

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

<p>In re:</p> <p>PLASTIQ INC., <i>et al.</i>,¹</p> <p style="text-align: center;">Debtors.</p>	<p>Chapter 11</p> <p>Case No. 23-10671 (BLS)</p> <p>(Jointly Administered)</p> <p>Re: D.I. 23, 127, 186</p>
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**DECLARATION OF TIM O’LEARY ON BEHALF OF THE BUYER
IN SUPPORT OF APPROVAL OF THE SALE OF THE DEBTORS’ ASSETS**

I, Tim O’Leary, hereby declare pursuant to 28 U.S.C. § 1746, under penalty of perjury as follows:

1. I am the Chief Financial Officer of Priority Technology Holdings, Inc. (“Priority”). I am over eighteen years of age and make this declaration based on: (i) my personal knowledge; (ii) information learned from my review of relevant documents; (iii) information supplied to me by individuals and advisors employed or retained by Priority; or (iv) my opinion based on my experience, knowledge, and information concerning the facts set forth herein. I am competent to testify as a witness and make this declaration in support of the *Debtors’ Motion for Entry of (A) an Order (I) Approving Bidding Procedures in Connection with the Sale of the Debtors’ Assets and Related Bid Protections, (II) Approving Form and Manner of Notice, (III) Scheduling Auction and Sale Hearing, (IV) Authorizing Procedures Governing Assumption and Assignment of Certain Contracts and Unexpired Leases, and (V) Granting Related Relief; and (B) an Order (I) Approving the Purchase Agreements, and (II) Authorizing a Sale Free and Clear of*

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.



All Liens, Claims, Encumbrances, and Other Interests (D.I. 23) (the “Sale Motion”) filed by the above-captioned debtors and debtors in possession (collectively, the “Debtors”), the Reply of Plastiq, Powered by Priority, LLC in Support of Approval of the Sale of the Debtors’ Assets and in Response to the Limited Objection of the Official Committee of Unsecured Creditors (the “Buyer Reply”), and for all other purposes and matters in connection with the hearing on the Sale Motion and the transaction contemplated therein.

Selection as the Stalking Horse Bidder

2. Priority is the 4th largest non-bank payment processor in the U.S. with over \$112 billion of annual payments volume, nearly 260,000 active merchant accounts and over 435,000 consumer accounts. For the fiscal year ended December 31, 2022, Priority generated \$663.6 million of revenue, \$226.9 million of gross profit and \$140.3 million of Adjusted EBITDA. The company operates across three reporting segments (SMB, B2B and Enterprise) with a purpose-built payments technology platform that enables clients to collect, store and send money. In March 2023, Priority and Plastiq, Inc. (“Plastiq”) established a commercial relationship whereby Priority currently provides certain payment processing services to Plastiq and its customers. Prior to this relationship, Plastiq utilized similar services at Silicon Valley Bank. Following the collapse of Silicon Valley Bank, Priority was able to effectively take over the functions previously performed by Silicon Valley Bank in a very short time period to minimize any potential disruption to Plastiq’s customer base.

3. Pre-petition, Priority was approached about a potential opportunity to purchase the Debtors’ business. The initial introduction was facilitated by Colonnade Acquisition Corp. II or an affiliate thereof (“Colonnade”) and Keefe, Bruyette & Woods, the advisory firm that led Colonnade’s earlier failed SPAC merger efforts with the Debtors. Colonnade, after termination

of the SPAC merger agreement with the Debtors pre-petition, was instrumental in introducing Priority to the Debtors, their advisors, and the acquisition opportunity.

4. After executing a non-disclosure agreement and performing initial due diligence, Priority delivered a non-binding letter of intent (the “LOI”) to the Debtors on March 9, 2023. Priority, the Debtors and Blue Torch Finance, LLC as agent for the Debtors’ prepetition secured lenders (“Blue Torch”) heavily negotiated the terms and conditions of the LOI and, on March 28, 2023, the LOI was executed by the parties. On April 22, 2023, the Debtors terminated the LOI. However, the Debtors, along with their professionals, continued to engage with Priority regarding a potential acquisition, including the possibility of Priority serving as a stalking horse bidder for the Debtors’ assets in a chapter 11 process.

