

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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

**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 OBLIGATIONS; (VI) PAYMENTS 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**

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 form 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), 363(b), 507(a)(4), and 507(a)(5) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), (a) authorizing, but not directing, the Debtors, in accordance with their stated policies and in their discretion, to (i) pay accrued prepetition employee wages, salaries, commissions, and other compensation in the

<sup>1</sup> 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 Nearsides Business Corp. (N/A). The corporate headquarters and the mailing address for the Debtors is 1475 Folsom Street, Suite 400, San Francisco, California 94103.



ordinary course, (ii) pay prepetition business expenses incurred by the Employees (as defined below), (iii) make contributions to prepetition benefit programs and continue such programs in the ordinary course of their business, (iv) honor severance obligations, (v) honor workers' compensation obligations, (vi) make payments for which prepetition payroll deductions were made, (vii) pay processing costs and administrative expenses relating to the foregoing payments and contributions, and (viii) make payments to third parties incident to the foregoing payments and contributions, and (b) authorizing banks and other financial institutions (collectively, the "**Banks**") to honor and process check and electronic transfer requests related to the foregoing. 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**"),<sup>2</sup> 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), 363(b), 507(a)(4), and 507(a)(5) of the Bankruptcy Code and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

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<sup>2</sup> Each capitalized term used but not defined herein shall have the meaning ascribed to it 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. 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. The Debtors’ Workforce**

4. As described in the First Day Declaration, Debtors conducted several prepetition reductions in force (the “**RIFs**”), and as of the Petition Date, the Debtors’ workforce comprises of approximately 44 full-time, salaried employees (the “**Full-Time Employees**”) and one employee that is paid hourly (the “**Hourly Employee**,” and together with the Full-time Employees, the “**Employees**”). The Employees work in various states across the United States. The majority of the Employees work in the Debtors’ offices located in San Francisco, California.

5. In addition, the Debtors have historically supplemented their workforce by retaining from time to time individuals with specialized expertise as independent contractors (the “**Independent Contractors**,” and together with the Employees, the “**Workforce**”). The number of Independent Contractors employed by the Debtors at any given time fluctuates depending on the Debtors’ needs. The Independent Contractors fill immediate business needs of the Debtors and allow the Debtors to have a flexible workforce to meet their operational needs in a cost-effective manner. As of the Petition Date, the Debtors employ the services of four Independent

Contractors, and may hire additional Independent Contractors in the ordinary course of business during these chapter 11 cases.

6. The Workforce, as with any business entity, perform a variety of critical functions for the Debtors, and their knowledge, skills, and understanding of the Debtors' infrastructure, business operations, and customer and vendor relations are essential to, among other things, the success of these chapter 11 cases. Without the continued service and dedication of the Workforce, it will be difficult, if not impossible, to operate the Debtors' business without an unexpected or inopportune interruption, and to prosecute these chapter 11 cases in a manner that will maximize the value of the Debtors' estates.

7. To successfully accomplish the foregoing, minimize the personal hardship that the Workforce will suffer if prepetition employee-related obligations are not paid when due or as otherwise expected, and maintain employee morale and a focused workforce during this critical time, the Debtors believe that it is necessary and in the best interest of their estates and all stakeholders to seek the relief requested herein.

**RELIEF REQUESTED**

8. By this Motion, the Debtors request that the Court enter the Proposed Orders, authorizing, but not directing, the Debtors, in accordance with their stated policies and in their discretion, to: (a) pay prepetition Employee wages, salaries, bonuses, and other compensation, including Commissions (as defined below), in the ordinary course; (b) pay prepetition Independent Contractor obligations; (c) pay prepetition Employee business expenses; (d) make contributions to prepetition benefit programs provided to the Employees, the most significant of which are described below, and continue such programs in the ordinary course of business with respect to the Employees; (e) honor severance obligations; (f) honor workers'

compensation obligations; (g) make payments for which prepetition payroll deductions were made; (h) pay processing costs and administrative expenses relating to the foregoing payments and contributions; and (i) make payments to third parties incident to the foregoing payments and contributions (collectively, and as described in greater detail below, the “**Employee Wages and Benefits**”).

