and other stakeholders of the new business are legally entitled to operate and transact business with an entity that is not subject to the legacy liabilities and non-statutory restrictions of a predecessor entity, including with respect to prospective injunctive relief that does not currently bind either the defendants in the CFPB Litigation nor the Debtors more

generally. The PGX Stalking Horse Purchaser cannot successfully operate amid a cloud of litigation (to which it is not a party) and uncertainty, which would, at a minimum, impose substantial impediments in connection with the execution of its strategic performance goals and business plan and force the company to operate at a fundamental structural disadvantage compared to its competitors. The Prepetition Secured Lenders and DIP Lenders have not agreed (and will not agree) to consummate the Sale Transaction and invest on a go-forward basis under such uncertainty. Accordingly, the Prepetition Lenders and DIP Lenders negotiation process, by negotiated for and required a number of bargained-for protections against such an event, including (i) the condition precedent to closing in the Progrexion APA that the Bankruptcy Court shall have entered a sale order, in form and substance satisfactory to the PGX Stalking Horse Purchaser, that provides for a Sale of the Purchased Assets (as defined in the Progrexion APA), *see* Progrexion APA § 8.1(i), “free and clear of all Encumbrances and Liabilities (other than Permitted Encumbrances), on the terms set forth [therein],” *see* Progrexion APA § 1.1 (“Sale Order”), (ii) the milestone requirement under the DIP Loan Agreement that the Bankruptcy Court enter a Sale Order no later than 70 calendar days after the Petition Date, in form and substance acceptable to the Required DIP Lenders, *see* DIP Loan Agreement ¶ 11(f), and (iii) the Event of Default under the DIP Loan Agreement where there is any sale of all or substantially all assets of the Debtors pursuant to section 363 of the Bankruptcy Code, unless such sale is conducted in accordance with the Bid Procedures and Bid Procedures Order and consented to by the Required Lenders. *See* DIP Loan Agreement § 9.01(u)(I). Accordingly, in the event that the proposed Sale Order does not provide for such bargained-for free and clear protections and good faith findings, the Stalking Horse Purchaser cannot move forward with closing on the proposed Sale Transaction.

**CONCLUSION**

Blue Torch joins the Debtors' Reply and respectfully requests that the Court overrule the Sale Objections to the extent not mooted or resolved, adjourn all Contract Objections, and approve and authorize the Debtors' consummation of the Stalking Horse Agreements and the Sale Transactions and the transfer of assets free and clear and with requisite good faith findings. Blue Torch reserves all rights to supplement this Joinder and to further address issues arising under the Sale Objections and the Contract Objections, either by further submission to this Court, at oral argument, or through testimony to be presented at any hearing, to otherwise participate in this matter, and to assert additional arguments based on information subsequently learned.

*[Remainder of Page Intentionally Left Blank]*

For the reasons set forth herein and in the Debtors' Reply, Blue Torch files this Joinder and respectfully requests that the Court enter a final order denying the Motion to Convert.

Dated: August 22, 2023  
Wilmington, Delaware

**MORRIS, NICHOLS, ARSHT & TUNNEL LLP**

/s/ Matthew B. Harvey

Robert J. Dehney (No. 3578)  
Matthew B. Harvey (No. 5186)  
1201 N Market St, 16th Floor  
Wilmington, Delaware 19801  
Telephone: (302) 658-9200  
Facsimile: (302) 658-3989  
Email: rdehney@morrisnichols.com  
mharvey@morrisnichols.com

-and-

**KING & SPALDING LLP**

Roger Schwartz (admitted *pro hac vice*)  
Michelle Muscara (admitted *pro hac vice*)  
1185 Avenue of the Americas  
New York, New York 10036  
Telephone: (212) 556-2100  
Facsimile: (212) 556-2222  
Email: rschwartz@kslaw.com

-and-

**KING & SPALDING LLP**

Geoffrey King (admitted *pro hac vice*)  
110 N Wacker Drive  
Suite 3800  
Chicago, Illinois 60606  
Telephone: (312) 995-6333  
Facsimile: (312) 995-6330  
Email: gking@kslaw.com  
*Counsel to Blue Torch Finance LLC*