

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

FOOD52, INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 25-12277 (\_\_\_)

**DEBTOR'S MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
(I)(A) AUTHORIZING CONTINUATION OF, AND PAYMENT OF  
PREPETITION AMOUNTS INCURRED IN CONNECTION WITH,  
CUSTOMER PROGRAMS AND (B) AUTHORIZING BANKS TO HONOR  
AND PROCESS CHECKS AND ELECTRONIC TRANSFER REQUESTS  
RELATED THERETO, AND (II) 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**”) (i) authorizing, but not directing, the Debtor to continue its Customer Programs (as defined below) in the ordinary course of the Debtor’s business and to honor or pay prepetition amounts in respect thereof; (ii) authorizing banks and other financial institutions at which the Debtor holds accounts (collectively, the “**Banks**”) to honor and process check and electronic transfer requests related to the foregoing; and (iii) 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*

<sup>1</sup> 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, 13<sup>th</sup> Floor, Brooklyn, New York 11205.



and *First Day Motions* (the “**First Day Declaration**”),<sup>2</sup> 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, 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

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<sup>2</sup> 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.

### **THE DEBTOR'S CUSTOMER PROGRAMS**

5. Prior to the Petition Date, both in the ordinary course of the Debtor's business and as is customary in the industry, the Debtor offered and engaged in certain customer and other programs and practices (collectively, the "**Customer Programs**"). The Customer Programs include, but are not limited to, the following (as described in detail below): (i) a gift card program, including prepaid gift cards sold by the Debtor (the "**Gift Card Program**"); (ii) various coupon, discounts, promotions, and other similar policies, programs, and practices of the Debtor; and (iii) in certain instances, customer refunds.

#### **I. THE GIFT CARD PROGRAM**

6. The Debtor maintained the Gift Card Program whereby customers could redeem pre-paid gift cards (the "**Gift Cards**"). The Debtor's obligations with respect to the Gift Cards arose as Gift Cards were redeemed. Gift Cards could be purchased at the Debtor's website.

7. As more fully described in the First Day Declaration, due to Avid sweeping substantially all of the Debtor's cash with no forewarning to the Debtor on December 15, 2025, the Debtor has been in survival mode ever since. As a result, as of December 19, 2025, the Debtor no longer accepts Gift Cards. The Debtor does not intend to accept Gift Cards during this chapter 11 case and does not seek relief to continue the Gift Card Program through this Motion.

## **II. COUPONS, DISCOUNTS, AND OTHER PROMOTIONS**

8. In the ordinary course of its business, the Debtor issues coupons, discounts, and promotions (the “**Promotions**”). The Promotions are issued on the Debtor’s website, through email blasts, and through digital advertising with the purpose of supporting marketing efforts and driving customer traffic and sales. The Promotions are not redeemable for cash.

9. The Debtor believes that continuing to honor the Promotions is essential to maintaining its relationships with its customers. Accordingly, the Debtor seeks the authority to continue, in its discretion, to administer and honor the Promotions in the ordinary course of business, consistent with past practices.

## **III. CUSTOMER REFUNDS**

10. In the ordinary course of its business, the Debtor offers refunds (i) to customers that contact the Debtor regarding products that did not meet the customer’s quality expectations and upon the Customer’s return of such products or (ii) in the case that a customer order was placed but the Debtor has run out of stock in the product ordered (the “**Customer Refunds**”). The Debtor issues the Customer Refunds in the hopes of retaining the customers and to maintain the Debtor’s brand reputation. The Customer Refunds are issued by cash, check, or electronic transfer.

11. The Debtor believes that continuing to honor the Customer Refunds is essential to maintaining its relationships with its customers and preserving the going concern value of its business. Accordingly, the Debtor seeks the authority to continue, and in its discretion, to administer and honor the Customer Refunds in the ordinary course of business, consistent with past practices, including causing any prepetition checks or transfers that were given in payment of Customer Refunds to be honored.

### **RELIEF REQUESTED**

12. By this Motion, the Debtor seeks entry of the Proposed Orders: (i) authorizing, but not directing, the Debtor to continue the Customer Programs in the ordinary course of the Debtor's business and to honor or pay prepetition amounts in respect thereof; (ii) authorizing the Banks to honor and process check and electronic transfer requests related to the foregoing; and (iii) granting related relief.

