

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

FOOD52, INC.,¹

Debtor.

Chapter 11

Case No. 25-12277 (____)

**DEBTOR'S MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING THE DEBTOR TO PAY CERTAIN PREPETITION TAXES
AND FEES AND RELATED OBLIGATIONS, (II) AUTHORIZING BANKS TO
HONOR AND PROCESS CHECK AND ELECTRONIC TRANSFER REQUESTS
RELATED THERETO, (III) SCHEDULING A FINAL HEARING,
AND (IV) GRANTING RELATED RELIEF**

The above-captioned debtor and debtor in possession (the “**Debtor**”) hereby submits this motion (this “**Motion**”) for the entry of interim and final orders, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Interim Order**”) and **Exhibit B** (the “**Proposed Final Order**,” and together with the Proposed Interim Order, the “**Proposed Orders**”) (a) authorizing, but not directing, the Debtor, in its discretion, to pay certain prepetition taxes and fees and related obligations that are payable to certain authorities (collectively, the “**Authorities**”), (b) authorizing banks and other financial institutions (collectively, the “**Banks**”) to honor and process check and electronic transfer requests related to the foregoing, and (c) scheduling a final hearing with respect to the foregoing. In support of this Motion, the Debtor relies upon and incorporates by reference the *Declaration of Erika Badan in Support of Chapter 11 Petition and First Day Motions* (the “**First**

¹ The Debtor in this chapter 11 case is Food52, Inc. and the last four digits of the Debtor’s federal tax identification number are 2604. For the purpose of this chapter 11 case, the Debtor’s service address is 1 Dock 72 Way, 13th Floor, Brooklyn, New York 11205.



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Day Declaration)”,² filed contemporaneously herewith. In further support of this Motion, the Debtor respectfully states as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “**Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012 (the “**Amended Standing Order**”). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409. Pursuant to Rule 9013-1(f) of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtor consents to the entry of a final judgment or order with respect to this Motion if it is determined that the Court would lack Article III jurisdiction to enter such final judgment or order absent consent of the parties.

2. The statutory and legal predicates for the relief requested herein are sections 105(a), 363(b), 507(a)(8), 541, 1107(a), and 1108 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

3. On the date hereof (the “**Petition Date**”), the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtor is authorized to operate its businesses and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the

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

Bankruptcy Code. No official committees have been appointed in this chapter 11 case and no request has been made for the appointment of a trustee or an examiner.

4. Additional information regarding the Debtor's businesses, its capital structure, and the circumstances leading to the filing of this chapter 11 case is set forth in the First Day Declaration.

I. Taxes and Fees

5. In the ordinary course of business, the Debtor incurs or collects and remits a variety of taxes, including, without limitation, sales, property, real estate, income, franchise, and certain other miscellaneous taxes (collectively, the "**Taxes**").³ The Debtor also incurs fees for business licenses, permits, and various other fees and assessments (collectively, the "**Fees**," and together with the Taxes, the "**Taxes and Fees**") in connection with the operation of its business. The Debtor remits the Taxes and Fees to the Authorities on a monthly, quarterly, and annual basis in accordance with applicable law. On an annual basis, the Debtor typically remits approximately \$3.2 million in Taxes and Fees.

6. Through this Motion, the Debtor seeks authority to pay current, accrued, pre-petition Taxes and Fees in an amount of up to \$716,000, of which approximately \$514,000 will come due within the first thirty (30) days of this chapter 11 case, which amounts primarily relate to sales, use, and miscellaneous similar taxes (the "**Sales Taxes**").⁴ The Debtor currently

³ In addition to the Taxes discussed herein, the Debtor is required by law to withhold and pay certain taxes related to employee payroll obligations. Any relief requested with respect such taxes is requested in the *Debtor's Motion for Entry of Interim and Final Orders (I) Authorizing the Debtor to Pay and Honor Certain (A) Prepetition Wages, Benefits, and Other Compensation Obligations; (B) Prepetition Employee Business Expenses; and (C) Workers' Compensation Obligations; (II) Authorizing Banks to Honor and Process Checks and Transfers Related to Such Obligations; and (III) Granting Related Relief.*

