

**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 (BLS)  
Debtors. )  
 ) (Joint Administration Requested)

**DEBTORS’ FOURTH OMNIBUS MOTION FOR ENTRY OF ORDER  
AUTHORIZING REJECTION OF CERTAIN EXECUTORY  
CONTRACTS, EFFECTIVE AS OF THE PETITION DATE**

**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 the Petition 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* (the “**First Day Declaration**”),<sup>2</sup> filed contemporaneously herewith. In further support of this Motion, the Debtors respectfully state as follows:

<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 First Day Declaration.



## **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 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 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 Rejected Executory Contracts**

4. Prior to the Petition Date, the Debtors and their advisors reviewed the Debtors’ executory contracts, and determined that certain licensing, service, vendor, and other agreements are no longer necessary to the operation of the Debtors’ businesses, and therefore do

not further the Debtors' goals of maximizing value for all creditors and stakeholders and minimizing costs in these chapter 11 cases. As set forth more fully in the First Day Declaration, in September of 2022, the Debtors completed an acquisition for Nearside Business Corp. and certain of its subsidiaries ("**Nearside**"). The Debtors acquired Nearside primarily for its technology and the ability to offer business bank accounts to customers. Subsequent to the acquisition, however, the Debtors discovered that Nearside lacked the technology, security, and controls to sell into the Debtors' customer base. Given the gaps in the technology and the cost/time it would take to achieve commercial feasibility, the Debtors ultimately made the decision to completely shut down the Nearside business in November of 2022.

5. Schedule 1 to the Proposed Order contains certain executory contracts related to the acquisition or operation of the Nearside business (collectively, including any amendments or modifications thereto, the "**Contracts**"). Since the Contracts are no longer utilized by the Debtors, the Debtors determined, in an exercise of their business judgment, to immediately reject the Contracts to avoid potentially incurring further costs and expenses that would only undermine the Debtors' efforts to minimize costs and maximize value of the estate for the benefit of all creditors.

### **RELIEF REQUESTED**

6. 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 Petition Date.

7. 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)).

8. 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)).

9. 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).

10. 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.

11. Following the acquisition of Nearside in September of 2022, the Debtors discovered that Nearside lacked the necessary technology, security, and controls to sell into the Debtors’ customer base. Due to the time and cost needed to make Nearside commercially feasible, the decision was made to shut down Nearside in November 2022. The Debtors have therefore determined that the Contracts are not integral to the Debtors’ chapter 11 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.

12. Furthermore, the Debtors have analyzed each of the Contracts, and have determined that such agreements do not provide the Debtors with any material benefit, and should be immediately rejected to cut off the potential incurrence of additional 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 Petition 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 Petition 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.

13. 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 Petition 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**

14. Nothing in the Proposed Orders 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**

15. 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 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; and (g) the counterparties to the Contracts (via electronic mail and/or first class mail). 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 Order, 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 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 (BLS)
Debtors.	)	
	)	(Jointly Administered)
	)	
	)	Re: Docket No. _____

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**ORDER AUTHORIZING REJECTION OF CERTAIN EXECUTORY  
CONTRACTS EFFECTIVE AS OF THE PETITION DATE**

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 an order authorizing the Debtors to reject, effective as of the Petition 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

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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.

deliberation thereon; and this Court having 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 Petition 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 Petition 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. Claims arising out of the rejection of the Contracts must be filed on or before the later of (a) the deadline for filing proofs of claim based on prepetition claims against any of the Debtors as set by an order of this Court or (b) thirty (30) days after entry 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 1<sup>1</sup>****Rejected Contracts**

<b>Debtor</b>	<b>Creditor Name</b>	<b>Address</b>	<b>City</b>	<b>State</b>	<b>Zip</b>	<b>Country</b>
Nearside	SeekOut	1110 112th Ave. NE 4th Floor	Bellevue	WA	98004	USA
Nearside	Segment.io	101 Spear Street, Floor 1	San Francisco	CA	94105- 1580	USA
Nearside	SEMRush	800 Boylston Street, Suite 2475	Boston	MA	02199	USA
Nearside	Sendgrid	1801 California Street, Suite 500	Denver	CO	80202	USA
Nearside	Sentilink	548 Market St, PMB 70654	San Francisco	CA	94104- 5401	USA
Nearside	SentinelOne	444 Castro Street, Suite 400	Mountain View	CA	94041	USA
Nearside	Sentry	1800 North Point Drive	Stevens Point	WI	54481	USA
Nearside	Serotte Law Firm	370 Franklin Street	Buffalo	NY	14202	USA
Nearside	ShareASale	15 W. Hubbard St., Suite 500	Chicago	IL	60654	USA
Nearside	SHARED COUNT.CO M	Suite #228 2325 Hurontario St	Mississauga	ON	L5M 2N9	Canada
Nearside	Shelterpoint	1225 Franklin Avenue, Suite 475	Garden City	NY	11530	USA
Nearside	Shortcut	45 W 27th St	New York	NY	10001	USA
Nearside	Slack Technologies, LLC	500 Howard St	San Francisco	CA	94105	USA
Nearside	Snap Inc.	2772 Donald Douglas, Loop North	Santa Monica	CA	90405	USA
Nearside	SNR Ventures	1 Bluxome St #203	San Francisco	CA	94107	USA
Nearside	Statuscake	12 East Passage, Third Floor	London		EC1A 7LP	England
Nearside	Statuspage	Level 6, 341 George Street	Sydney	NSW	2000	Australia
Nearside	Stocksy	#320 - 560 Johnson Street	Victoria	BC	V8W 3C6	Canada
Nearside	Streak	160 Pine St, Suite 250	San Francisco	CA	94111	USA
Nearside	Stripe	160 Pine St, 250	San Francisco	CA	94111	USA
Nearside	SugarWish	7808 Cherry Creek S Dr, Suite 408	Denver	CO	80231	USA
Nearside	Superpowered	600 Congress Ave, 14th Floor	Austin	TX	78701	USA

<sup>1</sup> 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.

