

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)
) Chapter 11
PLASTIQ INC., *et al.*,¹)
) Case No. 23-10671 ()
Debtors.)
) (Joint Administration Requested)
)

DEBTORS’ MOTION FOR INTERIM AND FINAL ORDERS, PURSUANT TO SECTIONS 105(a), 345, 363, 1107(a) AND 1108 OF THE BANKRUPTCY CODE, BANKRUPTCY RULE 2015, AND LOCAL RULE 2015-2, (A) AUTHORIZING AND APPROVING CONTINUED USE OF CASH MANAGEMENT SYSTEM, (B) APPROVING THE PAYMENT OF THE FBO ACCOUNT FEES; (C) AUTHORIZING USE OF PREPETITION BANK ACCOUNTS AND BUSINESS FORMS, (D) WAIVING THE REQUIREMENTS OF SECTION 345(b) ON AN INTERIM BASIS, AND (E) GRANTING CERTAIN 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 forms 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), 345, 363, 1107(a), and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), Rule 2015 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2015-2(a) and (b) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), (a) authorizing and approving the Debtors’ continued use of their existing cash management system, (b) approving the payment of the FBO Account Fees (as defined below), (c) granting the Debtors a waiver of certain bank account and related

¹ 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.



requirements of the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) to the extent that such requirements are inconsistent with (i) the Debtors’ practices in connection with their existing cash management system or (ii) any action taken by the Debtors in accordance with any order granting the relief requested in this Motion or any other order entered in these chapter 11 cases, (d) waiving the requirements of section 345(b) of the Bankruptcy Code with respect to the Debtors’ deposit practices on an interim basis, and (e) granting certain 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**”),² 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), 345, 363, 1107(a), and 1108 of the Bankruptcy Code, Bankruptcy Rule 2015, and Local Rule 2015-2(a) and (b).

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

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) 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 payable and accounts receivable operations for small and medium-sized businesses (each, an “**SMB**” and collectively, the “**SMBs**”). The Debtors’ software allows their clients to automate payments, workflows, and processes, and to access new credit sources. Thus, the Debtors’ services solve two primary needs of SMBs: (i) automation at an affordable price and (ii) assistance with maintaining a healthy cash flow. In addition, the Debtors facilitate one-time or recurrent payments for their customers to allow such customers to make rent payments, and to pay, *inter alia*, their mortgages, utility bills, day care costs, 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.

II. Cash Management System

5. The Debtors consist of affiliated entities and utilize a centralized cash management system, as described in detail below (the “**Cash Management System**”) to efficiently

and effectively operate their business. The Debtors maintain bank accounts (collectively, the “**Bank Accounts**”) with Silicon Valley Bank (“**SVB**”), the Bank of Montreal (“**BMO**”), City National Bank (“**CNB**”), Choice Financial Group and Evolve Bank & Trust (“**Choice**”), First Republic Bank (“**First Republic**”), Wells Fargo Bank (“**Wells Fargo**”), and Royal Bank of Canada (“**RBC**” and together with SVB, BMO, CNB, Mercury, First Republic, and Wells Fargo, the “**Banks**”). The Cash Management System plays two (2) key roles in the Debtors’ business: (i) it is an integral component of the Debtors’ business operations and ability to service their customers, and (ii) it is used for traditional corporate finance purposes, such as paying employees and operating expenses in the ordinary course.

6. The Debtors’ business model focuses on facilitating payment (through PlastiQ Pay) or acceptance (through PlastiQ Accept) of credit card transactions. A PlastiQ Pay transaction begins when a customer initiates a payment using a credit card. Conversely, a PlastiQ Accept transaction begins when party initiates a payment to a customer. The applicable credit card processor, Stripe, FIS, or prior to February 13, 2023, American Express (“**AMEX**”), then processes the payment, the Debtors assess their transaction fees, which range from less than 0.2% to 2.9% of the transaction amount (the “**Transaction Fee**”), and funds flow to the applicable Bank Accounts described below. Precisely which of the Debtors’ Bank Accounts is involved in a given funds flow depends on, among other things, (i) what the customer is purchasing with the credit card, (ii) where the customer or recipient of the funds is located, and (iii) the currency denomination of the transferred funds. A schematic illustration of the Debtors’ Cash Management System is attached hereto as Exhibit C.

7. The following is a list of the Debtors' Bank Accounts, along with a general description of each:

- a. SVB PLV Inc. Account (last four digits 7587): The SVB PLV Inc. Account, which is maintained at SVB (the "**SVB PLV Inc. Account**"), is a settlement account for Debtor PLV Inc. in the Cash Management System. The SVB PLV Inc. Account receives ACH payments, bank transfer, and credit card transactions from Texas-based customers and processes ACH payments, wires, and check disbursements to various billers and merchants on behalf of the Debtors' customers. Post-reconciliation transaction profit from the SVB PLV Inc. Account is remitted to the SVB Analysis Checking Account (defined below).
- b. SVB SAAS PLV Account (last four digits 4048): The SVB SAAS PLV Account, which is maintained at SVB (the "**SVB SAAS PLV Account**"), receives software as a service ("**SAAS**") subscription fees via card processors for Texas-based customers and remits subscription fee revenue to the SVB Analysis Checking Account (defined below).
- c. SVB SAAS PQ Account (last four digits 2292): The SVB SAAS PQ Account, which is maintained at SVB (the "**SVB SAAS PQ Account**"), receives SAAS subscription fees via card processors for all other (i.e., non-Texas) U.S.-based customers and remits subscription fee revenue to the SVB Checking Analysis Account (defined below).
- d. SVB Analysis Checking Account (last four digits 7637): The SVB Analysis Checking Account, which is maintained at SVB (the "**SVB Analysis Checking Account**"). The SVB Analysis Checking Account receives (i) subscription fee revenue from the SVB SAAS PLV Account and the SVB SAAS PQ Account and (ii) post-reconciliation transaction profit from the SVB PLV Inc. Account and the First SVB Business Checking Account (as defined below). The SVB Analysis Checking Account is used as the Debtors' main checking account to, among other things, directly pays the Debtors' vendors and other operating expenses that come due in the ordinary course of the Debtors' business. Additionally, the SVB Analysis Checking Account remits funds to the following accounts: the First CNB PlastiQ Inc. Account, the Second CNB PlastiQ Inc. Account, the First CNB PLV Inc. Account, and the Second CNB PLV Inc. Account (each as defined below).
- e. BMO SAAS CA Account (last four digits 4609): The BMO SAAS CA Account, which is maintained at BMO (the "**BMO SAAS CA**

Account”), receives SAAS subscription fees via Stripe from Canadian customers and remits subscription fee revenue to the BMO Plastiq Canada Inc. Corporate Finance Account (defined below).