⁴ This estimate does not include any potential prepetition liabilities related to the Taxes and Fees that may later come due as the result of an audit. The Debtor also owes certain past due Sales Taxes for the past year, but do not seek relief with respect to such past-due Sales Taxes through this Motion.

conducts business in fifty (50) states. As a retailer with an online business, the Debtor incurs, collects, and remits Sales Taxes to various governmental authorities across jurisdictions (collectively, the “**Taxing Authorities**”) in connection with the purchase of goods and services from vendors or the sale of goods and services to customers. Sales Taxes are usually set by the relevant Taxing Authorities as a percentage of the retail prices of goods and services purchased. In some jurisdictions, the Debtor remits to the relevant Taxing Authorities estimated amounts with respect to Sales Taxes, resulting in tax credits or overpayments that may be refunded to the Debtor in certain circumstances. Additionally, when the Debtor incurs Sales Taxes at the point of purchase, vendors often include the applicable Sales Tax on the invoices payable by the Debtor, and the Debtor does not separately remit such amounts to the Taxing Authorities. The Debtor estimates that approximately \$287,000.00 in pre-petition Sales Taxes relating to sales in November 2025 and \$227,000.000 in pre-petition Sales Taxes relating to sales in December 2025 will come due in January 2026.

7. The Debtor also pays fees to certain Authorities to maintain various business license fees, permit fees, fees and taxes for health and fire inspections, and other miscellaneous taxes, including income and franchise taxes, and real estate taxes, which the Debtor estimates total approximately \$103,000 in accrued, unpaid currently owed pre-petition amounts. The Debtor seeks authority to pay accrued and unpaid current pre-petition amounts with respect to such Taxes, subject to the caps in the Proposed Orders.

RELIEF REQUESTED

8. By this Motion, the Debtor requests that the Court enter the Proposed Orders, (a) authorizing, but not directing, the Debtor, in its discretion, to pay Taxes and Fees owing on account of periods prior to the Petition Date, up to a cap of \$716,000, of which \$514,000 may be

paid in the interim period pending entry of the Proposed Final Order, (b) authorizing the Banks to honor and process check and electronic transfer requests related thereto, and (c) scheduling a final hearing with respect to the foregoing.

BASIS FOR RELIEF

I. The Court Should Authorize, But Not Direct, the Debtor, in Its Discretion, to Pay the Taxes and Fees

9. There are several reasons for granting the relief requested herein. *First*, section 363(b)(1) of the Bankruptcy Code provides that, after notice and a hearing, the trustee “may use, sell, or lease, other than in the ordinary course of business, property of the estate” 11 U.S.C. § 363(b)(1). Section 105(a) of the Bankruptcy Code empowers a bankruptcy court 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). Bankruptcy courts have invoked the equitable power of section 105 of the Bankruptcy Code to authorize the postpetition payment of prepetition claims where such payment is necessary to preserve the value of a debtor’s estate. *See, e.g., Tropical Sportswear Int’l Corp.*, 320 B.R. 15, 20 (Bankr. M. D. Fla. 2005) (“Bankruptcy courts recognize that section 363 is a source for authority to make critical vendor payments, and section 105 is used to fill in the blanks.”). Courts have likewise acknowledged that “[u]nder [section] 105, the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.” *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 177 (Bankr. S.D.N.Y. 1989)); *see In re Just for Feet, Inc.*, 242 B.R. 821, 825 (D. Del. 1999) (citing *In re Penn Central Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (holding that the court is authorized under section 105(a) of the Bankruptcy Code to allow immediate payment of prepetition claims of vendors found to be critical to the debtor’s continued operation)).

10. In a long line of well-established cases, federal courts consistently have permitted postpetition payment of prepetition obligations where necessary to preserve or enhance the value of a debtor’s estate for the benefit of all creditors. *See, e.g., Miltenberger v. Logansport, C. & S. W. Ry. Co.*, 106 U.S. 286, 312 (1882) (payment of prereceivership claim permitted to prevent “stoppage of [crucial] business relations”); *In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that “if payment of a claim which arose prior to [the commencement of the bankruptcy case] is essential to the continued operation of the . . . [business] during [the bankruptcy case], payment may be authorized even if it is made out of [the] corpus”); *Dudley v. Mealey*, 147 F.2d 268, 271 (2d Cir. 1945) (extending doctrine for payment of prepetition claims beyond railroad reorganization cases).

