

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 (MFW)

(Jointly Administered)

Ref: Docket No. 472

DECLARATION OF SCOTT VOGEL IN SUPPORT OF
CONFIRMATION OF THE DEBTORS' AMENDED JOINT PLAN PURSUANT
TO CHAPTER 11 OF THE BANKRUPTCY CODE

I, Scott Vogel, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true and correct to the best of my knowledge, information and belief:

1. Since January 14, 2025, Paul Aronzon and I (together, the “**Independent Managers**”) have served as the two Independent Managers to the above-captioned debtors and debtors in possession (collectively, the “**Debtors**” or the “**Company**”).

2. I am over the age of 18 and submit this declaration (this “**Declaration**”) on behalf of the Debtors in support of the *Debtors' Amended Joint Plan Pursuant to Chapter 11 of the Bankruptcy Code* [D.I. 472] (as modified, amended, or supplemented from time to time in accordance with its terms, the “**Amended Plan**”).² Except as otherwise indicated, all statements set forth in this Declaration are based upon my personal knowledge, my opinions based on my

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); and 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 them in the Amended Plan or the solicitation version of the *Disclosure Statement for Debtors' Joint Plan Pursuant to Chapter 11 of the Bankruptcy Code* [D.I. 344] (the “**Disclosure Statement**”), as applicable. To the extent this Declaration references the “**Plan**”, it is in reference to the initial version of the Plan filed on March 28, 2025 [D.I. 123].



experience, my discussions with the Debtors' professional advisors, and/or my discussions with the Independent Managers' investigation counsel, Young Conaway Stargatt & Taylor, LLP (**"Young Conaway"**).

3. I am a graduate of Olin Business School at Washington University and hold a Master of Business Administration from the Wharton School at the University of Pennsylvania. I served as a Managing Director of the investment team at Davidson Kempner Capital Management for more than 14 years, where I primarily focused on investments in distressed debt, and frequently served on the boards and creditor committees of portfolio companies. Since 2016, I have been the Managing Member at Vogel Partners LLC, a private investment and advisory firm. I have served as a board member, including as an independent director, for numerous companies, including Avaya, CBL & Associates, BlockFi, Bumble Bee Foods, Neiman Marcus, PetSmart, and Robertshaw.

4. I provide this Declaration to primarily provide evidentiary support for the proposed Plan Releases (as defined below) set forth in the Amended Plan. I am authorized to submit this Declaration on behalf of the Debtors, including with respect to matters exclusively related to the Investigation (as defined below) conducted by the Independent Managers, as further discussed herein. If called upon to testify, I would and could testify competently to the facts set forth in this Declaration.

I. Appointment of the Independent Managers

5. On January 14, 2025, it is my understanding that the operating agreement of Debtor F21 OpCo, LLC was amended and restated to modify the management structure of the Company to provide that the Company be managed by a Board of Managers (the **"Board"**). At that time, the Independent Managers were appointed to serve on the Board.

6. Among other things, the Independent Managers were vested with (a) the power and authority of the Board to oversee certain powers, responsibilities and obligations in connection with a potential financing, sale, reorganization, recapitalization, strategic or other similar transactions involving the Company and/or its subsidiaries; and (b) the full and exclusive power and authority to: (x) oversee, and engage professionals to undertake, an independent investigation of potential claims and causes of action that the Debtors or their estates may have against the Company's insiders or secured lenders, including any person or entity proposed to be released under a chapter 11 plan of liquidation (collectively, the "**Potential Causes of Action**"); and (y) determine what actions, if any, should be taken on account of any such Potential Causes of Action.

II. The Board's Independent Investigation & Committee Settlement

7. Article VIII.B of the Amended Plan contains releases by the Debtors (the "**Debtor Release**") of certain Released Parties.³ Before agreeing to the Debtor Release contemplated by the Plan, as initially proposed, and in the interest of exercising our sound business judgment, the Independent Managers directed their independent counsel, Young Conaway, to conduct an investigation under our supervision (the "**Investigation**"). Through the Investigation, Young Conaway reviewed and analyzed potential colorable, valuable, or actionable Potential Causes of Action that may exist against the Debtors' current and former managers and officers (the "**D&Os**"), secured lenders, and insiders, including certain entities affiliated with the Company,