- f. BMO Plastiq Canada Inc. Settlement Account (last four digits 3846): The BMO Plastiq Canada Inc. Settlement Account, which is maintained at BMO (the “**BMO Plastiq Canada Inc. Settlement Account**”), receives ACH payments, bank transfers, and credit card transactions from Canadian customers and first (i) makes ACH payments, wire transfers, and check disbursements to billers and merchants on behalf of Canadian customers, and then (ii) remits post-reconciliation profit to the BMO Plastiq Canada Inc. Corporate Finance Account (defined below).
- g. BMO Plastiq Canada Inc. Corporate Finance Account (last four digits 7736): The BMO Plastiq Canada Inc. Corporate Finance Account, which is maintained at BMO (the “**BMO Plastiq Canada Inc. Corporate Finance Account**”) receives subscription fee revenue from the BMO SAAS CA Account and post-reconciliation transaction profit from the BMO Plastiq Canada Inc. Settlement Account and is used to pay vendors, employees, and the payroll processor for Canadian employees in the ordinary course of the Debtors’ business.
- h. SVB Collateral MMA ACH Reserve Account (last four digits 4643): The SVB Collateral MMA ACH Reserve Account, which is maintained at SVB (the “**SVB Collateral MMA ACH Reserve Account**”) is an ACH reserve account that holds approximately \$1 million in funds required by the Debtors’ payment processors and that makes occasional disbursements to the SVB Analysis Checking Account on an as-needed basis.
- i. SVB Collateral MMA AMEX Reserve Account (last four digits 6568): The SVB Collateral MMA AMEX Reserve Account, which is maintained at SVB (the “**SVB Collateral MMA AMEX Reserve Account**”) is an AMEX reserve account that holds a \$5.5 million letter of credit required by AMEX and that makes occasional disbursements to the SVB Analysis Checking Account on an as-needed basis.
- j. BMO Reserve Account (last four digits 4764): The BMO Reserve Account, which is maintained at BMO (the “**BMO Reserve Account**”) is a reserve account that previously held approximately \$1.5 million CAD as required by a partnership between the Debtors and the Canadian Revenue Agency (the “**CRA**”). Prior to the Petition Date, the Debtors determined to discontinue the CRA business line and transferred the funds previously held in the BMO

Reserve Account to other Bank Accounts in the Cash Management System.

- k. First CNB PlastiQ Inc. Account (last four digits 2877): The First CNB PlastiQ Inc. Account, which is maintained at CNB (the “**First CNB PlastiQ Inc. Account**”), is a corporate finance account that receives funds from the SVB Analysis Checking Account and makes disbursements to the Debtors’ U.S. payroll processor (“**ADP**”) in respect of salary, payroll tax, and 401(k) obligations up to an aggregate amount of \$600,000.00. If disbursements from the First CNB PlastiQ Inc. Account exceed \$600,000.000, the remaining “net pay” is pulled from either the Second CNB PlastiQ Inc. Account or the SVB Analysis Checking Account.
- l. Second CNB PlastiQ Inc. Account (last four digits 2869): The Second CNB PlastiQ Inc. Account, which is maintained at CNB (the “**Second CNB PlastiQ Inc. Account**”), is a corporate finance account that receives funds from the SVB Analysis Checking Account and makes disbursements to (i) ADP in connection with employee benefits and (ii) to the Debtors’ U.S.-based employees as reimbursement for employee expenses.
- m. First CNB PLV Inc. Account (last four digits 3921): The First CNB PLV Inc. Account, which is maintained at CNB (the “**First CNB PLV Inc. Account**”), is a corporate finance account that receives funds from the SVB Analysis Checking Account and makes disbursements to select Texas-based vendors on the Debtors’ behalf.
- n. First CNB PLV Inc. Account (last four digits 2059): The Second CNB PLV Inc. Account, which is maintained at CNB (the “**Second CNB PLV Inc. Account**”), is a corporate finance account that receives funds from the SVB Analysis Checking Account and makes disbursements to select Texas-based vendors on the Debtors’ behalf. The Second CNB PLV Inc. Account is essentially a redundant account to the First CNB PLV Inc. Account, but both accounts remain open as of the Petition Date.
- o. Priority Passport Account (last four digits 0795): The Priority Passport Account, which is maintained at Wells Fargo Bank, is a settlement account for the Debtor PlastiQ Inc. in the Cash Management System. The Priority Passport Account Receives ACH payments, bank transfers, and credit card settlements from all customers and processes ACH payments, wires and check disbursements to various billers and merchants on behalf of debtors’ customers. Some funds may be transferred to SVB PLV Inc. Account or SVB FBO account for disbursement. Post reconciliation transaction profit from the Priority Passport Account is remitted to CNB checking account.

8. The Debtors also maintain two (2) “for benefit of” accounts (each, an “**FBO Account**” and collectively, the “**FBO Accounts**”) at SVB. The FBO Accounts are not owned by the Debtors, but are used in the day-to-day operation of the Debtors’ business and play an integral role in the overall Cash Management System.

- a. First SVB FBO Business Checking Account (last four digits 8211): The SVB FBO Business Checking Account is maintained at SVB (the “**First SVB FBO Business Checking Account**”) and is a settlement FBO Account which receives ACH payments, bank transfers, and credit card settlements from the Debtors’ customers. On a monthly basis, the First SVB FBO Business Checking Account also remits customer chargebacks to customer bank accounts, merchant accounts, or Slope, the Debtors’ short-term financing partner, as applicable. The First SVB FBO Business Checking Account also remits some payments (i) directly to billers and merchants and (ii) to the Second SVB FBO Business Checking Account. Any post-reconciliation profit from the First SVB FBO Business Checking Account is remitted to the SVB Analysis Checking Account.
- b. Second SVB FBO Business Checking Account (last four digits 5823): The Second SVB FBO Business Checking Account is maintained at SVB (the “**Second SVB FBO Business Checking Account**”) and is a settlement FBO Account which receives customer funds for disbursement from the First SVB FBO Business Checking Account and processes ACH payments, wire transfers, and check disbursements to various billers and merchants on behalf of the Debtors’ customers. At the end of every business day, the Second SVB FBO Business Checking Account is automatically balanced back to \$0.

9. Finally, the Debtors maintain the following seventeen (17) accounts, identified by their last four digits, which are idle accounts that the Debtors are planning to, or in the process of closing (each, an “**Idle Account**” and collectively, the “**Idle Accounts**”). Seven (7) of the Idle Accounts (last four digits: 1827, 7744, 1831, and 2091, 7744, 6820, and 1975) are held at SVB, and of these seven (7) Idle Accounts, three (3) (last four digits: 7744, 6820, and 1975) were opened in connection with and previously used by the Debtors’ Nearside business. Four (4) of the Idle Accounts are held at Choice (last four digits: 0599, 6921, 4008, and 6278), three (3) of

the Idle Accounts are held at First Republic (last four digits: 3909, 6072, 0208), two (2) of the Idle Accounts are held at BMO (last four digits: 7234 and 8147), and one (1) Idle Account (last four digits: 4157) is held at RBC and was previously used in connection with the Debtors' Nearside business.

10. The Debtors engage in intercompany transactions (the "**Intercompany Transactions**") in the ordinary course of their business. From time to time on an as needed basis the Debtors engage in Intercompany Transactions with their non-debtor affiliates in Canada, mostly for the purpose of funding monthly payroll. The Debtors anticipate that approximately \$50,000 will become due on account of these Intercompany Transactions during the first thirty (30) days of these chapter 11 cases, with an additional \$50,000 coming due during the pendency of these cases. Other than as described herein, the Debtors do not intend to engage in Intercompany Transactions with their non-debtor affiliates on a post-petition basis. Nevertheless, the Debtors are requesting the Court's authority to continue to engage in Intercompany Transactions during the pendency of these chapter 11 cases, including the payment of amounts owed in respect of Intercompany Transactions up to \$50,000 upon entry of the Proposed Interim Order.

