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7 Munchery, Inc.

8 **UNITED STATES BANKRUPTCY COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

12 In re
13 MUNCHERY, INC.,
14 Debtor and Debtor-in-Possession.

Case No. 19-30232-HLB
Chapter 11

**MOTION TO SELL CUSTOMER DATA
AND CONTENT ASSETS FREE AND
CLEAR OF LIENS¹**

Hearing:

Date: June 18, 2020

Time: 10:00 a.m.

Place: 450 Golden Gate Ave., 16th Floor
San Francisco, CA 94102

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20 **THIS MOTION AFFECTS THE FOLLOWING SECURED CLAIMANTS: (1)**

21 TriplePoint Venture Growth BDC Corp. (“TriplePoint”); and (2) VIVE VC Fund, LP

22 Munchery, Inc., (“Munchery” or the “Debtor”) files this Motion to Sell Customer Data
23 and Content Assets Free and Clear of Liens (the “Motion”) pursuant to 11 U.S.C. § 363(b),
24 § 363(f)(2), Bankruptcy Rules 4001 and 6004, and B.L.R. 6004-1. The Motion is supported by

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27 ¹ Unless specified otherwise, all chapter and code references are to the Bankruptcy Code,
28 11 U.S.C. §§ 101–1532. “Bankruptcy Rule” references are to the Federal Rules of Bankruptcy
Procedure and “B.L.R.” references are to the Bankruptcy Local Rules for the Northern District of
California. “ECF” references are to the docket in the above-captioned proceeding.

1 the concurrently filed Declaration of James Beriker in Support of the Motion (the “Beriker
2 Declaration”).

3 The Motion seeks approval of a Term Sheet dated May 15, 2020 by and between the
4 Debtor, Rolliyo, Inc. (the “Buyer”), and TriplePoint. The Term Sheet provides that the assets to
5 be included in the sale are intangible assets to be purchased by the Buyer from the Debtor,
6 specifically, the following customer data, content, marketing and trademark assets owned by the
7 Debtor: (1) the customer data, including all email and other contact information, transaction
8 history, and customer ratings and reviews; (2) the customer history and transactional data; (c) the
9 recipe database, including ingredients, nutritional information, preparation instructions,
10 descriptions, and photographs; (d) the tradename, trademarks, domain names, social media
11 accounts, all written content, videos, and photography assets developed for or by Munchery to
12 support the business or the brand; and (e) all marketing material developed by or for Munchery,
13 including all marketing and performance data. Under the Term Sheet, the seller is the Debtor
14 and the buyer is Rolliyo, Inc. James Beriker is the CEO of the Debtor and is also the CEO of the
15 Buyer. An authentic copy of the Term Sheet is attached to the supporting Declaration of James
16 Beriker.

17 For the reasons set forth in the accompanying Notice, Beriker Declaration, and
18 Memorandum of Points and Authorities, Munchery requests that the Court enter an order (1)
19 granting its Motion to Sell Data and Content Assets Free and Clear of Liens; (2) waiving the 14-
20 day stay of imposed by Rule 62(a) of the Federal Rules of Civil Procedure and/or Bankruptcy
21 Rule 6004(h); (3) authorizing Munchery to take the steps it deems necessary to implement the
22 Term Sheet without further Court order; and (4) allowing such other relief as the Court deems
23 proper.

24 Dated May 21, 2020

FINESTONE HAYES LLP

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26 */s/ Jennifer C. Hayes*

Jennifer C. Hayes
Attorneys for Munchery, Inc.