9. The Debtors also request the Court to authorize the Banks to honor and process check and electronic transfer requests related to the Employee Wages and Benefits.

**I. Obligations on Account of Workforce Wages and Other Compensation, Business Expenses, Deductions, and Payroll Taxes**

**A. Unpaid Wages and Other Compensation**

10. Prior to the Debtors’ RIFs, the Debtors’ gross aggregate payroll liability was approximately \$2.1 million per month. Employees are generally paid wages and salaries on a semi-monthly basis, via direct deposit. Payroll is made on the fifteenth (15<sup>th</sup>) and the last day of each month for the period ending the prior week (“**Payroll**”). The Debtors typically fund Payroll four days in advance of payment through their third-party payroll processor, discussed in further detail below.

11. The Debtors performed a reduction in force of approximately 86 employees on April 4, 2023. The Debtors’ last prepetition Payroll (for the period May 1, 2023 through May 15, 2023) was funded on May 12, 2023, in the amount of approximately \$365,000. The Debtors’ next Payroll (for the period May 16, 2023 through May 31, 2023) will be funded on May 30, 2023, in the amount of approximately \$450,000 (which amount is inclusive of Commissions (as defined below)).

12. In addition, the Debtors historically have maintained a commission and sales incentive program to encourage and incentivize Employees to maximize their performance

(the “**Commissions**”). Approximately 6 Employees are eligible to receive Commissions. Two are paid quarterly, and four are paid monthly. The Debtors seek to honor Commissions earned prior to the Petition Date and continue the Commissions in the ordinary course of business.

13. Based on historical Payroll figures, the Debtors believe that approximately \$380,000 in the aggregate remains outstanding, as of the Petition Date, on account of unpaid accrued wages, salaries, Commissions, and other compensation due from the Debtors to the Workforce (collectively, the “**Unpaid Wages**”).

14. The Debtors’ failure to remit full payment of the amount that the Debtors believe remains outstanding, as of the Petition Date, on account of Unpaid Wages would inflict great financial hardship on the Workforce, and would damage morale and impair the Debtors’ chapter 11 efforts. The Debtors, therefore, request authority from the Court to satisfy obligations owed to the Workforce on account of Unpaid Wages.

15. Pending entry of the Proposed Final Order, no individual Employee or Independent Contractor will be paid more than \$15,150.00, in the aggregate, for any Unpaid Wages.

**B. Bonus Programs**

16. To ensure optimal performance and prevent attrition, the Debtors maintain a bonus program to encourage and incentivize certain Employees to maximize their performance (the “**Bonus Programs**”). The Bonus Programs vary by employee and are based upon an agreed upon percentage of the Employee’s base salary. Approximately six Employees are eligible for the Bonus Programs. Payments under the Bonus Programs historically have been paid to eligible Employees on a quarterly basis, and any bonuses earned under the Bonus Program are paid in the month following the calendar quarter end. The Debtors estimate that approximately \$100,000 is accrued and outstanding under the Bonus Programs as of the Petition Date. The next anticipated

payment under the Bonus Programs for the second quarter of 2023 is due to be paid in July of 2023.

17. Subject to entry of the Proposed Final Order, the Debtors seek authority, but not direction, to pay amounts due under the Bonus Programs, regardless of when accrued, and to continue the Bonus Programs in the ordinary course of business during the pendency of these chapter 11 cases, provided that no payments from the Debtors on behalf of the Bonus Programs will be paid to any insiders (as defined in section 101(31) of the Bankruptcy Code), unless separately authorized by the Court.