11. The Debtors utilize internal accounting software to facilitate the Cash Management System and maintain their books and records in a manner that allows the Debtors to monitor transfers and transactions, maintain accurate records of any permitted Intercompany Transactions, and gather account balance information.

III. The Debtors' Business Model and the Flow of Customer Funds

12. As noted above, 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, daycare costs, homeowners' association fees, and other expenses. In providing this service, the Debtors collect funds from their customers (collectively, the "**Customer**

Funds”) and transmit such funds to various entities (collectively, the “**Providers**”), as directed by the customers.

13. For example, if a customer’s landlord requires payment of rent to be made by check and a customer wishes to make such payments on her credit card, the customer can create an account on the Debtors’ platform, add her credit card to the account, and charge it in the amount of her rent. This charged amount comes to the Debtors as Customer Funds. The Debtors will then pay the landlord, as Provider, on the customer’s behalf by check. A different customer might use the Debtors’ services to pay his utility bill by credit card and request that the Debtors remit the Customer Funds as an ACH payment or wire transfer.

14. Although the exact balance of the Customer Funds held by the Debtors fluctuates based on the day and the behavior of the Debtors’ customers, on a given day in the ordinary course, the Debtors believe that they hold up to \$20 million in Customer Funds. Other than the Transaction Fee, such Customer Funds are not property of the Debtors’ estates and the Debtors merely serve as a pass-through for purposes of facilitating the transfer of the Customer Funds to the Providers.

15. Failure to maintain the Customer Funds and continue the transfer of such Funds to the Providers in the ordinary course of business would severely disrupt the Debtors’ business operations, cause irreparable damage to the Debtors’ goodwill, and likely cause the Debtors’ customers to turn to their competitors to fulfill their needs. The Debtors’ customers also have sequential liability for payments to the Providers, and therefore, without the ability to (i) continue the collection and transfer of Customer Funds and (ii) satisfy any related prepetition obligations, the Debtors’ customers would be directly liable to the Providers. If this were the case, the Debtors could risk loss of valued customers and a severe reduction in their market share. Thus, absent the ability to continue the flow of Customer Funds in the ordinary course post-petition, the

Debtors will suffer immediate and irreparable harm to both their customer and vendor bases, which would have a detrimental impact on the Debtors' business and brand, thereby adversely affecting the Debtors' ability to maximize value in these chapter 11 cases.

16. The Debtors' business depends on continuing to facilitate the transmittal of Customer Funds to Providers on a post-petition basis. Any interruption in these transactions would have catastrophic consequences, including potential personal liability of their customers to the Providers. Consequently, the Debtors are seeking the Court's authority to both (i) allow them to transmit Customer Funds received prepetition to the applicable Providers on a post-petition basis, and (ii) with respect to Customer Funds received post-petition, to continue to facilitate the transfer of such funds to the Providers in the ordinary course of business during the pendency of the chapter 11 cases.

RELIEF REQUESTED

17. By this Motion, the Debtors request entry of the Proposed Orders: (a) authorizing and approving the continued use of their existing Cash Management System, including the flow of Customer Funds to the Providers; (b) authorizing the Debtors to continue to pay the FBO Account Fees on a post-petition basis; (c) granting the Debtors a waiver of certain bank account and related requirements of the U.S. Trustee (including, without limitation, the operating guidelines established by the U.S. Trustee that require debtors to close all prepetition bank accounts, open new accounts designated as debtor-in-possession accounts, and to provide new business forms and stationery) to the extent that such requirements are inconsistent with (i) the Debtors' practices in connection with their Cash Management System, or (ii) any action taken by the Debtors in accordance with any order granting the relief requested in this Motion or any other order entered in these chapter 11 cases; (d) authorizing the Debtors' deposit practices and waiving

the requirements of section 345(b) of the Bankruptcy Code in connection therewith on an interim basis; and (e) granting certain related relief.

BASIS FOR RELIEF

I. The Court Should Authorize the Debtors' Uninterrupted Use of Their Existing Cash Management System

18. The Debtors seek authority to continue utilizing their current Cash Management System, as described above. It is critical that the Debtors be able to consolidate management of cash and centrally coordinate transfers of such funds to operate their business efficiently and effectively. Any disruption to the Cash Management System would seriously harm the Debtors. Maintenance of the existing Cash Management System will prevent any unexpected or inopportune interruption to the Debtors' business operations while protecting the Debtors' cash for the benefit of their estates. Requiring the Debtors to change their Cash Management System at this critical time would cause, among other things, unnecessary disruption to the Debtors and their business affairs.

19. The Cash Management System utilizes the Bank Accounts to both conduct the Debtors day-to-day business in service of their Customers and to effectively and efficiently collect, transfer, and disburse funds, as needed in the Debtors' general business operations. The Cash Management System provides significant benefits to the Debtors, including the ability to: (a) closely track, and thus control, all corporate funds; (b) ensure cash availability; and (c) reduce administrative expenses by facilitating the movement of funds and the development of timely and accurate account balance and presentment information. A disruption in the Cash Management System could cause delays in the collection and disbursement of funds, thus impeding the Debtors' ability to avoid an unexpected or inopportune interruption in their operations during the pendency of these chapter 11 cases. Furthermore, the Debtors' chapter 11 cases will be facilitated by

preserving the “business as usual” atmosphere, and avoiding the distractions that would inevitably be associated with a substantial disruption in the Cash Management System.

20. The Debtors believe that they can only proceed through the chapter 11 process in an efficient and cost-effective manner if the Bank Accounts are continued in their current form. The Debtors will ensure that appropriate procedures are in place so that checks issued prior to the Petition Date, but presented after the Petition Date, will not be honored absent approval from the Court. The Debtors will also maintain records of postpetition transfers within the Cash Management System, so that transfers and transactions will be documented in their books and records to the same extent such information was maintained by the Debtors prior to the Petition Date.

21. Accordingly, the Debtors respectfully request that the Court authorize the continued use of the Cash Management System, provided that no prepetition checks, drafts, wire transfers, or other forms of tender that have not yet cleared the relevant drawee bank as of the Petition Date will be honored unless authorized by separate order of the Court.

22. The Debtors also request that no bank participating in the Cash Management System (each, a “**Cash Management Bank**,” and collectively, the “**Cash Management Banks**”) that honors a prepetition check or other item drawn on any account that is the subject of this Motion (a) at the direction of the Debtors, (b) in a good faith belief that the Court has authorized such prepetition check or item to be honored, or (c) as a result of an innocent mistake made despite implementation of reasonable item handling procedures, be deemed to be liable to the Debtors or to their estates on account of such prepetition check or other item being honored postpetition. The Debtors believe that according such flexibility to the Cash Management Banks is necessary to induce the Cash Management Banks to continue providing cash management services during these chapter 11 cases without incurring additional credit exposure.

