

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

In re: )  
 ) Chapter 11  
PLASTIQ INC., *et al.*,<sup>1</sup> )  
 ) Case No. 23-10671 (\_\_\_)  
Debtors. )  
 ) (Joint Administration Requested)  
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**DEBTORS’ MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
(A) AUTHORIZING THE DEBTORS TO MAINTAIN AND HONOR CERTAIN  
PREPETITION CUSTOMER PROGRAMS, (B) AUTHORIZING BANKS  
TO HONOR AND PROCESS CHECK AND ELECTRONIC TRANSFER REQUESTS  
RELATED THERETO, AND (C) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) hereby submit this motion (this “**Motion**”) for the entry of interim and final orders, substantially in the form attached hereto as Exhibit A (the “**Proposed Interim Order**”) and Exhibit B (the “**Proposed Final Order**,” and together with the Proposed Interim Order, the “**Proposed Orders**”), pursuant to sections 105(a), 363(b), 1107, and 1108 and of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), 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**”), and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), (a) authorizing the Debtors to maintain, honor, and administer their prepetition Refunds and Rewards Program, New Subscriber Programs, Referral Programs, the Rebate Program, the Payment Processing Fees, the Third Party Infrastructure Programs, and the Spot Loan Program (each, as defined herein, and collectively, the

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<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: PlastiQ Inc. (6125), PLV Inc. d/b/a/ PLV TX Branch Inc. (5084), and Nearside Business Corp. (N/A). The corporate headquarters and the mailing address for the Debtors is 1475 Folsom Street, Suite 400, San Francisco, California 94103.



“**Customer Programs**”) in the ordinary course of business and in a manner consistent with past practice as described herein; (b) authorizing banks and other financial institutions (collectively, the “**Banks**”) to honor and process check and electronic transfer requests related to the foregoing; and (c) granting related relief. In support of this Motion, the Debtors rely upon and incorporate by reference the *Declaration of Vladimir Kasparov in Support of Chapter 11 Petitions and First Day Pleadings* (the “**First Day Declaration**”),<sup>2</sup> filed contemporaneously herewith. In further support of this Motion, the Debtors respectfully state as follows:

### **JURISDICTION AND VENUE**

1. 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 as of February 29, 2012 (the “**Amended Standing Order**”). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief sought herein are sections 105(a), 363(b), 1107(a), and 1108 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004.

### **BACKGROUND**

#### **I. General**

2. On the date hereof (the “**Petition Date**”), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a)

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

and 1108 of the Bankruptcy Code. No official committees have been appointed in these chapter 11 cases, and no request has been made for the appointment of a trustee or an examiner.

3. The Debtors provide a leading software payment platform for business-to-business payment automation that powers all aspects of accounts payables and accounts receivables operations for small and medium-sized businesses (collectively, “SMBs”). The Debtors’ software allows its clients to automate payments, workflows, and processes, and access new credit sources. Thus, the Debtors’ services solve two primary needs of SMBs – automation at an affordable price and assistance with maintaining healthy cash flow. In addition, the Debtors facilitate one-time or recurring payments for their customers to allow such customers to make rent payments and to pay, *inter alia*, their mortgages, utility bills, day care, homeowners’ association fees, and other expenses. To that end, the Debtors operate through four (4) existing business lines: PlastiQ Pay, PlastiQ Accept, PlastiQ Connect, PlastiQ Credit, and in 2023, the Debtors plan to launch a fifth business line: PlastiQ SmartPay.

4. Additional information regarding the Debtors’ business, their capital structure, and the circumstances leading to the filing of these chapter 11 cases is set forth in the First Day Declaration.

## **I. CUSTOMER PROGRAMS**

### **A. The New Subscriber Program**

5. In addition to their standard fee-based transaction model, the Debtors offer a premium version of their services that includes additional tools and features, and is available to customers who pay a subscription fee. To incentivize customers to use the Debtors’ premium services, the Debtors offer a sixty (60) day trial program to allow new customers to experience the Debtors’ premium services for no charge (the “**New Subscriber Program**”). If a customer

chooses not to enroll in the Debtors' premium subscription at the end of the sixty (60) day period, the customer's plan reverts to the traditional fee-based model.