5. On May 23, 2023, the Debtors and PlastiQ, Powered by Priority, LLC (the “Buyer”), an acquisition vehicle formed by Priority, agreed on the terms of a stalking horse bid and executed the asset purchase agreement attached to the Sale Motion as Exhibit B (the “Stalking Horse Agreement”).

6. On May 24, 2023, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code and, on the same day, filed the Sale Motion.

7. On June 21, 2023, the Court entered the *Order (I) Approving Bidding Procedures In Connection With Sale Of The Debtors’ Assets And Related Bid Protections; (II) Approving Form And Manner Of Notice; (III) Scheduling Auction And Sale Hearing; (IV) Authorizing Procedures Governing Assumption And Assignment Of Certain Contracts And Unexpired Leases; And (V) Granting Related Relief* (D.I. 127) (the “Bid Procedures Order”), which, among other things, authorized the Debtors to enter into the Stalking Horse Agreement.

The Stalking Horse Agreement

8. By the Stalking Horse Agreement, if approved, the Buyer will purchase substantially all of the Debtors' assets (as defined in Section 2.1 of the Stalking Horse Agreement, the "Purchased Assets"). As part of the transaction (the "Sale") reflected in the Stalking Horse Agreement, the Buyer would also assume certain specified liabilities and the Debtors would assume and assign certain executory contracts and/or unexpired leases to the Buyer.

9. As consideration for the sale of the Purchased Assets, the Buyer will make a cash payment to the Debtors in the amount of \$27.5 million (the "Cash Payment") and issue preferred equity in the Buyer to Blue Torch.² *See* Stalking Horse Agreement, Sec. 2.5(a). The Cash Payment represents the amount the Buyer is willing to pay the Debtors for the Purchased Assets.

10. The Stalking Horse Agreement also provides for payment (the "Colonnade Payment") by the Buyer to Colonnade Acquisition Corp. II of \$2 million (as and when provided in the Letter Agreement³ between Colonnade, the Buyer and Priority) and issuance to Colonnade of 5% of the common equity in the Buyer, in connection with a closing under the Stalking Horse Agreement. *See* Stalking Horse Agreement, Sec. 2.5(c), Exh. B. The Colonnade Payment is not based on the value to be paid by the Buyer to the Debtors for the Purchased Assets and, therefore, it is my belief that the Colonnade Payment is not reducing the amount of the Cash Payment or

² The parties are discussing whether the preferred equity to be issued to Blue Torch is going to be restructured as a deferred contractual obligation given certain ongoing discussions concerning tax issues. To the extent this equity consideration is modified, the resulting treatment is intended to be equivalent in value and disclosed at or before the sale hearing.

³ As between Colonnade, the Buyer and Priority, who are the parties to the Letter Agreement (as defined in the Stalking Horse Agreement), the Letter Agreement, not the Stalking Horse Agreement, shall control. *See* Stalking Horse Agreement, Exh. B.

other consideration being paid to the Debtors pursuant to the Stalking Horse Agreement or otherwise diverting estate assets.

11. The Buyer negotiated the Colonnade Payment as part of the Stalking Horse Agreement for several key reasons. First, Colonnade, after termination of the SPAC merger agreement with the Debtors pre-petition, was instrumental in introducing Priority to the Debtors, their advisors, and the acquisition opportunity. By this introduction in early 2023, Priority was able to take part in the prepetition negotiation and due diligence process, led by Triple P RTS, LLC on behalf of the Debtors, for the Debtors' assets, which allowed Priority more time to evaluate the transaction prior to the Debtors' bankruptcy cases and afforded the Buyer the opportunity to execute the Stalking Horse Agreement.

12. Second, Section 2.5(c) of the Stalking Horse Agreement is critical to the Buyer, which views Colonnade as important to its go-forward business. The commercial space within which the Buyer and the Debtors operate is competitive and constantly evolving as technology improves, regulations change, and consumer demand shifts. It is therefore essential to have business partners like Colonnade who are active in the marketplace and can provide real time intelligence on business efficiencies and strategic opportunities. Additionally, the Debtors' business revenue relies, to a substantial degree, on various partner relationships that provide referrals. Colonnade's industry relationships and continued partnership will help ensure the Buyer's business (should the Sale be approved) not only continues to benefit from those referrals but also generates new opportunities to grow revenue.