23. Additionally, in each instance in which the Debtors hold one (1) or more accounts at a bank that is a party to a Uniform Depository Agreement with the U.S. Trustee, within fifteen (15) days of the date of the entry of the Proposed Interim Order granting this Motion, the Debtors will (i) contact such Bank, (ii) provide such Bank with the applicable Debtor's employer identification number (if available), and (iii) identify each of the affected accounts as accounts held by a debtor-in-possession in a bankruptcy proceeding. Where the Debtors hold one (1) or more accounts at a Bank that is not a party to a Uniform Depository Agreement with the U.S. Trustee, the Debtors will use their good faith efforts to cause such Bank to execute a Uniform Depository Agreement in a form proscribed by the Office of the United States Trustee within thirty (30) days of the date of the entry of the Proposed Interim Order granting the relief requested in this Motion.

II. The Customer Funds are Not Property of the Debtors' Estates

24. As discussed above, in the ordinary course of business, the Debtors act as a conduit through which Customer Funds pass before being disbursed to the Providers in fulfillment of customer obligations. In the examples provided above regarding payment of rental obligations or utility bills using the Debtors' services, the money that constitutes Customer Funds is not the Debtors' money; it is the customers' money being paid in respect of the customers' obligations. The Debtors' services provide a means by which the customers can pay their obligations using credit or debit cards even if the Providers would not otherwise accept such payment methods. In this sense, the Customer Funds are trust funds that are held by SVB in an FBO Account that the Debtors do not own, for the benefit of both (i) the Providers, to whom payment is owed, and (ii) their customers, on whose behalf such payment is being made.

25. Section 541(d) of the Bankruptcy Code excludes "property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest"

from the definition of property of the estate. *See* 11 U.S.C. § 541(d); *see also In re Columbia Gas Sys. Inc.*, 997 F.2d 1039, 1054 (3d Cir. 1993) (“A bankruptcy estate includes all property of the debtor, but only to the extent of the debtor’s equitable interest in such property.”). The legislative history of section 541(d) of the Bankruptcy Code makes plain that “Congress clearly intended the exclusion created by section 541(d) to include not only funds held in express trust, but also funds held in constructive trust.” *In re Columbia Gas Sys. Inc.*, 997 F.2d at 1059 (citing H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 368 (1977), *reprinted* in 1978 U.S.C.C.A.N. 5963, 6324 (“Situations occasionally arise where property ostensibly belonging to the debtor will actually not be property of the debtor, but will be held in trust for another. For example, if the debtor has incurred medical bills that were covered by insurance and the insurance company had sent payment of the bills to the debtor before the debtor had paid the bill for which the payment was reimbursement, *the payment would actually be held in constructive trust for the person to whom the bill was owed.*)).

26. Here, other than the Transaction Fee, Customer Funds are not paid to the Debtors in respect of any obligations owed by the customers to the Debtors. Instead, other than the Transaction Fee, the bulk of the Customer Funds only pass-through the Bank Accounts. In connection with this pass-through, the Customer Funds are briefly held in trust for the benefit of the Providers before being paid to the Providers by the Debtors. However, at all relevant times, other than the Transaction Fee, the Customer Funds do not become or otherwise constitute property of the Debtors’ estates, and would not otherwise be available for distribution to the Debtors’ creditors.

27. Given this pass-through relationship, the Debtors respectfully submit that permitting them to pay the Customer Funds that were received prepetition but not yet distributed to the Providers on a post-petition basis will not adversely affect the Debtors’ estates and should be authorized by the Court. Moreover, the Debtors’ ordinary course practice of facilitating the

payment of the Customer Funds to the Providers should be permitted to continue on a post-petition basis because the Customer Funds passing through the Debtors' platform are not property of the Debtors' estates, but are instead the property of their customers when paid and property of the Providers when received.

III. The Debtors Should be Permitted to Pay the FBO Account Fees

28. In the ordinary course of operating their business, the Debtors incur certain fees and other charges pursuant to their account service agreements with SVB in connection with the FBO Accounts, including fees for account maintenance, fraud control services, ACH services, paper disbursement services, wire and other transfer services, information reporting services, direct transmissions services, and implementation set up fees (collectively, the "**FBO Account Fees**"). The Debtors are required to pay the FBO Account Fees under the applicable service agreements with SVB to continue using the FBO Accounts. Indeed, ongoing delinquency on account of past-due FBO Account Fees could result in SVB, and any other similar service provider, suspending and/or terminating the provision of its services to the Debtors. A suspension or termination of this kind would upend the Debtors' relationships with their customers and shut down their enterprise. As of the Petition Date, the Debtors estimate that \$100,000 has accrued and remains outstanding on account of the FBO Account Fees, all of which will become due and payable during the first 30 days of these chapter 11 cases.

29. To ensure that the Debtors are able to continue to perform under the terms of the applicable service agreements with SVB, and any other similar service provider during the pendency of these chapter 11 cases, the Debtors are requesting the Court's authority, but not direction, to pay the outstanding pre-petition balance owed on account of the FBO Account Fees, and authority to continue to pay the FBO Account Fees in the ordinary course of business on a post-petition basis.

IV. The Court Should Grant the Debtors a Waiver of the U.S. Trustee Guidelines

30. The Debtors further request a waiver of certain bank account and related requirements of the U.S. Trustee (including, without limitation, the operating guidelines established by the U.S. Trustee that require debtors to close all prepetition bank accounts, open new accounts designated as debtor-in-possession accounts, and to provide new business forms and stationery) to the extent that such requirements are inconsistent with (a) the Debtors' practices in connection with their Cash Management System, or (b) any action taken by the Debtors in accordance with any order granting the relief requested in this Motion or any other order entered in these chapter 11 cases.

31. The U.S. Trustee has issued certain chapter 11 operating guidelines pursuant to 28 U.S.C. § 586 (the "**U.S. Trustee Guidelines**"). These guidelines require that a chapter 11 debtor, among other things:

- a. close all existing bank accounts;
- b. open new bank accounts in a depository approved by the U.S. Trustee that are designated as debtor-in-possession accounts ("**DIP Accounts**"), with separate DIP Accounts established for an operating account, a tax account (to the extent that payroll or other taxes are an issue for the debtor), and a payroll account (to the extent that the debtor had a separate payroll account prepetition);
- c. obtain and utilize new checks for all DIP Accounts that bear the designation "Debtor-in-Possession" and contain other information about the debtor's chapter 11 case, and insure that the signature cards for all DIP Accounts clearly indicate that the debtor is a "Debtor-in-Possession";
- d. deposit all receipts and make all disbursements only through the approved DIP Accounts, with any funds in excess of those required for current operations being maintained in an interest-bearing account;
- e. deposit to the tax DIP Account sufficient funds to pay any tax liability (when incurred) associated with the debtor's payroll; and

- f. deposit all estate funds into DIP Accounts with a financial institution that agrees to comply with the requirements of the U.S. Trustee (which will be monitored by the U.S. Trustee), with no DIP Account exceeding the insured or collateralized limits of that approved depository.

32. If enforced in these chapter 11 cases, given the nature of the Debtors' business, such requirements would cause disruption to the Debtors' business and would impair the Debtors' chapter 11 efforts. The Bank Accounts represent an established Cash Management System that the Debtors need to maintain to ensure smooth collections and disbursements in the ordinary course of their business. Therefore, to avoid delays in paying debts incurred postpetition, and to ensure as smooth a transition into chapter 11 as possible, the Debtors should be permitted to continue to maintain their Bank Accounts and, if necessary, open new accounts and close existing accounts, in the ordinary course of business. Otherwise, transferring their Bank Accounts will be disruptive, time consuming, and expensive.