6. The Debtors believe that offering the New Subscriber Program is critical to their ability to attract new customers to their premium platform and to build future customer and building partner relationships and revenue. Since the Debtors established the New Subscriber Program in April 2022, the Debtors estimate that more than 1,500 customers have taken advantage of such Program. Given the nature of the New Subscriber Program, the Debtors do not incur cash liabilities associated therewith. Consequently, there are no outstanding amounts owed in connection with the New Subscriber Program as of the Petition Date. Nevertheless, the Debtors seek authority, but not direction, to continue to administer the New Subscriber Program during the pendency of the chapter 11 cases and to continue to honor obligations related thereto in the ordinary course of business, including with respect to any obligations that arose before the Petition Date.

**B. The Referral Programs**

7. Given the importance of word of mouth referrals in the Debtors' industry, the Debtors have historically offered customer programs designed to reward loyal customers who introduce their colleagues and partners to the Debtors. Specifically, and in the ordinary course of business, the Debtors offer three (3) referral programs for successful referrals of new customers.

8. The first is a program pursuant to which existing customers receive a \$100 gift card for any successful referral culminating in a new Plastiq Accept or Plastiq Pay customer account (the "**Gift Card Program**").

9. The second is a program where existing customers receive "Fee-Free Dollars" for referrals resulting in new customer accounts (the "**Fee-Free Referral Program**"). Fee-Free Dollars are used to reduce the portion of a payment that is subject to a service fee and expire after

ninety (90) days of a customer's last use or earning of Fee-Free Dollars. The Debtors estimate that approximately \$100,000 in Fee-Free Dollars have been issued but not yet redeemed as of the Petition Date. By this Motion, the Debtors seek authority, but not direction, to honor outstanding Fee-Free Dollars, subject to the limitations proposed herein, in a manner consistent with their past practices in the ordinary course of business.

10. The third is a program pursuant to which certain existing customers with a proven track record of referring future customers to the Debtors can enter into "Marketing Agreements" with the Debtors and receive a fixed monthly fee in exchange for recommending the Debtors' services to potential future customers (the "**Marketing Agreement Referral Program**," and collectively with the Gift Card Program and the Fee-Free Referral Program, the "**Referral Programs**").

11. The Debtors believe that the Referral Programs are critical to attracting new customers and help improve and maintain customer loyalty, relationships with partners, and revenue. The Referral Programs have been effective in attracting a large number of new customers. The Debtors estimate, based on their historical data, that the Referral Programs result in approximately \$220,000 of cash liabilities on average per month.

12. The Debtors seek authority, but not direction, to continue to administer the Referral Programs and to honor obligations related thereto in the ordinary course of business, including with respect to any obligations that arose before the Petition Date.

**C. The Rebate Program**

13. The Debtors also reward certain large volume customers by providing rebates to such customers on their spending with the Debtors (the "**Rebate Program**"). The exact amounts offered to certain customers under the Rebate Program vary in relation to the volume spent by

these customers, but the Rebate Program ultimately functions to discount the fees paid by certain high-volume customers for the use of the Debtors' products and services. The Debtors believe that continuing to offer the Rebate Program after the Petition Date will be critical to ensuring that such high-volume customers are not lost to the Debtors' competitors and maintaining the Debtors' competitive edge in the marketplace.

14. In January and February of 2023, the Debtors' incurred an average of approximately \$100,000 in cash liabilities per month under the Rebate Program. To avoid the loss of these critical customers and to preserve the vitality of relationships with the same, the Debtors request the Court's authority, but not direction, to continue and honor the obligations related to the Rebate Program in the ordinary course of business, including with respect to any obligations that arose before the Petition Date.

## II. THE PAYMENT PROCESSING FEES

15. Consistent with industry practice and to accommodate the needs of their customers, the Debtors accept the following methods of non-cash payment from customers: credit cards (Visa, MasterCard, and Discover), debit cards, and other online-only forms of payment (collectively, the "**Non-Cash Payments**"). To process Non-Cash Payments, the Debtors are party to agreements (each, a "**Payment Processing Agreement**" and collectively, the "**Payment Processing Agreements**") with FIS and Stripe, Inc. (each, a "**Payment Processing Company**" and together, the "**Payment Processing Companies**").

16. Payment Processing Agreements with the Payment Processing Companies are used in connection with the Debtors' services. In the case of the Debtors' services, customers are only required to pay regular processing fees, which range from 0% to 4% of the transaction amount (the "**Processing Fees**").

