

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)
) Chapter 11
PLASTIQ INC., *et al.*,¹)
) Case No. 23-10671 (BLS)
Debtors.)
) (Jointly Administered)
)
) **Hearing Date:**
) **TBD**
)
) **Objection Deadline:**
) **October 9, 2023 at 4:00 p.m. (ET)**

**DEBTORS’ EIGHTH OMNIBUS MOTION FOR ENTRY OF ORDER
AUTHORIZING REJECTION OF CERTAIN EXECUTORY
CONTRACTS, EFFECTIVE AS OF SEPTEMBER 25, 2023**

EACH CONTRACT COUNTERPARTY RECEIVING THIS MOTION
SHOULD LOCATE THEIR RESPECTIVE NAMES AND CONTRACT
DESCRIPTION IN THE SCHEDULE ATTACHED TO THE PROPOSED
ORDER AS SCHEDULE 1.

The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) hereby submit this motion (this “**Motion**”) for the entry of an order, substantially in the form attached hereto as Exhibit A (the “**Proposed Order**”), pursuant to sections 105(a) and 365(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), authorizing the Debtors to reject certain executory contracts as set forth on Schedule 1 to the Proposed Order, effective as of September 25, 2023 (the “**Rejection Effective Date**”). 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* [D.I. 2] (the “**First Day**”).

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.



Declaration)² filed on the Petition Date (as defined below). 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 these chapter 11 cases and this Motion 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) and 365 of the Bankruptcy Code and Rule 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

BACKGROUND

I. General

2. On May 24, 2023 (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.

3. On June 7, 2023, the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) appointed a statutory committee of unsecured creditors (the

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

“**Committee**”) pursuant to section 1102(a)(1) of the Bankruptcy Code [D.I. 65]. No trustee or examiner has been appointed in these Chapter 11 Cases.

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.

5. On, the Petition Date, the Debtors filed a motion seeking, among others, to sell substantially all of the Debtors’ assets (the “**Sale**”). On July 27, 2023, the Court held a hearing on the Sale to PlastiQ, Powered by Priority, LLC (“**Priority**”) and on July 31, 2023, the Court entered an order approving the Sale (the “**Sale Order**”) [D.I. 223]. The Sale closed on July 31, 2023.

6. On July 6, 2023, the Debtors filed the Combined Disclosure Statement and Chapter 11 Plan of PlastiQ Inc. and Its Affiliated Debtors [D.I. 168] (the “**Initial Combined Disclosure Statement and Plan**”). The Debtors filed revised versions of the Initial Combined Disclosure Statement and Plan on July 25, 2023 [D.I. 207] and July 31, 2023 [D.I. 224], which the Debtors further revised on September 11, 2023 [D.I. 301] (the “**Combined Disclosure Statement and Plan**”). On September 15, 2023, the Court entered an order confirming the Combined Disclosure Statement and Plan [D.I. 309].

7. Now that the Sale has closed and the Combined Disclosure Statement and Plan has been confirmed by the Court, the Debtors are focused on winding down their estates. To this end, the Debtors seek, through this Motion, to reject various executory contracts that were not assumed and assigned in connection with the Sale or designated as “Excluded Contracts”, are not necessary for the Debtors to conduct their wind down process, and do not provide any benefit to the Debtors or their estates.

II. The Rejected Executory Contracts

8. Pursuant to the entry of the Sale Order and the terms of the Sale, Priority has notified the Debtors of its intent to reject certain executory contracts as listed on Schedule 1³ to the Proposed Order and which were not assumed and assigned in connection with the Sale (collectively, including any amendments or modifications thereto, the “**Contracts**”). As such, the Debtors believe the Contracts do not provide any material benefit to the Debtors’ estates and that it will be in the best interests of the estates to reduce any further (or potential) administrative burden related to the Contracts which the Debtors now seek to reject.

RELIEF REQUESTED

9. By this Motion, to preserve and maximize the value of their estates, the Debtors, in an exercise of their business judgment, seek to reject the Contracts, effective as of the Rejection Effective Date.

10. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor-in-possession “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). As courts have held, “[t]he purpose behind allowing the assumption or rejection of executory contracts is to permit the trustee or debtor-in-possession to use valuable property of the estate and to ‘renounce title to and abandon burdensome property.’” *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098 (2d Cir. 1993) (quoting 2 *Collier on Bankruptcy* ¶ 365.01[1] (15th ed. 1993)).

³ The inclusion of any contract or other agreement on Schedule 1 to the Proposed Order is not intended as, nor shall be deemed to constitute, an admission by the Debtors or their estates that such contract or other agreement is or is not an executory contract. The Debtors and their estates reserve any and all rights, claims, and defenses with respect to the characterization of the Contracts under section 365 of the Bankruptcy Code, applicable non-bankruptcy law, or otherwise, including, without limitation, any and all rights to argue that any of the Contracts do not constitute an executory contract.