33. The Court has the authority to grant the requested relief pursuant to its equitable powers under section 105(a) of the Bankruptcy Code. Section 105(a) provides, in relevant part, that the Court "may 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). The relief requested herein is both necessary and appropriate to allow the Debtors to administer these chapter 11 cases successfully, to optimize their postpetition business performance, and to maximize the value of their estates.

34. Accordingly, the Debtors request that the Court waive the strict enforcement of the requirement that the Debtors open new bank accounts. The Debtors further request that their existing Bank Accounts be deemed debtor-in-possession accounts, and that the Debtors be authorized to maintain and continue using these accounts in the same manner and with

the same account numbers, styles, and document forms as those employed during the prepetition period.

35. A centralized cash management system “allows efficient utilization of cash resources and recognizes the impracticability of maintaining separate cash accounts for the many different purposes that require cash.” *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff’d in part, rev’d in part on other grounds*, 997 F.2d 1039 (3d Cir. 1993). The Third Circuit agreed, emphasizing that requiring the maintenance of all accounts separately “would be a huge administrative burden and economically inefficient.” *In re Columbia Gas Sys, Inc.*, 997 F.2d at 1061; *see also In re Southmark Corp.*, 49 F.3d 1111, 1114 (5th Cir. 1995) (cash management system allows debtor “to administer more efficiently and effectively its financial operation and assets”).

36. Accordingly, bankruptcy courts routinely grant debtors authority to continue utilizing existing cash management systems and treat requests for such authority as a relatively “simple matter.” *In re Baldwin-United Corp.*, 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987); *see Charter Co. v. Prudential Ins. Co. of Am. (In re Charter Co.)*, 778 F.2d 617, 621 (11th Cir. 1985) (holding that allowing the debtors to use their prepetition “routine cash management system” was entirely consistent with applicable provisions of the Bankruptcy Code). Courts in this circuit have recognized that allowing a debtor to maintain existing cash management systems is often appropriate. *See, e.g., In re Genesis Health Ventures, Inc.*, 402 F.3d 416, 424 (3d Cir. 2005); *In re Kindred Healthcare, Inc.*, 2003 WL 22327933, at *1 (Bankr. D. Del, Oct. 9, 2003); *In re Columbia Gas Sys.*, 997 F.2d at 1061 (recognizing that a requirement to maintain all accounts separately “would be a huge administrative burden and economically inefficient”).

37. The Debtors represent that if the relief requested is granted, they will implement appropriate mechanisms to ensure that no payments will be made on any debts incurred

by them prior to the Petition Date, other than those authorized by the Court. To prevent the possible inadvertent payment of prepetition claims, except for those otherwise authorized by the Court, the Debtors will work closely with the Cash Management Banks to ensure appropriate procedures are in place to prevent checks issued prepetition from being honored absent the Court's approval.

38. The Debtors also request authorization to continue to use all correspondence and business forms existing immediately before the Petition Date without reference to the Debtors' status as debtors in possession. The Debtors, in the ordinary course of their business, use many checks, invoices, letterhead, stationery, purchase orders, and other correspondence and business forms. To operate in an orderly fashion, the Debtors need to be permitted to use their existing forms without alteration or change. Parties doing business with the Debtors undoubtedly will be aware of the Debtors' status as debtors in possession as a result of the size and publicity surrounding these chapter 11 cases.

39. If the Debtors were required to change their forms, they would be forced to choose standard forms rather than use their current forms, with which the Debtors' employees, customers, and vendors are familiar. Such a change in operations would create a sense of disruption and potential confusion within the Debtors' organization and for the Debtors' employees, customers, and vendors. Further, the Debtors use a significant number and a wide variety of business forms in the ordinary course of their business operations. The Debtors therefore believe that it would be costly and disruptive to cease using all existing forms and to purchase and begin using new stationery and business forms. The Debtors respectfully submit that to do so would be unnecessary and that appropriate care can be taken to assure the proper use of the existing forms.

40. Notwithstanding the foregoing, upon the depletion of any pre-printed check stock and other business forms, the Debtors will obtain new check stock and business forms reflecting their status as debtors-in-possession, and with respect to checks which the Debtors or their agents print themselves, the Debtors will begin printing “Debtor-in-Possession” or “DIP” and the case number for these chapter 11 cases on such items within ten (10) days of the date of the entry of the Proposed Orders.

V. The Court Should Waive the Deposit Requirements of Section 345(b) of the Bankruptcy Code on an Interim Basis

41. The Debtors request that the Court waive the requirements of section 345(b) of the Bankruptcy Code on an interim basis and permit them to maintain their deposits in their accounts in accordance with their existing deposit practices until such time as the Debtors obtain the Court’s approval to deviate from the guidelines imposed under section 345(b) of the Bankruptcy Code on a final basis, to the extent necessary.

42. Section 345(a) of the Bankruptcy Code authorizes deposits or investments of money of a bankruptcy estate, such as cash, in a manner that will “yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment.” 11 U.S.C. § 345(a). For deposits or investments that are not “insured or guaranteed by the United States or by a department agent or instrumentality of the United States or backed by the full faith and credit of the United States,” section 345(b) of the Bankruptcy Code provides that the estate must require from the entity with which the money is deposited or invested a bond in favor of the United States secured by the undertaking of an adequate corporate surety. 11 U.S.C. § 345(b).

43. However, a court may relieve a debtor in possession of the restrictions imposed by section 345(b) of the Bankruptcy Code for “cause.” 11 U.S.C. § 345(b). Local Rule 2015-2(b) provides that if a motion for a waiver of the restrictions imposed by section 345(b) “is

filed on the first day of a chapter 11 case in which there are more than 200 creditors, the Court may grant an interim waiver until a hearing on the debtor's motion can be held." Del. Bankr. L.R. 2015-2(b). As this Motion is being filed on the Petition Date and the Debtors have in excess of 200 potential creditors, the Debtors request that the Court enter an order waiving, on an interim basis, for a period of thirty (30) days from the entry of the Proposed Orders, the requirements of section 345(b) of the Bankruptcy Code.

44. Some, but not all, of the Debtors' Bank Accounts are maintained at U.S. Trustee-approved depository institutions. Accordingly, the Debtors request an interim waiver of the requirements of section 345(b) of the Bankruptcy Code to provide them with the required time to come into compliance or seek appropriate relief for any Bank Account is not maintained at an authorized depository. Given the complexity of the Debtors' Cash Management System, the essential role that the Debtors' Cash Management System plays in the Debtors' ability to carry out the day to day operations of their business and service their Customers, and the relative security of the Cash Management System, the Debtors submit that cause exists to grant an interim waiver of the requirements of section 345(b) in the manner requested herein.

SATISFACTION OF BANKRUPTCY RULE 6003

45. Pursuant to Bankruptcy Rule 6003(b), any motion seeking to use property of the estate pursuant to section 363 of the Bankruptcy Code or to satisfy prepetition claims within twenty-one (21) days of the Petition Date requires the Debtors to demonstrate that such relief "is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003. As set forth throughout this Motion, any disruption of the current Cash Management System would substantially diminish or impair the Debtors' efforts in these chapter 11 cases to preserve and maximize the value of their estates. Furthermore, there is no question that the Debtors' failure to

pay or otherwise satisfy any outstanding fees on account of the Cash Management System would likely result in immediate and irreparable harm to the Debtors' business operations.

