

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

F21 OPCO, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 25- 10469 (___)

(Joint Administration Requested)

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING THE DEBTORS TO PAY AND HONOR CERTAIN
(A) PREPETITION WAGES, BENEFITS, AND OTHER COMPENSATION
OBLIGATIONS; (B) PREPETITION EMPLOYEE BUSINESS EXPENSES; (C) BONUS
PROGRAM OBLIGATIONS; AND (D) WORKERS' COMPENSATION OBLIGATIONS;
(II) AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS AND TRANSFERS
RELATED TO SUCH OBLIGATIONS; AND (III) GRANTING RELATED RELIEF**

F21 OpCo, LLC and its debtor affiliates, as debtors and debtors in possession (collectively, the "**Debtors**") in the above-captioned chapter 11 cases (these "**Chapter 11 Cases**"), hereby submit this motion (this "**Motion**") for entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** (the "**Interim Order**") and **Exhibit B** (the "**Final Order**") and, together with the Interim Order, the "**Proposed Orders**"), (i) authorizing, but not directing, the Debtors to: (a) pay their Employees' (defined below) accrued prepetition wages and salaries, and other accrued prepetition compensation (collectively, the "**Employee Claims**"); (b) pay accrued prepetition obligations to independent contractors and supplemental workers utilized by the Debtors (collectively, the "**Supplemental Workforce Claims**"); (c) reimburse Employees for prepetition expenses that Employees incurred on behalf of the Debtors in the ordinary course of business; (d) pay all prepetition amounts withheld from an Employee's paycheck on account of, among other

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: F21 OpCo, LLC (8773); F21 Puerto Rico, LLC (5906); F21 GiftCo Management, LLC (6412). The Debtors' address for purposes of service in these Chapter 11 Cases is 110 East 9th Street, Suite A500, Los Angeles, CA 90079.



things, federal, state, local, and foreign income taxes and social security and Medicare taxes (the “**Trust Fund Taxes**”) and the Debtors’ share of prepetition social security taxes, Medicare taxes, and federal unemployment insurance (the “**Payroll Taxes**” and, together with the Trust Fund Taxes, the “**Employment Taxes**”); (e) honor any prepetition obligations in respect of, and continue in the ordinary course of business until further notice (but not assume), certain of the Debtors’ employee benefits programs, plans, and policies (collectively, the “**Employee Benefits**”), as described below; (f) honor any bonus program obligations related to the Debtors’ store closing process; (g) honor the Debtors worker’s compensation policies (the “**Workers’ Compensation Program**”); and (h) the extent that any of the foregoing programs are administered, insured, or paid through a third-party administrator or provider, to pay any prepetition claims of such administrator and provider in the ordinary course of business to ensure the uninterrupted delivery of payments or other benefits to the Employees (the “**Employee Administrator Obligations**” and, collectively with the Employee Claims, the Supplemental Workforce Claims, Employment Taxes, the Employee Expenses (defined below), the Employee Benefits, and the Workers’ Compensation Program, the “**Employee Obligations**”); and (ii) authorizing the Debtors’ banks and other financial institutions (collectively, the “**Banks**”) to honor and process related checks and electronic transfers. In support of this Motion, the Debtors rely upon, and incorporate by reference, the *Declaration of Stephen Coulombe in Support of Chapter 11 Petitions and First Day Pleadings* (the “**First Day Declaration**”),² filed contemporaneously herewith. In further support of this Motion, the Debtors respectfully state as follows:

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

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “**Court**”) has jurisdiction to consider this Motion under 28 U.S.C. § 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. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Under Rule 9013-1(f) of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue of these Chapter 11 Cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

3. The statutory and legal predicates for the relief requested herein are 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**”), and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

BACKGROUND

4. On the date hereof (the “**Petition Date**”), the Debtors filed voluntary petitions in the Court commencing these Chapter 11 Cases. The Debtors continue to manage and operate their businesses as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested and no committee has been appointed in these Chapter 11 Cases.

5. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these Chapter 11 Cases, is

set forth in detail in the First Day Declaration. Simultaneously herewith, the Debtors have filed a motion seeking to have these Chapter 11 Cases jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015(b).

DEBTORS' EMPLOYEE OBLIGATIONS

I. EMPLOYEE COMPENSATION AND BONUS PROGRAMS

A. Payroll and Ordinary Course Compensation

i. Employee Obligations

6. The Debtors' current workforce is comprised of approximately 1,750 full-time salaried and hourly employees (collectively, the "**Full-Time Employees**") and 7,190 part-time Employees (the "**Part-Time Employees**"), as well as approximately 320 employees employed by the Debtors on a seasonal basis (such seasonal employees, together with the Full-Time Employees and the Part-Time Employees, the "**Employees**"). None of the Debtors' Employees are union members. All Employees are paid on a weekly or bi-weekly payroll schedule (the "**Payroll**"). Paydays are on Friday.

7. The Debtors use Dayforce, a third-party payroll administrator, to support Payroll processing, which is funded by non-debtor affiliate SPARC Group Holdings, LLC ("**SPARC**"). As described in the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Continued Use of Cash Management System; (II) Authorizing Use of Prepetition Bank Accounts and Certain Payment Methods; (III) Authorizing Continued Performance of Intercompany Transactions in the Ordinary Course of Business; and (IV) Granting Related Relief* (the "**Cash Management Motion**"), filed contemporaneously herewith, the Payroll processing costs are part of the Shared Services (as defined in the Cash Management Motion) that the Debtors benefit from. As SPARC pays for the Debtors' share of monthly service fees owed to Dayforce, SPARC books an

intercompany receivable owing from the Debtors, thus increasing the SPARC Payable (as defined in the Cash Management Motion).

