

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 PREPETITION CLAIMS OF CERTAIN
(A) CRITICAL VENDORS, (B) 503(b)(9) CLAIMANTS, AND (C) LIEN CLAIMANTS;
(II) CONFIRMING ADMINISTRATIVE EXPENSE PRIORITY OF OUTSTANDING
ORDERS; (III) AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS AND
TRANSFERS RELATED TO SUCH OBLIGATIONS; 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 to pay, in the ordinary course of business, prepetition amounts owing on account of (i) Critical Vendor Claims, (ii) 503(b)(9) Claims,² and (iii) Lien Claims (each as defined herein and collectively, the “**Trade Claims**,” with the claimants holding each Trade Claim, the “**Trade Claimants**”); (b) granting administrative expense priority to any undisputed obligations on account of goods ordered by the Debtor prior to the date hereof that will not be delivered until after the Petition Date (as defined herein) and authorizing the Debtor to satisfy such

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 A “**503(b)(9) Claim**” refers to a claim of a vendor to the Debtor that may be accorded administrative expense priority under section 503(b)(9) of the Bankruptcy Code as a result of the Debtor having received goods from such vendor within the 20 days immediately preceding the Petition Date.



obligations; (c) authorizing the Debtor's banks and other financial institutions (collectively, the "**Banks**") to honor and process check and electronic transfer requests related to the foregoing; and (d) granting related relief. 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 Day Declaration**"),³ 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) and 363 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**").

³ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

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 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.

OVERVIEW OF THE DEBTOR’S VENDORS

5. As described in greater detail in the First Day Declaration, the Debtor operates three distinct brands, including Food52 (a media and commerce platform that unites food, home, and lifestyle through content, community, and curated products, reaching a monthly audience of approximately thirty-seven million), Schoolhouse (a modern American design brand that sells heirloom-quality home goods, including lighting, furniture, hardware, décor, and home textiles), and Dansk Designs (an American brand, inspired by Danish designs known for its teak serving pieces, brightly colored enameled iron cookware, and timeless ceramic dinnerware). The Debtor would not be able to do so without certain third-party vendors (the “**Critical Vendors**”) and various freight vendors, ocean carriers, truckers, common or contract carriers, other shipping services providers, and facility management and maintenance vendors, including those providing electrical, plumbing, roofing, and other services (collectively, the “**Lien Claimants**”).

6. The Debtor relies on the Trade Claimants for the receipt, distribution, and delivery of the inventory sold on its e-commerce platform,⁴ as well as the infrastructure that supports its operations including, but not limited to, advertisement spend and information technology. Certain Trade Claimants play a crucial role in the Debtor's streamlined process of sourcing inventory and delivering it directly to consumers. Timely receipt of inventory is essential to maintain the Debtor's operations.

7. Many of these vendors provide goods and services on favorable trade terms, and maintaining these trade terms is critical to the Debtor's ability to continue operations, ensure sufficient inventory to meet customer demand, and distribute such inventory across the United States. These vendors cannot be easily replaced or substituted by alternative vendors on similar terms. Moreover, certain of the Debtor's vendors are located outside of the United States and may not fully understand the implications of chapter 11, further exacerbating potential disruption to the Debtor's operations. Continued access to the goods and services provided by its vendors is necessary for the Debtor to generate revenue through retail sales and create liquidity for the Debtor's businesses, and the Debtor can ill-afford severe disruption to its supply chain at this critical juncture.

8. The following table summarizes the estimated prepetition amount of outstanding Trade Claims that the Debtor requests authority, but not direction, to pay pursuant to this Motion:

⁴ The Debtor also historically operated and sold inventory three days a week out of a showroom located on the ground floor of its facility in Portland, Oregon. The Debtor has closed its showroom prior to the Petition Date but is contemplating reopening such showroom postpetition.

Relief Requested			
<i>Category</i>	<i>Description of Services Provided</i>	<i>Interim</i>	<i>Final⁵</i>
Critical Vendors	Specialized suppliers of goods and services that are critical to maintain the Debtor's day-to-day operations, or which are sole or limited-source providers of the goods and services necessary for the uninterrupted operations of the Debtor's businesses.	\$842,000	\$842,000
503(b)(9) Claimants	Suppliers that provided goods to the Debtor that were received within 20 days before the Petition Date, which may give rise to claims under section 503(b)(9) of the Bankruptcy Code.	\$148,500	\$297,000
Lien Claimants	Suppliers of goods or services utilized by or provided to the Debtor that may assert shipper's liens, mechanic's liens, or other similar liens.	\$748,000	\$748,000
Total Amount of Trade Claims:		\$1,738,500	\$1,887,000

9. Some Trade Claims may be properly categorized as more than one type of claim or may ultimately be categorized as a different type of claim. The Debtor is seeking relief to pay the Trade Claims regardless of how they are ultimately categorized.