**C. Payroll Processor**

18. The Debtors retain ADP, Inc. (the “**Payroll Processor**”), a third party payroll processor, to administer its payroll. The Payroll Processor’s services are crucial to the smooth functioning of the Debtors’ payroll process, and therefore to the Debtors’ business operations generally. The Debtors pay the Payroll Processor approximately \$2,000 per month in fees (the “**Payroll Processor Fees**”) for its services. The specific amount owed to the Payroll Processor varies based on the particular services that are provided by the Payroll Processor when running a particular payroll. The Payroll Processor is paid through an automatic draft.

19. The Debtors estimate that, as of the Petition Date, approximately \$2,000 is due and owing to the Payroll Processor, and seek to pay any such amounts in the ordinary course of business to ensure that the Debtors’ payroll process continues to function in a timely and efficient manner and without interruption.

**D. Employee Expenses**

20. Prior to the Petition Date, and in the ordinary course of the Debtors’ business, the Employees incurred various expenses on behalf of the Debtors in the scope of their employment, including, without limitation, expenses for meals, travel, car rentals, relocation, fuel,

job specific training, and other business-related expenses (collectively, the “**Employee Expenses**”). All such expenses are incurred with the applicable Employee’s understanding that he or she will be reimbursed by the Debtors in accordance with the Debtors’ reimbursement policy, as described in more detail below. In all cases, reimbursement is contingent on the Debtors’ determination that the charges are for legitimate, reimbursable business expenses.

21. Certain of the Debtors’ Employees initially incur the Employee Expenses using personal credit cards, debit cards, or funds and subsequently seek reimbursement from the Debtors. Additionally, certain Employees incur the Employee Expenses through corporate credit cards issued by Brex and Divvy (the “**Corporate Cards**”). Although the Debtors pay the invoice for the Corporate Cards, the cards are held in the names of individual Employees. Therefore, to the extent that the Debtors fail to remit payment for the Corporate Cards for valid and legitimate charges, the Employees may be personally liable for the same. The Debtors have policies whereby the Employees seek reimbursement, or file expense reports for the Debtors’ payment, of the Employee Expenses. These expenses are ordinary course expenses that the Employees incur in performing their job functions, including all of the Employee Expenses incurred on the Corporate Cards. It is essential to the continued operation of the Debtors’ businesses that the Debtors be permitted to continue reimbursing or making direct payments on behalf of Employees for the Employee Expenses.

22. It is difficult for the Debtors to determine the exact amount of Employee Expenses outstanding as of the Petition Date because, among other things, the Employees may have expenses that they have yet to submit for reimbursement. On average, over the past year, the Debtors have paid approximately \$2,000 per month on account of the Employee Expenses. The

Debtors estimate that, as of the Petition Date, approximately \$2,000 in Employee Expenses remain unpaid.

23. The Employee Expenses were incurred on the Debtors' behalf and with the understanding that the Employees would be reimbursed for any and all such amounts. Therefore, to avoid harming the Employees who incurred the Employee Expenses, the Debtors seek authorization, but not direction, to continue reimbursing the Employees for the Employee Expenses in the ordinary course of business and in accordance with their prepetition practices and policies.

**E. Wage Deductions, Trust Fund Taxes, and Payroll Taxes**

24. During each applicable pay period, the Debtors routinely deduct certain amounts from the Workforce's compensation that represent earnings that judicial or government authorities, or the Workforce, have designated for deduction, including, but not limited to: (a) garnishments, child support, and similar deductions, and (b) other pre-tax and after-tax deductions payable pursuant to certain of the Workforce benefit plans discussed herein, such as health care benefits, insurance premiums, 401(k) contributions, legally ordered deductions, and other miscellaneous deductions (collectively, the "**Wage Deductions**"), and forward those amounts to various third-party recipients.

25. On average, prior to the Debtors' RIFs, the Debtors historically deducted, in the aggregate, approximately \$400,000 semi-monthly in Wage Deductions from the Workforce's pay. The Debtors believe that, as of the Petition Date, approximately \$30,000 has not been remitted to the various third-party recipients on account of the Wage Deductions.