11. This legal principle—known as the “doctrine of necessity”—functions in chapter 11 cases as a mechanism by which a bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. *See Just for Feet*, 242 B.R. at 826 (finding that “to invoke the necessity of payment doctrine, a debtor must show that payment of the pre-petition claims is critical to the debtor’s [continued operation].”); *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 939 (Bankr. D. Del. 1992) (recognizing that “[i]f payment of a pre-petition claim is essential to the continued operation of [the debtor], payment may be authorized”); *In re Boston & Me. Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtor’s continued operation). The doctrine is frequently invoked early in a bankruptcy case, particularly in connection with those Bankruptcy Code provisions that relate to payment of pre-petition claims. In one case, the court indicated its accord with “the principle that a bankruptcy court may exercise its equity powers under section 105(a) to authorize

payment of pre-petition claims where such payment is necessary ‘to permit the greatest likelihood of . . . payment of creditors in full or at least proportionately.’” *In re Structurelite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988).

12. The Debtor submits that the timely payment of the Taxes and Fees is critical to the Debtor’s ability to preserve and maximize estate value for the benefit of all stakeholders. Failure to pay these obligations could damage the Debtor’s relations with the Authorities, and cause the Authorities to take precipitous action, including conducting audits, filing liens, attempting to revoke licenses and permits, seeking to impose liability against the Debtor and its officers and directors, and, if applicable, seeking to lift the automatic stay, all of which could disrupt the Debtor’s chapter 11 efforts and impose significant costs on the Debtor’s estate. Payment of the Taxes and Fees will avoid these potentially burdensome and costly governmental actions, as well as the incurrence of potential penalties and interest if such Taxes and Fees are not timely paid. Thus, the Debtor submits that granting the relief requested herein will maximize the value of the Debtor’s estate and benefit its creditors.

13. *Second*, authority for satisfying the Taxes and Fees also may be found in sections 1107(a) and 1108 of the Bankruptcy Code. The Debtor, operating its businesses as debtors in possession under sections 1107(a) and 1108, is a fiduciary “holding the bankruptcy estate and operating the business for the benefit of [its] creditors and (if the value justifies) equity owners.” *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor in possession is the duty “to protect and preserve the estate, including an operating business’s going-concern value.” *Id.*

14. Courts have noted that there are instances in which a debtor in possession can fulfill its fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” *Id.* The *CoServ*

court specifically noted that preplan satisfaction of prepetition claims would be a valid exercise of a debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate," *id.*, and also when the payment was to "sole suppliers of a given product." *Id.* at 498. The court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor's fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor's going concern value, which is disproportionate to the amount of the claimant's prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

Id.

15. The Debtor submits that payment of the Taxes and Fees meets each element of the *CoServ* court's standard. Any failure to pay the Taxes and Fees could impair the Debtor's ability to continue its business operations. Any unexpected or inopportune interruption of the Debtor's operations during the course of this chapter 11 case could diminish estate value and frustrate the Debtor's chapter 11 efforts. Therefore, the Debtor can only meet its fiduciary duties as debtor in possession under sections 1107(a) and 1108 of the Bankruptcy Code by payment of the Taxes and Fees in the ordinary course of business.

16. *Third*, the Authorities might assert that certain of the Taxes and Fees are so-called "trust fund" taxes that the Debtor is required to collect from third parties and hold in trust for the benefit of the Authorities. To the extent that the Debtor collects the Taxes and Fees on behalf of the Authorities, such Taxes and Fees may not constitute property of the Debtor's bankruptcy estate. *See Begier v. Internal Revenue Serv.*, 496 U.S. 53, 57-60 (1990); *City of Ferrell v. Sharon Steel Corp.*, 41 F.3d 92, 97 (3d Cir. 1994); *DeChiaro v. N.Y. State Tax Comm'n*, 760 F.2d 432, 433 (2d Cir. 1985) (sales taxes are "trust fund" taxes); *Al Copeland Enters., Inc. v. Texas*, 991 F.2d 233