I. CRITICAL VENDORS.

10. In the ordinary course of business, the Debtor relies on certain third-party vendors to provide it with the goods and services required to operate its businesses and sell its products to customers efficiently and without interruption. Such Critical Vendors include, among others, suppliers who provide the Debtor with inventory to fulfill its orders and service providers performing marketing, advertising, brokerage, information technology, facilities management and maintenance, and store security services, among others.

11. Prior to filing this chapter 11 case, the Debtor and its advisors carefully reviewed and analyzed the Debtor's books and records and consulted with key personnel to identify the

⁵ For the avoidance of doubt, amounts requested to be available upon entry of the Final Order are inclusive of amounts requested to be available upon entry of the Interim Order.

Critical Vendors, each of whom supplies essential goods and services necessary to maintain the Debtor's go-forward operations and will be critical to maximizing the value of the Debtor's estate.

As part of this analysis, the Debtor considered numerous factors including:

- a. whether a vendor is critical to maximizing the value of property of the estate during this chapter 11 case;
- b. whether a vendor is a sole- or limited-source or high-volume supplier for goods or services critical to the Debtor's business operations;
- c. whether alternative vendors are available that can provide requisite volumes of similar goods or services on equal (or better) terms and, if so, whether the Debtor would be able to transition business thereto;
- d. the degree to which replacement costs (including, pricing, transition expenses, professional fees, and lost sales or future revenue) exceed the amount of a vendor's prepetition claim;
- e. whether certain specifications or contract requirements prevent, directly or indirectly, the Debtor from obtaining goods or services from alternative sources;
- f. whether, if a vendor is not a sole source supplier, the Debtor has sufficient product in inventory to continue its operations while a replacement vendor is put in place;
- g. whether the business relationship between the Debtor and the supplier is governed by a contract that will remain enforceable during this chapter 11 case; and
- h. whether a vendor meeting the foregoing criteria is able or likely to refuse to ship product to, or perform services for, the Debtor postpetition if the Debtor fails to pay its prepetition claims.

12. In addition to these factors, the Debtor and its advisors considered the health of each vendor relationship, each vendor's familiarity with the chapter 11 process, and the extent to which each vendor's prepetition claims could be satisfied elsewhere in the chapter 11 process. The Debtor also balanced preserving its relationships with the vendors most important to maintaining ordinary course of business operations with limiting the expenditure of estate

resources. Following the Debtor's analysis of these vendors, the Debtor identified the Critical Vendors for purposes of the relief requested herein.

13. Failure to pay prepetition claims held by the Critical Vendors and accrued in the ordinary course of business (the “**Critical Vendor Claims**”) could cause such Critical Vendors to refuse to provide the goods and services necessary for the Debtor's business operations. Even a temporary disruption to such provisioning could result in the Debtor's inability to operate and sell its products to customers, which would immediately and irreparably harm the Debtor's businesses, damage its vital third-party relationships, and significantly impair its going-concern viability. Such harm would likely far outweigh the cost of paying the Critical Vendor Claims.

14. Accordingly, the Debtor requests authority, but not direction, to make payments on account of Critical Vendor Claims in an aggregate amount of approximately \$842,000, all of which the Debtor anticipates is due or will become due between entry of the Interim and Final Orders (such period, the “**Interim Period**”), and therefore requests that such amount be approved for payment on an interim basis. These amounts represent the Debtor's best estimate as to what aggregate amounts must be paid to the Critical Vendors to continue an uninterrupted supply of critical goods and services. The Debtor further requests the authority to allocate the foregoing amounts (i) in its sole discretion, (ii) without prejudice to seeking additional relief, and (iii) subject to agreements (within the Debtor's discretion) to receive terms consistent with Customary Trade Terms (as defined herein) from the Critical Vendors. For the avoidance of doubt, the Debtor intends to pay the Critical Vendor Claims only where it believes, in its business judgment, that the benefits to its estate from making such payments will exceed the costs.

II. 503(b)(9) CLAIMANTS.

15. In the ordinary course of business, the Debtor may have received goods from various vendors (collectively, the “**503(b)(9) Claimants**”) within the 20-day period immediately

preceding the Petition Date, thereby giving rise to claims that may be accorded administrative priority under section 503(b)(9) of the Bankruptcy Code (the “**503(b)(9) Claims**”). The Debtor obtains inventory, goods, or other materials from such claimants on an order-by-order basis. As a result, a 503(b)(9) Claimant may refuse to supply new orders without payment of its 503(b)(9) Claims. Such refusal would negatively affect the Debtor’s estate, as the Debtor’s businesses are dependent on the steady flow of inventory to fulfill customer orders. Moreover, because the 503(b)(9) Claims are accorded administrative expense priority, such claims will need to be paid pursuant to a chapter 11 plan, and payment in the ordinary course is only a matter of payment timing in order to maintain crucial vendor relationships. Accordingly, it is essential that the Debtor is authorized, but not directed, to pay the 503(b)(9) Claims.