26. Accordingly, the Debtors seek authority to continue to forward prepetition Wage Deductions to the applicable third-party recipients on a postpetition basis in the ordinary course of their business, as routinely done prior to the Petition Date.

27. Furthermore, the Debtors are required by law to withhold from the Workforce's pay certain amounts related to, among other things, federal, state, and local income taxes and social security and Medicare taxes (collectively, the "**Trust Fund Taxes**") for remittance to the appropriate federal, state, or local taxing authorities. The Debtors must then match from their own funds for social security and Medicare taxes and pay, based upon a percentage of gross payroll, additional amounts for state and federal unemployment insurance (the "**Payroll Taxes**"). In April 2023, the Debtors remitted approximately \$430,000 in Trust Fund Taxes and Payroll Taxes. The Debtors remit Trust Fund Taxes and Payroll Taxes to the Payroll Processor after each payroll, and the Payroll Processor holds such amounts until they are paid to the appropriate authority.

28. The Debtors believe that, as of the Petition Date, approximately \$70,000 is outstanding on account of the Trust Fund Taxes and the Payroll Taxes. The Debtors seek to remit and pay such amounts in the ordinary course of business, for the reasons set forth herein.

29. By this Motion, the Debtors seek authority, but not the direction, from the Court to remit Wage Deductions, Trust Fund Taxes, and Payroll Taxes in the ordinary course of business, including, without limitation, amounts determined to be related to the period prior to the Petition Date.

## **II. Employee Benefits**

30. In the ordinary course of business, the Debtors provide their eligible Employees, directly or indirectly, a number of benefits, including, but not limited to: (a) medical, dental, and vision insurance; (b) paid sick days, vacation days, pregnancy and parental leave, and other paid time off; (c) a 401(k) retirement plan; (d) certain other miscellaneous employee benefits, including, but not limited to, life and accidental death & dismemberment insurance, short-term and long-term disability insurance, and certain benefits to certain former Employees after their

termination, retirement, or disability leave, including, but not limited to, benefits provided under the Consolidated Omnibus Budget Reconciliation Act of 1985 (“**COBRA**”); and (e) certain state specific benefits (collectively, the “**Employee Benefits**”).

31. By this Motion, the Debtors seek authority, but not direction, to: (a) continue to provide the Employee Benefits for their Employees in the ordinary course of business; (b) continue to honor obligations related to the Employee Benefits, including, but not limited to, any premiums and administrative fees; and (c) pay amounts owed related to the Employee Benefits to the extent that they remain unpaid as of the Petition Date. Certain of the Employee Benefits are discussed below.

**A. Health Benefits**

32. The Debtors sponsor several health and welfare benefit plans, including medical, dental, and vision, for their Employees (collectively, the “**Health Benefits**”). The Debtors provide their Employees with various medical plan options, including a PPO and HDHP through Anthem Health Insurance, and a HMO and HDHP (California only) through Kaiser Permanete Insurance. In addition, the Debtors offer dental and vision plans administered by Guardian Life. Employees are also able to purchase optional life insurance through Anthem.

33. Of the Debtors’ Employees, any Employee working more than 20 hours per week is eligible to receive one or more types of the Health Benefits. The Debtors cover 100% of the premiums for Employees, and 70% of coverage for the dependents of Employees. In addition, some of these Employees make contributions (including to flexible spending accounts and the like) in connection with the Health Benefits, which are withheld from their wages every payroll cycle. The Debtors pay an aggregate amount of approximately \$85,000 per month on account of the Health Benefits pursuant to a variety of contracts with third-party insurance administrators and

carriers. Certain of these amounts are attributable to the administrative costs of third-party insurance administrators.

34. In addition, the Debtors pay Navia Benefit Solutions certain premiums to administer their COBRA coverage. The Debtors do not subsidize any cobra premiums. While the costs of COBRA coverage vary from month to month depending on how many Employees are receiving COBRA benefits, the Debtors pay approximately \$6,000 per month to Navia on account of COBRA administration payments.