(5th Cir. 1993) (debtor's prepetition collection of sales taxes and interest thereon were held subject to trust and were not property of the estates); *In re Shank*, 792 F.2d 829, 830 (9th Cir. 1986) (sales taxes required by state law to be collected by sellers from their customers are "trust fund" taxes); *In re Tap, Inc.*, 52 B.R. 271, 272 (Bankr. D. Mass. 1985) (withholding taxes are "trust fund" taxes). To the extent that the Taxes and Fees are "trust fund" taxes and the funds representing such Taxes and Fees can be adequately identified and traced, the Debtor would have no equitable interest in such funds and they would not be property of its estate. *See* 11 U.S.C. § 541(d); *In re Am. Int'l Airways, Inc.*, 70 B.R. 102, 103 (Bankr. E.D. Pa. 1987). Accordingly, the Debtor submits that the Court should authorize it to pay any of the Taxes and Fees that constitute trust fund taxes, and, further, that payment of such taxes and fees would not prejudice the rights of any of the Debtor's other creditors or other parties in interest.

17. *Finally*, some states hold corporate officers personally liable for unpaid taxes in certain circumstances. *See, e.g.,* JOHN F. OLSEN, ET AL., Director & Officer Liability: Indemnification and Insurance § 3:21 (2003) ("some states hold corporate officers personally liable for any sales tax and penalty owed and not paid by the corporation regardless of cause"). To the extent that any such "trust fund" taxes remain unpaid by the Debtor, its directors and officers could be subject to lawsuits or criminal prosecution during the pendency of this chapter 11 case. Such potential lawsuits would prove extremely disruptive for the Debtor, for the named officers and directors whose attention to the chapter 11 process is required, and for the Court, as the Court might be asked to entertain various requests for injunctions with respect to the potential state court actions against such individuals. Even the possibility of any such lawsuit or criminal prosecution would distract the Debtor and its directors and officers and impede their respective efforts in this chapter 11 case. Furthermore, the Authorities may audit the Debtor if the Taxes and Fees are not

timely paid. Payment of the Taxes and Fees will therefore avoid a loss of focus on the part of the Debtor's directors, officers, and other employees resulting from the risk of personal liability and/or audits.

18. For the foregoing reasons, the Debtor believes that granting the relief requested herein is appropriate and in the best interests of its estate and creditors.

II. The Court Should Authorize the Banks to Honor and Process the Debtor's Payments on Account of the Taxes and Fees

19. The Debtor also requests the Court to authorize the Banks, when requested by the Debtor, in its discretion, to honor and process checks or electronic fund transfers drawn on the Debtor's bank accounts to pay 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 in the applicable bank accounts to make such payments. The Debtor further requests that all of the Banks be authorized to rely on the Debtor's designation of any particular check or electronic payment request as approved pursuant to this Motion.

CAUSE EXISTS TO AUTHORIZE THE DEBTOR'S FINANCIAL INSTITUTIONS TO HONOR CHECKS AND ELECTRONIC FUND TRANSFERS

20. The Debtor further requests that the Court (a) authorize the Banks to receive, process, honor, and pay all checks presented for payment and electronic payment requests relating to the relief sought herein to the extent that the Debtor has sufficient funds on deposit in its accounts with the Banks, whether such checks were presented or electronic requests were submitted before or after the Petition Date, and (b) authorize the Banks to rely on the Debtor's designation of any particular check or electronic payment request as appropriate pursuant to this Motion without any duty of further inquiry and without liability for following the Debtor's instructions. The Debtor anticipates having sufficient funds to pay the amounts described herein. In addition, under the Debtor's existing cash management system, the Debtor can readily identify

whether checks or wire transfer requests are payments authorized by the relief requested herein. Accordingly, the Debtor believes that checks or wire transfer requests, other than those relating to payments authorized by the relief requested herein, will not be honored inadvertently.

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

21. 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 Debtor believes an immediate and orderly transition into chapter 11 is critical to the success of this chapter 11 case. As discussed in detail above, immediate and irreparable harm would result if the relief requested herein is not granted. The Debtor believes that, among other things, the success of its chapter 11 efforts will require it to remain in good standing with the Authorities, and that any unanticipated disruption in its business operations, and any distractions caused by attending to any issues related to any failure to pay the Authorities on account of the Taxes and Fees, would substantially diminish or impair the Debtor’s efforts to preserve and maximize estate value. Thus, if the relief requested herein is not granted, the Debtor’s failure to satisfy the Taxes and Fees would cause the Debtor’s estate immediate and irreparable harm by detracting from, and potentially derailing, the Debtor’s chapter 11 efforts. Accordingly, the Debtor submits that it has satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and, therefore, respectfully requests that the Court approve the relief requested in this Motion on an emergency basis.

