

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

In re:

PLASTIQ INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 23-10671 (BLS)

(Jointly Administered)

Hearing Date: June 21, 2023 at 10:00 a.m. (ET)
Objection Deadline: at or prior to the hearing

**BLUE TORCH FINANCE LLC'S MOTION FOR LEAVE TO FILE LATE REPLY OF
BLUE TORCH FINANCE, LLC TO OMNIBUS OBJECTION OF OFFICIAL
COMMITTEE OF UNSECURED CREDITORS TO APPROVAL OF
BIDDING PROCEDURES AND ENTRY OF FINAL ORDER
APPROVING POSTPETITION FINANCING**

Blue Torch Finance, LLC ("Blue Torch"), by and through its undersigned counsel, hereby files *Blue Torch Finance, LLC's Motion for Leave to File Late Reply of Blue Torch Finance, LLC to Omnibus Objection of Official Committee of Unsecured Creditors to Approval of Bidding Procedures and Entry of Final Order Approving Postpetition Financing* (the "Motion for Leave"). In support of the Motion for Leave, Blue Torch respectfully states as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over this Motion for Leave 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 February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the

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.



United States Constitution.² Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory basis for the relief requested herein is section 105(a) of title 11 of chapter 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended or modified, the “Bankruptcy Code”).

BACKGROUND

3. On May 24, 2023 (the “Petition Date”), the Debtors commenced the above-captioned chapter 11 cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

4. On the Petition Date, the Debtors filed the *Declaration of Vladimir Kasparov in Support of Chapter 11 Petitions and First Day Pleadings* (the “First Day Declaration”) ³ [D.I. 2], which sets forth the circumstances leading to the commencement of these Chapter 11 Cases and provides detailed information regarding the Debtors’ business and capital structure.

5. The Debtors continue to operate their business and manage their properties as debtors-in-possession, pursuant to Bankruptcy Code sections 1107(a) and 1108. As of the date hereof, no trustee or examiner has been appointed in these Chapter 11 Cases.

6. On June 7, 2023, the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed the Official Committee of Unsecured Creditors (the “Committee”) [D.I. 65].

The Committee consists of three (3) members: (i) Globant, LLC; (ii) Brex, Inc.; and

² Pursuant to Local Rule of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) 9013-1(f), Blue Torch hereby confirms its consent to entry of a final order by this Court in connection with the Motion for Leave if it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

³ Capitalized terms used but not otherwise defined in this Motion for Leave shall have the meanings ascribed to them in the First Day Declaration or the *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to Obtain Postpetition Financing, (II) Authorizing Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [D.I. 11] (the “DIP Motion”), as applicable.

(iii) Bowei Liu.

7. On the Petition Date, the Debtors filed the DIP Motion, seeking interim and final orders approving the DIP Facility. On May 25, 2023, the Court entered the *Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503 and 507 (I) Authorizing the Debtors to Obtain Senior Secured Superpriority Postpetition Financing; (II) Granting (A) Liens and Superpriority Administrative Expense Claims and (B) Adequate Protection to Certain Prepetition Lenders; (III) Authorizing Use of Cash Collateral; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief* [D.I. 38] (the “Interim DIP Order”), which approved the DIP Facility on an interim basis and scheduled a final hearing on the DIP Motion for June 15, 2023. On June 9, 2023, the Debtors filed the *Notice of Adjourned Hearing*, which adjourned the final hearing from June 15 to June 21, 2023 at 10:00 a.m. (ET) (the “Hearing”).

8. Pursuant to the Interim DIP Order, objections or responses to the final approval of the DIP Motion were due on or before June 8, 2023 at 4:00 p.m. (ET) (the “Objection Deadline”), which was extended for the Committee to June 15, 2023 at 5:00 p.m. (ET) (the “Committee Objection Deadline”).