46. For this reason and those set forth above, the Debtors respectfully submit that Bankruptcy Rule 6003(b) has been satisfied, and the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h)

47. 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).

48. 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

49. 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

50. Notice of this Motion has been provided to: (a) the U.S Trustee (Attn: Richard L. Schepacarter); (b) the Debtors' twenty (20) largest unsecured creditors (excluding insiders); (c) counsel to the Agent for the DIP Lenders (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 Cash Management Banks; and (h) 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 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:)	
)	Chapter 11
PLASTIQ INC., <i>et al.</i> , ¹)	
)	Case No. 23-10671 (___)
Debtors.)	
)	(Jointly Administered)
)	
)	Ref. Docket No. ___
)	

INTERIM ORDER, PURSUANT TO SECTIONS 105(a), 345, 363, 1107(a), AND 1108 OF THE BANKRUPTCY CODE, BANKRUPTCY RULE 2015, AND LOCAL RULE 2015-2, (A) AUTHORIZING AND APPROVING CONTINUED USE OF CASH MANAGEMENT SYSTEM, (B) AUTHORIZING THE DEBTORS TO PAY THE FBO ACCOUNT FEES, (C) AUTHORIZING THE USE OF PREPETITION BANK ACCOUNTS AND BUSINESS FORMS, (D) WAIVING THE REQUIREMENTS OF SECTION 345(b) ON AN INTERIM BASIS, AND (E) GRANTING CERTAIN RELATED RELIEF

Upon consideration of the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for the entry of interim and final orders, pursuant to sections 105(a), 345, 363, 1107(a), and 1108 of the Bankruptcy Code, Bankruptcy Rule 2015, and Local Rule 2015-2, (a) authorizing and approving the Debtors’ continued use of their Cash Management System, (b) authorizing the Debtors to continue to pay the FBO Account Fees on a post-petition basis, (c) granting the Debtors a waiver of the U.S. Trustee Guidelines, (d) waiving the requirements of section 345(b) of the Bankruptcy Code with respect to the Debtors’ deposit practices on an interim basis, and (e) granting certain related relief; 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

¹ 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.

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

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 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, 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 are authorized to continue to maintain and transmit the Customer Funds on a post-petition basis in the ordinary course of business and to satisfy any related prepetition obligations owed to the Providers.
4. The Debtors are authorized to pay \$100,000 in prepetition amounts owed in respect of the FBO Account Fees and to continue to pay the FBO Account Fees in the ordinary course of business during the pendency of these chapter 11 cases.
5. The Debtors are authorized to pay \$50,000 to their non-debtor Affiliates in Canada on account of Intercompany Transactions, pending entry of a further or final order.
6. The Debtors are authorized, in their discretion, to: (a) designate, maintain, and continue to use, with the same account numbers, all of their bank accounts in existence on the

Petition Date (collectively, the “**Bank Accounts**”), including, without limitation, those bank accounts identified in the Motion; (b) use, in their present form, any and all checks and other documents related to the Bank Accounts; and (c) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors-in-possession and to maintain and continue using these accounts in the same manner and with the same account numbers, styles, and document forms as used prior to the Petition Date.

7. The Cash Management Banks participating in the Cash Management System are hereby authorized to continue to service and administer all of the Bank Accounts as accounts of the Debtors as debtors-in-possession without interruption and in the ordinary course in a manner consistent with any agreements between the Cash Management Banks and the Debtors that existed prior to the Petition Date, and to receive, process, honor, and pay any and all checks, drafts, wires, or other electronic transfer requests issued, payable through, or drawn on, such Bank Accounts after the Petition Date by the holders or makers thereof or other parties entitled to issue instructions with respect thereto, as the case may be; *provided, however*, that any such checks, drafts, wires, or other electronic transfer requests issued by the Debtors before the Petition Date may be honored by any Cash Management Bank only if specifically authorized by order of this Court.

8. Except for those that comply with an order of this Court authorizing payment of certain prepetition claims, no checks, drafts, wires, or other electronic transfer requests drawn, issued, or requested on the Bank Accounts before the Petition Date, but presented for payment after the Petition Date, shall be honored or paid.

9. The operation of the Cash Management System in accordance with the Debtors’ normal and customary practice is adequate and sufficient and may be continued on and after the Petition Date.

10. The Cash Management Banks participating in the Cash Management System shall not be liable to the Debtors or to their estates and shall not be deemed to be in violation of this Order for honoring a prepetition check or other item drawn on any account that is the subject of this Order: (a) at the direction of the Debtors; (b) in a good faith belief that this Court has authorized such prepetition check or item to be honored; or (c) as a result of an innocent mistake made despite implementation of reasonable item handling procedures.

11. The Debtors are authorized to continue to use all of their correspondence and business forms (including, without limitation, checks, invoices, letterhead, stationery, and purchase orders) existing immediately before the Petition Date without reference to the Debtors' status as debtors-in-possession; *provided, however*, that upon the depletion of any pre-printed check stock and other business forms, the Debtors will obtain new check stock and business forms reflecting their status as debtors-in-possession; *provided further, however*, that with respect to checks which the Debtors or their agents print themselves, the Debtors shall begin printing "Debtor-in-Possession" or "DIP" and the jointly administered case number for these chapter 11 cases on such items within ten (10) days of the date of the entry of this Order.

12. For banks at which the Debtors hold bank accounts that are party to a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), the Debtors shall immediately, or as soon thereafter as is reasonably possible after the entry of this Order, (a) contact each UDA bank, (b) provide the UDA banks with each of the Debtors' employer identification numbers and (c) identify each of their accounts held at such UDA banks as being held by a debtor-in-possession in a bankruptcy case, and provide the proper case number.

13. In each instance in which the Debtors hold Bank Accounts at Banks that are not party to a Uniform Depository Agreement with the U.S. Trustee, the Debtor shall use its good

faith efforts to cause those Banks to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee within thirty (30) days after entry of this Interim Order, to the extent such Bank is a domestic bank.

14. The Debtors are authorized to open any new bank accounts and close any of the Bank Accounts as the Debtors may deem necessary and appropriate; *provided, however*, that prior to opening any new bank accounts or closing any of the Bank Accounts, the Debtors give notice within fifteen (15) days to the Office of the United States Trustee for the District of Delaware and any statutory committees appointed in these chapter 11 cases; *provided, further, however*, that the Debtors shall open any such new Bank Account at banks that have executed a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware, or at such banks that are willing to immediately execute such an agreement.

15. The relief granted herein is extended to any new bank accounts opened by the Debtors after the date hereof in accordance with this Order, and any such new accounts shall be deemed a Bank Account for purposes of this Order, and any banks at which any such new accounts are opened shall be deemed a Cash Management Bank, and a part of the Cash Management System, for purposes of this Order.

16. With regard to the Cash Management Banks that are party to an UDA with the U.S. Trustee, the Debtors shall immediately, or as soon thereafter as is reasonably possible after entry of this Order: (a) contact each bank, (b) provide each bank with each of the Debtors' employer identification numbers, and (c) identify each of their Bank Accounts held at such banks as being held by a debtor-in-possession.

