

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

In re:) Chapter 11
)
F21 OPCO, LLC, <i>et al.</i> ,) Case No. 25-10469 (MFW)
)
Debtors. ¹) (Jointly Administered)
)
) Hearing Date: July 31, at 2:00 p.m. EST
) Objection Deadline: July 24, 2025 at 4:00 p.m. EST

**MOTION OF LANETTE SULLIVAN FOR ORDER GRANTING
RELIEF FROM THE AUTOMATIC STAY AND/OR PLAN INJUNCTIONS**

Lanette Sullivan (“Movant”), by and through undersigned counsel, hereby moves this Court, (the “Motion”), pursuant to section 362(d) of title 11 of the United States Code, for entry of an order modifying the automatic stay of 11 U.S.C. §362(a) and/or the injunctions (the “Plan Injunctions”) established by the Findings of Fact, Conclusions of Law, and Order Confirming the Debtors’ Amended Joint Plan Pursuant to Chapter 11 of the Bankruptcy Code [Docket No. 493] (the “Confirmation Order”) to allow Movant to prosecute her personal injury claims against F21 OPCo, LLC, d/b/a Forever 21 Retail, Inc. and a/k/a Forever 21, together with its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) to judgment outside bankruptcy court and satisfy any award or other resolution she may obtain against the Debtors’ applicable insurance policies and any other responsible individual or entity.

In support of this Motion, the Movant respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334.

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. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. This is a core proceeding pursuant to 28 U.S.C. § 157(b).
4. The statutory predicates for the relief requested herein are Sections 362 of the Bankruptcy Code and Rule 4001(d) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

BACKGROUND

5. Prior to the Petition Date, on September 14, 2024, Movant suffered personal injuries at Debtors’ Forever 21 store located at 7007 Friars Road Rd. Ste. 1025, San Diego, CA.
6. Upon information and belief, the Debtors are covered by insurance policies applicable to Movant’s claims.
7. Prior to entry of the Confirmation Order, on April 22, 2025, Movant timely filed a proof of claim in Debtors’ case. *See* filed proof of claim No. 519.

BASIS FOR RELIEF REQUESTED

8. Through this Motion, Movant seeks the entry of an order pursuant to section 362(d) of the Bankruptcy Code and 4001 of the Federal Rules of Bankruptcy Procedure, granting relief so that Movant may prosecute her claims to judgment outside bankruptcy court and satisfy any award or other resolution she may obtain against the Debtors’ applicable insurance policies and any other responsible individual or entity.
9. Section 362(d)(1) of the Bankruptcy Code provides:
 - (d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying or conditioning such stay....
 - (1) For cause, including lack of adequate protection of an interest in property of such party in interest.

11 U.S.C. § 362(d)(1). The term “cause” is not defined in the Code, but rather must be determined on a case-by-case basis. *In re Rexene Prods. Co.*, 141 B.R. 547, 576 (Bankr. D. Del. 1992) (internal citations and quotations omitted). “Cause is a flexible concept and courts often...examin[e] the totality of the circumstances to determine whether sufficient cause exists to lift the stay.” *In re SCO Group, Inc.*, 395 B.R. 852, 856 (Bankr. D. Del. 2007).

10. Courts regularly follow the logic of the intent behind § 362(d), which is that it is often appropriate to allow litigation to proceed in a non-bankruptcy forum, if there is no prejudice to the estate, “in order to leave the parties to their chosen forum and to relieve the bankruptcy court from duties that may be handled elsewhere.” *In re Tribune Co.*, 418 B.R. 116, 126 (Bankr. D. Del. 2009)(quoting legislative history of § 362(d)) (internal citations omitted).

11. As this Court has explained:

The legislative history indicates that cause may be established by a single factor such as “a desire to permit an action to proceed in another tribunal,” or “lack of any connection with or interference with the pending bankruptcy case.”

The legislative history to Section 362(d)(1) emphasizes the section’s applicability to proceedings in another tribunal. “It will often be more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from any duties that may be handled elsewhere.”