17. If customers dispute charges with a Payment Processing Company, the Debtors may be obligated to debit the amount of the disputed charge, subject to certain adjustments (collectively, “**Chargebacks**” and, together with the Processing Fees, as well as other fees, fines, assessments, and obligations as may be defined in the Payment Processing Agreement, the “**Processing Obligations**”) to the Payment Processing Company. In 2022, the Debtors accrued \$1.9 million in losses due to Chargebacks out of total transaction volume of \$3 billion. The Debtors estimate that on average they incur approximately 10 basis points of volume due to Chargebacks for fraud that must be paid in full.

18. If the Debtors fail to meet their Processing Obligations, the Payment Processing Companies with which the Debtors do business can shut the Debtors down, and states in which the Debtors do business can rescind the Debtors’ bank charters, thereby halting the Debtors’ ability to continue to operate, resulting in immediate degradation of the value of the Debtors’ estates. In this sense, payments owed in respect of the Processing Obligations are held in trust by the Debtors and are properly not categorized as property of the estate at all.

19. Because all of the Debtors’ transactions are made using Non-Cash Payments, the Debtors’ continued acceptance of Non-Cash Payments is essential to the continued operation of the Debtors’ business and the maximization of the value of the Debtors’ estates. If the Debtors were no longer able to accept Non-Cash Payments, their ongoing operations would suffer and the value of their estates would be depleted. To avoid disrupting these vital payment processing services, the Debtors seek authority to pay any prepetition Processing Obligations outstanding as of the Petition Date and to continue paying the Processing Obligations in the ordinary course of business pursuant to the terms of the Payment Processing Agreements, in a manner consistent with past practices.

### **III. THE THIRD PARTY PROGRAMS**

#### **A. Third Party Infrastructure Program**

20. The Debtors also provide an opportunity for certain third parties to use the infrastructure of the Debtors' payment platform to create an experience for their customers that resembles the Debtors' business model (each, a "**Third Party Infrastructure Program**" and collectively, the "**Third Party Infrastructure Programs**"). For example, Billfire and PayGround participate in a Third Party Infrastructure Program called "**Connect**" in which they use the Debtors' platform to process funds for their customers. Additionally, hundreds of SMBs have agreements with the Debtors through which they use credit cards to fund payroll through the Debtors' platform. Although customers are not directly using the Debtors' portal under Connect and the Third Party Infrastructure Programs, the Debtors are required to provide services and IT and business support to facilitate the continuity of the Third Party Infrastructure Programs and are required to settle disputes among the parties thereto. The Debtors estimate that third parties typically earn approximately \$16,000 a month in exchange for participation in the Third Party Infrastructure Program with the Debtors.

21. To avoid disruption to the Third Party Infrastructure Programs and to maximize the value of the Debtors' estates for the benefit of all stakeholders, the Debtors request the Court's authority, but not direction, to continue to perform their obligations under the Third Party Infrastructure Programs during the pendency of these chapter 11 cases.

#### **B. Spot Loans**

22. The Debtors also facilitate opportunities for their customers to enter into loan agreements with an alternative third party lender. Through this program, a customer submits an application for a loan, and once approved, the money is advanced by the Debtors, and the Debtors



collect their standard transaction fee. The lender then reimburses the Debtors for advancing the loan, and takes responsibility for all aspects of servicing and collecting on the loan (the “**Spot Loan Program**”). Accordingly, the Debtors do not take on any balance sheet risk through the financing offerings. Nevertheless, the Debtors are requesting Court authority under this Motion to continue to offer the Spot Loan Program to their customers on a post-petition basis.

### **RELIEF REQUESTED**

23. By this Motion, the Debtors request entry of the Proposed Orders: (a) authorizing, but not directing, the Debtors to honor the prepetition Customer Programs, and to otherwise continue the Customer Programs in the ordinary course of business; (b) authorizing, but not directing, the Debtors to continue, renew, replace, modify, and/or terminate any of the Customer Programs in the ordinary course of business without the need for further court order; and (c) authorizing the Banks to honor and process check and electronic transfer requests related to the foregoing.