³ "Released Party" means collectively, each of, and in each case solely in its capacity as such: (a) each Debtor; (b) each of the SPARC Parties; (c) Distribution Co. and the Plan Administrator; (d) each Company Party; (e) the Agents; (f) each Consenting Creditor; (g) all Holders of Claims that opt into the releases set forth in Article VIII.C of the Plan; (h) all ABL Lenders; (i) all Term Loan Lenders; (j) all Holders of Subordinated Loan Claims; and (k) with respect to each Person or Entity listed or described in any of the foregoing (a) through (j), each such Person's or Entity's Related Parties (other than the Debtors in the case of the SPARC Parties).

such as SPARC⁴, Simon⁵, ABG⁶, and Brookfield⁷, which are direct or indirect holders of equity interests in the Debtors (collectively with the D&Os, the “**Insiders**”).

8. In conducting the Investigation, Young Conaway, at the Board’s direction, gathered and analyzed a broad array of information to assess whether the Debtors maintained potentially colorable claims against the Insiders. Young Conaway reviewed approximately 700 documents, including, among other things, a subset of the Debtors’ leases and documentation summarizing pertinent terms of leases across the Debtors’ lease portfolio; applicable credit agreements to which the Debtors are a party; documentation related to management fees charged to the Debtors by SPARC Group LLC (but never paid); documentation pertaining to a dividend issued to SPARC Group Holdings LLC in 2021 (the “**2021 Dividend**”); the licensing arrangement entered into with an ABG subsidiary as a result of, and in connection with, the prior bankruptcy (the “**Licensing Arrangement**”), which previously governed the Debtors’ use of material intellectual property; documents related to, and the facts and circumstances of, the SPARC Acquisition; the Debtors’ financial statements; organizational documents of the Debtors and their affiliates; and other material contracts. In addition, Young Conaway conducted comprehensive interviews of eleven (11) individuals, including then-current and former officers, managers, and advisors of the Debtors.

⁴ “**SPARC**” shall refer to the “**SPARC Parties**”, as defined in the Amended Plan.

⁵ Various Simon (entities were connected to this ownership structure and other related transactions, including Simon Blackjack Consolidated Holdings, LLC, Simon JCP Holdings, LLC, Simon Property Group, Inc., and Simon Property Group, L.P. As such, all affiliated entities shall be referred to herein as “**Simon**”).

⁶ Various ABG (as defined below) entities were connected to this ownership structure and other related transactions, including ABG-Aero, LLC, ABG Holdings LLC, ABG Intermediate Holdings 2 LLC, and F21 IPCo, LLC. As such, all affiliated entities shall be referred to herein as “**ABG**”.

⁷ Various Brookfield (as defined below) entities were connected to this ownership structure and other related transactions, including BPG Retail Holdings I LLC. As such, all affiliated entities shall be referred to herein as “**Brookfield**”.

9. Through the Investigation, the Board focused primarily on, among other things, (a) the basis for the SPARC Payable, a general unsecured claim which the Debtors estimated to be approximately \$338 million as of the Petition Date, (b) the leases which governed the Debtors' occupancy at premises owned by Simon and Brookfield prior to such leases being rejected and subject premises surrendered to applicable landlords, (c) the Licensing Arrangement, (d) the 2021 Dividend, and (e) the SPARC Acquisition (collectively, the "**Central Focus**"). In addition to the Central Focus, Young Conaway analyzed, among other Potential Causes of Action, actual fraudulent transfer, constructive fraudulent transfer, insider fraudulent transfer, preferential transfer, breach of fiduciary duty, breach of contract, unjust enrichment, and unlawful distribution.

10. The Board regularly communicated with Young Conaway, BRG, and RCS Real Estate Advisors prior to concluding its Investigation and asked for and received additional information throughout the process.

11. At the conclusion of Young Conaway's inquiry, Young Conaway presented the Board with a privileged report summarizing Young Conaway's analysis of, among other things, the Central Focus. Upon receiving Young Conaway's analysis and meeting multiple times with Young Conaway, the Board determined that there were no colorable or valuable claims held by the Debtors against any Insiders as a result of the prepetition conduct of such parties. The Board similarly determined that there were no actionable or colorable claims against the Debtors' secured lenders.