Rexene Prods., 141 B.R. at 576 (quoting H.R. Rep. No. 95-595, 95th Cong., 1st Sess., 343-344 (1977)).

12. Courts also generally lift the stay to allow personal injury actions to proceed in state court where the Debtor has liability coverage for defense costs and any resulting judgment. See *Matter of Holtkamp* (7th Cr. 1982 669 F.2d. 505, 508). In *Holtkamp* the court held that allowing a personal injury action against the debtor to proceed did not bar the debtor where the debtor’s insurance company had “assumed full financial responsibility for defending that litigation.” See also, *Foust v. Munson S.S.*

Lines, (1936) 229 U.S. 77, 87-88, in which the court allowed a wrongful death action against a bankrupt defendant to proceed despite the stay, stating that plaintiff was “entitled to maintain an action against the insurer for the amount of her judgment but not exceeding the amount of insurer’s liability to the debtor under the policy.” See also, *In re Adolf Gobel, Inc.*, 89 F.2d 171 (2d Cir.1937); *In re Winterland*, 101 B.R. 547 (C.D. Ill 1988); *In re Honosky*, 6 B.R. 667, 669 (Bankr.S.D.W.Va.1980).

13. Courts in this District rely upon a three-pronged balancing test in determining whether “cause” exists for granting relief from the automatic stay to continue litigation:

(1) prejudice to the estate or the debtor, (2) hardship to the moving party resulting from maintenance of the stay weighed against hardship to the debtor, and (3) probability of success of the moving party on the merits. *Trump Entm’t Resorts, Inc.*, 526 B.R. 116, 120-21 (Bankr. D. Del. 2015) (citing *Izzrelli v. Rexene Prods. Co. (In re Rexene Prods. Co.)*, 141 B.R. 574, 576 (Bankr. D. Del. 1992)).

14. Here, the facts weigh in Movant’s favor on each of these three prongs. First, the Debtors will not suffer prejudice should the stay be lifted because Movants’ personal injury action will proceed outside of bankruptcy court where the Debtors have liability coverage for defense costs and any resulting judgment.

15. Furthermore, to the extent the Debtors’ liability to the Movants is covered by insurance policies, any recovery by Movants will not affect or in any way prejudice the Debtor’s estate. See *In re 15375 Memorial Corp.*, 382 B.R. 652 687 (Bankr. D. Del 2008), rev’d on other grounds, 400 B.R. 420 (D. Del. 2009) (“[W]hen a payment by an insurer cannot inure to the debtor’s pecuniary interest, then that payment should neither enhance nor decrease the bankruptcy estate,” (quoting *In re Edgeworth*, 993 F.2d 51, 55-56 (5th Cir. 1993))); see also *In re Allied Digital Tech Corp.*, 306 B.R. 505, 510 (Bankr. D. Del. 2004) (ownership by a bankruptcy estate is not necessarily determinative of

the ownership of the proceeds of that policy). “[W]hen the debtor has no legally cognizable claims to the insurance proceeds, those proceeds are not the property of the estate.” *In re Edgeworth*, 993 F.2d 51,55-56 (5th Circ. 1993).

16. Second, the Movant will face substantial hardship if the stay is not lifted. The Movant is a resident of California and the events which form the basis of Movant’s claims occurred exclusively in California. If the Movant is forced to litigate his claims in Delaware, movant would incur the increased expense of bringing himself, witnesses, and physical evidence to Delaware. “[O]ne of the primary purposes in granting relief from the stay to permit claim liquidation is to economize judicial resources.” *In re Peterson*, 116 B.R. 247, 250 (D. Colo. 1990). Here, judicial economy would be served by lifting the automatic stay and allowing Movant’s claims to be liquidated in the forum where they are presently postured to be adjudicated quickly. Moreover, the Debtors will not suffer any hardship if the Movant’s claims are allowed to proceed. Movant’s claims are personal injury claims which do not present any factual or legal issues which will impact or distract the Debtors, whose Amended Joint Plan Pursuant to Chapter 11 of the Bankruptcy Code has already been confirmed.