### **BASIS FOR RELIEF**

#### **I. The Court Should Authorize, but Not Direct, the Debtors to Honor and Continue the Customer Programs in the Ordinary Course of Business**

24. Sections 1107(a) and 1108 of the Bankruptcy Code allow a debtor in possession to continue to operate its business. Further, section 363(c) of the Bankruptcy Code authorizes a debtor in possession to operate its business and to use property of the estate in the ordinary course of doing so without having to provide notice or obtain a court hearing. *See In re Roth Am.*, 975 F.2d 949, 952 (3rd Cir. 1992) (stating that “the framework of section 363 is designed to allow a [debtor in possession] the flexibility to engage in ordinary transactions without unnecessary creditor and bankruptcy court oversight”). Continuing, renewing, replacing, initiating, and/or terminating Customer Programs in the ordinary course of the Debtors’ business falls well within

the scope of activities that is permitted by sections 363(c), 1107(a), and 1108 of the Bankruptcy Code.

25. The Court may also authorize continuation of the Customer Programs, other than in the ordinary course of business, under section 363(b) of the Bankruptcy Code which provides that “[t]he trustee, 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). This section authorizes a court to allow a debtor to pay certain prepetition claims. To do so, the Debtors must articulate “some business justification, other than the mere appeasement of major creditors.” *In re Ionosphere Clubs*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989).

26. As noted above, the Customer Programs constitute an important and integral part of the Debtors’ enterprise and business strategy. Given the nature of the Debtors’ business model and their competitive industry, the maintenance and reinforcement of the Debtors’ strong customer relationships, as well as the Debtors’ ability to attract new customers during the pendency of these chapter 11 cases, will be critical to the successful prosecution of the chapter 11 cases and successful consummation of the contemplated sale process. Any failure to honor their Customer Programs could curb the Debtors’ profitability and negatively affect the Debtors’ chapter 11 process.

27. The well-established “necessity of payment” doctrine also supports the requested relief. That doctrine provides for payment of prepetition claims as necessary to maintain the continuity of a debtor’s business. *See In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (payment of creditors’ claims authorized under “necessity of payment” doctrine); *In re Penn Central Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (holding that the necessity of payment doctrine permits “immediate payment of claims of creditors where those creditors will

not supply services or materials essential to the conduct of the business until their pre-reorganization claims have been paid”); *In re Just For Feet Inc.*, 242 B.R. 821, 824 (D. Del. 1999) (recognizing “the court’s power to authorize payment of pre-petition claims when such payment is necessary for the debtor’s survival during chapter 11”); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (noting that the debtors “may pay pre-petition claims that are essential to continued operation of business”); *Ionosphere Clubs*, 98 B.R. at 176 (necessity of payment rule applies to chapter 11 debtors). The prepetition amounts owed under the Customer Programs meet the requirements for postpetition payment because failure to satisfy such claims will adversely affect the Debtors’ goodwill. *In re CoServ*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). The importance of the Debtors’ customers to their business cannot be overstated, and continuing the Customer Programs is thus necessary to preserve the Debtors’ ability to successfully continue their operations.

28. Finally, section 105(a) of the Bankruptcy Code provides an additional basis to grant the requested relief. It authorizes a court to issue “any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). Section 105(a) of the Bankruptcy Code ensures a bankruptcy courts’ power to take whatever action “is appropriate or necessary in aid of the exercise of their jurisdiction.” 2 Collier on Bankruptcy ¶ 105.01 (Richard Levin & Henry J. Sommer, eds., 16th ed.).

29. The Customer Programs, which are standard in the Debtors’ industry, allow the Debtors to ensure customer satisfaction and generate customer goodwill, thereby promoting increased revenue for the Debtors’ estates. As previously discussed, the damage that would result if the Debtors fail to honor their prepetition Customer Programs significantly outweighs any arguable harm to the Debtors’ estates if such programs are honored.

**II. The Court Should Authorize the Banks to Honor and Process the Debtors' Payments on Account of the Customer Programs**

30. The Debtors also request that the Court authorize the Banks, when requested by the Debtors, in their discretion, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition amounts described herein, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Debtors further request that all of the Banks be authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved pursuant to this Motion.

**SATISFACTION OF BANKRUPTCY RULE 6003(B)**

31. Pursuant to Bankruptcy Rule 6003, the Court may grant relief within 21 days after the filing of the petition regarding a motion to "use, sell, lease, or otherwise incur an obligation regarding property of the estate" only if such relief is necessary to avoid immediate and irreparable harm. Fed. R. Bankr. P. 6003(b). Immediate and irreparable harm exists where the absence of relief would or threaten the debtor's future value as a going concern. *See In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (discussing the elements of "immediate and irreparable harm" in relation to Bankruptcy Rule 4001).