13. I understand that in connection with the closing of the Stalking Horse Agreement, Colonnade will release any and all claims and causes of action against the Purchased Assets, Priority and the Debtors, and certain of their related parties, arising from or related to the

Agreement and Plan of Merger by and between Colonnade and PlastiQ, dated as of August 3, 2022.

14. The benefits to be derived from the Colonnade Payment, section 2.5(c) of the Stalking Horse Agreement and the corresponding terms set forth in the Letter Agreement were a key consideration by the Buyer in negotiating and entering into the Stalking Horse Agreement and are an integral and material component thereof. If that provision were to be stricken or altered without the Buyer's consent the Buyer is free to, and may, terminate the Stalking Horse Agreement.

15. I have been actively involved in the due diligence and negotiations leading up to the proposed sale transaction. The sale process, sale and sale price and all negotiations with the Debtors were conducted at arm's length and in good faith, with the parties being represented by separate legal counsel, and were not tainted by fraud, collusive bidding or other misconduct.

16. To the best of my knowledge, none of Priority, the Buyer, their affiliates, or the directors, officers, partners, or employees of Priority, the Buyer or their affiliates is an affiliate, director, officer, partner, or managing agent or "insider" of any of the Debtors or is otherwise affiliated with any such entity. I understand the definitions of the terms "affiliate" and "insider" as set forth in the Bankruptcy Code.

17. Other than as disclosed herein, there is no relationship with Colonnade. The Buyer, including its affiliates and their employees and agents, at no point asked, encouraged, or otherwise provided any incentive for Colonnade to refrain from participating in the Debtor's sale process as a potential buyer.

18. The Buyer is purchasing the Purchased Assets in good faith and is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code and has proceeded in good faith in connection with all aspects of the Sale and this transaction.

19. On the terms set forth in the Stalking Horse Agreement, the Buyer has offered to purchase the Purchased Assets free and clear of all liens, claims, encumbrances, and interests, except only as provided otherwise in the Stalking Horse Agreement, to the fullest extent authorized under section 363(f) of the Bankruptcy Code and other applicable law.

Adequate Assurance of Future Performance

20. In accordance with the Bid Procedures Order, I understand that contract counterparties to executory contracts or unexpired leases that may be assumed and assigned to the Buyer as part of the Sale were required to file objections as to the Buyer's adequate assurance of future performance by July 12, 2023. *See D.I. 148, Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with Sale.* I further understand that no such objections were filed by any party.

21. As discussed in paragraph 2 above, Priority is the 4th largest non-bank payment processor in the U.S. with over \$112 billion of payments volume and \$663.6 million of revenue. In addition to Priority's strong industry position, the company has demonstrated financial strength in fiscal 2022 with 29% growth in Revenue, 46% growth in Gross Profit and a 46% increase in Adjusted EBITDA. That momentum continued in the first fiscal quarter of 2023 with 21% Revenue growth, 22% growth in Gross Profit and a 24% increase in Adjusted EBITDA. At the end of the first quarter of 2023, Priority had \$33.5 million of capacity available on its Revolver and over \$16 million of unrestricted cash on hand. The Revolver capacity has subsequently been increased by \$15 million and will increase by another \$10 million in conjunction with the closing

of the PlastiQ asset purchase. Further, Priority has a strong operational infrastructure that will allow the company to quickly integrate PlastiQ's assets and work towards improved operating results, including generating positive free cash flow in the near-to-medium term after achieving the desired synergies post-closing.

22. Thus, it is my belief that the Buyer, as a subsidiary of Priority, has adequately demonstrated its financial wherewithal and ability to perform its obligations under the Stalking Horse Agreement and as to any assumed executory contracts and unexpired leases in compliance with the requirements of section 365 of the Bankruptcy Code. The Buyer is willing and able to perform under any executory contracts and unexpired leases assumed and assigned to it pursuant to the Stalking Horse Agreement.

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I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: July 24, 2023

By: 

Tim O'Leary
Chief Financial Officer
Priority Technology Holdings, Inc.