8. The Debtors' Payroll obligations are paid directly by SPARC, on behalf of the Debtors, to each Employee through direct deposit, pay card, or paper check. For each Payroll period, Dayforce processes Payroll from certain disbursement accounts funded by the Debtors with the amounts necessary to satisfy the Debtors' Payroll obligations. The Debtors (through SPARC) pay Dayforce approximately \$14,000.00 per month for this service.

9. The Debtors believe that, as of the Petition Date, approximately \$9 million was earned but remains outstanding on account of Employee Claims. The amount owed to any individual Employee on account of Employee Claims does not exceed \$15,150.00 (the "**Statutory Cap**"), except (as discussed below) with respect to certain Employees who are statutorily entitled to pay-out of their accrued but unused Paid Time Off (defined below) and severance. Pursuant to this Motion, the Debtors seek to pay all outstanding Employee Claims as of the Petition Date for accrued and unpaid wages and salaries (provided that no payment to an individual Employee on account of prepetition Employee Claims will exceed the Statutory Cap except as set forth herein), and Employee Administrator Obligations to Dayforce. For the avoidance of doubt, SPARC will pay all of the Employee Claims (as it has historically done in the ordinary course of the Debtors' business), and the Debtors seek to reimburse SPARC for the Employee Claims.

ii. *Supplemental Worker Obligations*

10. In addition, the Debtors supplement their workforce by retaining independent contractors and temporary workers (collectively, the "**Supplemental Workers**"), from time-to-time, whose services are procured indirectly through certain third-party staffing agencies. At any given time, the Debtors employ approximately five (5) to ten (10) Supplemental Workers. The independent contractors are paid through the Debtors' accounts payable system, while the

temporary workers are paid directly by the staffing agencies who, in turn, send invoices to the Debtors.

11. As of the Petition Date, the Debtors owed approximately \$55,000.00 in accrued but unpaid obligations on account of Supplemental Workforce Claims. The Debtors do not believe that any Supplemental Worker is individually owed, or has outstanding invoices, in excess of the Statutory Cap. By this Motion, the Debtors request authority to pay any and all prepetition Supplemental Workforce Claims in the ordinary course of business.

B. Retention Program

12. Prior to the Petition Date, the Debtors made payments to certain insiders and non-insiders through the implementation of a retention program in an effort to retain these critical employees for the duration of these Chapter 11 Cases and, in some instances, for the wind down that follows. Participants in the retention program were paid at the outset of its implementation and are required to remain Employees of the Debtors until their specified target end date. In the event applicable participants terminate their employment with the Debtors of their own accord, or are terminated for cause, prior to their target end date, they will be required to refund the entirety of their respective payments to the estates. For the avoidance of doubt, the retention program is described herein for disclosure purposes only, and the Debtors are not seeking any affirmative relief related to such program.

C. Store Closing Retention Bonus Program

13. Prior to the Petition Date, the Debtors offered a retention bonus program to certain non-insider full-time store managers and supervisors (collectively, the “**Retained Store Level Employees**”) in connection with the store closing sale process at each Retained Store Level Employee’s respective location (the “**Store Closing Retention Bonus Program**”). Retention of these Retained Store Level Employees is critical to minimizing any disruption that would otherwise

be triggered by the store closing process and successfully maximizing proceeds generated by the store closing sales. The Retained Store Level Employees are entitled to receive up to four (4) weeks of additional pay if they remain in their position with the Debtors through the end of the store closing sale at their respective locations. Each Retained Store Level Employee is entitled to receive two (2) weeks of normal salary if the employee remains at his or her designated store until the last day of the store closing sale being conducted at their location. The other two (2) weeks of pay is incentive based compensation dependent on achieving certain sales goals across all store closing sales in the aggregate.

14. As detailed in the First Day Declaration, the Debtors believe that this program is a critical component to the store closing strategy and, to the extent incentive pay is implicated, the success of the liquidation sales will more than compensate for the cash outlay to the Retained Store Level Employees. There are no outstanding prepetition amounts owed to the Retained Store Level Employees on account of the Store Closing Retention Bonus Program, which was offered to the applicable employees prior to the Petition Date, and the amount to be paid to any individual Retained Store Level Employee on account of the Store Closing Retention Bonus Program during these Chapter 11 Cases will not exceed \$9,000.00. Accordingly, the Debtors seek authority, but not direction, to continue the Store Closing Retention Bonus Program in the ordinary course for the duration of these Chapter 11 Cases.

II. EMPLOYEE EXPENSES

15. Prior to the Petition Date, the Debtors directly or indirectly reimbursed their Employees for certain expenses incurred in the scope of their employment on behalf of the Debtors (the “**Employee Expenses**”). The Employee Expenses are incurred in the ordinary course of the Debtors’ business operations and include, without limitation, expenses for meals, travel, automobile mileage, and other business-related expenses. All such expenses are incurred with the applicable

Employee's understanding that he or she will not be held personally responsible for these costs and that the amounts will be reimbursed or paid by the Debtors in accordance with the Debtors' reimbursement policies. In all cases, reimbursement is contingent on the Debtors' determination that the charges are for legitimate, reimbursable business expenses.

16. Most Employees initially incur the Employee Expenses using personal credit cards or funds and subsequently seek reimbursement from the Debtors. The Debtors manage the Employee Expenses through SAP Concur ("Concur"). These expenses are ordinary course expenses that the Employees incur in performing their job functions. The Debtors pay Concur approximately \$7,000.00 per quarter in administrative fees. As of the Petition Date, approximately \$20,000.00 is owing to the Employees on account of the Employee Expenses, and approximately \$20,000.00 is owing to Concur.

17. Absent authority to pay the prepetition and postpetition Employee Expenses, the Employees would be forced to bear the financial burden of the Debtors' business expenses. The Debtors therefore seek authority, but not direction, to pay all outstanding Employee Expenses, and to continue the foregoing policies with respect to all Employees during the pendency of these Chapter 11 Cases.