12. Nonetheless, as detailed in the initial Disclosure Statement filed on March 28, 2025, given other considerations relevant to these Chapter 11 Cases, including the overall anticipated recovery for general unsecured creditors and, primarily, the liquidating context of these proceedings, the Board determined that it was appropriate to secure suitable consideration in return

for the Debtor Release that was, ultimately, provided for in the Plan with respect to the Released Parties, including the SPARC Parties and other Insiders. Moreover, the Board determined that, in addition to the ABL Lenders which had agreed to carveout certain collateral for the benefit of general unsecured creditors, as discussed below, the Term Loan Lenders and the Subordinated Loan Lenders were both entitled to the Debtor Release set forth in the Plan given their respective agreement, as memorialized in the PSA and Plan, to waive their claims against the Debtors, thereby allowing general unsecured creditors to realize any recovery through the Plan.

13. The Board instructed Young Conaway to negotiate with the SPARC Parties and obtain consideration that the Board would deem sufficient to grant releases to such parties under the facts and circumstances of these proceedings. After multiple rounds of good-faith, arms-length negotiations, on March 27, 2025, the Debtors and the SPARC Parties agreed that, in exchange for the releases contemplated in the Plan, SPARC Group LLC would unconditionally waive its right to any recovery on account of 75% of the SPARC Payable upon the Effective Date. The Board actively participated in these negotiations and always acted on an informed basis, regularly receiving updates from Young Conaway and BRG with respect to these discussions. Indeed, this agreed upon amount was the culmination of extensive negotiation between the parties. Importantly, when approved by the Board in March 2025, the SPARC Settlement reduced the Debtors' anticipated General Unsecured Claims pool by approximately 37.5%, thereby increasing recoveries for other Holders of Allowed General Unsecured Claims in a material manner.

14. Two days before the Plan was filed, the Official Committee of Unsecured Creditors (the "Committee") was appointed. It is my understanding that the Committee and its advisors devoted extensive resources conducting a parallel investigation into, among other things, the Potential Causes of Action. It is my further understanding that, in connection therewith, the

Committee's advisors made significant document requests on the Debtors, the SPARC Parties, and the Debtors' secured lenders in an effort to conduct a thorough and exhaustive investigation into any claims or causes of action that the estates may hold against, among others, the Insiders and the Debtors' secured lenders. This document production included email correspondence, which Young Conaway similarly reviewed prior to producing to the Committee. Young Conaway consistently updated the Board with respect to the Committee's demands, inquiries and, ultimately, its conclusions.

15. It is my understanding that at the time that the Plan was approved for solicitation purposes on May 12, 2025, the Committee did not yet support the Plan, and its advisors had not yet made recommendations to the Committee with respect to the Plan or, in particular, the propriety of the Debtor Release proposed thereby. Shortly thereafter, however, it is my understanding that the Committee, the ABL Agent (on behalf of the ABL Lenders) and the SPARC Parties engaged in multiple rounds of good faith negotiations regarding the Plan over the course of many weeks. The Board remained fully informed as these discussions unfolded.

16. As a result of the negotiations had between the Debtors, the Committee, the SPARC Parties and the ABL Agent (on behalf of the ABL Lenders) (collectively, the "**Settling Parties**"), it is my understanding that the Settling Parties agreed to revise the Plan pursuant to a settlement agreement (the "**Committee Settlement**") memorialized in the Amended Plan. As a result of the Committee Settlement, the Debtor Release in the Amended Plan remains unchanged, but the consideration received by the Committee, on behalf of its constituents, has materially improved. My understanding is that one component of that consideration reflects the SPARC Parties' agreement to waive the entirety of the SPARC Payable, thereby reducing the anticipated General Unsecured Claims pool by approximately fifty percent (50%). It is my understanding that the

Committee did not identify any colorable claims against the Insiders, including the SPARC Parties, that, if successfully prosecuted, would result in a higher or better recovery for Holders of Allowed General Unsecured Claims beyond what is currently captured in the Amended Plan and described in more detail in the confirmation brief submitted by the Debtors simultaneously herewith.

17. Based upon the foregoing, including the results of the Investigation and the Committee's conclusions reached at the culmination of its own independent investigation into the Potential Causes of Action, as well as my professional experience, I believe that the Debtor Release is fair, equitable, appropriate, and warranted under the circumstances. Moreover, given the consideration extracted by the Committee as part of the Committee Settlement, which was given in exchange for, among other things, preservation of the Debtor Release, I believe that such Debtor Release is in the best interests of the Debtors and their stakeholders.