16. As of the Petition Date, the Debtor estimates that it owe approximately \$297,000 on account of goods delivered within the 20 days immediately preceding the Petition Date, the value of which may be entitled to administrative priority under section 503(b)(9) of the Bankruptcy Code.⁶ This amount represents the Debtor’s best estimate as to what aggregate amounts must be paid to the 503(b)(9) Claimants to continue an uninterrupted supply of critical goods. Accordingly, the Debtor seeks authority, but not direction, to make payments on account of the undisputed 503(b)(9) Claims in an aggregate amount of approximately \$297,000. The Debtor anticipates that approximately \$148,500 is due or will become due during the Interim Period and therefore requests that such amount be made available for payment upon entry of the Interim Order.

⁶ For the avoidance of doubt, such amounts exclude 503(b)(9) Claims that are classified as Critical Vendor Claims or Lien Claims for purposes of this Motion.

III. LIEN CLAIMANTS.

17. In the ordinary course of business, the Debtor relies on the uninterrupted flow of goods through its supply chain and distribution network, including the purchase, importation, and shipment of the Debtor's inventory. To maintain its extensive distribution network, the Debtor relies on various freight vendors, logistics providers, ocean carriers, truckers, common or contract carriers, and other shipping services providers for the receipt, distribution, and delivery of the Debtor's products to Radial, Inc., the Debtor's third-party logistics provider, who handles inventory management and the fulfillment of e-commerce orders, both direct-to-consumer and business-to-business. The Debtor also relies on the services of certain vendors for facility management and maintenance services, including electrical, plumbing, roofing, and other services. As a result, these Lien Claimants regularly have possession of the Debtor's inventory, and the Lien Claimants' continued services are critical to the Debtor's ability to access its products.

18. Under certain non-bankruptcy laws, these Lien Claimants will, in certain circumstances, have a lien on the goods in their possession that secures the charges or expenses incurred in relation to the transportation of goods or the supply of labor (the "**Lien Claims**").⁷ Thus, if the Lien Claims are not satisfied, the Lien Claimants are likely to attempt to assert such possessory liens and may refuse to release the Debtor's property until their claims are satisfied and their liens are redeemed. The Lien Claimants' retention of the Debtor's products would disrupt

⁷ For example, section 7-307 of the Uniform Commercial Code provides, in pertinent part, that a "carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law." *See* U.C.C. § 7-307(a) (2005); U.C.C. § 7-209(a) ("A *warehouse* has a lien against the bailor on the *goods* covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law.") (emphasis added).

the Debtor's supply chain and distribution network and negatively affect the Debtor's ability to generate revenue and administer this chapter 11 case.⁸ The Debtor intends to pay prepetition Lien Claims only where they believe, in its business judgment, that the benefits to its estate from making such payments will exceed the costs, including the expenses and delay of contesting asserted liens.

19. As of the Petition Date, the Debtor estimates that it owes approximately \$748,000 to the Lien Claimants on account of its associated Lien Claims. Accordingly, the Debtor requests authority, but not direction, to make payments on account of Lien Claims in an aggregate amount of approximately \$748,000, all of which the Debtor anticipates is due or will become due during the Interim Period and therefore requests that such amount be made available for payment upon entry of the Interim Order.

20. The Debtor does not seek to accelerate or modify existing payment terms with respect to the Lien Claims. Rather, the Debtor will pay the Lien Claims as they come due in the ordinary course of business, provided that such claimants make commercially reasonable efforts to maintain or restore Customary Trade Terms.

IV. CUSTOMARY TRADE TERMS.

21. Subject to Court approval, the Debtor intends to pay the Trade Claims only to the extent necessary to preserve the value of its businesses. In return for paying such Trade Claims, either in full or in part, the Debtor proposes that it be authorized, in its sole discretion, to require the Trade Claimants, as applicable, to provide favorable trade terms for the postpetition procurement of goods and services.

⁸ By this Motion, the Debtor does not concede that any liens (contractual, common law, statutory, or otherwise) described in this motion are valid, and the Debtor expressly reserves the right to contest the extent, validity, and perfection of any and all such liens, and to seek avoidance thereof.

22. Specifically, the Debtor seeks authority, but not direction, to condition payment of the Trade Claims upon such Trade Claimant's agreement (a) to continue—or resume—supplying such products and services to the Debtor pursuant to trade terms at least as favorable to the Debtor as those practices and programs (including credit limits, discounts, pricing, timing of payments, availability, and other terms) consistent with the parties' ordinary course practice or as otherwise agreed by the Debtor in its reasonable business judgment (the “**Customary Trade Terms**”), and (b) that they shall not be permitted to cancel, without the Debtor's consent, any contract, agreement, or arrangement pursuant to which they provide such goods and/or services to the Debtor during the course of this chapter 11 case. The Debtor reserves the right to require, at its discretion, that the Customary Trade Terms be commemorated in writing, including by email or through a trade agreement as a condition to payment.