18. In addition to reimbursement of the Employee Expenses, the Debtors also provide certain Employees with corporate credit cards (the "Corporate Cards") issued by PNC Bank, N.A. for business expenses. On average over the last six (6) months, the Debtors paid PNC Bank, N.A. approximately \$110,000 per month in the aggregate on account of the Corporate Cards. Charges on the Corporate Cards are automatically loaded into the Debtors' online expense system. The Debtors will reimburse cardholders for approved expenses, who are then responsible for payment to the Corporate Card issuer. Any late fees associated with non-payment are the responsibility of

the cardholder. By this Motion, the Debtors seek authority, but not direction, to pay any prepetition obligations that may have accrued but have not yet been paid on account of the Corporate Cards.

III. TRUST FUND TAXES AND PAYROLL TAXES

19. The Debtors are required by law to withhold from the Employees' pay the Trust Fund Taxes, which include certain amounts related to, among other things, federal, state, local, and foreign income taxes and social security and Medicare taxes, for remittance to the appropriate federal, state, local, or foreign taxing authorities. The Debtors must then pay (i) Payroll Taxes from their own funds on account of social security and Medicare taxes and (ii) based upon a percentage of gross payroll, additional amounts for state and federal unemployment insurance. Historically, on a monthly basis, the Debtors remit approximately \$1.5 million in Employment Taxes.

20. As of the Petition Date, the Debtors estimate that the aggregate amount of accrued but unpaid Employment Taxes is approximately \$1.4 million, all of which will come due during the first thirty (30) days of these Chapter 11 Cases. Accordingly, by this Motion, the Debtors request authority, but not direction, to pay any unpaid prepetition Employment Taxes that have not yet been paid.

IV. EMPLOYEE BENEFITS

21. In the ordinary course of business, the Debtors provide certain of their Employees, directly or indirectly, with a number of Employee Benefits, including, but not limited to: (a) a range of medical, dental, vision, long and short-term disability, life and accidental death insurance coverage, COBRA benefits, flexible spending accounts and health savings accounts (collectively, the "**Health Care Programs**"); (b) vacation, holiday, sick, and other leave benefits (collectively the "**Paid Time Off and Other Leave Policies**"); (c) a 401(k) retirement savings plan (the "**Retirement Plan**"); and (d) under certain circumstances, severance benefits (collectively with the Health Care Programs, the Paid Time Off and Other Leave Policies, and the Retirement Plan,

the “**Employee Benefits Programs**”). Employee contributions for the Employee Benefits Programs, where applicable, are processed through payroll deductions from the participating Employees.

22. The Debtors’ share of the Employee Benefits Program are funded by non-debtor affiliate SPARC. As SPARC pays for the Health Benefit Program covering all employees under the SPARC umbrella (including the Debtors’ Employees), SPARC books an intercompany receivable owing from the Debtors, thus increasing the SPARC Payable (as defined in the Cash Management Motion).

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

A. Health Care Programs

24. *Medical, Dental, and Vision Insurance Programs.* For their Full-Time Employees, the Debtors, through their affiliation with SPARC, offer (a) a self-funded medical and prescription drug program (the “**Self-Insured Health Plan**”) to Full-Time Employees located outside the state of California, which is administered by Anthem Blue Cross (“**Anthem**”); (b) three HMO plan options (together with the Self-Insured Health Plan, the “**Health Plans**”) provided through Kaiser Foundation Health Plan, Inc. for Full-Time Employees located in the state of California; (c) a self-funded dental insurance program administered by Delta Dental Insurance Company (the “**Self-Insured Dental Plan**”, and together with the Self-Insured Health Plan, the “**Self-Insured Plans**”); and (d) a vision insurance program (collectively with the Health Plans and the Self-Insured

Dental Plan, the “**Health Benefits**”). The Debtors also offer continued health coverage under COBRA to eligible Employees. Employees make contributions in connection with the Health Benefits, which are withheld from their wages every Payroll cycle. SPARC bills the Debtors for their share of the Health Benefits, which is approximately \$16 million per year.³

25. As of the Petition Date, there are approximately 1,750 active Employees participating in the Self-Insured Plans. As Employees participating in the Self-Insured Plans incur medical and dental expenses above their deductible, the Debtors pay eighty percent (80%) of such expenses and the Employee pays the remaining twenty percent (20%), subject to certain adjustments depending on the type of service being provided. The total annualized spend related to the Self-Insured Plans, based on the Debtors’ most current enrollment data, is approximately \$9.1 million.

26. To support the Self-Insured Plans, the Debtors (through SPARC) pay Anthem approximately \$700,000 per month in administrative fees and Delta Dental Insurance Company approximately \$5,000.00 per month in administrative fees. The Debtors typically pay out approximately \$600,000 in annual claims under the Self-Insured Health Plan and approximately \$600,000 in annual claims under the Self-Insured Dental Plan. The Debtors’ cost of these claims is backstopped by a medical stop-loss policy (the “**Stop-Loss Policy**”) issued and administered by Anthem. The Stop Loss Policy reimburses the Debtors (through SPARC) for claims paid out over a \$500,000 deductible per individual and \$625,000 for the aggregating specific deductible. Although the cost of the Stop-Loss Policy is born by SPARC in the first instance, the Debtors share of premiums for the Stop-Loss Policy is approximately \$625,000.

³ Historically, the Debtors have increased the SPARC Payable owing to SPARC as they were billed for the Health Benefits. By this Motion and the Cash Management Motion, the Debtors seek authority, but not direction, to pay SPARC directly for their share of the costs associated with the Health Benefits.