9. On June 15, 2023, the Committee filed the *Omnibus Objection of the Official Committee of Unsecured Creditors to Approval of Bidding Procedures and Entry of Final Order Approving Postpetition Financing* [D.I. 79] (the “Committee Objection”).

RELIEF REQUESTED

10. Through this Motion for Leave, Blue Torch respectfully requests entry of the order submitted herewith granting Blue Torch leave to file the late the *Reply of Blue Torch Finance, LLC to Omnibus Objection of Official Committee of Unsecured Creditors to Approval of Bidding Procedures and Entry of Final Order Approving Postpetition Financing* (the “Reply”).

attached hereto as **Exhibit 1** and deeming such Reply as filed, without any further action by Blue Torch.

BASIS FOR RELIEF

11. Pursuant to Local Rule 9006-1(d), “[r]eply papers by the movant, or any party that has joined the movant, may be filed by 4:00 p.m. prevailing Eastern Time the day prior to the deadline for filing the agenda.” Del. Bankr. L.R. 9006-1(d). The agenda for the Hearing was required to be filed by June 16, 2023 at 12:00 p.m. (ET). Thus, pursuant to Local Rule 9006-1(d) (“Rule 9006-1”), the deadline to file a reply in support of the DIP Motion was June 15, 2023, at 4:00 p.m. (ET) (the “Reply Deadline”).

12. By this Motion for Leave, Blue Torch respectfully requests that the Court grant Blue Torch leave and permission to file the Reply. The Debtors extended the Committee Objection Deadline until after the deadline for Blue Torch to submit its Reply under Rule 9006-1 had already passed.⁴ Therefore, Blue Torch could not file its Reply before the deadline set by Rule 9006-1 passed. The Reply attached hereto as **Exhibit 1** identifies the limited issues that currently remain open for the Court’s consideration as they relate to Blue Torch and addresses, among other things, the remaining factual and legal arguments raised in the Committee Objection. Blue Torch believes that the Reply will assist the Court in the consideration of the DIP Motion and the Committee Objection.

NOTICE AND NO PRIOR REQUEST

13. Blue Torch has provided notice of this Motion for Leave to the following, or in lieu thereof, their counsel, if known: (a) the U.S. Trustee; (b) the Committee; (c) the Debtors; and (d) all parties who have requested notice in these Chapter 11 Cases pursuant to Bankruptcy

⁴ Prior to the extension of the Committee Objection Deadline, Blue Torch and the Committee agreed that the Committee would not object to Blue Torch’s late filing of the Reply.

Rule 2002. In light of the nature of the relief requested in this Motion for Leave, Blue Torch respectfully submits that no further notice is necessary.

14. No previous request for the relief sought herein has been made by Blue Torch to this or any other Court.

WHEREFORE, Blue Torch respectfully requests that the Court enter the proposed order submitted herewith granting Blue Torch leave and permission to file the Reply, and granting such other and further relief as the Court deems just and proper.

Dated: June 20, 2023
Wilmington, Delaware

LANDIS RATH & COBB LLP

/s/ Matthew B. McGuire

Adam G. Landis (No. 3407)
Matthew B. McGuire (No. 4366)
Nicolas E. Jenner (No. 6554)
919 Market Street, Suite 1800
Wilmington, Delaware 19801
Telephone: (302) 467-4400
Facsimile: (302) 467-4450
Email: landis@lrclaw.com
mcguire@lrclaw.com
jenner@lrclaw.com

-and-

SCHULTE ROTH & ZABEL LLP

Adam C. Harris (admitted *pro hac vice*)
Reuben E. Dizengoff (admitted *pro hac vice*)
919 Third Avenue
New York, NY 10022
Telephone: (212) 756-2000
Facsimile: (212) 593-5955
E-mail: adam.harris@srz.com
reuben.dizengoff@srz.com

*Counsel to the DIP Lender and
Prepetition Lenders*

EXHIBIT 1
(The Reply)