35. The Debtors also offer Employees the use of flexible spending (“FSAs”) and health savings accounts (“HSAs”), and commuter accounts (“**Commuter Accounts**”, and collectively with the HSAs and FSAs, the “**Commuter/FSA/HSA Benefits**”) for various health, dependent care, and commuting expenses. The Commuter/FSA/HSA Benefits are administered through Navia Benefits Solutions. The Debtors make employer contributions to the HSAs, but do not contribute to the FSAs or Commuter Accounts. The Debtors seek authority to continue the Commuter/FSA/HSA Benefits during the pendency of these chapter 11 cases.

36. As of the Petition Date, the Debtors estimate that approximately \$25,000 is outstanding in connection with the Health Benefits, Commuter/FSA/HSA Benefits, and COBRA payments, including premiums, estimated claims, and administrative costs.

37. By this Motion, the Debtors seek authority to: (a) continue to provide the Health Benefits and COBRA coverage to the Employees in the ordinary course of business; (b) continue making contributions and payments to such benefit programs; (c) continue to pay amounts related thereto, including administrative costs (including, without limitation, those of third party insurance administrators); and (d) pay such amounts to the extent that they remain unpaid on the Petition Date.

**B. Paid Time Off**

38. The Debtors provide their Full-Time Employees, subject to certain company guidelines, unlimited paid time off for, without limitation, sick days, vacation time, holidays, and other miscellaneous reasons, to all qualifying Employees as a paid-time-off benefit (“**Unlimited Paid Time Off**”). Since it is unlimited, Unlimited Paid Time Off does not rollover into subsequent years. Unlimited Paid Time Off is paid at the eligible Employee’s base wage, but commissions and other compensation are not included. Upon termination, there is no payout regarding any unused or outstanding Paid Time Off, unless required by applicable local, state, or federal law.

39. The Debtors also provide their Hourly Employee, subject to certain company guidelines, paid time off that accrues at a rate of fifteen (15) or twenty (20) days per year, depending on length of service, for, without limitation, sick days, vacation time, holidays, and other miscellaneous reasons, to all qualifying Hourly Employees as a paid-time-off benefit (“**Limited Paid Time Off** and together with Unlimited Paid Time off, “**Paid Time Off**”). Limited Paid Time Off rolls over to subsequent years, subject to a thirty (30) day cap. Limited Paid Time Off is eligible to be cashed out upon termination of the Part-Time Employees employment with the Debtors. The Debtors estimate that approximately \$1,500 in Limited Paid Time Off has accrued as of the Petition Date.

40. Subject to the Court’s approval of the requested relief, the Debtors intend to comply with their policies and applicable local, state, and federal law related to Paid Time Off. Through this Motion, the Debtors request authority, but not direction, from the Court to continue to honor their Paid Time Off policies, to comply with applicable local, state, and federal law in the ordinary course of business, and to honor and pay, in their discretion, prepetition amounts related thereto. The Debtors will not pay prepetition obligations in excess of the section 507(a)(4) cap,

including on account of Paid Time Off in excess of \$15,150.00 in the aggregate, unless required by applicable local, state, or federal law.

**C. Additional Employee Benefits**

*(i) 401(k) Plan*

41. The Debtors offer a 401(k) plan for the benefit of their eligible Employees (the “**401(k) Plan**”), which is administered through Fidelity. The 401(k) Plan permits eligible Employees to defer a portion of their wages into the 401(k) Plan. The 401(k) Plan is not funded by matching contributions made by the Debtors, but the Debtors pay approximately \$1,500 per month to Fidelity to service the 401(k) Plan. Historically, prior to the Debtors’ RIFs, on a semi-monthly basis, the Debtors withhold from wages of participating Employees contributions to the 401(k) Plan of approximately \$60,000.

42. As of the Petition Date, the Debtors estimate that, at most, \$15,000 in the aggregate is owed by the Debtors on account of the 401(k) Plan. The Debtors seek authorization, but not direction, to continue to pay in the ordinary course of business amounts associated with the 401(k) Plan, including prepetition amounts determined to be owed and amounts owed to any 401(k) Plan fiduciaries.