27. As of the Petition Date, the Debtors estimate that approximately \$700,000 in the aggregate is currently due in connection with the Health Benefits. By this Motion, the Debtors seek authority to: (a) continue to provide the Health Benefits to eligible Employees in the ordinary course of business; (b) pay any prepetition costs related to the Health Benefits, including amounts owed to Anthem and on account of the Stop Loss Policy; and (c) pay any postpetition costs of the Health Benefits during the pendency of these Chapter 11 Cases.

28. *Life, Disability, and Related Insurance Coverage.* The Debtors provide Full-Time Employees with short-term and long-term disability insurance, accidental death and dismemberment insurance, and basic life insurance, which are offered through Voya Financial (“**Voya**”) (the “**Life and AD&D Insurance**”). The Life and AD&D Insurance costs the Debtors (through SPARC) approximately \$61,000.00 in the aggregate per month in premiums and administrative expenses. The Debtors seek authority, but not direction, to continue to pay in the ordinary course of business amounts associated with the Life and AD&D Insurance, including prepetition amounts.

29. *Flexible Spending and Health Savings Accounts.* The Debtors offer Full-Time Employees the use of flexible spending accounts (“**FSAs**”) and health savings accounts (“**HSAs**”) and, together with the FSAs, the “**FSA/HSA Benefits**”) for various health and dependent care expenses. The FSAs and the HSAs are administered through Health Equity, Inc. The Debtors seek authorization to maintain the FSA/HSA Benefits during the pendency of these Chapter 11 Cases.

B. Paid Time Off and Other Leave Policies

30. *Paid Time Off.* In the ordinary course of business, the Debtors provide various forms of paid time off to their Full-Time Employees, including vacation pay, sick pay, and holiday pay (“**Paid Time Off**”). Paid Time Off generally accrues on a monthly basis and the amount will differ based on years of service, level, and position held. Eligible Employees may schedule their Paid

Time Off in full or half-day increments and may also borrow Paid Time Off against their total annual grant, allowing an Employee to use Paid Time Off before it accrues. Accrued but unused Paid Time Off may be rolled over to the following calendar year, subject to a cap of five (5) days (unless otherwise required by law), which must be used by January 31 of the following year or will be forfeited. An Employee who is terminated or resigns from their position will forfeit any unused, accrued Paid Time Off, unless prohibited by law.

31. Accruals of Paid Time Off, however, are not a current cash payment obligation. As of the Petition Date, the Debtors estimate that approximately \$4.6 million in Paid Time Off has accrued. By this Motion, the Debtors seek authority, but not direction, to pay accrued but unpaid Paid Time Off as required under applicable law on a postpetition basis.

32. *Severance.* The Debtors do not maintain a formal severance policy for their Employees. However, due to recent reductions in the workforce in relation to the store closing sale process, certain of the Debtors' Employees may be entitled to severance payments under various state laws. Accordingly, the Debtors seek authority, but not direction, to pay any severance amounts that are required to be paid to their Employees under applicable state law.

33. *Other Forms of Paid and Unpaid Leave.* The Debtors provide certain other forms of paid and unpaid leave, including, for example, (a) leave under the Family Medical Leave Act, (b) time off for voting, (c) bereavement, and (d) other paid and unpaid leaves of absence for personal reasons, including those required by law (the "**Other Leave Policies**"). Importantly, these Other Leave Policies do not trigger incremental cash outlays beyond standard Payroll obligations. For the avoidance of doubt, no Employee will receive cash payments in excess of the Statutory Cap on account of the Paid Time Off and Other Leave Policies and the Employee Claims, in the aggregate, unless required under applicable state law.

C. Retirement Plan

34. The Debtors maintain the Retirement Plan, administered by Voya, through which qualified and participating Employees may defer a portion of their salary to help meet their financial goals and accumulate savings for their future in a 401(k) account. The Retirement Plan is funded by Employee and employer contributions. The Debtors (through SPARC) provide a match of one hundred percent (100%) of the first one percent (1%) of pay that the Employee contributes, and fifty percent (50%) of the next five percent (5%) that the Employee contributes, for a maximum match of three and a half percent (3.5%) of six percent (6%) of eligible income contributed by the Employee. The employer match vests on a two (2) year schedule with zero percent (0%) in the first year and increasing to one hundred percent (100%) after two (2) years. The Debtors (through SPARC) pay Voya approximately \$12,000.00 per month to administer the Retirement Plan. As of the Petition Date, the Debtors estimate that approximately \$3.3 million remains outstanding in connection with the Retirement Plan, including matching contributions and fees owed to SPARC on account of payments made to Voya.

35. Accordingly, the Debtors request authority, but not the direction, to pay outstanding amounts due and to continue to administer the Retirement Plan in the ordinary course of business.

V. WORKERS' COMPENSATION PROGRAM

36. Under the laws of various states, the Debtors are required to maintain workers' compensation insurance to provide their Employees with coverage for injury claims arising from or related to their employment with the Debtors. The Debtors maintain the Workers' Compensation Program through AIU Insurance Company and National Union Fire Insurance Company. The Debtors' annual cost of administering the Workers' Compensation Program is approximately \$2.4 million.

37. For the claims administration process in these Chapter 11 Cases to operate as efficiently as possible, and to ensure that the Debtors comply with state law, it is necessary that the Debtors obtain authority to continue to maintain the Workers' Compensation Program in the ordinary course of business, and to pay prepetition amounts related thereto, including, without limitation, any payments for workers' compensation claims, deductibles, retentions, premiums, and other amounts required in connection with the program as such amounts become due in the ordinary course during the pendency of these Chapter 11 Cases.