23. In addition, the Debtor requests that if any party accepts payment pursuant to the relief requested by this Motion and thereafter does not continue or resume providing goods or services on Customary Trade Terms, then: (a) any payment on account of a prepetition claim received by such party shall be deemed, in the Debtor's sole discretion, an improper postpetition transfer and, therefore, immediately recoverable in cash upon written request by the Debtor; (b) upon recovery by the Debtor, any prepetition claim of such party shall be reinstated as if the payment had not been made; (c) if there exists an outstanding postpetition balance due from the Debtor to such party, the Debtor may elect to recharacterize and apply any payment made pursuant to the relief requested by this Motion to such outstanding postpetition balance, and such supplier or vendor will be required to repay to the Debtor such paid amounts that exceed the postpetition obligations then outstanding, without the right of any setoffs, claims, provisions for payment of

any claims, or otherwise; and (d) the Debtor may pursue any other remedy available to it under the applicable law or any executed writing with such party.

V. OUTSTANDING ORDERS.

24. Prior to the Petition Date and in the ordinary course of business, the Debtor ordered goods that will not be delivered until after the Petition Date (collectively, the “**Outstanding Orders**”). To avoid becoming general unsecured creditors of the Debtor’s estate with respect to such goods, certain suppliers may refuse to ship or transport such goods (or may recall such shipments) with respect to Outstanding Orders unless they have comfort that such Outstanding Orders would be treated as administrative expenses of the Debtor’s estate. To prevent any disruption to the Debtor’s business operations, and given that goods delivered after the Petition Date are afforded administrative expense priority under section 503(b) of the Bankruptcy Code, the Debtor requests that the Court confirm the administrative expense priority status of Outstanding Orders under section 503(b) of the Bankruptcy Code, and authorize the Debtor to pay for the Outstanding Orders in the ordinary course of business and consistent with past practice.

BASIS FOR RELIEF

I. THE COURT SHOULD GRANT THE RELIEF REQUESTED IN THIS MOTION PURSUANT TO SECTIONS 105(a) AND 363(b) OF THE BANKRUPTCY CODE.

25. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 825–26 (D. Del. 1999); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175–76 (Bankr. S.D.N.Y. 1989); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983). In so doing, these courts acknowledge that

several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims.

26. Section 363(b) of the Bankruptcy Code permits a bankruptcy court, after notice and a hearing, to authorize a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). “In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions.” *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (collecting cases); *see also Armstrong World*, 29 B.R. at 397 (relying on section 363 of the Bankruptcy Code to allow a contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to the debtors); *Ionosphere Clubs*, 98 B.R. at 175 (finding that a sound business justification existed to justify payment of certain prepetition wages); *In re Phx. Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (requiring the debtor to show a “good business reason” for a proposed transaction under section 363(b) of the Bankruptcy Code).

27. Courts also authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code, which codifies a bankruptcy court’s inherent equitable powers 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). Under section 105(a) of the Bankruptcy Code, courts may authorize pre plan payments of prepetition obligations when essential to the continued operation of a debtor’s businesses. *See Just for Feet*, 242 B.R. at 825–26. Specifically, a court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the “necessity of payment” rule (also referred to as the “doctrine of

necessity”). *See, e.g., Ionosphere Clubs*, 98 B.R. at 176; *In re Lehigh & New England Ry Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (stating that courts may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); *see also In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the business). A bankruptcy court’s use of its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *Ionosphere Clubs*, 98 B.R. at 175–76 (citing *Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286 (1882)). Indeed, at least one court has recognized that there are instances when a debtor’s fiduciary duty can “only be fulfilled by the preplan satisfaction of a prepetition claim.” *CoServ*, 273 B.R. at 497.

28. The relief requested herein represents a sound exercise of the Debtor’s business judgment and is appropriate and warranted under the circumstances. The authority to satisfy the Trade Claims in the initial days of these cases without disrupting the Debtor’s operations will maintain the integrity of the Debtor’s supply chain, facilitate the sale of the Debtor’s products, and allow the Debtor to efficiently administer this chapter 11 case. Failure to pay these Trade Claimants could potentially destroy value that would otherwise inure to the benefit of the Debtor’s estate. Where, as here, debtors have shown that the payment of the trade claims is critical to maximize the value of their estates, courts in this district have routinely authorized payments to vendors. *See, e.g., In re Liberated Brands LLC*, No. 25-10168 (JKS) (Bankr. D. Del. Feb. 28, 2025) (authorizing the debtors to pay certain prepetition and postpetition trade claims); *In re JOANN Inc.*, No. 25-10068 (CTG) (Bankr. D. Del. Feb. 7, 2025) (same); *In re Am. Tire Distribs., Inc.*, No. 24-12391 (CTG) (Bankr. D. Del. Nov. 18, 2024) (same); *In re Accuride Corp.*,

No. 24-12289 (JKS) (Bankr. D. Del. Nov. 13, 2024) (same); *In re Wheel Pros, LLC*, No. 24-11939 (JTD) (Bankr. D. Del. Oct. 10, 2024) (same).