**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 No. 11, 38, 79

**REPLY OF BLUE TORCH FINANCE, LLC TO OMNIBUS OBJECTION
OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO
APPROVAL OF BIDDING PROCEDURES AND ENTRY OF
FINAL ORDER APPROVING POSTPETITION FINANCING**

Blue Torch Finance, LLC (“Blue Torch”), in its capacity as administrative agent and collateral agent for both the Prepetition Secured Parties² and the DIP Secured Parties, submits this reply (this “Reply”) to the omnibus objection [Docket No. 79] (the “Objection”) filed by the Official Committee of Unsecured Creditors (the “Committee”) to the Debtors’ DIP Financing Motion and Bid Procedures Motion, and respectfully represents as follows:

Reply

1. Shortly after the Committee’s appointment in these cases, proposed counsel to the Committee reached out to Debtors’ counsel and counsel to Blue Torch to present an issues list that included the issues raised in the Objection. The issues were neither novel nor unexpected. Essentially, the Committee wants more time and more money. More time for the sale process

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 not otherwise defined have the meanings ascribed to such terms in the *Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503 and 507 (I) Authorizing the Debtor to Obtain Senior Secured Superpriority Postpetition Financing; (II) Granting (A) Liens and Superpriority Administrative Expense Claims and (B) Adequate Protection to Certain Prepetition Lenders; (III) Authorizing Use of Cash Collateral; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief*, entered May 5, 2023 [Docket No. 38] (the “Interim DIP Order”).

(which will result in higher administrative expenses and a need for additional debtor in possession financing), and more money for Committee professionals and wind down costs for a post-closing case resolution process which (as of today) is speculative at best.³ At the same time, the Committee seeks to deny the DIP Secured Parties the protections afforded by the Bankruptcy Code under section 364(d), and the Prepetition Secured Parties the adequate protection to which they are entitled under section 361.⁴ The relief requested by the Debtors under these sections of the Bankruptcy Code – which are typical and customary for financings of this type in circumstances such as those presented here – are necessary to preserve, protect and maximize the value of the Debtors for the benefit of all parties.

2. These cases, unlike others that may have come before this Court, does not propose a sale that will pay the Prepetition Secured Parties in full in cash. Rather, the consideration offered by the proposed buyer here is a combination of cash and preferred stock.⁵ As a result, the interests of the Prepetition Secured Parties and the Committee are aligned in wanting a robust sale process that could result in a “higher or better” offer. But the DIP Secured Parties and Prepetition Secured Parties are also realistic and understand that under these circumstances, the desire for “more time”

³ Notwithstanding the foregoing, Blue Torch has made a proposal to the Committee that would provide for an increase in the Committee professional fee budget and provide funding for a wind down budget that could include confirmation of a liquidating plan and establishment of a post-confirmation litigation trust. Those funds would come from the DIP Secured Parties and Prepetition Secured Parties agreeing to release their liens on a portion of the proceeds of an approximately \$1 million receivable due to the Debtors from American Express.

⁴ In addition to the assertion that the DIP Secured Parties and Prepetition Secured Parties should not be granted liens on the Debtors unencumbered assets, the Committee at the same time argues that the DIP Secured Parties should provide *additional financing* (and the Prepetition Secured Parties should consent to being primed by additional financing) *at a lower interest rate and reduced fees* to allow for a longer sale process and higher Committee professional fees.

⁵ Contrary to the Committee’s assertion, the preferred stock offered by the proposed buyer does not share in the future value of the buyer. Rather, the preferred stock effectively gets redeemed over time from “free cash flow” (as and when available) and is capped at the face amount of the preferred when issued. As a result the present value of the preferred stock is significantly less than its nominal par value.

must be tempered by the cost and a realistic view on the likelihood that such additional time will produce a better result.⁶

3. More particularly, the Committee fails to recognize that even a modest extension to the Sale timeline proposed by the Bid Procedures is a costly proposition for the Debtors. As evidenced by the Approved Budget, any extension to the Sale timeline will cause the Debtors' to incur additional bi-weekly obligations up to \$700,000, including payroll obligations and other administrative expenses. With that in mind, the Debtors, in their business judgement, developed a sale timeline and DIP Milestones that they believe both maximizes the value to be obtained from bidders and does not cause the Debtors' stay in chapter 11 to be unnecessarily prolonged. The Debtors (as fiduciaries for all stakeholders) have appropriately opted to pursue a responsible strategy that balances cost and the need for a reasonable sale process.