VI. DIRECTION TO BANKS

38. Finally, the Debtors seek an order authorizing the Banks to receive, process, honor, and pay all of the Debtors' prepetition checks and fund transfers on account of any Employee Obligations, and prohibiting the Banks from placing any holds on, or attempting to reverse, any automatic transfers to any account of an Employee or other party for Employee Obligations. The Debtors also seek an order authorizing them to issue new postpetition checks or effect new postpetition fund transfers on account of the Employee Obligations to replace any prepetition checks or fund transfer requests that may be dishonored or rejected.

RELIEF REQUESTED

39. The Debtors seek entry of the Proposed Orders authorizing, but not directing, the Debtors, in their sole discretion: (a) to pay the Employee Obligations in the ordinary course of business, subject to the caps set forth in the Interim Order and the Final Order, respectively; (b) to honor and continue in the ordinary course of business until further notice (but not assume) certain of the Employee Benefits and the Workers' Compensation Program; and (c) to the extent that any Employee Benefit is administered, insured, or paid through a third-party administrator or provider, to pay any Employee Administrator Obligations.

40. The Debtors also request that the Court authorize the Banks, when requested by the Debtors, in their discretion, to honor and process any checks or electronic transfers drawn on the Debtors' bank accounts to pay any 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 to make such payments. The Debtors further request that the Banks be authorized to rely on the Debtors' designation of any particular check or electronic transfer request as approved pursuant to this Motion.

BASIS FOR RELIEF

41. 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).

42. 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).

I. CAUSE EXISTS TO AUTHORIZE, BUT NOT DIRECT, THE DEBTORS, IN THEIR DISCRETION, TO PAY OR OTHERWISE HONOR THE EMPLOYEE OBLIGATIONS

43. The Debtors seek the relief requested herein because any delay in paying or otherwise honoring any of the Employee Obligations could severely disrupt the Debtors' relationship with, and irreparably impair the morale of, the Employees at a time when their continued dedication, confidence, cooperation, and services are most critical to the Debtors and the success of these Chapter 11 Cases. The Debtors face the risk that their ability to maximize the value of their estates may be severely jeopardized if the Debtors are not immediately granted authority to pay the Employee Obligations. Granting the relief requested in this Motion on the grounds set forth below will allow the Debtors to continue to operate with minimal disruption to their reorganization process.

44. The Debtors believe that a substantial portion, if not all, of the relief requested herein is within the statutory caps of sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. The Debtors, therefore, would be required to pay these claims in full before any of the Debtors' general unsecured obligations may be satisfied. *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, the Debtors submit that granting the relief requested herein will not prejudice general unsecured creditors.

45. Even if a particular claim is not entitled to priority, payment is nonetheless justified under section 105(a) of the Bankruptcy Code and the well-established “doctrine of necessity.” The Court’s power to utilize the doctrine of necessity in chapter 11 cases derives from the Court’s inherent equity powers and its statutory authority to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The United States Supreme Court first articulated the doctrine of necessity over a century ago in *Miltenberger v. Logansport Railway Company*, 106 U.S. 286 (1882), in affirming the authorization by the lower court of the use of receivership funds to pay pre-receivership debts owed to employees, vendors, and suppliers, among others, when such payments were necessary to preserve the receivership property and the integrity of the business in receivership. *See id.* at 309–14. The modern application of the doctrine of necessity is largely unchanged from the Court’s reasoning in *Miltenberger*. *See In re Lehigh & New Eng. Ry.*, 657 F.2d 570, 581–82 (3d Cir. 1981) (“[I]n order to justify payment under the ‘necessity of payment’ rule, a real and immediate threat must exist that failure to pay will place the [debtor’s] continued operation . . . in serious, jeopardy.”).

46. The doctrine of necessity permits the Court to authorize payment of certain prepetition claims prior to the completion of the reorganization process where the payment of such claims is necessary to the reorganization. *See In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) (stating that where the debtor “cannot survive” absent payment of certain prepetition claims, the doctrine of necessity should be invoked to permit payment); *see also In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (“[T]he court can permit pre-plan payment of a pre-petition

obligation when essential to the continued operation of the debtor.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (“[T]o justify payment of a pre-petition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the Chapter 11 process.”).

47. The Employees and Supplemental Workers perform a variety of critical functions for the Debtors, and their knowledge, skills, and service are essential to the success of the Debtors’ chapter 11 efforts. Without the continued service and dedication of the Employees and Supplemental Workers, it will be difficult, if not impossible, to continue operations, implement the store closing and going concern sale process, and otherwise maximize the value of the Debtors’ assets. Moreover, absent the requested relief, the Employees and Supplemental Workers would suffer great hardship and, in many instances, financial difficulties, because these monies and benefits are needed to enable them to meet their personal obligations. This would have a highly negative impact on workforce morale and likely would result in unmanageable performance issues or turnover, thereby, resulting in immediate and irreparable harm to the Debtors and their estates. The Debtors, therefore, submit it is necessary to pay and/or honor the prepetition Employee Obligations to maintain employee morale and a focused workforce during this critical time, which will allow the Debtors to avoid any inopportune interruptions to their efforts to maximize the value of their estates for the benefit of all stakeholders.

II. CAUSE EXISTS TO AUTHORIZE THE BANKS TO HONOR AND PROCESS THE DEBTORS’ PAYMENTS ON ACCOUNT OF THE EMPLOYEE OBLIGATIONS

48. The Debtors represent that they have sufficient funds to pay the amounts described herein in the ordinary course of business by virtue of expected cash flows from ongoing business operations and postpetition financing. As a result of the commencement of these Chapter 11 Cases and in the absence of an order of the Court providing otherwise, the Debtors’ checks and electronic

fund transfers in respect of the Employee Obligations may be dishonored or rejected by financial institutions. Under the Debtors' cash management system, the Debtors can readily identify checks or transfers as relating directly to payment of Employee Obligations. Accordingly, the Debtors believe that prepetition checks and transfers other than those for Employee Obligations will not be honored inadvertently. The Debtors submit that any Bank should be authorized to rely on the representations of the Debtors with respect to whether any check drawn or transfer request issued by the Debtors prior to the Petition Date should be honored pursuant to this Motion.