II. THE COURT SHOULD AUTHORIZE THE PAYMENT OF CRITICAL VENDOR CLAIMS.

29. The Debtor requires a steady provision of goods and services provided by the Critical Vendors to continue operating its businesses and maintain operational stability. Importantly, any disruption to the Debtor's supply chain would frustrate these efforts, decreasing the value of the Debtor's businesses and impairing stakeholder value at the outset of this chapter 11 case.

30. Allowing the Debtor to pay the Critical Vendor Claims pursuant to all or some of the above-referenced Bankruptcy Code provisions is especially appropriate where, as here, doing so is consistent with the "two recognized policies" of chapter 11 of the Bankruptcy Code: preserving going-concern value and maximizing the value of property available to satisfy creditors. *See Bank of Am. Nat'l Trust & Savs. Ass'n v. 203 N. LaSalle St. P'Ship*, 526 U.S. 434, 453 (1999). Indeed, recognizing that payment of prepetition claims of certain essential vendors is, in fact, both critical to a debtor's ability to preserve value and maximize creditor recovery, courts in this district regularly grant relief consistent with that which the Debtor is seeking in this Motion. *See, e.g., In re Liberated Brands LLC*, No. 25-10168 (JKS) (Bankr. D. Del. Feb. 28, 2025) (authorizing the debtors to pay certain vendor claims); *In re JOANN Inc.*, No. 25-10068 (CTG) (Bankr. D. Del. Feb. 7, 2025) (same); *In re Am. Tire Distribs., Inc.*, No. 24-12391 (CTG) (Bankr. D. Del. Nov. 18, 2024) (same); *In re Accuride Corp.*, No. 24-12289 (JKS) (Bankr. D. Del. Nov. 13, 2024) (same); *In re Wheel Pros, LLC*, No. 24-11939 (JTD) (Bankr. D. Del. Oct. 10, 2024) (same).

31. The Debtor depends on the services provided by the Critical Vendors and will continue to do so postpetition as the Debtor seeks to preserve and maximize the value of its estate.

Ensuring these Critical Vendors continue to provide critical services is therefore vital to the success of this chapter 11 case. Should any of the Critical Vendors delay or cease providing services to the Debtor, even on a temporary basis, the Debtor's businesses would face severe consequences. Aside from payment to the Critical Vendors, no practical alternative exists by which Debtor can protect the value of its estate. Accordingly, for the reasons set forth herein, it is appropriate for the Court to authorize the Debtor to satisfy the Critical Vendor Claims.

III. THE COURT SHOULD AUTHORIZE THE PAYMENT OF 503(b)(9) CLAIMS.

32. Section 503(b)(9) of the Bankruptcy Code provides administrative priority for "the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business." Generally, the 503(b)(9) Claims must be paid in full for the Debtor to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(A). Consequently, paying such claims now only provides such parties with what they would be entitled to receive under a chapter 11 plan unless they consented otherwise.

33. Moreover, the Bankruptcy Code does not prohibit a debtor from paying such claims prior to pursuit of confirmation of a plan. As administrative claims incurred in the ordinary course of business, the Debtor believes it may pay such claims in an exercise of its business judgment pursuant to section 363(c)(1) of the Bankruptcy Code. *See, e.g.*, October 31, 2006 Hr'g Tr. at 49; *In re Dura Auto. Sys., Inc.*, No. 06-11202 (KJC) (Bankr. D. Del. Nov. 6, 2006) ("THE COURT: I think arguably the debtor could pay its 503(b)(9) claimants without court approval."). The timing of such payments lies squarely within the Court's discretion. *See In re Glob. Home Prods., LLC*, No. 06-10340, 2006 WL 3791955, at *3 (Bankr. D. Del. Dec. 21, 2006) (agreeing with parties that "the timing of the payment of that administrative expense claim is left to the discretion of the Court").

34. The Debtor's ongoing ability to obtain inventory is key to its survival and necessary to preserve the value of its estate. Absent payment of the 503(b)(9) Claims in the ordinary course during this chapter 11 case—which merely accelerates the timing of payment and not the ultimate treatment of such claims—the Debtor could be denied access to the goods necessary to maintain the Debtor's business operations. Failure to honor these claims in the ordinary course of business may also cause the Debtor's vendor base to withhold support for the Debtor during the chapter 11 process. Such vendors could accelerate or eliminate favorable trade terms. The cost of that disruption and the resulting administrative burden would far exceed the cost of paying the 503(b)(9) Claims as they come due.