III. The Plan Releases

18. In addition to the Debtor Release, Article VIII.E contains consensual releases granted by certain third parties, including Holders of Claims that opted into such release (the **"Third-Party Release"** and together with the Debtor Release, the **"Plan Releases"**).⁸

19. In my view, and as further summarized herein, the Plan Releases are appropriate because, among other things, each Released Party provided integral support to the Debtors in connection with these Chapter 11 Cases, has facilitated the Debtors' efficient and successful wind down and liquidation, and/or has provided appropriate consideration to the estates for such release, as demonstrated by the Committee's support for the Amended Plan. Moreover, it is my understanding that the Third-Party Release is fully consensual, as it is only being granted by

⁸ "Releasing Parties" means, collectively, each of, and in each case in its capacity as such: (a) each Debtor; (b) Distribution Co. and the Plan Administrator; (c) each Company Party; (d) the Agents; (e) each Consenting Creditor; (f) all Holders of Claims that opt into the releases set forth in Article VIII.C of the Plan; (g) all ABL Lenders; (h) all Term Loan Lenders; and (i) all Holders of Subordinated Loan Claims.

Holders of Claims that opted into such release (as is the case for Holders of General Unsecured Claims) or otherwise agreed to provide mutual releases to the Debtors and the other Releasing Parties pursuant to and/or in connection with negotiation of the terms of the PSA and the Plan (as is the case for the other Releasing Parties).

A. The Debtor Release

20. As described above, I believe that the Debtors have exercised their sound business judgment in granting the Debtor Release under the Amended Plan because such release is well-informed, fair, reasonable, and in the best interests of the Debtors' estates. The Debtor Release—which initially did not include the SPARC Parties at the time the PSA was executed and the Investigation remained pending—was a critical component of the PSA negotiated by and between the Debtors and the Consenting Creditors prior to the Petition Date, which allowed the Debtors to commence these Chapter 11 Cases with sufficient access to cash collateral, and an actionable strategy and path to an efficient and orderly wind down of their operations. Moreover, without the concessions made by each Consenting Creditor in connection with the PSA, the Debtors would not have been able to initiate these Chapter 11 Cases with a confirmable proposed Plan that has always contemplated a recovery for out-of-the-money Holders of Allowed General Unsecured Claims.

21. With respect to the Insiders and the SPARC Parties, in particular, such parties participated in the Debtors' store closing and marketing processes, facilitated the orderly wind down of the Debtors' operations, provided critical support for the Debtors and their advisors, and/or provided appropriate consideration in exchange for the Debtor Release, particularly when considered in the context of the Investigation's conclusions. Further, I believe that the Committee's conclusions reaffirm that the Board's decision to grant the Debtor Release is appropriate, and such Debtor Release brings warranted finality to these chapter 11 proceedings.

Based upon the record of these Chapter 11 Cases and my extensive experience conducting similar inquiries into prepetition insider and third-party conduct, I believe that the Debtor Release, which was approved at the conclusion of a thorough Investigation and is now supported by the Committee, constitutes a sound exercise of the Debtors' business judgment, is consistent with releases that are customary in transactions of this kind where no colorable claims against the Released Parties have been identified or are anticipated to generate recovery beyond that captured in the Amended Plan, is fair and reasonable, and is in the best interests of the Debtors and their estates.

B. The Third-Party Release

22. It is my understanding that the Third-Party Release is appropriately tailored and will only bind parties that have been provided notice of, and affirmatively consented to, the Third-Party Release. I understand that the Third-Party Release is applicable only to the "Releasing Parties," which includes: (a) each Debtor; (b) Distribution Co. and the Plan Administrator; (c) each Company Party; (d) the Agents; (e) each Consenting Creditor; (f) all Holders of Claims that opt into such release; (g) all ABL Lenders; (h) all Term Loan Lenders; and (i) all Holders of Subordinated Loan Claims. Accordingly, as it relates to Holders of General Unsecured Claims in particular, the Third-Party Release only applies with respect to Holders that took affirmative action to evidence their consent to the Third-Party Release by opting in on the Ballot that they submitted in connection with Plan voting. All other Releasing Parties otherwise agreed to provide mutual releases to the Debtors and the other Releasing Parties pursuant to and/or in connection with negotiation of the terms of the PSA and the Plan.

23. Accordingly, for the above reasons, I believe that the Debtors have a good-faith basis for including the consensual Third-Party Release in the Plan and such release satisfies all applicable requirements of the Bankruptcy Code.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: June 23, 2025

/s/ Scott Vogel

Scott Vogel
Independent Manager