49. For the reasons set forth above, the Debtors submit that the relief requested herein is in the best interests of the Debtors, their estates, and their creditors, and, therefore, should be granted.

**BANKRUPTCY RULE 6003 HAS BEEN SATISFIED
AND BANKRUPTCY RULE 6004 SHOULD BE WAIVED**

50. Under Bankruptcy Rule 6003, the Court may grant a motion to "use . . . property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition" within 21 days after the commencement of a chapter 11 case to the extent "relief is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003. The Debtors believe an immediate and orderly transition into chapter 11 is critical to the success of these Chapter 11 Cases. As discussed in detail above and demonstrated by the First Day Declaration, immediate and irreparable harm would result if the relief herein is not granted. As set forth throughout this Motion, any delay in paying the Employee Obligations would be detrimental to the Debtors, their estates, and their creditors. Indeed, the Debtors' ability to operate their business with as little disruption as possible during these Chapter 11 Cases requires, in large part, an able and willing workforce, which the Debtors currently have in the Employees and Supplemental Workers. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule

6003 and, therefore, respectfully request that the Court approve the relief requested in this Motion on an emergency basis.

51. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[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 described above, the relief sought herein is necessary for the Debtors to operate their business without interruption, thereby preserving value for their estates. Accordingly, the Debtors respectfully request that the Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

RESERVATION OF RIGHTS

52. Nothing in this Motion shall be deemed: (a) an implication or admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of the Debtors’ or any other party in interest’s right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) a concession by the Debtors that any lien (contractual, common, statutory or otherwise) satisfied pursuant to this Motion is valid (and all rights to contest the extent, validity, or perfection or seek avoidance of all such liens are expressly reserved); (f) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (g) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors’ estates; (h) a waiver of the obligation of any party in interest to file a proof of claim; or (i) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. If the Court enters

any order granting the relief sought herein, any payment made pursuant to such order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

NOTICE

53. Notice of this Motion will be given to: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to Wells Fargo Bank, N.A. as Prepetition ABL Administrative Agent; (c) counsel to Pathlight Capital LP as Prepetition Term Loan Agent; (d) counsel to Simon Blackjack Consolidated Holdings, LLC as Prepetition Subordinated Loan Agent; (e) the creditors listed on the Debtors' consolidated list of thirty (30) creditors holding the largest unsecured claims against the Debtors; (f) the Banks; (g) Dayforce; (h) the United States Attorney for the District of Delaware; (i) the Internal Revenue Service; (j) the state attorneys general for states in which the Debtors conduct business; and (k) all parties entitled to notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

[Remainder of page intentionally left blank.]

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Orders granting the relief requested in this Motion and such other and further relief as may be just and proper.

Dated: March 17, 2025

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Kristin L. McElroy

Andrew L. Magaziner (No. 5426)

Robert F. Poppiti, Jr. (No. 5052)

Ashley E. Jacobs (No. 5635)

S. Alexander Faris (No. 6278)

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Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT A

Proposed Interim Order

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

In re:

F21 OPCO, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 25-10469 (____)

(Jointly Administered)

Ref: Docket No. ____

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO PAY AND
HONOR CERTAIN (A) PREPETITION WAGES, BENEFITS, AND OTHER
COMPENSATION OBLIGATIONS; (B) PREPETITION EMPLOYEE
BUSINESS EXPENSES; (C) BONUS PROGRAM OBLIGATIONS; AND
(D) WORKERS' COMPENSATION OBLIGATIONS; (II) AUTHORIZING
BANKS TO HONOR AND PROCESS CHECKS AND TRANSFERS RELATED
TO SUCH OBLIGATIONS; AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of the Debtors for entry of an interim order (this “**Interim Order**”), (a) authorizing the Debtors to, in accordance with their stated policies and in their discretion, (i) pay, honor, or otherwise satisfy certain of the Employee Obligations, including amounts and obligations related to the period prior to the Petition Date, and continue certain of their Employee Benefits in the ordinary course of business, and (ii) continue the Store Closing Retention Bonus Program and pay amounts related thereto to Retained Store Level Employees; (b) authorizing the Debtors to continue the Workers’ Compensation Program and honor obligations related thereto, regardless of when accrued; (c) authorizing the Banks to honor and process related checks and electronic transfers; and (d) granting related relief, all as more fully set forth in the Motion; and this Court having reviewed the Motion and the First Day Declaration; and

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: F21 OpCo, LLC (8773); F21 Puerto Rico, LLC (5906); F21 GiftCo Management, LLC (6412). The Debtors’ address for purposes of service in these Chapter 11 Cases is 110 East 9th Street, Suite A500, Los Angeles, CA 90079.

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

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 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 determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED on an interim basis, as set forth herein.
2. Upon entry of this Interim Order, the Debtors are authorized, but not directed, to pay (including to SPARC and any third parties that provide or aid in the monitoring, processing or administration of the Employee Obligations) and/or honor, in their sole discretion, the Employee Obligations as and when such obligations are due, in an amount not to exceed \$10.5 million in the aggregate on an interim basis; *provided, however*, that notwithstanding any other provision of this Interim Order, no payments to any Employee shall exceed the Statutory Cap set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code unless such amounts above the Statutory Cap are a result of cash payments for unpaid amounts under the Paid Time Off, Other Leave Policies, or severance payments that are required under applicable state law.
3. All objections to the entry of this Interim Order, to the extent not withdrawn or settled, are overruled.