11. The standard applied to determining whether the rejection of an unexpired lease or executory contract should be authorized is the “business judgment” standard. *Sharon Steel Corp. v. Nat’l Fuel Gas Distr. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989); *In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (stating that a debtor’s decision to reject an executory contract is governed by the business judgment standard and can only be overturned if the decision was the “product of bad faith, whim, or caprice”); *see also In re Tayfur*, 599 F. App’x 44, 49–50 (3d Cir. 2015) (extending the standard articulated in *Sharon Steel* to unexpired leases). Once a debtor states a valid business justification, “[t]he business judgment rule ‘is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.’” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)).

12. The business judgment rule is crucial in chapter 11 cases and shields a debtor’s management from judicial second-guessing. *See Comm. of Asbestos Related Litigants and/or Creditors v. Johns-Manville Corp.*, 60 B.R. 612, 615–16 (Bankr. S.D.N.Y. 1986) (“The Code favors the continued operation of a business by a debtor and a presumption of reasonableness attached to a debtor’s management decisions.”). Generally, courts defer to a debtor-in-possession’s business judgment to reject a lease or an executory contract. *See, e.g., NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984), *superseded by statute on other grounds*, Bankruptcy Amendments and Federal Judgeship Act of 1984, sec. 541, § 1113, Pub. L. No. 98-353, 98 Stat. 333 (codified at 11 U.S.C. § 1113); *In re Minges*, 602 F.2d 38, 43 (2d Cir. 1979);

In re Riodizio, 204 B.R. 417, 424–25 (Bankr. S.D.N.Y. 1997); *In re G Survivor Corp.*, 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994).

13. Upon finding that the Debtors have exercised their sound business judgment in determining that the rejection of the Contracts is in the best interests of the Debtors and their estates, the Court should approve the proposed rejections under section 365(a) of the Bankruptcy Code. *See, e.g., Westbury Real Estate Ventures, Inc. v. Bradlees, Inc. (In re Bradlees Stores, Inc.)*, 194 B.R. 555, 558 n.1 (Bankr. S.D.N.Y. 1996); *Summit Land Co. v. Allen (In re Summit Land Co.)*, 13 B.R. 310, 315 (Bankr. D. Utah 1981) (holding that, absent extraordinary circumstances, court approval of a debtor’s decision to assume or reject an executory contract “should be granted as a matter of course”). If a debtor’s business judgment has been reasonably exercised, a court should approve the assumption or rejection of an unexpired lease or executory contract. *See, e.g., Sharon Steel Corp.*, 872 F.2d at 39–40.

14. Following the closing of the Sale and the confirmation of the Combined Disclosure Statement and Plan, the Debtors are no longer operating a business and are focused on the wind-down of their estates. Pursuant to the Sale Order and the terms of the Sale, Priority has effected its right to reject the Contracts within the Contract Designation Period (as defined in the Sale Order), determining that the Contracts provide no benefit. The Debtors have therefore determined that the Contracts are not integral to the Debtors’ chapter 11 wind-down efforts, are not otherwise beneficial to the Debtors’ estates, and may present burdensome contingent liabilities. Accordingly, the Debtors’ decision to reject the Contracts is an exercise of sound business judgment, and therefore should be approved.

15. Furthermore, the Debtors have analyzed each of the Contracts, and have determined that such Contracts do not provide the Debtors with any material benefit, and should

be immediately rejected to cut off the potential incurrence of administrative cost or expense. The facts and circumstances of the chapter 11 cases and the balance of the equities favor the Debtors' rejection of the Contracts effective as of the Rejection Effective Date. Without a retroactive date of rejection, the Debtors may incur unnecessary administrative charges related to the legacy contracts of a business no longer in operation. Moreover, the counterparties to the Contracts will not be unduly prejudiced if the Contracts are rejected effective as of the Rejection Effective Date because the Debtors will serve this Motion on each counterparty or its agent or representative by electronic mail and/or first class mail, stating that the Debtors intend to reject the Contracts as of the Rejection Effective Date.

16. In light of the foregoing facts and circumstances, the Debtors respectfully submit that their rejection of the Contracts under section 365 of the Bankruptcy Code, effective as of the Rejection Effective Date, is a sound exercise of their business judgment, and is necessary, prudent, and in the best interests of the Debtors, their estates, and their creditors. Accordingly, entry of the Proposed Order is appropriate.

RESERVATION OF RIGHTS

17. Nothing in the Proposed Order of 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

18. Notice of this Motion has been provided to: (a) the Office of the United States Trustee for the District of Delaware (Attn: Richard L. Schepacarter); (b) counsel to the

Committee; (c) counsel to the DIP Agent; (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 counterparties to the Contracts (via electronic mail and/or first class mail); and (h) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

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CONCLUSION

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

Dated: September 25, 2023
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Jared W. Kochenash

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Matthew B. Lunn (No. 4119)
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Counsel for Debtors and Debtors in Possession

**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)
)
	) <u>Hearing Date:</u>
	) TBD
)
	) <u>Objection Deadline:</u>
	) October 9, 2023 at 4:00 p.m. (ET)

