

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 (BLS)
Debtors.)	
)	(Jointly Administered)
)	
)	Ref. Docket Nos. 9 & 43

CERTIFICATION OF COUNSEL REGARDING REVISED PROPOSED FINAL ORDER, PURSUANT TO SECTIONS 105(a), 363(b), 507(a)(4), AND 507(a)(5) OF THE BANKRUPTCY CODE, (A) AUTHORIZING (I) PAYMENT OF PREPETITION EMPLOYEE WAGES, SALARIES, COMMISSIONS AND OTHER COMPENSATION; (II) PAYMENT OF PREPETITION EMPLOYEE BUSINESS EXPENSES; (III) CONTRIBUTIONS TO PREPETITION EMPLOYEE BENEFIT PROGRAMS AND CONTINUATION OF SUCH PROGRAMS IN THE ORDINARY COURSE; (IV) PAYMENT OF SEVERANCE OBLIGATIONS; (V) PAYMENT OF WORKERS’ COMPENSATION OBLIGATIONS; (VI) PAYMENT FOR WHICH PREPETITION PAYROLL DEDUCTIONS WERE MADE; (VII) PAYMENT OF ALL COSTS AND EXPENSES INCIDENT TO THE FOREGOING PAYMENTS AND CONTRIBUTIONS; AND (VIII) PAYMENT TO THIRD PARTIES OF ALL AMOUNTS INCIDENT TO THE FOREGOING PAYMENTS AND CONTRIBUTIONS; AND (B) AUTHORIZING BANKS TO HONOR AND PROCESS CHECK AND ELECTRONIC TRANSFER REQUESTS RELATED THERETO

On May 24, 2023, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Debtors’ Motion for Entry of Interim and Final Orders, Pursuant to Sections 105(a), 363(b), 507(a)(4), and 507(a)(5) of the Bankruptcy Code, (A) Authorizing (I) Payment of Prepetition Employee Wages, Salaries, Commissions, and Other Compensation; (II) Payment of Prepetition Employee Business Expenses; (III) Contributions to Prepetition Employee Benefit Programs and Continuation of Such Programs in the Ordinary Course; (IV) Payment of Severance Obligations; (V) Payment of Workers’ Compensation*

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.



*Obligations; (VI) Payment for Which Prepetition Payroll Deductions Were Made; (VII) Payment of All Costs and Expenses Incident to the Foregoing Payments and Contributions; and (VIII) Payment to Third Parties of All Amounts Incident to the Foregoing Payments and Contributions; and (B) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto [Docket No. 9] (the “**Motion**”).*

On May 25, 2023, the United States Bankruptcy Court for the District of Delaware (the “**Court**”) held a hearing (the “**Hearing**”) to consider, among other things, the relief requested by the Motion on an interim basis. Subsequent to the Hearing, the Court entered an order [Docket No. 43] (the “**Interim Order**”) granting the Motion on an interim basis. Pursuant to the Interim Order, responses to the entry of the proposed form of final order (the “**Proposed Final Order**”) attached to the Motion were to be filed and served no later than 4:00 p.m. (ET) on June 9, 2023, (the “**Objection Deadline**”).²

Prior to the Objection Deadline, the Debtors received informal comments from the Official Committee of Unsecured Creditors (the “**Committee**”). As a result of discussions between the Debtors and the Committee, such comments have been resolved through certain revisions to the Proposed Final Order, a revised form of which is attached hereto as **Exhibit A** (the “**Revised Proposed Final Order**”). For the convenience of the Court and all interested parties, a blackline comparing the Revised Proposed Final Order to the Proposed Final Order is attached hereto as **Exhibit B**. No other responses were received by the Debtors.

² The Objection Deadline was extended to June 14, 2023 at 5:00 p.m. (ET) solely for the Committee (as defined herein).

The Debtors submit that the Revised Proposed Final Order is appropriate and consistent with the relief requested in the Motion and their discussions with the Committee, and that the Committee does not object to entry of the Revised Proposed Final Order. Accordingly, the Debtors respectfully request that the Court enter the Revised Proposed Final Order at its earliest convenience without further notice or hearing.