*(ii) Life and AD&D Insurance and Disability Benefits*

43. The Debtors offer basic life and accidental death & dismemberment insurance (“**Life and AD&D Insurance**”), as well as short-term and long-term disability insurance (“**Disability Benefits**”), to all eligible Employees through Guardian Life Insurance. Basic Life and AD&D Insurance and the Disability Benefits are fully funded by the Debtors, and Employees are able to purchase additional coverage at their own expense through Anthem.

44. As of the Petition Date, the Debtors estimate that, inclusive of unpaid premiums and administrative costs, approximately \$2,000 in the aggregate is currently owed on

account of withholding obligations related to the Life and AD&D Insurance and the Disability Benefits.

(iii) *Other Benefits*

45. The Debtors offer their Employees certain additional benefits not described fully herein, including, but not limited to, wellness and mental health programs, career coaching, cell phone reimbursements (up to \$50.00 per month per eligible Employee), and payments to their employee benefits broker. As of the Petition Date, the Debtors estimate that, inclusive of unpaid premiums and administrative costs, approximately \$20,000 in the aggregate is currently owed on account of the aforementioned benefit programs.

**III. Severance Obligations**

46. While the Debtors do not have a formal severance program, from time to time, they have offered severance to certain eligible non-insider Employees (the “**Severance Program**”). Under the Severance Program, an eligible Employee may be entitled to severance (the “**Severance Obligations**”), provided, among other things, that the Employee executes a general release of claims against the Debtors.

47. The Debtors do not seek authority to make any severance payments to insiders that would fall within the scope of section 503(c)(2) of the Bankruptcy Code. As of the Petition Date, the Debtors do not believe that any amounts are currently owed on account of the Severance Obligations. The Debtors seek authorization, but not direction, to continue to pay in the ordinary course of business amounts associated with the Severance Obligations, including prepetition amounts determined to be owed, in each case subject to a \$15,150.00 cap per individual.

#### **IV. Workers' Compensation Program**

48. Under applicable state law, the Debtors are required to maintain worker's compensation insurance programs to provide their Employees with workers' compensation insurance coverage for claims arising from or related to their employment with the Debtors (the "**Workers' Compensation Program**"). To implement the Workers' Compensation Program, the Debtors maintain a high deductible workers' compensation policy through Travelers Indemnity Company (the "**WC Policy**"). Over the past twelve (12) months, the cost of the WC Policy was approximately \$12,000, and it was most recently renewed on June 21, 2022. The Debtors estimate that, as of the Petition Date, no premiums remain outstanding under the WC Policy.

49. To ensure that claims incurred under the Workers' Compensation Program are resolved, the Debtors must pay outstanding prepetition liabilities associated with the Workers' Compensation Program, as well as outstanding WC Policy premiums, as such amounts become due and owing. For the claims administration process in these chapter 11 cases to operate as efficiently as is possible, and to ensure that the Debtors comply with state law requirements, the Workers' Compensation Program must continue in the ordinary course of business.

50. Accordingly, the Debtors request authority, but not direction, in their discretion, to continue, renew, and maintain the Workers' Compensation Program in the ordinary course of business, and to pay prepetition amounts related thereto, including, without limitation, outstanding premiums, deductibles, and fees owed for administrative costs and other amounts required in connection with the program, as such amounts become due in the ordinary course of the Debtors' business.

**BASIS FOR RELIEF**

**I. The Court Should Authorize, but Not Direct, the Debtors, in Their Discretion, to Pay or Otherwise Honor the Employee Wages and Benefits**

51. The Debtors seek the relief requested herein because any delay in paying or otherwise honoring the Employee Wages and Benefits could severely disrupt the Debtors' relationship with the Employees and irreparably impair the Employees' morale at a time when their continued dedication, confidence, and cooperation are most critical to the Debtors and the success of these chapter 11 cases. The Debtors face the risk that the success of these cases and their ability to operate their business without any unexpected or inopportune interruption may be severely jeopardized if the Debtors are not immediately granted authority to pay the Employee Wages and Benefits.