4. Finally,⁷ the Committee opposes approval of the DIP on a final basis alleging that the terms are unfavorable. The chart below addresses, in summary format, each of the arguments presented by the Committee.

⁶ The Court should also take note that under the structure of the consideration offered by the proposed buyer, the aggregate consideration would not be adjusted upward to account for any incremental priming financing under the DIP. As a result any increase in the DIP would result in a further shortfall in the recovery for the Prepetition Secured Parties.

⁷ The failure to respond to every allegation is not a concession of accuracy or acceptance on the part of Blue Torch. Blue Torch reserves the right to address other aspects of the Committee's objections at the hearing.

Committee Assertion	Response
<p><u>Liens on Avoidance Actions and other Unencumbered Assets</u>. Committee contends that Court should not grant any liens on estate causes of action, including avoidance actions, or the proceeds of such actions. Committee contends that liens should not be granted on previously unencumbered assets.</p>	<p>Granting liens on proceeds of avoidance actions is appropriate where the DIP Secured Parties and Prepetition Secured Parties have agreed to subordinate their liens and administrative expense claims to the Carve-Out, to provide funding to assure payment of administrative expenses incurred during the chapter 11 cases (in accordance with a budget), and to provide funding to pay wind-down costs in the event these chapter 11 cases are converted to cases under chapter 7.</p> <p>Committee argues that there are substantial unencumbered assets, yet wants to limit those assets that can be used to secure repayment of the DIP and to serve as liens to provide adequate protection to the Prepetition Secured Parties. The Bankruptcy Code imposes no such limits, and the express provisions of sections 364(d) and 361 are to the contrary. There is no reason to deviate from the Bankruptcy Code priorities. The value of unencumbered assets belongs to the estate for distribution to creditors in accordance with statutory priorities. The value of unencumbered assets is available to pay administrative expenses (including DIP claims and adequate protection claims), priority unsecured creditors and the balance, if any, to general unsecured creditors.</p>

Committee Assertion	Response
<p><u>506(c) Waiver.</u> Committee contends that the waiver is inappropriate.</p> <p><u>552(b) Waiver.</u> Committee contends that the waiver is inappropriate.</p> <p><u>Marshaling.</u> Committee contends that the waiver is inappropriate.</p>	<p><u>506(c) & 552(b).</u> The waivers are appropriate here for the same reasons set forth above with respect to the granting of liens on previously unencumbered assets.</p> <p><u>Marshaling.</u> Neither the Debtors nor the Committee have the right to compel the DIP Secured Parties or the Prepetition Secured Parties to “marshal” their recoveries first against previously encumbered assets and only thereafter against assets that were previously unencumbered. That said, the DIP Secured Parties and Prepetition Secured Parties are prepared to consider marshaling on reasonable terms.</p>
<p><u>Adequate Protection.</u> Committee contends that adequate protection liens and claims should be limited solely to the extent of a diminution in value, if any, in the lenders’ prepetition collateral and subject to the Committee’s objection and challenge rights.</p>	<p>The Interim DIP Order and proposed Final DIP Order already limit adequate protection liens and superpriority claims to diminution in value. Furthermore, the Committee’s challenge rights are preserved for 75 days after entry of the Interim DIP Order consistent with the local rules. There is no cause to deviate from the local rules. LBR 4001-2(a)(i)(Q).</p>
<p><u>Professional Fees.</u> Committee believes \$500,000 budget for all Committee professionals is inadequate, especially when compared to the Debtors’ professional’s budget. Committee argues that committee professionals’ fee budget is adequate when it is approximately 30-40% of the budget for the debtors’ professionals. Committee asks for a budget of at least \$1.1 million and the Debtors’ professionals fee budget to be reduced to \$3.2 million, resulting in a 34.3% ratio.</p>	<p>The Committee severely misunderstands the budget for the Debtors’ professionals. That budget includes (i) the success fee of Portage Point Partners and (ii) Portage’s fees in connection with Portage providing personnel to serve in management roles. If those two fees are removed, the fees for the Debtors’ professionals equals approximately \$1.6 million, which is only slightly in excess of the 3:1 ratio of fees the Committee agrees is appropriate, thus warranting no changes or adjustments to the Committee’s professional fee budget.</p>
<p><u>Investigation Budget.</u> Committee argues that \$25,000 is insufficient to investigate liens and claims and requests an increase to \$75,000.</p>	<p>The DIP Lenders will agree to an increase of the Committee’s investigation budget to \$75,000.</p>