22. The Debtor also requests 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 Debtor to operate its business without interruption, thereby preserving value for its estate. Accordingly, the Debtor respectfully requests 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

23. Nothing in the Proposed Orders or this Motion: (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtor and its estate; (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtor and its estate with respect to the validity, priority, or amount of any claim against the Debtor and its estate; or (c) shall be construed as a promise to pay a claim.

NOTICE

24. Notice of this Motion will be given to: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the DIP Lender; (c) counsel to The Chernin Group; (d) counsel to Avidbank; (e) the creditors listed on the Debtor’s list of twenty (20) creditors holding the largest unsecured claims against the Debtor; (f) the United States Attorney for the District of Delaware; (g) the Internal Revenue Service; (h) the state attorneys general for states in which the Debtor conducts business; (i) the Banks; and (j) 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 Debtor submits that, under the circumstances, no other or further notice is required.

WHEREFORE, the Debtor respectfully requests 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: December 29, 2025
Wilmington, Delaware

**YOUNG CONAWAY STARGATT &
TAYLOR, LLP**

/s/ Brynna M. Gaffney

Michael R. Nestor (No. 3526)
Kara Hammond Coyle (No. 4410)
Elizabeth S. Justison (No. 5911)
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*Proposed Counsel for the Debtor
and Debtor in Possession*

EXHIBIT A

Proposed Interim Order

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

In re:

FOOD52, INC.,¹

Debtor.

Chapter 11

Case No. 25-____ (____)

Ref. Docket No. __

**INTERIM ORDER (I) AUTHORIZING THE DEBTOR TO PAY CERTAIN
PREPETITION TAXES AND FEES AND RELATED OBLIGATIONS,
(II) AUTHORIZING BANKS TO HONOR AND PROCESS CHECK AND
ELECTRONIC TRANSFER REQUESTS RELATED THERETO,
(III) SCHEDULING A FINAL HEARING, AND
(IV) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “**Motion**”)² of the above-captioned debtor and debtor in possession (the “**Debtor**”) for the entry of an interim order (this “**Interim Order**”), pursuant to sections 105(a), 363(b), 507(a)(8), 541, 1107(a), and 1108 of the Bankruptcy Code, (a) authorizing, but not directing, the Debtor, in its discretion, to pay Taxes and Fees related to the period prior to the Petition Date to the Authorities, and (b) authorizing the Banks to honor and process check and electronic transfer requests related to the foregoing; and upon consideration of the First Day Declaration and the record of this chapter 11 case; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required except as otherwise provided herein; and it appearing that this Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that

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venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having reviewed the Motion and having heard the statements in support of the relief requested in the Motion at a hearing before this Court; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of the Debtor, its estate, and its creditors, and is necessary to avoid immediate and irreparable harm to the Debtor and its estate, as contemplated by Bankruptcy Rule 6003(b); and after due deliberation and sufficient cause appearing therefore, **IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** on an interim basis as set forth herein.
2. Objections to entry of an order granting the Motion on a final basis must be filed by _____, 2026 at 4:00 p.m. (ET) and served on: (a) proposed counsel to the Debtor, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: Michael R. Nestor, Esq. (mnestor@ycst.com), Kara Hammond Coyle, Esq. (kcoyle@ycst.com), Elizabeth S. Justison, Esq. (ejustison@ycst.com), S. Alexander Faris, Esq. (afaris@ycst.com), and Andrew M. Lee, Esq. (alee@ycst.com); (b) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware, 19801, Attn: Benjamin A. Hackman, Esq. (Benjamin.A.Hackman@usdoj.gov); (c) counsel for the DIP Lender, Moore & Van Allen PLLC, 100 N. Tryon Street, Suite 4700, Charlotte, North Carolina 28202, Attn: James R. Langdon, Esq. (jimlangdon@mvlaw.com) and C. Cowden W. Rayburn, Esq. (cowdenrayburn@mvlaw.com), and Chipman Brown Cicero & Cole, LLP, 1313 N. Market Street, Wilmington, Delaware 19801, Attn: William E. Chipman Jr., Esq. (chipman@chipmanbrown.com); and (d) counsel to any statutory committee appointed in this chapter 11 case. A final hearing, if required, on the Motion will be

held on _____, 2026 at _____.m. (ET). If no objections are filed to the Motion, this Court may enter a final order without further notice or hearing.