### **BASIS FOR RELIEF**

#### **I. CONTINUATION OF THE CUSTOMER PROGRAMS IS WARRANTED**

13. Courts have authorized payment of prepetition obligations under section 363(b) of the Bankruptcy Code where a sound business purpose exists for doing so. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (finding that a sound business justification existed to justify payment of prepetition wages); *see also Armstrong World Indus., Inc. v. James A. Phillips, Inc.*, (*In re James A. Phillips, Inc.*), 29 B.R. 391, 397 (S.D.N.Y. 1983) (relying on section 363 to authorize a contractor to pay prepetition claims of some suppliers who were potential lien claimants because payments were necessary for general contractors to release funds owed to the debtors). In addition, section 363(c) allows a debtor-in-possession to enter into transactions involving property of the estate in the ordinary course of business without an order of the court. *See, e.g., In re James A. Phillips*, 29 B.R. at 395 n.2 (“Insofar as transactions are actually in the ordinary course, they are authorized automatically by § 363(c)(1) and § 1107(a), and do not require Bankruptcy Court approval.”). Where retaining the loyalty and patronage of customers is critical to a successful reorganization, courts have not hesitated to grant the relief requested. In *Federated Dep’t Stores, Inc.*, the court authorized debtors to treat deposits or prepayments on goods and services “in the same manner as [d]ebtors treated [d]eposits prior to the commencement of [the] cases.” Case No. 1-90-00130, 1990 Bankr. LEXIS 102 (Bankr. S.D. Ohio Jan. 15, 1990).

14. The relief requested herein is appropriate under each of the foregoing standards. The Debtor seeks to continue and honor its Customer Programs without interruption during the pendency of this chapter 11 case. The Customer Programs are an integral part of the Debtor's businesses and enable the Debtor to attract and retain customers. If the Debtor does not honor its Customer Programs in the ordinary course of business, the Debtor would be significantly less competitive, which would cause a decline in business.

15. Moreover, the Debtor would risk alienating certain customer constituencies or, possibly, even encouraging them to initiate business relationships with the Debtor's competitors. The failure to honor the Customer Programs could erode the Debtor's hard-earned reputation and brand loyalty, which, in turn, could adversely affect the Debtor's ability to maximize the value of its estate. Accordingly, in the exercise of its sound business judgment, the Debtor believes that a sound business purpose exists for the relief requested herein because it will pay dividends with respect to the value of the Debtor's businesses, both in terms of profitability and the engendering of goodwill, especially at this critical time following the filing of this chapter 11 case.

16. In addition, because the Debtor pays certain amounts on account of the Customer Programs in the ordinary course of business, the Debtor submits that Court approval of the Debtor's payment of postpetition amounts in connection with the Customer Programs is not necessary because of the authority granted to them by section 363(c) of the Bankruptcy Code. Indeed, most, if not all, of the Customer Programs are standard practice in the Debtor's industry, and do not require any cash outlay. Nonetheless, out of an abundance of caution, the Debtor requests that the Court grant the relief requested herein and enter an order authorizing it to pay amounts under the Customer Programs in the ordinary course of the Debtor's business.

**II. CONTINUATION OF THE CUSTOMER PROGRAMS IS WARRANTED PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE AND THE DOCTRINE OF NECESSITY**

17. The Debtor's proposed maintenance and honoring of the Customer Programs should also be authorized pursuant to section 105(a) of the Bankruptcy Code and the "doctrine of necessity."

18. Section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). A bankruptcy court's use of its equitable powers to "authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). "Under [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 *Ionosphere Clubs*, 98 B.R. at 177); accord *In re Just for Feet, Inc.*, 242 B.R. 821, 825 (D. Del. 1999) ("To invoke the necessity of payment doctrine, a debtor must show that payment of the prepetition claims is 'critical to the debtor's reorganization.'") (quoting *In re Fin. News Network, Inc.*, 134 B.R. 732, 736 (Bankr. S.D.N.Y. 1991)); see also *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) ("[T]o justify payment of a pre-petition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the Chapter 11 process.").

19. In a long line of well-established cases, federal courts have consistently 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 Ry.*, 106 U.S. 286, 311-12 (1882) (payment of pre-receivership claim prior to reorganization 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 reorganization is essential to the continued operation of the . . . [business] during reorganization, payment may be authorized even if it is made out of [the] corpus”); *Dudley v. Mealey*, 147 F.2d 268 (2d Cir. 1945), *cert. denied*, 325 U.S. 873 (1945) (extending doctrine for payment of prepetition claims beyond railroad reorganization cases); *Michigan Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279 (S.D.N.Y. 1987) (approving lower court order authorizing payment of prepetition wages, salaries, expenses, and benefits).

20. The “doctrine of necessity” functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. *See 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 debtors’ continued operation); *In re Just for Feet, Inc.*, 242 B.R. 821, 824 (D. Del. 1999) (“[C]ourts have used their equitable power under section 105(a) of the Code to authorize the payment of pre-petition claims when such payment is deemed necessary to the survival of a debtor in a chapter 11 reorganization.”). The doctrine is frequently invoked early in a chapter 11 proceeding, particularly in connection with payment of prepetition claims. The court in *Structurelite Plastics Corp.* noted that the decisional authority that supports “the principle that a bankruptcy court may exercise its equity powers under section 105(a) to authorize payment of prepetition claims where such payment is necessary to ‘permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately’” 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988) (quoting *In re Chateaugay Corp.*, 80 B.R. at 287). The *Structurelite* court stated that “a per se rule proscribing the payment of prepetition indebtedness may well be too inflexible to permit the



effectuation of the rehabilitative purposes of the Code.” *Id.* at 932. The rationale for the doctrine of necessity rule is consistent with the paramount goal of chapter 11: “facilitating the continued operation and rehabilitation of the debtor . . . .” *In re Ionosphere Clubs*, 98 B.R. at 176.