17. With regard to the Cash Management Banks that are not a party to an UDA with the U.S. Trustee, within thirty (30) days of the date of the entry of this Order, the Debtors shall use their good-faith efforts to cause the bank to execute an UDA in a form prescribed by the U.S. Trustee. The U.S. Trustee's rights to seek further relief from this Court on notice in the event that the aforementioned banks are unwilling to execute an UDA in a form prescribed by the U.S. Trustee are fully reserved.

18. The Debtors are authorized to continue engaging in Intercompany Transactions in the ordinary course of business and to continue performing under the terms of existing intercompany loan arrangements, *provided, however*, that there shall be no newly established intercompany loans from or to the Debtors absent further order of this Court.

19. The Debtors shall maintain accurate and detailed records of all transfers, including any Intercompany Transactions, so that all transactions may be readily ascertained, traced, recorded properly, and distinguished between prepetition and postpetition transactions.

20. The requirements of section 345(b) of the Bankruptcy Code are suspended on an interim basis for a period of thirty (30) days from the entry of this Order, such that the Debtors are hereby permitted to maintain their deposits in their Bank Accounts in accordance with their existing deposit practices. This Order shall be without prejudice to the Debtors' rights to seek further relief from this Court with respect to such requirements or to seek approval from this Court to deviate from such requirements on a final basis.

21. The Cash Management Banks are hereby authorized to debit from the Bank Accounts ordinary course of business bank fees and charges without further order of this Court, provided that such fees and charges are authorized under the applicable account agreement with the Debtors, and provided further that nothing set forth herein shall authorize any of the Cash

Management Banks to debit any claim or charges not in the ordinary course of business and not permitted under the applicable account agreements.

22. Within five (5) business days of the date of the entry of this Order, the Debtors shall (a) serve a copy of this Order on each Cash Management Bank and (b) request that each Cash Management Bank internally code each of the Bank Accounts as “debtor-in-possession” accounts.

23. Notwithstanding the Debtors’ authorized use of a consolidated cash management system, the Debtors shall calculate quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursements of each particular Debtor, regardless of which Debtor remits payment for those disbursements.

24. 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.

25. Nothing in this 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.

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

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

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

29. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this 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> , ¹)	
)	Case No. 23-10671 (___)
Debtors.)	
)	(Jointly Administered)
)	
)	Ref. Docket Nos. ___ & ___
)	

FINAL ORDER, PURSUANT TO SECTIONS 105(a), 345, 363, 1107(a), AND 1108 OF THE BANKRUPTCY CODE, BANKRUPTCY RULE 2015, AND LOCAL RULE 2015-2, (A) AUTHORIZING AND APPROVING CONTINUED USE OF CASH MANAGEMENT SYSTEM, (B) AUTHORIZING THE DEBTORS TO PAY THE FBO ACCOUNT FEES, (C) AUTHORIZING USE OF PREPETITION BANK ACCOUNTS AND BUSINESS FORMS, (D) WAIVING THE REQUIREMENTS OF SECTION 345(b) ON AN INTERIM BASIS, AND (E) GRANTING CERTAIN RELATED RELIEF

Upon consideration of the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for the entry of interim and final orders, pursuant to sections 105(a), 345, 363, 1107(a), and 1108 of the Bankruptcy Code, Bankruptcy Rule 2015, and Local Rule 2015-2, (a) authorizing and approving the Debtors’ continued use of their Cash Management System, (b) authorizing the Debtors to pay the FBO Account Fees; (c) granting the Debtors a waiver of the U.S. Trustee Guidelines, (d) waiving the requirements of section 345(b) of the Bankruptcy Code with respect to the Debtors’ deposit practices on an interim basis, and (e) granting certain related relief; 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

¹ 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.

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

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 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 are authorized to continue to maintain and transmit the Customer Funds on a post-petition basis in the ordinary course of business and to satisfy any related prepetition obligations owed to the Providers.
3. The Debtors are authorized to continue to pay the FBO Account Fees in the ordinary course of business during the pendency of these chapter 11 cases.
4. The Debtors are authorized to continue to perform their Intercompany Transactions in the ordinary course of business during the pendency of these chapter 11 cases.
5. The Debtors are authorized, in their discretion, to: (a) designate, maintain, and continue to use, with the same account numbers, all of their bank accounts in existence on the Petition Date (collectively, the “**Bank Accounts**”), including, without limitation, those bank accounts identified in the Motion; (b) use, in their present form, any and all checks and other documents related to the Bank Accounts; and (c) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors-in-possession and to maintain and continue using these accounts in the same manner and with the same account numbers, styles, and document forms as used prior to the Petition Date.
6. The Cash Management Banks participating in the Cash Management System are hereby authorized to continue to service and administer all of the Bank Accounts as

accounts of the Debtors as debtors-in-possession without interruption and in the ordinary course in a manner consistent with any agreements between the Cash Management Banks and the Debtors that existed prior to the Petition Date, and to receive, process, honor, and pay any and all checks, drafts, wires, or other electronic transfer requests issued, payable through, or drawn on, such Bank Accounts after the Petition Date by the holders or makers thereof or other parties entitled to issue instructions with respect thereto, as the case may be; *provided, however*, that any such checks, drafts, wires, or other electronic transfer requests issued by the Debtors before the Petition Date may be honored by any Cash Management Bank only if specifically authorized by order of this Court.

7. Except for those that comply with an order of this Court authorizing payment of certain prepetition claims, no checks, drafts, wires, or other electronic transfer requests drawn, issued, or requested on the Bank Accounts before the Petition Date, but presented for payment after the Petition Date, shall be honored or paid.

8. The operation of the Cash Management System in accordance with the Debtors' normal and customary practice is adequate and sufficient and may be continued on and after the Petition Date.

9. The Cash Management Banks participating in the Cash Management System shall not be liable to the Debtors or to their estates and shall not be deemed to be in violation of this Order for honoring a prepetition check or other item drawn on any account that is the subject of this Order: (a) at the direction of the Debtors; (b) in a good faith belief that this Court has authorized such prepetition check or item to be honored; or (c) as a result of an innocent mistake made despite implementation of reasonable item handling procedures.

10. The Debtors are authorized to continue to use all of their correspondence and business forms (including, without limitation, checks, invoices, letterhead, stationery, and

purchase orders) existing immediately before the Petition Date without reference to the Debtors' status as debtors-in-possession; *provided, however*, that upon the depletion of any pre-printed check stock and other business forms, the Debtors will obtain new check stock and business forms reflecting their status as debtors-in-possession; *provided further, however*, that, to the extent not already done, with respect to checks which the Debtors or their agents print themselves, the Debtors shall begin printing "Debtor-in-Possession" or "DIP" and the jointly administered case number for these chapter 11 cases on such items within ten (10) days of the date of the entry of this Order.

11. For banks at which the Debtors hold bank accounts that are party to a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), the Debtors shall immediately, or as soon thereafter as is reasonably possible after the entry of this Order, (a) contact each UDA bank, (b) provide the UDA banks with each of the Debtors' employer identification numbers and (c) identify each of their accounts held at such UDA banks as being held by a debtor-in-possession in a bankruptcy case, and provide the proper case number.