Dated: June 15, 2023
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Joseph M. Mulvihill

Michael R. Nestor (No. 3526)
Matthew B. Lunn (No. 4119)
Joseph M. Mulvihill (No. 6061)
Jared W. Kochenash (No. 6557)
1000 North King Street
Rodney Square
Wilmington, Delaware 19801
Tel.: (302) 571-6600
Facsimile: (302) 571-1253
Email: mnestor@ycst.com
mlunn@ycst.com
jmulvihill@ycst.com
jkochenash@ycst.com

Proposed Counsel for Debtors and Debtors in Possession

EXHIBIT A

Revised 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 (BLS)
Debtors.)
) (Jointly Administered)
)
) Re: Docket Nos. 9 & 43
)

FINAL ORDER, PURSUANT TO SECTIONS 105(a), 363(b), 507(a)(4), AND 507(a)(5) OF THE BANKRUPTCY CODE, (A) AUTHORIZING (I) PAYMENT OF PREPETITION EMPLOYEE WAGES, SALARIES, COMMISSIONS AND OTHER COMPENSATION; (II) PAYMENT OF PREPETITION EMPLOYEE BUSINESS EXPENSES; (III) CONTRIBUTIONS TO PREPETITION EMPLOYEE BENEFIT PROGRAMS AND CONTINUATION OF SUCH PROGRAMS IN THE ORDINARY COURSE; (IV) PAYMENT OF SEVERANCE OBLIGATIONS; (V) PAYMENT OF WORKERS' COMPENSATION OBLIGATIONS; (VI) PAYMENT FOR WHICH PREPETITION PAYROLL DEDUCTIONS WERE MADE; (VII) PAYMENT OF ALL COSTS AND EXPENSES INCIDENT TO THE FOREGOING PAYMENTS AND CONTRIBUTIONS; AND (VIII) PAYMENT TO THIRD PARTIES OF ALL AMOUNTS INCIDENT TO THE FOREGOING PAYMENTS AND CONTRIBUTIONS; AND (B) AUTHORIZING BANKS TO HONOR AND PROCESS CHECK AND ELECTRONIC TRANSFER REQUESTS RELATED THERETO

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), 363(b), 507(a)(4), and 507(a)(5) of the Bankruptcy Code, (a) authorizing, but not directing, the Debtors, in accordance with their stated policies and in their discretion, to pay, honor, or otherwise satisfy the Employee Wages and Benefits, including amounts and obligations related to the period prior to the Petition Date, and (b) authorizing the Banks

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.

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 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 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, in their discretion, to pay, honor, or otherwise satisfy amounts and obligations on account of the Employee Wages and Benefits in the ordinary course of their business, including, without limitation, any amounts and obligations related to the period prior to the Petition Date; *provided, however*, that: (a) no payment to any Employee on account of Unpaid Wages shall exceed, in the aggregate, the \$15,150.00 statutory cap provided for under section 507(a)(4) of the Bankruptcy Code; and (b) with respect to the Employee Wages and Benefits set forth in the table immediately below, the Debtors shall not pay any prepetition obligations on account of such Employee Wages and Benefits in excess of the applicable amounts set forth therein, unless required by applicable state law.

<u>Employee Wages and Benefits</u>	<u>Aggregate Amount</u>
Unpaid Wages (including Commissions)	\$380,000
Bonus Program	\$100,000
Payroll Processor Fees	\$2,000
Employee Expenses	\$2,000
Wage Deductions, Trust Fund Taxes, and Payroll Taxes	\$100,000
Health Benefits and Commuter/ FSA/ HSA Benefits	\$25,000
Paid Time Off	\$1,500
401(k) Plan	\$15,000
Life and AD&D Insurance and Disability Benefits	\$2,000
Additional Benefits	\$20,000

3. Subject to Paragraph 2 of this Order, the Debtors are authorized, in their discretion, in the ordinary course of their business, to (a) continue to pay, honor, or otherwise satisfy Unpaid Wages, Payroll Processor Fees, Employee Expenses, Paid Time Off, and Severance Obligations; (b) withhold, and remit to the applicable third-party, Wage Deductions, Trust Fund Taxes, and Payroll Taxes; and (c) administer the Employee Benefits and the Workers' Compensation Program.

4. The Debtors are authorized, but not directed, in their sole discretion, to honor and continue the Bonus Programs that were in effect as of the Petition Date; *provided, however*, that such relief shall not constitute or be deemed as an assumption or authorization to assume any of the Bonus Programs under section 365(a) of the Bankruptcy Code.

5. The Debtors shall provide advance notice to counsel to the Official Committee of Unsecured Creditors before the Debtors agree to any severance payments.

6. Nothing in this Order shall be deemed to authorize the payment of any amounts subject to section 503(c) of the Bankruptcy Code.

7. The Banks are authorized, when requested by the Debtors, in the Debtors' discretion, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition obligations authorized to be paid hereunder, 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 Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Order, and any such Bank shall not have any liability to any party for relying on such representations by the Debtors, as provided for in this Order.

8. 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.

9. 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.