Debtor	Creditor Name	Address	City	State	Zip	Country
Nearside	Swiss Typefaces	Quai Perdonnet 19	1800 Vevey			Switzerland
Nearside	Syzygy Social, LLC	3277 S White Road, 868	San Jose	CA	95148	USA
Nearside	Tailscale	50 Lynn Williams St., Unit 401	Toronto	ON	M6K 3R9	Canada
Nearside	TalentoHCM	255 Alhambra Circle, Suite 400	Coral Gables	FL	33134	USA
Nearside	TalentWall	145 E Prospect Ave. Suite 200	Danville	CA	94526	USA
Nearside	Taltrics	340 Fremont St, Apt 1108	San Francisco	CA	94105	USA
Nearside	Team Mobot	310 Lexington Avenue, Apt 6A	New York	NY	10016	USA
Nearside	Teamviewer	5741 Rio Vista Drive	Clearwater	FL	33760	USA
Nearside	Teleport	440 North Barranca Avenue, No. 8219	Covina	CA	91723	USA
Nearside	Textexpander	548 Market St # 37453	San Francisco	CA	94104- 5401	USA
Nearside	The Drop	55 2nd Street, 4th Floor	San Francisco	CA	94105	USA
Nearside	The Muse	1375 Broadway 20th Floor	New York	NY	10018	USA
Nearside	TikTok	5800 Bristol Pkwy	Culver City	CA	90230	USA
Nearside	TLO	555 W. Adams Street	Chicago	IL	60661	USA
Nearside	Torch	548 Market St, PMB 24776	San Francisco	CA	94104- 5401	USA
Nearside	Trade Desk	42 N. Chestnut Street	Ventura	CA	93001	USA
Nearside	Transunion	555 W. Adams Street	Chicago	IL	60661	USA
Nearside	TravelPerk	C/ dels Almogàvers, 154-164	Barcelona		08018	Spain
Nearside	Tremendous	228 Park Ave S #62949	New York	NY	10003	USA
Nearside	Trustpilot	Pilestræde 58	København K		1112	Denmark
Nearside	Twilio	101 Spear St	San Francisco	CA	94105	USA
Nearside	Twitter	1355 Market St Ste 900	San Francisco	CA	94103	USA
Nearside	Typeform	calle de Pallars 108 (Aticco)	Barcelona		8018	Spain
Nearside	Typography.com (Hoefler&Co)	600 Unicorn Park Drive	Woburn	MA	01801	USA
Nearside	Unit	228 Park Ave S, PMB 72777	New York	NY	10003	USA
Nearside	Unit21	222 Kearny Street, Suite 304	San Francisco	CA	94103	USA
Nearside	UPS	55 Glenlake Pkwy NE	Atlanta	GA	30328- 3474	USA
Nearside	Vanta	369 Hayes	San Francisco	CA	94102	USA
Nearside	Vendr	501 Boylston St, 10th FL	Boston	MA	02116- 3769	USA

Debtor	Creditor Name	Address	City	State	Zip	Country
Nearside	Very Good Security	548 Market Street, Suite 41338	San Francisco	CA	94104	USA
Nearside	Visa DPS	900 Metro Center Blvd	Foster City	CA	94404- 2172	USA
Nearside	VLLG Font Foundry	PO Box 869	Hudson	NY	12534	USA
Nearside	Vouch Insurance Services	831 Montgomery Street	San Francisco	CA	94133	USA
Nearside	Welcome Online	440 N. Barranca Ave #8588	Covina	CA	91723	USA
Nearside	Welcome Online	440 N. Barranca Ave #8588	Covina	CA	91723	USA
Nearside	Welton Level	318 W Adams, Suite 2000	Chicago	IL	60606	USA
Nearside	WeWork	575 Lexington Ave, 16th Floor	New York	NY	10022	USA
Nearside	When I Work	420 North 5th St. Suite 500	Minneapolis	MN	55401	USA
Nearside	Whimsical	1630 Welton Street, 7th Floor	Denver	CO	80202	USA
Nearside	Will Morley	44h, Lumeijstraat 44h	Amsterdam		1056V Z	Netherlands
Nearside	Zen Media	4614 SW 74th Ave	Miami	FL	33144	USA
Nearside	Zendesk	989 Market St	San Francisco	CA	94103	USA
Nearside	Zepplin	221 Main St, Ste 770	San Francisco	CA	94105	USA
Nearside	Zirtual	1322 Manning Pkwy	Powell	OH	43065	USA
Nearside	Zoom Video Communications, Inc.	55 Almaden Blvd, Suite 600	San Jose	CA	95113	USA