35. For these reasons, courts in this district have regularly authorized the payment of claims arising under section 503(b)(9) of the Bankruptcy Code in the ordinary course of business. *See, e.g., In re JOANN Inc.*, No. 25-10068 (CTG) (Bankr. D. Del. Feb. 7, 2025) (authorizing payment to parties with section 503(b)(9) claims); *In re Am. Tire Distribs., Inc.*, No. 24-12391 (CTG) (Bankr. D. Del. Nov. 18, 2024) (same); *In re Accuride Corp.*, No. 24-12289 (JKS) (Bankr. D. Del. Nov. 13, 2024) (same); *In re Wheel Pros, LLC*, No. 24-11939 (JTD) (Bankr. D. Del. Oct. 10, 2024) (same); *In re SunPower Corp.*, No. 24-11649 (CTG) (Bankr. D. Del. Aug. 28, 2024) (same). Accordingly, it is appropriate for the Court to authorize the Debtor to satisfy the 503(b)(9) Claims as set forth herein.

IV. THE COURT SHOULD AUTHORIZE THE PAYMENT OF LIEN CLAIMS.

36. Certain Lien Claimants may be entitled under applicable non-bankruptcy law to assert possessory or other statutorily arising liens on the Debtor's goods or other property in their possession (notwithstanding the automatic stay under section 362 of the Bankruptcy Code) in an attempt to secure payment of their prepetition claim. Under section 362(b)(3) of the Bankruptcy Code, the act of perfecting such liens, to the extent consistent with section 546(b) of the

Bankruptcy Code, is expressly excluded from the automatic stay.⁹ 11 U.S.C. § 362(b)(3). As a result, the Debtor anticipates that certain Lien Claimants may assert or perfect liens, refuse to turn over goods in their possession, or stop performing their ongoing obligations. Even absent a valid lien, to the extent that certain Lien Claimants have possession of the Debtor's inventory, mere possession or retention would disrupt the Debtor's operations.

37. Additionally, pursuant to section 363(e) of the Bankruptcy Code, the Lien Claimants may be entitled to adequate protection of a valid possessory lien to the extent that the Debtor use or sell the estate property against which a Lien Claim is asserted. Given that the value of such property will generally far exceed the value of the related Lien Claim, creditors will not be harmed—and, in fact, will be benefited—by satisfying certain amounts owed to the Lien Claimants. Those payments will facilitate the sale of estate property against which liens may otherwise be asserted, helping to preserve value.

38. Moreover, paying the Lien Claims should not impair unsecured creditor recoveries in this chapter 11 case. In instances where the amount owed to a Lien Claimant is less than the value of the goods that could be held to secure a Lien Claimant's claim, such party may be a fully-secured creditor of the Debtor's estate. In such instances, payment now only provides the Lien Claimants with what they might be entitled to receive under a chapter 11 plan, without any interest costs that might otherwise accrue during this chapter 11 case. Conversely, all creditors will benefit from the seamless transition of the Debtor's operations into bankruptcy.

39. For these reasons, courts in this jurisdiction have authorized the payment of prepetition lien claims under similar circumstances in recent chapter 11 cases. *See, e.g.,*

⁹ *See* 11 U.S.C. § 546(b)(1)(A) (providing that a debtor's lien avoidance powers "are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection.").

In re Liberated Brands LLC, No. 25-10168 (JKS) (Bankr. D. Del. Feb. 28, 2025) (authorizing payment of certain lienholder claims); *In re JOANN Inc.*, No. 25-10068 (CTG) (Bankr. D. Del. Feb. 7, 2025) (same); *In re Am. Tire Distribs., Inc.*, No. 24-12391 (CTG) (Bankr. D. Del. Nov. 18, 2024) (same); *In re Accuride Corp.*, No. 24-12289 (JKS) (Bankr. D. Del. Nov. 13, 2024) (same); *In re Wheel Pros, LLC*, No. 24-11939 (JTD) (Bankr. D. Del. Oct. 10, 2024) (same). Accordingly, for the reasons set forth herein, it is appropriate for the Court to authorize the Debtor to satisfy the Lien Claims.

V. THE COURT SHOULD CONFIRM THAT OUTSTANDING ORDERS ARE ADMINISTRATIVE EXPENSES AND THAT PAYMENT OF SUCH CLAIMS IS AUTHORIZED.

40. Pursuant to section 503(b)(1) of the Bankruptcy Code, obligations that arise in connection with the postpetition delivery of goods and services, including goods ordered prepetition, are administrative expenses because they benefit the estate postpetition. *See* 11 U.S.C. § 503(b)(1)(A) (providing that the “actual [and] necessary costs and expenses of preserving the estate” are administrative expenses); *see also In re John Clay & Co.*, 43 B.R. 797, 809–10 (Bankr. D. Utah 1984) (holding that goods ordered prepetition but delivered postpetition are entitled to administrative priority). Thus, granting the relief sought herein with respect to the Outstanding Orders will not afford such claimants any greater priority than they otherwise would have if the relief requested herein were not granted and will not prejudice any other party in interest.