32. As described herein, viability of the Debtors' business, and ultimately the Debtors' ability to maximize the value of these estates, are dependent upon the preservation of relationships with their existing customers and providers. The failure to honor the Customer Programs without interruption will erode the loyalty of the Debtors' customers and cause the providers to lose confidence in the Debtors, thus causing the Debtors to suffer immediate and irreparable harm. Maintaining the Customer Programs is essential for the Debtors to maximize value for the benefit

of all creditors. Accordingly, the Debtors submit that Bankruptcy Rule 6003 has been satisfied and the relief requested herein should be granted.

**WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h)**

33. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As provided herein, and to implement the foregoing successfully, the Debtors request that the Proposed Orders include a finding that the Debtors have established cause to exclude such relief from the fourteen (14)-day stay period under Bankruptcy Rule 6004(h).

34. For this reason and those set forth above, the Debtors submit that ample cause exists to justify a waiver of the fourteen (14)-day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable to the Proposed Orders.

**RESERVATION OF RIGHTS**

35. Nothing in the Proposed Orders or this Motion: (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates; (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority, or amount of any claim against the Debtors and their estates; or (c) shall be construed as a promise to pay a claim.

**NOTICE**

36. Notice of this Motion has been provided to: (a) the Office of the United States Trustee for the District of Delaware (Attn: Richard L. Schepacarter); (b) the Debtors’ twenty (20) largest unsecured creditors (excluding insiders); (c) counsel to the DIP Lender; (d) the Internal Revenue Service; (e) the Securities and Exchange Commission; (f) the Office of the United States

Attorney for the District of Delaware; (g) the Banks; and (i) all parties that have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

**CONCLUSION**

WHEREFORE, the Debtors respectfully request entry of the Proposed Orders, granting the relief requested herein and such other and further relief as is just and proper.

Dated: May 24, 2023  
Wilmington, Delaware

**YOUNG CONAWAY STARGATT & TAYLOR, LLP**

*/s/ Joseph M. Mulvihill*  
\_\_\_\_\_  
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*Proposed Counsel for Debtors and Debtors in Possession*

**EXHIBIT A**

**Proposed Interim Order**

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

In re:  PLASTIQ INC., <i>et al.</i> , <sup>1</sup>  Debtors.	) ) ) ) ) ) ) ) ) ) )	Chapter 11  Case No. 23-10671 (___)  (Jointly Administered)  <b>Ref. Docket No.</b>
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**INTERIM ORDER (A) AUTHORIZING THE DEBTORS TO MAINTAIN  
AND HONOR CERTAIN PREPETITION CUSTOMER PROGRAMS,  
(B) AUTHORIZING BANKS TO HONOR AND PROCESS CHECK AND  
ELECTRONIC TRANSFER REQUESTS RELATED THERETO,  
AND (C) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “**Motion**”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for the entry of this interim order (the “**Interim Order**”), pursuant to sections 105(a), 363(b), 1107(a), and 1108 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (a) authorizing, but not directing, the Debtors, to maintain, apply, pay, and honor certain Customer Programs, in the ordinary course of business and consistent with past practice, and (b) authorizing the Banks to honor and process check and electronic transfer requests related to the foregoing; and upon consideration of the First Day Declaration; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required except as otherwise provided herein; and it appearing that this Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. §

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<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: PlastiQ Inc. (6125), PLV Inc. d/b/a/ PLV TX Branch Inc. (5084), and Nearside Business Corp. (N/A). The corporate headquarters and the mailing address for the Debtors is 1475 Folsom Street, Suite 400, San Francisco, California 94103.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.