21. As stated above, maintenance and honoring of the Customer Programs is critical to preserving the Debtor’s relationships with its customers, who are essential to the Debtor’s businesses. In turn, the ability of the Debtor to maximize profitability and the value of its businesses during this chapter 11 case will be crucial to maximizing value for the benefit of all stakeholders. Thus, the Court should exercise its equitable powers to grant the relief requested herein.

22. Moreover, if the Debtor does not honor the Customer Programs, the Debtor would risk alienating certain customer constituencies or, possibly, even encouraging them to utilize services of the Debtor’s competitors. The failure to honor the Customer Programs could erode the Debtor’s hard-earned reputation and brand loyalty, which, in turn, could adversely affect the Debtor’s ability to maximize value for the estate. Accordingly, in the exercise of its sound business judgment, the Debtor believes that a sound business purpose exists for the relief requested herein because it will pay dividends with respect to the Debtor’s ability to maximize value for all interested parties, both in terms of profits and goodwill, especially at this critical time following the filing of this chapter 11 case.

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

23. 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**

24. 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, as any disruption of the Customer Programs would erode customer loyalty and drive customers to the Debtor's competitors. Accordingly, the Debtor submits that it has satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and, therefore, respectfully request that the Court approve the relief requested in this Motion on an emergency basis.

25. 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 businesses 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**

26. 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**

27. 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

Michael R. Nestor (No. 3526)  
Kara Hammond Coyle (No. 4410)  
Elizabeth S. Justison (No. 5911)  
S. Alexander Faris (No. 6278)  
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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.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 25-12277 (\_\_\_\_)

Ref. Docket No. \_\_\_\_

**INTERIM ORDER (I)(A) AUTHORIZING CONTINUATION OF, AND  
PAYMENT OF PREPETITION AMOUNTS INCURRED IN CONNECTION  
WITH CUSTOMER PROGRAMS AND (B) AUTHORIZING BANKS TO HONOR  
AND PROCESS CHECKS AND ELECTRONIC TRANSFER REQUESTS  
RELATED THERETO, AND (II) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “**Motion**”)<sup>2</sup> of the above-captioned debtor and debtor in possession (the “**Debtor**”) for the entry of an interim order (this “**Interim Order**”), (i) authorizing, but not directing, the Debtor to continue the Customer Programs in the ordinary course of the Debtor’s business and to honor or pay prepetition amounts in respect thereof; (ii) authorizing banks and other financial institutions at which the Debtor holds accounts (collectively, the “**Banks**”) to honor and process check and electronic transfer requests related to the foregoing; and (iii) 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 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

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<sup>1</sup> 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.

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

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 to continue to administer the Customer Programs in effect and honor any prepetition amounts related to the Customer Programs as described in the Motion, in each case, in the ordinary course of business; provided, however, that, pending entry of a final order, the Debtor's cash expenditures related to the Customer Programs.

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-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.

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.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 25-12277 (\_\_\_\_)

Ref. Docket Nos. \_\_\_\_ & \_\_\_\_

**FINAL ORDER (I) (A) AUTHORIZING CONTINUATION OF, AND  
PAYMENT OF PREPETITION AMOUNTS INCURRED IN CONNECTION  
WITH CUSTOMER PROGRAMS AND (B) AUTHORIZING BANKS TO HONOR  
AND PROCESS CHECKS AND ELECTRONIC TRANSFER REQUESTS  
RELATED THERETO, AND (II) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “**Motion**”)<sup>2</sup> of the above-captioned debtor and debtor in possession (the “**Debtor**”) for the entry of an order (this “**Final Order**”), (i) authorizing, but not directing, the Debtor to continue the Customer Programs in the ordinary course of the Debtor’s business and to honor or pay prepetition amounts in respect thereof; (ii) authorizing banks and other financial institutions at which the Debtor holds accounts (collectively, the “**Banks**”) to honor and process check and electronic transfer requests related to the foregoing; and (iii) 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 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

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<sup>1</sup> 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, 13<sup>th</sup> Floor, Brooklyn, New York 11205.

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

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)(A) Authorizing Continuation of, and Payment of Prepetition Amounts Incurred in Connection with Customer Programs and (B) Authorizing Banks to Honor and Process Checks and Electronic Transfer Requests Related Thereto, and (II) 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 to continue to administer the Customer Programs in effect and honor any prepetition amounts related to the Customer Programs as described in the Motion, in each case, in the ordinary course of business.
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 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.

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.