21. Third, the likelihood of success on the merits prong is satisfied, as “even a slight probability of success on the merits may be sufficient to support lifting an automatic stay.” *In re Continental Airlines, Inc.*, 152 B.R. 420, 426 (D. Del. 1993). This prong also weighs heavily in Movant’s favor. In addition, this Court has broad jurisdiction to supervise the administration of claims, but claims arising from personal injury are expressly excluded. 28 U.S.C. § 157(b)(5). Therefore, the usual purpose of providing a “central forum to adjudicate claims against the Debtors,” see, e.g., *15375 Memorial Corp. v. Bepco, LP (In re 15375 Memorial Corp.)*, 589 F.3d 605, 622 (3rd Cir. 2009), does not apply to Movant’s claims.

22. When weighing the above factors, the Court should lift the automatic stay and/or grant relief from the Plan Injunctions to permit Movant to prosecute Movant's claims against the Debtor(s) to judgment in state court and to satisfy any award or other resolution she may obtain against the Debtor(s) from the proceeds of any applicable insurance policies.

23. Movant believes that relief granted in connection with this Motion will have no meaningful effect on the administration of these cases and Movant respectfully submits that any order granting this Motion should be effective immediately upon its entry, notwithstanding the fourteen (14) day stay contemplated in Fed.R.Bankr.P. 4001(a)(3).

CONCLUSION

WHEREFORE, the Movant respectfully requests entry of an Order in substantially the form attached, and for such further additional relief as may be just and proper under the circumstances.

DATED: July 17, 2025

BY: James Tobia
James Tobia (#3798)
The Law Office of James Tobia, LLC
1716 Wawaset Street
Wilmington, DE 19806
(302) 655-5303
Attorney for Movant

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In re:) Chapter 11
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Debtors. ¹) (Jointly Administered)
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) Hearing Date: July 31, at 2:00 p.m. EST
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**NOTICE OF MOTION OF LANETTE SULLIVAN FOR ORDER GRANTING
RELIEF FROM THE AUTOMATIC STAY AND/OR PLAN INJUNCTIONS**

PLEASE TAKE NOTICE that on July 17, 2025, Lanette Sullivan (“Movant”), by and through undersigned counsel filed the *Motion of Lanette Sullivan for Order Granting Relief from the Automatic Stay and/or Plan Injunctions* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

PLEASE TAKE FURTHER NOTICE that if you oppose the Motion or if you want the court to consider your views regarding the Motion, you must file a written response with the Court detailing your objection or response by **July 24, 2025, at 4:00 p.m. (ET)**. You must also serve a copy of your response upon undersigned counsel.

PLEASE TAKE FURTHER NOTICE that a hearing to consider the Motion will be held on July 31, at 2:00 p.m. before the Honorable Mary F. Walrath, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th floor, courtroom No. 4, Wilmington, Delaware 19801 (the “Hearing”).

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.

PLEASE TAKE FURTHER NOTICE that if you fail to respond in accordance with this notice, the Bankruptcy Court may grant the relief requested in the Motion without further notice or hearing.

The hearing date specified above may be a preliminary hearing or may be consolidated with the final hearing, as determined by the Court.

The attorneys for the parties shall confer with respect to the issues raised by the Motion in advance for the purpose of determining whether a consent judgment may be entered and/or for the purpose of stipulating to relevant facts such as value of the property, and the extent and validity of any security instrument.

DATED: July 17, 2025

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F21 OPCO, LLC, *et al.*,) Case No. 25-10469 (MFW)
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Debtors.¹) (Jointly Administered)
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) **Re: _____**

**[PROPOSED] ORDER GRANTING MOTION OF LANETTE
SULLIVAN FOR ORDER GRANTING RELIEF FROM THE
AUTOMATIC STAY AND/OR PLAN INJUNCTIONS**

Upon consideration of the *Motion of Lanette Sullivan for Order Granting Relief from the Automatic Stay and/or Plan Injunctions* (the “Motion”), it is hereby ORDERED that:

1. The Motion is GRANTED as set forth herein.
2. The Movant² is granted relief from the automatic stay pursuant to section 362 of the Bankruptcy Code and relief from the Plan Injunctions for the sole and exclusive purpose of allowing the Movant to liquidate the Movant’s claims (collectively, the “Asserted Claim”) outside the Bankruptcy Court, including through prosecution of litigation in state court (the “State Court Action”) against the Debtors and any other individuals or entities, including any subsequent appeals, and to enforce judgment, including any alternative dispute resolution award or settlement, obtained on account of the Asserted Claim in the State Court Action (a “Judgment”) solely against any available proceeds under the Debtors’ applicable insurance policies, if any (such policies, as applicable, the “Insurance Policies”).

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 not defined herein shall have the meanings ascribed to them in the Motion.

3. Nothing in this Order is intended or shall be deemed to: (i) impair, modify, limit or expand the rights and duties of the Movant or the Debtors, if any, under the Insurance Policies; (ii) alter, amend or otherwise modify the terms and conditions of the Insurance Policies or any related agreements; (iii) relieve the Debtors of any of their obligations to any insurer under the Insurance Policies and any related agreements; (iv) create or permit a direct right of action by the Movant against any of the Debtors' insurers under the Insurance Policies; (v) preclude or limit, in any way, the rights of any insurer to contest and/or litigate the existence, primacy and/or scope of available coverage under the Insurance Policies or to otherwise assert any defenses to coverage; (vi) constitute a determination or admission that coverage exists with respect to the Asserted Claim or the State Court Action; (vii) be a stipulation, agreement, warranty, or admission by the Debtors or their estates that (a) the Debtors or their estates are liable to the Movant for any amount or (b) the Asserted Claim and any related damages asserted by the Movant are covered, in whole or in part, under any of the Insurance Policies; or (viii) create a duty or obligation on the part of the Debtors and their estates, and any agents, attorneys, employees or other representatives thereof, to defend against the Asserted Claim or the State Court Action or to incur any costs (including, without limitation, on account of any self-insured retentions under the Insurance Policies) in connection therewith.

4. Except as provided for herein, the provisions of section 362 of the Bankruptcy Code, including, without limitation, the provisions thereof prohibiting execution, enforcement or collection of any Judgment, shall remain in full force and effect. Neither the Movant, nor any of the Movant's agents, attorneys, employees or other representatives or any person or entity claiming by or through the Movant, shall ever attempt to cause any action to be taken to collect any portion of any Judgment from the assets or properties of the Debtors and their estates other than from any

available proceeds under the Insurance Policies. The Movant waives and releases any rights to recover from the assets or property of the Debtors and their estates other than from any available proceeds under the Insurance Policies, and any proofs of claim filed by the Movant in the Debtors' chapter 11 cases shall be deemed withdrawn without the need for any further action on the part of the Debtors and their estates, the Movant or this Court, and the claims agent in these chapter 11 cases is authorized to reflect such withdrawal in the claims register maintained in these proceedings. Notwithstanding anything herein to the contrary, the withdrawal of any proofs of claim filed by the Movant in these proceedings as provided for herein shall not impair, prejudice, waive or otherwise affect the rights of the Movant under this Order to prosecute the Asserted Claim in the State Court Action and to recover or receive payment on account of the Asserted Claim against the Debtors and their estates in the State Court Action, in each case as provided for herein.

5. This Order shall become effective immediately upon entry by the Court and is not subject to the fourteen-day stay provided in Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure.

6. This Court shall retain jurisdiction over any and all issues arising from or related to the implementation and interpretation of this Order.

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Debtors. ¹)	(Jointly Administered)
)	

CERTIFICATE OF SERVICE

I, James Tobia, hereby certify that on July 17, 2025, I caused the foregoing *Motion of Lanette Sullivan for Order Granting Relief from the Automatic Stay and/or Plan Injunctions* to be electronically filed with the Clerk of the Court and served upon those parties registered to receive electronic notices via the Court's CM/ECF electronic noticing system and to the persons listed below via Electronic Mail:

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.

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Dated: July 17, 2025

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