NOTICE OF MOTION

TO: (A) THE OFFICE OF THE UNITED STATES TRUSTEE FOR THE DISTRICT OF DELAWARE (ATTN: RICHARD L. SCHEPACARTER); (B) COUNSEL TO THE COMMITTEE; (C) COUNSEL TO THE DIP AGENT; (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 COUNTERPARTIES TO THE CONTRACTS (VIA ELECTRONIC MAIL AND/OR FIRST CLASS MAIL); AND (H) ALL PARTIES WHO HAVE FILED A NOTICE OF APPEARANCE AND REQUEST FOR SERVICE OF PAPERS PURSUANT TO BANKRUPTCY RULE 2002

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) have filed the attached *Debtors’ Eighth Omnibus Motion for Entry of Order Authorizing Rejection of Certain Executory Contracts, Effective as of September 25, 2023* (the “**Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

PLEASE TAKE FURTHER NOTICE that any objections or responses to the relief requested in the Motion must be filed on or before **October 9, 2023 at 4:00 p.m. (ET)** (the “**Objection Deadline**”) with the United States Bankruptcy Court for the District of Delaware, 3rd Floor, 824 North Market Street, Wilmington, Delaware 19801. At the same time, copies of any responses or objections to the Motion must be served upon the undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT, IF NECESSARY, A HEARING TO CONSIDER APPROVAL OF THE MOTION IS SCHEDULED FOR A DATE AND TIME TO BE DETERMINED BEFORE THE HONORABLE BRENDAN L. SHANNON, IN 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 BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 N. MARKET STREET, 6TH FLOOR, COURTROOM NO. 1, WILMINGTON, DELAWARE 19801.

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS OR RESPONSES TO THE MOTION ARE TIMELY FILED, SERVED, AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN CONNECTION WITH SUCH MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: September 25, 2023
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Jared W. Kochenash

Michael R. Nestor (No. 3526)

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Counsel for Debtors and Debtors in Possession

EXHIBIT A

Proposed 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 No. _____

**ORDER AUTHORIZING REJECTION OF CERTAIN EXECUTORY
CONTRACTS EFFECTIVE AS OF SEPTEMBER 25, 2023**

Upon consideration of the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for the entry of an order authorizing the Debtors to reject, effective as of the September 25, 2023 (the “**Rejection Effective Date**”), certain executory contracts, as more fully set forth in the Motion; and this Court having reviewed the Motion and the First Day Declaration; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 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; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and this Court having

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

determined that there is good and sufficient cause for the relief granted in this Order, therefore, **IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein.
2. Pursuant to sections 105(a) and 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006, the Contracts are hereby rejected by the Debtors, with such rejection being effective as of the Rejection Effective Date.
3. Nothing herein shall impair, prejudice, waive or otherwise affect the rights of the Debtors to: (a) assert that the Contracts (i) were terminated prior to the Rejection Effective Date, or (ii) are not executory contracts under 365 of the Bankruptcy Code; (b) assert that any claim for damages arising from the rejection of the Contracts is limited to the remedies available under any applicable termination provisions of the Contracts; (c) assert that any such claim is an obligation of a third party, and not that of the Debtors or their estates; or (d) otherwise contest any claims that may be asserted in connection with the Contracts. All rights, claims, defenses and causes of action that the Debtors and their estates may have against the counterparties to the Contracts, whether or not such claims arise under, are related to the rejection of, or are independent of the Contracts, are reserved, and nothing herein is intended or shall be deemed to impair, prejudice, waive or otherwise affect such rights, claims, defenses and causes of action.
4. In accordance with the *Order (A) Establishing Bar Dates and Related Procedures for Filing Proofs of Claim (Including for Claims Arising Under Section 503(b)(9) of the Bankruptcy Code) and (B) Approving the Form and Manner of Notice Thereof* [D.I. 109], claims arising out of the rejection of the Contracts must be filed thirty (30) days after service of this Order.
5. The requirements of Bankruptcy Rule 6006 are satisfied.

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

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

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

Schedule 1¹

Rejected Contracts

¹ Certain of the Contracts may have expired or terminated by their own terms prior to the filing of the Motion. The Debtors seek to reject such Contracts out of an abundance of caution to avoid potentially incurring further costs and expenses.

In re: Plastiq Inc., et al
 Case No. 23-10671
 Exhibit A
 Rejected Contract Schedule

Debtor Entity	Counterparty or Notice Party Name	Contract Description
Plastiq Inc.	ADP SCREENING & SELECTION SERVICES	Payroll provider and employee management
Plastiq Inc.	ADP, LLC	ADP Marketplace Developer Participation Agreement
Plastiq Inc.	ADP, LLC	Developer Participation Agreement
Plastiq Inc.	Cloudflare, Inc.	Cloudflare Self-Serve Subscription Agreement
Plastiq Inc.	Cloudflare, Inc.	Renewal Order Form
Plastiq Inc.	GIACT Systems, LLC	Amendment to Giact Services Agreement
Plastiq Inc.	GIACT Systems, LLC	Giact Services Agreement
Plastiq Inc.	Fidelity Information Services, LLC	Partnership Agreement
Plastiq Inc.	Mission Cloud Services, Inc.	Master Services Agreement
Plastiq Inc.	Mission Cloud Services, Inc.	Mission Customer AWS Resale Services Order Form
Plastiq Inc.	Mission Cloud Services, Inc.	Mission Private Pricing Addendum