3. The Debtor is authorized, but not directed, in its discretion, to pay prepetition Taxes and Fees to the Authorities in the ordinary course of its business up to an aggregate amount of \$514,000 pending entry of a final order.

4. Nothing in this Interim Order: (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtor and its estate; (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtor and its estate with respect to the validity, priority, or amount of any claim against the Debtor and its estate; or (c) shall be construed as a promise to pay any claim.

5. The Banks shall be, and are, hereby authorized, when requested by the Debtor, 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 Debtor reissues or re-request post-petition, drawn on the Debtor's 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.

6. The Banks may rely on the Debtor's representations with respect to whether any check or other transfer drawn or issued by the Debtor 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 Debtor as provided for in this Interim Order.

7. The Debtor is authorized to take any and all actions necessary to effectuate the relief granted herein.

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

9. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order shall be effective and enforceable immediately upon its entry.

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

EXHIBIT B

Proposed Final Order

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

In re:

FOOD52, INC.,¹

Debtor.

Chapter 11

Case No. 25-____ (____)

Ref. Docket Nos. __ & __

**FINAL ORDER (I) AUTHORIZING THE DEBTOR TO PAY CERTAIN PREPETITION
TAXES AND FEES AND RELATED OBLIGATIONS, (II) AUTHORIZING BANKS TO
HONOR AND PROCESS CHECK AND ELECTRONIC TRANSFER REQUESTS
RELATED THERETO, AND (III) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “**Motion**”)² of the above-captioned debtor and debtor in possession (the “**Debtor**”) for the entry of an order (this “**Final Order**”), pursuant to sections 105(a), 363(b), 507(a)(8), 541, 1107(a), and 1108 of the Bankruptcy Code, (a) authorizing, but not directing, the Debtor, in its discretion, to pay Taxes and Fees related to the period prior to the Petition Date to the Authorities, and (b) authorizing the Banks to honor and process check and electronic transfer requests related to the foregoing; and upon consideration of the First Day Declaration and the record of this chapter 11 case; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required except as otherwise provided herein; and it appearing that this Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court

¹ The Debtor in this chapter 11 case is Food52, Inc. and the last four digits of the Debtor’s federal tax identification number are 2604. For the purpose of this chapter 11 case, the Debtor’s service address is 1 Dock 72 Way, 13th Floor, Brooklyn, New York 11205.

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

having reviewed the Motion and having heard the statements in support of the relief requested in the Motion at a hearing before this Court, if any; and this Court having previously entered that certain *Interim Order (I) Authorizing the Debtor to Pay Certain Prepetition Taxes and Fees and Related Obligations, (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* [Docket No. ___]; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of the Debtor, its estate, and its creditors; and after due deliberation and sufficient cause appearing therefore, **IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** on a final basis as set forth herein.
2. The Debtor is authorized, but not directed, in its discretion, to pay prepetition Taxes and Fees to the Authorities in the ordinary course of its business up to an aggregate amount of \$716,000.
3. Nothing in this Final Order: (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtor and its estate; (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtor and its estate with respect to the validity, priority, or amount of any claim against the Debtor and its estate; or (c) shall be construed as a promise to pay any claim.
4. The Banks shall be, and are, hereby authorized, when requested by the Debtor, 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 Debtor reissue or re-request post-petition, drawn on the Debtor's 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.

5. The Banks may rely on the Debtor's representations with respect to whether any check or other transfer drawn or issued by the Debtor 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 Debtor as provided for in this Final Order.

6. The Debtor is authorized to take any and all actions necessary to effectuate the relief granted herein.

7. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Final Order shall be effective and enforceable immediately upon its entry.

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