157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of the Debtors, their estates, and their creditors; 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. A final hearing on the relief sought in the Motion shall be conducted on \_\_\_\_\_, 2023 at \_\_\_\_\_ (ET) (the “**Final Hearing**”). Any party objecting to the relief sought at the Final Hearing or the Proposed Final Order shall file and serve a written objection, which objection shall be served upon proposed counsel for the Debtors, counsel to the DIP Agent, and counsel for any statutory committee appointed in the chapter 11 cases, in each case so as to be received no later than \_\_\_\_\_, 2023 at 4:00 p.m. (ET). If no objections to the entry of the Proposed Final Order are timely filed, this Court may enter the Proposed Final Order without further notice or a hearing.
3. The Debtors, in their business judgment, are authorized, but not directed, to continue the Customer Programs, and to pay, setoff, or recoup the prepetition amounts owed under Customer Programs in the ordinary course of business.
4. The Debtors, in their business judgment, are authorized, but not directed, to continue, renew, replace, implement, modify, and/or terminate their Customer Programs, as they deem appropriate, in the ordinary course of business, without further application to this Court.
5. Notwithstanding anything to the contrary set forth herein, (a) any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under the Debtors’ postpetition financing agreements (the “**DIP Documents**”) and any orders approving the DIP Documents and governing the Debtors’ use of cash collateral (including

with respect to any budgets governing or relating thereto) and (b) to the extent there is any inconsistency between the terms of such orders approving the DIP Documents or the Debtors' use of cash collateral and any action taken or proposed to be taken hereunder, the terms of such orders approving the DIP Documents and use of cash collateral shall control.

6. Nothing in this Interim Order: (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates; (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority, or amount of any claim against the Debtors and their estates; or (c) shall be construed as a promise to pay any claim.

7. The Debtors are authorized to take any and all actions necessary to effectuate the relief granted herein.

8. The requirements of Bankruptcy Rule 6003(b) are satisfied.

9. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Final Order shall be effective and enforceable immediately upon its entry.

10. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Interim Order.

**EXHIBIT B**

**Proposed Final Order**

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

In re:	)	
	)	Chapter 11
PLASTIQ INC., <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 23-10671 (___)
Debtors.	)	
	)	(Jointly Administered)
	)	
	)	<b>Ref. Docket Nos.</b>
	)	

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**FINAL ORDER (A) AUTHORIZING THE DEBTORS TO MAINTAIN  
AND HONOR CERTAIN PREPETITION CUSTOMER PROGRAMS,  
(B) AUTHORIZING BANKS TO HONOR AND PROCESS CHECK AND  
ELECTRONIC TRANSFER REQUESTS RELATED THERETO,  
AND (C) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “**Motion**”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for the entry of this final order (the “**Final Order**”), pursuant to sections 105(a), 363(b), 1107(a), and 1108 of the Bankruptcy Code, (a) authorizing, but not directing the Debtors to maintain, apply, pay, and honor certain Customer Programs, in the ordinary course of business and consistent with past practice, and (b) authorizing the Banks to honor and process check and electronic transfer requests related to the foregoing; and upon consideration of the First Day Declaration; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required except as otherwise provided herein; and it appearing that this Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this

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<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: PlastiQ Inc. (6125), PLV Inc. d/b/a/ PLV TX Branch Inc. (5084), and Nearside Business Corp. (N/A). The corporate headquarters and the mailing address for the Debtors is 1475 Folsom Street, Suite 400, San Francisco, California 94103.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of the Debtors, their estates, and their creditors; 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, in their business judgment, are authorized, but not directed, to continue the Customer Programs, and to pay, setoff, or recoup the prepetition amounts owed under the Customer Programs in the ordinary course of business.
3. The Debtors, in their business judgment, are authorized, but not directed, to continue, renew, replace, implement, modify, and/or terminate their Customer Programs, as they deem appropriate, in the ordinary course of business, without further application to this Court.
4. Notwithstanding anything to the contrary set forth herein, (a) any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under the Debtors' postpetition financing agreements (the "**DIP Documents**") and any orders approving the DIP Documents and governing the Debtors' use of cash collateral (including with respect to any budgets governing or relating thereto) and (b) to the extent there is any inconsistency between the terms of such orders approving the DIP Documents or the Debtors' use of cash collateral and any action taken or proposed to be taken hereunder, the terms of such orders approving the DIP Documents and use of cash collateral shall control.
5. Nothing in this Final Order: (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates; (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority,

or amount of any claim against the Debtors and their estates; or (c) shall be construed as a promise to pay a claim.

6. The Debtors are authorized to take any and all actions necessary to effectuate the relief granted herein.

7. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Final Order shall be effective and enforceable immediately upon its entry.

8. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Final Order.