12. In each instance in which the Debtors hold Bank Accounts at Banks that are not party to a Uniform Depository Agreement with the U.S. Trustee, the Debtor shall use its good faith efforts to cause those Banks to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee within thirty (30) days after entry of this Final Order, to the extent such Bank is a domestic bank.

13. The Debtors are authorized to open any new bank accounts and close any of the Bank Accounts as the Debtors may deem necessary and appropriate; *provided, however*, that prior to opening any new bank accounts or closing any of the Bank Accounts, the Debtors give notice within fifteen (15) days to the Office of the United States Trustee for the District of

Delaware and any statutory committees appointed in these chapter 11 cases; *provided, further, however,* that the Debtors shall open any such new Bank Account at banks that have executed a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware, or at such banks that are willing to immediately execute such an agreement

14. The relief granted herein is extended to any new bank accounts opened by the Debtors after the date hereof in accordance with this Order, and any such new accounts shall be deemed a Bank Account for purposes of this Order, and any banks at which any such new accounts are opened shall be deemed a Cash Management Bank, and a part of the Cash Management System, for purposes of this Order.

15. With regard to the Cash Management Banks that are not a party to an UDA with the U.S. Trustee, within thirty (30) days of the date of the entry of this Order, the Debtors shall use their good-faith efforts to cause the bank to execute an UDA in a form prescribed by the U.S. Trustee. The U.S. Trustee's rights to seek further relief from this Court on notice in the event that the aforementioned banks are unwilling to execute an UDA in a form prescribed by the U.S. Trustee are fully reserved.

16. The requirements of section 345(b) of the Bankruptcy Code are hereby suspended as to the Cash Management Accounts on a final basis, such that the Debtors are hereby permitted to maintain their deposits in their Bank Accounts in accordance with their existing deposit practices. This Order shall be without prejudice to the Debtors' rights to seek further relief from this Court with respect to such requirements or to seek approval from this Court to deviate from such requirements on a final basis.

17. The Cash Management Banks are hereby authorized to debit from the Bank Accounts ordinary course of business bank fees and charges without further order of this Court, provided that such fees and charges are authorized under the applicable account agreement with

the Debtors, and provided further that nothing set forth herein shall authorize any of the Cash Management Banks to debit any claim or charges not in the ordinary course of business and not permitted under the applicable account agreements.

18. The Debtors are authorized to continue engaging in Intercompany Transactions in the ordinary course of business and to continue performing under the terms of existing intercompany loan arrangements, *provided, however*, that there shall be no newly established intercompany loans from or to the Debtors absent further order of this Court.

19. The Debtors shall maintain accurate and detailed records of all transfers, including any Intercompany Transactions, so that all transactions may be readily ascertained, traced, recorded properly and distinguished between prepetition and postpetition transactions.

20. Notwithstanding the Debtors' authorized use of a consolidated cash management system, the Debtors shall calculate quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursements of each particular Debtor, regardless of which Debtor remits payment for those disbursements.

21. 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.

22. Nothing in this 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.

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

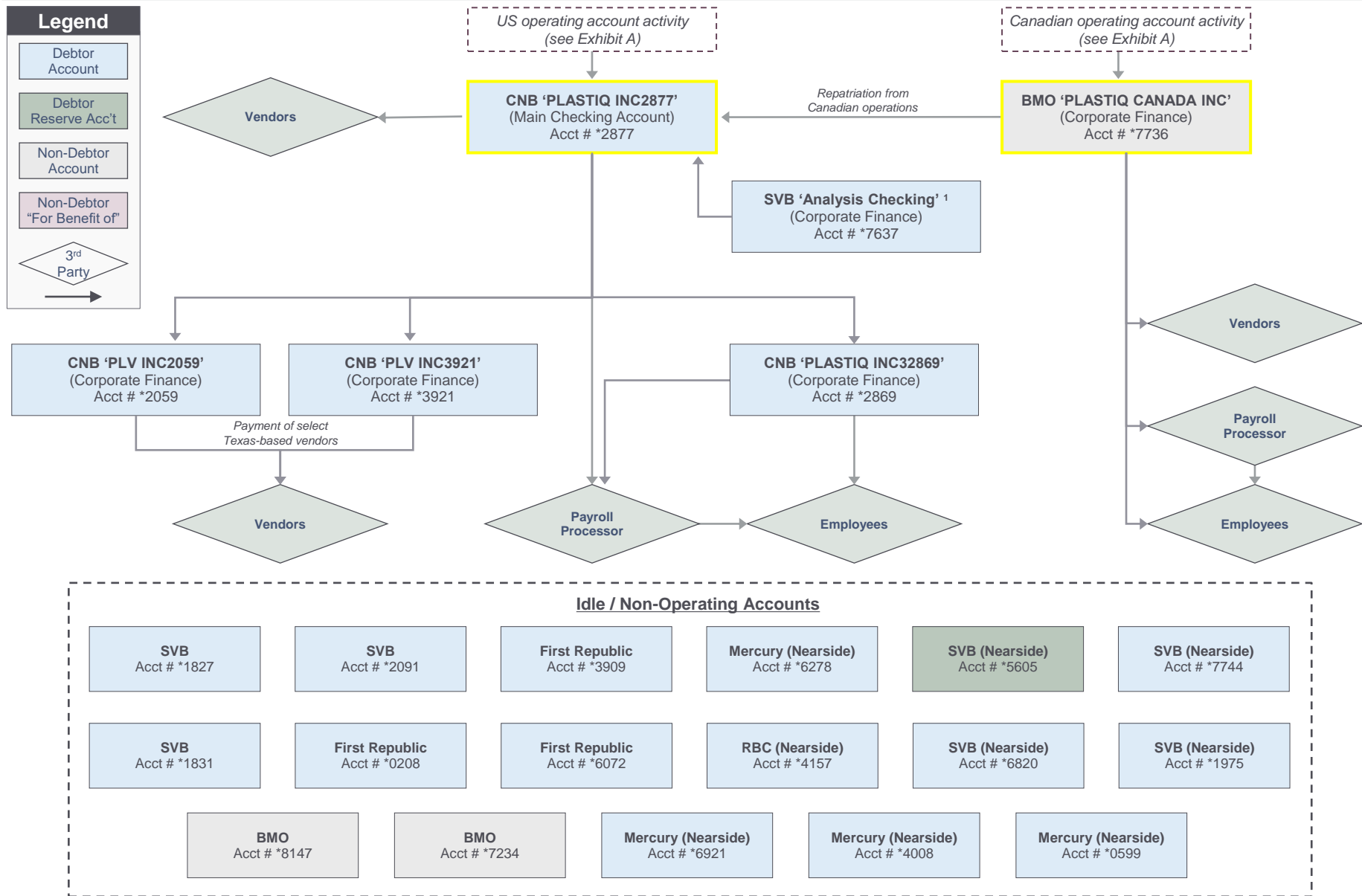
24. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

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

EXHIBIT C

Schematic Illustration of Cash Management System

Cash Management Schematic Exhibit B: Corporate Finance



(1) SVB account # *7637 was previously the Debtors' main checking account and has comparable capabilities as CNB account # *2877