41. Absent such relief, however, the Debtor may be required to expend substantial time and effort reissuing the Outstanding Orders. The attendant disruption and delay to the continuous and timely flow of goods to the Debtor would potentially halt operations, damage the Debtor’s business reputation, erode the Debtor’s customer base, and ultimately lead to a loss of revenue, all to the detriment of the Debtor’s estate and its creditors. Accordingly, the Court should confirm

that claims arising from the Outstanding Orders are entitled to administrative expense priority status and should authorize the Debtor to pay the Outstanding Orders in the ordinary course of business and consistent with past practice.

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

42. 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

43. 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 and demonstrated by the First Day Declaration, immediate and

irreparable harm would result if the relief requested herein is not granted. The failure of any Trade Claimant to deliver essential products or supplies to the Debtor would have immediate and detrimental consequences to the Debtor's businesses and would decrease value to the detriment and prejudice of all of the Debtor's stakeholders. Moreover, it is the Debtor's business judgment that continuation of its positive relationship with the Trade Claimants is critical to its continued operations and greatly increases the likelihood of successfully prosecuting this chapter 11 case. 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.

RESERVATION OF RIGHTS

44. 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

45. 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/ Andrew M. Lee

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Kara Hammond Coyle (No. 4410)
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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. 25-12277 (____)

Ref. Docket No. ____

**INTERIM ORDER (I) AUTHORIZING
THE DEBTOR TO PAY PREPETITION CLAIMS OF CERTAIN
(A) CRITICAL VENDORS, (B) 503(b)(9) CLAIMANTS, AND (C) LIEN CLAIMANTS;
(II) CONFIRMING ADMINISTRATIVE EXPENSE PRIORITY OF OUTSTANDING
ORDERS; (III) AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS AND
TRANSFERS RELATED TO SUCH OBLIGATIONS; 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**”), (a) authorizing, but not directing, the Debtor to pay, in the ordinary course of business, prepetition amounts owing on account of (i) Critical Vendor Claims, (ii) 503(b)(9) Claims,³ and (iii) Lien Claims; (b) granting administrative expense priority to any undisputed obligations on account of goods ordered by the Debtor prior to the date hereof that will not be delivered until after the Petition Date and authorizing the Debtor to satisfy such obligations; and (c) granting related relief; 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

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.

³ A “**503(b)(9) Claim**” refers to a claim of a vendor to the Debtor that may be accorded administrative expense priority under section 503(b)(9) of the Bankruptcy Code as a result of the Debtor having received goods from such vendor within the 20 days immediately preceding the Petition Date.

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 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 hereby authorized, but not required, to pay, without further order of this Court, Trade Claims in the ordinary course of business consistent with the parties' customary practices in effect prior to the Petition Date; provided that, on an interim basis, the aggregate amount of payments on account of Prepetition Trade Claims shall not exceed \$1,738,500. Nothing in this paragraph shall be construed as requiring the Debtor to make a payment to a particular creditor or claimant. The Debtor shall provide a copy of this Interim Order or any final order entered in connection with the Motion to any Trade Claimant to whom a payment is made pursuant to the relief granted herein.

4. Any undisputed obligations related to the Outstanding Orders are granted administrative expense priority in accordance with section 503(b)(1)(A) of the Bankruptcy Code. The Debtor is authorized, but not directed, to pay any undisputed amount relating to Outstanding Order, consistent with the parties' customary practices in effect prior to the Petition Date.

5. As a condition to receiving payment hereunder, the Debtor, in its sole discretion, may require, by written agreement, including by e-mail or through the Trade Agreement, such parties to continue supplying goods or services to the Debtor in accordance with Customary Trade Terms. The Debtor reserves the right to require more favorable trade terms with any party as a condition to payment of any prepetition claim.

6. Regardless of whether an agreement has been executed, if any party accepts payment hereunder for a prepetition obligation of the Debtor premised on compliance with the above, and thereafter fails to comply with the Customary Trade Terms, or other such terms as

agreed to by the Debtor, then, subject to entry of a final order on the Motion from this Court:

(a) any payment on account of a prepetition claim received by such party shall be deemed, in the Debtor's sole discretion, an improper postpetition transfer and, therefore, immediately recoverable in cash upon written request by the Debtor, *provided* that such party shall be provided reasonable opportunity to contest such request; (b) upon recovery by the Debtor, any prepetition claim of such party shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding postpetition balance due from the Debtor to such party, the Debtor may elect to recharacterize and apply any payment made pursuant to the relief requested by the Motion to such outstanding postpetition balance and such supplier or vendor will be required to repay to the Debtor such paid amounts that exceed the postpetition obligations then outstanding, without the right of any setoffs, claims, provisions for payment of any claims, or otherwise.

7. Any Trade Claimant that accepts payment from the Debtor on account of all or a portion of such party's claim pursuant to this Interim Order shall be deemed to (a) agree to the terms and provisions of this Interim Order and (b) have waived, to the extent so paid, Trade Claims, of any type, kind, or priority (including any reclamation claim), against the Debtor, its assets, and its properties. The Debtor shall provide a copy of this Interim Order to any Trade Claimant to whom a payment is made pursuant to this Interim Order.