4. The final hearing (the “**Final Hearing**”) on the Motion shall be held on [_____, 2025, at __: __.m] (prevailing Eastern Time). On or before [__: __.m.] (prevailing Eastern Time) on [_____, 2025, any objections or responses to entry of a final order on the Motion shall be filed with this Court and served on: (a) the Debtors, 110 East 9th Street, Suite A500, Los Angeles, CA 90079, Attn: Michael Brown (mbrown@thinkbrg.com); (b) the Debtors’ proposed counsel, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Andrew L. Magaziner, Esq. (amagaziner@ycst.com) and S. Alexander Faris, Esq. (afaris@ycst.com); (c) counsel to Wells Fargo Bank, N.A. in its capacity as Prepetition ABL Administrative Agent, Otterbourg P.C., 230 Park Avenue, New York, NY 10169, Attn: Chad Simon, Esq. (csimon@otterbourg.com) and Daniel Fiorillo, Esq. (dfiorillo@otterbourg.com); (d) counsel to Pathlight Capital LP in its capacity as Prepetition Term Loan Agent, Riemer & Braunstein LLP, Times Square Tower, Suite 2506, Seven Times Square, New York, NY 10036, Attn: Steven E. Fox, Esq. (sfox@riemerlaw.com) and Paul D. Bekker, Esq. (pbekker@riemerlaw.com); (e) counsel to Simon Blackjack Consolidated Holdings, LLC in its capacity as Prepetition Subordinated Loan Agent, (i) Choate Hall & Stewart LLP, Two International Place, Boston, MA 02110, Attn: Mark D. Silva, Esq. (msilva@choate.com), Rick Thide, Esq. (rthide@choate.com), and Hampton Foushee, Esq. (hfoushee@choate.com); and (ii) Pashman Stein Walder Hayden, P.C., 824 North Market Street, Suite 800, Wilmington, DE 19801, Attn: Joseph C. Barsalona, Esq. (jbarsalona@pashmanstein.com); and (f) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Jane M. Leamy, Esq. (jane.m.leafy@usdoj.gov). In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.

5. Subject to paragraph 2 of this Interim Order, the Debtors are authorized, but not directed, in their sole discretion, to honor and continue the Employee Benefits that were in effect as of the Petition Date; *provided, however*, that such relief shall not constitute or be deemed an assumption or an authorization to assume any of such Employee Benefits under section 365(a) of the Bankruptcy Code; *provided, further*, that the Debtors shall seek court approval, upon a motion on notice, of any modification that would implicate any portion of section 503(c) of the Bankruptcy Code.

6. The Debtors are authorized, but not directed, to continue the Workers' Compensation Program in the ordinary course of business and in accordance with the Debtors' prepetition policies and programs, and to pay any workers' compensation claims, deductibles, retentions, premiums, and other amounts required in connection with the Workers Compensation Program as such amounts become due in the ordinary course during the pendency of these Chapter 11 Cases, regardless of when accrued.

7. The Debtors are authorized, but not directed, to continue the Store Closing Retention Bonus Program in the ordinary course of business and in accordance with the program offered to applicable Employees prior to the Petition Date; *provided, however*, that no individual Retained Store Level Employee will receive payment in excess of \$9,000.00 on account of the Store Closing Retention Bonus Program during the pendency of these Chapter 11 Cases, and no "insiders" shall receive compensation under such program absent further order of this Court.

8. The Debtors may pay and remit any and all Trust Fund Taxes, whether these relate to the period prior to or after the Petition Date.

9. The Debtors are authorized to maintain the Corporate Cards in the ordinary course of business.

10. Nothing in the Motion or this Interim Order (including any actions taken or payments made by the Debtors pursuant thereof), is to be construed as: (a) an implication or admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion; (e) a concession by the Debtors that any lien (contractual, common, statutory or otherwise) satisfied pursuant to the Motion is valid (and all rights to contest the extent, validity or perfection or seek avoidance of all such liens are expressly reserved); (f) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (g) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (h) a waiver of the obligation of any party in interest to file a proof of claim; or (i) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. Nothing contained in this Interim Order shall be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid

11. The Banks shall be, and are, hereby authorized, when requested by the Debtors, to process, honor, pay, and, if necessary, reissue any and all checks or electronic funds transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the Debtors' accounts, whether those checks were presented before or after the Petition Date, provided that sufficient funds are available in such accounts to make the payments.

12. The Banks may rely on the Debtors' representations with respect to whether any check or other transfer drawn or issued by the Debtors before the Petition Date should be honored pursuant to this Interim Order, and the Banks shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Interim Order.

13. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, and to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored as a result of the commencement of these Chapter 11 Cases.

14. Nothing in this Interim Order shall be construed as binding on this Court or any other party-in-interest, or to establish the law of the case, with respect to whether an individual is or is not an insider within the meaning of section 101(31) of the Bankruptcy Code.

15. Nothing in this Interim Order shall authorize the Debtors to make any payments to or on behalf of "insiders" (as defined by section 101(31) of the Bankruptcy Code) that would be subject to section 503(c) of the Bankruptcy Code.

16. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Interim Order shall be effective and enforceable immediately upon entry hereof.

17. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied because the relief set forth in this Interim Order is necessary to avoid immediate and irreparable harm.

18. The Debtors are authorized and empowered to take all actions necessary or appropriate to implement the relief granted in this Interim Order.