WHEREFORE, the DIP Lenders respectfully request that the Court enter an order approving (i) the Final DIP Order, and (ii) the Bid Procedures Motion, and granting such other and further relief as is just and proper.

Dated: June 20, 2023
Wilmington, Delaware

LANDIS RATH & COBB LLP

/s/ Matthew B. McGuire

Adam G. Landis (No. 3407)
Matthew B. McGuire (No. 4366)
Nicolas E. Jenner (No. 6554)
919 Market Street, Suite 1800
Wilmington, Delaware 19801
Telephone: (302) 467-4400
Facsimile: (302) 467-4450
Email: landis@lrclaw.com
mcguire@lrclaw.com
jenner@lrclaw.com

-and-

SCHULTE ROTH & ZABEL LLP

Adam C. Harris (admitted *pro hac vice*)
Reuben E. Dizengoff (admitted *pro hac vice*)
919 Third Avenue
New York, NY 10022
Telephone: (212) 756-2000
Facsimile: (212) 593-5955
E-mail: adam.harris@srz.com
reuben.dizengoff@srz.com

*Counsel to the DIP Lender and
Prepetition Lenders*

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

In re:

PLASTIQ INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 23-10671 (BLS)

(Jointly Administered)

Ref. No.

**ORDER GRANTING BLUE TORCH FINANCE LLC'S MOTION FOR LEAVE TO
FILE LATE REPLY OF BLUE TORCH FINANCE, LLC TO OMNIBUS OBJECTION
OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO APPROVAL OF
BIDDING PROCEDURES AND ENTRY OF FINAL ORDER
APPROVING POSTPETITION FINANCING**

Upon consideration of *Blue Torch Finance LLC's Motion for Leave to File Late Reply of Blue Torch Finance, LLC to Omnibus Objection of Official Committee of Unsecured Creditors to Approval of Bidding Procedures and Entry of Final Order Approving Postpetition Financing* (the "Motion For Leave");² and the Court having reviewed the Motion for Leave; and the Court having determined that the legal and factual bases set forth in the Motion for Leave establish just cause for the relief granted herein; and the Court having 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 February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court being able to issue a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion for Leave in this District is proper

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 in this Order shall have the same meanings given to such terms as in the Motion for Leave.

before the Court pursuant to 28 U.S.C. §§1408 and 1409; and the Court having found that notice of the Motion for Leave and the hearing thereon was sufficient under the circumstances; and sufficient cause appearing therefore, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion for Leave is GRANTED.
2. Blue Torch is granted leave and permission pursuant to Local Rule 9006-1(d) to file the Reply, and the Reply is deemed filed and as a matter of record in the Chapter 11 Cases.
3. The Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: June 20, 2023
Wilmington, Delaware

THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE