

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

FOOD52, INC.,¹

Debtor.

Chapter 11

Case No. 25-12277 ()

Hearing Date:
To be Determined

Objection Deadline:
January 14, 2025 at 4:00 p.m. (ET)

**DEBTOR'S FIRST (1ST) OMNIBUS MOTION FOR ENTRY OF AN ORDER
AUTHORIZING (I) REJECTION OF CERTAIN EXECUTORY CONTRACTS,
EFFECTIVE AS OF THE PETITION DATE; (II) AND GRANTING RELATED RELIEF**

**THE COUNTERPARTIES RECEIVING THIS MOTION SHOULD LOCATE THEIR
RESPECTIVE NAME AND CONTRACT DESCRIPTION IN THE SCHEDULE
ATTACHED TO THE PROPOSED ORDER AS EXHIBIT 1.**

The above-captioned debtor and debtor in possession (the “**Debtor**”) hereby submits this motion (this “**Motion**”) for the entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**”), authorizing the Debtor to reject those certain executory contracts (including any amendments or modifications thereto, collectively, the “**Rejected Contracts**,” and the counterparties to such Rejected Contracts, collectively, the “**Counterparties**”) ² set forth on Exhibit 1 to the Proposed Order effective as of the Petition Date (as defined below). In support of this Motion, the Debtor respectfully states as follows:

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 The inclusion of any contract, or other agreement on Exhibit 1 to the Proposed Order is not intended as, nor shall be deemed to constitute, an admission by the Debtor or its estate that such contract is or is not an executory contract or that such contract or other agreement did not expire prior to the Petition Date in accordance with its own terms. The Debtor and its estate reserves any and all rights, claims, and defenses with respect to the characterization of the Rejected Contracts under section 365 of the Bankruptcy Code, applicable non-bankruptcy



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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 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), 365(a) and 554(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), and Rules 6006 and 6007 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 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.

law, or otherwise, including, without limitation, any and all rights to argue that the Rejected Contracts do not constitute executory contracts and that the Rejected Contracts expired prior to the Petition Date.

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 *Declaration of Erika Badan in Support of Chapter 11 Petition and First Day Motions* (the “**First Day Declaration**”).³

I. THE REJECTED CONTRACTS

5. As set forth in further detail in the First Day Declaration, the Debtor operates three distinct brands and businesses, including a digital-first food community centered on cooking, recipes, and storytelling and lines, and two home goods brands—Schoolhouse and Dansk Designs.

6. As described in the First Day Declaration, prior to the commencement of this chapter 11 case, the Debtor’s management engaged in a comprehensive review of the financial performance of the Debtor’s businesses. The Debtor has identified the Rejected Contracts as contracts it does not need because such contracts are not necessary or economically beneficial to the Debtor’s business affairs, will not be assumed and assigned as part of any sale process (and are not subject to the Stalking Horse Bid), and are not otherwise beneficial to its estate. Accordingly, the Debtor has determined that rejecting the Rejected Contracts, effective as of the Petition Date, is an appropriate exercise of its business judgment and in the best interest of its estate to avoid potentially incurring further costs and expenses that would only undermine the Debtor’s efforts to minimize costs and maximize value of the estate for the benefit of all creditors.

RELIEF REQUESTED

7. By this Motion, the Debtor seeks entry of the Proposed Order, substantially in the form attached hereto as **Exhibit A**, authorizing the Debtor to reject the Rejected Contracts, effective as of the Petition Date. In light of the Debtor’s efforts to preserve and maximize the

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

value of its estate, and to avoid incurring costs and expenses associated with unnecessary contracts, the Debtor submits that this relief is necessary and appropriate.

BASIS FOR RELIEF

I. REJECTION OF THE REJECTED CONTRACTS REFLECTS THE DEBTOR'S SOUND BUSINESS JUDGMENT

8. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor-in-possession “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). The purpose behind section 365(a) is “to permit the trustee or debtor-in-possession to use valuable property of the estate and to renounce title to and abandon burdensome property.” *In re Republic Airways Holdings Inc.*, 547 B.R. 578, 582 (Bankr. S.D.N.Y. 2016) (quoting *In re Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098 (2d Cir. 1993)); *see also In re Exide Techs.*, 607 F.3d 957, 967 (3d Cir. 2010) (“Courts may use § 365 to free a [debtor] from burdensome duties that hinder its reorganization.”); *N.L.R.B. v. Bildisco and Bildisco (In re Bildisco)*, 465 U.S. 513, 528 (1984) (“[t]he authority to reject an executory contract is vital to the basic purpose to a Chapter 11 reorganization, because rejection can release the debtor’s estate from burdensome obligations that can impede a successful reorganization.”). Pursuant to Bankruptcy Rule 6006(f), a trustee or debtor in possession may file a motion for the authority to reject multiple contracts and/or leases. Fed. R. Bankr. P. 6006(f).

9. The standard applied by courts to determine whether the assumption or rejection of an unexpired nonresidential lease or executory contract should be authorized is the “business judgment” test, which requires a debtor to have determined that the requested assumption or rejection would be beneficial to its estate. *See Grp. of Institutional Invs. v. Chi., Milwaukee St. Paul & Pac. R.R.*, 318 U.S. 523, 550 (1943) (noting that “the question whether a lease should be

rejected...is one of business judgment”); *In re Bildisco*, 682 F.2d 72, 79 (3d Cir. 1982), *aff’d*, 465 U.S. 513 (“The usual test for rejection of an executory contract is simply whether rejection would benefit the estate, the ‘business judgment’ test.”); *accord In re HQ Glob. Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003).

10. In applying the business judgment standard, bankruptcy courts give deference to a debtor’s decision to assume or reject leases and executory contracts. *See, e.g., Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39–40 (3d Cir. 1989) (affirming the rejection of a service agreement as a sound exercise of the debtor’s business judgment when the bankruptcy court found that such rejection would benefit the debtors’ estate); *In re Trans World Airlines, Inc.*, 261 B.R. 103, 121 (Bankr. D. Del. 2001) (“[A] debtor’s decision to reject an executory contract must be summarily affirmed unless it is the product of bad faith, or whim, or caprice.”).

11. Rejection of the Rejected Contracts is well within the Debtor’s business judgment and will serve to maximize the value of its estate. The Debtor has analyzed the terms of the Rejected Contracts, determined that such agreements do not provide the Debtor any material benefit and should be rejected to cut off the potential incurrence of additional administrative costs or expenses during this chapter 11 case. Additionally, this Motion, which is being served on the Counterparties and/or their agents or representatives by overnight delivery and electronic mail (where available), is a statement to such Counterparties that the Debtor is unequivocally surrendering its interests in the Rejected Contracts as of the Petition Date.

II. THE COURT SHOULD DEEM THE REJECTED CONTRACTS REJECTED EFFECTIVE AS OF THE PETITION DATE

12. Section 365 of the Bankruptcy Code does not restrict a bankruptcy court from applying rejection retroactively. *See In re Jamesway Corp.*, 179 B.R. 33, 37 (S.D.N.Y. 1995) (stating that section 365 does not include “restrictions as to the manner in which the court can

approve rejection”); *see also In re CCI Wireless, LLC*, 297 B.R. 133, 138 (D. Colo. 2003) (noting that section 365 “does not prohibit the bankruptcy court from allowing the rejection of leases to apply retroactively”).

13. Courts have held that a bankruptcy court may, in its discretion, authorize rejection retroactively to a date prior to entry of an order authorizing such rejection where the balance of equities favors such relief. *See In re Thinking Machs. Corp.*, 67 F.3d 1021, 1029 (1st Cir. 1995) (stating that “rejection under section 365(a) does not take effect until judicial approval is secured, but the approving court has the equitable power, in suitable cases, to order a rejection to operate retroactively”); *In re Chi-Chi’s, Inc.*, 305 B.R. 396, 399 (Bankr. D. Del. 2004) (stating “the court’s power to grant retroactive relief is derived from the bankruptcy court’s equitable powers so long as it promotes the purposes of § 365(a)”); *In re CCI Wireless, LLC*, 297 B.R. at 140 (holding that a “court has authority under section 365(d)(3) to set the effective date of rejection at least as early as the filing date of the motion to reject”).

14. Here, the equities of this chapter 11 case favor the Court’s approval of the retroactive rejection of the Rejected Contracts to the Petition Date. Without such relief, the Debtor will potentially incur unnecessary administrative expenses related to the Rejected Contracts—agreements that provide no benefit to the Debtor’s estate since the Debtor no longer enjoys any benefits under the Rejected Contracts and, accordingly, is not generating any revenue to offset contract obligations. *See* 11 U.S.C. § 365(d)(3).

15. Moreover, the Counterparties will not be unduly prejudiced if the Rejected Contracts are rejected effective as of the Petition Date because the Debtor has served this Motion on the Counterparties and/or their agents or representatives by electronic mail and/or facsimile (if

known), on the date hereof, and by overnight mail, the following day, stating that the Debtor intends to reject the Rejected Contracts effective as of the Petition Date.

16. Accordingly, based on the Debtor's desire to eliminate the potential for administrative claims against its estate, and to avoid the potential alleged accrual of any further obligations under the Rejected Contracts, the Debtor respectfully submits that the retroactive rejection of the Rejected Contracts as of the Petition Date is appropriate.

17. Accordingly, the Debtor respectfully submits that the Court deem the Rejected Contracts rejected effective as of the Petition Date.

COMPLIANCE WITH BANKRUPTCY RULE 6006(f)

18. Bankruptcy Rule 6006(f) establishes requirements for a motion to reject multiple executory contracts or unexpired leases that are not between the same parties. Rule 6006(f) states, in part, that such motion shall:

- a. state in a conspicuous place that parties receiving the omnibus motion should locate their names and their contracts or leases listed in the motion;
- b. list parties alphabetically and identify the corresponding contract or lease;
- c. specify the terms, including the curing of defaults, for each requested assumption or assignment;
- d. specify the terms, including the identity of each assignee and the adequate assurance of future performance by each assignee, for each requested assignment;
- e. be numbered consecutively with other omnibus motions to assume, assign, or reject executory contracts or unexpired leases; and
- f. be limited to no more than 100 executory contracts or unexpired leases.

The Debtor respectfully submits that the relief requested in this Motion complies with the requirements of Bankruptcy Rule 6006(f).

RESERVATION OF RIGHTS

19. Nothing in the Proposed Order 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

20. 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 United States Securities and Exchange Commission; (j) the Counterparties or their counsel, if known, via overnight mail; and (k) all parties entitled to notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, under the circumstances, no other or further notice is required.

[Remainder of page intentionally left blank.]

WHEREFORE, the Debtor respectfully requests that the Court enter the Proposed Order granting the relief requested in this Motion and such other and further relief as may be just and proper.

Dated: December 29, 2025
Wilmington, Delaware

**YOUNG CONAWAY STARGATT &
TAYLOR, LLP**

/s/ Brynna M. Gaffney

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*Proposed Counsel for the Debtor
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EXHIBIT A

Proposed 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. __

**FIRST (1ST) OMNIBUS ORDER AUTHORIZING (I) REJECTION OF CERTAIN
EXECUTORY CONTRACTS, EFFECTIVE AS OF THE PETITION DATE;
AND (II) 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 “**Order**”) authorizing the Debtor to reject the Rejected Contracts set forth on **Exhibit 1** to this Order, effective as of the Petition Date, and granting related relief, all as more fully set forth in the Motion; and upon consideration of the record of the chapter 11 case; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required except as otherwise provided herein; and it appearing that this Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court 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

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² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them 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**, as set forth herein.
2. Pursuant to sections 105(a) and 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006, the Rejected Contracts, to the extent not already terminated in accordance with their applicable terms or upon agreement of the parties, are hereby rejected by the Debtor, with such rejection being effective as of the Petition Date.
3. All objections to the entry of this Order, to the extent not withdrawn or settled, are overruled.
4. If the Debtor has deposited monies with a Counterparty to a Rejected Contract set forth on **Exhibit 1** hereto as a security deposit or other arrangement, such Counterparty may not setoff or recoup or otherwise use such deposit without the prior authority of this Court.
5. Any person or entity that holds a claim that arises from the Rejected Contracts must file a proof of claim based on such rejection within thirty (30) days of the date hereof.
6. Nothing in this 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.
7. The Debtor is authorized to take any and all actions necessary to effectuate the relief granted herein.

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

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

EXHIBIT 1**Rejected Contracts**

Title of Contract	Counterparty	Address
DANSK License Agreement	Form Portfolios LLC	115 Benevolent Street Providence, RI 02906
FORM License Agreement	Form Portfolios LLC	115 Benevolent Street Providence, RI 02906
Side Agreement	Form Portfolios LLC	115 Benevolent Street Providence, RI 02906
Support and Participation Agreement	Form Portfolios LLC	115 Benevolent Street Providence, RI 02906
Credit Agreement	Janel Group Inc.	1450 American Lane Suite 625 Schaumburg, IL 60173
Power of Attorney Agreement	Janel Group LLC	1450 American Lane Suite 625 Schaumburg, IL 60173