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

EXHIBIT B

Proposed Final Order

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

In re:

F21 OPCO, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 25-10469 (___)

(Jointly Administered)

Ref: Docket Nos. ___ & ___

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO PAY AND
HONOR CERTAIN (A) PREPETITION WAGES, BENEFITS, AND OTHER
COMPENSATION OBLIGATIONS; (B) PREPETITION EMPLOYEE
BUSINESS EXPENSES; (C) BONUS PROGRAM OBLIGATIONS; AND
(D) WORKERS' COMPENSATION OBLIGATIONS; (II) AUTHORIZING
BANKS TO HONOR AND PROCESS CHECKS AND TRANSFERS RELATED
TO SUCH OBLIGATIONS; AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of the Debtors for entry of a final order (this “**Final Order**”), (a) authorizing the Debtors to, in accordance with their stated policies and in their discretion, (i) pay, honor, or otherwise satisfy certain of the Employee Obligations, including amounts and obligations related to the period prior to the Petition Date, and continue certain of their Employee Benefits in the ordinary course of business, and (ii) continue the Store Closing Retention Bonus Program and pay amounts related thereto to Retained Store Level Employees; (b) authorizing the Debtors to continue the Workers’ Compensation Program and honor obligations related thereto, regardless of when accrued; (c) authorizing the Banks to honor and process related checks and electronic transfers; and (d) granting related relief, all as more fully set forth in the Motion; and this Court having reviewed the Motion and the First Day Declaration; and this Court having

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: F21 OpCo, LLC (8773); F21 Puerto Rico, LLC (5906); F21 GiftCo Management, LLC (6412). The Debtors’ address for purposes of service in these Chapter 11 Cases is 110 East 9th Street, Suite A500, Los Angeles, CA 90079.

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

previously entered that certain *Interim Order (I) Authorizing the Debtors to Pay and Honor Certain (A) Prepetition Wages, Benefits, and Other Compensation Obligations; (B) Prepetition Employee Business Expenses; (C) Bonus Program Obligations; and (D) Workers' Compensation Obligations; (II) Authorizing Banks to Honor and Process Checks and Transfers Related to Such Obligations; and (III) Granting Related Relief* [D.I. ____] (the “**Interim Order**”); 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 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 determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED on a final basis, as set forth herein.
2. Upon entry of this Final Order, the Debtors are authorized, but not directed, to pay (including to SPARC and any third parties that provide or aid in the monitoring, processing or administration of the Employee Obligations) and/or honor, in their sole discretion, the Employee Obligations as and when such obligations are due, in an amount not to exceed \$16 million in the aggregate absent further order of this Court; *provided, however*, that notwithstanding any other provision of this Final Order, no payments to any Employee shall exceed the Statutory Cap set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code unless such amounts above the

Statutory Cap are a result of cash payments for unpaid amounts under the Paid Time Off, Other Leave Policies, or severance payments that are required under applicable state law.

3. All objections to the entry of this Final Order, to the extent not withdrawn or settled, are overruled.

4. Subject to paragraph 2 of this Final Order, the Debtors are authorized, but not directed, in their sole discretion, to honor and continue the Employee Benefits that were in effect as of the Petition Date; *provided, however*, that such relief shall not constitute or be deemed an assumption or an authorization to assume any of such Employee Benefits under section 365(a) of the Bankruptcy Code; *provided, further*, that the Debtors shall seek court approval, upon a motion on notice, of any modification that would implicate any portion of section 503(c) of the Bankruptcy Code.

5. The Debtors are authorized, but not directed, to continue the Workers' Compensation Program in the ordinary course of business and in accordance with the Debtors' prepetition policies and programs, and to pay any workers' compensation claims, deductibles, retentions, premiums, and other amounts required in connection with the Workers Compensation Program as such amounts become due in the ordinary course during the pendency of these Chapter 11 Cases, regardless of when accrued.

6. The Debtors are authorized, but not directed, to continue the Store Closing Retention Bonus Program in the ordinary course of business and in accordance with the program offered to applicable Employees prior to the Petition Date; *provided, however*, that no individual Retained Store Level Employee will receive payment in excess of \$9,000.00 on account of the Store Closing Retention Bonus Program during the pendency of these Chapter 11 Cases, and no "insiders" shall receive compensation under such program absent further order of this Court.

7. The Debtors may pay and remit any and all Trust Fund Taxes, whether these relate to the period prior to or after the Petition Date.

8. The Debtors are authorized to maintain the Corporate Cards in the ordinary course of business.

9. Nothing in the Motion, the Interim Order, or this Final Order (including any actions taken or payments made by the Debtors pursuant thereof), is to be construed as: (a) an implication or admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion; (e) a concession by the Debtors that any lien (contractual, common, statutory or otherwise) satisfied pursuant to the Motion are valid (and all rights to contest the extent, validity or perfection or seek avoidance of all such liens are expressly reserved); (f) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (g) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (h) a waiver of the obligation of any party in interest to file a proof of claim; or (i) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. Nothing contained in this Final Order shall be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

10. The Banks shall be, and are, hereby authorized, when requested by the Debtors, to process, honor, pay, and, if necessary, reissue any and all checks or electronic funds transfers,

including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the Debtors' accounts, whether those checks were presented before or after the Petition Date, provided that sufficient funds are available in such accounts to make the payments.

11. The Banks may rely on the Debtors' representations with respect to whether any check or other transfer drawn or issued by the Debtors before the Petition Date should be honored pursuant to this Final Order, and the Banks shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Final Order.

12. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, on account of the Employee Obligations as set forth herein, and to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored as a result of the commencement of these Chapter 11 Cases.

13. Nothing in this Final Order shall be construed as binding on this Court or any other party-in-interest, or to establish the law of the case, with respect to whether an individual is or is not an insider within the meaning of section 101(31) of the Bankruptcy Code.

14. Nothing in this Final Order shall authorize the Debtors to pay any payments to or on behalf of "insiders" (as defined by section 101(31) of the Bankruptcy Code) that would be subject to section 503(c) of the Bankruptcy Code.

15. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Final Order shall be effective and enforceable immediately upon entry hereof.

16. The Debtors are authorized and empowered to take all actions necessary or appropriate to implement the relief granted in this Final Order.

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