8. 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.

9. Notwithstanding the foregoing, prior to entry of an order granting the relief requested in the Motion on a final basis, the Debtor is not authorized to pay any prepetition amounts on account of Trade Claims before the applicable due dates of such claims.

10. 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-requests postpetition, 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.

11. 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.

12. No payments shall be made to any professionals or insiders as that term is defined in section 101(31) of the Bankruptcy Code.

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

14. 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.

15. 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.

16. 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. 25-12277 (____)

Ref. Docket Nos. ____ & ____

**FINAL ORDER (I) AUTHORIZING
THE DEBTOR TO PAY PREPETITION CLAIMS OF CERTAIN
(A) CRITICAL VENDORS, (B) 503(b)(9) CLAIMANTS, AND (C) LIEN CLAIMANTS;
(II) CONFIRMING ADMINISTRATIVE EXPENSE PRIORITY OF OUTSTANDING
ORDERS; (III) AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS AND
TRANSFERS RELATED TO SUCH OBLIGATIONS; 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 order (this “**Final Order**”), (a) authorizing, but not directing, the Debtor to pay, in the ordinary course of business, prepetition amounts owing on account of (i) Critical Vendor Claims, (ii) 503(b)(9) Claims,³ and (iii) Lien Claims; (b) granting administrative expense priority to any undisputed obligations on account of goods ordered by the Debtor prior to the date hereof that will not be delivered until after the Petition Date and authorizing the Debtor to satisfy such obligations; and (c) granting related relief; 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

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.

³ A “503(b)(9) Claim” refers to a claim of a vendor to the Debtor that may be accorded administrative expense priority under section 503(b)(9) of the Bankruptcy Code as a result of the Debtor having received goods from such vendor within the 20 days immediately preceding the Petition Date.

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 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 the *Interim Order (I) Authorizing the Debtor to Pay Prepetition Claims of Certain (A) Critical Vendors, (B) 503(b)(9) Claimants, and (C) Lien Claimants; (II) Confirming Administrative Expense Priority of Outstanding Orders; and (III) 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 hereby authorized, but not required, to pay, without further order of this Court, Trade Claims in the ordinary course of business consistent with the parties' customary practices in effect prior to the Petition Date; provided that the aggregate amount of payments on account of Trade Claims shall not exceed \$1,887,000. Nothing in this paragraph shall be construed as requiring the Debtor to make a payment to a particular creditor or claimant. The Debtor shall provide a copy of this Final Order to any Prepetition Trade Claimant to whom a payment is made pursuant to the relief granted herein.
3. Any undisputed obligations related to the Outstanding Orders are granted administrative expense priority in accordance with section 503(b)(1)(A) of the Bankruptcy Code. The Debtor is authorized, but not directed, to pay any undisputed amounts relating to the

Outstanding Orders in the ordinary course of business consistent with the parties' customary practices in effect prior to the Petition Date.

4. As a condition to receiving payment hereunder, the Debtor at its discretion may require, by written agreement, including by e-mail or through the Trade Agreement, such parties to continue supplying goods or services to the Debtor in accordance with Customary Trade Terms. The Debtor reserves the right to require more favorable trade terms with any party as a condition to payment of any prepetition claim.

5. Regardless of whether an agreement has been executed, if any party accepts payment hereunder for a prepetition obligation of the Debtor premised on compliance with the above, and thereafter fails to comply with the Customary Trade Terms, or other such terms as agreed to by the Debtor, then: (a) any payment on account of a prepetition claim received by such party shall be deemed, in the Debtor's sole discretion, an improper postpetition transfer and, therefore, immediately recoverable in cash upon written request by the Debtor, *provided* that such party shall be provided reasonable opportunity to contest such request; (b) upon recovery by the Debtor, any prepetition claim of such party shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding postpetition balance due from the Debtor to such party, the Debtor may elect to recharacterize and apply any payment made pursuant to the relief requested by the Motion to such outstanding postpetition balance and such supplier or vendor will be required to repay to the Debtor such paid amounts that exceed the postpetition obligations then outstanding, without the right of any setoffs, claims, provisions for payment of any claims, or otherwise.

6. Any Trade Claimant that accepts payment from the Debtor on account of all or a portion of such party's claim pursuant to this Final Order shall be deemed to (a) agree to the terms and provisions of this Final Order and (b) have waived, to the extent so paid, any and all prepetition

claims, of any type, kind, or priority (including any reclamation claim), against the Debtor, its assets, and its properties. The Debtor shall provide a copy of this Final Order to any Trade Claimant to whom a payment is made pursuant to this Final Order.

7. 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.

8. 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-requests postpetition, 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.

9. 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.

10. No payments shall be made to any professionals or insiders as that term is defined in section 101(31) of the Bankruptcy Code.

11. Nothing in this Final Order authorizes the Debtor to accelerate any payments not otherwise due.

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

13. 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.

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