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

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

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

EXHIBIT B

Blackline

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)
) Chapter 11
 PLASTIQ INC., *et al.*,¹)
) Case No. ~~23-_____~~ (~~_____~~ [23-10671](#)
 Debtors.) ([BLS](#))
)
) (Jointly Administered)
)
) **Re: Docket Nos. ~~_____~~[9](#) & ~~_____~~[43](#)**

FINAL ORDER, PURSUANT TO SECTIONS 105(a), 363(b), 507(a)(4), AND 507(a)(5) OF THE BANKRUPTCY CODE, (A) AUTHORIZING (I) PAYMENT OF PREPETITION EMPLOYEE WAGES, SALARIES, COMMISSIONS AND OTHER COMPENSATION; (II) PAYMENT OF PREPETITION EMPLOYEE BUSINESS EXPENSES; (III) CONTRIBUTIONS TO PREPETITION EMPLOYEE BENEFIT PROGRAMS AND CONTINUATION OF SUCH PROGRAMS IN THE ORDINARY COURSE; (IV) PAYMENT OF SEVERANCE OBLIGATIONS; (V) PAYMENT OF WORKERS' COMPENSATION OBLIGATIONS; (VI) PAYMENT FOR WHICH PREPETITION PAYROLL DEDUCTIONS WERE MADE; (VII) PAYMENT OF ALL COSTS AND EXPENSES INCIDENT TO THE FOREGOING PAYMENTS AND CONTRIBUTIONS; AND (VIII) PAYMENT TO THIRD PARTIES OF ALL AMOUNTS INCIDENT TO THE FOREGOING PAYMENTS AND CONTRIBUTIONS; AND (B) AUTHORIZING BANKS TO HONOR AND PROCESS CHECK AND ELECTRONIC TRANSFER REQUESTS RELATED THERETO

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), 363(b), 507(a)(4), and 507(a)(5) of the Bankruptcy Code, (a) authorizing, but not directing, the Debtors, in accordance with their stated policies and in their discretion, to pay, honor, or otherwise satisfy the Employee Wages and Benefits, including

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.

amounts and obligations related to the period prior to the Petition Date, 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 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 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, in their discretion, to pay, honor, or otherwise satisfy amounts and obligations on account of the Employee Wages and Benefits in the ordinary course of their business, including, without limitation, any amounts and obligations related to the period prior to the Petition Date; *provided, however,* that: (a) no payment to any Employee on account of Unpaid Wages shall exceed, in the aggregate, the \$15,150.00 statutory cap provided for under section 507(a)(4) of the Bankruptcy Code; and (b) with respect to the Employee Wages and Benefits set forth in the table immediately below, the Debtors shall not pay any prepetition obligations on account of such Employee Wages and Benefits in excess of the applicable amounts set forth therein, unless required by applicable state law.

<u>Employee Wages and Benefits</u>	<u>Aggregate Amount</u>
Unpaid Wages (including Commissions)	\$380,000
Bonus Program	\$100,000
Payroll Processor Fees	\$2,000
Employee Expenses	\$2,000
Wage Deductions, Trust Fund Taxes, and Payroll Taxes	\$100,000
Health Benefits and Commuter/ FSA/ HSA Benefits	\$25,000
Paid Time Off	\$1,500
401(k) Plan	\$15,000
Life and AD&D Insurance and Disability Benefits	\$2,000
Additional Benefits	\$20,000

3. Subject to Paragraph 2 of this Order, the Debtors are authorized, in their discretion, in the ordinary course of their business, to (a) continue to pay, honor, or otherwise satisfy Unpaid Wages, Payroll Processor Fees, Employee Expenses, Paid Time Off, and Severance Obligations; (b) withhold, and remit to the applicable third-party, Wage Deductions, Trust Fund Taxes, and Payroll Taxes; and (c) administer the Employee Benefits and the Workers' Compensation Program.

4. The Debtors are authorized, but not directed, in their sole discretion, to honor and continue the Bonus Programs that were in effect as of the Petition Date; *provided, however*, that such relief shall not constitute or be deemed as an assumption or authorization to assume any of the Bonus Programs under section 365(a) of the Bankruptcy Code.

[5. The Debtors shall provide advance notice to counsel to the Official Committee of Unsecured Creditors before the Debtors agree to any severance payments.](#)

6. ~~5.~~ Nothing in this Order shall be deemed to authorize the payment of any amounts subject to section 503(c) of the Bankruptcy Code.

7. ~~6.~~ The Banks are authorized, when requested by the Debtors, in the Debtors' discretion, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition obligations authorized to be paid hereunder, 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 Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Order, and any such Bank shall not have any liability to any party for relying on such representations by the Debtors, as provided for in this Order.

8. ~~7.~~ 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.

9. ~~8.~~ 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.

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

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

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