52. Employees are crucial to the operation of a company's business and they are crucial to the success of a chapter 11 case. The Debtors simply cannot risk the substantial disruption of their business and affairs that would, in all likelihood, accompany any decline in workforce morale attributable to the Debtors' failure to pay the Employee Wages and Benefits in the ordinary course of business. Absent the requested relief, the Employees would suffer great hardship and, in many instances, financial difficulties, since these monies are needed to enable them to meet their personal obligations. Additionally, without the requested relief, the Debtors' stability would be undermined by the potential threat that otherwise loyal Employees at all levels would seek other employment.

53. Pursuant to section 507(a)(4) of the Bankruptcy Code, each Employee may be granted a priority claim for:

allowed unsecured claims, but only to the extent of \$15,150 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for—

- (A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or
- (B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor.

11 U.S.C. § 507(a)(4).

54. Likewise, under section 507(a)(5) of the Bankruptcy Code, Employees may ultimately be granted a priority claim for:

allowed unsecured claims for contributions to an employee benefit plan—

- (A) arising from services rendered within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first; but only
- (B) for each such plan, to the extent of—
  - (i) the number of employees covered by each such plan multiplied by \$15,150; less
  - (ii) the aggregate amount paid to such employees under paragraph (4) of this subsection, plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan.

11 U.S.C § 507(a)(5).

55. The Debtors believe that the Unpaid Wages are entitled to priority status under section 507(a)(4) of the Bankruptcy Code, to the extent such wages do not exceed \$15,150.00 per Employee. The Debtors would therefore be required to pay these claims in full to confirm any chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(B) (requiring payment of certain allowed unsecured claims for wages, salaries, and commissions, and certain allowed unsecured claims for

contributions to an employee benefit plan). Thus, granting the relief requested herein would only affect the timing, and not the amount, of the payment of such amounts to the extent that they constitute priority claims.

56. Moreover, the vast majority of the Workforce rely exclusively on their full compensation or reimbursement of their wages or expenses to continue to pay their daily living expenses, and these Employees will be exposed to significant financial difficulties if the Debtors are not permitted to pay Unpaid Wages. Additionally, the Debtors believe that if they are unable to honor such obligations, the morale and loyalty of the Workforce will be jeopardized at a time when such support is critical to, among other things, their chapter 11 efforts and their ability to effectively prosecute these chapter 11 cases.

57. Additionally, the Wage Deductions, Trust Fund Taxes, and Payroll Taxes principally represent portions of the Employees' pay that governments (in the case of the Trust Fund Taxes and Payroll Taxes), the Employees (in the case of the voluntary Wage Deductions), and certain authorities (in the case of the involuntarily Wage Deductions) have designated for deduction from the Employees' pay. The Debtors' failure to pay these amounts could result in hardship to certain Employees and an administrative burden for the Debtors. Indeed, the Debtors would expect inquiries from garnishors regarding any failure by the Debtors to submit, among other things, child support and alimony payments that are not the Debtors' property but, rather, have been withheld from the Employees' pay on such parties' behalf. Moreover, if the Debtors cannot remit these amounts, the Employees may face legal action due to the Debtors' failure to submit such payments.

58. The Workforce is essential, among other things, to the orderly and successful prosecution of these chapter 11 cases and to avoid any unexpected or inopportune

interruption of the Debtors' business operations. They have an intimate knowledge of the Debtors' infrastructure and operations, and any deterioration in the Workforce's morale and welfare at this critical time undoubtedly would adversely impact the Debtors and the success of these chapter 11 cases.

59. Finally, maintaining the Workers' Compensation Program is justified because applicable state law mandates this coverage. Furthermore, with respect to any claims related to the Workers' Compensation Program, the risk that eligible claimants will not receive timely payments with respect to employment-related injuries could have a devastating effect on the financial well-being and morale of the Employees and their willingness to remain in the Debtors' employ. Entry of the Proposed Orders will alleviate any such concerns, as it will allow the Debtors to avoid any unexpected or inopportune interruptions to their business operations and enable them to maximize the value of the estates for the benefit of all stakeholders.

60. For these reasons, the Debtors submit that the relief requested herein is necessary, prudent, and in the best interests of the Debtors, their estates, and creditors, and should therefore be granted.

## **II. The Court Should Authorize the Banks to Honor and Process the Debtors' Payments on Account of the Employee Wages and Benefits**

61. The Debtors also request the Court to authorize the Banks, when requested by the Debtors, in their discretion, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition obligations described herein, 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 Debtors further request that all of the Banks be authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved pursuant to this Motion.

**SATISFACTION OF BANKRUPTCY RULE 6003(b)**

62. 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.” The Debtors believe that, among other things, the success of their chapter 11 efforts will require the continued focus and dedication of the Employees, as any deterioration in employee morale or significant loss in workforce will have an adverse impact on the Debtors’ ability, among other things, to continue to operate their business without any unexpected or inopportune interruption and to successfully prosecute these chapter 11 cases. Thus, if the relief requested herein is not granted, the failure to satisfy the Employee Wages and Benefits would cause the Debtors’ estates immediate and irreparable harm by detracting from, and potentially derailing, the Debtors’ chapter 11 efforts.

63. For this reason and those set forth above, the Debtors respectfully submit that Bankruptcy Rule 6003(b) has been satisfied and that 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)**

64. 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 set forth throughout this Motion, any delay in paying the Employee Wages and Benefits would be detrimental to the Debtors, their estates and creditors. Indeed, the Debtors’ ability to operate their business without

any unexpected or inopportune interruption requires, in large part, an able and willing workforce, which the Debtors currently have in the Employees.

65. 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**

66. Nothing in the Proposed Orders or this Motion: (i) 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; (ii) 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 (iii) shall be construed as a promise to pay a claim.

### **NOTICE**

67. 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) the Debtors' twenty (20) largest unsecured creditors (excluding insiders); (c) counsel to the Debtors' 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 Banks; (h) the Payroll Processor; and (i) 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 Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware. 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> , <sup>1</sup>	)
	) Case No. 23-10671 (___)
Debtors.	)
	) (Jointly Administered)
	)
	) <b>Re: Docket No.</b> ___
	)

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**INTERIM 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**”)<sup>2</sup> 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 to honor

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<sup>1</sup> 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.

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

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 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, which objection shall be served upon proposed counsel for the Debtors, counsel to the DIP Agent, and counsel to any statutory committee appointed in these chapter 11 cases, in each case 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, 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 or

Independent Contractor 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; (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; and (c) the Debtors shall not cash out any prepetition obligations on account of Paid Time Off unless applicable state law requires such cash-out payment.

<b><u>Employee Wages and Benefits</u></b>	<b><u>Aggregate Amount</u></b>
Unpaid Wages (including Commissions)	\$380,000
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

4. 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 Process Fees, Employee Expenses, Paid Time Off, and Severance Obligations; (b) withhold, and remit to the applicable third-parties, Wage Deductions, Trust Fund Taxes, and Payroll Taxes; and (c) administer the Employee Benefits and the Workers' Compensation Program.

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

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.

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.

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 any claim.

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

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

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**

**Proposed Final Order**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: )  
 ) Chapter 11  
 PLASTIQ INC., *et al.*,<sup>1</sup> )  
 ) Case No. 23-10671 (\_\_\_)  
 Debtors. )  
 ) (Jointly Administered) Re:  
 )  
 ) Docket Nos. \_\_\_ & \_\_\_  
 )

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**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**”)<sup>2</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> 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. Nothing in this Order shall be deemed to authorize the payment of any amounts subject to section 503(c) of the Bankruptcy Code.

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.

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.

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.

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

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.

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